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

Prishtina, 3 September 2015
Ref. No.:837/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI75/15

Applicant

Hatixhe Cana-Kurti

Request for constitutional review of Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-14-0218-A0001-A0004, of 14 May 2015

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 is submitted by Ms. Hatixhe Cana-Kurti with residence in village Livoq i Ulet, Municipality of Gjilan (hereinafter: the Applicant).

Challenged Decision

2. The Applicant requests the constitutional review of Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel), of 14 May 2015.

Subject Matter

3. The subject matter is the constitutional review of Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel of 14 May 2015, which, allegedly, has violated the Applicant's rights and freedoms guaranteed by the Constitution under Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

4. At the same time, the Applicant requests the Court to impose an interim measure, which would ban further distribution of the 20% of the proceeds of the sale to all workers who are entitled to this right to proceeds from the privatization of the Socially Owned Enterprise Agrokultura (hereinafter: the SOE Agrokultura) until the Court decides on the merits of the Referral.

Legal Basis

5. The Referral is based on Article 113.7 of 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, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 15 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 29 June 2015, the President of the Court, by Decision No. GJR. KI75/15 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI75/15 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

8. On 1 July 2015, the Court informed the Applicant and the Appellate Panel about the registration of the Referral.

9. On 21 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. The Applicant was employed with the Socially-Owned Enterprise (hereinafter: SOE) Agrokultura from 15 May 1985 until 31 March 1995.

11. On 26 March 2006, the SOE Agrokultura was privatized.

12. On 10 December 2010, the Privatization Agency of Kosovo (hereinafter: PAK) announced the final list of employees who are entitled to share in 20% of the proceeds from the privatization of the SOE Agrokultura, in which the Applicant was not included. In the reasoning of the decision is stated that *"all the other applicants who are not satisfied with the decision of the Privatization Agency shall have the right of appeal to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) until 31 December 2010."*

13. On an unspecified date, the Applicant filed an appeal with the Special Chamber against the final list, which was published on 10 December 2010 by the Privatization Agency of Kosovo. In the appeal, the Applicant, in addition to the allegations *"that in 1995 her employment relationship with SOE Agrokultura was terminated due to discrimination against [her] by the then regime and management of the company"*, enclosed a certificate issued by the director of the enterprise as evidence of her former employment status, which she had enjoyed during the period from 15 May 1985 until 31 March 1995.

14. On 10 July 2014, the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel) rendered its Judgment [SCEL- 10-0038] by which it approved the Applicant's appeal and ordered the Special Chamber to include her in the final list with other workers who had acquired the legitimate right to a share of 20% of the proceeds from the privatization of SOE Agrokultura.

15. On an unspecified date, PAK filed an appeal against this Judgment [SCEL- 10-0038] of the Specialized Panel, because PAK had not had an opportunity to respond to the Applicant's claims before the Specialized Panel.

16. In its appeal, the Privatization Agency stated: *"The Appellant (Applicant) did not submit the relevant fact, based on which would be determined the justification of allegations that she was not equal to the proceedings, and the reasoning for the application of direct or indirect discrimination in accordance with Article 8.1 of the Law Against Discrimination. The Appellant did not provide the facts of discrimination, and the respondent (Privatization Agency) was not able to present its arguments to respond to allegations of discrimination on which the Appellant [Applicant] based her appeal. "*

17. On 14 May 2015 the Appellate Panel having considered and assessed all the allegations and evidence in the case file submitted by the parties to the proceedings, found that the appeal of the Privatization Agency was grounded, therefore by Judgment [AC-I-14-0218-A0001 -A0004] modified the Judgment [SCEL- 10-0038] of the Specialized Panel and rejected the Applicant's claim as ungrounded.

18. In the reasoning of the Judgment [AC-I-14-0218-A0001-A0004] the Appellate Panel stated: *"The claimant C-0002 Hatixhe Cana-Kurti had closed her work booklet in 1995. There is no decision on her employment prior to this period,*

there is no decision on dismissal from work and she did not provide any evidence indicating that she was working until the privatization of the SOE, or that she was on the waiting list, as she stated in the appeal before the Special Chamber. For these reasons, the Applicant does not meet the criteria stipulated in Article 10.4 of the UNMIK Regulation 2003/13, to be included in the final list with a legitimate right to 20%. "

Applicant's allegations

19. The Applicant believes that the Appellate Panel by its Judgment committed a violation of the principle of equality before the law in relation to the other parties.

20. The Applicant addresses the Court with the request: *"I want to be included in the final list of employees with legitimate right to 20 % share of proceeds from privatization of the SOE Agrokultura from Gjilan."*

Admissibility of the Referral

21. In order to be able to adjudicate upon the Applicant's Referral, the Court needs first to examine whether the she has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

22. In this regard, 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."*

23. In addition, Article 48 of the Law, requires:

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*

24. In this case, the Court refers to Rule 36 (1) (d) of the Rules of Procedure, which provides:

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *d) the referral is prima facie justified or not manifestly ill-founded."*

25. In the present case, the Court notes that the Applicant challenges the Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel, which has allegedly violated her rights and freedoms guaranteed by Article 24 [Equality Before the Law] of the Constitution.

26. In this regard, the Court notes that the Applicant did not explain how and why the Judgment [AC-I-14-0218-A0001-A0004] of the Appellate Panel violated her rights guaranteed by the Constitution.

27. Based on the Applicant's Referral, the Court notes the Applicant tried to justify the alleged violations of Article 24 [Equality Before the Law] of the Constitution exclusively with the statement, *"I consider that the Appellate Panel by its Judgment violated the principle of equality before the law in relation to other parties."*

28. The Court notes that the Appellate Panel based its decision on UNMIK Regulation no. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY OWNED IMMOVABLE PROPERTY of 9 May 2003, which provides, *inter alia*, that:

> *„For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatisation and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6. "*

29. Furthermore, the Court notes that, based on this law, the Appellate Panel concluded that the Applicant had not been employed with the SOE Agrokultura during the required period of time to become eligible to benefit from the 20% share in the proceeds (see para. 16 above).

30. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See: *mutatis mutandis*, *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999. See also case no. KI70/11, *Applicants: Faik Hima, Magbule Hima and Bestar Hima* Resolution on Inadmissibility of 16 December 2011).

31. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the provisions of Article 24 of the Constitution (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).

32. Moreover, the Court notes that the Appellate Panel rendered its Judgment [AC-I-14-0218-A0001-A0004] of 14 May 2015 following detailed consideration and assessment of all the allegations and the evidence from the case file as submitted by both parties to the appeal procedure.

33. Accordingly, the Court holds that the explanation given by the Appellate Panel in Judgment [AC-I-14-0218-A0001-A0004] is clear and legally grounded and that the proceedings before the Appellate Panel were not in any way unfair or

arbitrary (See, *mutatis mutandis, Shub v. Lithuania,* no. 17064/06, ECHR Decision of 30 June 2009).

34. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, because the Applicant did not submit any evidence indicating that the challenged decision in any way violates her rights and freedoms guaranteed by Article 24 of the Constitution.

35. Therefore, the Court concludes that the Applicant has not substantiated her claim and the Referral is to be rejected as inadmissible because as manifestly ill-founded, pursuant to Rule 36 (1) (d) of the Rules of Procedure.

Request for Interim Measure

36. As it was stated in paragraph 4, the Applicant also requests from the Court to impose an interim measure, by which would be banned further distribution of the 20 % of the proceeds to all employees who had acquired this right from the privatization of the SOE Agrokultura, until the Court decides on the merits of this Referral.

37. In order for the Court to impose an Interim Measure, in accordance with Rule 55 (4 and 5) of the Rules of Procedure, the Court must determine whether or not:

> *"(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; and*
>
> *(...)*
>
> *If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."*

38. As stated above, the Applicant's Referral is inadmissible, therefore, the request for an interim measure must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (2) (b) and 55 (5) of the Rules of Procedure, in the session held on 21 July 2015, unanimously:

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO REJECT the Request for Interim Measure;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law;

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Altay Suroy Arta Rama-Hajrizi