



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

Prishtina, 14 December 2010
Ref. No.: RK 34/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 35/09

Applicant:

Halit Bahtiri

vs.

Directorate of Education of the Municipal Assembly in Podujeva

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
Gjylieta Mushkolaj, Judge and
Iliriana Islami, Judge

Unanimously approves the following **Decision** on the inadmissibility of the case.

INTRODUCTION

Applicant

1. The Applicant is Mr. Halit Bahtiri, from Sibovc i Epërm village, municipality of Podujeva.

Challenged decisions

Directorate of Education of the Municipal Assembly in Podujeva

Subject matter

2. On 18 August 2009, Mr. Halit Bahtiri, from Sibovc i Epërm village, municipality of Podujeva, filed a referral with the Constitutional Court of Kosovo, which was registered under No. KI 35/09. Mr. Bahtiri requested from this Court that due to the violation of the right to work, freedom of movement and maltreatment, to be compensated 18 years of work experience in the amount of sixty thousand Euros (60,000 €)

Legal basis

3. Article. 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 55 of the Rules of Procedure **of the Constitutional Court** of the Republic of Kosovo (hereinafter referred to as: the Rules).

Summary of the proceedings before the Court

4. The referral was filed with the Constitutional Court on 18 August 2009. The President of the court appointed Prof. Dr. Ivan Čukalović as Judge Rapporteur and the Review Panel comprising of Judge Prof. Dr. Enver Hasani, presiding judge, and Judges Iliriana Islami and M.Sc. Kadri Kryeziu. On 16 June 2010, the Court reviewed the case and discussed on the admissibility of the applicant's request.

Summary of facts

5. Mr. Bahtiri a graduating student of the Faculty of Philology, Department of Albanian Studies, worked as a professor at "8 November" Classical Gymnasium in Podujeva, from 1975 to 1977, when he went to serve the army.
6. After the end of the military service and after defending his diploma assignment at the Faculty of Philology, in 1978, Mr. Bahtiri established employment relations as a professor at "8 November" Classical Gymnasium in Podujeva.
7. In 1981, the municipal council of the Communist Party of Pudujeva and the Initiation Council of the Municipal Assembly of Podujeva suspended the applicant and ordered him to work at "Vëllazërim-Bashkim" [Brotherhood-Unity] Primary School in Podujeva, whereby, as the applicant alleges, because of the difference in payment, he was damaged in the amount of **forty-five thousand five hundred Euros (45,500 €) German Marks**. In addition, according to the applicant, he was maltreated during all the time by colleagues and students and, as a result, he was forced to leave his job in 1990.
8. On 16 July 2007, Mr. Bahtiri addressed the Directorate of Education of the Municipal Assembly in Podujeva with the request to be reinstated to the working

position at “Aleksandër Xhuvani” Gymnasium in Podujeva or at “Naim Frashëri” Primary School in Podujeva.

9. On 21 January 2008, Mr. Bahtiri addressed the Ministry of Education, Science and Technology of the Republic of Kosovo with the request to be recognized 17 years of work experience and to be paid fifty thousand Euros (50,000 €) as compensation.
10. On 30 October 2007, Mr. Bahtiri addressed Kosovo Judicial Council with the request for the compensation of the income in the amount of thirty-five thousand Euros (35,000 €).
11. Kosovo Judicial Council replied to Mr. Bahtiri’s request on 21 November 2007 and instructed him to address the municipal competent court with a claim for the compensation of his income to realize his right.
12. Mr. Bahtiri also addressed the Independent Supervisory Council of Kosovo requesting to be reinstated to the working position at “Naim Frashëri” Primary School.
13. The Independent Supervisory Council of Kosovo, through the document No. 02 (20) 2008, dated 30 January 2008, rejected Mr. Bahtiri’s request reasoning that the appeal is inadmissible since, pursuant to Article 2, paragraph 2.1 of Administrative Instruction of the Ministry of Public Services on Rules of Procedure for Appeals, only civil service employees are entitled to file appeals with the Independent Supervisory Council of Kosovo, whereas the applicant has neither the status nor the post of the civil servant, so, according to Article 11, paragraph 11.1 of UNMIK Regulation No. 2001/36 on Civil Service of Kosovo and Article 2.1 of Administrative Instruction of the Ministry of Public Services No. 2005/02 on the Rules of Procedure for Appeals, this appeal has been lodged by the unauthorized person.

Applicant’s allegations

14. The Applicants claims that the has been denied the right to work according to Article 49 of the Constitution and that he has been discriminated against according to Article 24 (2) of the Constitution, without elaborating the issue any further.

Assessment of admissibility of the referral

15. In order to be able to adjudicate the applicant’s referral, the Court needs first to examine the documents available to it and then to analyze if the applicant has fulfilled the admissibility requirements laid down in the Constitution. In this connection, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”

16. Based on the documents submitted by Mr. Bahtiri, the Court finds that despite the legal instruction of the Kosovo Judicial Council, dated 21 November 2007, that he can address the municipal competent court with a claim for the compensation of his income to realize his right, Mr. Bahtiri has not used this legal right.
17. The Court also emphasizes that domestic legislation, especially the Law on Contested Procedure (Law No. 03/L-006 of the Assembly of the Republic of Kosovo) provides that regular courts are competent to adjudicate on labor relations disputes and it also provides effective appeal remedies for the realization of the rights that are supposed to have been violated.
18. Moreover, Article 475 of this Law provides that “In contentious procedures in work environment, especially is setting the deadlines and court sessions, the court will always have in mind that these cases need to be solved as soon as possible.”
19. Considering what was said above, the Court assesses that Mr. Bahtiri has in no case addressed a competent court to decide regarding the referral he filed with the Constitutional Court
20. The Court wishes to emphasise that the rationale of the rule for the exhaustion of legal remedies is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the legal order of the Republic of Kosovo will provide effective legal remedies for the protection of the violation of constitutional rights (see, *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999).
21. The Court also emphasizes simply that any doubt regarding the perspective of the issue is not sufficient to exclude one complainant from his obligation to appeal to local competent authorities (see *Whiteside v the United Kingdom*, Decision of 7 March 1994, App. No. 20357/92, DR 76, p. 80).
22. Article 56 of the Law provides:

“The deadlines defined in this Law for the initiation of procedures on matters that fall under the jurisdiction of the Constitutional Court and which have arisen before the entry into force of this Law shall begin to be counted on the day upon which this Law enters into force.”
23. Article 56 of the Law interconnects with Article 49 of the Law, which provides deadlines for the submission of individual referral pursuant to Article 113 (7) of the Constitution and Article 47 of the Law:

“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.”

24. In relation to this, the Court notes that the applicant's referral was filed with the Constitutional Court on 18 August 2009, whereas the last decision in relation to this case is the Independent Supervisory Council's decision, dated 30 January 2008, which relates 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.

25. Article 48 of the law provides:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

26. The applicant has not accurately defined what rights and freedoms he claims to have been violated according to the Constitution.

FOR THESE REASONS

The Court after considering all the facts and evidence presented by the applicant, and after having deliberated on the matter, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law, and Article 55 of the Rules of Procedure, unanimously,

DECIDES

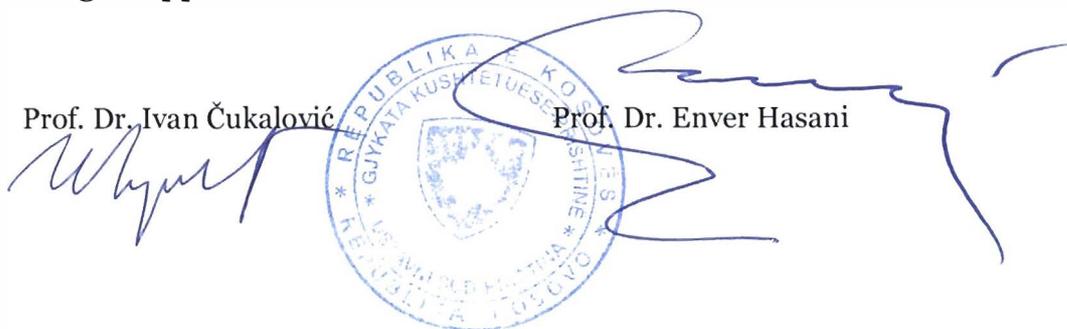
- I. **TO REJECT** the referral as inadmissible.
- II. This Decision shall be notified to the parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. Dr. Ivan Čukalović

Prof. Dr. Enver Hasani



The image shows the handwritten signatures of Prof. Dr. Ivan Čukalović and Prof. Dr. Enver Hasani in blue ink. Below the signatures is the official seal of the Constitutional Court of Kosovo. The seal is circular and contains the text 'REPUBLIKA E KOSOVES' at the top, 'GJYKATA KUSHTETUESE' on the left, 'KOSOVA' on the right, and 'KONSTITUCIONE' at the bottom. In the center of the seal is the coat of arms of Kosovo.