



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

Prishtina, 31 March 2014
Ref. No.: RK 586/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI133/13

Applicant

Shefqet Hasimi

**Constitutional review of the Judgment of the Supreme Court,
Rev. no. 90/2013, of 23 July 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 Shefqet Hasimi, Senior Legal Officer (Department of Legal Affairs) at the Ministry of Justice (hereinafter: Applicant), who in the proceedings before the regular courts represented the Ministry of Internal Affairs. The Applicant has filed the referral on his own behalf.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 90/2013, of 23 July 2013, served on the Applicant on 15 August 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court, Rev. no. 90/2013, of 23 July 2013, which upheld the Judgment of the District Court in Prishtina.
4. Lower instance judgments had approved the claim suit of the claimant Q.R., thereby annulling as unlawful the decision of the Police General Director P. no. 88/VDP/2011 of 4 February 2011, by which the disciplinary measure of 30% deduction from gross salary for two months was imposed to the claimant.
5. From the case files, it may be derived that the Applicant, in capacity of the Senior Officer in the Division of Representation (Department of Legal Affairs) in the Ministry of Justice, was authorized to represent the Ministry of Internal Affairs in the proceedings before the regular courts. Nevertheless, the referral filed with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), was filed as an individual referral on his behalf.

Legal basis

6. Article 113.7 of the Constitution, Article 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 Court

7. On 30 August 2013, the Applicant filed his Referral with the Constitutional Court.
8. On 4 September 2013, the President of the Court, by Decision No. GJR.KI 133/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI133/13 appointed the Review Panel, composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
9. On 16 September 2013, the Court notified the Applicant of registration of the Referral, and requested from the Applicant to clarify whether he filed the referral as an individual referral, on his own behalf. On the same date, the Referral was notified to the Supreme Court of Kosovo.
10. On 23 October 2013, the Court received a letter from the Applicant, by which the Applicant confirmed his allegations for violation of the rights guaranteed by the Constitution, but failing to specify whether the referral was filed individually.

11. On 25 October 2013, the Ministry of Justice, respectively the Director of the Legal Department, to which Department the Applicant is part, filed with the Court an Authorization for Representation.
12. On 6 November 2013, the Court notified the Ministry of Internal Affairs of registration of the referral, thereby attaching the letter submitted by the Applicant, and the representation authorization issued by the Ministry of Justice.
13. On 24 January 2014, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

14. On 28 September 2010, the Senior Police Appointment and Discipline Committee (hereinafter: SPADC) recommended that due to misconduct, namely interference with the investigation process by the District Public Prosecutor in Prishtina, Q. R. is imposed a disciplinary measure of 30% deduction from the gross salary for two months.
15. On 4 February 2011, the Kosovo Police General Director rendered a Decision, imposing Q.R. the disciplinary measure as proposed by the SPADC.
16. Against this Decision, Q. R. filed a complaint with the Ministry of Internal Affairs.
17. On 22 March 2011, by a Decision, the Minister of Internal Affairs rejected as ungrounded the complaint filed by Q.R.
18. On 8 April 2011, Q. R. filed a complaint with the Municipal Court in Ferizaj.
19. On 8 December 2011, the Municipal Court in Ferizaj, by Judgment C. no. 229/11 approved the claim of claimant Q. R. as grounded, and annulled the Decision of the Kosovo Police General Director.
20. In its Judgment, the Municipal Court in Ferizaj found that [...] *“the decision issued by the General Director of the Police was done without any legal grounds referring to the UNMIK Administrative Order 2006/9, in which direction the respondent was referring allegedly for misconduct of the claimant by not taking into consideration that this regulation is out of force upon entry into force of the Law on Police, where in Article 46 of the Law such disciplinary violation does not appear. The Law on Police clearly provides all the disciplinary violations, however, such measure as misconduct does not exist. Due to these reasons these decisions and the decision of the first and seconds instance taken by the respondent do not have any judicial or legal grounds.”*
21. On the request of the respondent that the claim and case files be submitted to the Supreme Court due to jurisdiction, the Municipal Court in Ferizaj stated that [...] *“such claim according to the Court is not based since this is a dispute*

from employment relationship for which, in accordance with Article 26, paragraph I, item 7 of the Law on Regular Courts, Official Gazette no. 21/78, the Municipal Court is competent to decide.”

22. Against the Judgment of the Municipal Court in Ferizaj, the Ministry of Internal Affairs, represented by the Applicant, filed a complaint with the District Court in Prishtina.
23. On 24 October 2012, the District Court in Prishtina, by Judgment Ac. No. 320/2012 rejected the complaint as ungrounded.
24. Based on the case files, on 27 November 2012, the State Prosecutor informed the Applicant that in relation to his proposal for the request for protection of legality against the Judgments of the Municipal Court in Ferizaj, and the District Court in Prishtina, upon review of the challenged Judgments and other case file, it did not find any legal grounds to file such a request for protection of legality.
25. Against the Judgment of the District Court in Prishtina, No. 320/2012, of 24 October 2012, by claiming substantial violations of contested procedure provisions and erroneous application of the material law, the Ministry of Internal Affairs, represented by the Applicant, filed a revision with the Supreme Court of Kosovo.
26. On 23 July 2013, the Supreme Court rendered, by Judgment Rev. No. 90/2013, rejected the revision as ungrounded.
27. In its Judgment, the Supreme Court found that [...] *“In this particular case the provisions for conducting the disciplinary hearing before the CHPAD have not been applied, as it is correctly emphasized in the Judgments of the lower instance courts [...]”*. Further, the Supreme Court found that [...] *“upon rendering the decision on imposing the disciplinary measure of garnishing the monthly salaries, the General Director invoked Administrative Order no.2006/9 dated 06.06.2006, which is an Administrative Order for the implementation of UNMIK Regulation no.2005/54 on the guiding framework and principles of the Kosovo Police Service, which entered into power on 20.12.2005 and was abrogated on 20.02.2008 when the Law on Police was adopted. Thus legal provisions of a law that was not in power at the critical time were applied.”*

Applicant’s allegations

28. The Applicant alleges that [...] *“all of the above mentioned Judgments are issued in violation of the Constitution, refusing the Decisions of the Employment body.”*
29. The Applicant has requested from the Court to find whether [...] *“challenged Judgments if there are violations of applicable laws in Kosovo, did they act in violation of the Constitution of the Republic of Kosovo, that the claimant intruded without authorization in the District Prosecution Office in Prishtina, as well as to determine whether the Employment Body acted in conformity*

with the Constitution [...]”, by not specifying the alleged violation of any specific constitutional provision.

Admissibility of the Referral

30. In order to be able to adjudicate the Applicant’s Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

31. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides:

“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”.

32. Therefore, the Court notes that it must first determine whether the Applicant is an authorized party as per provisions mentioned above.

33. The Court notes that from the submitted documents, it is clear that in the proceedings before regular courts, the Applicant, in capacity of a Senior Officer in the Division of Representation (Department of Legal Affairs) of the Ministry of Justice, has represented the Ministry of Internal Affairs, in the capacity of responding party. Therefore, he, himself, was not party to the proceedings.

34. In this case, upon the request of the Court to clarify whether the Referral was filed on individual behalf of the Applicant, the Applicant filed a letter on 23 October 2013, thereby confirming his allegations for violation of the rights as guaranteed by the Constitution, but failing to specify whether he had filed his Referral on his behalf. In his letter, the Applicant stated, *inter alia*:

“Since I Shefqet Hasimi, Senior Officer at the Ministry of Justice, Judicial Representation Division as authorized have represented this matter, with representations, notes, submissions, responses to claims, I PROPOSE to the Constitutional Court of Kosovo to also take into consideration this request for reviewing the Constitutionality in the Judgments as specified in the Referral, as the interests of the Ministry of Internal Affairs – Kosovo Police, Representative of the Ministry of Justice from the Kosovo Police have been affected.

In this sense I consider that the Constitution and Laws of Kosovo have been violated, upon the interference with the District Prosecution in Prishtina, therefore I consider that the Judgment violates the Constitution.

Therefore, due to these reasons we have sought from the Constitutional Court of Kosovo to provide an opinion on the Judgments of the Supreme Court of Kosovo as a final instance”.

