



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

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Pristina, 8 July 2013  
Ref. No.:RK443/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI30/13**

Applicant

**Fatmir Metahysa**

**Constitutional Review of the Judgment of the District Court in Peja, Ac. no. 527/12, dated 14 November 2012, and of the Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Fatmir Metahysa, with residence in Gjakova.

## **Challenged decision**

2. The Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012, and the Judgment of the District Court in Peja, Ac. no. 527/12, dated 14 November 2012.

## **Legal basis**

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 20 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, dated 15 January 2009 (hereinafter: the Law); and the Rule 56.2 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

## **Subject matter**

4. The subject matter is the Applicant's right and the obligation of his Employer, PTK j.s.c., in Prishtina, branch in Gjakova (hereinafter: Employer), to compensate to Applicant the difference of monthly salary for the position of the Fitter I and of Specialist Technician, respectively the difference of monthly salary between the fifth grade and seventh grade of the categorization of salaries.

## **Proceedings before the Court**

5. On 7 March 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 March 2013, the President by Decision No. GJR. KI30/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No.KSH. KI30/13, appointed Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani (members).
7. On 3 April 2013, the Applicant was notified about registration of the Referral. On the same date, the Referral was communicated to the Municipal Court in Gjakova and District Court in Peja.
8. On 14 June 2013, the Review Panel considered the report of the Judge Rapporteur and proposed to the full Court the inadmissibility of the Referral.

## **Summary of facts, as evidenced by the documents submitted by the Applicant**

9. On 4 July 2003, the Applicant, suffered grave bodily injuries while performing his working duty as a fitter, and as consequence, he was assigned by his employer to a new working place as a specialist technician. The difference in monthly salary between these two positions was 190.88 €.
10. On 9 July 2009, the Appeals Commission of the Employer, by Decision No. 01-3659/09, approved the Applicant's request for his re-assignment from the post

of the Fitter I, to the post of specialist technician and his compensation in a retroactive manner for the time the Applicant was lawfully engaged as a Fitter I, but who in fact performed the duty of a specialist technician.

11. On 1 December 2010, the Employer and the Applicant concluded employment contract for indefinite time. The abovementioned contract, among the other, provided that the Applicant will perform the working duties as Fitter I, in the unit Kosovo Telecom, and that the Applicant's basic salary is determined at the 5<sup>th</sup> grade.
12. On 6 December 2010, the Employer's Chief Executive, by Decision No. 01-5975, reassigned the Applicant in a new working place, where it determined that the Applicant performs work duties of a specialist technician and that the basic salary is determined at the 5<sup>th</sup> grade.
13. On 14 June 2012, the Municipal Court in Gjakova, by Judgment C. no. 276/11, provided:

*"I. The statement of claim of the claimant Fatmir Metahysa (Applicant) from Gjakova is REJECTED as UNGROUNDED, hereby requesting that the respondent Post Telecommunication of Kosovo – J.S.C. in Prishtina, Branch in Gjakova, to pay the claimant assigned in the work and work duties Specialist Technician in Gjakova, in the name of personal monthly income, according to 7<sup>th</sup> grade at the amount of €908,01, as well as to compensate the difference of earned personal income for the finished works of the fitter (5<sup>th</sup> grade) for each month, at the amount of €190,88 per month, starting from 15.07.2008 until 01.01.2012, which reaches general gross amount of €9.509,74 as well as to compensate the costs of proceedings at the amount of €519,48, within the time limit of 7 days from the day this Judgment becomes final under the threat of forced execution."*

14. In the Judgment C. no. 276/11, dated 14 June 2012, the Municipal Court in Gjakova, inter alia stated that the Decision No. 01-5975 dated 6 December 2010, rendered by the Employer' Chief Executive "was not challenged in a legally prescribed manner, therefore, it results that he agreed with it," respectively the Municipal Court in Gjakova concluded that the Applicant did not request judicial protection within legal time limits, provided by Article 78 and by Article 79 of the Law on Labour, No. 03/L-212.
15. On 14 November 2012, the District Court in Peja, by Judgment Ac. no. 527/12, upheld the Judgment of the Municipal Court in Gjakova, C. no. 276/11, dated 14 June 2012, whereas it rejected the appeal of the Applicant as ungrounded.

### **Applicant's allegations**

16. The Applicant alleges that his basic rights that derive from the employment relationship were violated, since the difference of monthly salaries for the posts of the Fitter I and of the Specialist Technician was not compensated to him.

17. The Applicant alleges that the decisions of the regular courts are unlawful because his case was reviewed in an erroneous manner and that the factual situation was determined in incomplete manner.
18. The Applicant alleges that pursuant to Article 87 of the Law on Labour, he filed claim to the regular courts within legal time limits, while the latter have erroneously concluded that the statement of claim of the Applicant was statute-barred, so it was filed outside the legal time limits.
19. Furthermore, the Applicant proposes to the Court to protect the constitutionality and legality pursuant to Article 113.7 of the Constitution; the Articles: 46, 47, 48 and 49, of the Law; as well as Article 13 [Right to an Effective Remedy] of the European Convention on Human Rights (hereinafter: "ECHR").

### **Assessment of admissibility**

20. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
21. The Court refers 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."*
22. The Court also refers to the Rule 36 (1) c) of the Rules of Procedure:

*36 (1) The Court may only deal with Referrals if:*

*... (c) the Referral is not manifestly ill-founded.*
23. In the instant case, the Court notes that the regular court have reviewed the Applicant's allegations and rejected his appeal for monetary compensation as out of time, based on relevant provisions of the Labour Law.
24. The Court also reviewed that the Applicant complains that the regular courts have erroneously applied the substantive law, made procedural errors when concluding that his appeals are out of time.
25. The Court stresses that questions of fact and law are matters of jurisdiction, autonomy and prerogative of regular courts; in the present cases the Applicant's Referral raises questions of facts and of legality, which indeed are matters of original jurisdiction of regular courts and do not raise the constitutional questions.
26. The Court emphasizes that exhaustion of legal remedies does not imply only to follow legal-formal proceedings step by step, but also to raise constitutional

questions before the regular courts, so that the Applicants can have a constitutional adjudication which would simultaneously allow regular courts to decide pursuant to constitutional norms (*see Article 102.5 of the Constitution*).

27. 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. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (*see Resolution on Inadmissibility: AABRIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, Kl41/ 09, of 21 January 2010, and see mutatis mutandis, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999*).
28. On 29 January 2013, the Court similarly elaborated the question of exhaustion of legal remedies and the subsidiary character of the Constitution in the Decision on the request for interim measure and the Resolution on Inadmissibility in the Case no. KI139/12-Applicant Besnik Asllani, Constitutional Review of the Judgment of the Supreme Court of the Republic of Kosovo, Pkl. no. 111/2012 dated 30 November 2012.
29. In the Case No. KI139/12 regarding the principle of exhaustion of legal remedies and subsidiary character of the Constitution, the Court reasoned:

*"Thus the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when failing to avail itself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. That failure shall be understood as a giving up of the right to further object the violation and complain. (See Resolution, in Case No. Kl. 07/09, Demë KURBOGAJ and Besnik KURBOGAJ, Review of Supreme Court Judgment Pkl.nr. 61/07 of 24 November 2008, paragraph 18).*

*Whenever a judicial decision is challenged on the basis of some legal position that is unacceptable from the viewpoint of human rights and fundamental freedoms, the regular courts that delivered the decision must be afforded with the opportunity to reconsider the challenged decision. That means that, every time a human rights violation is alleged, such an allegation cannot as a rule arrive to the Constitutional Court without being considered firstly by the regular courts.*

...

*In practice, nothing prevented the Applicant of having complained before the District and Supreme Courts about the alleged violation of his right to fair trial. If those Courts would consider the violation and would fix it, it would be over; if they either did not fix the violation or did not consider it,*

*the Applicant would have met the requirement of having exhausted all remedies, in the sense that those Courts were allowed the opportunity of settling the alleged violation."*

30. Constitutional Court is not a fact finding Court. Constitutional Court reiterates that the determination of complete and right factual situation is a full jurisdiction of regular courts and that its role is to provide the compliance with the rights, guaranteed by the Constitution and other legal instruments and therefore it cannot act as a "court of fourth instance ", (*see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para.65*).
31. Furthermore, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to replace its determination of facts with those of the regular courts. As a general rule, it is the task of these courts to assess the evidence before them. The task of the Constitutional Court is to verify whether the procedures in the regular courts were fair in their entirety, including the way this evidence was taken, (*see ECtHR Judgment App. No 13071/87 Edwards against United Kingdom, paragraph 3, dated 10 July 1991*).
32. The fact that the Applicant is unsatisfied with the outcome of the case, cannot serve him as the right to file an arguable claim for violation of the constitutional provisions. (*See mutatis mutandis ECtHR Judgment Appl. no. 5503/02, Meztur Tiszazugi Tarsulat against Hungary, Judgment dated 26 July 2005*).
33. Under these circumstances, the Applicant did not substantiate with evidence neither his allegations nor the violation of Article 13 [Right to an Effective Legal Remedy] of the ECHR, because the presented facts do not in any way show that the regular courts denied him the rights guaranteed by the Constitution.
34. Consequently, the Referral should be rejected as manifestly ill-founded pursuant to the Rule 36 (1) c) of the Rules of Procedure.

## FOR THESE REASONS

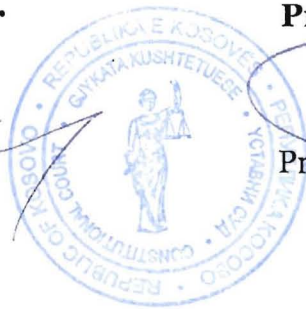
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 8 July 2013, unanimously:

### 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 on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

  
Altay Suroy



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani