



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

Pristina, 5 July 2013
Ref. No.:RK 462/13

RESOLUTION ON INADMISSIBILITY

in

Cases No. KI46/13, KI47/13, KI48/13 and KI68/13

Applicants

Naim Morina, Bukuriye Drançolli, Avdi Imeri and Genc Shala

**Constitutional Review
of the Decision of the District Court in Prishtina Ac. Nr. 1421/2011 dated
4 December 2012, Decision of the District Court in Prishtina Ac.
Nr.1373/2011 dated 4 December 2012, Decision of the District Court in
Prishtina Ac. Nr. 1372/11 dated 6 December 2012, and Decision of the
District Court in Prishtina Ac. Nr. 1371/11 dated 7 December 2012**

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 Applicants

1. The Referrals are submitted by Naim Morina, Bukuriye Drançolli, Avdi Imeri and Genc Shala (hereinafter: the Applicants), all residing in Prishtina.

Challenged decisions

2. The Applicant, Naim Morina, KI46/13 challenges the Decision of the District Court in Prishtina Ac. Nr. 1421/2011 dated 4 December 2012, which the Applicant claims to have received on 17 January 2013.
3. The Applicant, Bukurije Drançolli, KI47/13 challenges the Decision of the District Court in Prishtina Ac. Nr.1373/2011 dated 4 December 2012. The Applicant claims that he received this Decision on 5 March 2013.
4. The Applicant, Avdi Imeri, KI48/13 challenges the Decision of the District Court in Prishtina Ac. Nr. 1372/11 dated 6 December 2012. The Applicant claims that he received this Decision on 5 March 2013.
5. The Applicant, Genc Shala, KI68/13 challenges the Decision of the District Court in Prishtina Ac. Nr. 1371/11 dated 7 December 2012. The Applicant claims that he received this Decision on 6 March 2013.

Subject matter

6. The Applicants in their Referrals submitted to the Court request the reinstatement to their previous working places, including financial compensation in accordance with the Judgments of the Municipal Court and District Court amended by Judgments of the Supreme Court of 18 December 2008.

Legal basis

7. The Referrals are based on Article 113.7 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law), and Rules 37 and 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

8. On 3 April 2013, the Applicants Naim Morina (KI46/13), Bukurije Drançolli (KI47/13) and Avdi Imeri (KI48/13) individually submitted their Referrals to the Court.
9. On 16 April 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (presiding), Almiro Rodrigues and Enver Hasani.
10. On 16 April 2013, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referrals KI47/13 and KI48/13 with Referral KI46/13. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the Decision of the President on appointment of the Judge Rapporteur and the Review Panel of 16 April 2013.

11. On 10 May 2013, the Court notified the Applicants and the Basic Court of the registration of the Referrals and the joinder of Referrals.
12. On 13 May 2013, the Applicant, Genc Shala (KI68/13) submitted his Referral to the Court.
13. On 14 May 2013, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI68/13 with Referral KI46/13, KI47/13 and KI48/13. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the Decision of the President on appointment of the Judge Rapporteur and the Review Panel of 16 April 2013.
14. On 17 May 2013, the Court notified the Applicants and the Basic Court of the registration of the Referral KI68/13 and the joinder of Referral KI68/13 with Referrals KI46/13, KI47/13, and KI48/13.
15. On 5 July 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to full Court on the inadmissibility of the Referral.

Summary of facts

16. The Applicants had an employment relationship for an unspecified period with the Public Housing Enterprise. The Applicants' employment relationship with the Public Housing Enterprise began in the following years: Applicant, Naim Morina (KI46/13) in 1985, Applicant, Bukurije Drançolli (KI47/13) in 1981, Applicant, Avdi Imeri (KI48/13) in 1979, and Applicant, Genc Shala (KI68/13) in 1980.
17. Based on the documents attached, starting from 11 September 2001 until 5 January 2006, and the employment contracts with the Public Housing Enterprise were signed every year.
18. On 5 January 2006, the employer, namely the Public Housing Enterprise offered the Applicants to sign contracts for a specified period of one (1) month (1 January 2006 - 31 January 2006).
19. Consequently, the Applicant, Naim Morina (KI46/13) initially signed the contract, but on 11 January 2006 requested the legal reassessment of the contract. The Applicants, Bukurije Drançolli (KI47/13) and Avdi Imeri (KI48/13) have also initially signed the offered contract, but on 11 January 2006 requested the withdrawal of their signatures as being invalid. Applicant, Genc Shala (KI68/13) refused to sign the offered contract.
20. On 20 January 2006, upon notice of the employer, the Applicants Bukurije Drançolli (KI47/13) and Avdi Imeri (KI48/13) were informed that the request to withdraw their signature was considered as refusal to sign the offered contract with the result the termination of the employment relationship between them and the Public Housing Enterprise.

21. On the same day, upon notice of the employer, the Applicant, Genc Shala (KI68/13) was informed that as a result of his refusal to sign the offered contract, the employment relationship between him and the Public Housing Company was terminated.
22. On 1 February 2006, upon notice of the employer, the Applicant, Naim Morina (KI46/13) was informed that the signed employment contract between him and the Public Housing Enterprise expired on 31 January 2006 and the contract would no longer be extended.
23. On 3 March 2006, following a complaint of the Applicants submitted to the Executive Agency of the Labour Inspectorate within the Ministry of Labour and Social Welfare, the Agency rendered a Decision, requesting the Public Housing Enterprise to consider the notice on termination of the employment relationship as being invalid.
24. On 20 March 2006, the Executive Agency of the Labour Inspectorate within the Ministry of Labour and Social Welfare also rendered a Decision requesting the Public Housing Company to suspend the execution of the notices on termination of employment relationship for employees of the Public Housing Company.
25. In the meantime, the Applicants had individually filed lawsuits with the Municipal Court in Prishtina.
26. On 14 April 2006, the Municipal Court in Prishtina by Judgment Cl. No 17/2006 decided to approve the lawsuit of Applicant, Genc Shala (KI68/13) as grounded and annul as unlawful the notice no. 01-100/1 of 20 January 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to his previous working place with all the rights from the employment relationship, as of 1 January 2006 until the day of reinstatement to the employment place, including the compensation of specified procedure expenses.
27. On 10 May 2006, the Municipal Court in Prishtina by Judgment Cl. No 21/2006 decided to approve the lawsuit of Applicant, Avdi Imeri (KI48/13) as grounded and annul as unlawful the notice no. 01-99/1-50 of 20 January 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to his previous working place within eight (8) days after the Judgment becomes final, including the compensation of specified procedure expenses.
28. On 17 May 2006, the Municipal Court in Prishtina by Judgment Cl. No 18/06 decided to approve the lawsuit of Applicant, Naim Morina (KI46/13) as grounded and annul as unlawful the notice no. 01-153/1 of 1 February 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to his previous working place or any other position corresponding to his professional qualification, with all the

rights from the employment relationship, as of 1 February 2006 until the day of reinstatement to the employment place, including the compensation of specified procedure expenses.

29. On 24 May 2006, the Municipal Court in Prishtina by Judgment Cl. No 19/06 decided to approve the lawsuit of Applicant, Bukurije Drançolli (KI47/13) as grounded and annul as unlawful the employment contract of 30 December 2005 and also annul the notice no. 01-99/3 of 20 January 2006 on the termination of employment relationship between the Applicant and the Public Housing Enterprise. The Municipal Court further obliged the Public Housing Enterprise to reinstate the Applicant to her previous working place with all the rights arising from the employment relationship, as of 11 January 2006 until the day of reinstatement to the employment place, including the compensation of specified procedure expenses.
30. Against the aforementioned Judgments of the Municipal Court in Prishtina, the Public Housing Enterprise filed appeals with the District Court in Prishtina.
31. The District Court in Prishtina in its Judgment Ac. Nr. 736/06 dated 28 February 2007 (Naim Morina, KI46/13), Judgment Ac. Nr. 691/06 dated 28 February 2007 (Bukurije Drançolli, KI47/13), Judgment Ac. Nr. 802/2006 dated 12 March 2007 (Avdi Imeri, KI48/13) and Judgment Ac. Nr. 620/06 dated 8 February 2007 (Genc Shala, KI68/13) decided to reject the appeals of the Public Housing Enterprise as ungrounded and upheld the Judgments of the Municipal Court in Prishtina Cl. No 18/06 of 17 May 2006 (KI46/13), Cl. No 19/06 of 24 May 2006 (KI47/13), Judgment Cl. No 21/2006 of 10 May 2006 (KI48/13) and Cl. No 17/2006 of 14 April 2006 (KI68/13).
32. On an unspecified date, the Public Housing Company filed revisions with the Supreme Court of Kosovo because of an alleged essential violation of the Law on Contested Procedure and erroneous application of substantive law, proposing to quash the Judgments of the Municipal and District Court in Prishtina.
33. On 18 December 2008, the Supreme Court of Kosovo rendered the Judgments Rev.I.nr. 31/2008 (Naim Morina, KI46/13), Rev. I. nr. 29/2008 (Bukurije Drançolli, KI47/13), Rev. I. nr. 28/2008 (Avdi Imeri, KI48/13) and Rev.I.nr. 32/2008 (Genc Shala, KI68/13), whereby it decided to approve the revisions filed by the Public Housing Enterprise as grounded and to quash the Judgments rendered by Municipal Court and District Court in Prishtina and further reject the lawsuits filed by the Applicants as ungrounded.
34. The Supreme Court of Kosovo in its aforementioned Judgments found that the Municipal and District Court in Prishtina have erroneously applied the provisions of substantive law.
35. The Supreme Court further noted that the Public Housing Enterprise had notified the Applicants on the termination of the employment relationship before the expiry of the contracts, thereby acting in accordance with the Essential Labour Law of Kosovo and concluded that the will for extending the

employment relationship with the Applicants was missing on the side of the Public Housing Enterprise in its capacity of employer.

36. On 30 April 2009, the Applicants, represented by their legal representative, against the Judgments of the Municipal Court individually filed proposals for repeating the procedures with the District Court in Prishtina. The Applicants filed the proposals for repeating the procedure against the Judgments of the Municipal Court due to the amendments made by the aforementioned Supreme Court judgments of 18 December 2008.
37. The District Court in Prishtina in its individual Decisions Ac. Nr. 648/2009 of 24 October 2011 (Naim Morina, KI46/13), Ac. Nr. 649/2009 of 16 September 2011 (Bukurije Drançolli, KI47/13), Ac. Nr. 651/2009 of 25 October 2010 (Avdi Imeri, KI48/13) and Ac. Nr. 650/2009 of 10 September 2011 (Genc Shala, KI68/13) rejected the proposal for repeating the procedures as being submitted out of time.
38. The District Court in Prishtina justified its Decisions to reject the proposals for repeating the procedures with reference to Article 234 of the Law on Contested Procedure, which foresees that the proposal for repeating the procedure should be submitted within thirty (30) days from the day the final decision was submitted to the party. The District Court referring to the case files found that the four above-mentioned Judgments of the Supreme Court dated 18 December 2008 were served to the legal representative of the Applicants on 26 January 2009, while the proposals for repeating the procedure were filed on 30 April 2009, meaning that the referrals were not submitted within the time limit prescribed by Law.
39. Against the Decisions of the District Court, the Applicants individually filed appeals with the District Court in Prishtina, arguing that their legal representative notified them on the Judgments of the Supreme Court on 2 April 2009.
40. The District Court in Prishtina in its Decisions Ac. nr. 1421/2011 of 4 December 2012 (Naim Morina, KI46/13), Ac. nr. 1373/2011 of 4 December 2012 (Bukurije Drançolli, KI47/13), Ac. nr. 1372/11 of 6 December 2012 (Avdi Imeri, KI48/13) and Ac. nr. 1371/2011 of 7 December 2012 (Genc Shala, KI68/13) decided to reject the appeal of the Applicant as ungrounded and upheld the Decisions of the District Court.
41. The District Court in Prishtina, in all of its aforementioned decisions referring to the provisions of the Law on Contested Procedure noted that procedural actions taken by the legal representative of the party within the bounds of his authorization are deemed to be actions of the party itself and such actions include receipt of letters and court decisions.
42. In conclusion, the District Court confirmed that the Proposals for repeating the procedure were submitted out of time.