35. Further, the Court, upon receipt of letter of the Applicant on 23 October 2013, on 25 October 2013, received an authorization submitted by the Ministry of

Justice, by which: “[...] Authorized Mr Shefqet Hasimi, Senior Legal Officer of the Division for Judicial Representation, Department for Legal Affairs of the Ministry of Justice [...] to represent the Government of the Republic of Kosovo before the Constitutional Court of Kosovo, for filing the Referral of date 30.08.2013, registered by the Constitutional Court as KI 133/2013, pursuant to Article 113.7 of the Constitution, and Articles 46, 47, 48, 49 and 50 of the Law on the Constitutional Court of the Republic of Kosovo, the authorized is hereby obliged to represent and protect the interests of the Government in accordance with the applicable legislation. This authorization is valid until its revocation, and may not be used for other purposes.”

36. The representation of public authorities by the Ministry of Justice in judicial and arbitration proceedings is regulated by relevant legislation.
37. In this regard, the Law on amending and supplementing Law no. 03-L-048 on Public Financial Management and Accountability and the Regulation of the Government 02/2011 on the Areas of Administrative Responsibilities of the Prime-Minister’s Office and Ministries, and, provide that:

Article 24 of the Law:

[...]

“The Ministry of Justice shall be entitled and authorized, but not obliged, to assume responsibility for representing public authorities if (i) this is requested by the public authority; or (ii) if the Ministry of Justice determines that the relevant public authority is not being properly or competently represented. The Ministry of Justice shall be entitled to obtain independent legal counsel, provided that is not in conflict with its obligation to represent any party or interest in a proceeding.”[...]

Annex I of the Regulation

“The Ministry of Justice:

[...]

IX. Represent public authorities in procedures before courts and arbitration tribunals in accordance with the law in force;”

[...]

38. Therefore, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies, as provided by Article 113.7 of the Constitution.
39. Further, Article 49 of the Law provides that *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision”*. In this case, the Court notes that the Applicant was served the Judgment of the Supreme Court on 15 August 2013, while he has filed his referral with the Court on 30 August 2013.
40. Nevertheless, the Court must also take into consideration 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.“

41. The Applicant addresses the Court requesting it to find whether [...]” *challenged judgments in power and in which there are violations of applicable laws in Kosovo, acted in violation of the Constitution of the Republic of Kosovo that the claimant intruded without authorization in the District Prosecution Office in Prishtina, as well as to determined whether the Employment Body acted in conformity with the Constitution [...].”*
42. In this regard, the Court notes that the Applicant fails to specify the right he alleges to have been violated, and the Article of the Constitution which supports his referral.
43. The Constitutional Court also reiterates that under the Constitution, it is not its duty to act as a fourth-instance court when considering decisions rendered by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (See *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECtHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility, of 16 December 2011).
44. Based on the case file, the Court notes that the reasoning provided by the Judgment of the Supreme Court is clear, and upon review of all proceedings, the Court also found that regular court proceedings have not been unfair or arbitrary (See, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECtHR, decision of 30 June 2009).
45. Furthermore, the Applicant has not submitted any *prima facie* evidence that would confirm the violation of rights guaranteed by the Constitution (See, Vanek v. the Republic of Slovakia, ECtHR, No. 53363/99, Decision of 31 May 2005). The Applicant has not specified what rights of the Constitution support his allegations, as required by Article 113.7 of the Constitution, and Article 48 of the Law.
46. Consequently, the Referral is manifestly ill-founded, in accordance with Rule 36 (2), a) and d) of the Rules of Procedure, which provides that *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: a) The Referral is not prima facie justified and d) when the Applicant does not sufficiently substantiate his claim.”*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 and Rule 36 (2) a) and d) of the Rules of Procedure, on 24 January 2014, unanimously:

DECIDES

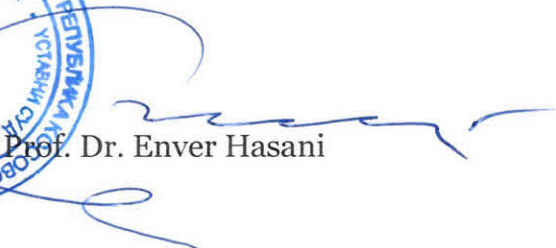
- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani