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

Prishtina, 18 November 2013
No. ref: RK491/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI67/13

Applicant

Mr. Shaqir Prevetica

Constitutional Review of the Decision Rev.no.228/2012 of the Supreme Court of the Republic of Kosovo, of 12 March 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 Mr. Shaqir Prevetica, with residence in Prishtina.

Challenged decision

2. The Applicant challenges Decision Rev.no.228/2012 of the Supreme Court, of 12 March 2013 (hereinafter, the challenged Decision), which was served on Applicant on 25 April 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly violated the right to work of the Applicant as guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered in to force on 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 8 May 2013, the Applicant submitted Referral to the Court.

6. On 27 May 2013, the President 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 19 June 2013, the Court notified the Applicant and the Supreme Court on the registration of the Referral.

8. On 12 September 2013, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. The Applicant used to work in the Touristy and Catering Company "Kosova" (hereinafter: TCC "Kosova") until he was sent to the social assistance.

10. On 12 December 2001, the Board of Directors of TCC "Kosova" (decision no. 117) decided to send the Applicant to paid social assistance as of 1 January 2002, by enabling him to receive personal income of 70% (seventy percent) of the average salary of employees of this catering company. In that decision it is stated: *"this Status will be provided by the Company from its own funds until the respective state institution for regulating his final legal retirement becomes functional"*.

11. On 10 September 2002, the Municipal Court in Prishtina (Ruling C. no. 46/02) rejected the claim of the Applicant as out of time.

12. On 1 February 2005, the District Court in Prishtina (Decision Ac.no.592/2002) quashed the Ruling of the Municipal Court and returned the matter to the same court for retrial.

13. On 6 June 2005, the Municipal Court (Ruling C. no. 130/05) rejected the Applicant's claim as out of time.

14. On 21 November 2007, the District Court (Ruling, Ac.no.56/2006), quashed again the Ruling of the Municipal Court in Prishtina and returned the matter to the first instance court for retrial.

15. On 1 April 2009, the Municipal Court (Ruling Cl.no.05/2008) terminated the procedure of the further adjudication of the contested matter, "because TCC "Kosova" former "Sloga" in Prishtina was privatized and that the liquidation of the abovementioned company entered into force on 11 April 2007".

16. On 20 July 2009, the District Court (Ruling Ac.no. 1178/2009) rejected as ungrounded the Applicant's appeal and upheld the Ruling of the Municipal Court rejecting the claim as out of time.

17. On 12 March 2013, the Supreme Court (Ruling, Rev. no. 228/2012) rejected as ungrounded the Applicant's revision, filed against the Ruling of the District Court. The Supreme Court reasoned its decision as following:

> *"Setting from the situation of this matter, the Supreme Court of Kosovo found that the first instance court has correctly applied the provisions of the contested procedure when it found that the appeal was out of time. By provision of Article 208 in conjunction with Article 176, paragraph 1 of the LCP, it was provided that the Ruling rendered by the first instance court can be appealed within a 15 day time limit from the day a copy of the Ruling is served, whereas Article 186, paragraph 2 of the abovementioned law, provides that the appeal is out of time if it is filed after the statutory deadline. The claimant's authorized representative Ali Qosja was served the copy of the first instance court's Ruling CI.no.5/2008 of 1.4.2009 on 2.4.2009, whereas the claimant submitted the appeal on 30.6.2009, thus the appeal has been filed after the statutory deadline envisaged by the provision of Article 176, paragraph 1 in conjunction with Article 208 of the LCP, as it was correctly found by the lower instance courts, which provided sufficient reasons in their Rulings, which this revision Court supports as correct and grounded on law."*

Applicant's allegations

18. The Applicant claims that the regular courts decisions have violated his right to work as guaranteed by Article 49 of the Constitution.

19. The Applicant requests from the Court compensation for the lost time, including the period of time from 1 January 2002 until today, due to termination of the employment relationship by the employer.

20. Furthermore, the Applicant complaints on the decisions of the regular courts regarding: a) *the rejection of his claim as out of time; and b) the conclusions of the courts regarding the claims of former Kosovo Trust Agency, "that* TCC *"Kosova" former "Sloga" in Prishtina was privatized and that the liquidation of the abovementioned enterprise, entered into force on 11 April 2007", by stating that until 25 April 2013, the liquidation of the enterprise above has not started, because twenty percent (20%) proceeds from the sale of this enterprise has not been paid yet to its employees.*

Admissibility of Referral

21. The Court assesses beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

22. In that respect, the Court refers to Article 113.7, which establishes:

> *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.*

23. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

> *The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*

24. The Court notes that the Applicant is a natural person, followed proceedings trough the instances available and filed the Referral within the foreseen four months limit.

25. Therefore, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies provided by law and filed his referral in time.

26. However, the Court must also refer to Article 48 of the Law, which provides:

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

27. In addition, the Court refers to Rule 36 (1) c) and Rule 36 (2) a) and b) of the Rules of Procedure foresee:

> *36 (1) The Court may only deal with Referrals if:*
>
> *[...]*
>
> *c) the Referral is not manifestly ill-founded.*
>
> *36 (2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

a) the Referral is not prima facie justified;

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

28. The Court notes that the Applicant alleges a violation of his right to work as guaranteed by Article 49 of the Constitution.

29. The Court also notes that, answering to the allegations made by the Applicant, the Supreme Court *"found that the first instance court has correctly applied the provisions of the contested procedure when it found that the appeal was out of time"*.

30. The Court considers that the decision of the Supreme Court is well reasoned and justified and the Applicant has not accurately clarified how and why the decision of the Supreme Court violated his right to work.

31. In fact, the Applicant has not explained and proved namely that his appeal was filed in a due time and consequently there was a violation of his right to work.

32. The Court notes that the Applicant only complains about the decisions of regular courts, regarding the conclusion that the appeal was not filed within the legal time limit, as it was required by the provisions of the applicable law.

33. The Court recalls that it is not its task to assess the legality of decisions issued by regular courts, unless such decisions have been rendered in an arbitrary and unreasoned manner.

34. It is the task of the Court to assess if the proceedings, in their entirety, have been in compliance with the Constitution. So, the Constitutional Court is not a fourth instance in respect to the decisions taken by 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 v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

35. In the present case, the Applicant has not provided any prima facie evidence which would show that the alleged violation mentioned in the Referral constitute a violation of his constitutional right (see Vanek vs. Slovak Republic, ECtHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).

36. Therefore, the Court cannot consider that the pertinent proceedings conducted in the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis,* Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

37. Finally, the Court concludes that the Applicant's Referral does not meet all the admissibility requirements and thus, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (2) a) and b) of the Rules of Procedure, the Referral is manifestly ill-founded and inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) c) and 36 (2) a) and b) and rule 56 (2) of the Rules of the Procedure, on 12 September 2013, unanimously

DECIDES

I. TO REJECT the Referral as Inadmissible;

II. TO NOTIFY this Decision to the Parties; and

III. TO PUBLISH this Decision in accordance with Article 20(4) of the Law.

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Snezhana Botusharova Prof. Dr. Enver Hasani