



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 18 November 2013
Ref.No.:RK498/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI126/13

Applicant

Shaqir Vula

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 293/2012, of 17 May 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 Applicant is Mr. Shaqir Vula, a graduated jurist, residing in Gjakova.

Challenged Decision

2. The Applicant challenges the following court decisions: the Judgment of the Supreme Court of Kosovo in Prishtina Rev. 293/2012 of 17 May 2013; the Judgment of the District Court in Peja Ac. No. 132/2012 of 12 June 2012; and the Judgment of the Municipal Court in Gjakova C. No. 292/2008 of 20 September 2011.

Subject Matter

3. The subject matter of the Referral pertains to alleged violation of the Applicant's constitutional rights in relation to his right to a fair and impartial trial (Article 31 of the Constitution; Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR) and his right to work and exercise profession (Article 49 of the Constitution).
4. The Applicant requests from the Constitutional Court to annul the Judgment of the Supreme Court of Kosovo, Rev. No. 293/2012 of 17 May 2013.

Legal Basis

5. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

6. On 19 August 2013, the Applicant submitted his Referral to the Court.
7. On 30 August 2013, the President of the Constitutional Court, by Decision No. GJR. KI 126/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI 126/13, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova, and Kadri Kryeziu.
8. On 12 September 2013, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of the Referral.
9. On 21 October 2013, 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

10. This Referral comes before the Court concerning the termination of the Applicant's employment contract for the position of Municipal Public Advocate.
11. Pursuant to the Applicant's statement of facts, the Applicant had been appointed Municipal Public Advocate pursuant to the Decision of Municipal

Assembly for the period from 2003 to 2006. During this period, Applicant had an employment contact for the above stated time frame.

12. After the termination of the first employment contract for the period from 2003 until 2006, the Applicant continued to work as a Municipal Public Advocate pursuant to Gjakova Municipal Assembly decision 01 no. 112-21266/2007 of 01 June 2007, which provided:

“The employment contract of the Applicant at the position of Municipal Public Advocate is extended for the duration until the conclusion of the competition procedure for this position.”

13. For the purpose of continuity of the position, the Applicant’s employment was extended until the conclusion of the recruitment period for the position the Applicant was currently in position of.
14. The Applicant’s employment was subsequently extended by three consecutive contracts for three (3) month periods.
15. On 31 March 2008, the extension of the employment contract was terminated.
16. Subsequently, the Applicant filed claim with the Municipal Court in Gjakova, Judgment C. No. 56/2010 of 7 April 2011, which rejected the Applicant’s claim as being ungrounded.
17. The Applicant subsequently filed an appeal with the District Court in Peja, Judgment Ac. No. 132/2012 of 12 June 2012, by which was ultimately rejected the Applicant’s appeal.
18. The Applicant filed revision with the Supreme Court against the second instance decision. He requested from the Supreme Court to review the decision of the District Court in Peja and the decision of the Municipal Court in Gjakova.
19. On 17 May 2013, the Supreme Court (Judgment: Rev. 293/2012) rejected as ungrounded the request for revision. In its reasoning, the Supreme Court states that: “the Applicant was appointed Municipal Public Advocate pursuant to decision of the Municipal Assembly for the period from 2003 to 2006. The employment contract was extended, by contract ZK-01/17 dated 7 January 2008, with a final termination date of 31 March 2008. The Applicant (Claimant) was notified on 13 March 2008 by the Gjakova Municipality that his employment contract would be terminated on 31 March 2008 and that it would not be renewed. According to court documents, the Applicant entered into the employment contracts of his own volition and that he understood that the contract periods were for a definite time period.
20. Furthermore, the Supreme Court held that:

“Although in the Revision it is alleged that the Judgment contains essential violation of the provision of contentious procedure they are not specified but only the content of Article 182 of LCP has been paraphrased, that the Revision has no reasoning on this legal ground, whereas this court

pursuant to Article 215 of LCP, except the capability to be a party and the regular representation of the parties in procedure does not review *ex officio* the existence of other essential violations of the provisions of contentious procedure. Due to this, it was found that this allegation of the Revision is not grounded.”

21. With regards “to the erroneous application of the material law in the Revision” the court found that “the claimant had no remarks on the last employment contract dated 7 January 2008 effective from 1 January 2008 until 31 March 2008 and has signed it willingly, which contradicts the mentioned allegation and renders it not grounded.” Therefore, the Supreme Court held that the allegations in the Revision could not be approved and in the Applicant’s specific case, the Revision allegations have not called into doubt the ground or the legality of the lower instance courts’ Judgments. Based on this, the Supreme Court, pursuant to Article 222 of LCP, determined that the Applicant’s Revision is rejected as ungrounded.

Applicant’s Allegations

22. The Applicant alleges that during the course of the abovementioned proceedings, his constitutional rights were violated because the respective courts did not apply the applicable provisions of law.
23. According to the Applicant’s Referral and statement of facts, the Applicant alleged that “[t]he first instance court, the appeal and the revision courts have erroneously applied the material law.”
24. According to the Applicant, during all stages of the proceedings, the respective courts failed to “provide the necessary legal reasoning grounded on the law.”
25. The Applicant further alleges that the decision to not extend his employment contract “directly violates the provisions of Administration Instruction No. MSHP/DASHC-2003/02 CONTRACT PROCEDURES for Implementing Administrative Directive 2003/02 – Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, which under item 4 in relation to the contract renewal provides: ‘The employee’s contract should normally be extended for a three year period when its renewal results due to the expiration of the first contract under the condition that: 4a.1 the budget for the position is available or most likely will possibly be available, 4a.2 when there are no disciplinary measures against the employee due to serious violations.’”
26. Furthermore, the Applicant alleges that:
 - a) “his employment should not have been terminated until an evaluation of his work was completed in order to facilitate the employer in determining whether to extend the employment contract or to fill the position through a public announcement.
 - b) during his employment with the Municipal Public Advocate, he submitted annual work reports that were found to be successful, with no remarks made as to his work product, and

c) *his contract should not have been terminated because he performed his work in a satisfactory manner.*”

Admissibility of the Referral

27. In order to be able to adjudicate the Applicant’s Referral, the Court must first determine whether the Applicant has fulfilled the admissibility requirement set forth in the Constitution, the Law, and Rules of Procedure.
28. The Court should firstly determine whether the Applicant is an authorized party to file the Referral in the Court. In the present case, the Applicant is natural person, therefore the Court assesses that the Applicant has met the requirement, provided by Article 113 (7) of the Constitution: *“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.”*
29. The Court further notes that, the Applicant has met the requirements provided by Article 113(7) of the Constitution and Article 47(2) of the Law, as well as Rule 36.1 (a) of the Rules of Procedure, regarding the exhaustion of legal remedies provided by the law in force.
30. The Court further notes that the Applicant submitted the Referral within the time-limit prescribed by Article 49 of the Law and Rule 36.1 (b) of the Rules, to submit the Referral within the four (4) month period. The Applicant was served with the last decision (Rev. 293/2012, 17 May 2013) on 2 July 2013 and submitted the Referral in the Court on 19 August 2013, which means that the Referral was filed in accordance with the abovementioned provisions.
31. The Court must also take into consideration for admissibility purposes whether the Applicant’s Referral satisfied the admissibility requirements prescribed in Rule 36.1 (c) and provisions of Rule 36.2 of the Rules of Procedure, that provides as follows:
 - 36.(1) *“The Court may only deal with Referrals if:
[...]
c) the Referral is not manifestly ill-founded.*
 - 36.(2) *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
 - (a) the Referral is not prima facie satisfied;
 - (b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;
 - (c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or
 - (d) when the Applicant does not sufficiently substantiate his claim”.*

32. Based on the case file, the Court notes that the Applicant mainly complains on the decisions of regular courts due to erroneous application of the material law, the lack of reasoning of those decisions and other reasons that have to do with his rights to work.
33. The Court must remind the Applicant that the Constitutional Court is not a court of fourth instance, to assess the legality and accuracy of decisions issued by regular courts, unless there is convincing evidence that such decisions have been rendered in an unfair and unclear manner. It is the role of the regular courts to interpret and apply the relevant rules of both procedural and substantive law. (See Garcia Ruiz v. Spain [GC], No. 30544/96, 28, European Court on Human Rights [ECtHR] 1999-I).
34. In the Applicant's Referral, there is no evidence to suggest that any of his rights guaranteed by the Constitution have been violated. During the course of the Applicant's regular proceedings, the Applicant had been afforded an opportunity to present his case with facts and evidence before those courts, regarding his allegations for violation of rights. It is not the task of this Court to review decisions of regular courts simply because the Applicant was not satisfied with the outcome of the previous decisions.
35. Therefore, in accordance with Rule 36 (2) (b) of the Rules of Procedure, the Applicant's Referral is considered as manifestly ill-founded and as such inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, pursuant to Rule 36 (2) b) and Rule 56 (2) of the Rules of Procedure, on 21 October 2013, 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

Arta Rama-Hajrizi



President of the Constitutional Court

Prof. Dr. Enver Hasani