



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

Pristina, 30 June 2014
Ref.no.:RK 652/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI22/14

Applicant

Lulzim Hoti

**Constitutional review of the Ruling of the Supreme Court, Rev. no.
237/2013, dated 5 November 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 Mr. Lulzim Hoti (hereinafter: the “Applicant”), residing in Prizren.

Challenged decision

2. The final ruling is the ruling of the Supreme Court, Rev. no. 237/2013, of 5 November 2013, which was served on the Applicant on an unspecified date.
3. However, the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) notes that the Applicant in the Referral form specifically challenges the Judgment of the Municipal Court of Prizren, C. no. 232/08, of 24 May 2010.

Subject matter

4. The subject matter is the constitutional review of the ruling of the Supreme Court by which the Applicant alleges that Article 31 [Right to Fair and Impartial Trial], the principle of the presumption of innocence and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) have been violated.

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 6 February 2014, the Applicant submitted the Referral to the Court.
7. On 6 March 2014, the President of the Court, by Decision No. GJR. KI22/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI22/14, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 10 March 2014, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court and the Ministry of Justice.
9. On 12 May 2014, 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. On 5 March 2007, the Disciplinary Commission of the Ministry of Justice issued a decision whereby it found that the Applicant was in serious violation of “[...] Article 30.1 (a), (b) of the Code of Conduct for Civil Servants, provided by UNMIK Administrative Directive no. 2003/2 on application of UNMIK Regulation no. 2001/36 on Civil Service of Kosovo, and in compliance with

point 4, item 42.1., 4.2.2. of Administrative Directive no. MPS/DCAS 2003/04 according to Article 4, item 4.1, 4.2, 4.5 and 4.6 of Code of Conduct of Civil Servants No. 01/2006 and according to Code of Discipline of Correctional Service of Kosovo PSV 9.2, the first Standard item 4 under (f), (g), (h) and (k) and the fourth standard item 7 under (b), (d), (f) and (g).” Thus, the Disciplinary Committee terminated the employment contract of the Applicant. The Applicant complained against this decision to the Independent Oversight Board of Kosovo.

11. On 7 May 2007, the Independent Oversight Board of Kosovo rejected as premature the complaint of the Applicant because the Applicant had not complained to the Appeals Commission within the Ministry of Justice. Following this, the Applicant complained to the Appeals Commission of the Ministry of Justice.
12. On 6 August 2007, the Appeals Commission of the Ministry of Justice rejected as ungrounded the complaint of the Applicant and upheld the decision of the disciplinary commission of 5 March 2007. The Applicant filed a complaint against this decision with the Independent Oversight Board of Kosovo.
13. On 5 October 2007, the Independent Oversight Board of Kosovo rejected the complaint of the Applicant as ungrounded and upheld the decision of the Appeals Commission of the Ministry of Justice of 6 August 2007. The Independent Oversight Board held that *“Based on the submissions it is seen that the disciplinary procedure is conducted correctly. The personnel officers acted based on the report of a disciplinary violation and requested the initiation of disciplinary procedure and the case was referred to the disciplinary committee. The Decision of the disciplinary committee is lawful and grounded on the factual situation, statements of parties and evidence presented by parties. The appellant has not presented evidence by which would testify that he has not committed disciplinary violation, which by Discipline Code of Correctional Service of Kosovo is determined as a serious violation of discipline.”*
14. On 24 May 2010, the Municipal Court in Prizren (Judgment C. no. 232/08) rejected as ungrounded the complaint of the Applicant who requested the annulment of the Decision of the Independent Oversight Board of Kosovo. The Municipal Court held that *“By viewing and evaluating the administered evidence mentioned above it was confirmed that on 25.08.2006 the disciplinary procedure was initiated against the claimant, because the claimant received cigarettes and money from family members for prisoner A.A.. The Disciplinary Committee by decision no.44 of 05.03.2007 concluded that by these actions the claimant committed serious disciplinary violations [...]. Against this decision the claimant filed an appeal on 12.03.2007 which the Appeals Committee of Ministry of Justice rendered a decision by which the appeal of claimant was rejected and upheld the decision of Disciplinary Committee. The claimant proceeded the procedure with the Independent Oversight Board, as final administrative body, to decide on this matter and on 05.10.2007, this body renders the decision no. A 02 281/2007, whereby the appeal of the claimant was rejected as ungrounded and upheld the decision of Appeals Committee. Therefore, from the abovementioned the court came into*

conclusion that the decision of the respondent for termination of employment relationship is lawful, since it was based on complete determination of factual situation, by applying precisely the disciplinary procedure provided by applicable legislation for civil servants.” The Applicant then complained against this decision to the District Court in Prizren.

15. On 25 September 2012, the District Court of Prizren (Judgment Ac. no. 572/2010) rejected as ungrounded the complaint of the Applicant and upheld the Judgment of the Municipal Court of Prizren of 24 May 2010. The District Court held that *“According to the evaluation of the panel of this court the substantial violations of the contested procedure provisions pursuant to Article 182, paragraph 2 of LCP, for which this court takes care ex officio, do not stand and nor other violations for which the appeal alleges. The first instance court has correctly and completely determined the factual situation and correctly applied the substantive law when it decided as in the enacting clause of judgment, the same has given a grounded reasons and in compliance with situation in case file and proceeded evidence, reasons which are admissible also for the panel of this court.”* Approximately nine months later the Applicant filed a request for revision to the Supreme Court against this judgment.
16. On 5 November 2013, the Supreme Court (Ruling Rev. no. 237/2013) rejected, as out of time, the request for revision. The Supreme Court held that *“The representative of the Applicant has received the judgment of the second instance court on 8.10.2012 and that the time limit for submitting a request for revision started on 9.10.2012, when the representative of the applicant has received the judgment, and the final day for filing a revision was on 7.11.2012, while the revision was submitted on 5.7.2013, i.e. after the allowed time limit [...]”*

Applicant’s allegations

17. The Applicant alleges that *“Constitution of the Republic of Kosovo guarantees the right to work and right to innocence. Both these principles were violated since the entire conducted procedure was led by personal criteria and by prejudice of guilt, which never until now was determined in any regular court procedure. Thus termination of employment relationship is initiated and implemented based on assumption of a criminal offence, which was never confirmed.”*

Admissibility of the Referral

18. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
19. In this respect, the Court refers to Article 48 of the Law, which provides that:

“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.”

20. Furthermore, the Court takes into account Rule 36 (1) c) and Rule 36 (2) of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals if:

[...]

(c) the Referral is not manifestly ill-founded.

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

a) the Referral is not prima facie justified;

[...]

d) when the Applicant does not sufficiently substantiate his claim.”

21. The Court notes that the Referral of the Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution.
22. However, the Court also notes that the Applicant has failed to clarify how and why these constitutional rights were violated by the challenged decision. Dissatisfaction of the Applicant with a decision or a mere mentioning of articles and provisions of the Constitution do not suffice to build an allegation of constitutional violation. When alleging constitutional violation, the Applicant must provide convincing and well-justified argument in order for the referral to be grounded.
23. The Court notes that it is not the duty of this Court to review the errors of fact or law (legality) allegedly made by the regular courts, unless and only when they violate the rights and freedoms protected by the Constitution (constitutionality). Therefore, the Court may not act as a fourth instance court in this case. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see case KI14/13, the Applicant, Municipality of Podujeva, and the Resolution on Inadmissibility of 12 March 2013).
24. Furthermore, the rulings of the Supreme Court and the lower instances courts has provided reasoning in their findings.
25. Consequently, the Court considers that the Referral of the Applicant does not fulfill the admissibility requirements, due to the fact that the Applicant has not been able to justify his allegations and provide evidence to support the allegations of constitutional violation by the challenged decision.

26. Therefore, in compliance with Article 48 of the Law, and Rules 36 (1) c) and (2) a) and d) of the Rules of Procedure, the Referral must be rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (1) c), 36 (2) a) and d) and 56 (2) of the Rules of Procedure, on 12 May 2014, 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



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani