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

Prishtina, on 16 May 2016
Ref. no.: RK939/16

RESOLUTION ON INADMISSIBILITY

In

Case No. KI112/15

Applicants

Feride Bulliqi and Others

Constitutional Review of the Judgment Rev. No. 1/2015 of the Supreme Court dated 10 April 2015

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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

The Applicants

1. The Referral was submitted by Feride, Nezaqete, Smajl, Veton, Mirvete, Agim and Merita Bulliqi with residence in Prishtina, Municipality of Prishtina-Kosova (hereinafter, the Applicants). The Applicants are represented by Mr. Selatin Ahmeti, a practicing lawyer in Prishtina.

Challenged decision

2. The Applicants challenge the Judgment Rev. No. 1/2015 of the Supreme Court of 10 April 2015, which was served on the Applicants on 4 June 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which allegedly violated Article 31 [Right to Fair and Impartial Trial] 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 the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 27 August 2015, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

6. On 14 September 2015, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Ivan Čukalović and Arta Rama-Hajrizi.

7. On 23 September 2015, the Court notified the Applicants of the registration of the Referral and requested the Applicant to submit the power of attorney for representation before the Court.

8. On 12 October 2015, the Applicants submitted to the Court the requested power of attorney.

9. On 15 October 2015, the Court sent a copy of the Referral to the Supreme Court.

10. On the same date, the Court requested from the Basic Court in Pristina to submit a copy of the letter of receipt, showing the date upon which the Applicants have been served with the challenged Judgment.

11. On 20 October 2015, the Court received the requested letter of receipt indicating that the Applicants were served with the Judgment of the Supreme Court on 4 June 2015.

12. On 13. April 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

The Facts of the case

13. Fehmi Bulliqi, predecessor of the Applicants, was an employee of the Elektroekonomia e Kosovës, namely Elektroekonomia e Serbisë, Open-pit Mine in Bellaqevc (hereinafter: Elektroekonomia).

14. On 22 November 1993, Fehmi Bulliqi died with others employees, as a consequence of a traffic accident on his way to work happened on 23 August 1993.

15. The late Fehmi Bulliqi left behind his wife, Applicant Feride, and his children, Applicants Nezaqete, Smajl, Veton, Mirvete, Agim and Merita Bulliqi.

16. On 25 August 1993, an Agreement was concluded between the Insurance Company "Kosova" in Prishtina and Elektroekonomia on compensation of the damages to families of the persons who died as a result from the accident.

17. On 17 July 1996, the Applicants filled a claim with the Municipal Court in Pristina since Elektroekonomia did not pay the agreed compensation. The case was registered under number C. no. 1066/96, but it was lost and not completed.

18. At that time, the Applicants had filed a claim against "Autotransport" which has been a Working Unit of the Elektroekonomia e Kosovës.

19. On 6 July 2005, the Applicants requested the renewal and continuation of the case. The new case was registered then under the number C. no. 1535/05.

20. The Applicants expanded the claim in this proceeding to include also the Energy Corporation of Kosovo (hereinafter, KEK) as Respondent, as legal inheritor of the former Elektroekonomia. The Applicants considered that the two entities KEK and "Autotransport" had joint responsibility to compensate the damages.

21. On 9 February 2010, the Municipal Court (C. No. 1535/2005) concluded that the KEK was responsible to compensate the damage, since KEK was the inheritor and legal successor of the Elektroekonomia. The claim against "Autotransporti" was rejected due to the lack of passive legitimacy.

22. On an unspecified date, KEK filed an appeal with the Court of Appeals, alleging *"all appealing grounds, provided by provisions of Article 181, paragraph 1, items a), b) and c) of the LCP* [Law on Contested Procedure]".

23. On 04 September 2014, the Court of Appeals (Judgment Ac. no. 1984/2012) rejected as ungrounded the KEK's appeal and upheld the Judgment of the Municipal Court, concluding that *"the damage compensation (...) is fair and reasonable"*.

24. KEK filed a revision with the Supreme Court, alleging *"essential violations of the contested procedure provisions and the erroneous application of the substantive law"*.

25. On 10 April 2015, the Supreme Court (Judgment, Rev. No. 1/2015) granted the revision of KEK and modified the Judgments of the Municipal Court and the Court of Appeals.

26. In its Judgment, the Supreme Court held what follows.

> *"In 1990, entity Electro Economy of Kosovo was violently integrated in Electro Economy of Serbia and since that moment it ceased to exist as legal person. (...) While the second Respondent* [Autotransport] *was registered as joint stock company on 10.03.2006, without any other specification".*
>
> *"There are no evidence in the case files that the Respondents have also inherited the obligations of EES and "Autotransport" from the time period of the interim measures before the war, which means that this entity does not have legal continuity with the previous entity, which undertook the obligation to compensate the damage for the consequences of the accident which happened on 23.08.1993. The Respondents cannot be treated as responsible for the consequences caused at the time when they did not exist as legal entity in Kosovo".*
>
> *"The Respondents (...) do not have passive legitimacy since the party has subject matter legitimacy only if it is participating in the legal material relationship, from which the dispute has arisen, therefore the Respondents are not obliged to compensate the damage as requested by the statement of claim of the Claimants, since the Respondents lack the passive legitimacy".*
>
> *"There is no legal basis for the existence of any legal succession between the Respondent and the former entity, which was subject of the claim in 1996. The Respondent did not inherit the obligations of the former entity and as such they do not have passive legitimacy".*

Applicants' allegation

27. The Applicants claim that the challenged Judgment violated their rights to fair and impartial trial, as guaranteed by Article 31 of the Constitution.

28. In this regard, the Applicants allege that the challenged Judgment violated their rights *"because the Supreme Court of Kosovo has applied the substantive law based on the erroneously ascertained factual situation".*

29. The Applicants further reason that *"the Respondent – KEK and "Autotransporti" has inherited all their assets, and therefore it is their obligation to compensate the Claimants for the damage because they use the coal of the Electro Economy of Kosovo, basic assets, the building and the entire property, without taking into account when it was registered and it changed the name as a new entity".*

30. The Applicants request the Court to confirm that the Judgment of the Supreme Court violated the Applicant's constitutional right to fair and impartial trial and declare as fair and impartial the Judgments of the Municipal Court of Prishtina and of the Court of Appeals.

Admissibility of the Referral

31. The Court first examines whether the Applicants have fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

32. In this respect, the Court refers to paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

> *"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."*

33. The Court also refers to Article 48 [Accuracy of the Referral] 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".*

34. In addition, the Court refers to Rule 36 [Admissibility Criteria] of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *[...]*
>
> *d) the Applicant does not sufficiently substantiate his claim".*

35. The Court recalls that the Applicants claim that the challenged Judgment of the Supreme Court has violated their right to fair and impartial trial, *"because the Supreme Court of Kosovo has applied the substantive law based on the erroneously ascertained factual situation".*

36. However, the Court considers that the Applicants merely state that there was a violation of their constitutional right to fair and impartial trial, without explaining how and why the facts they presented were a violation of that constitutional right they referred to. They have not provided any *prima facie*

evidence which would point out to a violation of his constitutional rights. (See: *Vanek vs. Slovak Republic,* No. 53363/99, ECHR, Decision, of 31 May 2005)

37. The Court reiterates that, in order to have a case related to a constitutional violation, the Applicants must substantiate and prove that the proceedings before the Supreme Court, viewed in their entirety, have not been conducted in a correct manner and in accordance with the requirements of a fair trial, or that other violations of the constitutional rights have been committed by the Supreme Court during the proceedings. (See case *Shub against Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

38. The Court notes that the Supreme Court concluded namely that *"there is no evidence in the case files that the Respondents have also inherited the obligations of EES and "Autotransport" (...). The Respondents cannot be treated as responsible for the consequences caused at the time when they did not exist as legal entity in Kosovo".*

39. The Court considers that the Judgment of the Supreme Court is fair and justified. In fact, it thoroughly explains why the revision was rejected as ungrounded due to lack of passive legitimacy of the respondents and consequently the judgments of the lower instance courts were modified. The Applicant has not explained how and why that conclusion of the Supreme Court on lack of passive legitimacy violated his right to fair and impartial trial

40. The Court finds that the Applicants have not substantiated and proved their claim on a constitutional basis; on the contrary, they confined the discussion to the application of the substantive law based on the erroneously ascertained factual situation, which are of legality nature and fall under the jurisdiction of the regular courts.

41. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).

42. Therefore, the Court considers that the challenged Judgment of the Supreme Court contains all the necessary reasons on which it is based, in accordance with the requirements of Article 31 of the Constitution and Article 6 ECHR.

43. The Court, even though acknowledging the unfavorable result for the Applicants, further reiterates that it is neither authorized nor is its task under the Constitution to act as a court of fourth instance, in respect of the decision taken by the Supreme Court on lack of passive legitimacy of the respondents. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

44. For the foregoing reasons, the Court concludes that the Applicants have not sufficiently substantiated and proved their allegation and, therefore, the Referral is inadmissible as manifestly ill-founded on a constitutional basis.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 13. April 2016, 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. TO DECLARE this Decision effective immediately

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Arta Rama-Hajrizi