



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

Pristina, 20 June 2011
Ref. No.: RK118/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 128/10

Applicant

Arben Komani

**Constitutional Review of the Decision of the Directorate of Education of
the Municipal Assembly of Gjakova No. 4, dated 29 January 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 Mr. Arben Komani, father of the minor David Komani, from Gjakova.

Challenged decision

2. The Applicant challenges the Decision of the Directorate of Education of the Municipal Assembly of Gjakova No. 4, of 29 January 2010, which was served on the Applicant on 6 February 2010.

Subject matter

3. The Applicant claims that the Supreme Court and Administrative bodies, by remaining silent and not treating his case as a matter of priority, is in violation of:
 - a. Article 3 of the Convention on the Rights of the Child in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution");
 - b. Article 31 [Right to Fair and Impartial Trial] of the Constitution;
 - c. Articles 2 and 7 of the Universal Declaration of Human Rights in conjunction with Article 22 of the Constitution.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (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

5. On 16 December 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 27 January 2011, the Court communicated the Referral to the Supreme Court and the Directorate of Education of the Municipal Assembly of Gjakova.
7. On 14 February 2011, the President, by Order No. GJR. 128/10, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President, by Order No. KSH. 128/10, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Gjyljeta Mushkolaj.

8. On 18 May 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 26 December 2009, the Applicant filed a complaint with the Head Inspector of Education of the Ministry of Education, Science and Technology (hereinafter: "MEST") against his son's teacher, complaining that the teacher had inflicted stress upon his son in school.
10. On 12 January 2010, the Department of Inspection of MEST in Gjakova performed an inspection at the school.
11. On 13 January 2010, the Applicant requested the Head Inspector of Education of MEST that his complaint of 26 December 2009 be dealt urgently, since the teacher of his son had caused his son to suffer from anxiety and feelings of uneasiness.
12. On 19 January 2010, the Cabinet of the Permanent Secretary of MEST issued a recommendation to establish a commission to review the complaint and take appropriate measures against the teacher as well as to report back to the Section of Inspectors in Gjakova for the actions that had been taken.
13. On 29 January 2010, the Disciplinary Commission established by the Directorate of Education in Gjakova issued its decision (No. 04). The Applicant was instructed to bring his complaint before the board of the school, where the teacher was employed, and the Director of the school was requested to look into the complaint made by the Applicant and to take a decision on the merits of the complaint. The Applicant was told, that, if he was not satisfied with the outcome, that he could bring a case before the Head Inspector of Education of MEST. Moreover, the decision could be contested before the Appeal's Commission.
14. On 8 February 2010, the Applicant complained to the Municipal Department of Education against the decision of the Disciplinary Commission of 29 January 2010.
15. On 27 March 2010, the Disciplinary Commission found that the teacher had acted unprofessionally and imposed on her the disciplinary measure of a written reprimand. The Applicant was entitled to complain about the decision to the Municipal Department of Education, which he, apparently, never did.

16. On 8 April 2010, the Applicant filed a complaint with the Supreme Court complaining about administrative silence and violation of legal provisions.
17. On 16 September 2010, the Applicant filed a request with the Supreme Court to urgently decide his case.

Applicant's allegations

18. The Applicant alleges a breach of Article 3 of the Convention on the Rights of the Child in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, Article 31 [Right to Fair and Impartial Trial] of the Constitution and Articles 2 and 7 of the Universal Declaration of Human Rights in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution by being silent and for the non-qualification of the matter as a priority.
19. According to the Applicant, in all proceedings before the administrative organs, he had met with administrative silence, legal provisions had been violated, and unjustified delegation of competencies had taken place in order to postpone the case and escape the responsibilities concerned, while the competent authorities refused to take punitive measures against the violators of the law and caused an unreasonable postponement of the proceedings in general, by not taking a final decision and disregarding our interests as parents, and as well as attempting to hinder the process, to the detriment of his son, by not replying to the complaints.

Assessment of the admissibility of the Referral

20. The Applicant alleges a breach of Article 3 of the Convention on the Rights of the Child in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, Article 31 [Right to Fair and Impartial Trial] of the Constitution and Articles 2 and 7 of the Universal Declaration of Human Rights in conjunction with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution by being silent and for the non-qualification of the matter as a priority.
21. As to the Applicant's allegation that the Supreme Court and the Administrative bodies had been slow in dealing with his case, the Court refers to the relevant case-law of the European Court for Human Rights, providing that "the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities

and what was at stake for the applicant in the dispute” (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

22. However, 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, in particular, whether he has exhausted all legal remedies available under the applicable law.
23. The rationale for the exhaustion rule 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, judgment of 28 July 1999).
24. In the present case, the Court notes that the Applicant's claim, which he is presently making before this Court concerning the excessive length of proceedings, has not been decided yet in final instance by the Supreme Court.
25. It follows, that the Referral is inadmissible pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law, and Rule 56 (2) of the Rules of Procedure, on 20 June 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

Ivan Čukalović

President of the Constitutional Court

Prof. Dr. Enver Hasani