



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

Prishtina, on 1 February 2016
Ref. no.:RK884/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI43/15

Applicant

ECO-HIGJIENA L.L.C

**Constitutional Review of Judgment C. no. 381/2014, of the Basic Court in
Gjilan, of 3 December 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 the Company ECO-HIGJIENA L.L.C. from Gjilan (hereinafter: the Applicant), which is represented by Besim Osmani, lawyer from Kamenica.

Challenged decision

2. The Applicant challenges Judgment C. no. 381/2014 of the Basic Court in Gjilan, of 3 December 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment C. no. 381/2014 of the Basic Court in Gjilan, of 3 December 2014.
4. The Applicant claims that its alleged failure to be served with the challenged judgment is contrary to Article 32 [Right to Legal Remedies], as well as to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, under Article 22 of the Constitution of Kosovo are directly applicable in the Republic of Kosovo.
5. At the same time, the Applicant requests the Court to impose Interim Measure and to order the Basic Court in Gjilan to annul the proceedings in case C. no. 381/2014 until the final decision is rendered.

Legal basis

6. The Referral is based on Article 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54 and 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 8 April 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 14 April 2015, the President of the Court, by Decision no. GJR. KI43/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI43/15 appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
9. On 1 June 2015, the Court informed the Applicant about the registration of the Referral and requested him to submit to the Court the power of attorney, showing that he is the legal representative of the Company ECO-HIGJIENA L.L.C. from Gjilan. On 12 June 2015, the Applicant submitted to the Court the required power of attorney.
10. On 15 June 2015, the Court sent a copy of the Referral to the Basic Court in Gjilan. On 26 June 2015, the Court received a response from the Basic Court in Gjilan. In the response of the Basic Court is stated that Judgment C. no.

381/2014 upon the appeal of the Applicant (the appeal was submitted on 12 June 2015) is pending before the Court of Appeal of Kosovo.

11. On 1 July 2015, by Decision GJR. KI43/15, the President of the Court appointed Judge Ivan Čukalović as a member of the Review Panel replacing Judge Kadri Kryeziu, whose mandate in the Constitutional Court ended on 26 June 2015.
12. On 16 October 2015, the Applicant informed the Court that he submitted appeal against Judgment C. no. 381/2014 of Basic Court in Gjilan to the court of appeal, and this case is still pending.
13. On 18 December 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.
14. At the same time, the Review Panel proposed to the full Court to reject the Applicant's request for interim measure, with a justification that it did not submit any convincing evidence to justify the imposition of the interim measure, as necessary, in order to avoid an unrecoverable damage, or evidence that such a measure is in the public interest.

Summary of facts

The administrative procedure within the Company

15. From the case file it follows that the Board of Directors of the Company ECO-HIGJIENA L.L.C. from Gjilan in 2012 suspended from work two of its workers.
16. In further proceedings an agreement was reached between the two workers and ECO-HIGJIENA, so that ECO-HIGJIENA annulled the decision on suspension of these workers, whereas the same workers resigned from their positions.

The proceedings before the regular courts in the civil dispute

17. The above mentioned workers filed a claim with the Municipal Court in Gjilan regarding the contested resignation, which they alleged that they filed under pressure, applied to them by the Board of Directors of ECO-HIGJIENA.
18. On 2 May 2013, the Basic Court in Gjilan, by Judgment C. no. 809/12, approved the statement of claim of the above mentioned workers and obliged the company, ECO-HIGJIENA, to re-instate the workers to their job positions and to compensate their personal income from the day of their disputed resignation.
19. The Applicant filed an appeal with the Court of Appeal of Kosovo against the decision of the Municipal Court.
20. On 8 January 2014, the Court of Appeal of Kosovo by Judgment AC. no. 1857/13 rejected the Applicant's appeal against Judgment C. no. 809/12, of the Municipal Court, and partly modified it.

21. The above mentioned workers submitted a request for revision to the Supreme Court of Kosovo against the decision of the Court of Appeal of Kosovo.
22. On 12 May 2014, the Supreme Court of Kosovo, by Decision Rev. no. 87/2014, approved the part of the revision related to re-instatement of the abovementioned workers to their job positions, whereas it quashed and remanded the decision of the first and second instance court to the first instance court for retrial.
23. On 3 December 2014, the Basic Court in Gjilan in the repeated procedure rendered Judgment C. no. 381/14.
24. On 19 January 2015, the Applicant filed a request for revision with the Supreme Court of Kosovo against the decision of the Municipal Court.
25. On 30 April 2015, the Basic Court in Gjilan rejected the request for revision of the Applicant as inadmissible.
26. On 20 May 2015, the Applicant filed appeal with the Court of Appeal against the decision of the Basic Court on the rejection of the request for revision. This procedure is still ongoing.

Applicant's allegations

27. The Applicant claims that the alleged failure to be served with Judgment C. no. 381/14 of the Basic Court in Gjilan, of 3 December 2014, violated his right guaranteed by the Article 32 [Right to Legal Remedies] of the Constitution of Kosovo.
28. The Applicant requests that the Court:
 - I. „To declare our Referral admissible:
 - II. To hold that the Court in case C. No. 381/14, where declared its decision on merits final, has violated the provisions of the Constitution of the Republic of Kosovo, Articles 32 and 22.1.2:
 - III. To order the Basic Court in Gjilan to annul all proceedings, by which Decision C. No. 381/14 became final,
 - IV. To order the Basic Court in Gjilan, to serve the decision C. No. 381/14, on me, as authorized person, so that I can exercise my right to appeal this decision”.
29. The Applicant also requests the Court to:

„impose a certain measure or to order the Basic Court in Gjilan to terminate all proceedings related to the execution of decision number C. No. 381/2014, until a decision based on merits is rendered in relation to this Referral”.

Admissibility of the Referral

30. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and 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 stipulates:

"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 47.2 of the Law, which provides that:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".
33. Moreover, the Court takes into account Rule 36 (1) (b) of the Rules of Procedures, which provides that:

"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".
34. In that regard, the Court recalls that the Applicant stated that the Basic Court in Gjilan, by not serving Judgment C. no. 381/14 violated his right to a legal remedy guaranteed by Article 32 of the Constitution of Kosovo.
35. The Court notes that on 20 May 2015, the Applicant submitted a claim with the Court of Appeal where the procedure is still pending.
36. The Court further recalls that the principle of subsidiarity requires that the Applicant exhausts all legal remedies provided by law.
37. The rationale for the exhaustion rule is to afford competent authorities, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that Kosovo's legal system shall provide effective remedies against violations of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (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*, ECHR, *Selmouni v France*, no. 25803/94, decision of 28 July 1999).
38. Accordingly, the Court considers that the Applicant's Referral is premature, because of the non exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedures.

39. It follows that the Referral is inadmissible.

Assessment of the request for Interim Measure

40. The Court notes that the Applicant in the Referral requests the Court to impose Interim Measure or to order the Basic Court in Gjilan to suspend all proceedings related to the enforcement of decision under number C. no. 381/2014, until it is decided on the merits of this Referral.

41. In order to impose an Interim Measure, in accordance with Rule 55 (4) of the Rules of Procedure, the Court must determine:

“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted.

(c) the interim measures are in the public interest“.

42. As previously concluded, the Referral is inadmissible; therefore, the request for Interim measure is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law, and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 18 December 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



Robert Carolan



President of the Constitutional Court



Arta Rama-Hajrizi