



**Republika e Kosovës
Republika Kosova-Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court**

Pristina, 30 April 2010
Ref. no. RK 29/10

RESOLUTION ON INADMISSIBILITY

Case No. KI 01/09

Applicant

Ismet Bajrami

vs.

Respondent

NewCo Ferronikeli Complex L.L.C

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

The Applicant.

1. The Applicant is Ismet Bajrami, of Oshlan Village, Vustrri, Kosovo.

The Responding Party

2. The Responding Party is NewCo Ferronikeli Complex L.L.C. of 37, L.e. Pejes 4 str, 12000 Fushe Kosovo

Subject Matter of the Referral

3. The Applicant, who is unrepresented, submitted a Referral to the Constitutional Court on 9 February 2009 claiming an alleged violation of the right to work, arising from what he alleges was discriminatory practices of recruiting. In particular, the Applicant states that he was refused employment on the grounds that he "came from another Municipality".

The Facts

4. The Applicant was originally employed by a former socially owned enterprise, "Ferronikeli" in Gllagoc-Drenac. He was employed as a machinery mechanic with a title of Main Heavy Oil Storage Operator.
5. The Applicant commenced employment with "Ferronikeli" on 20 April 1984. Due to events surrounding unrest in Kosovo the Enterprise ceased operating in 1998 and the Applicant was therefore without work.
6. The Enterprise was subsequently privatized on 4 April 2006 and a new company was established, NewCo Ferronikeli Complex L.L.C., the Responding Party. The Responding party recruited 1,000 employees; however, the Applicant was not one of those recruited under the selection process carried out by the new management. 900 former employees were not selected for employment following the recruitment process.

Legal Basis for the Application

7. 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 Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Court

8. On 9 February 2009, the Applicant lodged a Referral with the provisional secretariat of the Constitutional Court. On 11 February 2009 the Court wrote to the Applicant acknowledging the receipt of the Referral and requesting the Applicant to call to the office of the Constitutional Court to complete a Referral Form. The completed Form was submitted to the Court on 4 December 2009.
9. The President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. A Review Panel consisting of Judges Altay Suroy, Chair, and Judges Gjylieta Mushkolaj and Almiro Rodrigues was established.
10. On 10 December 2009 The Court notified the Responding party of the making of the Referral and sent a copy of the Referral to it requesting a response. The Respondent replied on 15 December 2009. The response pointed out that the Applicant was one of 900 former employees of the ex- "Ferronikeli" company who were not employed in the recruitment process for the privatised company.
11. They pointed out in their Reply also that former employees not selected in the recruitment process were entitled to apply to the Kosovo Privatisation Agency for implementation of their employment rights. They denied that the Applicant was ever

employed or had any labour relations with the new company NewCo Ferronikeli Complex L.L.C.

12. The Applicant was sent a copy of the Respondent's reply on 5 February 2010 and he was requested to address the contentious aspects of his case raised by the Respondent. He was also requested to provide details of what measures he took to enforce his employment rights in any court or other tribunal.
13. The Applicant replied to the Court by letter on 10 February 2010. In his reply he pointed out that there were difficulties with providing certain documentation requested by the Court. He did not, however, give details of any steps that he had taken to pursue his grievances before any Court or administrative authority or that he had pursued any local remedies that might be available to him.

Assessment of the Admissibility of the Referral

14. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution. In this connection, 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."
15. The Court wishes to emphasise 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). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).
16. This Court applied this same reasoning when it issued a Decision on 27 January 2010 on inadmissibility on the grounds of non exhaustion of remedies in the case of AAB-RIINVEST University L.L.c., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41/09 and in the Decision of 23 March 2010 in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. KI 73/09.
17. Bearing this in mind it is clear from the documentation submitted that there is complete lack of evidence before the Court that the Applicant took any step to pursue his claim through the courts or any administrative authority that may be available to him. Therefore, he did not exhaust all legal remedies provided by law as required for him to be able to pursue a claim to the Constitutional Court.

FOR THESE REASONS

18. The Court after considering all the facts and the evidence tendered, and having deliberated on the matter on 30 April 2010 concludes that the Applicant has not exhausted all legal remedies available to him and

DECIDES UNANIMOUSLY

- 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 on the Constitutional Court.
- III. This Decision is effective immediately.

Judge Rapporteur

Snezhana Botusharova, signed.



President of the Constitutional Court

Prof. Dr. Enver Hasani, signed.