



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Pristina, 10 March 2011  
Ref. No.: RK92/10

**RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 28/10**

Applicant

**FAIK AZEMI**

**Constitutional Review of Decision of the District Court in Pristina  
Ac Nr 5/2010 dated 4 March 2010**

and

**Decision of the Municipal Court in Pristina E.nr.67/2008  
dated 23 December 2009**

**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  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

**The Applicant**

1. The Applicant is Mr. Faik Azemi from Pristina.

## **Subject Matter**

2. The subject matter of the Referral submitted to the Constitutional Court of is the alleged non-execution of the Judgment of the Municipal Court of Pristina CI.nr 515/2007 dated 29 December 2008, which became final and binding on 18 June 2009.

## **Alleged violations of Constitutional guarantees**

3. The Applicant has not explicitly specified the constitutional rights which have allegedly been violated, but has stated that the provisions of the Law on the Executive Procedure, and the legal principle of *res judicata* have been violated.

## **Legal Basis**

4. Article 113(7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 16 December 2008 (hereinafter: the Law), and Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Court**

5. On 18 January 2010 the Applicant filed a Referral with the Constitutional Court. It was registered on 28 April 2010 after the Applicant submitted the relevant documents.
6. On 16 December 2010, after having considered the Report of the Judge Rapporteur Snezhana Botusharova, the Review Panel, composed of Almiro Rodrigues (Presiding), Gjyljeta Mushkolaj and Kadri Kryeziu made a recommendation to the full Court on the inadmissibility of the Referral.

## **The Applicant's Complaint**

7. The Applicant complains that the Municipal Court in Pristina unjustly refused to execute its Judgment CI .nr 515/2007, despite it being final and "executable".

## **Summary of the facts**

8. On 29 December 2008 the Municipal Court in Pristina issued the Judgment CI nr 515/2007 whereby "approving as grounded the claim-suit of...[the Applicant] and confirming that the respondent, Directorate of Education and Science of the Municipality of Pristina, illegally terminated the employment contract during the period in question, respectively from 1 October 2003 until 31 December 2007,.....and obliging the same respondent to recognize the ...[Applicant's] all rights from labour relation...under threat of a forced execution."
9. On 18 June 2009 the above mentioned Judgment became final and binding.
10. On 17 July 2009 the Applicant submitted a written Proposal for the execution of the above mentioned Judgment to the Municipal Court in Pristina as the competent court. His request in particular related to the payment of 11,475 Euro in lieu of the unpaid salaries.

11. On 23 December 2009 the Municipal Court in Pristina issued Decision E.nr. 67/2008 and rejected the Applicant's proposal for execution clarifying, *inter alia* that "the judgment in question does not adjudicate the amount requested."
12. Unsatisfied with such Decision, the Applicant appealed to the Pristina District Court.
13. On 4 March 2010 the District Court issued Decision Ac .nr 5/2010 and rejected the Applicant's appeal as ungrounded, stating *inter alia* that "the creditor [i.e. the Applicant] is entitled to pursue his rights for the challenged period through the contested procedure for personal incomes or salaries."

#### **Assessment of the admissibility of the Referral**

14. It should be noted at the outset that the Applicant's complaint is limited to his disagreement with the decision of the District Court that confirmed earlier decision of the Municipal Court of Pristina on rejecting his proposal for the execution of the payment in the amount of 11, 475 Euro.
15. Indeed, the Applicant complains to the Constitutional Court that the Municipal Court unjustifiably rejects to execute its Judgment CI .nr 515/2007, despite it is according to him that judgment final and executable.
16. The Constitutional Court however notes that execution of the Judgment as requested by the Applicant on 17 July 2009 has never been granted.
17. The Constitutional Court notes that on 4 March 2010 the District Court issued Decision Ac .nr 5/2010 in which was stated *inter alia* that "the creditor [i.e. the Applicant] is entitled to pursue his rights for the challenged period through the contested procedure for personal incomes or salaries."
18. In this respect the Court recalls 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."
19. The Applicant has not submitted any evidence that he has initiated contested proceedings before the competent court in Kosovo as suggested by the Pristina District Court.
20. 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 Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see: Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, of 27 January 2010 and, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, decision of 28 July 1999).
21. Accordingly the Referral is Inadmissible.

**FOR THIS REASON**

The Constitutional Court, pursuant to Article 113.4 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 56 (2) of the Rules of Procedure, unanimously,

**DECIDES**

- I. TO REJECT the Referral as Inadmissible.

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.

This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Snezhana Botusharova

Prof. Dr. Enver Hasani

