



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

Prishtina, 6 January 2014
Ref.No.:RK534/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI132/12

Applicant

Bahtir Beqiri

**Constitutional Review of the Decision of the Court of Appeal Ac.no
1076/2013 dated 8 April 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
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Bahtir Beqiri, residing in Vushtrri.

Challenged decision

2. The Applicant in the referral specifically challenges the Judgment of the Municipal Court in Vushtrri of the Republic of Kosovo C. nr. 215/06 (hereinafter: the Municipal Court in Vushtrri) of 3 July 2006, which was received by the Applicant on an unspecified date.
3. However, the final decision in this case is the Decision of the Court of Appeal of the Republic of Kosovo Ac. no. 1076/2012 (hereinafter: the Court of Appeal) of 8 April 2013.

Subject matter

4. The subject matter is the constitutional review of the above-mentioned Decision of the Court of Appeal of the Republic of Kosovo.
5. Notwithstanding this, the Applicant in the referral challenged the Judgment of the Municipal Court in Vushtrri C. nr. 215/06 of 3 July 2006 due to the non-execution of the decision.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Article 47.2 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. The Applicant has submitted the referral on 24 December 2012.
8. On 6 December 2012, the President of the Constitutional Court, with Decision No.GJR.KI-132/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI132/12, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Ćukalović and Arta Rama-Hajrizi.
9. On 19 April 2013, the Referral was communicated to the Basic Court in Vushtrri (hereinafter: Basic Court).
10. On 17 October 2013, the Basic Court in Vushtrri submitted to the Court the Decisions of the Municipal Court in Vushtrri and the Court of Appeal of the Republic of Kosovo, which were not initially submitted by the Applicants.
11. On 31 October 2013, the Court notified the Applicant regarding the submitted documents by the Basic Court in Vushtrri.
12. On 13 November 2013, the Applicant submitted his comments.

13. On 19 November 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. The applicant was employed as a worker of the Socially Owned Enterprise "Cyqavica" until the year 1992.
15. According to the documents submitted, based on the Judgment of the Municipal Court in Vushtrri C 215/06 dated 3 July 2006, the SOE "Cycavica" in Vushtrri was obliged to fulfill the obligations regarding compensation of salary from 1992 until 1999 with an interest of 4.5% per year as of 29 June 2005 until its final payment for all the Applicants.
16. The Applicant filed a request with the Municipal Court in Vushtrri for the Execution of the previous Municipal Court Judgment C. no. 215/06 of 3 July 2006.
17. On 15 September 2006, the Municipal Court in Vushtrri rendered the Decision E. no. 784/06 on the execution of the Judgment C. no. 215/06 dated 3 July 2006. The account of the SOE "Cycavica" was blocked and the "New Bank in Kosovo" branch in Vushtrri was ordered to pay the Applicants the specified amount plus the specified interest.
18. However, on 20 February 2008 the Municipal Court in Vushtrri rendered the Decision E. no. 258/08 to cancel the Execution procedure.
19. In its Decision the Municipal Court in Vushtrri justified its Decision to cancel the execution with reference to the letter of 31 December 2007 of the Kosovo Trust Agency requesting the Municipal Court that *"...regarding all cases related to SOE "Cyqavica, to cancel the execution as the UNMIK Regulation 2005/4 provides that by adoption of special regulations regarding regulation of certain areas is excluded LEP [Law on Execution Procedure] and that the said SOE is not in the liquidation procedure, but the creditor can realize his rights in KTA [Kosovo Trust Agency] and these requests will be considered as executive title and in the executive procedure of the enterprise, the requests will be fulfilled by the Liquidation Committee of the SOE"*.
20. Against the Decision of the Municipal Court in Vushtrri E. no. 258/08 dated 20 February 2008, the Applicant filed an appeal with the Court of Appeal.
21. On 8 April 2013, the Court of Appeal rendered the Decision Ac. no. 1076/2012 whereby it decided to approve the appeal filed by the Applicant as grounded and to quash the Decision of the Municipal Court E. nr. 258/2008 dated 20 February 2008.
22. The Court of Appeal in its aforementioned decision found that the Municipal Court in Vushtrri has erroneously applied the provisions of substantive law.

Furthermore it stated that that the lower court instance did not sufficiently reason its decision to cancel the execution procedure.

23. On 13 November 2013, the Applicant in his reply regarding the submitted decisions by the Basic Court, amongst others stated *“that according to their interpretation the submitted decisions are arbitrary and do not have a legal basis”*

Applicant’s allegations

24. The Applicant claims that he has worked in the SOE “Cyqavica” in Vushtrri until 1991 whereby Serbian forces coercively removed him from work and discriminated him.
25. The Applicant alleges that his rights guaranteed by the Constitution were violated because he is entitled to a share of proceed from the privatization of SOE “Cyqavica” as a form of compensation for his salary for the years 1991 until 1999. The applicant calls upon Article 53 [Interpretation of Human Rights Prvisions] and 54 [Judicial Protection of Rights] of the Constitution.

Assessment of the admissibility

26. The Court observes that, in order to be able to adjudicate the Applicants complaint, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
27. At the outset, the Court would like to reiterate that it can only decide on the admissibility of a Referral, if the Applicant shows that it has exhausted all legal remedies available under applicable law pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36.1.a, providing:

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”.

Article 47.2

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

Rule 36.1.a

“The Court may only deal with Referrals if all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted”.

28. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (See case KI65/11, Applicant Holding

Corporation "Emin Duraku", Resolution on Inadmissibility of 21 January 2013).

29. Bearing this in mind it is clear from the documentation submitted by the Basic Court in Vushtrri that the case is still pending before this regular court. It follows that the Applicant has not exhausted all legal remedies available to him under applicable law as required for him to be able to pursue a claim to the Court.
30. Moreover, the Court reiterates that the Applicant is obliged to inform the Court of all circumstances relevant to the referral and not to retain any information known to him. Otherwise retaining or misleading the Court could raise the issue of abuse of the right to petition.
31. The Court notes that in the present case the Applicants' have not informed the Court about the Decision of the Municipal Court in Vushtrri (E. no. 256/08 dated 20 February 2008) to cancel the procedure of its execution and the Decision of the Court of Appeal (Ac. No. 1076/2012 dated 8 April 2013) to quash the above mentioned Decision of the Municipal Court in Vushtrri. Such Conduct is not in compliance with the right to individual petition according to the European legal standards. (See *mutatis mutandis*, see ECHR decision Hadrabova and others v Czech Republic, ECHR Decision on Admissibility of Application No. 42165/02 and 466/03 of 25 September 2007).
32. The Court further emphasizes that there is no final decision to be challenged before this Court.
33. In sum, the Applicant has not exhausted all the legal remedies available to him under applicable law.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 19 November 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Prof. Dr. Enver Hasani