



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina, 22 June 2010
Ref. no.: RK 28/10

RESOLUTION ON INADMISSIBILITY

Case No. KI. 17/09

Misin Beqiri

vs.

The Ministry of Health of the Republic of Kosovo

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, Misin Beqiri, is residing in the village Shtutica, Municipality of Drenas.

Subject matter

2. The Applicant alleges that due to lack of the implementation of Decision from 29 June 2007 issued by the Central Board for Implementation of Overseas Treatment of the Ministry of Health the right to the medical treatment of his minor child has been violated.

Legal basis

3. 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

4. The Applicant submitted his Referral to the Constitutional Court on 2 June 2009. On the same date the Applicant was informed by the Provisional Secretariat of the Court that his case would be considered once the Constitutional Court becomes fully functional.
5. On 18 December 2009 the Constitutional Court communicated the Applicant's case to the Ministry of Health. The Court has not received any reply within the prescribed time-limit.
6. On 13 May 2010 after having considered the Report of the Reporting Judge, Snezhana Botusharova, the Review Panel, composed of Judges Altay Suroy, Judge (Presiding), Enver Hasani and Iliriana Islami, on the same date, recommended to the full Court to reject the case as inadmissible.

Facts

7. It appears from the documents submitted by the Applicant that his late minor daughter who was born on 4 January 2001, had suffered from a grave health condition (*Dg. Leucosis acuta lymphoblastica*).
8. The Applicant's daughter was hospitalised at the University Clinical Centre Pristina in the period from 12 June 2007 to 26 June 2007.
9. On 27 June 2007 the University Clinical Centre in Skopje, issued a certificate according to which the whole treatment of the Applicant's daughter in their hospital would cost 30,000 Euro.
10. On 29 June 2007 the University Clinical Centre in Pristina issued an opinion that on the basis to the medical diagnoses the Applicant's daughter should be sent to a more advanced medical centre abroad for further medical treatment.
11. On the same date, *i.e.* on 29 June 2007, the Central Board for Implementation of Overseas Treatment issued a decision according to which the amount of 30,000 Euro should be allocated for the medical treatment of the Applicant's daughter in Skopje. The Ministry of Health and the Ministry of Economy and Finances approved this decision on the same date.
12. However this decision was not ever enforced.
13. Due to the absence of the Governmental financial support, the Applicant was bound to self-finance the medical treatment of his daughter in Italy to which the Italian KFOR had assisted. Eventually the Applicant's daughter was sent to Rome for medical treatment.
14. Unfortunately, on 18 October 2007 the Applicant's daughter passed away.

15. On 30 November 2007 the Applicant submitted his complaint to the Ombudsperson Institution in Kosovo. Subsequently, the Ombudsperson communicated the Applicant's case with the Minister of Health on 5 September 2008.
16. In his letter to the Ministry of Health the Ombudsperson concluded that "there has been a lack of transparency in relation to treatment abroad, and in terms of urgency in receiving a reply in relation to the possibility of realizing the request." The Ombudsperson further emphasised that he believes that failure of the Ministry of Health to provide reply and assistance in response to the Applicant's request is violation of the right to life as provided by Article 2 of the European Convention on Human Rights.
17. On 23 September 2008 the Ministry of Health replied to the Ombudsperson and stated, *inter alia*, that "lack of budget for the [Applicant's daughter] case and low prospects for success were the factors determining non-realization of the programme."

Applicant's allegations

18. The Applicant complains, without specifying any particular provision of the Constitution, that the right to medical treatment of his child has been violated.

Assessment of the Admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and the Law.
20. The Constitutional Court notes that the Applicant complained that Decision of Central Board for Implementation of Overseas Treatment issued on 29 June 2007 was never enforced.
21. In this connection, the Constitutional Court notes that the Applicant's complaint is related to a period prior to the date of the entry into force of the Constitution (see *Blečić v. Croatia*, Application no. 59532/00, ECHR Judgment of 29 July 2004) and, therefore, concludes that the Referral is out of time.
22. The Constitutional Court also recalls that pursuant to Article 113.7 of the Constitution
"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."
23. Even assuming that Applicant submitted his Application in time, the Constitutional Court notes the Applicant has not substantiated in whatever manner, why he considers that the legal remedies prescribed in the Law on the Administrative Procedure (No. 02/L-28 of 22 July 2005) and/or Law on Executive Procedure (No 2008/03-L008 of 2 June 2008) would not be available and, if available, would not be effective and, therefore, not need to be exhausted.
24. Consequently, the Applicant cannot be considered to have fulfilled the requirements for admissibility of the Referral.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Article 55 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



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani