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

Prishtina, 14 December 2010
Ref. No.: RK36/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 26/09

Mr. Ekrem Gashi

Vs.

Central Bank of the Republic of Kosovo[1]

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Ekrem Gashi, residing in Pristina.

[1] At the time of the events,: its predecessor, the Banking and Payment of Authority of Kosovo (BPAK).

Opposing Party

2. The Responding Party is the Central Bank of the Republic of Kosovo as the legal successor of the Banking and Payment Authority of Kosovo (hereinafter: the "BPAK"), which was the Applicant's employer at the time of the events.

Subject Matter

3. The Applicant complains that he was dismissed by BPAK in violation of the applicable law in Kosovo and did not comply with the decisions of the Courts to reinstate him in his previous employment. He invokes a violation of Articles 49 and 54 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal Basis

4. Article 113 (7) of the Constitution, Articles 20 and 22 (7) and (8) of the Law on the Constitutional Court of the Republic of Kosovo of 16 December 2009, (No. 03/L-121), (hereinafter: "the Law") and Section 54 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. The Referral was registered on 9 July 2009 and communicated to BPAK for comments.

6. On 22 January 2010, BPAK filed a response with this Court.

7. On 15 June 2010, the Review Panel consisting of Kadri Kryeziu (Presiding), Enver Hasani and Iliriana Islami considered the report of the Judge Rapporteur Robert Carolan and made a recommendation to the Court.

Facts

8. The Applicant has worked as a driver for the BPAK, pursuant to an employment contract concluded between the parties on 1 February 2001.

9. On 19 March 2002, the BPAK terminated the Applicant's employment contract, allegedly, for misconduct.

10. On 26 January 2005, the Applicant filed a claim with the Municipal Court in Pristina challenging his dismissal. The Municipal Court found that the termination of the employment contract of the Applicant by the employer had not been conducted in accordance with the applicable law in Kosovo and, therefore, annulled it. Aditionally, the Municipal Court ordered the BPAK to reinstate the Applicant in his job and to compensate the Applicant's litigation expenses in the amount of 639.60 Euro.

11. The Municipal Court found that the employer had violated Article 11 (5) of UNMIK Regulation (2001/27) on Essential Labour Law, (hereinafter "UNMIK

Regulation 2001/27")[2], and concluded that the employer had not reviewed the termination decision as requested by the Applicant, since, pursuant to Article 178 (2) of the Joint Labour Law, the employer should have postponed the termination of the contract of employment, when the Applicant requested the review thereof. In the Municipal Court's view, the Joint Labour Law was the applicable law in Kosovo, in accordance with UNMIK Regulation 1999/24 on the law applicable in Kosovo (hereinafter "UNMIK Regulation 1999/24") as amended by UNMIK Regulation (2000/59).

12. On 10 June 2005, the District Court in Pristina upheld the decision and the legal reasoning of the Municipal Court of Pristina and rejected BPAK's appeal. The District Court found that the Applicant's employment contract had been terminated in contradiction with the Law on Essential Rights of Labor Relation - as the applicable law in Kosovo - since BPAK had held directly a meeting with the Applicant and had communicated to him the grounds for the termination of the employment contract without giving prior notice on the intention and grounds for his dismissal and initiating disciplinary proceedings against the Applicant. BPAK had, therefore, acted in an unlawful manner, in contradiction with the provisions of the above mentioned law.

13. On 6 September 2005, the Municipal Court in Pristina confirmed its decision of 26 January 2005, upheld by the District Court of Pristina on 10 June 2005, and rejected the claim of BPAK that the courts of Kosovo did not have the authority to act upon the Applicant's claim. The Municipal Court of Pristina further concluded that BPAK's appeal to the Supreme Court did not prevent the execution of the decision of 26 January 2005.

14. On 24 January 2006, the Supreme Court of Kosovo allowed the request of BPAK for revision and amended the decisions of the Municipal Court of Pristina and the District Court of Pristina, to the effect that the claim of the Applicant was rejected as unfounded. The legal reasoning of the Supreme Court was based on the fact that a notification stating the reason for termination of the employment contract to the employee was enough and in accordance with UNMIK Regulation (2001/27), which overruled all legislation that was not in accordance with it.

Applicant's allegations

15. The Applicant claims that BPAK has not re-instated him in his previous employment with BPAK and that BPAK has not compensated him for the 639.60 Euros which the Municipal Court had ordered BPAK to pay to him.

---

[2] Article 11 (5) stipulates that "...if a labour contract is terminated by the employer on the grounds of serious misconduct, the employer shall:

- "notify the employee in writing that it intends to terminate the labour contract. Such notice shall include the grounds for termination; and"
- "a meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination, if the employee is a member of a union, the employee shall be entitled to have a union representative present at such meeting."

16. The Applicant alleges that his legal right to be re-instated in his previous employment has effectively been denied, because BPAK has not complied with the decisions of the lower, which constitutes a violation of Articles 49 [Right to Work and exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution.

- Article 49 provides:

  "The right to work is guaranteed."

- Article 54 provides:

  "Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."

Submissions by the Opposing Party

17. In its submissions to the Court, BPAK stated that the Applicant had not been re-instated in his previous position, because his claim was unfounded and legally unsustainable.

18. BPAK maintained that the termination of the Applicant's contract of employment was in compliance with the applicable law of Kosovo. It also alleged that at the time of the termination of the contract of employment, BPAK was exercising a number of responsibilities and functions which were the exclusive powers of the Special Representative of the Secretary General, consistent with UNMIK Regulations. It further argued that, as a result, its actions were outside of the authority of the courts of Kosovo.

Assessment of the admissibility of the Referral

19. In order to be able to adjudicate the Applicants' Referral, the Court need first to examine whether the Applicant has fulfilled the admissibility requirements, laid down in the Constitution, the Law and the Rules of Procedure.

20. In this respect, the Court notes that the decision of the Supreme Court was taken on 24 January 2006 and that the Referral was submitted to the Constitutional Court on 9 July 2009.

21. Article 56 of the Law provides:

  "The deadlines defined in this Law for the initiation of procedures on matters that fall under the jurisdiction of the Constitutional Court and which have arisen before the entry into force of this Law shall begin to be counted on the day upon which this Law enters into force."

22. In these circumstances, the Court concludes that the decision of the Supreme Court was taken more than three years before the entry into force of the Law and is, therefore, out of time.

23. It follows that the Applicants' Referral must be rejected as inadmissible "*ratione temporis*".

FOR THESE REASONS

24. The Constitutional Court, pursuant to Article 20 of the Law, and Section 54 (b) of the Rules of Procedure, 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.

III. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Robert Carolan Prof. Dr. Enver Hasani