



**REPUBLIKA E KOSOVËS**  
**Republika Kosova - Republic of Kosovo**  
**Gjykata Kushtetuese / Ustavni sud / Constitutional Court**  
Adresa: Perandori Justinian, PN. Prishtinë  
T: +381 (0)38 220 104; F: +381 (0)38 220 112; [www.gjk-ks.org](http://www.gjk-ks.org)

---

Prishtina, 11 may 2010  
Ref. No.RK 19/10

**RESOLUTION**

**Case No. KI. 71/09,**

**Ali Hasan Tahiri**  
**against**  
**Supreme Court Decision Nr. 271/2009**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

Composed of:

Enver Hasani, President  
Snezhana Botusharova,  
Robert Carolan, Judge  
Ivan Čukalović, Judge  
Iliriana Islami, Judge  
Kadri Kryeziu, Judge  
Gjylieta Mushkolaj, Judge  
Almiro Rodrigues, Judge and

Altay Suroy, Judge

**Applicant**

1. The Applicant is Ali Hasan Tahiri, residing in the Village of Duar, Municipality of Vushtrri.

**Challenged decisions**

2. In his Referral, the Applicant challenges Judgment Nr. 361/2006 of the Municipal Court of Prishtina dated 16 April 2008. He also mentions Judgment Nr. 271/2009 of the Supreme Court dated 5 July 2009 as the last effective remedy.

## **Subject matter**

3. The Applicant deems that Articles 3 (Equality before the law), 21 (General principles of human rights and fundamental freedoms) and 54 (Judicial protection of rights) of the Constitution have been violated.

## **Legal basis**

4. Article. 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Articles 20, 27.7 and 27.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 54(b) 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 proceedings before the Court**

5. The Applicant submitted his Referral to the Constitutional Court on 10 December 2009. On 18 February 2010, after having considered the Report of the Judge Rapporteur, Almiro Rodrigues, the Review Panel, composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Gjylieta Mushkolaj, forwarded its recommendation to reject the case as inadmissible to the full Court on the same day.

## **Summary of facts**

6. It appears from the documents submitted by the Applicant, that, on 26 October 2006, he filed a "request for continuation of an indemnity compensation" with the Municipal Court of Pristina, stating that, on 1 September 2006, the Kosovo Energy Corporation (KEK), without issuing any decision and without any legal basis for termination of the "Agreement on temporary remuneration of indemnity" (105 Euro/month) concluded between the Parties on 15 August 2001, had ceased to pay the indemnity.

7. By judgment of 16 April 2008, the Municipal Court granted the Applicant's claim and ordered KEK to pay the monthly sum of 105 E, including the arrears, to him. The Court found that the conditions envisaged in the Agreement had not been met for KEK to cease the payment of the compensation and ordered it to continue with the monthly payments in accordance with the Agreement concluded between the Parties.

8. Thereupon, KEK filed an appeal with the District Court in Pristina, requesting it to squash the judgment of the Municipal Court and to refuse the Applicant's claim. The Court, however, upheld the judgment, and rejected KEK's appeal as unfounded. It stated that the court of first instance had correctly determined the factual situation and appropriately applied the substantive law; moreover, the Agreement had created rights and obligations for the Parties, which KEK was obliged to fulfill in accordance with Article 17 of the Law on Obligations and Torts and no change in the Statute of KEK's supplemental pension fund could have retroactive effects to the detriment of the Applicant.

9. On 12 March 2009, KEK filed a revision with the Supreme Court.

10. On 24 April 2009, the Applicant submitted an "application for execution" to the Municipal Court, asking it to freeze KEK's bank account and to have the monies owed to him transferred to his bank account.

11. Before the Municipal Court could decide on the Applicant's request, the Supreme Court ruled on 15 July 2009, that the lower courts had wrongfully applied the substantive law, when they concluded that the Applicant's claim was well-founded; it, therefore, accepted the revision and annulled both judgments, while refusing the Applicant's claim as ill-founded.

### **Applicant's allegations**

12. Without elaborating his constitutional claims, the Applicant complains that his human rights under Arts. 3, 21 and 54 of the Constitution (see also under "Subject matter" above) have been violated.

### **Assessment of the Admissibility of the Referral**

12. 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 and the Law.

14. In this connection, the Court refers to Article 49 (Deadlines) of the Law, stipulating that :

*"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced..."*

15. The Court notes that in his Referral, when asked to "state the date of service of a decision on the last effective remedy used", the Applicant indicated: "KOSOVO SUPREME COURT - Rev. nr. 271/2009, date: 15.07.2009".

16. Taking into account the fact that the Applicant filed the Referral on 10 December 2009, the Court concludes that he has not submitted his constitutional complaint within the mandatory period of four months as stipulated by Article 49 of the Law.

17. In these circumstances, the Applicant cannot be considered to have fulfilled the requirements for admissibility of the Referral.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 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**

Almiro Rodrigues



**President of the Constitutional Court**

Prof. dr. Enver Hasani

