



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

Prishtina, 14 April 2014
Ref.no.: RK599/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI37/14

Applicant

Privatization Agency of Kosovo

Request for constitutional review of the Judgment of the Special Chamber of the Supreme Court of Kosovo, AC-II-12-0078, of 23 January 2014 and the request for granting interim measure

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 the Privatization Agency of Kosovo, the Regional Office in Peja, which is represented by Mr. Gëzim Gjoshi, the Legal Officer in the Privatization Agency of Kosovo (hereinafter: the PAK).

Challenged decision

2. The challenged decision is the Judgment of the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber), AC-II-12-0078, of 23 January 2014, which was served on the Applicant on 30 January 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Special Chamber, AC-II-12-0078, by which the Applicant's appeal was rejected and the Judgment of the Municipal Court in Klina, C. no. 185/2009 was upheld as well as the assessment of the request for interim measure, presented in the Referral.

Legal basis

4. Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Court), Article 22 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 (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 3 March 2014, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).
6. On 10 March 2014, the President of the Court by Decision, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Ivan Čukalović, Enver Hasani and Robert Carolan.
7. On 11 March 2014, the Constitutional Court notified the Applicant and the Supreme Court of the registration of Referral.
8. On 25 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

9. On 2 October 2008, the claimants: F. M., N. B., D. M., GJ. R., C. T., all from the Municipality of Klina, filed a claim with the Special Chamber against the respondents: 1. Agricultural Combine "Ujmiri", with the work office in the village Ujmir, Municipality of Klina (hereinafter: AC "Ujmiri") and 2. PAK, by requesting compensation of unpaid personal income for the work in AC "Ujmiri".
10. On 27 August 2009, the Special Chamber rendered the Decision SCC-008-0264. It referred the matter, regarding this claim, to the Municipal Court in Klina for deciding.

11. On 15 June 2011, the Municipal Court in Klina, deciding upon the claim of claimants, according to the competence delegated by the Special Chamber, rendered the Judgment C. no. 185/2009, thereby partly approving as grounded the claim of the claimants: F. M., N. B., D. M., GJ. R., C. T., and obliged the respondents AC and PAK in Peja to pay material compensation of personal income in the monetary amount as per the enacting clause of the Judgment.
12. In its reasoning, the Municipal Court in Klina, assessed as evidence the employment contracts of the claimants and heard the authorized representative of PAK and regarding this, it stated: *“From such determination of factual situation, the Court concludes that the claim of claimant should be approved partly as grounded and fair and based on law, whereby the court based on evidence and reading of employment contracts and representative of the second respondent KB “Ujmiri” from Ujmiri, Fadil Kryeziu came into conclusion that the claim and statement of claim is grounded and approved the same in entirety as it is stated in the initial claim.”*
13. Against this Judgment, the PAK, in capacity of the respondent, filed an appeal with the Special Chamber of the Supreme Court.
14. On 23 January 2014, deciding upon the PAK’s appeal, the Special Chamber rendered the Judgment AC-II-12-0078, by which rejected the PAK’s appeal as ungrounded and upheld the Judgment C. no. 185/2009, of the Municipal Court in Klina, of 1 June 2011.
15. In the reasoning of the Judgment, the Appellate Panel of the Special Chamber responded to each allegation, filed in the appeal and stated among the other *“So, the contracts were concluded between the Employer the SOE “Ujmiri”, on one side, and the claimants on the other, regardless of who the director was. Even the director was the employee in this SOE, and he is entitled to personal income for the work he has done or he is doing. PAK even failed to challenge by any evidence that the claimants were not employed in this SOE, for the period stated by the claimants themselves, while the claimants presented the employment contracts, concluded at the beginning of each year”.*
16. The Appellate Panel of the Special Chamber further reasoned in the Judgment *“Regarding PAK allegation for the statute of limitation of the claimants’ claim (3 years), for the first time this matter became time-barred in the appeal proceedings, although it was not specified which claims became statute-barred, since many of them became one or two years after the termination of the employment relationship. Therefore, PAK is obliged to recognize them the right to payment of income to these workers, in accordance with this judgment”.*
17. Finally, unsatisfied with the Judgment of the Special Chamber, PAK submitted the Referral to the Constitutional Court.

Applicant’s allegations

18. The Applicant alleges that by the Judgment of the Special Chamber, was committed:

- “i) Violation of constitutionality and legality determined by Chapter VII, 102, paragraph 3 of the Constitution of the Republic of Kosovo, by which is provided that the courts adjudicate based on Constitution and law;*
- ii) Violation of Article 31 of the Constitution of the Republic of Kosovo, by which was provided the right to fair and impartial trial;*
- iii) Violation of European Convention of Human Rights, (ECHR), Article 6, by which is provided fair and impartial trial; and*
- iv) Violation of general legal principles”.*

19. The Applicant also alleges that when rendering the challenged Judgment the material law was erroneously applied and that the Judgment contains substantial violations of the contested procedure provisions.
20. The Applicant further stated that the regular courts did not apply the appropriate law when rendering decisions regarding the dispute.

Admissibility of the Referral

21. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary first to examine whether it has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
22. In this respect, the Court refers to the Constitution, where is provided:

Article 113.7

“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”.

And Article 21.4

“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”

The Court also takes into account Rule 36 of the Rules of Procedure, which provides:

- (1) “The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded.”*

23. In this respect, the Court concludes that the Applicant’s Referral was submitted to the Court by a legal entity, within deadline of 4-months provided by the Law and after the exhaustion of legal remedies, therefore, it is suitable to be considered in the Court.

Assessment of substantial aspects of the Referral

24. The Court notes that the Applicant challenges the Judgment of the Special Chamber of the Supreme Court, AC-II-12-0078, of 23 January 2014, with allegation that this Judgment violated its rights guaranteed by the Constitution.
25. Responding to the allegations, referred by the Applicant for the constitutional violation, the Court concludes that:

As to Article 102.3 of the Constitution

26. Article 102, paragraph 3, of the Constitution, provides:

“Courts shall adjudicate based on the Constitution and the law.”

27. The Applicant alleged that the violation of this constitutional provision was committed, because the regular courts did not apply the appropriate legal provision, when rendered the decision and that, according to the Applicant, *“did not adjudicate based on the law”*.
28. From the facts presented in the Referral, the Court did not find violation of this constitutional provision, because in fact, both, the Municipal Court in Klina and the Special Chamber, have adjudicated the case based on the law. The fact whether the material law was correctly or erroneously applied is the legal matter, and does not present ground for constitutional violation in itself.

As to Article 31 of the Constitution and Article 6 of ECHR

29. The Applicant did not clearly specify in the Referral that Article 31 of the Constitution and Article 6 of ECHR, were violated, but that in the part of the Referral, under the title -B. Substantial violation of the contested procedure provisions, in item 12 had stated: *“The Judgment in question does not contain violation of legal and constitutional provisions nor it has violated international standards for fair, impartial and independent trial, it is in full contradiction with provisions of Article 31.2 of the Constitution of the Republic of Kosovo and Article 6 of European Convention for Human Rights (hereinafter “ECHR)”*.
30. On this occasion, the Court recalls that the Constitution of Kosovo and ECHR in the provisions challenged by the Applicant provide:

Article 31 of the Constitution [Right to Fair and Impartial Trial]

“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law”.

[...]

Article 6.1 of ECHR provides

Right to a fair trial

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.

[...]

31. In respect to the above, the Court notes that the simple description of the provisions of the Constitution and the ECHR and the conclusion that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying actions of the public authority that are contrary to fair and impartial trial, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the ECHR regarding a fair and impartial trial.
32. In this respect, the Court recalls that the ECtHR, through its developed case law, in conjunction with Article 6 of the ECHR, has established some of the basic elements contained in Article 6 of the Convention related to fair trial, and among others they are:
 - Right to access to the Court;
 - Right to equality in process (*equality of arms*);
 - Right to public hearing;
 - Right to public announcement of the decision;
 - Right to the court established by law;
 - Right to independence and impartiality during the trial;
 - Right to trial at reasonable time;
 - Right to effective execution of the decision;
33. Having considered the Applicant’s Referral and the facts presented in it, the Court did not find that any of the guarantees stated above have been violated; moreover, from the decisions of the regular courts it is clearly seen that each of them separately and all of them together have been fulfilled in entirety.
34. The Court further holds that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely a higher instance court. The Court, in principle does not consider the fact whether the regular courts have correctly and completely determined factual situation, or, whether as in the case at issue, the employment contracts were valid or not, because this is a jurisdiction of the regular courts. It is essential for the Court the issues on

which existence depends the assessment of possible violations of the constitutional rights and not clearly legal issues, which were mainly the facts presented by the Applicant (See, *mutatis mutandis*, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).

35. From the above, it must be recalled that one of the fundamental principles of the constitutional adjudication, is that of subsidiarity. In the particular context of the Court, this means that the duty to ensure respect for the rights provided by the Constitution, is primarily attributed to national judicial authorities, not directly and immediately to the Constitutional Court (see Scordino v. Italy, no. 1, [GC], § 140), therefore, in this respect, the Court notes that the issue addressed by the Applicant, was given effective response by the Supreme Court, by justifying with arguments the rendered decision.
36. The Court recalls that the mere fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see *mutatis mutandis*, Judgment ECtHR Appl. No. 5503/02, Mezotur Tizsazugi Tarsulat v. Hungary, or the Resolution of the Constitutional Court, Case KI128/12 of 12 July 2013, the Applicant Shaban Hoxha in the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).
37. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of a constitutional right, and it cannot be concluded that the Referral is grounded and, therefore, in accordance with Rule 36, paragraph 2, item b, it found that the Referral should be rejected as manifestly ill-founded.

Request for interim measure

38. Given the fact that the Referral is declared inadmissible as manifestly ill-founded in entirety the Court does not find any ground to grant the interim measure and as such it is rejected.

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 of the Rules of Procedure, the Constitutional Court, in its session held on 25 March 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measure;
- III. 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Altay Suroy

Prof. Dr. Enver Hasani

