



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

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Prishtina, 19 June 2014  
Ref. no.:RK644/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI114/13**

Applicant

**Emsale Zoni**

**Constitutional Review of the Decision of the District Court in Mitrovica  
Ac. no. 170/2012 dated 24 September 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  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Referral was submitted by Mrs. Emsale Zoni, residing in Vushtrri.

### **Challenged decision**

2. The Applicant in the referral specifically challenges the Judgment of the Municipal Court in Vushtrri of the Republic of Kosovo C. nr. 215/06 (hereinafter: the Municipal Court in Vushtrri) of 3 July 2006, which was received by the Applicants on an unspecified date.
3. However, the final decision in this case is the decision of the District Court in Mitrovica Ac. no. 170/2012 dated 24 September 2012 received by the Applicant on an unspecified date.

### **Subject matter**

4. The subject matter is the constitutional review of the above mentioned Decisions of the District Court in Mitrovica.
5. Notwithstanding this, the Applicants in the referral challenged the collective Judgment of the Municipal Court in Vushtrri C. nr. 215/06 of 3 July 2006 due to the non execution of the decision.

### **Legal basis**

6. The Referrals are based on Article 113.7 of the Constitution, Article 47.2 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

### **Proceedings before the Constitutional Court**

7. The Applicant submitted the referral 29 July 2013.
8. On 5 October 2013, the President of the Constitutional Court, with Decision No. GJR. KI114/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI114/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
9. On 12 September 2013, the Referrals were communicated to the Basic Court in Vushtrri (hereinafter: Basic Court).
10. On 26 September 2013, the Basic Court in Vushtrri submitted to the Court the Decision of the Municipal Court in Vushtrri E. no. 273/08 dated 21 February 2008 and District Court in Mitrovica Ac. no. 170/12 dated 24 September 2012 which were not initially submitted by the Applicant.
11. On 21 November 2013, the Court notified the Applicant regarding the submitted documents by the Basic Court in Vushtrri.

12. On 11 February 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

13. The applicant was employed at the Socially Owned Enterprise "Cyqavica" until the year 1992.
14. According to the documents submitted, based on the collective Judgment of the Municipal Court in Vushtrri C 215/06 dated 3 July 2006, the SOE "Cycavica" in Vushtrri was obliged to fulfill the obligations regarding compensation of salary from year 1992 until year 1999 with an interest of 4.5% per year as of 29 June 2005 until its final payment for all the Applicants.
15. The Applicants filed a request with the Municipal Court in Vushtrri for the Execution of the previous Municipal Court Judgment C. no. 215/05 of 3 July 2006.
16. On 5 October 2006, the Municipal Court in Vushtrri decided on the execution of the Judgment C. no. 215/06 dated 3 July 2006 (Decision E. no. 2846/06 dated 5 October 2006). The account of the SOE "Cycavica" was blocked and the "New Bank in Kosovo" branch in Vushtrri was ordered to pay the Applicants the specified amount plus the specified interest.
17. However, on 21 February 2008, the Municipal Court in Vushtrri rendered a decision to cancel the Execution procedure (Decision E. no. 273/08).
18. In its Decision the Municipal Court in Vushtrri justified its Decision to cancel the execution with reference to the letter of 31 December 2007 of the Kosovo Trust Agency requesting the Municipal Court that "... regarding all cases related to SOE "Cyqavica, to cancel the execution as the UNMIK Regulation 2005/4 provides that by adoption of special regulations regarding regulation of certain areas is excluded LEP [Law on Execution Procedure] and that the said SOE is not in the liquidation procedure, but the creditor can realize his rights in KTA [Kosovo Trust Agency] and these requests will be considered as executive title and in the executive procedure of the enterprise, the requests will be fulfilled by the Liquidation Committee of the SOE".
19. Against the decision of the Municipal Court in Vushtrri E. no. 273/08 dated 21 February 2009 the Applicant filed an appeal with the District Court in Mitrovica.
20. On 24 September 2012, the District Court in Mitrovica (Decision Ac. nr. 170/12) rejected the appeal of the Applicant and upheld the decision of the Municipal Court E. no. 273/08 dated 21 February 2009.. The District Court held that "SOE are an exclusive jurisdictional competence of the Special Chamber in accordance with UNMIK regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters".

### **Applicants' allegations**

21. The Applicant claim that she has worked in the SOE "Cyqavica" in Vushtrri until year 1991 whereby Serbian forces coercively removed her from work and discriminated her.
22. The Applicant alleges that her rights guaranteed by the Constitution were violated because she is entitled to a share of proceed from the privatization of SOE "Cyqavica" as a form of compensation for her salary for the years 1991 until 1999. The applicant calls upon Article 53 [Interpretation of Human Rights Prvisions] and 54 [Judicial Protection of Rights] of the Constitution.

### **Assessment of the admissibility**

23. The Court observes that, in order to be able to adjudicate the Applicants complaint, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
24. In this respect, the Court refers to Article 49 of the Law which provides that:

*"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 (...).*
25. The Court also takes into consideration Rule 36.1. b), which provides that:

*"The Court may only deal with Referrals if: the Referral is filed within four months from the date on which the decision of the last effective remedy was served on the Applicant".*
26. The Court notes that the final judgment of the District Court in Mitrovica, Ac. nr. 170/12 is dated 24 September 2012 and was served on the Applicant on an unspecified date, whereas the Applicant filed the Referral with the Court on 29 September 2013. Since the Applicant has failed to submit evidence to this Court when the she was served with the decision of the District Court this Court considers the date when the decision is publicly announced as the date of service, i.e. 24 September 2012.
27. The Court emphasizes that the legal requirement of the compatibility with the four month deadline for the submission of a Referral is intended to promote the principle of legal certainty and to assure the parties that cases that are under the jurisdiction of the Constitutional Court shall be examined within a reasonable time limit to protect the authorities and other interested parties from being in situations of uncertainty for a long period of time (see, *mutatis mutandis*, P. M. v. the United Kingdom, Application no. 6638/03, Decision of 24 August 2004).
28. Furthermore, the Court reiterates that the Applicant is obliged to inform the Court of all circumstances relevant to the referral and not to retain any information known to him. Otherwise retaining or misleading the Court could

raise the issue of abuse of the right to petition.

29. The Court notes that in the present case the Applicants' have not informed the Court about the Decision of the Municipal Court in Vushtrri (E. no. 273/08 dated 21 February 2008) to cancel the procedure of its execution and the Decision of the Court of Appeal (Ac. No. 170/2012 dated 24 September 2012) to quash the above mentioned Decision of the Municipal Court in Vushtrri. Such Conduct is not in compliance with the right to individual petition according to the European legal standards. (See *mutatis mutandis*, ECHR decision *Hadrabova and others v Czech Republic*, ECHR Decision on Admissibility of Application No. 42165/02 and 466/03 of 25 September 2007).
30. Under these circumstances, the Applicant has not met the requirements for admissibility in terms of time limit in which the referral should be submitted to the Constitutional Court.
31. The Court, therefore, concludes that the Referral must be rejected as inadmissible, pursuant to Article 49 of the Law.

#### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 11 February 2014, 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**

Altay Suroy



**President of the Constitutional Court**

Prof. Dr. Enver Hasani