



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

Pristina, 16 December 2011
Ref. No.: RK179/11

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 02/11

Applicant

Esat Kurtaliqui

**Constitutional Review of the Decision C.no. 409/06 of the Municipal Court of
Ferizaj of 7 February 2008**

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. Esat Kurtaliqui, residing in Pleshina Village, Ferizaj.

Challenged decision

2. The Applicant challenges explicitly Decision C.no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008, which was served upon the Applicant on the same date.
3. Furthermore, the Applicant in his Referral makes also reference to Decision Ac. No. 215/08 of the District Court of Pristina of 27 March 2009, which was served on him on 28 May 2009.

Subject matter

4. The Applicant alleges that his right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 49 [Right to Work and Exercise Profession] has been violated.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of 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").

Proceedings before the Court

6. On 10 January 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
7. On 12 January 2011, the Applicant submitted additional documents to the Court.
8. On 14 February 2011, the President, by Order No. GJR. 02/11, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order No. KSH. 02/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.
9. On 4 May 2011, the Court communicated the Referral to the Special Chamber of the Supreme Court, the IMK Steel Pipe Factory in Ferizaj (hereinafter: "IMK") and the Kosovo Privatization Agency (hereinafter: "PAK").
10. On 12 May 2011, the Court communicated the Referral to the Municipal Court of Ferizaj.
11. On 23 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to this Court on the inadmissibility of the Referral.

Summary of facts

12. On 27 November 1989, the “IMK” Interim Supervising Body, by Decision No. 5616, suspended temporarily the Applicant from work in “IMK” due to serious violations of his labour contract
13. On 12 October 1990, the “IMK” Interim Supervising Body terminated the Applicant’s contract of employment on the ground that he had seriously breached his labour contract.
14. On 26 November 1990, the Applicant complained to the “IMK” Interim Supervising Body about its decision of 12 October 1990.
15. In 1999, the Applicant and other employees of factory returned to work.
16. On 4 January 2006, the Applicant filed a complaint with the Special Chamber of the Supreme Court (hereinafter: the “Special Chamber”), requesting it to confirm his labour relations with IMK, to grant compensation for lost personal income and to allocate to him the shares he was entitled to. On the same date and, thereafter, on 14 March 2006, the Applicant notified the Kosovo Trust Agency (hereinafter: the “KTA”) about the complaint.
17. On 18 May 2006, the Special Chamber decided to refer the case to the Municipal Court of Ferizaj as the competent court, pursuant to Section 17 of Administrative Direction 2003/13 implementing UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.
18. On 21 November 2007, the KTA sent a letter to the Applicant notifying him that his contract of employment with “IMK” was terminated with immediate effect following the privatization of “IMK”.
19. By Decision C.no. 186/05 of 7 February 2008, the Municipal Court of Ferizaj terminated the procedure due to the liquidation (or privatization??) of “IMK”.
20. On 27 March 2009, the District Court of Pristina rejected the Applicant’s complaint as unfounded and upheld the decision of the Municipal Court of Ferizaj of 7 February 2008. The District Court held that, pursuant to UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency (hereinafter: “UNMIK Regulation 2002/12”), Section 9.3 “any legal action against a Socially-owned Enterprise subject to liquidation pursuant to this section shall be suspended upon application by the Agency to the court of the place where the action is filed.”

Applicant's allegations

21. The Applicant alleges that the Municipal Court and District Court have violated his constitutional rights by not approving his claim to confirm his labour relations with "IMK", not compensating him for lost personal income and not allocating to him the shares he was entitled to..

Assessment of the admissibility of the Referral

22. As to the Applicant's allegation that his right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution has been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

23. In respect of challenged Decision C. no. 409/06 of the Municipal Court of Ferizaj of 7 February 2008, which was served on the Applicant on the same date, the Court refers to Rule 36 (3) (h) which reads as follows:

"A Referral may also be deemed inadmissible in any of the following cases:

(h) the Referral is incompatible ratione temporis with the Constitution."

24. In order to establish the Court's temporal jurisdiction it is essential to identify, in each specific case, the exact time of the alleged interference. In doing so, the Court must take into account both the facts of which the applicant complains and the scope of the Constitution right alleged to have been violated (see, *mutatis mutandis*, European Court of Human Rights, Grand Chamber Judgment in the case of *Blečić v. Croatia*, Application no.59532/0, dated 8 March 2006, para. 82.).

25. The Court notes that the Applicant complains that his right to work guaranteed by the Constitution has been violated. In that respect the Applicant challenges expressly the decision of the Municipal Court in Ferizaj of 7 February 2008, which was served on the Applicant on the same date.

26. However, the Court notes that the Applicant effectively appealed against the Municipal Court's decision to the District Court of Pristina, which, by Decision Ac. No. 215/08 of 27 March 2009, upheld that decision, but the Applicant has not shown that he submitted an appeal in last instance to the Supreme Court, where he should have raised the same constitutional complaints against the decisions of the Municipal Court and District Court. Only, if that remedy would not have been successful, could he have filed a Referral with this Court.

27. The Court must, therefore, conclude that the Applicant has not exhausted all legal remedies available to him under applicable law, as required by Article 113.7 of the Constitution, Article 47(2) of the Law and Rule 36(1)(a) of the Rules of Procedure. The

rationale of this requirement is to afford the authorities concerned, including the courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see: Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, of 27 January 2010 and, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). In the present case, such an effective remedy existed in the form of an appeal to the Supreme Court.

28. For the foregoing reason the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47(2) of the Law, and Rules 36 (1) (a) and 56 (2) of the Rules of Procedure, on 23 November 2011, unanimously

DECIDES

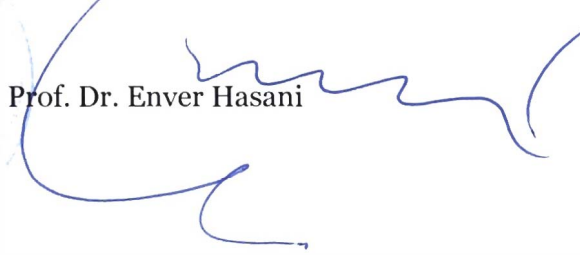
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani