



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

Prishtina, 11 November 2015
Ref. No.:RK848/15

DECISION TO REJECT THE REFERRAL

in

Case No. KI28/15

Applicant

Naser Dragusha and 4 other employees of the Kosovo Energy Corporation

Request for constitutional reassessment of Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicants are: Mr. Naser Dragusha, Mr. Bajram Ahmeti, Mr. Mehmet Shaqiri, Mr. Shasivar Hashani and Ms. Selvete Preniqi (hereinafter: the Applicants), represented by Mr. Ilaz Çerkinaj, lawyer from Prishtina.

Challenged decision

2. The Applicants challenge Judgment Rev. 25/2012, of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 10 May 2013, which was served on them on 10 July 2013.

Subject matter

3. The subject matter is the request for constitutional reassessment of Judgment Rev. no. 25/2012 of the Supreme Court, of 10 May 2013, which, allegedly, violated the Applicants rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 10 March 2015, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 April 2015, the President of the Court, by Decision no. GJR. KI28/15 appointed Judge Bekim Sejdiu as Judge Rapporteur and by Decision no. KSH. KI28/15, appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 6 May 2015, the Court informed the Applicants about the registration of the Referral and requested them to fill in the referral form and to attach to the Referral the last decision which they challenge and other relevant documents.
8. On 21 May 2015, the Applicants submitted the additional documents requested by the Court.
9. On 11 September 2015, after having considered the Report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. Regarding the same allegations raised by the Applicants, the Court has already decided in Case KI163/13, of 23 June 2014, and in Case KI165/14, of 9 July 2015.

The summary of facts regarding the Resolution on Inadmissibility of the Constitutional Court, in Case KI163/13, of 23 June 2014

11. On 18 October 2013, the Applicants Mr. Naser Dragusha, Mr. Mehmet Shaqiri, Mr. Bajram Ahmeti, Mr. Shasivar Hashani, Mr. Qazim Igrishta and Ms. Selvete Preniqi submitted a Referral to the Court, requesting the constitutional review of Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013.
12. The Applicants in Case KI163/13 alleged that their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Protection of Judicial Rights] of the Constitution, have been violated.
13. The Court, in Case KI163/13, assessed that the Supreme Court regarding the Applicants' allegations clearly explained the relationship between the Applicants, as employees, and KEK as employer, based on the contract established with the consent of both parties, as well as the rights and obligations arising from such a contract; and moreover, the Supreme Court has also provided clear assessment of the decisions of the lower instance courts.
14. In addition, the Court notes that the fact that the Applicants disagree with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] and of Article 49 [Right to Work and Exercise Profession] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).
15. Consequently, the Court did not find violation of the Applicants' rights guaranteed by the Constitution and by ECHR, by Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013.
16. Based on the facts and circumstances presented in the Referral no. KI163/13, the Court, on 23 June 2014, concluded that the Applicants' Referral was declared inadmissible as manifestly ill-founded.

The summary of facts regarding the Resolution on Inadmissibility of the Constitutional Court, in Case KI165/14, of 9 July 2014

17. On 10 November 2014, the Applicant Bajram Ahmeti submitted the Referral to the Court, which was registered under no. KI165/14. Through this Referral, the Applicant challenged the same Judgment of the Supreme Court (Rev. no. 25/2012, of 10 May 2013), which was challenged by him also in Case KI163/13, of 23 June 2014.
18. The Applicant in Referral KI165/14 alleged that by challenged Judgment were violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution.
19. Taking into account all considered facts in Case KI165/14, the Court concluded that the subject matter of the Applicant's Referral was the same Judgment, on

which constitutionality the Court had decided in Case KI163/13, on 23 June 2014. Therefore, the Applicant's Referral was declared inadmissible in accordance with Rule 36 (3) (d) of the Rules of Procedure.

Applicant's allegations

20. In the present Referral KI28/15, the Applicants allege that by the challenged Judgment were violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution.

Admissibility of the Referral

21. Before considering the Referral, the Court first examines whether it meets the procedural admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
22. Regarding this Referral, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides:

"The Court may summarily reject a referral if the referral [...] is repetitive of a previous referral decided by the Court, or if the referral is frivolous".

23. The Court notes that the Applicants in the present case, in fact, request reassessment of Judgment Rev. no. 25/2012, of the Supreme Court, of 10 May 2013, which constitutionality was reviewed in Case KI163/13, of 23 June 2014, and in Case KI165/14, of 9 July 2015, where, as Applicant was Mr. Bajram Ahmeti, one of the Applicants in Case KI163/13 and of the present case KI28/15. In fact, the present Referral does not contain any new evidence, based on which, a matter that was not considered or that was evaded in the Court's previous proceedings would be considered now.
24. Therefore, the present referral is a repetition of previous referrals which have already been considered by the Court. The Court has no jurisdiction to decide on the same legal matters it has already decided on. The jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By individual acts of the public authorities within the meaning of Article 113.7, it should be understood all individual acts of public authorities of the Republic of Kosovo that present a subject of constitutional review within the meaning of this Article, except for acts of the Constitutional Court itself. Therefore, it should be clearly and rightly understood that the Constitutional Court does not have jurisdiction to reopen and adjudicate its own decisions on which it has already decided.
25. In addition, the Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

26. In this regard, Article 116.1 [Legal Effect of Decisions] of the Constitution provides: *"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*
27. As a conclusion, the Court considers that the Applicants' Referral is in fact a request for repetition of previous proceedings which have already been decided by the Court. Therefore, in accordance with Rule 32 (5) of the Rules of Procedure, the Referral is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Rule 32 (5) of the Rules of Procedure, on 30 October 2015, unanimously

DECIDES

- I. TO REJECT the Referral;
- 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



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi