



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

Pristina, 28 July 2010
Ref. No.: RK 59/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 62/09

Sadik Sheme Bislimi

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. Sadik Sheme Bislimi, residing in Ferizaj.

Subject Matter

2. The Applicant filed a referral, requesting the Court “to assess legality of implementation of laws of justice in courts and Kosovo state administration bodies” .
3. In general, the Applicant points out his own view on the social and political events “during the last decade”, without making a clear and complete case on a precise violation.

Legal Basis

4. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: “the Constitution”), Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: “the Law”) and Section 54 (b) of the

Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. On 20 December 2009, the Applicant submitted the Referral to the Court, requesting the Court "to assess legality of implementation of laws of justice in courts and Kosovo state administration bodies".

6. On 16 July 2010, the Review Panel, consisting of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Kadri Kryeziu, considered the Report of the Judge Rapporteur Almiro Rodrigues and made a recommendation to the Court on the inadmissibility of the Referral.

Facts

7. The Applicant alleges that, on 1 August 1992, he "was proclaimed invalidity pensioner with over 38 years of experience", receiving a pension based on contributions" which he paid until 15 August 1998.

8. From 15 August 1998 until 5 May 2003, he was denied such pension and from the date he reached 65 years of age, he "was given 25-40 Euros, only as charity, similar to those that never worked a day in their life, and had not paid any pension contributions. From 1 January 2007, he "was paid again 75 Euros of charity again on behalf of pension", and from 1 January 2008, he "was paid again charity of 80 Euros.

9. Furthermore, the Applicant alleges that, on 1 October 2001, he requested the Municipal Court to indemnify him "at the amount of 2,630.80 DM, or converted into Euros, 1,200.00 Euros".

10. On 8 February 2008, the Municipal Court in Ferizaj decided "to compensate the damage, but the party which had to pay for such compensation did not agree to such decision, and appealed the decision".

11. He further states that this case has been remaining with the second instance court in Prishtina "for the last 2 years".

12. The Applicant refers to a Municipal Court in Ferizaj "dispute on purchase of land (...) for a parcel with a surface of 10.383 m²", where "this surface area is not defined properly".

13. The Applicant has transferred 1/3 of a parcel of 31.160 m², which should be divided into 3 equal parts meaning that 1/3 of this area is 10.383 m² and "this area does not appear".

14. Different geodesy experts assessed the terrain and provided the Municipal Court in Ferizaj with findings in written. In fact, on 18 March 2005, the first expert calculated the 1/3 of this area as coming to 09.000 m².

15. Then, the Municipal Court in Ferizaj "proposed a super-expertise, with 2 other super-experts". These experts proposed the surface area to be 08.600 m².

16. Therefore, "the case was decided in the favor of the plaintiff, at the area of 08.600 m², and not how it should be, 10.383 m²".

17. Finally, the Applicant states that he has honored his contract on electricity services with KEK and regularly paid for the electricity spent, although KEK has caused priceless damages with irregular and poor electricity supply, involving electricity outages and without any warning to customers.

18. Regarding these alleged damages, the Applicant complained to the Director of KEK, apparently at least ten times, the last one being on 3 October 2009, which, according to the Applicant have remained without any reply.

19. He also "went to the Municipal Court in Ferizaj, with a claim suit sent by mail", on 28 December 2007, alleging that "this is damage caused by poor electricity supply, and due to dozens of outages during a single day, without any warning, which means that KEK administration does not observe or respect the laws" and "does not perform on its obligations as provided by itself with the contract No. 10508, of date 27.02.2003".

20. The Applicant also asserts that the collection of the 3.5 Euro RTK fee through electricity bills is unconstitutional. Applicant argues that he has neither consented nor contracted to receive RTK service and thus cannot be forced to pay the fee.

21. Finally, the Applicant claims that he was one of 10,000 citizens of Kosovo who signed a petition protesting a KEK price increase in mid-2009. Applicant asserts that the President of the Assembly ignored this petition, despite having a legal obligation to review it.

Applicant's allegations

22. More precisely, the Applicant:

a. questions "why for the last 10 years, the Law on Invalidity and Pension Insurance has not been approved", as well as the Law on Health Insurance and Law on Labour. The Applicant considers that "pensions should be guaranteed by international laws, without consideration of the state where one gives contribution in work, and that pension should be paid back, as deserved";

b. claims that "an administrative dispute (...) was decided on 8 February 2008 [in the Municipal Court in Ferizaj] (...) but the party which had to pay for such compensation did not agree to such decision, and appealed the decision, and this case is being reviewed at second instance court in Prishtina, which is still not finished, although this case was simple to decide";

c. refers to a Municipal Court in Ferizaj "dispute on purchase of land (...) for a parcel with a surface of 10.383 m²", where "this surface area is not defined properly";

d. finally, requests the Court "to annul and reject the direction of senior leaders of 2003, making the KEK bodies to be servants, and collect RTK fees of 3.5 euros a month, through electricity bills, starting from 1 November 2003, which is entirely unlawful".

23. The Applicant concludes stating: "I want legal remedies and advice on what should be done (...) to enjoy my denied rights".

Assessment of the admissibility of the Referral

24. 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.

25. In respect to the first issue, which is the question of why some laws have not been approved, the Court reiterates that individuals are authorized to refer to the Court violations by public authorities of their individual rights and freedoms guaranteed by the Constitution.

However, they must fulfill the legally established requirements. Among them is the requirement: “only after exhaustion of all legal remedies provided by law”. These words clearly show the restrictive character of the constitutional principle.

26. As to this complaint, the Applicant has not shown that he has exhausted any legal remedies available to him under applicable law or that such remedies would have been ineffective.

27. Furthermore, the Applicant does not convincingly present arguments neither that he has been directly and currently violated in his rights by a public authority nor does he point to a concrete final decision which has violated his rights and freedoms guaranteed by the Constitution.

28. In addition, the inexistence of a final decision of a concrete public authority leads to the conclusion that he is not an authorized party to raise the question on why some laws have not been approved. Therefore, this claim is inadmissible.

29. Concerning the second issue, which concerns the administrative dispute in the Municipal Court in Ferizaj, the Applicant states that this case has been pending in the second instance court in Prishtina “for the last 2 years”. Thus, it is clear that a final decision is still to be delivered and all legal remedies provided by law have not been exhausted yet. Therefore, the claim is inadmissible.

30. In respect to the third issue, which is the dispute regarding a parcel with a surface of 10.383 m², the Applicant states that “the case was decided [by the Municipal Court in Ferizaj] in the favour of the plaintiff, at the area of 08.600 m², and not how it should be, 10.383 m²”.

31. It appears that no appeal is pending in another judicial instance and, thus, the decision is final. On the other side, the Applicant does not allege any precise violation nor attach the necessary supporting information and documents to prove that allegation. Apparently the Applicant didn't actually object or appeal against any violation and thus waived the right of invoking now such a violation, if any, before this Court.

32. Therefore, the Court concludes that the referral does not meet formal requirements for further proceeding and thus is inadmissible.

33. Finally, as to the last issue which concerns the collection of the RTK fee of 3.5 Euros through electricity bills, the Applicant does not accurately clarify what rights and freedoms he claims to have been violated.

34. The Applicant also provides no evidence that he has employed any of legal remedies regarding the RTK fee collection or the petition protesting the KEK price increase.

35. Thus, the Constitutional Court concludes that, in accordance with Article 22 (7) of the Law, this part of the Referral does not meet formal requirements for further proceeding. Therefore, the claim is inadmissible.

36. In sum, the Court finds that the claims contained in the Referral filed by the Applicant do not fulfill the requirements of admissibility established by Article 113 (1) and (7) of the Constitution, Articles 46 to 48 of the Law and Section 69 of the Rules of Procedure. Hence, the Referral is rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Section 54 (b) of the Rules of Procedure, unanimously, in its session of 28 July 2010:

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

Almiro Rodrigues, signed



President of the Constitutional Court

Prof. Dr. Enver Hasani, signed