



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtine, 15 January 2013
Ref. No.: RK344/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI79/10

Applicant

Izet Zejnullahu

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 93/2010, dated 30 June 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Izet Zejnullahu residing in Vushtri. He is represented by a Lawyer, Zait Xhemajli, 30 Meto Bajraktari Street, Prishtina.

Challenged Decision

2. Judgment of the Supreme Court of Kosovo, Rev. No. 93/2010, dated 30 June 2010.

Subject Matter

3. The Applicant challenged the decision of Kosovo Police Service in Pristina to terminate his employment contract as a police officer.

Legal Basis

4. Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. The Applicant submitted a Referral to the Constitutional Court on 26 August 2010. The Court acknowledged the making of the Referral to the Applicant on 30 August 2010.
6. On 1 September 2010, the President of the Court appointed Judge Robert Carolan to be the Judge Rapporteur and on the same date, he appointed a Review Panel comprised of Judges Snezhana Botusharova (Presiding), Enver Hasani and Iliriana Islami.
7. The Court notified the making of the Referral to the Supreme Court of Kosovo and to the Ministry of Internal Affairs of the Republic of Kosovo.
8. The Ministry of Internal Affairs replied to the notification on 4 April 2011.
9. On 6 March 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the Facts

10. The Applicant had been employed by the Kosovo Police but was dismissed from the Police in 2008, pursuant to Decision of the Disciplinary Committee, dated 28 January 2008, and Decision of the Appeals Board of the Ministry of Internal Affairs – Kosovo Police, dated 23 March 2008.
11. The reasons given for dismissing him were that when the Applicant applied for membership of the Kosovo Police, he stated in his Application that there were no procedures initiated against him for illegal actions. However, the information provided was not correct. On 26 October 2002, the Applicant was asked in his employment application, “...were you ever arrested or were you subject of any investigation procedure?” To this question the Applicant answered “No”.
12. It subsequently transpired that the Applicant had, in fact, been arrested in the Federal Republic of Germany for a serious criminal offence committed in Manheim, Germany, during 1998-1999. That investigation determined that he spent one day in prison following his arrest.
13. The Applicant was successful in his challenge to the decision to dismiss him from the Police in the Municipal Court and in the District Court. However, the Supreme Court,

in its Judgment, Rev. No. 93/2010, of 30 June 2010, stated that the false presentation of the circumstances of his conviction was a justification for his dismissal.

Allegations of the Applicant

14. The Applicant alleged that the Supreme Court violated Article 21, Paragraph 1 (General Principles); Article 31, Paragraphs 2 and 3 (Right to Fair and Impartial Trial); Article 49, Paragraph 1 (Right to Work and Exercise Profession); Article 102, Paragraph 2 (General Principles of the Judicial System); and Article 104, Paragraph 1 of the Constitution (Appointment and Removal of Judges).
15. The Applicant also alleged that the Supreme Court violated Article 6 of the European Convention on Human Rights (Right to a fair trial).
16. The Applicant requested that the Constitutional Court impose interim measures.

Response of the Opposing Party

17. The Ministry of Internal Affairs replied to the Court by letter dated 4 April 2011 reaffirming the obligation of members of the Police contained in the Police Regulations, part of which required the following: *“Applicants and employees should be sincere and always say or write the truth, regarding all the matters related to official service, including the date when they apply for the service, no matter if they are under the oath or not”*.

Assessment of the Admissibility of the Referral

18. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1]).
19. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, Constitutional Court Judgment of 23 June 2010, of the Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras 66 and 67).
20. Having examined proceedings before the ordinary courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009).
21. Furthermore the Applicant had not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
22. Because the Applicant merely disputed whether the Supreme Court applied the proper law and reached the proper factual conclusion it appears that the Applicant is simply asking this Court to reverse the legal decision of the Supreme Court. Therefore, this referral is manifestly ill-founded with respect to a violation of any of his constitutional or human rights, and consequently is inadmissible.

Assessment of the Substantive Legal Aspects of the Referral

23. As the Referral is inadmissible, there is no substantive basis for the Applicant's referral.
24. Because the referral is inadmissible and since the Applicant did not establish that if he were to prove a constitutional violation that he would suffer unrecoverable damages such as a monetary award from his previous employer for wrongful termination, there is no valid basis for the imposition of interim measures.
25. The Applicant has produced no evidence or argument to ground the granting of interim measures.

FOR THESE REASONS

The Court, following deliberations on 06 March 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible,
- II. This Decision is to be notified to the Applicant, and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur


Robert Carolan

President of the Constitutional Court


Prof. Dr. Enver Hasani

