



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

Pristina, 12 May 2011
Ref. No.: 104/11

CLARIFICATION

of

JUDGMENT

in

Case No. KI 08/09

**The Independent Union of Workers of IMK Steel Factory in Ferizaj,
represented by Mr. Ali Azem, President of the Union.**

**Constitutional Review of the Decision of the Municipal Court of Ferizaj,
Decision C No. 340/2001, dated 11 January 2002**

Requested Clarification of the Judgment, dated 17 December 2010

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

Subject Matter

1. Request for clarification submitted by the Privatization Agency of Kosovo.

Legal basis

2. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Constitutional Court

3. On 31 March 2011, the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") held a session to assess and decide on the above request.

Facts

4. On 18 January 2011, the Constitutional Court of the Republic of Kosovo received a request for clarification from the Privatization Agency of Kosovo (hereinafter: "PAK"), containing two questions in respect of the Judgment of this Court in case KI-08/09 adopted on 17 December 2010, reading as follows:

"...

1. *Firstly, PAK requests clarification regarding the first part of item III of the enacting clause, as to which decision is qualified as final and binding – res judicata, specifying the number of the case and the date of issuance of the decision, which is the subject matter of this enacting clause.*
2. *Secondly, in the function of the implementation of this Judgment, PAK requests the clarification of what are the concrete obligations of PAK for the implementation of item III of the enacting clause, especially considering legal provisions of Regulation No. 2005/48 on the Reorganization and Liquidation of Enterprises under the Administrative Authority of PAK, as the legal successor of Kosovo Trust Agency.*

..."

Legal limits of assessing the Request

5. The answers to the above questions are given by the Court taking into account the legal basis abovementioned, together with the legitimacy, the pertinence and relevance of the request and the limits of the subject matter of the petitum which is at the basis of the judgment taken in the case.
6. Therefore, bearing in mind that the Court is bound by the limits of its judgment and is not legally authorized to go beyond those limits, the questions are clarified as follows hereafter.

Answer to the request

7. As to the first question which decision is qualified as final and binding – res judicata – which is the subject matter of clause III, the answer is that the decision concerned is referred to in the Judgment several times. Notwithstanding this, the decision concerned is: Decision of the Municipal Court of Ferizaj, C. No. 340/2001, dated 11 January 2002.
8. As to the second question which relates to the concrete obligations of PAK to implement clause III with respect to Regulation No. 2005/48 on the Reorganization and Liquidation of Enterprises under the Administrative Authority of PAK, the answer is that the

Judgment does not invalidate Law No. 02/L-123 on Business Organizations or any other Laws.

9. The case concerns the Municipal Court's *res judicata* decision that has still not been enforced after 9 years, whereas despite the *res judicata* decision, the Kosovo Trust Agency (KTA) privatized the debtor IMK. By failing for such a long period of time to enforce the judgment of 11 January 2002, the appropriate authorities have deprived the provisions of Article 31 of the Constitution and Articles 6 and 13 of the ECHR of all useful effect, as stipulated by the Judgment. Consequently, the Court held that the final and binding decision of the Municipal Court of Ferizaj must be executed.
10. Furthermore, according to the Law on PAK, it appears that PAK is the authority administering Socially Owned Enterprises and that PAK shall satisfy valid claims of Creditors relating to Socially Owned Enterprises from those monetary proceeds that have been derived from the administration, sale, transfer or liquidation of such Enterprises and/or such assets. Since these monetary proceeds are held in trust for the benefit of the relevant Creditors by PAK, PAK may be solely and completely responsible for implementing the Decision of the Municipal Court of Ferizaj, C.No. 340/2001, date 11 January 2002, depending on whether and how its predecessor, KTA, responded in the last nine years with respect to the judgment of the municipal court and following the applicable law.
11. On behalf of the Court which is responsible for interpreting the Constitution, but which is not the final authority for determining the legality of a statute, the Court cautions the responsible parties in case KI-08/09 to seek their own legal advice concerning the Government's and PAK's legal responsibility.

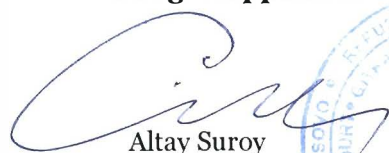
FOR THESE REASONS

THE COURT, on 12 May 2011, decides, unanimously, to clarify the requested questions as above.

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.

Judge Rapporteur

President of the Constitutional Court


Altay Suroy


Prof. Dr. Enver Hasani

