



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

Pristina, 26 July 2013
Ref.no.:RK461/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI15/13

Applicant

Muharrem Ademi

**Constitutional Review of the non-execution Municipal Court in Pristina
Judgment Pl. No. 4492/92 dated 3 September 1996**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Muharrem Ademi residing in Pristina, represented by Beqir Abdiu, a lawyer practicing in Pristina.

Challenged decision

2. The Applicant challenges non-execution of the Judgment of the Municipal Court in Pristina, Pl. No. 4492/92 dated 3 September 1996. The Applicant claims that challenged judgment became final on 22 November 1996.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Court") of the constitutionality of the alleged non-execution of the Municipal Court in Pristina Judgment Pl. No 4492/92 dated 3 September 1996 related, *inter alia*, to the compensation of Applicant's salaries he incurred in the period of an unlawful dismissal from the "Students' Center" in Pristina.

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of the Law, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Proceedings before the Court

5. On 5 February 2013, the Applicant submitted a referral with the Constitutional Court.
6. On 26 February 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, and by subsequent decision of the President, Judge Arta Rama-Hajrizi was replaced by the president of the Court, Prof. Dr. Enver Hasani, as a member of the Review Panel.
7. On 18 April 2013, the Court notified the Applicant and the Municipal Court in Pristina of the registration of the Referral.
8. On 4 June 2013, the Applicant's lawyer has been asked to submit a duly signed authorization letter.
9. On 20 June 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

10. The facts of the referral can be summarized as follows.

11. On 3 September 1996, the Municipal Court in Pristina issued the Judgment Pl. Nr.4492/92 by which the Applicant's claim was approved and a Decision of Director of the respondent (Students' center in Pristina) of 3 March 1992, relating to termination of the Applicant's employment was quashed as being unlawful. It was further stated "*[T]he respondent is obliged to reinstate the plaintiff to employment relationship in the position which corresponds his employment relationship...with all rights from the employment relationship...*"
12. The judgment of the Municipal Court in Pristina (Pl. Nr.4492/92) became final on 22 November 1996, since the District Court in Pristina rejected the appeal of the respondent by its judgment Gž. No. 902/96 as ungrounded.
13. The Applicant claims that on 8 February 1997, following the receipt of District Court judgment, he submitted two requests for execution of the Judgment Pl. No. 4492/92. The first request related to the Applicant's reinstatement to his previous workplace, and according to the Applicant was registered under No. I-2-29/97. The second request related to the compensation of his personal income was registered under No. I-2-30/97. It seems, according to the Applicant, that the Municipal Court has never issued any decision and has never approved the Applicant's requests for execution of the judgment.
14. Almost three years after and following the Applicant's request of 29 December 1999, the Students' Center in Pristina issued the Resolution No 93.2 dated 30 December 1999 allowing the Applicant "*the unpaid leave in duration of 12 months due his travel abroad... until 31 December 2000...*". It was further stated in abovementioned Resolution "*after the expiry of the time limit of the temporary stay abroad ...the abovementioned person [i.e. the Applicant] may report to this Center to resume his work within a period of 30 days.*"
15. It is not clear if the Applicant returned to the workplace in the prescribed time limit.
16. On 13 October 2006, almost seven years after the Resolution on unpaid leave has been issued, the Applicant submitted a written request to the Administrator and the President of the Municipal Court in Pristina requesting execution of the Municipal Court Judgment Pl. No. 4492/92 dated 3 September 1996.
17. Less than two weeks after that, i.e. on 26 October 2006, the Applicant submitted to the Municipal Court in Pristina new Proposal for Execution of the final judgment of Pl. No. 4492/92 of 3 September 1996, requesting to the compensation of his personal income.
18. On the same date, i.e. on 26 October 2006, the Applicant submitted a claim to the Municipal Court in Pristina also requesting compensation of the personal income from the employment relationship. In his claim the Applicant requested the Court to following the financial expertise issue a judgment and "*confirm the right of the*

plaintiff [i.e. The Applicant] for the compensation of personal income for the period from 3 March 1992 to 21 December 1999."

19. The respondent party (the Students' Centre in Pristina) objected the Applicant's claim arguing, *inter alia*, that the Applicant's request is submitted after expiration of the statutory time limit. Furthermore it was stated that the Students' Center that exists after the war is not the same one that existed before the war and consequently there is no passive legitimacy with regard to the new Students' Center in Pristina.
20. The Applicant argues that on 22 June 2007, the Municipal Court in Pristina issued the judgment Cl.no. 363/06 and rejected the Applicant's claim of 26 October 2006. On 17 January 2008, the Applicant submitted an appeal against the aforementioned judgment to the District Court in Pristina. It appears, according to the Applicant, that on 6 April 2009 the District Court in Pristina approved his appeal and returned the case to Municipal Court in Pristina. However, the above mentioned judgments were not submitted by the Applicant.
21. On 14 February 2012 the Municipal Court in Pristina issued the judgment C.nr. 1055/09, and rejected the Applicant's claim for the compensation of personal income as ungrounded. In the reasoning of that judgment it was, *inter alia*, stated "*...it is a well known that the postwar Students' Center is included as an organizational part of the University of Pristina and as such it is financed by the Ministry of Education, Science and Technology of Kosovo which was established as a part of Kosovo Interim Administration pursuant to the provisions issued by UNMIK. Based on this established factual situation after having assessed the administrated evidence the court found that the respondents lack passive legitimacy to be a party to proceedings...*"
22. On 29 February 2012, the Applicant submitted an appeal against the judgment of the Municipal Court of Pristina dated 14 February 2012 to the District Court in Pristina.
23. It seems that the appellate proceedings before the District Court has not been finalized yet.

Applicant's allegations

24. The Applicant alleges that by alleged non-execution Municipal Court in Pristina Judgment Pl. No. 4492/92 dated 3 September 1996 his rights to a fair trial guaranteed by Article 31 of the Constitution in conjunction with Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") has been violated.
25. The Applicant also alleges that there has been violation of his property rights guaranteed by Article 1 Protocol No.1 to the Convention.

26. The Applicant's argues that there has been a violation of "*the legal principle according to which no one has the right, including the Court to adjudicate again an adjudicated matter resolved with a final judgment.*"
27. The Applicants also alleges that there has been violation of "*the basic principle of the legal certainty of the citizens with regard to the execution of the final decisions of the courts, a principle that 'no one is above the law'.*"
28. The Applicant requests the Constitutional Court to quash the judgment of the Municipal Court in Pristina Cl. No 1055/2099 of 14 February 2012 since he claims that above mentioned judgment is unconstitutional and finally he recommends the Constitutional Court to order to the Municipal Court in Pristina to execute judgment Pl. No. 4492/92 dated 3 September 1996.

Assessment of the Admissibility of the Referral

29. The Court notes that while the Applicant complains against alleged non- execution of the Municipal Court in Pristina Pl. No. 4492/92 dated 3 September 1996 he also requests the Court "*to quash the judgment of the Municipal Court in Pristina Cl. No 1055/2099 of 14 February 2012.*"
30. The Court further notes based on the facts of the case and the Applicant's allegations that there are two interrelated sets of proceedings that Applicant's complained of. Both proceedings were initiated by the Applicant and both are related to the compensation for unpaid salary following the unlawful dismissal.
31. While, the first set of the proceedings relate to the execution the Municipal Court in Pristina Judgment Pl. No. 4492/92 dated 3 September 1996 that was allegedly initiated on 8 February 1997.
32. The subsequent set of the proceedings relate to the proceedings pending before the District Court in Pristina following the Applicant's appeal against the judgment C.nr. 1055/09 of the Municipal Court in Pristina dated 14 February 2012.
33. With regard to the subsequenet set of proceedings the Court notes that the appellate proceedings before the District Court has not been finalized yet.
34. In that regard, the Court refers to Article 113.7 of the Constitution which provides:

"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."
35. Moreover, Article 47 (2) of the Law also establishes that:

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

36. As it mentioned above, case the Applicant's complained of is pending before the District Court in Pristina.
37. It appears therefore, that the Applicant had failed to exhaust all legal remedies available to him.
38. Therefore, in the circumstances of a pending matter in the District Court, the Constitutional Court is unable to proceed further to assess the admissibility of the Referral. It appears that the Referral is premature.

Conclusion

39. Accordingly, the Court finds that the Referral does not fulfill the requirements of Article 113 (7) of the Constitution, Article 47(2) of the Law and Rule 36 (1) (a) of the Rules, and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 36 (1) (a) of the Rules of the Procedure, 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani