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

Prishtina, on 30 June 2014
Ref. no.: RK656/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI216/13

Applicant

Agron Vula

Request for Constitutional review of the Judgment of the Supreme Court, Rev. no. 22/2011, of 3 June 2013, with a request for Interim measures

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 Mr. Agron Vula, from Gjakova, represented by lawyer Mr. Teki Bokshi, from Gjakova.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 22/2011, of 3 June 2013, which was served on the Applicant on 27 August 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, by which the Applicant's revision was rejected as ungrounded and the judgments of the lower instance courts, by which the Applicant's claim for damage compensation was rejected, are considered legally grounded and as such remain effective.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. In October 2009, the Applicant submitted first Referral to the Court, with the same arguments and facts, and the Court by Resolution KI57/09 of 17 August 2011, declared the Referral inadmissible due to the fact that it was premature, and held that the matter of the Referral was still pending before the regular courts.

6. On 22 November 2013, the Applicant filed the Referral with the Court.

7. On 3 December 2013, by Decision GJR. KI216/13, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

8. On 11 December 2013, the Constitutional Court informed the Applicant, the Supreme Court and the Municipality of Gjakova of the registration of the Referral.

9. On 26 December 2013, the Court has received a written response from the Municipality of Gjakova to which were attached the Judgment of the District Court in Peja Ac. No. 151/10 and the Judgment of the Supreme Court on Revision Rev. 22/2011.

10. On 8 January 2014, the Court received from the Applicant, "written explanation" regarding his referral where the Applicant reiterated the arguments already stated in the Referral, by adding copies of some Articles published in the newspaper "Koha ditore" in respect to the Constitutional Court decisions regarding the implementation of the IOBK decisions.

11. On 23 January 2014, the Review Panel considered the report of the Judge Rapporteur and presented to the Court the recommendation on inadmissibility of the Referral.

Summary of facts

With regard to the contested procedure

12. The Applicant, Agron Vula, had a status of a civil servant in the Municipality of Gjakova at the position of the Head of Fire Prevention and Investigation of the Professional Firefighters Unit, which was a part of the Municipality.

13. On 19 August 2003, by Decision 12. No. 01-139, rendered by the Chief Executive of the Municipality, he was suspended with payment until the conclusion of the procedure for determining the responsibility, or disciplinary irresponsibility that was to be initiated against him.

14. Based on the case file, this disciplinary procedure was never conducted, thus the Applicant dissatisfied with this decision, initiated the contested procedure in regular courts, which went through two main phases.

15. The first phase of the contested procedure had commenced at the Municipal Court in Gjakova and was concluded by Judgment Rev. No. 10/2006, of 25 October 2006, and the Applicant never attached those court decisions to the Referral.

16. On 7 April 2009, the District Court in Peja rendered the Judgment C. No. 121/09, allowing the repetition of the proceedings effectively concluded on the basis of the Judgment of the District Court in Peja, Ac. No. 113/05, of 29 September 2005.

17. According to the reasoning of this decision, the key element in allowing the repetition of the procedure is the Decision of the Independent Oversight Board of Kosovo, which decided over the same legal matter and this new fact must be taken into consideration.

18. On 23 September 2009, the Municipal Court in Gjakova rendered the Judgment C. No. 555/07, by which it obliged the Municipality of Gjakova to pay to the Applicant ½ of personal income at the amount he used to receive while he was employed full time by the employing authority, for the period from 1 September 2003 to 30 October 2004, while the full amount of personal income of 242.66 €, as long as the legal conditions exist.

19. On 22 October 2010, the District Court in Peja rendered the Judgment Ac. No. 151/10, by which it modified the Judgment of the Municipal Court in Gjakova, C. No. 555/07, and decided on this legal matter by rejecting the Applicant's claim as ungrounded.

20. On 3 June 2013, the Supreme Court of Kosovo rendered the Judgment Rev. No. 22/2011, by which it rejected the Applicant's request for revision of the Judgment of the District Court, Ac. No. 151/2010, as ungrounded.

21. The Supreme Court of Kosovo, in its reasoning of the Judgment on the revision emphasized, among others, that "*the second instance court's Judgment was rendered by correct application of the material law, when it concluded that the claimant's statement of claim is not grounded, because pursuant to the Decision of the Independent Oversight Board of Kosovo A.02.158/2005 of 25.02.2008 there was no decision on merits in relation to the claimant's employment relationship, because the matter was remanded to the respondent for deciding in administrative procedure*".

With regard to the administrative and executive procedure

22. Concurrently with the procedure in the court, the Applicant initiated the administrative procedure by filing a complaint to the Independent Oversight Board of Kosovo (IOBK), as the body competent for reviewing complaints of civil servants.

23. On 25 February 2008, IOBK, in deciding on the Applicant's complaint, rendered Decision A02. 158/2005, partially approving the Applicant's complaint by holding that there had been violations of procedures, provided by legal acts governing the civil service and particularly of procedures of determining the responsibilities of the civil servant, and by this decision obliged the employing authority, namely the Municipality of Gjakova to conduct within 15 days the disciplinary procedure against the Applicant pursuant to the rules in force. (Clarification: the Decision of the IOBK in its introduction contains the suffix of the year 2005, while at the end of 2007, and is thus referred to in court decisions once with the year 2005, the other time with the year 2007, however, it is essentially the same decision).

24. On 30 July 2013, the Municipal Court in Gjakova allowed the execution of the Decision of the IOBK by the Clause of the Judgment E. No. 1268/09.

25. On 30 December 2009, the Municipal Court in Gjakova rendered the Judgment E. No. 1268/09, approving the objection requested by the Municipality of Gjakova against the Judgment E/No. 1268/09, of 30 July 2009, and annulled all the performed actions of the appealed decision.

26. In the reasoning of this Decision, the Municipal Court had emphasized that the Decision rendered by the IOBK had to do with a procedural obligation of the employing authority, namely the conduct of the disciplinary procedure and had nothing to do with any monetary obligation, thus pursuant to the Law on the Executive Procedure, it did not represent an executive title.

27. On 22 October 2010, the District Court in Peja rendered Resolution 139/10, by which it rejected as ungrounded the Applicant's appeal and upheld the Decision of the Municipal Court in Gjakova, E. No. 1268/09, of 30 December 2009.

28. In the reasoning of this Resolution, the District Court, among others, emphasized that "*The legal assessment of first instance court as fair and lawful is approved in entirety also by second instance court, since the appealed ruling does not constitute substantial violations of contested*

procedure provisions pursuant to Article 182 paragraph 2 item (b), (g), (j) and (m) of LCP".

Applicant's allegation for constitutional violations

29. The Applicant alleged that his human rights have been violated by Judgment of the Supreme Court, but also by the court decisions of the courts of lower instances: Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution, Article 6 [The right to a fair trial] and Article 13 [The right to an effective remedy] of the ECHR, and [Protection of property] of Protocol 1 of the ECHR.

30. The Applicant further alleged that the Constitutional Court, in similar cases, had decided to declare Referrals admissible, emphasizing in particular the Judgment of this Court, KI55/11, the Applicant F.P., and cases of Applicants E.K. (KI04/12) and V.M. (KI129/11) when it obliged the competent public authorities to execute the decisions of the IOBK.

31. The Applicant alleged that the Court should apply the Interim Measures of the Prohibition of Execution of the Judgment of the Supreme Court, Rev. 22/2013, because it is discriminatory and unconstitutional.

Admissibility of the Referral

32. In order to be able to adjudicate the Applicant's Referral, the Court has to first examine whether the Applicant has met the admissibility requirements provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.

33. Regarding this, it refers to Article 113.7 of the Constitution:

    "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".

34. In this respect, the Court concludes that the Referral KI216/13 has been filed with the Court by an individual, it was filed within the 4 month deadline foreseen by Article 49 of the Law on the Constitutional Court, and also after the exhaustion of available legal remedies, thus it meets the formal requirements for review by the Constitutional Court.

35. In assessing the Applicant's allegations, the Court notes that the Applicant is challenging the Judgment of the Supreme Court, Rev. no. 22/2011, by which his request for revision was rejected as unfounded for the reasons described in the reasoning of the Judgment on the request for revision.

36. In this respect, the Court concludes that in spite of Applicant's allegation that his rights guaranteed by the Constitution were violated by this Judgment, pursuant to Articles 21, 31, 32, 49 and 54, including human rights foreseen by the ECHR, pursuant to Article 6.13 and Protocol One, he has not presented facts

that would lead the Court to a conclusion that the alleged violations have in fact occurred. The Applicant has not provided arguments on the nature of the violation, has not clarified the circumstances in which it has potentially occurred, has not specified the scope of the violation or the constitutional consequences, and in fact, he has only attached to Referral the court decisions related to the case and has emphasized that the Decision of the IOBK, as it is, should have been implemented, even though he has also initiated a court dispute which was concluded as unfavorable for the Applicant.

37. The Court further concludes that regarding the contested procedure, the Applicant is in fact dissatisfied with the final outcome of his case at the courts and he has neither presented facts that would prove the irregularity of the court proceedings in the aspect of the human rights, nor he has presented facts that would prove the extremely arbitrary procedural irregularities that would have resulted in the violation of the rights, guaranteed by the Constitution. The Constitutional Court is not a fact finding court and hereby reiterates that the determination of the correct and complete factual situation is a full jurisdiction of regular courts and that its sole role is to ensure compliance with the rights guaranteed by the Constitution, therefore it cannot act as a "court of fourth instance" (see, *mutatis mutandis,* i.a., Akdivar vs. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

38. With regard to the Applicant's Referral, which refers to the earlier case law of the Constitutional Court and his allegations on the similarity of his case with cases KI55/11, KI04/12 and KI129/11, the Court emphasizes that these cases differ in some respects from each other.

39. While by the Judgment on case KI55/11, in paragraph 17, the Court had concluded that "on *25 June 2008, IOB approved the claim and ordered the employer to reinstate the employment of the Applicant"* (Decision No. 49/08) and thereby it had finally rendered the decision on the legal status of the civil servant at the employment authority (the court ascertained the same facts in case KI04/12, paragraph 10 of the Judgment, and case KI129/11 paragraph 18 of the Judgment), while in case KI216/13, the Board did not decide on the final status of the civil servant, but approved a part of his request and ordered a procedural action of the disciplinary procedure, which in conditions of its application would result with a final decision of the employing authority, a fact which was also determined by the regular courts in the contested procedure.

40. If the Board had approved the Applicant's claim in its entirety and it had obliged the employing authority to reinstate the Applicant to his job, then the Constitutional Court would have acted upon its earlier case law, however in an uncompleted administrative procedure, with a final merit based decision, the Court cannot hold violation of Article 31 of the Constitution, or of Article 6 of the ECHR. The ECHR, in the case of Barbera, Meseque and Jibardo vs. Spain (Judgment A No. 146, dated 6 December 1988), held the same stance by concluding that "*potential procedural omissions and shortcomings that occur in one phase of the process may be corrected in later phases of the process, thus it is in principle impossible to ascertain whether the process is regular until it has been concluded*".

41. Furthermore, the issue of IOBK decision in the case of the Applicant was the subject for review in regular courts in the contested procedure while in the cases mentioned by the Applicant, the IOBK decision was only subject of execution in the executive procedure without going for review to regular courts.

42. In such circumstances, the Applicant has "failed to sufficiently substantiate his allegations for violation of the Constitution by an act of a public authority", therefore the Court, in accordance with Rule 36, paragraph 2, item d, finds that the Referral should be declared as manifestly ill-founded.

43. Since the Referral is inadmissible in entirety, the Court finds no reason to apply the interim measure, and as such it is rejected.

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 23 January 2014, 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;

III. This Decision is effective immediately.

Judge Rapporteur

Kadri Kryeziu

President of the Constitutional Court

Prof. Dr. Enver Hasani