



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

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Pristina, 14 February 2013  
Ref. No.:RK381/13

## **RESOLUTION ON INADMISSIBILITY**

**Case No. KI24/11**

Applicant

**Ali Buzhala**

**Constitutional Review of the Judgment of District Court of Prizren  
Ac.nr. 593/2010, dated 20 January 2011**

composed of

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge

### **The Referral**

1. The Referral was submitted by Ali Buzhala from the village of Budakova in the Municipality of Suhareka (the Applicant). In the proceedings before the Court, the Applicant is represented by Gafurr Elshani, a practising lawyer from Pristina.

2. The Applicant challenges the Judgment of the District Court of Prizren Ac.nr. 593/2010, dated 20 January 2011, by which his appeal in the legal executive matter regarding the execution of a decision of the Independent Oversight Board (IOB) was rejected as ungrounded.
3. The Applicant claims that there has been a violation of Article 49 item 1 [Right to Work] of the Constitution of the Republic of Kosovo (hereinafter the "Constitution"), Article 31 [Right to a fair and unbiased trial] of the Constitution and Article 6 in conjunction with Article 13 of the European Convention on Human Rights.
4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (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 24 February 2011, the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").
6. On 02 March 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (presiding), Enver Hasani and Gjyljeta Mushkolaj.
7. On 24 August 2011, the District Court in Prizren replied furnishing the Court with some documents, all of them already attached to the Referral.
8. On 9 November 2011, the Court notified the IOB with the referral.
9. On 23 November 2011, the IOB responded to the Court, pointing out the procedural and background facts, and furnishing the Court with some documents which were also already attached to the Referral.
10. On 9 December 2011, the Court requested additional information from the Applicant's representative on a "lawsuit filed at the Supreme Court of Kosovo no. 193/7, dated 08.06.2010". On 1 February 2012, the Court requested the Applicant to "provide the Constitutional Court with a copy of the petition and any other court documentation in relation to the Supreme Court proceedings".
11. On 11 May 2012, the Court requested the Supreme Court to inform on the status of the Supreme Court proceedings in the case No. 193/07.
12. On 30 May 2012, the Supreme Court informed that "according to the records of this Court it doesn't indicate that Mr. Buzhala has a case in this Court with the number no.139/07".

13. On 4 July 2012, IOB responded for the second time to the Court and provided the Court with documents which were already attached in its first response.
14. On 4 July 2012, Ministry of Agriculture, Forestry and Rural Development – Kosovo Forest Agency, sent to the Constitutional Court the entire case file concerning Mr. Ali Buzhala dispute.
15. On 15 July 2012, the President appointed Judge Snezhana Botusharova as a member of Review Panel, replacing Judge Gjyljeta Mushkolaj.
16. On 12 July 2012, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

### **The employment contract**

17. On 19 November 2008, the Applicant commenced a working relationship at the Ministry of Agriculture, Forestry and Rural Development (hereafter, the “MAFRD”) as the Director of the Coordination Directorate Prizren. His employment contract was valid for one year, i.e. until 19 November 2009.
18. On 11 June 2009, the MAFRD (decision KE-344/09) due to “severe violation of duties and legal provisions” suspended the Applicant “with pay, (...) until a further decision is reached by the Ministry of Agriculture, Forestry and Rural Development”.
19. On 18 June 2009, the Applicant appealed that decision (KE-344/09, dated 11.06. 2009) to the Chief Executive Officer of MAFR, arguing “the incomplete and wrongful establishment of the actual situation and facts and violation of material provisions” and proposing to “annul the Decision appealed against”.
20. On 21 August 2009, the Applicant filed an appeal (no 02 178/2009) with IOB opposing the decision on suspension and claiming that the decision is arbitrary, drastic and taken contrary to the law.

### **Administrative proceedings decisions**

21. On 8 September 2009, the IOB issued a decision (A 02/178/2009) obliging the MAFRD to start disciplinary proceedings against the Applicant as stated in the Decision on Suspension KE-344/09, of 11 June 2009.
22. On 13 October 2009, the Applicant submitted a new appeal (no.02 216/09) to IOB against the Decision (no. ref.KE-344/09, dated 11.06.2009) on suspension from work.
23. On 4 December 2009, the IOB approved (decision A.02(216)2009) the Applicant's appeal "annulling the Decision of the Employing Agency nr. KE-344/09, dated 11.06.2009" and "obliging the Employing Agency to enable the return of the complainant to his job and his ability to enjoy all rights derived from such working relations, within 15 days starting from the date when the decision was received".
24. Meanwhile, on 30 November 2009, the Disciplinary Committee of the MAFRD issued a decision (No 1541/09) declaring the Applicant guilty and imposing the disciplinary measure of termination of employment on the Applicant.
25. On 22 December 2009, the Applicant appealed the decision of the Disciplinary Committee to the Appeals Committee of MAFRD.
26. On 28 April 2010 and again on 04 November 2010, the Applicant further appealed to the IOB, since the MAFRD did not execute the IOB decision on return to his job.
27. On 30 April 2010, the IOB informed the Applicant that they had notified the Assembly of the Republic of Kosovo about the IOB decision not being executed and instructed the Applicant to refer to court procedures for the execution of its decision.

### **Proceedings in the Municipal Court of Prizren**

28. On 06 May 2010, the Applicant filed a request to the Municipal Court of Prizren for the execution of the IOB decision.
29. On 21 May 2010, the Municipal Court of Prizren took a decision allowing the requested execution.
30. On 16 July 2010, the MAFRD made opposition "against Court Resolution E.nr.942/10 of the Municipal Court of Prizren, dated 21 May 2010".

31. On 27 July 2010, the Applicant replied to the opposition of MAFRD, proposing that “the Court reject the defendant’s opposition as ungrounded and leave the executive decision.”
32. On 02 September 2010, the Municipal Court of Prizren (E.nr.942/2010) made a decision “approving as grounded the opposition made by the defendant, the Ministry of Agriculture, Forestry and Rural Development, the Kosovo Forest Agency in Pristina, the Coordinating Directorate in Prizren, against this court’s Resolution allowing the execution of Resolution E.nr.942/10, dated 21 May 2010” and “suspending the procedure regarding this legal matter and the Court’s Resolution granting the execution of Resolution E.nr.942/10, dated 21 May 2010, as well as all other procedural measures undertaken in this legal matter so far”.

#### **Proceedings in the District Court of Prizren**

33. On 18 October 2010, the Applicant appealed the decision of the Municipal Court to the District Court of Prizren, “because of the wrongful establishment of the factual situation and because of the wrong application of material law”.
34. On 20 January 2011, the District Court of Prizren delivered a decision “rejecting as ungrounded the appeal made by the complainant, Ali Buzhala (...) and verifying the Resolution issued by the Municipal Court of Prizren E.nr.492/2010, dated 02 September 2010”.
35. On 04 February 2011, the Applicant made a request to the Public Prosecutor of Kosovo for the protection of legality against the executive resolutions of the Municipal Court of Prizren E.nr.942/10, dated 02 September 2010 and the second-degree executive resolution issued by the District Court of Prizren Ac.nr.593/2010, dated 20.01.2011.
36. On 09 February 2001, the Prosecutor’s Office “confirmed the inability to find the legal grounds for requesting the protection of legality (...)”.

#### **Pending case in the Supreme Court**

37. On 15 December 2011, the Applicant’s representative informed the Court that “the Supreme Court of Kosovo has not yet decided on the case no. 193/07”.
38. On 14 February 2012, the Applicant’s representative replied that “the case in the Supreme Court with the above mentioned number deals with issues and decisions that arose after the executive title”.

39. On 7 July 2012, the Forest Agency of Kosovo submitted to the Court a copy of its response to the case No. 193/7 dated 08 June 2010, where the Applicant is the plaintiff in the proceedings before the Supreme Court.
40. The submitted documentation indicate that the proceedings initiated by the Applicant before the Supreme Court are still pending.

### **Preliminary Assessment of Admissibility**

41. The admissibility requirements are laid down in the Constitution and further specified in the Law and the Rules of Procedure.
42. In that regard, the Court refers to Article 113.7 of the Constitution which provides:

*“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.”*

43. On the other side, Article 47 (2) of the Law also establishes that:

*The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*

44. Furthermore, Rule 36 (1) a) foresees that:

*The Court may only deal with Referrals if all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted.*

45. It appears in the case that the Applicant had failed to exhaust all legal remedies available to him, since the proceedings before the Supreme Court are still pending.
46. In fact, as mentioned above, the Applicant's lawyer on 15 December 2011 informed the Court that there is a Supreme Court proceeding still pending in relation to the Applicant's right to work matter.
47. Therefore, in the circumstances of a pending matter in the Supreme Court, the Constitutional Court is unable to proceed further to assess the admissibility of the Referral. It appears that his Referral is premature.

## Conclusion

48. Having said that, the Court finds that the Referral does not fulfill the requirements of Article 113 (7) of the Constitution, Article 47(2) of the Law and Rule 36 (1) (a) of the Rules, and as such is inadmissible.

## FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 (1) (a) of the Rules of the Procedure unanimously:

## DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Prof. Dr. Enver Hasani