



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

Prishtina, 17 August 2011
Ref. No.: RK128/11

RESOLUTION ON INADMISSIBILITY

In

Case No. KI57-09

Applicant

Agron Vula

**Constitutional Review Decision of the Municipality of Gjakova not to implement
the Decision of the Independent Oversight Board, dated 25 February 2008**

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 Mr. Agron Vula, residing in Gjakova, who was originally unrepresented but who is now represented by Mr Taki Bokshi, a Lawyer, also from Gjakova.

Challenged Decision

2. Decision of the Municipality of Gjakova (hereinafter: the Municipality) not to implement the Decision of the Independent Oversight Board, dated 25 February 2008, served on the Respondent on 17 March 2008.

Subject Matter

3. On 21 October 2009 the Applicant filed a Referral with the Secretariat of the Constitutional Court (hereinafter: the "Court"), maintaining that the Decision of the Independent Oversight Board, dated 25 February 2009, had not been implemented by the Applicant's employer, the Municipality. The Decision of the Independent Oversight Board ordered the Municipality to review the case and adopt a merited decision.

Proceedings before the Constitutional Court

4. On 21 October 2009 the Applicant filed a Referral with the Secretariat of the Constitutional Court. He was then unrepresented. The Applicant is now represented by Teki Bokshi, a Lawyer, from Gjakova. The Applicant complains that the Decision of the of the Independent Oversight Board, dated 25 February 2008 was not implemented and that his rights under Article 49.1 of the Constitution of Kosovo, Article 6 of the European Convention on Human Rights and Fundamental Freedoms and Article 23 of the Universal Declaration on Human Rights, in conjunction with Article 21.1.1 of the Constitution of Kosovo were violated.
5. The President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and he appointed a Review Panel comprising Judge Ivan Cukalovic, presiding, and Judges Enver Hasani and Iliriana Islami.
6. By letter dated 21 January 2010 addressed to the Applicant's legal representative the Constitutional Court requested clarification of certain documents submitted with the original Application.
7. By a subsequent letter dated 1 September 2010 the Court send the Referral to the Municipality of Gjakova inviting the Municipality to provide its reply to the Referral together with justification and necessary supporting information and documents.
8. The Municipality replied on 30 September 2010 and stated that there was litigation pending in the case and that therefore the case before the Constitutional Court was inadmissible.
9. The Applicant's legal representative was copied with the response of the Municipality on 4 October 2010 and he wrote to the Court on 26 October 2010, *inter alia*, stating that a Decision had issued from the District Court of Peja C. no. 121/09, dated 7 April 2009. The response did not fully address the issue of the current proceedings arising from the suspension of the Applicant which were still pending before the District Court in Peja.
10. The Court deliberated on the matter on 14 December 2010.

Summary of the facts

11. The Applicant was employed under a temporary contract of employment with Gjakova Municipality as the Chief of the Fire Protection and Prevention. He was

temporarily suspended from duties from 20 August 2003 “until the completion of the procedure for the verification of responsibilities or disciplinary irresponsibility”. He was to be paid half of his personal monthly incomes during the temporary suspension.

12. His appeal against this suspension was ultimately heard by the Independent Oversight Board on 28 February 2008. The Decision of the Independent Oversight Board ordered the Municipality to review the case and adopt a merited decision. That Decision was not implemented. Instead, the Municipality maintains that there is litigation pending in relation to the matter and it furnished to the Court a Judgment of the Municipal Court in Gjakova awarding the Applicant unpaid salary. The Municipality maintains that they appealed this Judgment to the District Court in Peja which has not yet decided the case.
13. The Appeal of the Municipality to the District Court in Peja has been furnished to the Constitutional Court; these proceedings are still pending.

Assessment on Admissibility

14. 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.
15. Article 113.7 of the Constitution states:

“Individual persons 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.”

16. The Court wishes to emphasize again 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, invoked by the Applicant before those instances. 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).
17. This Court applied the same reasoning when it issued Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case KI 41/09 of 27 January 2010, and in the Resolution on Inadmissibility in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. KI 73/09 of 23 March 2010.
18. As there are proceedings pending relevant to the issue of the implementation of the Decision of the Independent Oversight Board and while those proceedings are pending it is premature for the Constitutional Court to deal with this case. It follows that the Applicant has not exhausted all legal remedies available to him under applicable law as required by Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, 47 of the Law, and Section 54 (b) of the Rules of Procedure, unanimously, in its session of 14 December 2010

DECIDES

I. TO REJECT the Referral as Inadmissible.

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.

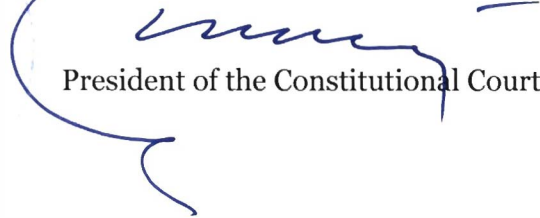
This Decision is effective immediately.

Snezhana Botusharova



Judge Rapporteur

Prof. Dr. Enver Hasani



President of the Constitutional Court