



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

Prishtina, 2 March 2015
Ref. no.:RK775/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI120/14

Applicant

Privatization Agency of Kosovo

Request for constitutional review of the Judgment of the District Commercial Court in Prishtina, II. C. nr. 79/2009, of 27 October 2009 and Judgment of the Appellate Court of Kosovo Ae. nr. 45/2012, of 20 May 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalovič, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is the Privatization Agency of Kosovo, the Regional Office in Peja (hereinafter: PAK), which is represented by Mr. Gëzim Gjoshi, the Legal Officer in PAK.

Challenged decision

2. The challenged decision is the Judgment of the District Commercial Court in Prishtina, II.C.nr.79/2009, of 27 October 2009 and Judgment of the Appellate Court of Kosovo Ae.nr.45/2012, of 20 May 2013, which was served to the Applicant on 17 June 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the District Commercial Court in Prishtina, II.C.nr.79/2009, of 27 October 2009, which rejected the lawsuit brought by PAK against Municipality of Klina; and Judgment of the Appellate Court of Kosovo Ae.nr.45/2012, of 20 May 2013, which rejected the appeal brought by PAK as ungrounded and reaffirmed the Judgment of District Commercial Court in Prishtina.

Legal basis

4. The Referral I based on Article 113.7 in conjunction with Article 21.4 of the Constitution of Kosovo (hereinafter: the Court), Article 22 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure)

Proceedings before the Court

5. On 22 July 2014 the Applicant submitted the Referral to the Constitutional Court.
6. On 6 August 2014 the President of the Court by Decision Nr. GJR. KI120/14, appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 20 August 2014, the Constitutional Court notified the Applicant on registration of the Referral and sent a copy of the Referral to the Appellate Court.
8. On 17 November 2014 the Court requested from the Basic Court in Prishtina to provide a copy of the letter of receipt indicating the date when the Applicant has received the challenged Judgment.
9. On 1 December 2014 the Basic Court in Prishtina submitted the requested document to the Court, which proves that the Applicant received the challenged Judgment on 17 June 2013.
10. On 12 February 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 6 March 2009, the Applicant filed a lawsuit with the District Commercial Court in Prishtina against Municipality of Klina for compensation of damages resulting from the demolition of Hotel "Mirusha", part of Agricultural Cooperative "Lavra", which as a socially-owned enterprise in accordance with Law No. 03/L-067 on Privatization Agency of Kosovo (adopted on 21 May 2008), is under PAK administration.
12. On 27 October 2009, District Commercial Court in Prishtina rendered Judgment II.C.nr.79/2009, rejecting the Applicant's lawsuit as ungrounded. In the reasoning of this Judgment, *inter alia*, was stated that: "*In order to establish the legal-civil responsibility for damage compensation pursuant to Article 154 and 158 of the LOR, it is a must that the following criteria are met: that the claimant suffered a damaged due to unacceptable and unlawful action of the respondent; the respondent for its action, by demolishing the facility and loss of goods, is responsible for the caused damage; that these undertaken actions are in contradiction to the law; that the respondent is guilty for the caused damage and existence of interlink between causes through illegal activities of the respondent and caused damages. By assessing the evidences and facts confirmed by the Court, the latter came to conclusion that all legal actions undertaken to demolish the Motel "Mirusha" in Klina have been carried out in terms of provisions of the Law on Constructions given that the Municipality is in possession and administers with the municipal public urban land and with all facilities located on it.*"
13. On 14 January 2010, the Applicant submitted an appeal to the Appellate Court of Kosovo challenging Judgment II.C.nr.79/2009 of 27 October 2009, alleging "*Violation of provisions of the substantive law, Erroneous and incomplete confirmation of factual situation, Erroneous application of the substantive law*".
14. On 20 May 2013, the Appellate Court rendered Judgment Ae.nr.45/2012, rejecting the Applicant's appeal as ungrounded. In the reasoning of this Judgment, the Appellate Court stated that: "*The Court of the first instance correctly applied the substantive law, given that the claimant neither in the proceeding of the first instance nor in the appealing procedure provided any evidence by which would have proven the grounds of the statement of claim, as provided by the Article 319 of LCP, and if the court cannot confirm with certainty any fact on existence of facts, based on administered evidence, then by applying the rules on burden of proof, on this concrete case, it shall conclude that the burden of proofs on the grounds of the claim lies with the claimant, therefore, the court of the first instance acted correctly when concluded that the statement of claim of the claimant is ungrounded.*"

Applicant's allegations

15. The Applicant alleges that the Judgment of the Appellate Court is rendered in violation of its right guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: ECHR), namely:

- i) *Violation of constitutionality and legality, set out in Chapter VII, Article 102, paragraph 3, of the Constitution of the Republic of Kosovo, whereby it is provided that the courts shall adjudicate based on the constitution and on the law;*
 - ii) *Violation of Article 31 of the Constitution of the Republic of Kosovo, whereby it is provided the right to a fair and impartial trial;*
 - iii) *Violation of the European Convention on Human Rights (ECHR), Article 6, whereby it is provided a fair and impartial trial; and*
 - iv) *Violation of general legal principles.”*
16. The Applicant also alleges that when rendering the challenged Judgment the material law was erroneously applied and that the Judgment contains substantial violations of the contested procedure provisions.
17. The Applicant further stated that the regular courts did not apply the appropriate law when rendering decisions regarding the dispute.

Admissibility of the Referral

18. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary first to examine whether it has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
19. In this respect, the Court refers to the Constitution, where is provided:

Article 113.7

“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”.

And Article 21.4

“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”

20. In addition, the Court refers to Article 49 of the Law, which provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...”

21. The Court also refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

“(1) The Court may only deal with Referrals if:

[...]

c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”

22. The Court observes that the last decision in the procedures before regular courts was that of the Appellate Court of Kosovo, rendered on 20 May 2013 and was served to the Applicant on 17 June 2013, whereas the Applicant filed the Referral with the Court on 22 July 2014, i.e. more than 4 months from the day upon which the Applicant has been served with the Appellate Court decision.
23. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 12 February 2015, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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


Robert Carolan

President of the Constitutional Court


Prof. Dr. Enver Hasani

