



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

Pristine, 1 December 2011
Ref.No.:RK 154/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI. 48/10

Applicant

Naser Rexhepi

**Constitutional Review of the Decision of the Commercial District Court VI.C.
no. 54/2003, dated 15 April 2003;**

and

**Decisions' of the Supreme Court of Kosovo Ac. no. 39/2003, dated 19 June
2003 and Rev.E no. 11/2003, dated 18 May 2004.**

CONSTITUTIONAL COURT OF REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The applicant is Mr. Naser Rexhepi from the village of Korretica e Ulët, Municipality of Drenas, represented by Imer Ibriqaj, a practicing lawyer from Komoran.

Challenged decisions

1. Challenged decisions with the Constitutional Court are:
 - a. Resolution VI.C.No 54/2003, dated 15 April 2003 - District Commercial Court;
 - b. Resolution Ac.No 39/2003, dated 19 June 2003 - Supreme Court of Kosovo;and
 - c. Resolution Rev.E No 11/2003, dated 18 May 2004 - Supreme Court of Kosovo.

Subject matter

2. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 30 June 2010 is the review of the constitutionality and legality of the decisions of the District Commercial Court – Resolution VI.C. No. 54/2003, dated 15 April 2003, the Resolution of the Supreme Court of Kosovo – Ac. No. 39/2003, dated 19 June 2003, and the Resolution of the Supreme Court of Kosovo Rev.E No 11/2003, dated 18 May 2004.

Legal basis

3. Article 113.7 in conjunction with Article 21.4 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 16 December 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”).

Proceedings before the Court

4. The Applicant submitted his Referral with the Constitutional Court on 25 June 2010.
5. On 30 June 2010, the Applicant submitted an “Act of Permanent Representation” (Power of Attorney) certified with the Municipal Court of Glogovc for his legal representative in the form of the additional document.
6. On 26 August 2010, the Constitutional Court sent a notification letter, Ref. No. DRLSA-1262/10 mb, to the Supreme Court of Kosovo regarding the Applicant’s Referral, and requested a written reply, but within the legal time limit the Constitutional Court did not receive any reply.
7. On 16 December 2010, after considering the report of the Judge Rapporteur Ivan Čukalović, the Review Panel composed of Judges Robert Carolan (Presiding) and Prof. Dr. Enver Hasani and Dr. Iliriana Islami, members of the panel, on the same day made its recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. According to the allegations of the Applicant, Mr. Naser Rexhepi, NTP (Commercial Enterprise) Fer Treg, seated in Drenas (Glogovc), whose owner he is, supplied Kosovo Protection Corps (hereinafter referred to as: the “KPC”) with fuel from 7 July 1999 until 1 June 2000 and he supports this with the copy of the report of the First Protection Zone of the KPC in Skenderaj, prot. No. 106/00, dated 5 July 2000, which bears the stamp and is signed by the Commander of the Zone, Major General Sami Lushtaku, sent to the KPC General Headquarters, in which it was specified that this zone was supplied with fuel in the total amount of DEM 80,763.44 or converted into Euros 41,293. Naser Rexhepi claims he has not received this amount and that KPC owes it to him.

