



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

Prishtina, on 11 November 2011
Ref. No.: RK157/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 09/11

Applicant

Mustafë Aliu

Constitutional Review of non-execution of the District Court Judgment, Ac. No. 1326/2008, of 27 February 2009, and of the Municipal Court Judgment, CI. No. 1176/07, of 12 June 2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Unanimously approves this Resolution on Inadmissibility pertaining the referral.

Pursuant to Article 18, paragraph 1, item 1.3 of the Law on the Constitutional Court of the Republic of Kosovo (Law No. 03/L-121), the President of the Court, Prof. Dr. Enver Hasani, declared the conflict of interest since this case relates to the institution he had worked previously, and asked to be disqualified during the entire procedure of the revision of this case. Since his request was approved by judges, the President did not take part in any phase of the revision of this case or in the decision making process on this case.

Applicant

1. The applicant is Mr. Mustafë Aliu, a professor at the Faculty of Physical Culture and Sport of the University of Prishtina.

Challenged decisions

2. The decisions challenged with the Constitutional Court are:

Judgment of the Municipal Court in Prishtina CI. No. 1176/07, of 12 June 2008; and Judgment of the District Court in Prishtina, Ac. No. 1326/2008, of 27 February 2009.

Subject matter

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 24 January 2011 is the constitutional review of the non-execution of the Judgment of the District Court in Prishtina, Ac. No. 1326/2008, of 27 February 2009, rejecting the appeal of the University of Prishtina, and the Judgment of the Municipal Court in Prishtina, Ci. No. 1176/07, of 12 June 2008, approving Mr. Mustafë Aliu's statement of claim and obliging the University of Prishtina to enable Mr. Mustafë Aliu to perform the duties of the Dean of the Faculty of Physical Culture and Sport pursuant to Decision Ref. No. 1/38, of 12 June 2006.

Alleged violations of constitutionally guaranteed rights

4. Even though pursuant to Article 48 of the Law on the Constitutional Court, the applicant should accurately clarify in his referral what rights and freedoms he claims to have been violated, Mr. Mustafë Aliu did not clarify in his referral what rights he claims to have been violated, even though in his referral addressed to the Court, he stressed he claims that Articles 21, 22, 23 and 113 of the Constitution (Human Rights - General Principles, Direct Applicability of International Agreements and Instruments, Human Dignity, and Jurisdiction and Authorized Parties to refer matters to the Constitutional Court) have been violated.

Legal basis

5. Article 113.7 in conjunction with Article 21.4 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

6. On 24 January 2011, the Applicants submitted his Referral to the Constitutional Court.
7. On 26 January 2011, the Constitutional Court, through the official document Ref. Nr.: DRLSA-168/11/sk, notified the Municipal Court in Prishtina concerning the referral under review, and officially requested from it its resolutions concerning Mr. Aliu's statement of claim, which are missing in the case file the Constitutional Court was reviewing.
8. On the same date, in response to the official document of the Constitutional Court, the Municipal Court furnished the requested resolutions.
9. On 1 February 2011, through the official document Ref. No.: DRLSA-168/11/sk, the Court notified the University of Prishtina on the referral submitted by Mr. Aliu and asked for UP's possible comments concerning this referral.

10. On 14 February 2011, the University of Prishtina sent a written reply concerning this referral, stressing that the UP could make no compensation for Mr. Mustafë Aliu since in fact he has not been performing the duties of the Dean of the Faculty of Physical Culture and Sport.
11. On 12 April 2011, after having considered the Report of the Judge Rapporteur, Altay Suroy, the Review Panel, composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Iliriana Islami, Panel members, on the same date presented its recommendations to the full Court to reject the case as inadmissible.

Applicant's complaint

12. The applicant complains that the University of Prishtina, without any legal justification, has not executed the Judgment of the District Court in Prishtina, Ac. No. 1326/2008, rejecting the appeal of the University of Prishtina as ungrounded, and confirming the Judgment of the Municipal Court in Prishtina, Ci. No. 1176/07, of 12 June 2008, which approved Mr. Mustafë Aliu's statement of claim and obliged the University of Prishtina to reinstate the plaintiff to the duties of the Dean of the Faculty of Physical Culture and Sport; he was discharged from this position through the decision of the Rectorate.

Facts

13. On 12 June 2008, the Municipal Court in Prishtina, through Judgment Ci. No. 1176/07, approved the statement of claim of Mr. Mustafë Aliu's, former Dean of the Faculty of Physical Culture and Sport, and annulled the Decision of the respondent – UP, discharging him from the post of the Dean (Decision – Ref. No. 1/38, of 12 June 2006) and obliged the respondent to reinstate the plaintiff, Mr. Mustafë Aliu, to the post of the Dean of the Faculty of Physical Culture and Sport within UP.
14. On 27 February 2009, the District Court in Prishtina, through Judgment Ac. No. 1326/2008, rejected the appeal of the University of Prishtina and confirmed the Judgment of the Municipal Court, Ci. No. 1176/07.
15. On 30 June 2009, the Municipal Court in Prishtina, through Resolution E 530/09, approved Mr. Mustafë Aliu's proposal for the execution and set the proposed execution.
16. On 25 August 2009, the Municipal Court in Prishtina, through Resolution E. No. 530/09, rejected debtor's – University of Prishtina – objection against the resolution allowing the execution of judgments of the Municipal Court and District Court in Prishtina, which were favorable for the creditor, Mr. Mustafë Aliu.
17. On 2 September 2009, referring to regular courts final and executable judgments, Mr. Mustafë Aliu sent a letter to the University of Prishtina requesting his reinstatement to the post of the Dean of the Faculty of Physical Culture and Sport.
18. On 29 March 2010, the District Court in Prishtina, through Judgment Ac. No. 1079/2009, finally APPROVED debtor's – University of Prishtina – appeal as grounded, and annulled the Resolution on Execution of the Municipal Court in Prishtina, E 530/09, declaring this execution issue as completed.
19. In his referral submitted with the Constitutional Court, Mr. Mustafë Aliu also claimed other constitutional and legal violations addressed against his colleagues, and, on behalf of these alleged irregularities, he also presented employment contracts of Mr.

Rexhep Murati, Mr. Azem Hajdari, Decisions of the Independent Oversight Board of Kosovo, minutes of the UP Senate, and a copy of the UP statute.

Assessment of the admissibility

20. In order to be able to adjudicate on Applicant's Referral, the Court preliminarily refers to Article 113.1 of the Constitution, which stipulates that:

“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”.

Articles 47 and 49, of the Law on the Constitutional Court, which stipulate:

1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

Article 49 (Deadlines):

“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. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

21. While examining Applicant's documents submitted with the referral and the document provided ex officio by the Municipal Court in Prishtina concerning the execution procedure directly related to the matter under review, the Constitutional Court of Kosovo indisputably confirmed that Mr. Mustafë Aliu received the last decision on 20 April 2010 (Judgment Ac. No. 1079/2009), and this fact was confirmed through the copy of the delivery note personally signed by Mr. Aliu himself. He submitted the referral with the Constitutional Court on 24 January 2011, about 8 months beyond the 4-month deadline set forth by Article 49 of the Law on the Constitutional Court of the Republic of Kosovo to submit an individual referral before it.
22. Under these circumstances, the referral should be rejected as out of time (see, mutatis mutandis, *Blečić v. Croatia*, Application No. 59532/00, ECtHR Judgment of 29 July 2004). The Constitutional Court used such a justification in the Case No. KI 33/09, *Fillim Musa Gunga v. Decisions of the Special Chamber of the Supreme Court of Kosovo*, SCEL-08-0001, of 17 June 2008, and SCEL-08-0001, of 10 September 2008.
23. The Court further observes that even if the referral were submitted within the 4-month deadline, set forth by Article 49 of the Law on the Constitutional Court, it would have been rejected as manifestly ungrounded because the applicant has not submitted any prima facie evidence indicating his rights guaranteed by the Constitution have been violated.
24. In fact, even though the Municipal Court and the District Court in Prishtina, while examining the labor dispute, had approved Mr. Aliu's statement of claim and ordered his reinstatement to the post of the Dean of the Faculty of Physical Culture and Sports of UP, in the execution procedure, the District Court in Prishtina “rejected” its execution through Judgment Ac. No. 1079/2009, qualifying it as non-executable, and considering the Law on the Executive Procedure (Law No. 03/L-008), which stipulates in Article 14.1 that – “Against the final decision issued in executive and security

procedure is not permitted the revision and repetition of the procedure”, it gave a legal end to this judicial issue.

25. The Constitutional Court would like to underline that the correct and complete determination of the factual situation falls under the full jurisdiction of regular courts, and that its role is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a “fourth instance court” (see, *mutatis mutandis*, i.a., *Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).
26. From facts submitted with the referral, it appears that the applicant has not met the legal obligation regarding the accuracy of the referral, because he did not accurately specify what rights guaranteed by the Constitution have been violated by acts of public authorities. Moreover, the Court considers that there is nothing in the Referral which indicates that courts hearing the case lacked impartiality or proceedings were otherwise unfair. The mere fact that applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).
27. As for the other constitutional violations that the Applicant mentions in his Referral and which he claims to have been violated, the Court reiterates that Article 47 of the Law on the Constitutional Court stipulates that in order to be entitled to submit an individual Referral with the Constitutional Court, the party should prove that “his individual rights guaranteed by the Constitution are violated by a public authority”. He should in fact prove the violation of his rights guaranteed by the Constitution, and not other individuals’ rights. The Constitution of the Republic of Kosovo does not recognize an “*actio popularis*” or the right of every individual or legal person to refer constitutional issues without preliminarily having direct interest in that issue.
28. In these circumstances, the referral is out of time, manifestly ungrounded, so the applicant has not met the requirements for the admissibility of the referral, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36.3 (h) of the Rules of Procedure, in its session of 12 April 2011 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;
- III. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy

Deputy-President of the Constitutional Court

Mr. Sc. Kadri Kryeziu