



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

Pristine, 09 March 2012
Ref. No.:RK205/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 109/10

Applicant

Ismet HEBIBI

**Constitutional Review of the District Court in Peja Judgment,
Ac.no. 317/07 dated 12 November 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 Ismet Hebibi, residing in Junik, Kosovo.

Challenged court decision

2. The challenged court decision is the Judgment of the District Court Ac. no 317/07 of 12 November 2008, which was served on the Applicant on 26 December 2008.

Subject matter

3. The Applicant alleges that his right has been violated since his case was prolonged for 4 years in the Municipal Court in Decan because a judge "for personal reasons tried to minimize his case and to render an illegal decision".
4. The Applicant requests the Constitutional Court to order the compensation of damage that he allegedly suffered because electric energy transformer has been installed at his immovable property for more than 40 years. The Applicant also asks the Court to order removal of the high voltage cable and broken electric transformer which presents a great danger for his family.

Legal basis

5. Article 113.7 of the Constitution, Articles 20 and 22 and 49 of the Law on the Constitutional Court and Rule 36 (1) (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

6. On 29 October 2010 the Applicant submitted the Referral to the Court. In his Referral the Applicant requested not to have his identity revealed in the decision of this Court.
7. On 23 November 2010, the President, by Order No.GJR. 109/10, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Order No.KSH. 109/10, appointed the Review Panel composed of Judge Almiro Rodrigues (Presiding), Judge Ivan Čukalović and Judge Iliriana Islami.
8. On 18 May 2011 after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts and allegations as presented by the Applicant

9. The Applicant is the owner of the immovable property No.1342 possession list 109 Municipality of Junik.
10. According to him, from 1968 to date his and many other families have been endangered by the electric energy transformer that was installed against the will of his family on their immovable property described above. This transformer was broken many times and thus presents a danger to his family. At one occasion high voltage killed a cow in the backyard.
11. In addition to material damage, fear and psychological anxiety that his and other families suffered, on 18 April 2008 the KEK electric transformer was destroyed by storm and the cable of high voltage was cut and fell on two houses and their backyards.
12. This situation continued for 42 years.

13. Consequently, the Applicant sued KEK in Peja before the Municipal Court in Decan, requesting compensation of damage in the amount of 17,230 Euro.
14. On 19 June 2007 the Municipal Court in Decan issued judgment C. no. 484/04 and rejected as ungrounded the Applicant's request as specified above.
15. Unsatisfied with that judgment the Applicant appealed to the District Court in Peja.
16. On 12 November 2008 the District Court issued judgment Ac.no. 317/07 and rejected as unfounded the Applicant's appeal.
17. According to the Municipal Court receipt found in the Applicant's case-file, the District Court judgment of 12 November 2008 was served on the Applicant on 26 December 2008.
18. The Applicant requested at least five times the exclusion of the presiding judge from his case before the Municipal Court in Decan C no. 448/04, due to lack of his credibility. Moreover the Applicant requested the transfer of his case to the Municipal Court in Peja or Gjakova.

Assessment of the admissibility of the Referral

19. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
20. As to the Applicant's referral, the Court refers to Article 49 of the Law which insofar relevant reads as follows:

Deadlines

"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...."

21. The Court notes that the challenged judgment of the District Court of Peja Ac. no. 317/07 of 12 November 2008 was served on the Applicant on 26 December 2008. The Court also notes that the Applicant submitted the Referral to the Court on 29 October 2010.
22. In addition, even assuming that the Applicant had filed the Referral within the legal deadline, the Applicant has not shown that he has exhausted all legal remedies available to him within the meaning of Article 113.7 of the Constitution. (*See mutatis mutandis, ECHR Azinas v. Cyprus, no.56679100 decision of 28 April 2004, also see mutatis mutandis decision of 24 March 2010 in case no. KI73/09, Mimoza Kusari-Lila v. the Central Election Commission*).
23. In sum, it follows that the Referral is rejected as inadmissible.

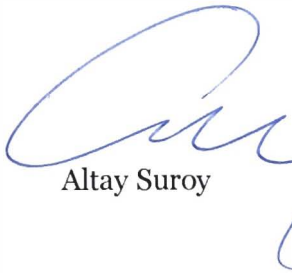
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 49, 56 and 58 of the Law and Section 36 1 (b) of the Rules of Procedure, on 18 May 2011, unanimously,

DECIDES

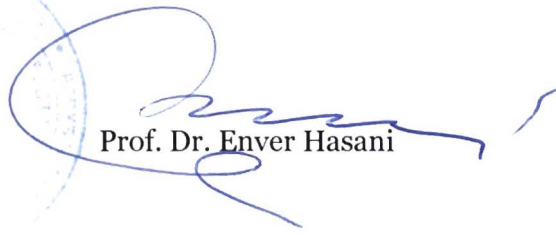
- I. TO REJECT the referral as inadmissible;
- II. TO REJECT the request on his identity not to be disclosed as ungrounded;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. The Decision is effective immediately.

Judge Rapporteur



Altay Suroy

President of the Constitutional Court



Prof. Dr. Enver Hasani

