



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristina, 05 september 2012
Ref. No.: RK293/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI81/10

Applicant

Nazif Reka

**Constitutional Review of Supreme Court Judgment Rev. I. nr. 363/09,
dated 6 May 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy – President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge

The Applicant

1. The Applicant is Ramadan Rahmani of Fushe Kosove, Pristina. The Applicant is unrepresented.

Subject Matter

2. The subject matter of the Referral is the claim of the Applicant that the Decision of the Supreme Court of 6 May 2010 violated his constitutional right to work. He alleges that he is entitled to be employed as a dental technician in the Municipality of Kacanik.

Challenged Decision

3. Judgment of the Supreme Court of the Republic of Kosovo, Rev. I. nr. 363/09, dated 6 May 2010.

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Procedure before the court

5. On 3 September 2010, the Applicant filed a Referral with the Constitutional Court.
6. Subsequently the President of the Constitutional Court appointed Judge Iliriana Islami as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy, and Snezhana Botusharova.
7. On 10 July 2012 the President replaced the Judge Iliriani Islami, whose mandate as a Judge of the Constitutional Court had expired, with Judge Ivan Ćukalović as the Judge Rapporteur.
8. On 11 July 2012, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts of the case

9. The Applicant was employed as a dental technician with the Municipality of Kačanik under a contract of employment. By decision of the Municipality, dated 20 February 2007, his employment as a dental technician was terminated and he was offered three alternative positions; dental assistant, employee at the information system operator and driver. The original position as a dental mechanic was made as part of a decision to cut 27 positions in the Municipality of Kačanik. The Applicant refused the alternative positions as he considered that they did not correspond to his professional qualifications.
10. The Applicant's contract as a dental technician had expired on 31 December 2006 and it was not renewed. The Municipality did however keep him employed and paid him for three months of 2007 until he was finally removed from the payroll in April 2007.
11. The Applicant appealed to the Independent Oversight Board (IOB) and he was partly successful in that the IOB decided, on 9 October 2007, that the Complaints Commission within the Municipality of Kačanik had not been completed.

12. On 9 November 2007 the Complaints Commission of the Municipality found that the Applicant should be retained as a dental technician. This Decision was not enforced by the Municipality.
13. The Applicant subsequently brought proceedings in the Municipal Court of Kaçanik where he sought to return to the workplace. He was successful in the Municipal Court and also on Appeal in the District Court in Pristina. However, the Municipality appealed the matter to the Supreme Court who found in favour of the Municipality.
14. The Supreme Court found that the Municipal and District Courts had erroneously found for the Applicant. The Supreme Court emphasised that the Applicant had a contract of employment only until 31 December 2006, albeit the Municipality had extended that contract for a further three months as a matter of goodwill. Article 35(1) (b) of UNMIK Administrative Directive 2003/02, IMPLEMENTING UNMIK REGULATION NO. 2001/36 ON THE KOSOVO CIVIL SERVICE, provided that “employment in the civil service shall end automatically on the expiry of the employment contract of the civil servant.”

Assessment of the admissibility of the referral

15. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
16. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).
17. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case *Edwards v. United Kingdom*, App. No 13071/87 adopted on 10 July 1991).
18. In the present case the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Ministry of Labour and Social Welfare and the Supreme Court. Having examined both administrative proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no.17064/06 of 30 June 2009).
19. Furthermore the Applicant had not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
20. The Referral therefore must be rejected as inadmissible.

FOR THESE REASONS

The Court, following deliberations on 11 July 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

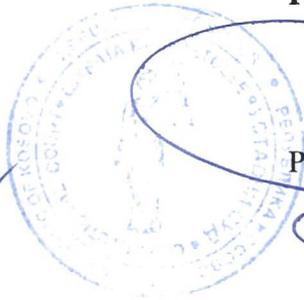
DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

