



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

---

Pristine, 01 March 2012  
Ref. No.: RK204/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 37/11**

Applicant

**Jalldyze Kastrati**

**Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev.  
no. 5/2008, dated 9 July 2010**

### **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 Cukalovic, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicant**

1. The Applicant is Mrs. Jalldyze Kastrati, from Gjakova, residing at Mother Theresa street, apartment no. 7. She is represented by Mr. Hasan Shala, a lawyer from Gjakova.

## **Challenged Decision**

2. The challenged decision is the Judgment of the Supreme Court, Rev. no. 5/2008, dated 9 July 2010, rejecting the Revision of the plaintiff Mrs. Jaldyze Kastrati from Gjakova, filed against the Judgment of the District Court in Peja, Ac. no. 318/2004, dated 8 May 2007, which the party received on 17 September 2010.

## **Subject Matter**

3. The subject matter of the Referral submitted with the Constitutional Court of the Republic of Kosovo on 16 March 2011 is the labor dispute between the Applicant and her former employer 'Virginia' J.S.C. from Gjakova, which relates to the nonpayment of personal income for the period from 14 November 1994 to 28 August 1997, when she was unlawfully dismissed from work. The Applicant initiated court proceedings on this issue and, since she was not satisfied with the decision of District Court in Peja, she filed a Revision with the Supreme Court and the Judgment of the Supreme Court, Rev. no. 5/2008, dated 9 July 2010, is exactly the act of the public authority the Applicant is challenging, asking for its constitutional review.

## **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of Republic of Kosovo of 15 January 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**

5. On 16 March 2011, Mrs. Jaldyze Kastrati filed a Referral with the Constitutional Court of Kosovo requesting the constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 5/2008, dated 9 July 2010.
6. On 23 March 2011, the Constitutional Court requested from Applicant's representative to submit to the Court with all documents on the progress of the case in all court instances, including decisions issued by regular courts.
7. On 4 April 2011, the Constitutional Court received the supplementation of the referral with requested documents from Applicant's legal representative.
8. On 18 April 2011, the President appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj, members.
9. On 14 June 2011, after having considered the Report of the Judge Rapporteur, Ivan Čukalović, the Review Panel, composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Gjyljeta Mushkolaj, Panel members, recommended to the full Court the inadmissibility of the Referral.

## **Summary of the facts**

10. Mrs. Jaldyze Kastrati was in employment relationship for an indefinite period of time with AIC "Virginia" J.S.C in Gjakova.

11. On 15 November 1994, the Disciplinary Commission of the employer AIC "Virginia" J.S.C in Gjakova, issued Decision No. 105 pronouncing to Mrs. Kastrati the disciplinary measure of "the termination of employment relationship". Employer's Appeals Commission, through Decision no. 138, dated 23 December 1994, upheld the Decision of the Disciplinary Commission.
12. On 24 December 1996, the Municipal Court in Gjakova issued Judgment P. no. 9/95 approving the statement of claim of Mrs. Kastrati and annulled the decisions of the employer AIC "VIRXHINIA" J.S.C. and obliged the respondent to reinstate the plaintiff, Mrs. Kastrati, to her working place with all the rights from the employment relationship.
13. On 23 January 1998, the Municipal Court in Gjakova issued Judgment P. No. 60B/96, approving the other statement of claim of the plaintiff Mrs. Kastrati and obliged AIC "VIRXHINIA" J.S.C. to compensate her the unpaid personal income on behalf of the unlawful dismissal from work from 14 November 1994 to 28 August 1997, in the amount of 13,332.00 dinars of that time together with the legal interest rate from 1 January 1997.
14. On 27 November 1998, acting pursuant to the appeal of the respondent J.S.C. "Virginia" in Gjakova, the District Court in Peja through Resolution Ac. no. 673/98, annulled the Judgment of the Municipal Court in Gjakova, C. no. 608/96, dated 23 January 1998, and remanded the case to the first instance court for retrial with the remark if the Judgment of the first instance court, C. nr. 9/1995, was final. Since this case had remained unfinished before the war in Kosovo, the plaintiff requested, through the submission of 12 February 2002, the continuation of the proceedings.
15. On 25 March 2004, through its Judgment C. no. 84/02, the Municipal Court in Gjakova completely determined the factual situation and approved plaintiff's statement of claim for the compensation of unpaid monthly salaries in the amount of 2,238.00 Euros and the payment of the procedural costs in the amount of 700.00 Euros.
16. On 8 May 2008, the District Court in Peja, through Judgment A.C no. 318/04, amended the Judgment of the Municipal Court in Gjakova, C. no. 84/02, dated 25 March 2004, so and rejected as unfounded the statement of claim of the plaintiff Jaldyze Kastrati for the compensation of unpaid salaries underlining that the current "VIRXHINIA" J.S.C. is not a successor of the former AIC "Virginia" J.S.C and the plaintiff is not in a "legal-civil or employment relationship" with the current employer "Virginia" J.S.C., so this employer has no obligations towards the plaintiff.
17. On 9 July 2010, the Supreme Court through Judgment Rev. nr. 5/2008 rejected as ungrounded the Revision filed by the plaintiff Mrs. Jaldyze Kastrati against the Judgment of the District Court in Peja, Ac. nr. 318/2004, dated 8 May 2007.
18. According to the personal statement written in the Referral submitted to the Constitutional Court, Mrs. Jaldyze Kastrati stated she had received the Judgment of the Supreme Court on 17 September 2010.
19. On 16 March 2011, Mrs. Jaldyze Kastrati through her representative, the lawyer Mr. Hasan Shala, submitted the Referral to the Constitutional Court claiming the violation of her constitutionally guaranteed rights mentioned in the Referral.

### **Applicant's allegations**

20. The Applicant stressed that the challenged decision has violated her constitutionally guaranteed rights set forth with Articles 23 (Human Dignity); 24 (Equality Before the

Law); 31 (Right to a Fair and Impartial Trial); and Article 49 (Right to Work and Exercise Profession).

21. The Applicant also emphasized that the Supreme Court of Kosovo by rejecting plaintiff's REVISION through Judgment Rev. no. 5/2008, dated 9 July 2010, has made it impossible for her to realize her right for the compensation of the unpaid salaries for the time she was unlawfully dismissed from work. The Applicant therefore requests the Constitutional Court to recognize this right to her.

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

22. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility conditions and requirements laid down in the Constitution.

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."*

The Court also takes into consideration:

Article 49 of the Law on the Constitutional Court of the Republic of Kosovo which refers to individual Referrals stipulating 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. 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."*

24. Rule 36, paragraph 1, of the Rules of Procedure of the Constitutional Court of Kosovo clearly states: the Court may only deal with Referrals if:

*"b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant."*

25. After reviewing the documents submitted with the Referral, the Court concludes that the Applicant has not fulfilled the admissibility requirement for submitting the Referral within the 4 (four) month period as required by legal provisions mentioned in previous paragraphs of this report, because she had received the Judgment of the Supreme Court Rev. no. 5/2008 on 17 September 2010, whereas she submitted the Referral to the Constitutional Court of the Republic of Kosovo on 16 March 2011, after the elapse of the 4 (four) month deadline she was obliged by the Law to submit it.

26. In the actual case, 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 (*ECHR P.M. v. the United Kingdom* Application no. 6638/03, of 24 August 2004)

27. Therefore, it results that the Applicant has not fulfilled admissibility requirements because the Referral was submitted after the elapse of the 4 (four) month deadline, as determined by the Law on the Constitutional Court, and

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 29 of the Law on the Constitutional Court, and Rule 36.1 (b) of the Rules of Procedure, in the session of 14 June 2001, unanimously

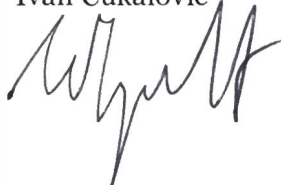
**DECIDES**

- I. TO REJECT the Referral as inadmissible.
- II. This Decision shall be notified to the Parties and 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**

**President of the Constitutional Court**

Ivan Čukalović



Prof. Dr. Enver Hasani

