



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

Pristina, 5 July 2013
No.Ref.:RK463/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI40/13

Applicant

Ymer Bajrami

Constitutional Review
of the Decision of the District Court in Prishtina Ac. No. 389/2012
dated 23 November 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 Applicant

1. The Referral is filed by Ymer Bajrami (hereinafter: the Applicant), residing in the village of Orllan, Municipality of Podujevo.

Challenged decision

2. The Applicant challenges the Decision of the District Court, Ac. No. 389/2012, dated 23 November 2012. This decision was served on the Applicant on 18 December 2012.

Subject matter

3. The Applicant alleges that the Decision of the District Court (Ac. No. 389/2012) of 23 November 2012 violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) because, as alleged by the Applicant, the execution procedure with regards to the payment of compensation of his salary was cancelled.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 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 Rule 56.2 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 18 March 2013, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).
6. On 25 March 2013, the President appointed the Deputy-President Ivan Čukalović as Judge Rapporteur.
7. On 2 April 2013, the Court notified the Applicant and the Basic Court in Prishtina of the registration of the Referral.
8. On 5 July 2013, the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Enver Hasani reviewed the report of the Judge Rapporteur and made a recommendation to the full Court on inadmissibility of the Referral.

Summary of facts as submitted by the Applicant

9. According to the documents attached to the Referral, based on the Judgment of the Municipal Court in Prishtina, Cl. No. 72/05, of 3 July 2006, the Private Trade Company "*Ital-Kosova*" in Prishtina was obliged to reinstate the Applicant to his previous working place, or to a working position that meets his professional skills and working abilities, and to fulfill all of the obligations from the working relationship as from 1 December 2001.
10. On 11 October 2006, the Applicant submitted a claim to the Municipal Court in Prishtina stating that the defendant, namely the Private Trade Company "*Ital-Kosova*" in Prishtina, had reinstated the Applicant to his working place but it did not compensate him for the lost salaries.

11. On 23 January 2007, the Municipal Court in its Judgment, Cl. No. 336/06, approved the claim of the Applicant, and based on the financial expertise ordered by the Court, it decided to oblige the Private Trade Company "*Ital Kosova*" in Prishtina to provide compensation of the lost salaries for the period from 1 December 2001 until 1 January 2006 in the amount of 13,143.00 EUR plus the specified interest.
12. On 14 January 2009, the Applicant filed a request with the Municipal Court in Prishtina for the Execution of the previous Municipal Court Judgment, Cl. No. 336/06, of 23 January 2007.
13. On 29 April 2011, the Municipal Court in Prishtina (E 19/09) decided on the execution of the Judgment, Cl. No. 336/06 of 23 January 2007 and obliged the Private Trade Company "*Ital Kosova*" in Prishtina to pay to the Applicant the amount of 13,143.00 EUR plus the specified interest.
14. However, on 13 April 2012, the Municipal Court in Prishtina rendered a decision to cancel the Execution procedure E. No. 19/09 of 29 April 2011.
15. The Municipal Court in Prishtina justified its Decision to cancel the execution with reference to the letter of 6 April 2012 of the Kosovo Agency for Business Registration (No. 379) informing the Court that the debtor, namely the Private Trade Company "*Ital Kosova*" in Prishtina, ceased to exercise business activities. Therefore, the Municipal Court in Prishtina, pursuant to Article 22 of the Law on Execution in conjunction with Article 277, paragraph 1 (c) of the Law on Contested Procedures, decided to cancel the Execution procedure.
16. On 20 April 2012, against the Decision of the Municipal Court in Prishtina, E. No. 19/09 of 13 April 2012, the Applicant filed an appeal with the District Court in Prishtina.
17. On 23 November 2012, the District Court in Prishtina with its Decision Ac. No. 389/2012 rejected the appeal of the Applicant and upheld the Decision of the Municipal Court, E. No. 19/09 of 13 April 2012.
18. In its Decision, the District Court also referred to a letter of the Privatization Agency of Kosovo of 24 March 2010, which confirmed that employees who have had a working relationship with the Private Trade Company "*Ital Kosova*" in Prishtina up to 18 June 2007, and were not retired, continue to enjoy the status of employees of the socially owned Enterprise IMN-Kosova. Based on the case file a part of IMN Kosova had been sold to form Private Trade Company "*Ital Kosova*" in Prishtina. Following the closure of the Private Trade Company "*Ital Kosova*" in Prishtina, its assets and liabilities were merged back into the socially owned Enterprise IMN-Kosova, which is now administered by the Privatization Agency of Kosovo.
19. In the same decision, the District Court in Prishtina also found that [...] "*nowhere in the case files, could a proposal for Execution against the socially owned Enterprise IMN Kosova be found.*" Therefore the Court concluded that it cannot act beyond the proposal for execution.

Applicant's Allegation

20. The Applicant alleges that his right to Work and Exercise Profession, guaranteed by Article 49 of the Constitution has been violated.
21. The Applicant further seeks to enjoy his right to receive salaries, as was awarded with a final Judgment of the Municipal Court (Cl. No. 336/06) dated 23 January 2007.

Assessment of the admissibility of the Referral

22. First of all, in order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. The Court should first examine whether the Applicant is an authorized party to submit a referral with the Court, in accordance with requirements of Article 113.7 of the Constitution.

24. Article 113, paragraph 7 of the Constitution 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."

In relation to this Referral, the Court notes that the Applicant is a natural person, and is an authorized party in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

25. The Court must also determine whether the Applicant, in accordance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In the present case, the final decision on the Applicant's case is the Decision of the District Court in Prishtina Ac. No. 389/2012 of 23 November 2012. As a result, the Applicant has shown that he has exhausted all legal remedies available under the applicable laws.
26. The Applicant must also prove that he has fulfilled the requirements of Article 49 of the Law in relation to submission of the Referral within the legal time limit. It can be seen from the case file that the Decision of the District Court in Prishtina Ac. No. 389/2012 of 23 November 2012 was served on the Applicant on 18 December 2012, while the Applicant filed the Referral to the Court on 18 March 2013, meaning that the Referral was submitted within the four months time limit, as prescribed by the Law and the Rules of Procedure.
27. In relation to the Referral, 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;”

28. 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 regular courts 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, see also case No. 70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
29. 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).
30. Based on the case files, the Court notes that the reasoning provided in the Decision of the District Court in Prishtina Ac. No. 389/2012 of 23 November 2012 is clear and, after reviewing the entire procedure, the Court also found that the regular court proceedings have not been unfair or otherwise tainted by arbitrariness (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009).
31. Moreover, the Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, whereas he already has been reinstated to his previous working place and seeks only to enjoy his right to receive his salaries, as was awarded with the final Judgment of the Municipal Court (Cl. No. 336/06 of 23 January 2007).
32. At the end, with reference to cases adjudicated by the Court regarding suspension of the execution procedure, specifically with reference to the case No. KI 08/09, *Independent Union of Workers of IMK Steel Factory in Ferizaj*, Judgment of 17 December 2010, the Court considers that based on the documents submitted and completed proceedings, this Referral differs from the afore-mentioned case for the following reasons:

Firstly, the Municipal Court with its Decision E. No. 19/09 of 29 April 2011, decided to cancel the execution procedure, due to the fact that the Private Trade Company “*Ital Kosova*” in Prishtina had ceased to exercise its business activities. The above-mentioned decision was upheld by the District Court in Prishtina by its decision Ac. No. 389/2012 of 23 November 2012.

Secondly, the District Court in its afore-mentioned Decision clearly held that following the closure of the Private Trade Company “*Ital Kosova*” in Prishtina, whereby its assets and liabilities were merged back into the socially owned enterprise IMN-Kosova, which is now being administered by the Privatization

Agency of Kosovo, the Applicant did not file a proposal for execution against the successor of the Private Trade Company "*Ital Kosova*" in *Prishtina*, namely the socially owned enterprise IMN-Kosova, concluding that it cannot act beyond the proposal for execution.

33. For all of the aforementioned reasons, the Court considers that the facts presented by the Applicant did not in any way justify the allegation of a violation of his constitutional rights and the Applicant did not sufficiently substantiate his claim.

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. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. dr. Ivan Čukalović

Prof. dr. Enver Hasani

