



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

Pristine, 14 February 2012
Ref. No.: RK191/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 64/11

Applicant

Feti Gashi

**Constitutional Review of the Judgment to the Supreme Court of Kosovo,
Rev.Nr.184/2008 dated 27 January 2009**

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 Feti Gashi from the village of Mramor, Hajvali.

Challenged decision

2. The Applicant challenges the decision of the Supreme Court of Kosovo Rev.Nr.184/2008 dated 27 January 2009, claiming that his right to work under Article 49 of the Constitution had been violated.
3. On 19 December 2009, the Applicant submitted an earlier referral to the Court on the same subject matter. This referral was registered under no. KI 74/09.

Legal Basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

5. On 15 December 2010, after having considered the Report of the Judge Rapporteur and the proposal of Review Panel in the Referral registered under no. KI 74/09, the Court found that the Referral was inadmissible, because it was not filed within the four month time limit pursuant to Article 49 of the Law.
6. On 12 May 2011, the Applicant submitted to the Court a second Referral registered under no. KI 64/11.
7. On 17 August 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.
8. On 18 January 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. The Applicant had an employment contract with KEK which was terminated on 24 April 2006. In fact, the KEK Disciplinary Commission issued a decision finding that the Applicant had violated his employment duties.
10. In June 2006, in an attempt to protect his interests and rights which were allegedly violated, the Applicant instituted judicial proceedings at the Municipal Court of Lipjan, then also at the District Court in Pristina and the Supreme Court.
11. In fact, on 27 January 2009, the Supreme Court (Rev.Nr.184/2008) quashed the Judgements of the District and Municipal Courts, thereby upholding the dismissal of the Applicant from employment with KEK. The Supreme Court found that the courts wrongly applied the material law when they deemed the Applicant's claim as grounded.
12. On 16 March 2009, the Applicant wrote a letter to the President of the Assembly of EULEX Judges, requesting an amendment to the judgement of the Supreme Court. The Applicant claims that he has never received a reply from EULEX.

Assessment of admissibility

13. On 19 December 2009, the Applicant filed with the Court the Referral 74/09. As mentioned above, he wrote the letter to the President of the Assembly of EULEX Judges on 16 March 2009. Thus, the letter to the President of the Assembly of EULEX Judges was delivered before having filed with the Court the Referral 74/09.
14. Even though that letter has not been mentioned in the earlier Referral 74/09, the second Referral 64/11 is exclusively based on that letter which is presented by the Applicant as a new fact brought to the case.
15. The Applicant considers that his earlier Referral registered under No 74/09 was submitted in time by virtue of his letter sent to the President of the Assembly of EULEX Judges on 16 March 2009 and because he is still waiting for a reply from EULEX.
16. In relation to the admissibility requirements, the Court refers to Rule 36 (3) (e) of the Rules, which states that a referral may be found inadmissible if *“the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new decision.”*
17. In applying that Rule to this case, it is relevant to consider whether the Applicant’s Referral provides *“sufficient grounds for a new decision”*.
18. The Court recalls that the Applicant claims that his letter to the President of the Assembly of EULEX Judges is a new fact for the purpose of a new decision, as it allegedly shows that the case is yet to be finalised.
19. The Court notes that the Applicant’s request to the President of the Assembly of EULEX Judges is based on Article 6, in conjunction with Article 5(6), of the Law on Jurisdiction, Case Selection and Case Allocation to EULEX Judges and Prosecutors in Kosovo.
20. Article 6 (Provisions concerning the EULEX Property Rights Coordinator in Kosovo) of the aforementioned Law provides:
“6.1 The EULEX Property Rights Coordinator in Kosovo will assist in coordinating property rights issues, including claims resolution, between different in this subject matter including, but not limited to the Kosovo Property Agency, the Kosovo Property Claims Commission, the Kosovo Trust Agency, the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, ordinary courts, or the Kosovo Police Service.
6.2 All actors dealing with property rights issues, including claims resolution in Kosovo will be obliged to supply the EULEX Property Rights Coordinator free of charge with any information requested of them. The EULEX Property Rights Coordinator will have access to all the elements required for implementation of its mandate.”
21. Article 5 (6) of the same Law reads as follows:
“5.6 In the performance of their function to monitor, mentor and advise, EULEX judges will have the authority to request in written form information about the status of any ongoing or closed civil case falling under the jurisdiction or competence of any court of Kosovo. EULEX judges will be entitled to receive free copies of the documents pertaining to any dispute or civil proceeding falling under the jurisdiction or competence of any of the courts of Kosovo.”

22. The Applicant has not received a reply to his request to EULEX and he is not certain whether his request was registered as a case pending before EULEX.
23. On the other side, the Court also refers to Article 113 (7) of the Constitution which establishes 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*”. It appears that the Judgment of the Supreme Court (Rev.Nr.184/2008), dated of 27 January 2009, is final and binding (*res judicata*). Thus, except for its execution, no other legal remedies are effective and available against its validity.
24. Moreover, the letter sent by the Applicant to the President of the Assembly of EULEX Judges is not a legal remedy provided by law and it does not have the potential to affect the Judgment of the Supreme Court.
25. Furthermore, in accordance with the European Court jurisprudence, applicants are only obliged to exhaust domestic remedies that are available in theory and in practice at the relevant time, that is to say, that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (Judgment of the European Court of Human Rights Grand Chamber in the *Case Sejdic v. Italy*, Application no. 56581/00 of 1 March 2006 para.46).
26. The letter sent by the Applicant to the President of the Assembly of EULEX Judges is therefore incapable of providing the redress sought by the Applicant and does not offer any prospect of success in effectively obtaining a favourable change of the judgment of the Supreme Court.
27. Thus, the Court concludes that the Referral registered under No 64/11 does not provide sufficient grounds for a new decision pursuant to Rule 36 (3) (e) of the Rules.
28. Therefore, the Court maintains the conclusion on inadmissibility reached in the Resolution made in the Referral 74/09, because it was and it still is out of time, pursuant to Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 (3) (e) of the Rules, 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; and
- III. This Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

