



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

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Pristine, on 18 April 2011  
Ref. no.: RK 150/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 77/11**

Applicant

**Mustafa Mazreku**

**Constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. nr.  
330/2008, dated 06.01.2011.**

### **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

#### **Applicant**

1. The Applicant is Mr. Mustafa Mazreku, from Mamusha, residing at 8 Selver Maçkaj St., Prizren, represented by Mr. Masar Pirana, a lawyer from Prizren.

## **Challenged decision**

2. The challenged decision of the public authority that has allegedly violated rights guaranteed by the Constitution is the Judgment of the Supreme Court of Kosovo, Rev. no. 330/2008, dated 06.01.2011.

## **Subject matter**

3. The subject matter of the case that was submitted with the Constitutional Court of the Republic of Kosovo on 08 June 2011 is the constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 330/2008, dated 06 January 2011, which the applicant, according to his personal statement, received on 22.02.2011.

## **Legal basis**

4. Article 113.7 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, which entered into force on 15 January 2010 (hereinafter referred to as the "Law"), and Section 29 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 Constitutional Court**

5. On 08.06.2011, the Constitutional Court received the Referral of Mr. Mustafa Mazreku and registered it under no. KI 77/11.
6. On 17 August 2011, the President of the Constitutional Court, by Decision GJ.R 77/11, appointed Judge Dr. Iliriana Islami as Judge Rapporteur.
7. On the same date, the President of the Constitutional Court appointed the Review Panel consisting of Robert Carolan (Presiding), and judges Almiro Rodrigues and Prof. Dr. Enver Hasani as panel members.
8. On 24 June 2011, the Constitutional Court notified both the Supreme Court of Kosovo and the Applicant on the registration of the case, but it received no comment within the time limit by them.

## **Summary of the facts**

9. On 1 October 1987, Mr. Mustafa Mazreku established employment relationship for an indefinite period of time with "Fadil Hisari" Primary School in Prizren in the post of **cashier** and this was done pursuant to the Resolution on "Joining of Resources and Work", No. 256, of 01 October 1987, and he has been continuously working at the same post till after the war and the establishment of the International Administration of the United Nations in Kosovo (UNMIK).
10. On 7 August 2000, UNMIK issued "Directions of the Department of Education and Science" – Employment Contracts for the period of 1/9/00 to 31.12.00 and determined conditions under which education staff could obtain employment contracts, conditions for provisional contracts for teachers and conditions of payment for those that will be working, but who do not have employment contracts for the period mentioned in this Direction.

11. According to Mr. Mustafa Mazreku's claim, pursuant to this Direction, he has not been given the employment contract even though according to the payroll he had received the advance payment in the amount of 450 DEM for the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> month of 2000.
12. Also, according to his claim, even though he had not received the employment contract, he had not received the reward of 800 DEM for those that had remained without employment contracts and jobless. Meanwhile, when all employees of this school received the difference of he salary for the months of September, October, November and December 2000, he had received neither the difference nor the full salary for the month of December 2000. However, despite this, Mr. Mazreku continued to go to work even without an employment contract and without personal income.
13. On 29 January 2002, seeing that the situation he was facing would not be resolved, Mr. Mazreku filed a lawsuit with the Municipal Court in Prizren requesting the resolution of the employment dispute.
14. On 8 May 2007, the Municipal Court in Prizren issued Judgment C. no. 112/06, **approving** the lawsuit of the plaintiff, Mr. Mustafë Mazreku, as grounded and **obliging** the Municipality of Prizren – Department of Education and Science, to reinstate the plaintiff to the post of the cashier at "Fadil Hisari" Primary School with all the rights he had had until 1 October 2001.
15. On 02 June 2008, deciding pursuant to the appeal of the Municipality of Prizren – Municipal Department, the Judgment of the District Court in Prizren, AC. no. 296/2007, rejected this appeal as ungrounded and left the challenged Judgment of the Municipal Court, C. no. 112/06, in force.
16. Since the final Judgment of the District Court in Prizren was not being implemented, Mr. Mustafa Mazreku filed a request with the Municipal Court in Prizren for the execution of this Judgment and this Court through Resolution E. no. 1063/08, approved this request and did its execution on 10.10.2008, reinstating Mr. Mustafë Mazreku to his post.
17. In fact, even though the Municipal Court had executed its decision, Mr. Mazreku had only physically gone to work because he had not been given any work contract, but he was only promised to be offered the post of the librarian, since there is no post for cashier neither at "Fadil Hisari" Primary School nor at any other school since the financial resources are not being managed by schools but by the Municipal Department for Education and Science. Mr. Mustafë Mazreku kept going to work at "Fadil Hisari" Primary School for five months continuously after being reinstated by the Municipal Court, but without personal incomes, and after that, he decided not to go to work until his work dispute is not solved.
18. On 25 June 2008, the Legal Office of Prizren Municipality submitted a Revision with the Supreme Court of Kosovo challenging the Judgment of the Municipal Court in Prizren (C. no. 112/06, of 08.05.2006) and the Judgment of the District Court in Prizren (AC. no. 296/2007, of 02.06.2008) on accounts of essential violation of the provisions of the contested procedure and erroneous application of the substantive law.
19. On 08.07.2009, the Municipal Court in Prizren, as an execution court, issued Resolution, E. no. 1063/08, fining the Director of the Department for Education and Science of Prizren Municipality in the capacity of the responsible person with 50 Euros and the Department for Education and Science, in the capacity of the legal person, with 200 Euros, because of effective non-implementation of the executable decision.

20. On 6 January 2001, the Supreme Court of Kosovo, deciding pursuant to the Revision of the Legal Office of Prizren Municipality, issued Judgment, Rev 330/2008, approving the submitted Revision and amending the Judgment of the Municipal Court in Prizren, C. no. 112/06, of 08.05.2006, and the Judgment of the District Court in Prizren, AC. no. 296/2007, of 02.06.2008, so that the lawsuit of Mr. Mustafa Mazreku is REFUSED. Mr. Mustafë Mazreku received this Judgment on 22.02.2011.
21. The Supreme Court stressed in the Judgment of its Revision that regular courts of lower instances had correctly determined the factual situation, but they had **erroneously applied the substantive law** since employment relationship in education institutions was a contractual relationship and concluded in time limits under UNMIK Directions, whereas, since Mr. Mazreku did not have an employment contract, he did not have a valid legal employment relationship, but only factual work at school.
22. As soon as he received the Supreme Court Judgment approving the Revision of Prizren Municipality, Mr. Mustafa Mazreku, through his legal representative, Mr. Masar Pirana, a lawyer from Prizren, submitted a request for the protection of legality with the State Prosecutor's Office in Prishtina.
23. On 31 March 2011, the State Prosecutor's Office, through the official document KMLC no. 23/2011, notified Mr. Mustafa Mazreku that pursuant to the provision of Article 245.3 in conjunction with Article 220 of the Law on Contested Procedure (hereinafter referred to as "LCP") that the request for the protection of legality is not allowed against the decision issued on the occasion of the Revision by the Supreme Court, therefore, even in this case, this referral cannot be referred.

### **The Applicant's allegations**

24. The Applicant claimed that the Judgment of the Supreme Court, Rev. no. 330/2008, of 06.01.2011, has denied him the right to work, which had been recognized by the Judgment of Municipal Court in Prizren, C. no. 112/06, of 08.05.2007, and by the Judgment of the District Court in Prizren, AC. no. 296/07, of 02.06.2008.
25. The Applicant claims that the judgment of the Supreme Court of Kosovo has violated his rights guaranteed by the Constitution: Article 24.1 (Equality Before the Law), Article 31.2 (Right to Fair and Impartial Trial); Article 102.3 (Courts shall adjudicate based on the Constitution and the law); Article 49 (Right to Work and Exercise Profession), and the violation of the **Universal Declaration of Human Rights** Article 7 (Equality before the law without any discrimination). According to the Applicant, Article 7 of the European Convention on Human Rights and the **International Convention on Elimination of All Forms of Racial Discrimination** (Articles 2.1; 5 and 6) have also been violated.

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

26. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.
27. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates that:

*"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 account:

Rule 36 of the Rules of Procedure of the Constitutional Court, which stipulates:

"(1) The Court may only deal with Referrals if:  
c) the Referral is not manifestly ill-founded.

28. Referring to the alleged violation of the rights guaranteed by the Constitution of the Republic of Kosovo and other International Conventions and Instruments by the Applicant, in the capacity of the Judge Rapporteur I conclude
29. Article 102 [General Principles of the Judicial System], paragraph 3, of the Constitution, clearly stipulates that: **"Courts shall adjudicate based on the Constitution and the law"**.
30. Article 103 [**Organization and Jurisdiction of Courts**], paragraph 2 of the Constitution, clearly stipulates that "The Supreme Court of Kosovo is the highest judicial authority".
31. In this direction, the Constitutional Court does not find any fact that the Supreme Court, while deciding upon the request for Revision, for which it is authorized under Article 212 of LCP, to have violated Article 31.2 (the Right to Fair and Impartial Trial), Article 49 (the Right to Work and Exercise Profession), or Article 102.3 (Courts shall adjudicate based on the Constitution and the law) that the Applicant claims to have been violated.
32. In fact, besides expressing dissatisfaction for the Revision issued by the Supreme Court, the Applicant has not provided any other fact as to why the trial "was not fair and impartial", in what way he was treated as unequal, or what phase of the proceedings was unconstitutional.
33. The Constitutional Court is not a court of facts, and, on this occasion, it wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and that its role (of the Constitutional Court) 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).
34. The mere fact that applicants are dissatisfied with the outcome of the case cannot serve to them as a right to 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).
35. The Constitutional Court cannot ignore the fact that under UNMIK Directions, but later on under Article 2 of the Regulation 2001/36 on the Kosovo Civil Service, all employees, whose salary is paid from the Kosovo Consolidated Budget, had the status of the civil servant, including education staff.
36. This Regulation had provided for in Article 3.1 (c) "That employment in the Civil Service shall be governed by written contracts of employment; and in Article 3.3

Contracts of employment in the Civil Service shall be for a period of up to three (3) years, and may be extended.

37. These Directions, including this Regulation that was in force at that time, had undoubtedly defined the employment relationship as contractual and that all civil servants, without any exception, were subject to the system of employment contracts, so, the Constitutional Court notices that the Applicant, Mr. Mustafa Mazreku, together with his Referral filed with this Court, has not submitted any employment contract with "Fadil Hisari" school.
38. Under these circumstances, the Constitutional Court does not find any fact that the Supreme Court has not "adjudicated rightly and impartially" by rendering the decision as in the abovementioned revision and it does not conclude that the said decision has violated rights guaranteed by the Constitution.
39. Based on these circumstances, the Constitutional Court finds no violation of the European Convention of Human Rights (Article 7) or of the Universal Declaration of Human Rights (Article 7), directly applicable in the juridical system of Kosovo, that Mr. Mazreku claims to have been violated.
40. In these circumstances, the Applicant has not "sufficiently substantiated his claim", so, pursuant to Rule 36, paragraph 2, item c and d, I propose to the Review Panel to reject the Referral as manifestly ill-founded, and

#### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 (2) of the Law, and Rule 56 (2) of the Rules of Procedure, on ... 2011, ...

#### **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; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

  
Dr. Iliriana Islami

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani