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

Prishtina, on 21 July 2014
Ref.no.:RK681/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI90/14

Applicant

Rrahim Preteni

Constitutional Review of the Decision Ac. no. 1067/13 of the Court of Appeal of the Republic of Kosovo of 17 January 2013

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Rrahim Preteni, residing in village of Melenica, Municipality of Mitrovica.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of the Republic of Kosovo, Ac. no. 1067/13, of 17 January 2013 (hereinafter: the Court of Appeal), which was served on him on 3 February 2014.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision of the Court of Appeal, Ac. no. 1067/13, of 17 January 2013, which allegedly violated Applicant's right to work.

Legal basis

4. Legal basis for this case is: Article 113.7 of the Constitution, Article 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 5 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 May 2014, the President of the Court, by Decision no. GJR. KI90/14, appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision no. KSH. KI90/14, appointed the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

7. On 10 June 2014, the Court notified the Applicant and the Court of Appeal of the registration of the Referral.

8. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.

9. On 26 June 2014 the President of the Court, by Decision no. GJR. KI90/14, replaced Judge Kadri Kryeziu as a Judge Raportuer, and in his place appointed Judge Arta Rama-Hajrizi.

10. On 2 July 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

Facts in civil procedure

11. On 25 June 2001, the Municipal Court in Mitrovica (Judgment C. no. 22/2001) approved as grounded, the Applicant's statement of claim, filed against the Banking and Payment Authority Kosovo, branch in Mitrovica (hereinafter: BPAK). By this Judgment, the BPAK was forced to reinstate the Applicant to his

working place and to compensate the unpaid salaries, from 31 August 2000 until his reinstatement to his working place.

12. Against the Judgment of the Municipal Court in Mitrovica, the BPAK filed an appeal within the legal time limit with the District Court in Mitrovica.

13. On 26 April 2002, the District Court in Mitrovica (Judgment AC. no. 142/2001) rejected as ungrounded the appeal filed by the BPAK and upheld in entirety the first instance court judgment.

14. The BPAK filed a revision with the Supreme Court against the judgments of the lower instance courts, due to substantial violation of the contested procedure provisions and erroneous application of the material law.

15. On 26 November 2002, the Supreme Court (Judgment Rev. no. 80/2002) approved the revision filed by the BPAK and modified the judgments of the lower instance courts, because the latter applied the material law in an erroneous way.

16. On 28 January 2003, the Applicant filed a request for a repetition of the procedure against the Judgment of the Supreme Court, with the same court, because the relevant facts of his statement of claim were not taken into account and because the case was decided without holding a hearing.

17. On 22 May 2007, the Supreme Court (Decision PPC. nr. 2/2006) rejected as ungrounded the Applicant's request for repetition of procedure. The abovementioned court justified the rejection of the request for repetition of procedure by basing on the fact that the same court has decided by revision, pursuant to Article 391 of the LCP, according to which Article, the Court decides on revision without a hearing.

Facts in executive procedure

18. On 23 May 2002, the Applicant, in capacity of the creditor, filed with the Municipal Court in Mitrovica, the proposal for execution of the Judgment C. no. 22/2001, of 25 June 2001.

19. On 7 June 2002, the Municipal Court in Mitrovica (Decision E. no. 273/2002) approved the Applicant's proposal for execution of the Judgment C. no. 22/2001, of 25 June 2001, whereby obliging the BPAK (debtor) to reinstate the Applicant to work and to compensate to him all unpaid salaries, from the day of dismissal up to his final reinstatement to his working place.

20. On 17 June 2002, the BPAK filed an objection against the Decision E. no. 273/2002, by which the Judgment C. no. 22/2001, of 25 June 2001, was allowed.

21. On 12 July 2002, the Municipal Court in Mitrovica (Decision E. no. 273/2002) rejected as ungrounded the objection filed by the BPAK.

22. Following this, the BPAK timely filed an appeal with the District Court in Mitrovica, against the Decision E. no. 273/2002, of 12 July 2002, by requesting suspension of the Judgment C. no. 22/2001, of 25 June 2001, of the first instance court.

23. On 17 June 2005, the District Court in Mitrovica (Judgment AC. no. 91/2002) rejected the BPAK appeal for suspension of the Judgment C. no. 22/2001, of 25 June 2001 and upheld the Decision E. no. 273/2001, by which the execution of the Judgment C. no. 22/2001, of the same court, was allowed.

24. On 24 January 2013, the Applicant, in the capacity of the creditor, filed a Request to expedite the case with the Basic Court in Mitrovica, by requesting forced execution of the Judgment of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002 and of the Judgment of the District Court in Mitrovica, Ac. no. 142/2001, of 26 April 2002.

25. On 19 February 2013 the Basic Court in Mitrovica (Decision E. no. 594/2009), basing on the Decision of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002, and on the Decision of the District Court in Mitrovica, Ac. nr. 142/2001, of 26 April 2002, allowed the execution of the Judgment C. nr. 22/2001, of 25 June 2001, by which the Applicant gained the right to reinstatement to work and to compensation of his unpaid salaries.

26. The BPAK filed an objection against the Decision E. no. 594/2009, of 19 February 2013, with the same court, by being based on the fact that the Supreme Court, by revision modified the judgments of the lower instance courts.

27. On 29 March 2013, the Basic Court in Mitrovica (Decision E. no. 594/2009) approved the objection, filed by the BPAK, with the reasoning that the legal act, allegedly as an executive title for execution, has not become final, due to the fact that the Supreme Court of Kosovo, by Judgment Rev. no. 80/2002, of 26 November 2002, modified the judgments of the lower instance courts and rejected the Applicant's statement of claim, for his reinstatement to work and for compensation of the unpaid salaries.

28. On 4 April 2013, the Applicant filed an appeal with the Court of Appeal in Mitrovica against the Decision of the Basic Court in Mitrovica E. no. 594/2009, of 29 March 2013.

29. On 17 January 2014, the Court of Appeal in Prishtina (Decision Ac. no. 1067/2013) rejected as ungrounded the Applicant's appeal and upheld the Decision of the Basic Court in Mitrovica, E. no. 594/2009, of 29 March 2013.

30. Furthermore, the Court of Appeal reasoned its decision as it follows:

> *"Setting from such a state of matter, the Court of Appeal of Kosovo assesses that the creditor's appealed allegations that there exist final judgments of the Municipal and District Court, by which was allowed the proposed execution, but he doesn't explain any other fact that would be important that this execution matter is quashed or modified in his favour, hence it*

rejected all of them as ungrounded. Since, in the present case there are judgments of the highest instance court in the country, i.e. of the Supreme Court of Kosovo, according to which to the claimant, in this case to the creditor, was modified the judgment of the first and second instance courts, where it was adjudicated in his favour, and also his proposal for repetition of procedure was rejected, consequently, in the present situation there is no executive title that requires execution, since the judgments of lower instance courts have been modified to the creditor's detriment, and that his reinstatement to working place in the execution procedure is not possible.

However, the first instance court in such cases when the objection is approved, depending on the circumstances of the case, concludes partial or complete execution and annuls the committed actions, this is explicitly provided by the provision of Article 57 par. 1 in conjunction with par. 3 of LEP, however, in the given situation, even if the challenged decision is quashed, based on this provision, the panel concludes that the factual situation cannot be changed and that the creditor cannot realize his request.

Hence the legal stance of the first instance court pertaining this matter is completely recognized by the Court of Appeal of Kosovo, as a correct and lawful stance, whereas the claims of the creditor are rejected as ungrounded on concrete evidence. Even though the creditor has not challenged the challenged decision due to any essential violation of procedure, however the second instance court assessed the challenged decision in this regard as well, and found that such a decision does not contain any substantial procedural violation under Article 182 par. 2 in conjunction with Article 194 of LCP, which the court reviews ex officio, and which violations might have influence on the fairness and legality of the challenged decision".

Applicant's allegations

31. The Applicant alleges that the Court of Appeal, by its Decision, Ac. no. 1067/2013, rendered in the executive procedure, has violated his right to reinstatement to his working place. All this, due to the fact that the latter rejected the permission of the execution of Judgment C. no. 22/2001, of 25 June 2001, which was approved by Decision of the Municipal Court in Mitrovica, E. no. 273/2002, of 7 May 2002 and by Decision of the District Court in Mitrovica, Ac. no. 142/2001, of 26 April 2002.

32. The Applicant alleges that the Court of Appeal, based its rejection of allowing the proposal for execution of the Judgment of the Supreme Court, Rev. no. 80/2002, by which the BPAK revision was approved and the Applicant's statement of claim was rejected. According to the Applicant, the Court of Appeal rejected the Applicant's proposal for execution, despite the fact that the first instance court decision became final.

Admissibility of the Referral

33. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure of the Court.

34. In this respect, the Court refers to Article 48 of the Law, which provides:

> *"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."*

35. In addition, Rule 36 (1) c) of the Rules of Procedure, provides:

> *(1) The Court may only deal with Referrals if:*
> *[...]*
> *c) the Referral is not manifestly ill-founded.*

36. Moreover, Rule 36 (2) b) of the Rules of Procedure, provides:

> *„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
> *b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;*
> *[...]*
> *d) when the Applicant does not sufficiently substantiate his claim".*

37. In the present case, the Court notes that the Applicant alleges that the Court of Appeal violated his right to reinstatement to work, because it rejected the proposal for execution of Judgment C. no. 22/2001, of 25 June 2001, despite the fact that by Decision E. no. 273/2002 of the Municipal Court in Mitrovica, the execution was allowed and which became final after the rejection of the BPAK appeal by the District Court in Mitrovica.

38. As to the Applicant's allegation that the first instance court decision became final after its decision was upheld by the second instance court, in the executive procedure, the Court considers that the decisions of the lower instance courts, in the executive procedure, cannot be considered as adjudicated matter, as long as against the decisions of lower instance court in regular civil procedure the unsatisfied parties file appeal with the higher court instances, such as in the present case, by a revision filed with the Supreme Court, by BPAK.

39. However, the Decision of the Court of Appeal is clear, comprehensible and contains wide and comprehensive reasoning, and is based on a judgment rendered by the Supreme Court, which modified the decisions of the lower instance courts. It is understandable that the Supreme Court, as the highest instance of the regular judiciary, has the jurisdiction to assess the legality of the decisions rendered by the lower instance courts, if their decisions are

challenged by a party or parties, such as in the present case (see, the reasoning of the Decision of the Court of Appeal, in paragraph 29 of this document).

40. Therefore, the Court considers that the Applicant's allegations for violation of the rights, guaranteed by the Constitution and ECHR, do not present sufficient constitutional ground for the approval of his referral, as admissible.

41. Moreover, the Court cannot act as a fourth instance court, when reviewing the decision taken by the Court of Appeal. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis, Garcia Ruiz v. Spain*, no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1).

42. In the present case, the Court cannot consider that the proceedings conducted in the Court of Appeal were in any way unfair or arbitrary (See, *mutatis mutandis, Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

43. In sum, the Court concludes that the Applicant's Referral, pursuant to Article 48 of the Law and Rule 36 (1) c) of the Rules of Procedure, is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (1) c), Rule 36 (2) b) and d), as well as Rule 56 (2) of the Rules of Procedure, on 2 July 2014, 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**

Arta Rama-Hajrizi Prof. Dr. Enver Hasani