



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 8 September 2011
Ref. No.: 136/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 100/10

Applicant

Eduard Thaqi (also known as Sokol Thaqi)

**Constitutional Review of the Decision of the Kosovo Police, no.398-SHPK-2002
dated 22 October 2002**

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
Gjylieta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Eduard Thaqi (formerly known as Sokol Thaqi) residing in Kishnicë.

Opposing party

2. The opposing party is the Kosovo Police

Subject matter

3. The Applicant challenges the Kosovo Police Decision 398-SHPK-2002, dated of 22 October 2002, whereby he was expelled from work.
4. Moreover, the Applicant alleges a violation of Article 49 [Right to work and exercise profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").
5. Furthermore, the Applicant requested his identity not to be disclosed in the decision of the Constitutional Court.

Legal basis

6. Article 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 36 (3) (h) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. On 8 October 2010, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
8. On 17 November 2010, the Referral was communicated to the Kosovo Police, which replied on 6 December 2010.
9. On 7 December 2010, the President appointed Judge Almiro Rodrigues as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges Ivan Čukalović (Presiding), Kadri Kryeziu and Enver Hasani.
10. On 6 January 2011, the Court requested additional documents, which the Applicant submitted on 18 January 2011.
11. On 25 March 2011, the Referral was communicated to the Ministry of Education, Science and Technology (hereinafter: the MEST), which replied on 28 March 2011.
12. On 20 May 2011, and 23 September 2011, the Review Panel considered the report of Judge Rapporteur Almiro Rodrigues and made a recommendation to the court on inadmissibility.

Summary of the facts

13. The Applicant joined Kosovo Police on 19 February 2000, where he served in different positions, one of them being in the capacity of Investigator within the Unit for Missing Persons.
14. On 22 October 2002, the Applicant was expelled from work for the reason that, *inter alia*, his employment record contained inaccurate information. The Kosovo Police decision stated the following:

"Sokol Thaqi you were insincere and your application in Kosovo Police Service contains inaccurate information/documents. You have failed to meet minimal conditions for employment in Kosovo Police Service."

"Based on the evidence against you, Sokol Thaqi KPS # 0566, you are expelled from Kosovo Police Service due to violation of Principles and Procedures of the Kosovo Police Service."

15. On 3 December 2002, the Applicant had an interview with the Kosovo Police Appeals Board, whereby he was, allegedly, promised to be reinstated as Kosovo Police officer on the condition that he provides a valid secondary school diploma. Thereupon, the Applicant enrolled in the secondary school in Obiliq and obtained a secondary school diploma, which he submitted to the Kosovo Police.
16. On 28 August 2004, after having obtained the secondary school diploma, the Applicant requested to be rehired by the Kosovo Police.
17. The Kosovo Police went to the Ministry of Education, Science and Technology (MEST), in order to have the diploma submitted by the Applicant verified.
18. The Applicant states that the Kosovo Police was informed by MEST that the validity of Applicant's diploma was contentious.
19. On 25 November 2004 and onwards, the Applicant initiated some administrative and judicial proceedings in order to clarify the validity of the diploma.
20. Finally, on 2 May 2006, the MEST validated the certificates and diplomas of all the students who had passed the respective exams of the relevant school year, including the Applicant.

Applicant's allegations

21. The Applicant claims that, even though he finished and obtained a valid school diploma, he was still not rehired as Kosovo Police officer, in spite of the fact that he was promised to be rehired once he has provided the said qualifications.
22. The Applicant also claims that he had a successful interview with the Kosovo Police and was only waiting to resume his work as an officer of the Kosovo Police
23. In addition, the Applicant alleges that he was encouraged by the Kosovo Police to apply for newly available positions in the Force, which, according to the Applicant is impossible, because the Kosovo Police is not recruiting new cadets anymore.
24. As to the request on his identity not to be disclosed, the Applicant was well aware that a decision could be taken only based on arguments presented by him. No reasons were given to support that request.
25. From the submitted documents it appears that the Applicant asks the Court to:
 - a) reinstate him as Kosovo Police officer;
 - b) award him with just compensation for the damages incurred during the period he remained unemployed.

Assessment of the admissibility of the Referral

26. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
27. As to the Applicant's Referral, 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."
28. In order to establish the Court's temporal jurisdiction it is essential to identify, in each specific case, the exact time of alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of constitutional right alleged to have been violated (see, *mutatis mutandis*, *European Court of Human Rights Chamber Judgment in case of Blečić v. Croatia*, Application no.59532/0, dated 8 March 2006, para.82).
29. The Court notes that the Applicant complains that his right to work guaranteed by the Constitution of the Republic of Kosovo has been violated. In that respect the Applicant challenges decision no.398-SHPK-2002 of the Kosovo Police which is dated 22 October 2002.
30. This means that the alleged interference with Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of the entry into force of the Constitution and from which date the Court has temporal jurisdiction.
31. It follows that the Applicant's referral is incompatible "*ratione temporis*" with the provisions of the Constitution.

FOR THESE REASONS


The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo and Section 36 (3) (h) of the Rules Procedure, on 20 May 2011, and 23 September 2011, unanimously

DECIDES

- I. TO REJECT the referral as inadmissible.
- II. TO REJECT the request on his identity not to be disclosed as ungrounded.
- III. 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.
- IV. The Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