9. By Resolution E, No. 100/2002, dated 7.10.2002, on allowing the execution, the District Commercial Court allowed the execution according to which the KPC, in the capacity of the respondent, was to pay to the plaintiff, NTP Fer Treg, owned by Naser Rexhepi, the amount of €41,293.89 in the name of the debt within 8 days.
10. On 15 April 2003, the District Commercial Court, acting upon the rejection of the KPC, issued the Resolution VLC. No. 54/2003 annulling its previous decision E, No. 100/2002, dated 7 October 2002, and considered the proposal on allowing the execution as a claim, whereas in item 2 (two) of this Resolution, it rejected the claim of NTP Fer Treg, owned by Naser Rexhepi, as inadmissible.
11. On 19 June 2003, the Supreme Court of Kosovo, by Resolution Ac. No. 39/2003, rejected plaintiff's appeal as ungrounded and left in force the Resolution of the District Commercial Court in Prishtina, VL.C No. 54/2003, dated 15 April 2003.
12. The plaintiff, NTP Fer Treg, owned by Naser Rexhepi, submitted a revision with the Supreme Court and this court, through the Resolution Rev. No.11/2003, rejected plaintiff's revision by confirming the Resolution of the Supreme Court Ac, No. 39/2003, dated 19 June 2003.
13. The same plaintiff filed another claim with the District Commercial Court on the same issue, but this time it was against: 1. KPC, 2. Lieutenant-General Agim Çeku, and 3. the Department of Justice, seated in Prishtina, and this claim against the first respondent was rejected as an adjudicated matter, whereas for the other two respondents it was rejected as inadmissible through the Resolution III, C. No. 213/2005, dated 27 October 2005.
14. Acting upon plaintiff's appeal, the Supreme Court of Kosovo rejected plaintiff's appeal by Resolution Ac. No. 94/2005, dated 14.12.2005, for the first part of the enacting clause of the Resolution of the District Commercial Court – respectively for the issue of debt regarding KPC, whereas the part regarding the third respondent has been amended, and the case was sent to the Municipal Court in Prishtina as a competent court.
15. Finally, unsatisfied with abovementioned Judgments, on 26 June 2010, Mr. Naser Rexhepi, submitted a Referral with the Constitutional Court of Republic of Kosovo.

Applicant's allegations

16. The Applicant through his representative alleged that the said court decisions have violated his rights guaranteed by the Constitution, such as: Article 10 [Market Economy], Article 22, items 1, 2, 7, 23, 24, 25, 26, Article 31 [Right to a Fair Trial], Article 36 [Right to Privacy], Article 49 [Right to Work and Exercise Profession], etc.
17. The applicant also claimed that by Resolution E, No. 100/2002, dated 7 October 2002, on allowing the execution, the District Commercial Court allowed the execution according to which the KPC, in the capacity of the respondent, was supposed to pay to him, as the plaintiff, the amount of €41,293.89 in the name of the debt within 8 days. Afterwards, by the Resolution of the same Court, VI. C. No. 54/2003, dated 15.04.2003, issued upon the rejection of the KPC, according to the Applicant the first Resolution, which was in favor of the Applicant, was unlawfully quashed and the plaintiff's claim was rejected as inadmissible. The Supreme Court of Kosovo, by Resolution Ac. No. 39/2003, dated 19 June 2003, and Resolution Rev. E No 11/2003, dated 18 May 2004, rejected the appeal, respectively the revision against the Resolution for the annulment of the Resolution E. No. 100/2002, dated 7 October 2002, which was in favor of the Applicant.

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate on the Applicant's Referral, the Court initially refers to Article 113.7 in conjunction with Article 21.4 of the Constitution which read:

*"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*

"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

19. The Court also takes into consideration:

Article 46 of the Law on the Constitutional Court of the Republic of Kosovo concerning individual Referrals, which stipulates:

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

20. By analyzing the documents of the case file submitted by the Applicant, it is established that the last Resolution regarding his case was rendered by the court on 14 December 2005, whereas the party has received it on 15 February 2006.
21. Always considering the time limits, the Court notes that the applicant has requested the review of the constitutionality of the acts of **public authorities** (the last Resolution of the Supreme Court of Kosovo Ac.No.94/2005, dated 14 December 2005) which date from a time period before the entry into force of the Constitution of the Republic of Kosovo (15 June 2008), the Constitutional Court thus cannot review the constitutionality of the juridical acts which have allegedly violated any constitutionally guaranteed right, because at that time, those rights have neither been determined nor guaranteed by the Constitution since the Constitution itself did not exist, **I therefore conclude that the referral is *ratione temporis* inadmissible** in relation to the Constitution. (see *Blečić v. Croatia*, Application No. 59532/00, ECHR Judgment of 29 July 2004 where the ECHR had declared inadmissible that Application 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**).
22. The European Court had used such reasoning when it declared inadmissible **Jasiiniene vs. Lithuania** (see *mutatis mutandis Jasiiniene vs. Lithuania*, Application no. 41510/98, ECHR Judgments of 6 March and 6 June 2003).
23. Under these circumstances, the Court considers that the Applicant has not met the admissibility requirements. and it therefore:

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36.3 (h) of the Rules of Procedure, on the session of 16 December 2010, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible because it is *ratione temporis* incompatible with the Constitution.
- II. The 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 Constitutional Court.
- III. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

