



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

Prishtina, 30 January 2012
Ref. No.: TK 194/12

DECISION TO STRIKE OUT THE REFERRAL

in

Case No. KI 14/10 and KI 15/10

Besnik Musa and Hekuran Muhaxhiri

against

Ministry of Internal Affairs,

Kosovo Judicial Council

and

Ministry of Justice

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

Applicants

1. The Applicants' are Mr. Besnik Musa and Mr. Hekuran Muhaxhiri residing in Gjakova. In the proceedings before the Constitutional Court they are represented by Mr Teki Bokshi, a lawyer from Gjakova.

2. The Present cases are similar to KI 06/10 "Valon Bislimi against the Ministry of Internal Affairs, the Judicial Council and the Ministry of Justice. In this case, the Court decided that there has been a violation of the Applicant's right to freedom of movement guaranteed by Article 35 (2) of the Constitution in conjunction with Article 2 of Protocol No.4 to the European Convention on Human Rights.

In addition, the Court has decided that the practice based on Memorandum of Understanding of 21 August 2008, applied by the Ministry of Internal Affairs and Municipal Court prevents the Applicant in enjoying his right to an effective legal remedy in violation of Article 54 of the Constitution in conjunction with Article 13 of the European Convention on Human Rights.

The Constitutional Court found that the Ministry of Internal Affairs should decide on the Applicant's application for passport of 27 April 2009 in accordance with Law on Travel Documents within 30 days after receipt of its Judgment. (*See Judgement KI 06/10 dated 30 October 2010*).

Subject matter

3. The subject matter of these Referrals is the assessment of the constitutionality of the alleged violation of the Applicant's freedom of movement as guaranteed by Article 35 (2) of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution). According to the Applicants their rights to leave their country have been violated by refusing the issuance of their passports which is required to travel abroad. The Applicants further argued that in the Kosovo legal system there is no effective legal remedy to pursue to address his right to leave the country.
4. The Applicants' through their representative have also submitted the requests for interim measures in order to avoid "further discriminations and violations of the right to freedom of movement of citizens with the conditioning of any ongoing criminal procedure."

Legal basis

5. The Referrals are based on Articles 113.7 of the Constitution, Articles 20 and 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law) and Rule 32 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the facts

6. The Applicants supports their Referrals solely by reference to the documents referred to in the Referral made to the Court.

The Applicant's complaints

7. The Applicants complain that their right to freedom of movement as guaranteed by Article 35 (2) of the Constitution has been violated. The Applicants' argue that the Municipal Court in Gjakova unfairly and erroneously interpret the applicable legal provisions failing to provide certificates in which, as alleged is a necessary document for the Ministry of Internal Affairs to issue any passport of the Republic of Kosovo.
8. The Applicants' also complain that there are no legal remedies in Kosovo that can be used to remedy their situation. Therefore according to them there is a need to create mechanisms within the State for the citizens of Kosovo that are in their situation to

prevent further violation of the right to be given a passport.

9. The Applicants' argue that their right to freedom of movement have been violated due to the erroneous application of Article 271(2) of the Kosovo Criminal Procedure Code (CPC) as well as Articles 27.1.item A and Article 28.2 of the Law on Travel Documents. According to the Applicants' both laws provide that the limitation of the right to free of movements caused by the refusal of the issuance of a passport can only be imposed in cases where a prior decision of the competent court has been issued.
10. The Applicants' also argue that the Ministry of Internal Affairs does not have any legal basis to deprive them of their constitutional right based on absence of the certificate issued by the Court that a person is not under investigation. In substance, according to the Applicants, the restriction imposed on their right to freedom of movement is not based on law but it is a matter of erroneousness interpretation of the laws and practice, including the misinterpretation of a Memorandum of Understanding entered into between the Ministry of Internal Affairs, the Kosovo Judicial Council and the Ministry of Justice, dated 21 August 2008.
11. Finally, the Applicants' requested imposition of a interim measures in order "to avoid further discrimination and violations of the right to freedom of movement of citizens with the conditioning of any ongoing criminal procedure".

Summary of the Proceeding before the court

12. The Applicants' submitted their Referrals to the Constitutional Court on 5 February 2010.
13. On 19 February 2010, the President, by Order No.GJR. 06/10, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No.KSH. 06/10, appointed the Review Panel composed of Judge Ivan Ćukalović, Judge Enver Hasani and Judge Iliriana Islami.
14. The Constitutional Court on 25 March 2011, consequent to the Judgment of the Constitutional Court KI 06/10 dated 30 October 2010 has requested from the Applicants' to inform the Constitutional Court whether they have received their passports.
15. On 6 April 2011 the Applicants' legal representative informed the Constitutional Court that following the Judgement of the Constitutional Court KI 06/10, the Applicants have been issued with passports.
16. Consequently, the Applicants' representative informed the Constitutional Court that their claim had been satisfied.
17. On 16 May 2011, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court to strike out the referral.

The Court's Assessment

18. In order to be able to decide on the Applicants' request the Constitutional Court needs first to examine, whether the conditions prescribed in Rule 32 of the Rules of Procedure have been satisfied.
19. Rule 32 of the Rules of Procedure, in the pertinent part, reads as follows:

1) A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.

(2) Notwithstanding a withdrawal of a referral, the Court may determine to decide the referral.

(3) The Court shall decide such a referral without a hearing and solely on the basis of the referral, any replies, and the documents attached to the filings.

(4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.

20. For the foregoing reasons, further examination of the Referrals is discontinued and the Court finds that there are no special circumstances regarding respect for human rights which would require further examination of the Referrals (see, *mutatis mutandis*, the decision of the Constitutional Court in the case of Rafet Hoxha KI 24/09 dated 24 March 2010).

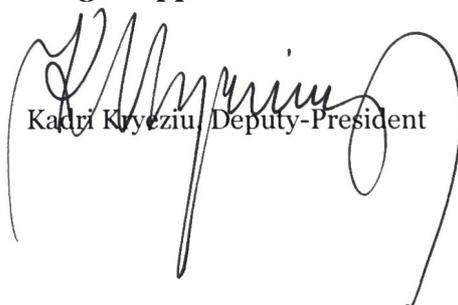
FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law and Rule 32 of the Rules of Procedure, unanimously,

DECIDES

- I. TO STRIKE OUT the Referral.
- 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



Kadri Kryeziu, Deputy-President

President of the Constitutional Court



Prof. Dr. Enver Hasani