



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 4 November 2013.
No. Ref.:RK488/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI64/13

Applicant

Fane Bytyqi

**Constitutional Review of the Decision of Kosovo Energy Corporation
(hereinafter: KEK) no. 192, of 19 November 2007**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Fane Bytyqi from Prishtina, (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the KEK decision no. 192, of 19 November 2007, because the challenged decision violates her fundamental rights, guaranteed by the Constitution and the European Convention on protection of human rights.

Subject matter

3. The subject matter of this Referral submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 25 April 2013, is the annulment of the KEK decision and the exemption from the obligation of payment of debt for the spent electrical energy.
4. Furthermore, the Applicant requests that the Court does not disclose her identity.

Legal basis

5. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), on Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009, (hereinafter „the Law“) and the Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: The Rules of Procedure).

Proceedings before the Court

6. On 25 April 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo and the same was registered under the number KI 64/13.
7. On 17 May 2013, the Court notified the Applicant and the Supreme Court of Kosovo on registration of the Referral.
8. By Decision of the President (no. GJR.64/13, of 29 April 2013) the Judge Ivan Čukalović was appointed as Judge Rapporteur. On the same day, the President by Decision (No.KSH.KI64/13), appointed the Review Panel composed of judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Artë Rama Hajrizi.
9. On 12 September 2013, 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

10. On 13 November 2007, KEK rendered a decision no.192, whereby ordering that the Applicant is disconnected from the supply electrical network because of non-payment of the electricity bills for the spent electrical energy for the period from 2003 until 2007.

11. On 05 December 2007, the Applicant filed a claim to the Municipal Court in Prishtina against KEK decision No. 192, of 13 November 2007, by which he requested that the KEK decision is annulled as unlawful.
12. On 27 June 2008, the Municipal Court rendered the Ruling [C.no.2842/2007], by which declared itself as incompetent court for deciding on this legal matter, therefore, pursuant to provisions of Articles 16, 17 and 21 of the Law on Contested Procedure (LCP) treated this matter as administrative conflict and forwarded the case file to the Supreme Court of Kosovo.
13. On an unspecified date, the Applicant filed an appeal to Ombudsperson, stating that the KEK decision no.192 violated her rights and, therefore, she requested the acceleration of the proceedings before the Supreme Court.
14. On 28 May 2010, Ombudsperson requested in written from the Supreme Court that the case of the Applicant to be treated with priority and to be decided in an expedited procedure.
15. On 30 June 2010, the Applicant withdrew the claim of 13 November 2007 against KEK.
16. On 02 July 2010, the Supreme Court rendered the Ruling [A.no.1229/2008], whereby the further proceedings on this legal matter was terminated, because the claimant (the Applicant), withdrew her claim voluntarily.
17. On 17 December 2010, the Ombudsperson rendered the decision on inadmissibility of the Applicant's appeal, because based on the examination of the case file, which was treated before the Supreme Court, it was found that the Applicant on 30 June 2010, voluntarily withdrew the claim in the Supreme Court.
18. Ombudsperson, in the decision on inadmissibility has concluded that: *„since the evidence which you have submitted do not show that there is a violation of human rights or misuse of authority, the Ombudsperson pursuant to Article 19 item 1.5 of the Law no.03/L-195, decided to terminate further investigations, taking into account that the case was solved in different way, according to your will. “*

Applicant's allegations

19. The Applicant alleges that she addressed several times KEK administration, requesting the annulment of her debt, which she has based on the spent electrical energy, but she doubts that her request has ever been reviewed.
20. The Applicant claims that for reconnection to KEK network, KEK insists that the Applicant pays her accumulated debt.
21. The Applicant further stated that based on these kinds of actions of the authorities, it is concluded that she is the victim of the violation of fundamental

rights, guaranteed by the Constitution of Kosovo and by European Convention on Human Rights.

22. The Applicant requests from the Constitutional Court:

- a) „To quash the KEK decision, no.192, of 13.11.2007, as unlawful;
- b) To be exempted from payment of the old debt;
- c) To continue to pay the bill only for the spent electrical energy“

Assessment of admissibility of the Referral

23. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

24. In this respect, the Court refers to Article 113.1 and Article 113.7 of the Constitution which provides that:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties. (...)

7. 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”.

Moreover, Article 47.2 of the Law provides that: *“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”*

25. Thus, the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right.

26. In the present case, the Applicant withdrew the claim in the Supreme Court and by doing so, she failed to take procedural steps in the regular court proceedings, which is regulated by law. It is more likely that the case will be declared inadmissible, since that action is understood as denying the right to further proceedings and denial of violation.

27. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (See, *mutatis mutandis*, ECHR, Selmouni v. France, No. 25803/94, Decision of 28 July 1999).

28. In this respect, the Court concludes that the Applicant has not exhausted all legal remedies, available under the applicable law, as it is provide by Article 113.7 of the Constitution and Article 47.2 of the Law.
29. As to the Applicant's request for not having his identity foreclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

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 Procedure, on 12 September 2013, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. TO REJECT his request not to have his identity foreclosed;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20(4) of the Law.
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani