



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 28 October 2013
Ref. No.:RK487/13

RESOLUTION ON INADMISSIBILITY

in

Case No.KI74/13

Applicant

Shefqet Hasimi

**Constitutional review of the Supreme Court Judgment Mlc.no.6/2012
dated 16 April 2013**

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. Shefqet Hasimi, a legal officer in the Ministry of Justice with residency in Prishtina. The Applicant has filed the Referral on his own behalf.

Challenged decisions

2. The Applicant challenges Judgment Mlc.no.6/2012 of the Supreme Court of Kosovo dated 16 April 2013 in conjunction with Judgment C.no.682/09 of the Municipal Court in Prishtina, dated 21 December 2011; decision Ac.no.1276/2008 of the District Court in Prishtina, dated 26 March 2009; and judgment Cl.no.238/07 of the Municipal Court in Prishtina, dated 19 December 2007.

Legal basis

3. Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Subject matter

4. The subject matter of this Referral entails the obligation of the Central Inter-ministerial Committee of the Government of Kosovo (represented by the Applicant) as a respondent party to compensate per diems to a third party namely the plaintiff N.H based on his labor contract and work performance.
5. The plaintiff N.H in capacity of the employee, and the Central Inter-ministerial Committee represented by the Applicant, as the respondent party in the capacity of the employer, had differing views regarding per diem compensation of the plaintiff which culminated in legal litigation whereby the regular courts decided in favor of the plaintiff. Subsequently, the Applicant (Mr.Shefqet Hasimi) submitted a referral with the Court in order to challenge the said decisions of the regular courts.
6. The Referral indicates that the Applicant was authorized to represent the Central Inter-ministerial Committee of the Government of Kosovo in proceedings before the regular courts. However, the Applicant has expressly stated that he has filed an individual referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on his own behalf.

Procedure before the Court

7. On 17 May 2013, the Applicant submitted the Referral with the Court.
8. On 27 May 2013, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
9. On 11 June 2013, the Court notified the Applicant about the registration of the Referral. On the same date the Court communicated the Referral to the Supreme Court of Kosovo.

10. On 20 June 2013, the Court asked the Applicant to clarify whether the Referral is submitted as an individual Referral on his own behalf.
11. On 27 June 2013, the Applicant replied.
12. On 13 September 2013, the Review panel considered the report of the Judge Rapporteur and recommended to the full Court the inadmissibility of the Referral.

Summary of facts as evidenced by the documents furnished by the Applicant

13. On 19 December 2007, the Municipal Court in Prishtina by Judgment Cl.no.238/07 approved the lawsuit of the plaintiff N.H and obliged the Government of Kosovo as the respondent party to compensate the plaintiff, for the work done, with the amount of 2,440 € for the period from 1 May 2005 until 15 November 2005, based on a labor contract agreed to by the parties on 8 September 2004.
14. On 26 March 2009, the District Court in Prishtina by Decision Ac.no.1276/2008 overruled Judgment Cl.no.238/07 of the Municipal Court in Prishtina and remanded the case for retrial.
15. On 21 December 2011, the Municipal Court in Prishtina, by Judgment C.no.682/09 approved the lawsuit of the plaintiff N.H. and obliged the Government of Kosovo – Central Inter-ministerial Commission to compensate the plaintiff, for the work done, during 122 working days with the overall sum of 2,440 €.
16. On 16 April 2013, the Supreme Court of Kosovo, by Judgment Mlc.no.6/2012, rejected as unfounded the request for protection of legality filed by the Kosovo State Prosecutor against Judgment C.no.682/2009 of the Municipal Court in Prishtina dated 21 December 2011.

Applicant's allegations

17. The Applicant claims that the plaintiff N.H has not worked extra hours in accordance with the law on civil servants which can be evidenced in the work registry.
18. The Applicant further claims that all the decisions set forth by the plaintiff N.H are not approved and signed by the responsible and authorized authorities and that the plaintiff N.H has only done fictional work and as such it was approved by the regular courts.
19. The Applicant, therefore, considers that in the concrete case the applicable law and the Constitution of the Republic of Kosovo were violated and proposes to the Court to reassess the legality and the constitutionality of the relevant court decisions. The Applicant does not specify the alleged violation of any constitutional provision in particular.

Assessment of admissibility

20. 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, the Law and the Rules of Procedure.
21. In this respect, the Court refers to Article 113.1 of the Constitution providing:
"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".
22. The Court also refers to Rule 36 (3) c) of the Rules of Procedure reading:
*"A Referral may also be deemed inadmissible in any of the following cases:
[...]
c) the Referral was lodged by an unauthorized person;"*
23. Therefore, the Court considers that it should be first established whether the Applicant is an authorized party in the sense of the above legal provisions.
24. In the instant case, the Applicant in relation to the Referral has inter alia stated:
*"Seeing that this referral is registered in the Constitutional Court of the Republic of Kosovo under number KI74/13, the Ministry of Justice pertinent to the submission of the Referral has not given an authorization to Shefqet Hasimi (the Applicant)...
The referral submitted with the Constitutional Court of Kosovo on 17.05.2013 under number KI74/13 should consider as an INDIVIDUAL referral by Shefqet Hasimi (the Applicant)..."*
25. The Court notes that from the submitted documents it is clear that in the proceedings before the regular courts, the Applicant represented the Central Inter-ministerial Committee of the Government of Kosovo in its capacity as a responding party. Thus he himself was not a party to these proceedings.
26. The Court, therefore, considers that the Referral was not filed in a legal manner by an authorized person as required by Article 113.1 of the Constitution.
27. It follows, that the Referral must be rejected as inadmissible pursuant to Article 113.1 of the Constitution and Rule 36 (3) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.1 of the Constitution, Article 47 of the Law, and in compliance with the Rule 36 (3) c) of the Rules of Procedure, on 13 September 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani