



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

Pristina, 15 October 2010
Ref. No.: RK 53 /10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 38/09

Radio Zëri i Sharrit

vs.

**Decision A.no. 2194/07 of the Supreme Court of Kosovo,
dated 12 February 2009**

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 a resident of the Republic of Kosovo.

Challenged Decision

2. The Applicant challenges decision A.no.2194/07 of 12 February 2009 of the Supreme Court of Kosovo, received by the Applicant on 20 April 2009.

Subject Matter

3. The Applicant alleges that the decision of the Supreme Court is in violation of fundamental rights and freedoms protected by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"): "human rights, the right to inform and be promptly informed, freedom of expression, the right to work and exercise profession, development and enhancement."¹
4. He further alleges that the Supreme Court...does not respond to him regarding his lawsuit, thereby making him feel "insulted, surprised and disappointed with this clear injustice committed by the judges of this institution."

Legal Basis

5. Article 113 (7) of the Constitution; Articles 47 (2), 48, and 49 of Law (No. 03/L-121) on the Constitutional Court of the Republic of Kosovo of 16 December 2008, , (hereinafter: "the Law"); and Sections 54 (b) and 69 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 15 September 2009, the Applicant submitted the Referral to the Court, requesting it to evaluate the constitutionality of the Supreme Court Decision A. nr. 2194/07.
7. On 14 April 2010, the Review Panel, consisting of Judges Kadri Kryeziu (Presiding), Enver Hasani and Iliriana Islami, considered the Report of the Judge Rapporteur Gjyljeta Mushkolaj and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

8. On 19 December 2000, the Independent Media Commission (hereinafter: the "IMC") issued to the Applicant a license to transmit and operate in the Municipalities of Kacanik and Ferizaj.
9. On 21 July 2005, the IMC and the Applicant agreed upon new terms regarding the functioning and the operation of the radio transmissions, modifying the license that was issued on 19 December 2000.
10. The Applicant began transmitting in the region that was determined in the license of 2005, but moved temporarily to another location, since he had problems with the location where he transmitted from. In particular, on 11 June 2005, the Applicant experienced severe and uncontrollable circumstances of force majeure. As a result, the Applicant moved temporarily to another location, which was outside the region determined in the license. According to the Applicant, the IMC was notified.
11. At the beginning of November 2006, it was brought to IMC's attention that the Applicant changed the location of the transmitter, thereby no longer transmitting from the location as obliged by the modified license of 2005. In particular, on 6 November 2006, the Frequency Management Division (hereinafter "the FMD") of the IMC noticed that the Applicant was transmitting from another location.

¹ The Applicant does not specify which Articles of the Constitution have been violated.

12. Furthermore, the FMD noticed that the geographic coordinates of the Applicant were significantly different from those specified in the license of 2005. Rather than complying with the frequency coordinates assigned in the license, the FMD established that the Applicant was using different frequency coordinates.
13. On 7 November 2006, after having identified these irregularities, the FMD sent a letter to the Applicant to clarify the change of location and of frequencies.
14. On 9 November 2006, the Applicant replied to the FMD stating that the Radio changed its location due to force majeure. and that the same area was covered in accordance with the license.
15. On 13 November 2006, the IMC sent a letter to the Applicant informing him that, regardless of the reasons provided by him, the Applicant's decision to change the location without a prior written request to IMC did not comply with the license of 2005. Furthermore, the IMC had required from the Applicant to relocate to Hani Elezit within five (5) days.
16. On 10 January 2007, the IMC sent a notification to the Applicant regarding the violation of the license of 2005.
17. On 2 March 2007, after a disagreement between the IMC and the Applicant regarding the change of location of the Radio, the IMC offered to sign an agreement that would satisfy both parties. The Applicant rejected such agreement.
18. As a result, the IMC concluded that the License had been violated, and decided to impose sanctions upon the Applicant. In addition, the Applicant was ordered to relocate the antennas and operate from the location as indicated in the license of 2005.
19. Since the Applicant did not agree with the sanctions imposed by the Media Appeals Board of the IMC, the latter confiscated the radio transmitter equipment from the Applicant on 5 June 2008.
20. On 3 July 2008, the Applicant filed a law suit against the IMC in the Municipal Court of Kacanik (C. Nr. 112/08), requesting the court to annul the decision of the IMC and to return radio transmitter equipments. However, the court rejected the Applicant's claim.
21. Thereupon the Applicant filed an appeal with the Supreme Court. On 12 February 2009, the Supreme Court decided that the law suit filed against the IMC and against the decision of the Media Appeals Board nr. 0707/0750/MAB/wb was inadmissible. The Supreme Court assessed that the procedures followed prior to the IMC's decision were in accordance with the rules of administrative procedure, that the facts were proven to be correct, and that the material law was correctly applied.
22. On 25 June 2009, the Assembly of Kosovo discussed and voted upon the IMC's 2008 annual report. The issue regarding the closing of the Radio was also discussed and brought up by several Assembly members. Considering the maintenance of the independent nature of the IMC, however, the Assembly determined that it could debate such issues and assess the situation only after the IMC itself had compiled a report with recommendations.
23. On 15 September 2009, the Applicant submitted the referral to the Court, arguing that Supreme Court decision A. nr. 2194/07 violated the following rights and

freedoms guaranteed and protected by the Constitution: "human rights; the right to inform and be promptly informed; freedom of expression; the right to work and exercise a profession; right to development and enhancement." The Applicant, however, does not specify which articles of the Constitution have been violated.

Applicant's allegations

24. The Applicant alleges that his Radio acted in accordance with the License of 2005 and that, in particular, Section 20 of the License of 2005, Altitude of Antenna Site, allowed him to erect the antennas up to 1100 m. According to the Applicant, the Radio's antennas were even at a lower altitude than the license allowed and, therefore, the IMC's decision to confiscate the transmitter equipment and interrupt the broadcasting violated the license as well as the applicable laws. He further alleges that, indeed, the IMC, in its decision dated 6 April 2007, pointed out that the altitude of the antenna's was mistakenly assigned, in particular, because such altitude would not be realistically granted anyway due to the fact that such it cannot even be found in Hani i Elezit and that the license explicitly defined the geographic coordinates of operation, only covering the territory of Hani i Elezit.
25. The Applicant further claims that he was harmed by the decision of the IMC and, as a result, asks for material compensation of 90,000.00 EUR (ninety-thousand Euros).

Assessment of the admissibility of the Referral

26. 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.
 27. In this connection, the Court refers to Article 49 (Deadlines) of the Law, stipulating that:

"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. ..."
 28. As to the present Referral, the Court notes, that the final decision of the Supreme Court of Kosovo, dated 12 February 2009, was served on the Applicant on 20 April 2009, whereas he only filed the Referral with the Court on 15 September 2009. It follows that the Referral has not been filed with the Court within the time limit, stipulated by Article 49 of the Law.
27. Accordingly, the Referral must be rejected as inadmissible

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law, and Section 54 (b) of the Rules of Procedure, unanimously,

DECIDES

- 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.
- III. This Decision is effective immediately.

Judge Rapporteur

Dr. Gyljeta Mushkolaj

President of the Constitutional Court

Prof. Dr. Enver Hasani