



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

Prishtina, 20 March 2015
Ref. no.:RK780/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI89/14

Applicant

**Ministry of Agriculture, Forestry and Rural Development, Kosovo
Forestry Agency**

**Constitutional review of the Judgment, Rev. no. 287/2013,
of the Supreme Court, of 18 December 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by the Ministry of Agriculture, Forestry and Rural Development, Kosovo Forestry Agency (hereinafter: the Applicant), represented by Mr. Murat Lepaja.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 287/2013, of the Supreme Court, of 18 December 2013, which was served on the Applicant on 7 March 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment Rev. no. 287/2013, of the Supreme Court, of 18 December 2013, for which the Applicant has not specified any violation of the constitutional provisions.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 21.4 of the Constitution and Articles 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 19 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 June 2014, the President of the Court, by Decision no. GJR. KI89/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI89/14, appointed members of the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Altay Suroy and Snezhana Botusharova.
7. On 19 June 2014, the Court sent a copy of the Referral to the Supreme Court of Kosovo and to Ms. M. G. as third party in the proceedings.
8. On 23 July 2014, the Court notified the Applicant of the registration of Referral.
9. On 25 July 2014, the Court requested from the Applicant to submit the acknowledgement receipt, proving the date when the Applicant was served with Judgment Rev. no. 287/2013 of the Supreme Court of Kosovo.
10. On 1 August 2014, the Applicant submitted the documents required by the Court.
11. On 19 September, 2014, the Court requested from the Applicant to submit the claim for Administrative Conflict Ref. SP-575/06 of 2 November 2006, submitted to the Supreme Court, Decision A. No. 28881/2006, of the Supreme Court of Kosovo, of 14 March 2007, Judgment Ca No. 34441/2012, of the Court of Appeals, of 14 June 2013, and Judgment C. no. 340/2008, of the Municipal Court in Peja, of 26 April 2012.

12. On 26 September 2014, the Applicant submitted the documentation requested by the Court, the Decision A, 02, 100/2006, of the Independent Oversight Board, of 8 July 2006, and evaluation performance form for Ms. M.G. of 23 November 2007.
13. On 11 February 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts in administrative procedure

14. Ms. M.G. was employed from 5 April 2001 until 31 December 2007, as an Economic- Finance Officer at Forestry Agency - Regional Office in Peja, under the Ministry of Agriculture, Forestry and Rural Development of Kosovo.
15. On 28 February 2006, the Applicant by Decision Ref. KE-61/06 suspended Ms. M. G, with temporary dismissal from work. The Applicant found that, *“during working hours she did not respect obligations and work duties under Article 30.1 paragraph (b), (c), (d), (e) and (j) of Administrative Direction no. 2013/2 Implementing UNMIK Regulation no. 2001/36 on the Kosovo Civil Service [...]”*.
16. On 18 May 2006, the Disciplinary Committee of the Applicant (Employment Authority of Kosovo Forestry Agency) rendered Decision Ref. KE- 02/2/166/06 on termination of employment to Ms. M. G., by determining that *“[...] after the presentation of additional evidence mentioned above contradicted the Civil Service of Kosovo, and it was determined that she did not respect the reasonable instructions of the head of the employment authority, refuses and sabotages the work in the Economic- Financial Service of specifications, invoices for payment slips for public and private forests , and she also slanders and uses banal vocabulary and insults his colleagues, technical staff, but she also despises and insults the senior staff of the Ministry of Agriculture, Forestry and Rural Development, namely the Regional Office of KFA in Peja [...]”*.
17. On an unspecified date, Ms. M. G. filed complaint with the Applicant’s Appeals Committee (Employment Authority of Kosovo Forestry Agency).
18. On 8 June 2006, the Applicant’s Appeals Committee rendered Decision no. 02/2/174/06, on rejection of the complaint of Ms. M. G.
19. On 22 June 2006, Ms. M. G. filed complaint with the Independent Oversight Board of Kosovo against Decision (02/2/174/06) of the Applicant’s Appeals Committee.
20. On 8 July 2006, the Independent Oversight Board, by Decision A, 02, 100/2006, approved the complaint of Ms. M. G. as grounded and annulled the Decision (02/2/174/06) of the Applicant’s Appeals Committee and Decision (Ref. 02/2/166/06) of the Applicant’s Disciplinary Committee.

21. On 2 November 2006, the Applicant initiated administrative conflict before the Supreme Court of Kosovo against the Decision (A, 02, 100/2006) of the Independent Oversight Board.
22. On 14 March 2007, the Supreme Court of Kosovo, by Decision A. no.. 2881/2006 in an administrative conflict upon the Applicant's claim, rejected the Applicant's claim as inadmissible, by assessing "[...] *that the contested decision and the procedure which preceded the rendering of that decision does not have the character of the act and the Administrative Procedure as provided for by Article 6 of the Law on Administrative Conflict considering the provisions of the laws mentioned above finds that the Municipal Court in Prishtina is competent to decide on this contest [...]*".
23. On 26 November 2007, Ms. M. G. filed complaint with the Applicant's Appeals Committee against the evaluation of the work performance of 23 November 2007.
24. On 30 November 2007, the Applicant by letter Ref. KE. 934/07 notified Ms. M.G. on non-extension of the contract, pursuant to Regulation no. 2001/36 on the Kosovo Civil Service and Administrative Direction no. 2003/2 on the implementation of the said Regulation, and evaluation of work by the head of the Office of the KPA in Peja.
25. On 31 December 2007, the Appeals Committee rendered Decision no. 1604/13, on rejection of the complaint of Ms. M. G. as ungrounded and unsubstantiated.
26. On 24 January 2008, Ms. M. G. filed complaint with the Independent Oversight Board of Kosovo.
27. On 24 April 2008, the Independent Oversight Board by Decision No. 815/08, rejected the complaint of Ms. M. G. as ungrounded and upheld the Notification Ref. KE-934/07, of 30 November 2007 and also upheld Decision (no. 1604/13) of the Applicant's Appeals Committee.

Summary of facts in judicial procedure

28. After having exhausted all legal remedies in the administrative procedure, Ms. M. G. filed a claim with the Municipal Court in Peja, whereby she requested "[...] *the annulment of the respondent's Decision no. 1604/13, the Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo in Prishtina, of 31.12.2007 and Decision no. 815/08 of Independent Oversight Board of Kosovo, of 24.04.2008 as unlawful and the respondent, Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo, Kosovo Forestry Agency-the regional office in Peja be obliged to reinstate the claimant to employment relationship, with work duties and responsibilities that she performed before, as a financial officer [...]*".
29. On 26 April 2012, the Municipal Court in Peja, by Judgment C. No. 340/2008, rejected the statement of claim of the claimant Ms. M. G as ungrounded.

30. Ms. M. G. filed an appeal within legal time limit with the Court of Appeals against Judgment C. No. 340/08 of the Municipal Court in Peja.
31. On 14 June 2013, the Court of Appeals, by Judgment Ca. Nr. 3441/2012, rejected as ungrounded the appeal of the respondent Ms. M. G. and upheld Judgment C. No. 340/2008, of the Municipal Court in Peja.
32. On an unspecified date, Ms. M. G. filed revision with the Supreme Court against Judgment Ca. No. 3441/2012, of the Court of Appeals due to substantial violations of the contested procedure provisions and erroneous application of the substantive law.
33. On 18 December 2013, the Supreme Court, by Judgment Rev. no. 287/2013 approved as grounded the revision of the claimant Ms. M.G. and decided to modify Judgment Ca. no. 3441/2012 of the Court of Appeals, of 14 June 2013 and Judgment C. no. 340/2008 of the Municipal Court in Peja, of 26 April 2012.
34. Referring to the part of the decision on the approval of the revision as grounded, the Supreme Court reasoned:

“[...] the lower instance courts based on correct determination of factual situation have erroneously applied the material law, when they found that the claimant’s statement of claim is ungrounded in the part, referring to the respondent’s obligation to reinstate the claimant to employment relationship, with work duties and responsibilities that she performed before as finance officer.

The claimant was employed with the respondent from 5.4.2001 for a fix period of time, in work and work duties, assigned based on her professional background. The works performed by the claimant in the job position Officer for economic finance issues do not have the temporary or from time to time character, but they are of the permanent nature, which results that in that job position was hired another person.

The fact that the non-extension of the contract was preceded by negative appraisal of work duties performance by the KFA Head of the Office, was assessed by the Supreme Court, but pursuant to Article 12 of the Administrative Direction no. 2003/2 Implementing UNMIK Regulation no. 2001/36 on Civil Service of Kosovo, the work evaluation of each civil servant is subject to official discussion together with the assessment of the manager on annual basis and by and subsequent endorsement by the next higher manager in accordance with performance assessment procedures to be set out by the Ministry, whereas pursuant to Article 13 of the Law above, the employment authority shall provide appropriate training to civil servants, including the evaluation of the work duties”.

35. Referring to the part of the decision, by which the matter is remanded for retrial, the Supreme Court reasoned:

“[...] As regards the part, dealing with the respondent’s obligation to compensate the claimant with the salary as she was in the employment relationship from 1.1.2008 and on, and regarding the determination of the interest for the amount mentioned above, because of the erroneous application of the material law, the factual situation was not correctly determined and for this reason there are no conditions for modification of the judgment. Therefore both judgments of the lower instance courts were quashed in this part and the matter was remanded to the first instance court for retrial [...]”.

Applicant’s allegations

36. The Applicant alleges that *“[...] the erroneous conclusion of Supreme Court of Kosovo that in the case of the claimant we have to do with mere non-extension of the employment contract, is not grounded, because the non-extension was preceded by the preliminary measure of the competent authority of the respondent, the Disciplinary Committee, which by reviewing the request for disciplinary procedure against her, pursuant to legal provisions in force rendered decision on merits and declared her responsible and imposed adequate measure-termination of employment relationship. This is the main point of this request addressed to this respected institution of the Republic of Kosovo, which is responsible for interpretation of any legal provision from all fields of life, under specific existing circumstances in Kosovo”.*

Admissibility of the Referral

37. The Court notes that in order to be able to adjudicate the Applicants’ referral, it needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

38. In this respect, the Court refers to Article 48 of the Law, which provides:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.

39. In addition, Rule 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, provide:

- (1) *The Court may consider a referral if:*

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

- (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,

[...]

(d) the Applicant does not sufficiently substantiate his claim;

40. The Court notes that in the present case the Applicant mainly complains regarding erroneous determination of factual situation and erroneous application of substantive law (legality) and does not in way substantiate its allegation on constitutional grounds (see, *Applicant's allegations in paragraph 35 of this document*).
41. The Court notes that the Applicant's allegation mentioned above are of the nature of legality and the Court considers that they fall under the full jurisdiction of the Supreme Court, which assesses *ex-officio* the legality of decisions of lower instances courts.
42. Furthermore, the Court should not act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, (see case *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights of 10 July 1991).
43. In the present case, the Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
44. As for the part of the decision, by which the matter is remanded for retrial, the Court considers that the case is still pending in regular court proceedings (see, *reasoning of the Judgment of the Supreme Court in paragraph 33 of this document*).
45. In fact, the Court notes that the Applicant has not substantiated its allegation on constitutional grounds and it did not provide evidence, indicating how and why its rights and freedoms, protected by the Constitution, have been violated by the challenged decision.
46. The Court concludes that the Applicant's Referral is manifestly ill-founded pursuant to Article 48 of the Law and Rule 36 (1) (d) and Rule 36 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) (d), 36 (2) and 56 (b) of the Rules of Procedure, on 11 February 2015, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani