



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

Prishtina, on 25 October 2016
Ref. No.: RK980/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI90/15

Applicant

Emin Behrami

**Constitutional review of Judgment Rev. no. 39/2015 of the Supreme
Court of the Republic of Kosovo, of 19 March 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Emin Behrami (hereinafter: the Applicant), resident of Vushtrri.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 39/2015, of the Supreme Court of 19 March 2015, Judgment Ca. no. 2908/2013 of the Court of Appeal, of 22 October 2014, and Judgment C. no. 2351/10 of the Basic Court in Prishtina, of 15 February 2013.
3. The Judgment of the Supreme Court was served on the Applicant on 25 April 2015.

Subject matter

4. The subject matter is the constitutional review of Judgment Rev. no. 39/2015 of the Supreme Court, of 19 March 2015, which allegedly violated the Applicant's right to work, as guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (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

6. On 29 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 3 August 2015, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Arta Rama-Hajrizi (member).
8. On 20 August 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 13 September 2016, the President of the Court appointed Judge Snezhana Botusharova as a member of the Review Panel replacing Judge Robert Carolan, who had resigned from the position of the Judge of the Court on 9 September 2016. Based on seniority the presiding judge of the Review Panel was appointed Judge Almiro Rodrigues.
10. On 14 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court to declare the Referral inadmissible, as manifestly ill-founded.

Summary of facts

Facts in the administrative proceedings

11. Based on the documents included in the Referral it is noted that the Applicant was a teacher at the Islamic secondary school "Alauddin" in Prishtina.
12. On 25 May 2006, the Applicant was found guilty of a disciplinary offense by the Disciplinary Committee of the Islamic Community of Kosovo (hereinafter: ICK) and was fined by a reduction in personal income in the amount of 20% for 7 months. The Applicant complained to the Disciplinary Committee of the second instance of ICK.
13. On 24 June 2006, the Disciplinary Committee of the second instance of ICK rejected the Applicant's appeal as ungrounded and raised the amount of fine for the reduction of personal income, from 7 to 8 months.
14. Meanwhile, the Applicant filed a claim against ICK with the Municipal Court in Prishtina.

Facts in the judicial proceedings

15. On 4 April 2007, the Municipal Court in Prishtina approved as grounded the Applicant's statement of claim and annulled as unlawful the decisions of ICK committee. The abovementioned court noted the claimant is entitled to compensation for the full payment of personal income for the fining time of 8 months.
16. On 23 October 2010, the Disciplinary Committee of the first instance of ICK, by Decision no. 631/10, decided to terminate the employment relationship to the Applicant because of the commission of minor disciplinary offence, which is a consequence of the charge of abuse with students made by the Applicant against the two members of staff of the Madrasa School. The Applicant filed an appeal with the Disciplinary Committee of the second instance of ICK.
17. On 23 October 2010, the Disciplinary Committee of the second instance of ICK (Decision no. 799/10), upheld the decision of the Disciplinary Committee of the first instance.
18. On 26 October 2011, the Applicant filed a request with the Department of Inspection of the Ministry of Education, Science and Technology (hereinafter: MEST), requesting: the immediate reinstatement to his job as a teacher, compensation of all monthly personal income and other compensation for the material damage.
19. On 10 October 2011, MEST replied to the Applicant's request, stating that the reinstatement of the Applicant to his working position is not in their jurisdiction and that the Applicant has the right to address the second instance authority of the employer and then he can proceed with the competent court.
20. On 2 November 2010, the Applicant filed a claim with the Basic Court in Prishtina against Decision 631/10 of the Disciplinary Committee of the first

instance and Decision 799/10 of the second instance, due to violations of the fundamental provisions of the Constitution of ICK and LCP.

21. On 15 February 2013, the Basic Court in Prishtina, by Judgment C. no. 2351/10, rejected as ungrounded the statement of claim of the Applicant, regarding his request for annulment of decisions of the disciplinary committees of ICK and his request for reinstatement to his working place and compensation of personal income and other material damage.
22. On 30 April 2013, the Applicant filed an appeal with the Court of Appeal against the decision of the Basic Court in Prishtina due to violation of provisions of contested procedure; erroneous and incomplete determination of factual situation; and erroneous application of the substantive law.
23. On 22 October 2014, the Court of Appeal in Prishtina, by Judgment C. no. 2351/10, rejected the appeal of the Applicant as ungrounded because the legal position of the first instance court was correct and based on the law, and there was no substantial violation of the contested procedure or erroneous application of the substantive law.
24. On 22 October 2014, the Applicant filed a request for revision with the Supreme Court of Kosovo.

Facts in extraordinary legal remedy

25. On 19 March 2015, the Supreme Court of Kosovo, by Judgment Rev. no. 39/2015, approved as partly grounded the statement of claim of the Applicant; annulled as unlawful the decisions of the Disciplinary Committees of the first and second instance; and rejected as ungrounded the Applicant's statement of claim for reinstatement to his working place and personal monthly income compensation.
26. The relevant part of the Judgment of the Supreme Court regarding the decisions of the Disciplinary Committee reads:

"In such a factual situation, the Supreme Court of Kosovo finds that the legal stance of the lower instance courts in relation to the rejection of the statement of claim of the claimant is inadmissible, because the challenged decisions for the dismissal of the claimant from work were rendered by the respondent, even though the claimant had not established an employment relationship with the respondent, neither by contract, nor by any other legally accepted manner, but on the basis of the contract in the case files, the claimant had established the employment relationship with the Municipality of Prishtina, namely with the Directorate for Education and Culture, whereas the working place of the claimant, based on this contract, was with the Respondent, therefore, the challenged decisions are unlawful."

27. The relevant part of the Judgment of the Supreme Court regarding the reinstatement to his working place and compensation of personal income reads:

“As regards the fact that the claimant had an established employment relationship with the Municipality of Prishtina, for a specified time starting from 01 September 2009, until 31 August 2010, an employment contract which, from the aspect of its duration, has expired, whereas it was not extended by the employer, in this case by the Municipality of Prishtina, the Supreme Court finds that the part of the statement of claim of the claimant for the reinstatement of the claimant to work and the compensation of the monthly personal income is ungrounded, due to the reason that in accordance with Article 11.1 under e) of the Essential Labor Law in Kosovo (UNMIK Regulation No. 2001/27), which was applicable at the time of the discharge of the claimant from work, the employment contract shall be terminated following the expiration of the term of employment. Therefore, for this reason, in this part of the statement of claim of the claimant, the Supreme Court of Kosovo has modified the two Judgments of the lower instance courts, and rejected the statement of claim of the claimant in its entirety as in the enacting clause of this Judgment.”

28. Regarding other appeals filed in the revision by the Applicant, the Supreme Court concluded:

“Other allegations of the revision were considered as irrelevant and without any influence on deciding differently upon the revision of the claimant.”

Applicant's allegations

29. The Applicant alleges that in his case the right to work guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution was violated.

30. In addition, the Court notes that the Applicant complains of:

a) the procedures conducted before the ICK disciplinary committees, and alleges: *“...the two disciplinary committees of ICK, in compliance with Article 45.17 of its Constitution, are incompetent for initiating the disciplinary procedure as a first and second instance for employers of the Madrasah where I used to work, because they have ignored the disciplinary commission of the school as a first instance, after which the matter should have been forwarded to those two commissions, which, for the institution of the Madrasah, are the second and third instance...”*(first appeal).

b) the procedure conducted before the regular courts, by alleging that: *“...the Supreme Court should have reasoned the annulment of the two decisions of the disciplinary commissions of ICK as unlawful, on the basis of the incompetence of these two commissions in accordance with their Constitution and recommendations of MEST, as well as due to the flagrant violations of that Constitution and laws of the state, which have violently usurped the jurisdiction of the disciplinary commission of the Madrasah as a first instance, and not on the basis of the fact that ICK as a legal person has no jurisdiction for issuing such decisions and that it is not the applicant's employer”*(...). *“the Supreme Court of Kosovo was obliged that, in addition to the annulment of the*

two decisions of the disciplinary commissions of ICK as unlawful, to render a decision also for my reinstatement to the workplace, as well as the compensation of all my monthly personal income.”

c) for the fact that: “...Directorate of Education and Culture did not inform me at all as to on what legal basis it did not extend only my contract ... this was done solely on the basis of the decisions of the disciplinary commissions of ICK, the unlawful annulment of which is confirmed by the revision of the Supreme Court of Kosovo.”

Admissibility of Referral

31. The Court first examines whether the Applicant meets the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.

32. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”

33. The Court also 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.”

34. The Court further takes into account Rule 36 (1) (d) and Rule 36 (2) (b) of the Rules of Procedure, which 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.”

35. The Court notes that the Applicant complains about a violation of the right to work, as guaranteed by Article 49 of the Constitution, which according to the Applicant was committed by the disciplinary committees, and by the regular courts in their decisions.

36. In this respect, the Court refers to Article 49 of the Constitution, which provides:

Article 49 [Right to Work and Exercise Profession]

1. *The right to work is guaranteed.*
2. *Every person is free to choose his/her profession and occupation.*

37. As regards the interpretation and the meaning of Article 49 of the Constitution [Right to Work and Exercise Profession], the Court emphasizes that this Article provides a standard that specifies the guarantees and rights to work, the employment opportunities and the provision of equal conditions without discrimination, as well as the right to choose freely the working place and exercise profession, without forced obligations. These rights are regulated by law in a specific manner (see, *Resolution on Inadmissibility of the Court, in case KI46/15, of 9 October 2015, published on 20 October 2015*, paragraph 26).
38. In this context, the Court considers that the Applicant's allegations of violation of the right to work should be understood in the light of the interpretation of Article 49 of the Constitution, according to the above wording and interpretation. The protection of the rights to work is specifically regulated and guaranteed by applicable laws, the interpretation of which provisions is the primary jurisdiction and duty of the regular courts.
39. The Court notes that, in addition to the right to work, the Applicant also complains of: a) the proceedings conducted before the disciplinary committees of ICK; b) the proceedings conducted before the regular courts, namely the Supreme Court regarding the competence of the disciplinary committees and the rejection of the Applicant's statement of claim for reinstatement to his working place, as well as compensation for the lost personal income; and c) non-justification of the Directorate of Education and Culture for non-extension of the employment contract.
40. Regarding these claims, the Court notes that they raise the issues of legality, as it is about the conflict of competences between the disciplinary committees for which the Supreme Court as the highest instance of the regular judiciary, decided with competence, by reasoning each of the allegations in the revision filed by the Applicant.
41. The Court reiterates that it is not its task under the Constitution, to act as a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and substantive law (See, *case Garcia Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).
42. It is the role of the Court to consider whether the proceedings before the regular courts, viewed in entirety, were correct and fair (See, *inter alia, Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
43. The mere fact that the Applicant is dissatisfied with the outcome of the case, cannot of itself raise a successful and admissible claim for breach of the his/her rights, protected by the Constitution and ECtHR.

44. In these circumstances, the Court considers that the facts presented by the Applicant do not show in any way that the regular courts had denied him the rights guaranteed by Article 49 of the Constitution.
45. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible pursuant to Rule 36 (1) (d) and 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rules 36 (1) (d), 36 (2) (b), and 56 (2) of the Rules of Procedure, on 14 September 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi