



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

Prishtina, 7 December 2015
Ref. No: RK868/15

RESOLUTION ON INADMISSIBILITY

in

Case KI34/15

Applicant

Avdullah Kurti

**Constitutional review of Decision Ac. no. 1066/13 of the Court of Appeal
of Kosovo of 24 November 2014**

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 Referral is submitted by Mr. Avdullah Kurti from village of Vllahi in Mitrovica (hereinafter, the Applicant).

Challenged decisions

2. The Applicant challenges Decision Ac. no. 1066/13 of the Court of Appeal of Kosovo of 24 November 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision Ac. no. 1066/13 of the Court of Appeals of Kosovo of 24 November 2014.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), 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 16 March 2015, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 21 April 2015, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of judges Robert Carolan (Presiding), Almiro Rodrigues and Bekim Sejdiu.
7. On 22 May 2015, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal of Kosovo.
8. On 14 October 2015, 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

9. It appears from the documents contained in the referral that the Applicant was an employee of the National Accounting Service - Branch in Mitrovica (hereinafter, the NAS), starting from 1 June 1973 until 31 August 2001, when his employment relationship was terminated. The NAS was dissolved and the Banking and Payments Authority of Kosovo (hereinafter, the BPAK) was established pursuant to UNMIK Regulation 1999/20. The BPAK had terminated the Applicant's work contract because, inter alia, it did not consider itself as successor of the NAS.
10. On an unspecified date, the Applicant filed with the Municipal Court in Mitrovica a statement of claim against the BPAK, requesting reinstatement to work and compensation for unpaid personal income.
11. On 25 June 2001, the Municipal Court (Judgment C. no. 21/2001) approved the applicant's statement of claim against and obliged the respondent to reinstate the applicant to his workplace with all his rights and obligations arising from the work relationship and to compensate him personal income in value of 380

DM starting from 31 August 2000 within a time-line of 15 days. The Municipal Court reasoned, inter alia, that BPAK had continuity and inherited all the rights and obligations of the NAS, that it was indisputable that the applicant was in permanent employment relationship until the moment of establishment of the BPAK, and that, the BPAK had hired new employees in breach of the applicable Law on Employment Relationship.

12. On 28 September 2001, the BPAK filed with the District Court in Mitrovica an appeal, due to , inter alia, substantial violations of the Law on Contested Procedure (hereinafter: the LCP) provisions, incomplete and erroneous determination of factual situation and erroneous application of substantive law.
13. On 23 March 2002, the Applicant filed with the Municipal Court in Mitrovica a proposal for execution of its judgment (C. no. 21/2001 of 25 June 2001), requesting that the BPAK reinstates him to the workplace with all his rights and obligations arising from the work relationship, to compensate him personal income until final reinstatement to the workplace.
14. On 26 April 2002, the District Court (Judgment Ac. no. 140/2001) rejected the appeal of BPAK as unfounded and upheld the judgment of the Municipal Court. The District Court reasoned, inter alia, that it is indisputable that BPAK administers assets which were previously administered by the NAS, that it is indisputable that BPAK is an independent legal entity dealing with operation of payments and that all these characteristics were also possessed by the NAS, that the BPAK has hired new employees without observing legal procedures, and moreover, the BPAK terminated the applicant's employment relationship without conducting any procedure under the Law on Employment Relationship.
15. On 20 May 2002, the BPAK filed with the Supreme Court a request for revision, alleging, inter alia, substantial violations of LCP provisions and erroneous application of substantive law. The Public Prosecutor of Kosovo also joined the proceedings by filing a request for protection of legality against the judgments in question, due to the essential violation of the contested procedure provisions and the erroneous application of the substantive law.
16. On 7 June 2002, the Municipal Court (Decision E. no. 272/2002) granted leave for execution of its Judgment (C. no. 21/2001 of 25 June 2001) which ordered compensation and reinstatement of the Applicant to the workplace. The Municipal Court also had subsequently rejected as unfounded the objection of the BPAK (Decision E. no. 272/2002 of 12 July 2002).
17. On 26 November 2002, the Supreme Court (Judgment MLC. No. 2/2002) held:

“The request of the Public Prosecutor of Kosovo for the Protection of Legality and the Revision of the Respondent are granted; Judgment Ac. No. 140/2001 of the District Court in Mitrovica, dated 26 April 2002 and Judgment C. no. 21/2001 of the Municipal Court in Mitrovica, dated 25 June 2001 are modified, therefore the Statement of Claim of the Claimant, on obliging the Respondent- Banking and Payments Authority of Kosovo – Mitrovica branch to reinstate the Claimant to his previous position, with all the rights and obligations that derive from the employment relationship

and to compensate his personal income in the amount of 380 DM per month starting from 31 August 2000, until the reinstatement of the Claimant to his previous position, is rejected as ungrounded”.

18. Moreover the above-stated judgment of the Supreme Court in its relevant part reads:

“The Claimant has indeed had an employment relationship with the former NAS and until 31 August 2000 the Respondent has paid a monthly stipend in amount of 210 DM to him as aid. Pursuant to UNMIK Regulation no 1999/11, dated 15 November 1999, the Banking and Payments Authority of Kosovo (BPAK) is an individual public legal person and pursuant to the provision of Article 3.2 of UNMIK Regulation no. 1999/20, BPK may, on behalf of UNMIK, utilize and administer the property of National Bank of Kosovo, with its headquarters in “Marshall Tito” Str. (now “Nënë Tereza”) and the property of the Public Payment Service in Kosovo, with its headquarters in “Lenini” Str. in Prishtina. Pursuant to UNMIK Regulation no. 1999/11 dated 13 October 1999, the exercise of the control of the equipment, premises and payment services is foreseen. Among others, pursuant to the provision of Article 1 of this Regulation, it is foreseen that all pieces of equipment and premises, including the entire movable and immovable property, that are located in Kosovo and have been used by the Public Payment Service in Kosovo, with its headquarters in “Lenini” str. in Prishtina, shall be utilized and administered by UNMIK.

Due to the fact that the Respondent administers the basic assets, which were administered by the former National Accounting Service, no conclusion can be reached as regards the existence of any legal succession between the Respondent and the former NAS, because, pursuant to Article 6 of UNMIK Regulation no. 1999/1, the UNMIK shall administer the movable and immovable property, including finances, bank accounts and the other property of each of its bodies, which is located in the territory of Kosovo. There is no legal basis wherein it is foreseen that the Respondent has inherited the obligations from NAS. Besides this, the Claimant was notified that the payment in the form of a bonus by the Respondent will be made until 31 August 2000 and had there been a need for employment within the organization, the Claimant had the right to apply for such vacancy. The First Instance Court, just like the Second Instance Court, has erroneously applied the substantive law, when it found that the Statement of Claim of the Claimant is grounded. For this reason, upon granting the request for the protection of legality and the revision, both Judgments were modified and the Statement of Claim of the Claimant was rejected as ungrounded”.

19. On 28 January 2003, the Applicant filed with the Supreme Court a proposal for reopening of proceedings. The applicant claimed, inter alia, that he was not given the opportunity to participate in the hearing before the Supreme Court, and that, the impugned judgment of the Supreme Court is entirely unfounded, untenable and illegal.
20. On 19 July 2006, the District Court (Judgment Ac. no. 90/2002) rejected the appeal of the BPAK and upheld Decision of the Municipal Court on execution

(E. no. 272/2002 of 7 June 2002). The District Court reasoned that according to Article 384 of the LCP the lodging of revision cannot stay the execution of a final judgment, and that, in the concrete case by virtue of application of the provision in question the final judgment (C. no. 21/2001 of 25 June 2001) cannot be stayed.

21. On 14 February 2007, the Supreme Court (Decision PPC. No. 3/2006) held that the proposal of the applicant to reopen the proceedings is unfounded. The Supreme Court, inter alia, reasoned that in accordance with article 391 of the LCP it decides about the revision only based on the official documents of the case.
22. On 19 February 2013, the Basic Court in Mitrovica (Decision E. no. 577/ 2009) granted leave to the Applicant's execution proposal.
23. On 4 March 2013, the Central Bank of the Republic of Kosovo (hereinafter, the CBK) as successor of the BPAK filed an objection with the Basic Court in Mitrovica against Decision No. 577/09 of 19 February 2013 for allowing execution proposal. The CBK claimed, inter alia, that the impugned decision cannot be executed because there are two decisions of the Supreme Court (Judgment MLC No. 2/2002 of 26 November 2002 and Decision PPC. No. 3/2006 of 14 February 2007) which have nullified decisions of the Municipal and District Court in Mitrovica (Judgments C. no. 21/2001 of 25 June 2001 and Ac. no. 140/2001 of 26 April 2002).
24. On 29 March 2013, the Basic Court in Mitrovica (Decision E. no. 577/2009) approved the objection of CBK. The Basic Court in Mitrovica reasoned, inter alia, that the Supreme Court has accepted the request for protection of legality filed by the Public Prosecutor and the revision of the CBK to change decisions of the Municipal and District courts in Mitrovica, has rejected as unfounded the statement of claim of the applicant to be reinstated to the workplace, and moreover, the Supreme Court subsequently has rejected as unfounded the proposal of the applicant for reopening of the proceedings.
25. On 4 April 2013, the Applicant filed with the Court of Appeal of Kosovo an appeal against the above stated decision of the Basic Court in Mitrovica, complaining, inter alia, that he was unjustly deprived of the right to be reinstated in the workplace, that the Basic Court has violated article 384 of the LCP which provides that revision cannot stay the execution of a final decision.
26. On 24 November 2014, the Court of Appeal of Kosovo (Decision Ac. No. 1066/13) held that "*Decision E. no. 577/09 of the Basic Court in Mitrovica dated 29 March 2013 is MODIFIED, and adjudicated as follows: the enforcement procedure granted by Decision E. no. 577/09 of the Basic Court in Mitrovica dated 19 February 2013 on granting the execution is terminated, and the undertaken execution actions are QUASHED*". The Court of Appeal reasoned, inter alia, that the judgment (C. no. 21/2001 of 25 June 2001) which granted leave for the execution proceedings was changed by the Supreme Court, the enforcement procedure is terminated and the undertaken execution acts are annulled pursuant to Article 57.3 (Decision on objection) in connection with Article 73 (End of execution) of the Law on Execution Procedure.

Applicant's allegations

27. The Applicant alleges that in his case “...there have occurred violations of the law and the Constitution from the beginning until the end of the proceedings”.
28. The applicant asks the Court “... to take into account Decision Ac. no 90/2002 of the District Court in Mitrovica which says that according to Article 384 of the Law on Contested Procedure the lodged revision cannot suspend the execution of a final judgment”.
29. The Applicant generally alleges violation of the Constitution; however he does not invoke any constitutional provision in particular.

Assessment of admissibility

30. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
31. In this respect, the Court refers to Article 113.7 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.”

32. The Court also 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”.

33. The Court further takes into account Rule 36 1 (d) and 2 (d) of the Rules of Procedure which foresee:

(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*

34. In the concrete case, the Applicant requests the Court “to take into account Decision Ac. no 90/2002 of the District Court in Mitrovica which says that according to Article 384 of the Law on Contested Procedure the lodged revision cannot suspend the execution of a final judgment...and that in his case there have occurred violations of the law and of the Constitution from the beginning until the end of proceedings”.

35. The Court considers that the Court of Appeal of Kosovo has given sufficient reasoning by explaining that the Supreme Court upheld the revision lodged by the BPAK and rejected the applicant's statement of claim and that the Supreme Court has subsequently rejected as unfounded the applicant's request to reopen the proceedings.
36. In fact, the Court of Appeal decided that "*the enforcement procedure granted by Decision E. no. 577/09 of the Basic Court in Mitrovica dated 19 February 2013 on granting the execution is terminated, and the undertaken execution actions are QUASHED*", explaining that the execution proceedings were changed by the Supreme Court and the undertaken execution acts were annulled.
37. Furthermore, the questions of whether the lodged revision stays the execution proceedings or whether one institution is successor to the other are questions of legality that must be decided by the regular judiciary.
38. In that respect, the Court considers that the Applicant's referral does not raise constitutional questions but rather it raises questions of law and of fact which pertain to the duties and prerogative of the regular courts conferred upon them by the law and the Constitution.
39. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
40. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain [GC]*, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
41. The Constitutional Court recalls that it is not a fact-finding Court and thus the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
42. The Court reiterates that its task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
43. In fact, the Court notes that the Applicant does not indicate how and why the Court of Appeal acted in an arbitrary or unfair manner when concluding that the execution was annulled by the Supreme Court.

44. Moreover, the Constitutional Court cannot substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is up to these courts to assess the evidence presented to them.
45. In these circumstances, the Court considers that the Applicant has not substantiated his allegation of a violation of his fundamental human rights guaranteed by the Constitution because the facts presented by him do not show in any way that the Court of Appeal of Kosovo had denied him the rights guaranteed by the Constitution.
46. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, on 14 October 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties and to publish this Decision 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

Ivan Čukalović

Arta Rama-Hajrizi

