



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

Pristine, 21 May 2012
Ref. No.: RK 235/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 110/10

Applicant

Ismet Hebibi

**Constitutional Review of the decision of the Independent Oversight Board of
the Republic of Kosovo dated 3 February 2010**

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,

Challenged decision

2. The Applicant challenges the decision of the Municipality of Junik dated 20 July 2009 and the decision of the Independent Oversight Board of the Republic of Kosovo (hereinafter: IOBK) dated 3 February 2010.

Subject matter

3. The Applicant alleges that his right to work as guaranteed by the Constitution has been violated.
4. The Applicant requests from the Constitutional Court to be returned to work and order compensation of salary.

Legal basis

5. Article 113.7 of the Constitution, Articles 20 and 22 and 47 (2) of the Law on the Constitutional Court and Rule 36 (1) (a) 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 16 December 2010, the President, by Order no. GJR. 110/10, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order no. KSH. 110/10, appointed the Review Panel composed of Judge Altay Suroy (Presiding), Judge Kadri Kryeziu and Judge Gjyljeta Mushkolaj.
8. On 20 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.
9. On 20 January 2011 the Constitutional Court notified the IOBK regarding the submission of the above referral. On 27 January 2011, the IOBK has submitted to the Court the Applicant's case file.

Summary of the facts and allegations as presented by the Applicant

10. The Applicant was employed at the Medical Center "Dr. Ali Hoxha" in Deçan as an Ophthalmologist.
11. On 04 June 2009 through decision no. 05/379 of the Municipality of Junik by a disciplinary measure terminated the labour relation with the Applicant. The Applicant appealed this Decision on 18 June 2009.
12. On 20 July 2009 Municipality of Junik through decision no. 01-01-2009 rejected the Applicant's appeal and found that "the Applicant has violated Administrative Directive No. 2003/2 implementing Regulation no. 2001/36 on the Civil Service of Kosovo, namely Article 30 (1) (j), violent behaviour, threatening and insult in the working place".
13. On 29 December 2009, the Applicant complained to the IOBK against the decisions of the Municipality of Junik.

14. On 03 February 2010, the IOBK rejected the Applicants claim as out of time stating that “the Applicant’s claim should have been submitted to the IOBK within a deadline of thirty (30) days...”.
15. The Applicant has stated in his referral that he has not used the opportunity to challenge the decision of the IOBK before the Supreme Court for the reason that “the Supreme Court respects deadlines and thus would reject the Applicant’s case as out of time”.

Assessment of the admissibility of the Referral

16. 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.
17. In this relation, the Court refers to Article 113.7 of the Constitution, which states that:

"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"

and to Article 47.2 of the Law, stipulating that:

"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law"
18. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution, invoked by the Applicant before those instances. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).
19. This Court applied the same reasoning when it issued Resolution on Inadmissibility in the Case of Veli Sermahaj KI 49/09 dated December 2010.
20. It is clear from the Applicant's submissions that he never raised or pursued the alleged violations before the Supreme Court of the Republic of Kosovo.
21. It finds that the Applicant has not exhausted all legal remedies available to him under the applicable law as required by Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 of the Rules of Procedure, on 20 May 2011, unanimously,

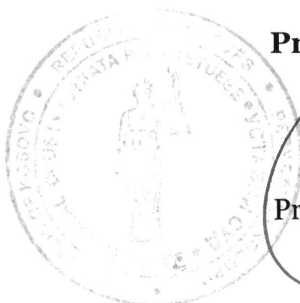
DECIDES

- 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.
- IV. The Decision is effective immediately.

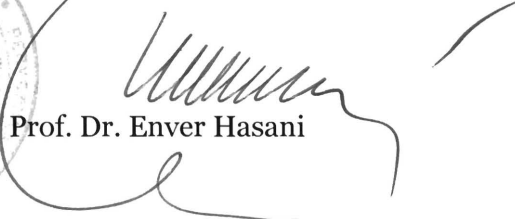
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani