



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 31 July 2015
Ref. no.: RK 812/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI170/14

Applicant

Adem Bajqinca

**Constitutional Review of the Judgment Rev. 533/2008,
of Supreme Court, of 9 February 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Adem Bajqinca, with residence in Bardhi i Madh, Municipality of Fushë-Kosovë (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Judgment, Rev. no. 533/2008 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 9 February 2010, which was served on the Applicant on 25 February 2010.

Subject Matter

3. The subject matter is the request for constitutional review of Judgment, Rev. 533/2008 of the Supreme Court, of 9 February 2010. The Applicant alleges that the Supreme Court, by approving the revision of the counterparty (the Applicant's employer), has violated his rights protected by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), but without specifying the constitutional provision.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 December 2014, the President by Decision GJR. KI170/14, appointed Judge Altay Suroy as Judge Rapporteur and by Decision KSH. KI170/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 23 January 2015, the Court notified the Applicant on registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
8. On 5 March 2015, the Court requested from the Basic Court in Prishtina the receipt of service, indicating the date when the last decision was served on the Applicant.
9. On 11 March 2015, the Basic Court in Prishtina submitted the requested document to the Court, which shows that the Applicant was served with the challenged Judgment on 25 February 2010.

10. On 26 June 2015, by Decision Nr. K.SH.KI 170/14, the President of the Court appointed Judge Arta Rama-Hajrizi as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.
11. On 7 July 2015, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

Summary of facts

12. The Applicant was employed in Kosovo Energy Corporation (hereinafter: KEK).
13. On 17 October 1999, the Applicant suffered bodily injuries while working at his working place. Consequently, he lost his work ability, and for that reason he was retired and he earns a monthly pension in a certain amount of money.
14. On an unspecified date, the Applicant submitted a lawsuit to the Municipal Court in Prishtina against KEK, requesting to oblige KEK *"to pay in name of the rent for the time period from 17.10.1999 and onward the difference between the pension and salary, which he would have earned if he was employed"*.
15. On 1 June 2006, the Municipal Court in Prishtina, by Judgment, C1. no. 267/05, rejected the Applicant's claim *"because of the statute of limitation of the claim"*.
16. Against this Judgment the Applicant filed an appeal within the legal time limit, with the request to annul it and remand the case for retrial.
17. On 27 August 2008, the District Court in Prishtina rendered its Judgment, Ac. no. 859/2006, by which it modified the Judgment, C1. no. 267/05 of the Municipal Court, so that it obliged the responding party (KEK) in this contest *"to pay the Claimant Adem Bajqinca, from the village of Bardh i Madh, a certain amount of money in name of the compensation of the rent realized for the period from 07.09.2002 until 07.09.2005, and starting from 07.09.2005, pay him the monthly amount as long as the legal conditions for payment are applicable, as well as the contested procedure expenses, within 15 days, under the threat of forced execution"*.
18. On an unspecified date, KEK filed a request for revision with the Supreme Court, *"due to substantial violations of provisions of contested procedure and erroneous application of substantive law, with the proposal that the challenged judgment be modified so that the statement of claim be rejected as ungrounded."*
19. On 9 February 2010, the Supreme Court rendered the Judgment Rev. 533/2008, and approved the request for revision of Judgment Ac. no. 859/2006, of the District Court in Prishtina.

20. In its reasoning, the Supreme Court stated, *"Since the damage was caused on 17.10.1999, the time limit of 3 years for the submission of the request for compensation of the damage is calculated from this date, not from the date decided by the second instance court. Considering that the claim for the payment of the rent due to the accident caused at work was submitted on 07.09.2005, the allegations in the revision that the request of the claimant is time-barred by statutory limitation are grounded"*.

Applicant's Allegations

21. The Applicant alleges that by the Judgment Rev. I. 533/2008, of 9 February 2010, by which the Judgment of the District Court in Prishtina for compensation on behalf of rent for a certain period of time was modified, the Supreme Court has violated the rights protected by the Constitution, but without specifying the relevant constitutional provisions.

Admissibility of the Referral

22. The Court notes that in order to be able to adjudicate the Applicant's Referral, it has to first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
23. In this respect, 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."

24. In addition, the Court refers to Article 49 of the Law, which provides:

"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 refers to Rule 36 (1) (c) of Rules of Procedure, which provides:

"(1) The Court may consider a referral if:

[...]

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant".

26. The Court notes that the last decision in the proceedings before the regular courts was that of the Supreme Court, rendered on 9 February 2010, and which was served on the Applicant on 25 February 2010, whereas the Applicant submitted the Referral to the Court on 25 November 2014, i.e. more than 4

months from the date when the Applicant was served with the decision of the Supreme Court.

27. It follows that the Referral is inadmissible as out of time, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

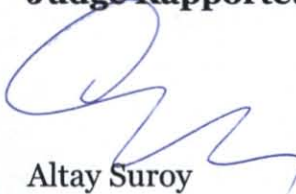
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 31 July 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

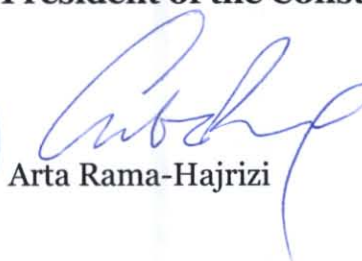
Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi