



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

Prishtina, 30 June 2014
Ref.no.:RK653/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI29/14

Applicant

Halit Islami

**Constitutional review of the Ruling of the Supreme Court, Rev. no.
138/2013, dated 11 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 Referral was submitted by Mr. Halit Islami (hereinafter: the “Applicant”), residing in the village Brainë, Municipality of Podujeva.

Challenged decision

2. The Applicant challenges the Ruling of the Supreme Court, Rev. no. 138/2013, of 7 July 2013, which was served on the Applicant on 12 September 2013.

Subject matter

3. The subject matter is the constitutional review of the Ruling of the Supreme Court by which the Applicant alleges that Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) has been violated.

Legal basis

4. 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 Constitutional Court

5. On 11 February 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 6 March 2014, the President of the Court, by Decision No. GJR. KI29/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI29/14, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 10 March 2014, the Court notified the Applicant of the registration of the Referral and requested the Applicant to submit a power of attorney for Mr. Ramiz Suka who represents the Applicant before the Court. However, the Court has so far not received a reply.
8. On 10 March 2014, the Court sent a copy of the Referral to the Supreme Court and the Student Center of the Ministry of Education, Science and Technology.
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 8 November 2011, the Municipal Court in Prishtina (Ruling C. no. 27/10) rejected the complaint of the Applicant to be re-instated at work with the Student Center of the Ministry of Education, Science and Technology. The Municipal Court held that the Applicant’s complaint was not clear and, although the court had requested the Applicant to improve and supplement the complaint, the Applicant had failed to act accordingly. Therefore, pursuant to

Article 102.3 of the Law on Contested Procedure, the court rejected the complaint of the Applicant. The Applicant then complained against this ruling to the District Court in Prishtina.

11. On 6 November 2012, the District Court of Prishtina (Ruling Ac. no. 230/2012) rejected as ungrounded the complaint of the Applicant and upheld the ruling of the Municipal Court of Prishtina of 8 November 2011. The District Court held that *“Since the claim was unclear, because it did not contain the decision that the petition sought to annul, the claim was twice returned to the claimant by the first instance court for supplementing it. The claimant with its submissions did not correct the statement of claim so the first instance court acted upon it. Moreover the claimant did not specify in the statement of claim who was the respondent in this contest, whether it was the Ministry of Education, Science and Technology or the Independent Oversight Board of the Civil Service of Kosovo, and who had rendered the final decision to terminate the employment relationship? As the claim is unclear it cannot be concluded what specifically is proposed by the claimant. Therefore, the first instance court correctly found that the claimant’s claim is unclear and that the claimant with his submissions did not correct the claim, which he also admits that he had not acted pursuant to the court’s orders.”* The Applicant then filed a revision to the Supreme Court against this ruling.
12. On 11 July 2013, the Supreme Court (Ruling Rev. no. 138/2013) rejected as impermissible the revision against the ruling of the District Court in Prishtina. The Supreme Court held that *“Pursuant to the provision of Article 228.1 of the LCP [Law on Contested Procedure] the parties can submit a Revision only against a final Ruling that concludes the procedure of the second instance court. Based on this situation of the case the Supreme Court of Kosovo has found that the Revision in this legal matter is impermissible because the court quashed the claim in this matter pursuant to Article 102.3 of the LCP and pursuant to Article 228.1 of the LCP the procedure in this matter was not concluded with a final decision.”*

Applicant’s allegations

13. The Applicant alleges that the employee terminated the employment relationship based on insinuations and, therefore, Article 49 [Right to Work and Exercise Profession] of the Constitution has been violated.

Admissibility of the Referral

14. 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.
15. In this respect, the Court refers to Article 49 of the Law, which provides:

“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. [...]”

16. The Court also refers to Rule 36 (1) b) of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals if: b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or [...].”

17. The final ruling of the Supreme Court, Rev. no. 138/2013 was taken on 7 July 2013, and was served on the Applicant on 12 September 2013, whereas the Applicant filed the Referral with the Court on 11 February 2014, which is more than 4 months from the day upon which the Applicant has been served with the Supreme Court ruling.

18. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1) b) 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