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

Prishtina, 11 April 2019
Ref. no.:RK 1345/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI198/18

Applicant

Hasan Shala

Request for constitutional review of Judgment Rev. No. 145/2018 of the Supreme Court of 6 September 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Hasan Shala from the village Barileva, municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Rev. No. 145/2018 of the Supreme Court of 6 September 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which, according to the Applicant's allegations, "*violated constitutional and human rights*". The Applicant did not specifically state what constitutional rights and freedoms were violated by the challenged judgment.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] 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 19 December 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 January 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzie Istrefi-Peci and Nexhmi Rexhepi.

7. On 28 January 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 27 March 2019, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. Based on the case file, it follows that on 2 April 2000 the Applicant got out from the bus and, on his way to his working place, he was hit by a passenger vehicle driven by the A.M., when the Applicant suffered serious bodily injuries, for which he was declared an invalid of first category and he was retired.

10. The Applicant further conducted two court proceedings. The first court proceedings concerned the payment of unpaid personal income, while the second court proceedings relate to the compensation of material and non-material damage, which resulted from the injuries he suffered.

11. Bearing in mind that there are two court proceedings, the Court will separately present them in factual situation.

The first court proceedings in relation to the Applicant's claim for payment of unpaid personal income

12. On 10 October 2001, the Applicant and the Kosovo Energy Corporation (hereinafter: KEK) signed an agreement on temporary compensation of salaries (No. 3568), which foresees: a) to pay the Applicant due to the termination of the employment relationship, because of suffered injuries, the employer assumes the responsibility to pay him the temporary compensation, until the beginning of the functioning of the Pension and Disability Insurance Fund of Kosovo, b) the employer will suspend the payment of the pension salary when he reaches the age of 65.

13. On 1 November 2006, KEK suspended further payment of salaries to the Applicant.

14. The Applicant filed a claim with the Municipal Court against KEK in which he requested the continuation of the payment of the agreed monthly salaries.

15. On 21 June 2007, the Municipal Court rendered Judgment Cl. No. 2782/2006, which approved the Applicant's statement of claim and "[...] *obliged the respondent (KEK) to pay the temporary compensation of salary pursuant to the agreement no. 3568 of 10.10.2001, as well as in the future, every month, starting from 01.06.2006 105 € and no later than 15 in the month for the previous month, until the requirements stipulated in this agreement change*".

16. KEK authorized representative filed an appeal with the District Court against Judgment Cl. No. 2782/2006 of the Municipal Court, with a proposal that the appealed judgment be modified and the claimant's statement of claim be rejected.

17. On 24 July 2008, the District Court by Judgment Ac. No. 53/2008 rejected KEK appeal as ungrounded and upheld Judgment Cl. No. 2782/2006 of the Municipal Court of 21 June 2007.

The second legal proceedings of the Applicant regarding the claim for compensation of material and non-material damage

18. On unspecified date, the Applicant filed a statement of claim with the Municipal Court requesting "*to oblige the respondent (KEK) to pay him € 10,000 in the name of physical pain, in the name of the reducing of life activities € 40,000, in the name of fear € 5,000, in the name of treatment costs € 10,000, for care and assistance by a third person € 6,000, in the name of an enhanced diet € 200, in the name of the lost profit € 20,000, for a monthly lease € 160, with a legal interest, from the day when the damage was caused*".

19. On 27 January 2007, the Municipal Court rendered Judgment C. No. 393/02, by which the statement of claim of the Applicant was rejected as ungrounded, with the reasoning:

"The court assessed the claimant's allegations that he suffered injuries when he went to work, but in this present case, there may be imposed no guilt on the respondent, and especially when it is known who caused the traffic accident, where, based on the statements of A.M., it is clear that the fault of the claimant resulted in an accident, because no proceedings were conducted against him, and this circumstance was not challenged by the claimant, namely he did not present any evidence that the driver was found guilty, therefore the statement of claim of the claimant is ungrounded".

20. The Applicant filed an appeal with the District Court against Judgment of the Municipal Court C. No. 393/02.

21. On 13 October 2008, the District Court rendered Judgment Ac. No. 733/08, which approved the Applicant's appeal as grounded and annulled Judgment C. No. 393/02 of the Municipal Court, and the case was remanded for retrial. The reasoning of the judgment, among other things, reads:

"The factual situation was not completely and correctly determined. The fact in relation to the issue in which manner was regulated by the normative acts of the respondent the compensation for the damage caused to the employee has remained unconfirmed in the event of an accident when entering the workplace and leaving the workplace...".

22. On 22 October 2009, the Municipal Court rendered Judgment No. 1946/2008, which partly approved the Applicant's statement of claim, obliging the respondent (KEK), that the in the name of material and non-material damage caused by the accident at work, to pay the Applicant for the damage in the total amount of € 16,150. The Municipal Court rejected the other parts of the statement of claim as ungrounded.

23. KEK filed an appeal with the Court of Appeals against Judgment No. 1946/2008 of the Municipal Court.

24. On 1 October 2010, the Court of Appeals rendered Judgment Ac. No. 5263/12, which approved the KEK appeal, annulled Judgment of the Municipal Court C. No. 1946/2008, of 22 October 2009, and remanded the case to the first-instance court for retrial. The reasoning of the judgment reads:

"The Court could not approve the legal position of the first instance court regarding the determination of material and non-material damage for the respondent, because this assessment is based only on the opinion of expert Dr. A. P, orthopedic traumatologist, as well as on the opinion of experts in the field of traffic I.B, grad. eng., who was not in a position to declare in relation to the shared responsibility of the participants in this accident in which the claimant was injured, and that this violation has the character of a violation at work, and hence, the appealed judgment contained serious violations of the provisions of the contested procedure referred to in Article 182, paragraph 2 item n) of the LCP, and therefore should be annulled.
[...]

The first instance court is obliged to remedy the abovementioned flaws in the retrial of the case, to examine the evidence of the examined expert-doctor of the orthopedist and neuropsychiatrist who will jointly declare in relation to the types of material and non-material damage..."

25. On 27 November 2014, the Basic Court rendered Judgment C. No. 2904/13, which approved the Applicant's statement of claim, obliging KEK that in the name of material and non-material damage caused by the accident at work on 2 April 2000, pays the Applicant:

"In the name of physical pain, the amount of 4500 €, in the name of fear, the amount of 3000 €, in the name of reduction of total life activities in the amount of 8000 €, in the name of aid and care by a third person the amount of 200 €, and in the name of increased feeding the amount of 200 € - in total amount of 15.900 €".

26. KEK filed an appeal to the Court of Appeals against Judgment C. no. 2904/13 of the Basic Court of 27 November 2014.

27. On 22 January 2018, the Court of Appeals rendered Judgment AC. No. 1191/2015, which approved the KEK appeal as grounded, modified Judgment No. 2904/2013 of the Basic Court of 27 November 2014, by rejecting the Applicant's statement of claim as ungrounded. The reasoning of the judgment states:

"From the case file it follows that by the challenged Judgment was upheld the claimant's statement of claim, with the reasoning that the claimant was in employment relationship with the respondent..."
[...]
This court cannot accept the legal position of the first instance court as fair, because in this case the responsibility of the respondent was not established, namely there is no basis for the liability of the respondent, as the damage to the respondent was not caused at workplace, but the damage was caused by the third party as determined by the first instance court,
[...]
Regarding the compensation of injuries at work under Article 60 paragraph 1 of the Law on Labor, it is stated that: "The employer is obliged to provide all employees covered by this Law with insurance against injuries and related illnesses". In the provision of Article 154 paragraph 1 of the Law on Obligational Relationships, it is foreseen that: "In the event of damage to any one, he is obliged to make compensation if unless it is established that the damage was caused without his fault".

28. The Applicant filed a request for revision to the Supreme Court against Judgment AC. No. 1191/2015 of the Court of Appeals.

29. On 6 October 2018, the Supreme Court rendered Judgment Rev. No. 145/2018, rejecting the request for revision of the Applicant as ungrounded. The reasoning of the Judgment of the Supreme Court reads:

"The Supreme Court finds that one case can be accepted as a work injury if these events have a character of the work, that is, that it, to have a temporal, spatial and causal link with the claimant's regular working duties. The injuries sustained by the claimant at the entrance of the respondent district by the third party, were not caused during the performance of work duties and there is no causal connection with the work of the claimant, therefore, pursuant to the provisions of Article 122 of the Labor Law (Official Gazette SAP Kosovo No. 12/39) and Article 154 of the Law on Obligations (Official Gazette SFRY no. 29/78) applicable pursuant to UNMIK Regulation No. 1999/24 and Articles 67-68 of the Provisional Rules of Procedure of the respondent on the employment relationship of 08.03.2000, the claimant is not responsible for compensation for the sustained injuries because they are caused during the performance of the work and are not related to the work, and according to the abovementioned provisions, and for this the respondent is not responsible for payment of the damage to the claimant. Therefore, the allegations in the revision of the claimant that the respondent is liable for damages caused to the claimant are ungrounded".

Applicant's allegations

30. The Applicant tries to build his claims of violation of constitutional and human rights, on the following allegations:

> *„My referral is reasoned because my constitutional rights were violated, because I was at work. I was at that moment moving to my workplace. There has been a violation of human rights in my case, because for 17 years I was without any rights, I remained invalid with limited abilities. In KEK they told me I was not injured by KEK tools. I was injured by a KEK worker, without my fault, in front of my workplace".*

31. As to the referral before the Court, the Applicant stated that *"by my referral, I ask pure justice only, I ask nothing but what I am entitled to."*

Admissibility of the Referral

32. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, further specified in the Law, and foreseen in the Rules of Procedure.

33. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *„1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
> *(...)*
> *7. 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."*

34. The Court further assesses whether the Applicant has met the admissibility criteria as foreseen by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

„1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."

Article 48 [Accuracy of the Referral]

"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."

Article 49 [Deadlines]

„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... ."

35. As to the fulfillment of these criteria, the Court finds that the Applicant filed the Referral in the capacity of the authorized party, challenging the act of the public authority, namely Decision Rev. No. 145/2018of the Supreme Court of 6 September 2018, after exhaustion of all legal remedies provided by law. The Applicant also filed the Referral in accordance with the deadline prescribed in Article 49 of the Law.

36. However, when assessing whether the Applicant fulfilled the admissibility requirements provided by Law, the Court also refers to Article 48 of the Law, which provides the Applicant with an obligation to accurately specify in his Referral submitted to the Court the rights and freedoms that have allegedly been violated.

37. The same requirement is clearly laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (1) (d) stipulates:

"(1) The Court may consider a referral as admissible if:

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions."

38. In this respect, the Court notes that, according to its case law and case law of the European Court of Human Rights (hereinafter: the ECtHR), the Applicant must accurately state a violation of his rights protected by the Constitution and reason these violations, in the way that would seem possible.

39. The Referral is manifestly ill-founded if it lacks *prima facie* evidence, which shows with sufficient clarity that the alleged violation of human rights and freedoms is possible (see, Judgment of the ECtHR, *Vanek v. Slovakia*, of 31 May 2005, application no. 53363/99) and whether the facts for which the claim is filed do not clearly constitute a violation of the rights alleged by the Applicant, namely if the Applicant does not have a *"reasoned claim"* (see ECtHR Judgment, *Mezőtúr-Tiszazugi Vízgazdálkodási Társulat v Hungary*, of 26 July 2005, application No. 5503/02), as well as when it is found that the Applicant is not a „victim" of a violation of the rights protected by the Constitution and the ECHR.

40. The Court notes that the Applicant did not state in the referral what constitutional rights and freedoms were violated by the judgments of the regular courts, nor did he state or explain how or in what manner the regular courts could violate some of his constitutional rights and freedoms, nor whether a violation may have occurred in the proceeding of determination of factual situation, the application of substantive law, or failure to comply with some of the guarantees provided for by the Constitution.

41. In the present case, the Court found that the Supreme Court in the reasoning of the challenged judgment, as the final decision in the present proceedings, provided detailed, clear and accurate reasons for its decision as to why the Applicant cannot exercise the right to compensation in the form he wishes, therefore, it cannot be concluded that the application of the relevant legal provisions in any part of the proceeding was arbitrary.

42. Bearing in mind the above, the consistent case law of the ECtHR and of the Constitutional Court, as well as the views set out in this decision, the Court finds that there is nothing to indicate that the Applicant's allegations, raise in any way the constitutional issues, namely nothing that indicates that the Applicant has " a reasoned referral" in the present case.

43. In the circumstances of this case, the Applicant's Referral is in accordance with the requirements established in paragraphs 1 and 7 of Article 113 of the Constitution and Articles 47 and 49 of the Law. However, the Applicant's Referral does not meet the admissibility requirements as foreseen by Article 48 of the Law and item (d) of paragraph (1) of Rule 39 of the Rules of Procedure.

44. In conclusion, in accordance with Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113, paragraphs 1 and 7 of the Constitution, Article 47 of the Law and Rule 39 (1) (d) of the Rules of Procedure, in the session held on 27 March 2019, 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 **President of the Constitutional Court**

Radomir Laban Arta Rama-Hajrizi

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