Applicants' Allegation

43. The Applicants, Naim Morina, Bukurije Drançolli and Avdi Imeri (KI46/13, KI47/13 and KI48/13) allege violation of Article 46 [Protection of Property], Article 49 [Right to Work and Exercise of Profession], and Article 54 [Judicial Protection of Rights] of the Constitution, without offering any further elaboration.
44. The same Applicants further request the Constitutional Court their reinstatement to their previous working places, including financial compensation.
45. The Applicant, Genc Shala (KI68/13) requests the Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev.I.nr.32/2008 dated 18 December 2008 and Decision of the District Court in Prishtina, Ac.no.1371/2011 dated 7 December 2012. He further requests the abovementioned Judgment and Decision [...] *to be declared void, the matter to be returned to the Basic Court for retrial and in accordance with a Decision on merits of the Constitutional Court to decide on full execution of the Judgment of the Municipal Court, CI.no.17/2006 and Judgment of the District Court, Ac.no.620/2006*".
46. Applicant, Genc Shala (KI68/13) further alleges violation of Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise of Profession] of the Constitution, Article 6 [Right to a Fair Trial], and Article 14 [Prohibition of Discrimination] of the European Convention on Human Rights.

Assessment of the admissibility of the Referral

47. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
48. The Court refers to Article 113, paragraphs 1 and 7 of the Constitution, which establishes that:
 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."*

The Court considers that the Applicants are natural persons, and are authorized parties in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

49. The Court also determines whether the Applicants, in accordance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, have exhausted all legal remedies. In the present cases, the Court considers that the Applicants have exhausted all legal remedies available under the applicable laws.
50. The Applicants must also prove that they have fulfilled the requirements of Article 49 of the Law in relation to submission of Referrals within the legal time limit. It can be seen from the case file that the Referrals were submitted within the four (4) month time limit, as prescribed by the Law and the Rules of Procedure.
51. In relation to the Referrals, the Court also takes into account Rule 36.2 of the Rules of Procedure, which provides:

“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or
(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...], or
(d) when the Applicant does not sufficiently substantiate his claim;”
52. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
53. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
54. Based on the case files, the Court notes that the reasoning provided in the last Decisions rendered by the District Court in Prishtina is clear and, after reviewing the entire procedures, the Court also found that the proceedings before the Supreme Court, have not been unfair and arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009). Furthermore, the Judgments of the Supreme Court of 18 December 2008 have been clear and well reasoned.
55. Moreover, the Applicants have not submitted any *prima facie* evidence indicating a violation of their rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005). The Applicants do not specify how Articles 24, 31, 46, 49 and 54 of the Constitution

support their claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

56. For all the aforementioned reason, the Court concludes that the facts presented by the Applicants did not in any way justify the allegation of a violation of the constitutional rights and the Applicants did not sufficiently substantiate their claims.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 36.2 and 56.2 of the Rules of Procedure, on 5 July 2013, unanimously:

DECIDES

- I. TO REJECT 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

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani