



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 28 April 2014
Ref. No.: RK 571/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI201/13

Applicant

Sofa Gjonbalaj

**Constitutional Review of the Judgment Rev. No. 299/2011
of the Supreme Court, of 17 April 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

The Applicant

1. The Referral is submitted by Ms. Sofa Gjonbalaj, with residence in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged Decision is the Judgment Rev. No. 299/2011 of the Supreme Court of 17 April 2013, which the Applicant declares to have received on 30 May 2013.

Subject matter

3. The subject matter is the request for constitutional review of the Judgment Rev. No. 299/2011 of the Supreme Court of 17 April 2013, which rejected the Applicant's request for revision against the Judgment of the District Court in Prishtina, Ac.no.45/2010, of 24 February 2011 as ungrounded.
4. The lower court instances rejected the Applicant's claim to annul the Decision No. 115 dated 1 April 2008, of the Agency for Business Registration within the Ministry of Trade and Industry, regarding the termination of the employment contract.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 13 November 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 3 December 2013, by Decision GJR. KI201/13, the President appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI201/13, the President appointed the Review Panel composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Artta Rama-Hajrizi.
8. On 11 December 2013, the Court informed the Applicant of the registration of the Referral. On the same date, the Court notified the Supreme Court and the Agency for Business Registration within the Ministry of Trade and Industry of the Referral.
9. On 2 April 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The Facts of the Case

10. From 2003 until 2008, based on a contract which was extended every year, the Applicant was employed in the capacity of First Registrar in the Agency for

Business Registration within the Ministry for Trade and Industry (hereinafter: the employer).

11. On 12 February 2008, the Applicant was served with an employment contract for a definite period from 1 January 2008 till 31 March 2008.
12. Consequently, on 1 April 2008, based on Decision No. 115 of the Acting Chief Executive of the Agency, the employment relationship of the Applicant was terminated (hereinafter: the Decision on termination of employment relationship).
13. On 25 April 2008, following an appeal filed by the Applicant against the Decision on termination of the employment relationship, the Appeals Commission of the Ministry of Trade and Industry (hereinafter: the Appeals Commission) rejected the appeal and upheld the Decision on termination of the employment relationship.
14. On 16 June 2008, following an appeal filed by the Applicant against the Decision of the Appeals Commission, the Independent Oversight Board of Kosovo (hereinafter: the IOBK) rejected the appeal as ungrounded and upheld the Decision on termination of employment relationship.
15. The IOBK, in its Decision of 16 June 2008, held that the Decision on termination of employment relationship was rendered in compliance with the legislation in force.
16. On 2 September 2009, the Applicant filed a claim with the Municipal Court in Prishtina, requesting the annulment of the Decision on termination of the employment relationship and the reinstatement to her previous working place.
17. On 19 January 2009, the Municipal Court in Prishtina, with its Judgment C1. No. 328/08, rejected the claim of the Applicant.
18. Following an appeal filed by the Applicant, on 24 February 2011, the District Court in Prishtina, with its Judgment Ac. No. 45/2010, rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Municipal Court in Prishtina (C1. No. 328/08 of 19 January 2009).
19. Against the aforementioned Judgment of the District Court in Prishtina, the Applicant filed a request for revision with the Supreme Court alleging violations of the provisions of the contested procedure and the erroneous application of substantive law.
20. On 17 April 2013, the Supreme Court, with its Judgment Rev. No. 299/2011, decided to reject the revision filed by the Applicant, as ungrounded.
21. The Supreme Court in its Judgment held that:

"[...] the claimant had established a definite period employment relation with the respondent, the contract may be extended only pursuant to the mutual

agreement, whereas it is terminated when one of the contracting parties is not willing to extend the contract, thus the claimant's employment relation was terminated upon the expiration of the time limit that established it."

22. On 19 July 2013, the Applicant submitted a request for protection of legality to the State Prosecutor of Kosovo against the Judgment of the Municipal Court in Prishtina.
23. On 9 August 2013, the State Prosecutor in its Notification No. KMLC No. 78/13 found that:

[...]

"Therefore in this particular case against the Judgment of the first instance of Municipal Court in Prishtina and against the Judgment of the second instance of District Court in Prishtina the request for the protection of the legality cannot be submitted because all the envisaged legal time limits have expired, whereas against the Judgment of the Supreme Court pursuant to the provision of Article 245.3 of the LCP the request for the protection of the legality is not admissible."

Applicants' allegation

24. The Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution.
25. The Applicant concludes requesting:
 1. *I seek from this court that after it reviews the presented documents to find that it acted in violation of Article 49 of the Constitution of Kosovo denying me the guaranteed right to work and at the same time the right to life.*
 2. *To declare unlawful and unconstitutional all the acts of all the instances and courts in this contest and acknowledge my right to work with all the compensations from the employment relation starting from 01.04.2008 until 26.02.2013 when I got retired.
I hope that at least at this court I will realize my human right, the right to work and life."*

Admissibility of the Referral

26. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
27. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes that:

“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.”

28. In the instant case, the Court notes that the Applicant has sought recourse to protect her rights before the Municipal and District Courts, and finally, following a request for revision, before the Supreme Court of Kosovo. The Applicant has also submitted a Request for Protection of Legality to the State Prosecutor.
29. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to her by the applicable law.
30. In addition, 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 all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”*
31. In order to verify whether the Applicant has submitted the Referral within the prescribed four month deadline, the Court refers to the date of receipt of the final Decision by the Applicant and the date of submitting the Referral to the Constitutional Court.
32. The “final decision” for the purposes of Article 49 of the Law will normally be the final decision rejecting the Applicant’s claim (See Paul and Audrey Edwards v. UK, No. 46477/99, ECtHR, Decision of 14 March 2002). The time limit starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of. (See Norkin v. Russia, App. 21056/ 11, ECtHR, Decision of 5 February 2013 and see also Moya Alvarez v. Spain, No. 44677/98, ECtHR, Decision of 23 November 1999).
33. Regarding the request for Protection of Legality submitted to the State Prosecutor, the Court notes that the State Prosecutor referring to the legal provisions in force notified the Applicant that: *“[...] against the Judgment of the first instance of Municipal Court in Prishtina and against the Judgment of the second instance of District Court in Prishtina the request for the protection of the legality cannot be submitted because all the envisaged legal time limits have expired, whereas against the Judgment of the Supreme Court pursuant to the provision of Article 245.3 of the LCP the request for the protection of the legality is not admissible.”*
34. Article 245, paragraph 3 of the Law on Contested Procedure establishes that:

“The request for protection of legality is not allowed against the decision that was taken during revision or request of protection of legality by the court with competencies to decide for judicial means.”

35. For the foregoing reasons, the Court considers that the final decision in the instant case is the Judgment of the Supreme Court and the time-limit begins to run from the date of receipt of the aforementioned Judgment by the Applicant (See Bayram and Yildirim v. Turkey, App. No. 38587/97, ECtHR, Decision of 29 January 2002). Thus, from the submissions it appears that the Applicant declares that the Judgment of the Supreme Court was served on her on 30 May 2013, whereas the Applicant submitted the Referral to the Court on 13 November 2013.
36. Based on the foregoing, it results that the Referral has not been submitted within the legal deadline stipulated by Article 49 of the Law.
37. Therefore, the Referral must be rejected as inadmissible, because it is out of time.

FOR THESE REASONS

The Constitutional Court, to Article 49 of the Law and Rule 36 (1), b) of the Rules of Procedure, on 2 April 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani