



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

Pristina, 16 December 2013
Ref.no.:RK521/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI109/13

Applicant

Nuriye Salihu

**Request for constitutional review of the Judgment ,Ac. No. 1717/2012, of
the Court of Appeal of Kosovo, of 22 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mrs. Nuriye Salihu (hereinafter; the Applicant) from Prishtina, The Applicant requested that her identity not to be disclosed.

Challenged decision

2. The challenged decision is Judgment Ac. no. 1717/2012, of the Court of Appeal of Kosovo of 22 April 2013, served on the applicant on 15 June 2013.

Subject matter

3. The subject matter is the assessment of the constitutionality of the Judgment of the Court of Appeal by which the Applicant's constitutional rights were violated in respect to the non-payment of compensation for additional work, which the applicant performed in the District Commercial Court in Prishtina. The work concerned cleaning the building from 17.07.2003 until 01.10.2003 and from 1.12.2003 until 15.12.2003.

Legal basis

4. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter the Constitution), Article 22 of the Law No. 03/L-121 of 15 January 2009 on the Constitutional Court of Republic of Kosovo (hereinafter the Law), and Rule 29 of the Rules of Procedure of the Court (hereinafter the Rules of procedure).

Proceedings before the Constitutional Court

5. On 19 July 2013, the Applicant submitted the Referral to the Court
6. On 06 August 2013, the President of the Court appointed the Judge Snezhana Botusharova as Judge Rapporteur, and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 6 September 2013, the Constitutional Court notified the Applicant and the Court of Appeal of the registration of Referral.
8. On 21 October 2013, 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

9. The applicant was hired by the District Commercial Court in Prishtina with the work duties of a cleaning lady.
10. The applicant was asked by the President of the Court to perform additional work of cleaning from 17.07.2003 until 1.10.2003 and 1.12.2003 until 15.12.2003, in order to replace her colleague. The Applicant was promised that she would receive compensation for this additional work.
11. On 19.11.2004, the Applicant filed an appeal with the Appeal Committee of the Ministry of Public Services, claiming the unpaid compensation, but she never received any response.

12. On 11.01.2005, the Applicant also addressed the Independent Oversight Board, but she did not receive any response from the Board.
13. On 03 December 2007, the applicant filed a claim in the Municipal Court of Prishtina for compensation of the material damage in the amount of 540 Euro, not compensated by her employing authority.
14. On 10 November 2009, the Municipal Court in Prishtina with its Judgment CI. no. 517/2007, rejected the claim of the claimant of the applicant as unfounded. In the reasoning of the judgment, the court stated *"The provision of Article 376, para.1 of the Law on Obligational Relationships (LOR) provided that the "claim for damages shall expire three years after the party sustaining the injury became aware of the injury of the person that caused it." In the present case, the respondent requests compensation of salaries for the overtime work for the period from 17.07.2003 until 1.10.2003 and from 1.12.2003 until 15.12.2003, which was never made and that for this compensation addressed the court by claim on 3.12.2007, which means that after expiry of the time limit of three years which makes the claim for compensation time-barred, which belongs to the category of the compensation of material damage, therefore the court rejected the same in entirety pursuant to the provision of LOR, cited above."*
15. On 22 April 2013, the Court of Appeal in Prishtina with its the Judgment Ac. no. 1717/2012, in deciding on the appeal of applicant, *rejected* as ungrounded the claimant's appeal, while upholding the Judgment of the Municipal Court of Prishtina CI 517/2007 of 10.11.2009. The Court of Appeal held that *"According to this state of the matter, the court of appeal found that the first instance court by presenting necessary evidence has correctly and completely determined the factual situation and with correct assessment of the evidence, has correctly applied the material law, when it found that the claim is unfounded and in the judgment gave sufficient legal and factual reasons on relevant facts, important for the correct adjudication of this matter, which are accepted by this court, too. "*

Applicant's allegations

16. The Applicant claims that the judgments of the first and the second instance courts, *"violated her legitimate right to be awarded monetary compensation for the work done"*, without providing any further clarification as to how this amounts to a constitutional violation.
17. In this respect, the Applicant argues that the judgments of the first and the second instance courts violated Article 28.2 of the Constitution (forced labour).
18. Applicant also asked that her identity to be protected due to personal reasons

Assessment of admissibility of the Referral

18. In order to be able to adjudicate the Applicants' Referral, the Court examines whether the Applicant has fulfilled the admissibility requirements laid down in

the Constitution, and as further specified in the Law and the Rules of Procedure of the Court.

19. Regarding this, 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.

20. In this respect, the Court considers that the Referral, was submitted to the Court by an individual, within the time limit of 4 months as provided by article 49 of the law, and after the exhaustion of available legal remedies, and is appropriate to be reviewed in the Constitutional Court.

Assessment of the Referral

21. The Court notes that the Applicant challenges the Judgment of the Court of Appeal, Ac.nr.1717/2012 of 22 April 2013, by which her appeal against the Judgment of the Municipal Court of Prishtina, CI no.517/2007 of 10.11.2009, was rejected as ungrounded.
22. The Court emphasizes that the Constitutional Court is not a fact-finding court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts. In the present case, the Court of Appeal decided upon the Applicant's appeal, and rendered the Judgment Ac.no.1717/2012 of 22 April 2013. The role of the Constitutional Court is only to secure compliance with the rights guaranteed by the Constitution and therefore, it cannot act as "the court of the fourth instance" (see, *mutatis mutandis*, i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).
23. The Court finds that the Judgment of the Court of Appeal is well reasoned and has dealt with the Applicant's complaint in a regular court process, rendered without any violation of human rights guaranteed by the Constitution of Kosovo.
24. Furthermore, to declare a decision of a public authority as unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that the "Decision of a public authority, as such, will be an indicator of a violation of the request to a fair trial and if the unfairness of that decision is so evident that the decision may be considered as extremely arbitrary" (see ECHR, Khamidov against Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).
25. The Constitutional Court found no elements of arbitrariness in the Judgment of the Court of Appeal Ac.no.1717/2012 of 22 April 2013, nor any violation of human rights, as alleged by the Applicant.
26. Regarding the allegation of the Applicant that by the Judgment of the Court of Appeal were violated her legitimate rights guaranteed by the Constitution pursuant to Article 28.2 of the Constitution, the Court concludes that Article 28

of the Constitution [Prohibition of Slavery and Forced Labor] has clearly specified that:

“1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced labor. Labor or services provided by law by persons convicted by a final court decision while serving their sentence or during a State of Emergency declared in compliance with the rules set forth in this Constitution shall not be considered as forced labor.

3. Trafficking in persons is forbidden.”

27. Taking into account this constitutional norm, the Court notes that definition of “forced labor” as used in this norm cannot be interpreted separately from the full content of Article 28 of the Constitution and in this respect, the constitutional terminology used refers to those situations, when the labor is imposed by force, or under the threat of force, and with consequences to the person if this work is not performed. Forced labour, within this meaning, is forbidden (in slavery, trafficking, etc) and the work needs to have been carried out in an involuntary manner. Therefore, in these circumstances, the Court does not find that in the Applicant’s case constituted a violation of Article 28 of the Constitution, as alleged in this Referral
28. The European Court on Human Rights (which law case, pursuant to Article 53 of the Constitution, the Constitutional Court is obliged to apply when adjudicating on human rights) in cases Karol Mihal v. Slovakia and Van der Mussele v. Belgium concluded that when determining whether the service required from the Applicant falls within the definition of forced labor”, the court will take into account all circumstances of the case in the light of the basic objectives of Article 4 of Convention” and to respond to the questions of the concrete case whether the finished work, performed by the Applicant was “forced ” and “compulsory “, the court should take into account if the work performed by the Applicant was performed under the threat of a punishment, whether the work was performed against the will of the Applicant and whether the Applicant volunteered to perform that work (see Karol Mihal v. Slovakia, (Application no. 23360/08, para. 43, and Van der Mussele v. Belgium, para. 34), therefore, the Constitutional Court applied the same requirements, holding that the additional work, performed by Ms. Salihu does not fall within the framework of Article 28.2 of the Constitution of Kosovo, because it was not carried out under the threat of a punishment, was not forcefully ordered and was a part of the normal work, but with an increased volume.
29. From the information provided by the Applicant, the Court concludes that the Applicant has initiated a procedure to claim monetary compensation for the work she performed during the mentioned time periods. The regular court dealt with her claim within the Law on Obligation. The Court finds that the Applicant has not been able to provide facts before this Court on the connection between non-monetary compensation and a violation of Article 28.2 (Forced labour) of the Constitution. The Court considers that these two issues in relation with the constitutional assessment are fundamentally different issues.

30. In these circumstances, the Applicant has not sufficiently substantiated her allegation, and it cannot be concluded that the Referral is grounded. Therefore, the Court pursuant to Rule 36 paragraph 2 item c ,d, finds that the Referral should be rejected as manifestly ill-founded.
31. Regarding the request of the applicant that applicant`s identity not be disclosed, the Court notes that in the Referral form she emphasized that the reasons are of “completely personal nature” without providing any further explanation .In these circumstances, the Court does not find that her request is grounded and cannot grant the right to non-disclosure of identity without any justifiable reason.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 7 of the Constitution, Article 47 of the Law on Court and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 21 October 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. To REJECT request for not disclosing identity of the applicant
- III. TO NOTIFY the Parties of this Decision;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani