



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

Prishtina, 7 November 2014
Ref. no.:RK 722/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI113/14

Applicant

Albion Sherifi

**Constitutional Review of the
Order of the Mayor of Municipality of Ferizaj
dated 30 April 2014**

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.

The Applicant

1. The Referral is submitted by Mr. Albion Sherifi, with residence in Ferizaj (hereinafter, the Applicant).

2. The Applicant states that he is the executive director of the NGO “*Nisma për Aktivizim*” from Ferizaj.
3. However, the Applicant did not specify whether he submitted the Referral on his own behalf or acting as a representative of the NGO “*Nisma për Aktivizim*”.

Challenged decision

4. The Applicant challenges the Order of the Mayor of Municipality of Ferizaj of 30 April 2014, by which all enterprises exercising trade, services and other activities in the Municipality of Ferizaj were prohibited to work on official holiday of the 1st of May.

Subject matter

5. The subject matter is the constitutional review of the challenged Order which allegedly violated Article 10 [Economy], Article 49 [Right to Work] and Article 119 [General Principles] of Chapter IX [Economic Relations] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal basis

6. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

7. On 4 July 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
8. On 16 July 2014, the Enterprise *Scan Color* JYSK filed additional documentation related with the challenged Order. That additional documentation was submitted upon knowledge of the Applicant and refers to a monetary fine imposed by the Trade Inspectorate of Ferizaj, as a result of business and trade activities of this Enterprise conducted during the official holiday on the 9th of May.
9. On 6 August 2014, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
10. On 22 August 2014, the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Mayor of the Municipality of Ferizaj.
11. On 16 September 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur.

12. On 21 October 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The Facts of the Case

13. On 30 April 2014, the Mayor of the Municipality of Ferizaj rendered the order that follows.

“Pursuant to Article 13 of Law no.03/L/040 of Local Self-governance (Official gazette of the Republic of Kosovo no.28/2008), Article 51, paragraph 2.1, of the Statute of Ferizaj Municipality, on 30.04.2014 the Mayor rendered the following:

Order prohibiting work on 1st May holiday.

I. All enterprises that exercise trade, service and other activities are ORDERED not to work on the first of May Holiday on 01.05.2014.

II. The Trade Inspectors and Municipal Inspectors will MONITOR the implementation of this order

III. FAILURE TO COMPLY with this order by the specified subjects, constitutes violation and is sanctioned by law.

*The Mayor,
[...]*”

14. This order was published in the webpage of the Municipality of Ferizaj.

Applicants’ allegation

15. As stated above, the Applicant claims that the Order of the Mayor of the Municipality of Ferizaj violated Article 10 [Economy], Article 49 [Right to Work] and Article 119 [General Principles] of Chapter IX [Economic Relations], of the Constitution.
16. In this respect, the Applicant argues that *“This order violates the individual rights of the citizens of Ferizaj Municipality by Ferizaj Municipality, in the quality of a public authority, respectively the Right to Work and Right of Exercising Profession guaranteed pursuant to Article 49 of the Constitution of the Republic of Kosovo. This also constitutes a case of state’s interference in the free market economy which is a fundamental principle of the democratic functioning of the public institutions in the Republic of Kosovo”.*
17. The Applicant requests *“[...] that the court finds that the order rendered by the Municipality and the actions of the Mayor violate the Constitution of Kosovo and the constitutional order in order to protect the fundamental principles of the state, which guarantee right to work and economy based on the free market [...].”*

Admissibility of the Referral

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

19. In this respect, the Court refers to Article 113 (1) and (7) of the Constitution, which establishes:

The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

(...)

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.

20. The Court also refers to Article 47 (1) of the Law, which provides:

Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

21. In addition, the Court takes into account Rule 36 (3) c) of the Rules of Procedure, which foresees:

*A Referral may also be deemed inadmissible in any of the following cases:
(...) ...c) the Referral was lodged by an unauthorised person*

22. The Court recalls that the Applicant requests the constitutional review of the Order of the Mayor of the Municipality of Ferizaj dated 30 April 2014.

23. However, the Applicant does not allege and prove that his own rights and freedoms were or are directly violated by that public authority.

24. In this regard, the Court reiterates that the Constitution does not provide for an “*action popularis*”, i.e. individuals can not complain in abstract about legislation or governmental acts which have not been applied to them personally through measure of implementation (See Case *Dudgeon v. the United Kingdom*, Application No. 7525/76, ECHR, Decision of 22 October 1981. See also Case KI 117/11, Applicants *Ridvan Hoxha vs. Municipality of Prizren*, Constitutional Court, Resolution on Inadmissibility of 18 July 2012).

25. The Court reminds that a complaint must be brought by or on behalf of persons who claim to be victims of a violation of constitutional provisions. Such person must be able to show that they were “directly affected” by the measure complained of (See Case *Ilhan v. Turkey*, Application No. 22277/93, ECHR, Judgment of 27 June 2000).

26. The Court considers that, as required by Article 113.7 and Article 47.1 of the Law, the Applicant has not proved that a public authority has violated any of his or NGO’s individual rights and freedoms guaranteed by the Constitution.

27. Thus, the Court considers irrelevant for the case whether the Applicant submitted the Referral on his own behalf or acting as representative of the NGO. In fact, in both capacities the Applicant does not have *locus standi* before this Court.
28. In sum, the Court concludes that the Applicant is not an authorized person to challenge in abstract the constitutionality of the Order of the Mayor of Municipality of Ferizaj and therefore the Referral must be declared as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (7) of the Constitution, Article 47 (1) of the Law and Rule 36 (3), and c) of the Rules of Procedure, on 21 October 2014, unanimously:

DECIDED

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

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

