



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

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Prishtina, 20 January 2011  
Ref. No.: RK 82/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 36/09**

Applicant

**Ruhan Berisha**

**Constitutional Review of Non-execution of the Judgment of the Municipal Court  
in Gjilan C.nr 388/05**

### **CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of :

Enver Hasani, President  
Kadri Kryeziu, Vice-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge  
Iliriana Islami, Judge

#### **Applicant**

1. Applicant is Mr. Ruhan Berisha from Gjilan.

### **Challenged Decision**

2. The Applicant complains on the non-execution of the Judgment of the Municipal Court of Gjilan, dated 20 October 2005.

### **Subject Matter**

3. Subject matter for review in the Constitutional Court is the non-execution of the final Judgment of the Municipal Court of Gjilan C.nr.388/05 dated 20 October 2005, which upholds the claim-suit of Mr. Berisha in its entirety, and obliges the Consortium "Iliria" from Gjilan to repay to the plaintiff the amount as per item II of the Judgment.

### **Legal Basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution); Article 20 of the Law 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law); and Article 54 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

### **Proceedings before the Court**

5. The Applicant has submitted a referral in the Constitutional Court on 3 September 2009.
6. On 5 February 2010, the Constitutional Court issued a notification on the registration of the case to the Kosovo Privatization Agency, with the request for a reply in accordance with Article 22.2 of the Law on the Constitutional Court of Kosovo, and never received any reply to the request.
7. On 15 June 2010, after the review of the report of Judge Rapporteur, Iliriana Islami the Review Panel, composed of Judges Robert Carolan, Snezhana Botusharova and Ivan Čukalović, presented its recommendations to the full court to reject the case as inadmissible .

### **Summary of the facts**

8. On 15 February 2002 Mr. Ruhan Berisha, jointer of assets, signed a contract to join for the construction of the Commercial-Residential Building "ILIRI-5/1" with the consortium "Iliria - 5/1", represented by; "Textile Combine INTEGJ and NHIN MORAVA E BINQES" as executors of investments, with the conditions specified in the contract, with the aim of acquiring ownership rights of the flat in Block I, Entry II, first floor, apartment No. 23, with a total surface area of 64,21 m<sup>2</sup> envisaged to be part of the to-be-built building.
9. The contract was validated in the Municipal Court of Gjilan on 19 February 2002, under the number VR.nr.357/02
10. According to the contract, construction works should be completed 18 months from the day the contract was signed, the latest.
11. After having paid two installments in a timely manner in line with the contract, Mr. Berisha was informed that the building will not be constructed. Discontent with the situation, on 13 May 2005, he filed a lawsuit in the Special Chamber of the Supreme Court of Kosovo, requesting compensation in the amount of 27,611.00 €

12. On 9 June 2005, with the Decision SCC-05-0148, the Special Chamber of the Supreme Court of Kosovo referred the case to the Municipal Court in Gjilan, as the competent court.
13. The Municipal Court in Gjilan, in its Judgment of 20 October 2005, upheld the Claim-suit of the Plaintiff, Mr. Ruhan Berisha, in its entirety, and declared the contract on the jointer of assets for the construction of the commercial-residential building "Iliria 5/1" as null and void, and obliged the Respondent, Consortium Iliria, to pay to the plaintiff the amount of 27.611€ and compensation of litigation expenses in the amount of 151€.
14. On 15 March 2006 the Decision of the Municipal Court became final and executable.
15. The Decision E.nr.249/06 of the Municipal Court in Gjilan rejected the objection of the debtor, Consortium "Iliria", filed against the Decision of the Court to allow the execution.
16. The textile Combine from Gjilan, namely the debtor, was liquidated on 1 December 2006.
17. Ruhan Berisha completed and filed the form in PAK, but received no response.
18. After this, the Plaintiff, Mr. Berisha, no longer addresses the Special Chamber, although the Decision of the Municipal Court involves the Consortium "Iliria", liquidated in 2006.

#### **Applicant's Allegations**

19. The Applicant, in his request, doesn't clearly specify which constitutional rights have been violated, and requests the execution of the Judgment of the Municipal Court in Gjilan.

#### **Assessment of the admissibility of the referral**

20. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution. In this relation, the Court makes reference to Article 113.7 of the Constitution, which provides 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*

Article 48 of the Law, which provides that:

*"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

21. Based on the documentation presented for the case, the court finds that following the Judgment taken by the Municipal Court in Gjilan (Judgment C.nr.388/05), the Applicant, aware that his debtor ILIRIA Consortium, respectively its representative, has underwent liquidation did not submit the matter to the Special Chamber of the Supreme Court, which, based on the UNMIK Regulation 2002/13, has jurisdiction to decide, taking into consideration that Mr. Berisha already possessed a Municipal Court Judgment which was not executed, while ILIRIA Consortium, and its respective components, was administered by the Kosovo Trust Agency.

22. The court also points out in this case that the domestic legislation, particularly the abovementioned regulation on the Special Chamber of the Supreme Court, provides for the jurisdiction for settlement of property disputes for claimants who sue companies under the administration of the KTA. Article 9.7 of this regulation expressly stipulates that "The decision in relation to a claim pursuant to Article 4 or settlement of a claim pursuant to Article 4.3 is final and binding for parties and should be executed by the adequate bodies in line with the applicable law.
23. Considering the above, the court holds that the applicant should have submitted the matter to the Special Chamber of the Supreme Court before filing a referral to the Constitutional Court.
24. The court would like to emphasize, that the rationale behind the rule of exhaustion of legal remedies is to offer the respective authorities, including courts, the possibility to prevent or remedy the alleged violation of the Constitution. This rule is based in the presumption that the legal order in Kosovo will ensure effective legal remedy against violations of constitutional rights (see, mutatis mutandis, ECtHR, Selmouni v. France No. 25803/94, Decision of 28 July 1999).
25. The Court also maintains that, a mere presumption in relation to the perspective of the case is insufficient to exclude an applicant from his/her duty to complain before the national competent authorities (see Whiteside v the United Kingdom, Decision of 7 March 1994, Application No. 20357/92, DR 76, p.80).
26. The applicant did not clarify the referral and failed to justify as far as procedural and substantive aspects are concerned in order to prove that such a constitutional right was violated.

### **FOR THESE REASONS**

The Court, after reviewing all facts and evidences provided, and reviewing the issue of June 15, 2010, concluded that the Applicant HAS NOT exhausted all legal remedies available, and unanimously,

### **DECIDES**

- I. TO REJECT the referral as inadmissible;

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.

This Decision is effective immediately.

**Judge Rapporteur**

Iliriana Islami

**President of the Constitutional Court**

Prof. Dr. Enver Hasani