



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

Pristina, on 2 November 2015
Ref. No.:RK850/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI121/14

Applicant

Valdet Nikçi and others

**Constitutional Review of Decision Rev. no. 21/14 of the Supreme of
Kosovo of 3 April 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 was submitted by Valdet Nikçi, Nimon Dinaj, Isuf Vukli, Fazli Kuçi, Shkëlzen Morina, Sutkije Boja, Nusret Kurtaj, Shqipe Dakaj, Nimon Shala, Sejdi Camaj, Kimete R. Kastrati, Ramadan Morina, Hedije Dupa, Qazim Qavolli, Nekibe Morina, Nusret Belegu, Mybera Tigani, Hajdin Vermezi, Mevlyde Kullashi, Ferid Dupa, Hale Smakaj, Isuf Dreshaj, Kimete Kastrati, Besim Ademaj, Vjollca Kelmendi, Hazir Jonuzi, Sylejman Laja, Emin Sylejmani, Mustafë Ahmeti, Qerim Rama, Xhevat Berisha, Sejdi Durmishi, Deli Shala, Rexhë Nikçi, Sudan Krasniqi, Rifat Shala, Imer Blakaj, Xhevat Daci, Hysen Dreshaj, Shefki Seferaj, Shyqri Jashari, Rifat Zekaj, Jakup Shala, Shaban Kelmendi, Ejup Bojupi, Haki Gashi, Ali Shala, Shaban Dakaj, Rifat Kuçi, Xhevdet Shala, Bislim Lajçi, Nimon Kastrati, Lutfo Rebronja, Isa Gashi, Hazir Beqiri, Muzli Ukshinaj, Rexhep Tishuku, Bilall Durmishi, Daut Berisha, Skënder Rexhëbogaj, Skënder Krasniqi, Hajrullah Zhara, Ahmet Muriqi, Ramiz Kastrati, Dinë Kuçi, Rrustem Elshani, Bajram Bobi, Çelë Nikçi, Xhevat Gashi (hereinafter: the Applicants). The employees are represented by Mr. Valdet Nikçi, who is the President of the Trade Union of the Factory for Metal Constructions (former-UTVA) in Peja.

Challenged decision

2. The Applicants challenge Decision Rev. no. 21/14 of the Supreme Court of the Republic of Kosovo of 3 April 2014 (hereinafter: the Supreme Court).
3. The Applicants have not specified the date when the abovementioned Decision of the Supreme Court was served on them.

Subject matter

4. The subject matter is the constitutional review of the abovementioned Decision.
5. The Applicants allege that the decisions of the regular courts have violated Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution as well as their rights guaranteed by the Law on Contested Procedure and by the Law on Labor.
6. The Applicants' Referral is related to the compensation of unpaid salaries by the Factory for Metal Constructions (former-UTVA) in Peja, including the time period from 1 June 1995 until 31 March 1999.

Legal basis

7. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

8. On 23 July 2014 the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
9. On 6 August 2014 the President of the Court by Decision no. GJR. KI121/14 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI121/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
10. On 12 September 2014 Mr. Valdet Nikçi submitted the power of attorney for the representation of the Applicants before the Court.
11. On 17 September 2014 the Court informed the Applicants about the registration of Referral KI121/14 and sent a copy of the Referral to the Supreme Court.
12. On 5 December 2014 the Court requested from the Applicants some additional information.
13. On 12 December 2014 the Applicants submitted to the Court the additional information.
14. On 25 February 2015 the Court requested from the Applicants to complete the Referral and to fill out the official form of the Referral.
15. On 9 March 2015 the Applicants submitted to the Court the Referral form.
16. On 29 June 2015 the President by Decision KSH. KI121/14 appointed Judge Arta Rama-Hajrizi as a member to the Review Panel, replacing Judge Enver Hasani, whose mandate as Constitutional Court Judge ended on 26 June 2015.
17. On 8 September 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible.

Summary of the facts

18. The Applicants were employed in the Factory for Metal Constructions in Peja. According to the Applicants, the factory in question has not compensated their monthly salaries from 1 June 1995 to 31 March 1999, a period when they were coercively removed from work.
19. The Applicants filed a claim with the Municipal Court in Peja against the Factory for Metal Constructions in Peja (former UTVA).
20. On 27 October 2004 the Municipal Court in Peja rendered Judgment C. no. 133/03, approving the Applicants' claim and obliging the Factory for Metal Constructions in Peja (the respondent), to pay them unpaid monthly income, from 1 June 1995 to 31 March 1999. The Judgment further states: "*Based on the determined factual situation and indisputable facts between the litigants in the*

proceedings, the court found that the specified statements of claim of the claimants have legal basis, and as such were approved by the court as grounded”.

21. The Factory for Metal Constructions (former UTVA) did not file an appeal against the Judgment of the Municipal Court in Peja.
22. Kosovo Trust Agency (hereinafter: the KTA), through the State Public Prosecutor, filed a request for protection of legality with the Supreme Court against Judgment C. no. 133/03 of the Municipal Court in Peja.
23. On 22 March 2005 the Supreme Court of Kosovo (Judgment Mlc. no. 2/2005) rejected as ungrounded the request for protection of legality, reasoning that the Municipal Court in Peja had jurisdiction to decide on the claims, in accordance with the Law on Regular Courts (No. 21/1978) and it had correctly determined the facts and correctly applied the procedural and substantive law.

Facts as to the request for repetition of proceedings

24. On an unspecified date, the Privatization Agency of Kosovo (hereinafter: the PAK) filed a request for repetition of proceedings with the District Court in Peja.
25. On 22 November 2010 the District Court in Peja by Decision Ac. no. 390/2010 rejected the request for repetition of the proceedings regarding Case C. no. 133/03, which was decided by the Municipal Court in Peja, on 27 October 2004.
26. PAK filed an appeal with the second instance of the same court against the Decision of the District Court in Peja.
27. On 21 March 2011 the District Court in Peja (the second instance) rendered Decision K. Ac. no. 4/10, quashing the first instance decision of the District Court in Peja and remanding the case to the first instance for reconsideration and retrial.
28. On 20 April 2011 the District Court in Peja (first instance) rendered Decision AC. no. 141/2011, allowing the repetition of the procedure that was completed with final Judgment (C no. 133/03, of 27 October 2004) of the Municipal Court in Peja, and annulling the Judgment in its entirety.
29. The Applicants filed a revision with the Supreme Court against the Decision (Ac. no. 141/2011) of the District Court in Peja, which approved the request for repetition of the proceedings.
30. On 3 April 2014 the Supreme Court of Kosovo (Decision Rev. no. 21/2014) rejected the revision filed against the Decision of the District Court in Peja as inadmissible.

Facts as to the contested proceedings

31. After approving the repetition of proceedings by the District Court in Peja (second instance), the Basic Court in Peja started *ex officio* to review the case, which was registered under no. C. no. 254/11.
32. On 2 June 2014 PAK requested the termination of the contested procedure regarding the case C. no. 254/11, which was pending consideration by the Basic Court in Peja.
33. On 23 July 2014 the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo and informed the Basic Court in Peja about the Referral.
34. On 3 September 2014 the Basic Court in Peja decided to terminate the contested procedure. The minutes of the court in question state: *“the session is postponed for indefinite time and the date of the next hearing will be set after the Constitutional Court decides on the legality of the decision of the Supreme Court ...”*.

Applicant’s allegations

35. The Applicants allege that the decisions of the regular courts have violated Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution as well as their rights guaranteed by the Law on Contested Procedure and the Law on Labor.
36. In addition, the Applicants raised before the Court the following issues:
 - *Is the KTA, respectively PAK a party to the proceedings in the present case?*
 - *Was the District Court entitled to approve the request for repetition of procedure, at the request of the PAK, after the expiry of 5 years after the Judgment C. No. 133/03 became final and that is at the time of liquidation of the enterprise, whereas now requires the termination of the procedure due to the liquidation-the company is in the process of liquidation?*
 - *According to all the evidence submitted, are the workers entitled to compensation of unpaid salaries for the work done for the period mentioned in the claim and in the Judgment of the MC. C. no. 133/03.*

Admissibility of the Referral

37. In order to adjudicate the Applicants’ Referral, the Court must examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rule of Procedure.
38. In this case the Court refers to Article 113.7 of the Constitution, which 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.”

39. In addition, Article 47.2 of the Law provides:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.

40. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

“The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.

41. In the present case, the Court notes that the Basic Court in Peja on 3 September 2014, at the request of PAK, decided to suspend the contested proceedings regarding Case C. no. 254/11 until the Constitutional Court renders a decision, as requested by the Applicants.

42. Based on the fact that the Applicants’ case is still pending in regular court proceedings, namely before the Basic Court in Peja, the Court considers that the Applicants’ Referral is premature.

43. In this regard, the Court reiterates that the regular courts are independent in exercising their judicial authority, and it is their constitutional duty to interpret questions of fact and law that are relevant to the cases brought before them.

44. The rationale for the exhaustion rule is to afford, as in the present case the regular courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order provides an effective remedy for the violation of constitutional rights (see: Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo* KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECtHR, *Selmouni v. France*, no. 25803/94, Decision of 28 July 1999)

45. Thus the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, administrative or judicial proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See Resolution in Case No. KI07/09, *Demë Kurbogaj and Besnik Kurbogaj*, Review of the Supreme Court Judgment Pkl. no. 61/07 of 24 November 2008, paragraph 18)

46. Accordingly, the Constitutional Court cannot assess the alleged constitutional violations before the regular courts have completed the procedures that have been brought before them.

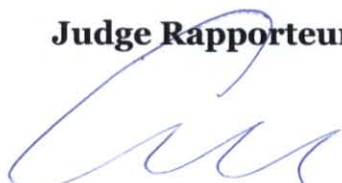
FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) (b) of the Rules of Procedure on 8 September 2015, 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy

President of the Constitutional Court



Arta Rama-Hajrizi

