



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

Prishtina, 31 March 2014
Ref. No.:RK 585/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI181/13

Applicant

SC "WITT` PEN", Suhareka

**Constitutional Review of the Judgment of the Supreme Court, Rev. no.
34/2013, of 11 July 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 Applicant is the Health Enterprise – Pharmacy "Witt`pen" (hereinafter: HC "Witt`pen"), in Suhareka, owned by Mr. Gani Guraziu, duly represented by lawyer Mr. Ramiz Suka from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev.no.34/2013, of 11 July 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, which rejected as ungrounded the revision of the Applicant, and by which, judgments of lower instance courts, which had rejected the claim of the Applicant for damage compensation, are valued as lawful and as such remain in force.

Legal basis

4. Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules).

Proceedings before the Court

5. On 23 October 2013, the Applicant submitted the Referral with the Constitutional Court.
6. On 31 October 2013, by Decision no. GJR. KI181/13, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur, and the Review Panel with the following composition: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 11 November 2013, the Constitutional Court notified the Applicant and the Supreme Court on the registration of referral.
8. On 21 January 2014, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 24 September 2004, by Judgment C. No. 228, the Municipal Court in Suhareka, approved the claim of the Applicant for damage compensation, and had accorded to him a certain amount of money for the damage caused due to the seizure of a considerable amount of medicines from his pharmacy in April and May 1999, by the Financial Police of the Republic of Serbia, and transfer of such medicines to the Health Care Centre in Suhareka.
10. According to this judgment, the damage caused should be compensated in a solidary manner by the Main Family Medicine Centre (MFMC) in Suhareka, and the Ministry of Health (MoH).

11. On 23 January 2006, by decision Ac. No. 368/2004, the District Court in Prizren had approved the complaints of the representatives of the respondents MoH and MFMC in Suhareka, thereby quashing the Judgment of the Municipal Court in Prizren, and remanded the case for retrial.
12. On 14 September 2006, the Municipal Court in Suhareka by Judgment C.No.25/06 approved again the claim of the Applicant and rendered the Judgment identical to the first Judgment C. No. 228, of 14 September 2006.
13. On 3 September 2007, by Decision Ac. No. 436/2006, the District Court in Prizren approved the appeals of representatives of the Applicants MH and MFMC- Suhareka, and returned the case for retrial.
14. On 27 January 2010, the Municipal Court in Prizren finally rendered the Judgment C. No. 206/07, thereby rejecting as ungrounded the claim of the Applicant, finding that the responding parties are not liable for the damage caused to the Applicant.
15. On 24 October 2012, the District Court in Prizren rendered the Judgment Ac. No.89/2010, thereby rejecting the complaint of the Applicant as ungrounded. The District Court found that *“Since the first instance Court determined the factual situation correctly and entirely, it didn’t commit any violation of the contested procedures, therefore correctly applied the material right”*.
16. On 1 July 2013, the Supreme Court of Kosovo rendered the Judgment Rev. No. 34/2013, thereby rejecting as ungrounded the revision of the Applicant filed against the Judgment of the District Court in Prizren, Ac. no. 69/2010.
17. In the reasoning of its Judgment, the Supreme Court, inter alia, found that:

“Given this situation on the matter, the Supreme Court of Kosovo found that the lower instance courts, by correctly and fully confirming the factual situation, correctly applied the provisions of the contested procedures and the material right, by finding that the statement of claim of plaintiff is unfounded for the fact that the respondents don’t have the passive legitimacy, considering the fact that the damage to the plaintiff was inflicted by the authorities of the ex-Republic of Serbia during months of April and May, 2000, while the claim was filed on date 23.11.2000”.

Applicant’s allegations

18. The Applicant alleged that the judgment of the Supreme Court violated his right to work, as guaranteed by Article 49 of the Constitution.

Admissibility of the Referral

19. In order to be able to adjudicate the Applicant’s Referral, 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.

20. In this respect, the Court refers to the 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”.

21. In this regard, the Court notes that the Referral KI181/13 was filed with the Court by an individual, it was filed within the four-month time limit as provided by Article 49 of the Law on the Constitutional Court, and after the exhaustion of available legal remedies, and therefore, it meets the formal requirements to be reviewed at the Constitutional Court.
22. In assessment of allegations of the Applicant, the Court notes that the Applicant challenges the Judgment of the Supreme Court, Rev.No.34/2013, which rejected his revision as ungrounded, since according to the reasoning of the court, the responding parties did not have passive legitimacy to be party in this judicial proceeding, and therefore, they cannot be held liable for the damage caused to the Applicant.
23. The Applicant alleges in particular that his rights under Article 49 of the Constitution have been violated. And, in this respect, the Court notes that this constitutional provision expressly provides:

“1. The right to work is guaranteed.

2. Every person is free to choose his/her profession and occupation.”

24. In this regard, the Court finds that despite the allegation of the Applicant that the judgment violated his guaranteed rights to work, as per Article 49 of the Constitution, he has not submitted any evidence to satisfy the Court that the alleged violation has indeed occurred. The applicant has not offered any arguments on the nature of violation. He has not clarified the circumstances in which such violation has occurred, he has not specified the extent of violation or constitutional consequences, and indeed, he has only filed in his referral the court decisions related to the case, and has stated that by the seizure of medicines from his pharmacy, and the failure to compensate the damage caused due to such seizure, he was prevented from further work.
25. The Court has further found that the Applicant was not prevented from work by any decision of any public authority, and no prevention measure was imposed to deny his right to work and exercise profession (Article 49 of the Constitution), but he had a civil case in regular courts, related to compensation of damage, decided by regular courts in a judicial proceeding, and therefore, in such circumstances, the Court did not find that the judgment of the Supreme Court caused any violation of the Article 49 of the Constitution, as claimed by the Applicant.
26. In relation with the above, the Court finds that in fact, the Applicant is not satisfied with the final outcome of a judicial proceeding, given that he has not proved by any evidence the arbitrariness of the revision judgment of the Supreme Court, and has not provided any arguments on violation of human

rights, but the matter raised by him is related to the ascertainment of the factual situation, and application of law, which are clearly legality matters and not constitutional matters.

27. The Constitutional Court is not a fact-finding court, and in this case, it reiterates that the determination of the correct and complete factual situation it is under the complete jurisdiction of the regular courts, and that its role is only to ensure compliance with the rights guaranteed by the Constitution, and therefore, it may not act as a “fourth-instance court (See, *mutatis mutandis*, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).
28. From the above-mentioned reasons, the Court considers that the facts presented by the Applicant do not in any way justify the claim of violation of constitutional rights and that the Applicant has not sufficiently substantiated his claim. And that the mere statement that the Constitution was violated cannot be considered as a constitutional complaint.
29. Under similar circumstances, the Court declared as inadmissible the Referral of the Applicant in the case KI21/13 (see, Resolution on Inadmissibility KI21/13, of 13 December 2013).
30. In such circumstances, the Applicant had not “sufficiently supported the claim of violation of the Constitution by the act a public authority”. Therefore, the Court, in accordance with Rule 36, paragraph 2, item d, found that the Referral is manifestly ill-founded and must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, on 21 January 2014, unanimously

DECIDES

- I. TO DECLARE the Referral 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; and
- III. This Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu

President of the Constitutional Court


Prof. Dr. Enver Hasani

