



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

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Prishtina, 25 November 2013  
Ref.No.:RK504/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI58/13**

Applicant

**Mr. Sadik Bislimi**

**Constitutional Review of the Judgment of the Municipal Court of Ferizaj  
C. no. 6/2008 of 5 November 2012; C. no. 364/2009 of 19 December  
2012 and the Ruling of the Basic Court in Ferizaj  
C. no. 534/10 of 15 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 and  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Applicant is Mr. Sadik Bislimi, residing in Ferizaj.

## **Challenged decision**

2. The Applicant challenges the Decision of the Municipal Court in Ferizaj C. no. 6/2008 of 5 November 2012; C. no. 364/2009 of 19 December 2012 and Decision of the Basic Court in Ferizaj C. no. 534/10 of 15 March 2013.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review by the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) of the Judgment of the Municipal Court in Ferizaj C. no. 6/2008 of 5 November 2012; Decision of the Municipal Court of Ferizaj C.no.364/2009 of 19 December 2012 and the Decision of the Basic Court in Ferizaj C.no.534/10 of 15 March 2013, by which the Applicant alleges that his rights to a fair and impartial trial have been violated, a right guaranteed by Article 31 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 16 December 2008, which entered into force on 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).

## **Proceedings before the Court**

5. On 18 April 2013, the Applicant submitted the Referral to the Court.
6. On 29 April 2013, the President of the Constitutional Court by Decision No. GJR.58/13 appointed Judge Altay Suroy as Judge Rapporteur and by Decision No. KSH.58/13 the President appointed the Review Panel composed of judges: Ivan Čukalović (Presiding), Kadri Kryeziu and Enver Hasani.
7. On 8 May 2013, the Court notified the Applicant of the registration of Referral under no. KI 58/13 and requested from the Applicant the completion of the same with the necessary documentation.
8. On 18 June 2013, the Applicant submitted the completed referral form, which lacked the decisions of higher instances.
9. On 26 June 2013, the Court again requested from the Applicant additional documents.
10. On 10 July 2013, Mr. Kushtrim Bislimi, on behalf of the Applicant, through electronic mail notified the Court that the requested decisions and the referral form were submitted to the Court on 14 June 2013.



11. On 16 October 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of the facts**

12. On 28 December 2007, the Applicant filed a claim with the Municipal Court in Ferizaj against Kosovo Energy Corporation (hereinafter: KEK) regarding the damage caused by the interruption of electrical energy during the period of time from 1 January 2003 until 31 October 2007.
13. On 5 November 2012, the Municipal Court in Ferizaj (Judgment, C.no.6/2008) rejected the statement of claim of the Applicant filed against KEK, regarding the compensation of damage in the amount of 2.761,47,00 euro caused by interruption of electrical energy for the time period from 1 January 2003 until 31 October 2007. The Court in question, in accordance with Article 319 paragraph 1 and Article 322 of the Law on Contested Procedure (LCP) concluded that the evidence submitted by the Applicant did not present sufficient grounds for the approval of his statement of claim, therefore rejected it as ungrounded. Against this judgment, the Applicant was allowed the right to appeal within the time limit of 15 days from the day of service of Judgment.
14. On 12 November 2009, the Applicant filed a claim with the Municipal Court of Ferizaj regarding the obstruction to possession and use of his private property, because of the obstructions that were caused, as he alleges, from the distribution network of the electrical energy, which was managed by KEK.
15. On 19 December 2012, the Municipal Court in Ferizaj (Ruling, C. no. 364/09) dismissed the Applicant's statement of claim as out of time, as it is stated by the said court, because the Applicant missed the legal time limit for submission of claim.
16. On 20 December 2010, the Applicant filed a claim with the Basic Court in Ferizaj against the Government of Kosovo, namely the Ministry of Labor and Social Welfare, regarding the request for compensation of damage caused by the termination of pension for 13 (thirteen) consecutive years.
17. On 15 March 2012, the Basic Court in Ferizaj (Ruling, C.no.534/10) rejected the Applicant's claim as ungrounded, as stated by the said court, due to the fact that the claim was unclear, incomprehensible and without specified requests.
18. The Applicant has stated in his Referral that he has filed an appeal against the decisions of first instance with the second instance court. Nevertheless, the Applicant has not submitted any decision of the second instance and third instance court, even though he was requested several times by the Constitutional Court to do so.

### **Applicant's allegations**

19. The Applicant alleges that the regular courts by their decisions have violated his constitutional rights, guaranteed by Article 31 of the Constitution.

20. The Applicant requests, among others, from the Constitutional Court: the compensation of damage caused by KEK to the household (house appliances), because of the interruption of electrical energy; removal of obstacles to the possession of his property, which is obstructed by KEK electrical network and compensation of the damage caused by the termination of pension.

### **Admissibility of the Referral**

21. The Court first examines whether the Applicant has fulfilled the admissibility requirements, laid down in the Constitution as further specified in the Law and the Rules of Procedure of the Court.

22. In this case, the Court refers to Article 113 paragraph 7 which establishes that:

*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. Article 47 (2) of the Law on the Court also provides that: *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

24. Furthermore, Rule 36 (1) a) of Rules of Procedure provides that:

*1. The Court may only deal with Referrals if:  
a) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.*

25. The Constitutional Court notes from the case files that the Applicant in general complains against the decisions of the first instance, where, the subject of challenge in all three presented cases is not the same.

26. In the first case (Judgment, C.no.6/2008 of 5 November 2012), he complains about the damage caused by KEK, due to interruption of electrical energy; in the second case (Ruling, C. no. 364/09 of 19 December 2012) he complains about the obstruction to possession of his private property also by KEK authorities and in the third case (Ruling, C.no.534/10 of 15 March 2013) he complains about the damage caused by termination of pension for 13 (thirteen) consecutive years.

27. In this case, the Court states that the Applicant had the opportunity to raise the alleged violations of the constitutional rights for judicial bias, which he is raising before the Constitutional Court, to the higher instances such as the Court of Appeal and the Supreme Court. Since the Constitutional Court has requested several times from the Applicant to complete the Referral with relevant documents, the Court assesses that the burden of responsibility lies with the party/parties in case of failure to complete the Referral.



28. From this viewpoint, the Constitutional Court considers that the Applicant's Referral is premature, since we are dealing with non-exhaustion of available legal remedies under the laws in force.
29. Therefore, in accordance with the principle of subsidiarity, the Court considers that the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113 (7) of the Constitution and the other legal provisions, which were mentioned above.
30. In fact, the purpose of the exhaustion rule is to allow the regular courts the opportunity of putting right the alleged violations of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural framework (See, *mutatis mutandis*, Selmouni v. France [GC], § 74; Kudla v. Poland [GC], § 152; Andrashik and Others v. Slovakia (dec.)).
31. Whenever a judicial decision is challenged on the basis of some legal position that is unacceptable from the viewpoint of human rights and fundamental freedoms, the regular courts that issued the decision must be afforded the opportunity to reconsider the challenged decision. That means that, every time a human rights violation is alleged, such an allegation cannot as a rule arrive to the Constitutional court without first being considered by the regular courts.
32. Before the foregoing reasons, the Court concludes that the Referral does not meet the admissibility requirements, as required by Article 113.7 of the Constitution, Article 47.2 of Law and Rule 36 (1) a) of the Rules of Procedure, therefore pursuant to Article 46 [Admissibility] of the Law, the Referral as such is considered inadmissible.


## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) and Rule 56 (2) of the Rules of Procedure, on 16 October 2013, unanimously


## DECIDES


- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Altay Suroy

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

The seal of the Constitutional Court of Kosovo is circular. It features a central figure of a person holding a scale, symbolizing justice. The text "GJKATA KUSHTETUESE" is written in the upper arc, and "KONSTITUCIONALNA SODBA" is in the lower arc. The words "REPUBLIC OF KOSOVO" are also visible around the perimeter.