



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

Prishtina, 19 March 2015
Ref. No.: RK779/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI64/14

Applicant

Afrim Nuredini

Constitutional review of the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory

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, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Afrim Nuredini (hereinafter: the Applicant), with residence in the village Sllatinë e Epërme.

Challenged decision

2. The Applicant in his Referral explicitly requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) for the “[...] *INITIATION OF LEGALITY against final Judgment of the Constitutional Court in Prishtina, KIo8/09 [...]*” of 17 December 2010.

Subject matter

3. The Applicant’s claim is directed at the Trade Union of the Steel Pipe Factory-IMK, because it did not include his name on the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which, approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory.
4. In this respect, the Applicant alleges a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and requests “*That the Constitutional Court renders a Judgment that I as well, as a former employee possess the right to receive the compensation I am entitled to for nine years pursuant to my salary at the time, as an employee of this enterprise.*”

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 4 April 2014, the Applicant submitted the Referral to the Court.
7. On 6 May 2014, the President of the Court, by Decision No. GJR. KI64/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI64/14, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 27 May 2014, the Court notified the Applicant of the registration of Referral.
9. On 15 September 2014, the President, by Decision No. GJR. KI64/14, appointed Judge Ivan Čukalović as Judge Rapporteur to replace Judge Robert Carolan.
10. On 11 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 19 February 1990, the Applicant's employment relationship with the Socially-Owned Enterprise Steel Pipe Factory was terminated with the justification that he had been absent from work for five consecutive working days. The termination of the employment relationship was based on Article 75, paragraph 2, item 3, of the Law on Fundamental Rights regarding Employment Relationship, Official Gazette SFRY No. 60/89 (Decision No. 1386).
12. The Court notes that the Applicant submitted only three pages of the Referral composed of: 1. Request for "[...] *INITIATION OF LEGALITY against final Judgment of the Constitutional Court in Prishtina, KIO8/09 [...]*"; 2. Decision on termination of employment relationship no. 1386 of 19 February 1990.

Applicant's allegations

13. The Applicant alleges that he was not in the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory. The Applicant claims that he was not informed about this because he was outside of Kosovo.
14. Consequently, the Applicant alleges that *"the Law on Labor has been violated because just like all other employees of this enterprise I am also entitled to be compensated for the money I am legally entitled to."*
15. Thus, the Applicant requests from the Court that *"[...] as other former employees, to be entitled the right to compensation for nine years based on the salary I had at that time as former employee of this enterprise"*.

Admissibility of the Referral

16. The Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
17. In this respect, 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".
18. In addition, Article 47.2 of the Law also provides:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".
19. Furthermore, Rule 36 (1) (b) reads:

“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”.

20. In the present case, the Applicant’s claim is directed at the Trade Union of the Steel Pipe Factory IMK, because it did not include his name in the list of employees entitled to benefits in accordance with the Judgment of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002, which approved the request for compensation of unpaid salaries of 572 workers of the socially owned IMK Steel Pipe Factory.
21. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of fundamental rights.
22. The rationale for the exhaustion rule is to afford the concerned authorities, 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 legal order of Kosovo shall provide an effective remedy for the violation 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. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).
23. The Applicant has not indicated whether he has exhausted all of his available legal and constitutional remedies as a condition of submitting his Referral as provided by Article 113.7 of the Constitution and Article 47.2 of the Law.
24. It follows that the Referral is inadmissible pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (1) (b) and 56 (b) of the Rules of Procedure, on 11 February 2015, unanimously

DECIDES

- I. TO REJECT the Referral as 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. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Ivan Čukalović



President of the Constitutional Court



Prof. Dr. Enver Hasani