



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

Prishtina, 17 June 2011
No. ref.:RK122/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI. 30/11

Applicant

Iliaz Shuleta

**Constitutional review of Judgment CI. No. 307/2006, dated 12 February 2007,
of the Municipal Court in Prishtina**

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
Iiriana Islami, Judge

Applicant

1. The applicant is Mr. Iljaz Shuleta, from Prishtina, residing at 18/a Mbreti Bardhyl [King Bardhyl] Street, Prishtina, duly represented by Mr. Maliq Lushaku.

Challenged decision

2. The challenged decision is Judgment CI. No. 307/2006, dated 12 February 2007, of the Municipal Court in Prishtina.

Subject matter

3. The subject matter of the case that was submitted with the Constitutional Court of the Republic of Kosovo on 1 March 2011 is the constitutional review of Judgment CI. No. 307/2006, dated 12 February 2007, of the Municipal Court in Prishtina, rejecting plaintiff's, Mr. Iljaz Shuleta's, lawsuit for his reinstatement to his post with the Kosovo Energy Corporation, from where he had gone to early invalidity pension at his personal request.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 1 March 2011, Mrt. Iljaz Shuleta submitted a Referral with the Constitutional Court challenging Judgment CI. No. 307/2006, dated 12 February 2007, of the Municipal Court in Prishtina, rejecting his lawsuit for his reinstatement to his post with the Kosovo Energy Corporation, from where he had gone to early invalidity pension at his personal request.
6. On 2 March 2011, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Gjyljeta Mushkolaj, members.
7. The Constitutional Court has not received any comment from parties involved in the issue concerning the Referral.
8. On 19 May 2011, following the report of the Judge Rapporteur, Kadri Kryeziu, the Review Panel, composed of Judges Robert Carolan (Presiding), Enver Hasani and Gjyljeta Mushkolaj, members, recommended to the full Court on the inadmissibility of the Referral.

Summary of the facts

9. Even though the Applicant has not attached necessary documents to the Referral, from the copy of Judgment CI. No. 307/2006, dated 12 February 2007, of the Municipal Court in Prishtina, it can be concluded that Mr. Shuleta was in continuous employment relationship with KEK for over 20 years.
10. On 23 September 2003, always according to data obtained from the said judgment, he submitted a written request to his employer for invalidity pension because of his worsened health condition.
11. On 23 October 2003, KEK approved Mr. Shuleta's request through Decision No. 171/132, and recognized his right to temporary invalidity pension according to "B" category starting from 1 January 2003 through 1 December 2008.

12. On 21 April 2006, Mr. Shuleta addressed KEK through a request for his reinstatement to his former post justifying his request with the fact that he has already recovered and rehabilitated and that he is fit to work.
13. Since his request was not approved, the Applicant filed a claim with the Municipal Court in Prishtina, where the case was registered under number CI. No. 307/06.
14. Meanwhile, the Applicant, Mr. Shuleta, informed KTA and KEK through notification letters on the initiation of this procedure.
15. On 12 February 2007, the Municipal Court in Prishtina issued Judgment CI. No. 307/2006 rejecting Mr. Iljaz Shuleta's claim as ungrounded.
16. Mr. Shuleta had written in the official application form of the Referral filed with the Constitutional Court the he had received the judgment of the Municipal Court on 10 April 2007.
17. From the documents submitted by the Applicant, it appears that this judgment has not been appealed and that there is no other judgment of a higher court instance.
18. Finally, unsatisfied with the said Judgment of the Municipal Court, Mr. Iljaz Shuleta through his legal representative [**the sentence is not complete in the original**]

Applicant's allegations

19. The Applicant has not clarified what constitutionally guaranteed right he claims to have been violated by the decision he is challenging before the Court, even though he is obliged by Article 48 of the Law on the Constitutional Court to clarify it.
20. He claimed that Judgment CI. No. 307/2006, dated 12 February 2007, of the Municipal Court in Prishtina, rejecting his claim submitted with the Court for his reinstatement to his post with KEK, was illegal.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.
22. 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."

The Court also takes into account:

Article 46 of the Law on the Constitutional Court of the Republic of Kosovo, which refers to individual Referrals, stipulating that:

"The Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitution, if it determines that all legal requirements have been met."

23. By analyzing the documents of the case submitted by the Applicant, it appears that the last Judgment of the Municipal Court in Prishtina was issued on 12 February 2007 and according to his personal allegations, he received that Judgment on 10 April 2007.
24. Always considering time limits, the Court notices that the Applicant has requested the constitutional review of the act of the **public authority** (Judgment of the Municipal Court in Prishtina, of 12 February 2007, received by the party on 10 April 2007) which relates to a period prior to the entry into force of the Constitution of the Republic of Kosovo (15 June 2008), so, the Constitutional Court cannot assess the constitutionality of the juridical acts which have allegedly violated any constitutionally guaranteed right, since those rights have neither been determined nor guaranteed by the Constitution since the Constitution itself did not exist, **therefore, I conclude that the referral is inadmissible *ratione temporis* in relation to the Constitution** (see *Blečić vs. Croatia*, Application No. 59532/00, ECHR Judgment of 29 July 2004), whereby the ECHR had declared that Application as inadmissible because the provisions of the European Convention on Human Rights do not oblige the contracting parties on any act that has been issued or a juridical situation that has seized existing **prior to the entry into force of the Convention**.
25. The European Court used such reasoning when it declared **Jasiúnienė v. Lithuania** as inadmissible (see *mutatis mutandis Jasiúnienė v. Lithuania*, Application No. 41510/98, ECHR Judgments of 6 March and 6 June 2003).
26. Even if the Referral related to an issue dating after the entry into force of the Constitution, it would nonetheless not fulfill admissibility requirements set forth by Article 113.7 of the Constitution since its Applicant had not exhausted all legal remedies available to him before addressing the Constitutional Court because he had provided only Judgment **CI. No. 307/2006**, dated 12 February 2007, of the Municipal Court in Prishtina, as material evidence and he had not provided evidence on the use of other legal remedies of appeal.
27. Under these circumstances, the Applicant has not fulfilled admissibility requirements, and:

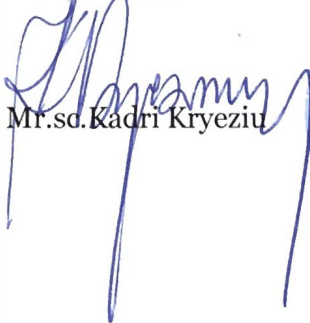
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, article 49 of the Law on the Constitutional Court, and Rule 36.3(h) of the Rules of Procedure, in the session held on 15 May 2011, unanimously

DECIDES

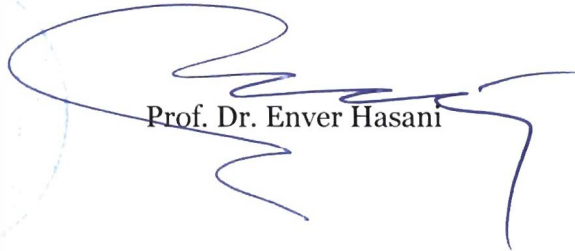
- I. TO REJECT the Referral as inadmissible because the Referral is incompatible *ratione temporis* with the Constitution.
- II. This Decision shall be notified to the parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court.
- III. This Decision is effective immediately.

Judge Rapporteur



Mr. sc. Kadri Kryeziu

President of the Constitutional Court



Prof. Dr. Enver Hasani