



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 3 March 2011. god.
Ref. No.: RK 81/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 74/09

Applicant

Feti (Hamëz) Gashi

**Constitutional Review of Judgment Rev. No. 184/2008 dated 27 January 2009
of the Supreme Court of the Republic of Kosovo**

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 (Hamëz) Gashi residing in Mramur, Hajvali.

Challenged Decision

2. The Applicant challenges Judgement Rev. No. 184/2008 dated 27 January 2009 of the Supreme Court of the Republic of Kosovo.

Subject Matter

3. The Applicant alleges that his right to work protected by the Constitution, has been violated by the Judgement of the Supreme Court of the Republic of Kosovo and Decision of Kosovo Energy Corporation (KEK).

Legal Basis

4. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law) and Section 54 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: Rules of Procedure).

Proceedings before the Court

5. On 19 December 2009 the Applicant filed a Referral with the Constitutional Court.
6. In response to the notification of the Referral sent to the Supreme Court and the Legal Office of KEK, the Constitutional Court has not received any substantial comments.
7. On 15 December 2010, after having considered the Report of the Judge Rapporteur Snezhana Botusharova, the Review Panel, composed of Judges Altay Surroy (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. The Applicant was employed by the Kosovo Energy Corporation (KEK) as an electro installer in Pristina. Disciplinary action was taken by KEK against the Applicant arising from the unauthorized taking of an electrical transformer, the property of KEK.
9. In his defence, the Applicant denied having taken the transformer without permission and argued that the work carried out was outside of the working schedule and with the consent of KEK officials.
10. On 28 April 2006, KEK Disciplinary Commission issued a Decision and found the Applicant had violated his employment duties and consequently terminated his employment contract.
11. The Applicant challenged Decision of KEK Disciplinary Commission to the Municipal Court of Pristina. On 24 November 2006 the Municipal Court issued a Judgment (Cl. Br. 166/2006) and ordered that the Applicant be returned to work.
12. The Judgment of the Municipal Court was appealed by KEK to the District Court of Pristina which through its Judgment AC. nr. 173/2006, dated 06 June 2007 rejected the Appeal of KEK and upheld the Judgement of the Municipal Court.
13. KEK challenged this Judgment to the Supreme Court of Kosovo which through its Judgment, Rev. Nr. 184/2008, dated 27 January 2009, upheld the revision of KEK and quashed the Judgments of the District Court and Municipal Court thereby upholding the

dismissal of the Applicant from employment with KEK. The Supreme Court found that the Municipal Court wrongly applied the material law when it found Applicant's suit well founded.

14. Following the Judgement of the Supreme Court, on 11 March 2009 KEK terminated the employment contract of the Applicant because "of the approval of the extraordinary legal remedy – revision of the defendant KEK by the Supreme Court".

Assessment of the admissibility of the Referral

15. 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 as further specified in the Law and the Rules of Procedure.
16. As to the Applicant's Referral, the Court refers to Article 49 of the Law, which reads as follows:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced.

17. From the submitted documents, it appears that the Referral has not been filed within the time limit pursuant to Article 49 of the Law.
18. The Court notes that final decision, i.e. the judgement of the Supreme Court was taken on 27 January 2009 and was implemented by KEK on 11 March 2009. The Court also notes that the Applicant filed the Referral with the Secretariat of the Constitutional Court on 19 December 2009.
19. The Court, therefore, concludes that the Referral must be rejected as inadmissible, pursuant to Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, 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.

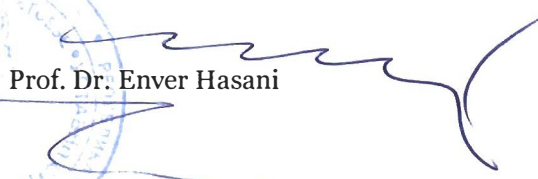
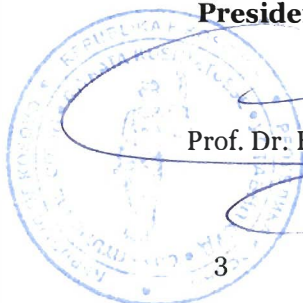
This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani