



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 13 December 2013  
No. ref.:RK 518/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI 111/13**

Applicant

**Ajshe Leka**

**Constitutional review of the Judgment of the Supreme Court of Kosovo,  
Rev. no. 250/2012, of 7 June 2013**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Applicant is Ms. Ajshe Leka, from Gjilan (hereinafter: the Applicant), represented by Mr. Shabi Isufi, a practicing lawyer from Gjilan.

## **Challenged decision**

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Rev. no. 250/2012 of 7 June 2013, by which approved the respondent's revision as grounded and modified the Judgment of the District Court in Gjilan, Ac. no. 198/2011, of 8 May 2012, and the Judgment of the Municipal Court in Gjilan, C. no. 442/2007, of 22 April 2012, thereby rejecting as unfounded the Applicant's claim. That Judgment, according to the Applicant's allegations, has violated a number of Articles of the Constitution of the Republic of Kosovo.

## **Subject matter**

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo Rev. no. 250/2012 of 7 June 2013 which ended a legal property dispute between the Applicant and the Main Center of Family Medicine in Gjilan (hereinafter: MCFM in Gjilan), which originated following a claim filed by the Applicant requesting that the MCFM in Gjilan (the respondent) pay the Applicant, in the name of the non-material damage for the mental anguish and violation of the dignity, the amount of 6000,00 €, with the interest of 3.5% per year, as well as the expenses of the proceedings in the amount of 623,00 €.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. The Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 23 July 2013.
6. The President, by Decision (No. GJR. 111/13 of 5 August 2013), appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President, by Decision No. KSH. 111/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 12 September 2013, the Court notified the Applicant and the Supreme Court of the registration of Referral.
8. On 22 October 2013, after considering the report of the Judge Rapporteur Kadri Kryeziu, the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović, made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of the facts**

9. On 13 February 2006, the MCFM in Gjilan by Decision No. 04-164 discharged the Applicant from the position of the head nurse in MCFM in Gjilan. And by



Decision of MCFM in Gjilan No. 04-467 of 28 February 2007, Applicant's employment relationship with the MCFM in Gjilan was terminated.

10. Against the Decision of MCFM in Gjilan No. 04-467 of 28 February 2007, the Applicant filed an appeal with the Independent Oversight Board of Kosovo.
11. Independent Oversight Board of Kosovo issued Decision No. A. 02/58/2007 of 3 July 2007, quashing both decisions of the MCFM in Gjilan and obliging the employment authority – Municipality of Gjilan to enable the realization, within 15 days of the receipt of the appealed decision, on the basis of the employment contract No. 04-370, of 25 March 2005.
12. Considering that the MCFM in Gjilan did not execute the Decision of the Independent Oversight Board No. A.02/58/2007 of 3 July 2007, the Applicant filed a proposal for execution with the Municipal Court in Gjilan for the execution of the Independent Oversight Board Decision.
13. On 6 March 2007, the Municipal Court in Gjilan by Decision E. no. 861/06, of 8 December 2006 and by Decision Ac. No. 143/07, of 25 April 2007, allowed the execution and obliged the MCFM in Gjilan to reinstate the Applicant to her work place with all the rights and obligations deriving from the employment relationship.
14. On 5 July 2007, the Applicant was reinstated at her work place.
15. On 18 July 2007, the Applicant filed a lawsuit with the Municipal Court in Gjilan for the compensation of the material and non-material damage against the MCFM in Gjilan (respondent), whereas on 17 August 2007, the Applicant through her authorized representative Shabi Isufi, a practicing lawyer from Gjilan, specified and supplemented the lawsuit and the claim against the said the respondent.
16. The Municipal Court in Gjilan, by Judgment C. No. 442/07, of 22 April 2011, partially approved the lawsuit of the Applicant. In the enacting clause of the Judgment the court obliged the MCFM to pay the Applicant the amount of 6.000,00 € in the name of the non-material damage for the mental anguish and violation of the dignity of the Applicant as well as the expenses of the proceedings in the amount 623,00 €.
17. On 13 May 2011, MCFM in Gjilan filed an appeal against the Judgment of the Municipal Court in Gjilan, C. No. 442/07, of 22 April 2011.
18. The District Court in Gjilan, by Judgment Ac. No. 198/11, of 28 May 2012, rejected the appeal of MCFM in Gjilan and upheld the Judgment of the Municipal Court in Gjilan, C. No. 442/07, of 22 April 2011.
19. On 1 June 2012, the MCFM in Gjilan filed a request for revision with the Supreme Court of Kosovo.

20. On 7 June 2012, the Applicant by proposal E. No. 1156/12 requested from the Municipal Court in Gjilan approval of the execution of the final Judgment of the Municipal Court in Gjilan, C. No. 442/07 of 22 April 2011.
21. On 28 June 2012, MCFM in Gjilan (the respondent), now a debtor filed an objection with the Municipal Court in Gjilan against the proposal of the Applicant E. No. 1156/12. In the objection MCFM in Gjilan stated: *„it has submitted within the legal time a request for revision to the Supreme Court in Prishtina, and in practice it often happens that the Supreme Court of Kosovo, when deciding upon revision, quashes or modifies the judgments of lower instances.“*
22. On 20 July 2012, the Municipal Court in Gjilan issued Decision E. No. 1156/2012, rejecting the objection of MCFM in Gjilan as unfounded.
23. On 31 July 2012, the Municipal Court in Gjilan issued Decision E. No. 1156/2012, *“APPROVING the execution of the Judgment of the Municipal Court in Gjilan C. no. 442/2007, of 22.04.2011, and OBLIGING the Ministry of Economy and Finance – Treasury in Prishtina to transfer funds from the account of the Municipality of Gjilan to the account 1150090462000105 PCB-Branch in Gjilan which belongs to the creditor Ajshe Leka from Gjilan, namely the amount of 6.000,00 € in the name of non-material damage and the amount of 854,68 € in the name of the expenses of the contested and execution proceedings, all that in the total amount 6.854,68 € (six thousands eight hundred fifty four Euro and sixty eight cents)“.*
24. On 31 July 2012, the MCFM in Gjilan filed an appeal against the Decision of the Municipal Court E. No. 1156/2012 of 20 July 2012.
25. On 6 August 2012, the Applicant filed a reply to the appeal of MCFM in Gjilan (respondent) of 31 July 2012.
26. On 19 September 2012, the District Court in Gjilan issued Decision rejecting the appeal of MCFM in Gjilan (respondent-debtor) as unfounded and upholding in its entirety the Decision of the Municipal Court in Gjilan E. No. 1156/2012, of 31 September 2012.
27. On 7 June 2013, the Supreme Court of Kosovo in Prishtina, by Judgment Rev. No. 250/12, approved as well-founded the revision of MCFM in Gjilan (respondent- debtor) and modified the Judgment of the District Court in Gjilan, Ac. No. 198/2011, of 28 May 2012 and the Judgment of the Municipal Court in Gjilan, C. No. 442/2007, of 22 April 2011, thereby rejecting as unfounded the claim of the Applicant (plaintiff) requesting that MCFM in Gjilan (respondent) pay the Applicant in the name of the non-material damage for the mental anguish and violation of the dignity the amount of 6000,00 €, with the interest of 3.5% per year, as well as the expenses of the proceedings in the amount of 623,00 €.
28. In the reasoning of the Judgment, the Supreme Court states: *“Considering that there has occurred a complete return to the previous situation, as the claimant has been reinstated at her position as head nurse, where she was previously*



*employed, the difference between this position and the position as nurse where she had been appointed by the respondent's decision has been compensated, the Supreme Court of Kosovo finds that the claimant's statement of claim for mental anguish and the violation of the claimant's dignity and authority by the respondent upon changing her position is not grounded since this would be in violation of Article 200 of the LCT, that envisages the monetary compensation for mental anguish, because approving the claimant's statement of claim for mental anguish in this particular case favors the claimant's intentions that are not compatible to the nature and social purpose of this type of compensation envisaged in this legal provision. The Supreme Court finds that in no way has the claimant's dignity and authority been violated when her position was changed from head nurse to nurse, thus this court has found that the claimant's statement of claim is not grounded and because the lower instance courts had erroneously applied the substantive law, both Judgments of those courts had to be modified and the statement of claim as such had to be rejected as unfounded"*

29. On 10 July 2013, MCFM in Gjilan as a respondent based on the Judgment of the Supreme Court of Kosovo in Prishtina filed a proposal with the Basic Court in Gjilan for counter-execution of the Judgment and the decisions of the lower courts.

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

30. The Applicant alleges that the Decision of the Supreme Court Rev. No. 250/2012, of 7 June 2013, violates the provisions of Articles 22, 23, 27, 49 and 54 of the Constitution in the following manner:

*"Violation of the claimant's dignity consists in the fact that the Supreme Court of Kosovo in Prishtina did not take into consideration the fact that Municipal Court and District Court in Gjilan with their Judgments have correctly applied the provisions of the Law on Contested Procedure and the Law of Contract and Torts, because by dismissing the claimant while she was pregnant, mental anguish was inflicted on her that resulted in giving birth through cesarean section, and on the other hand according to the Psychiatry expert, the claimant has also suffered loss of her dignity and prestige in the society due to the gossip relating to her dismissal without legal grounds."*

*"Violation of Article 27 of the Constitution of the Republic of Kosovo consists in the fact that the claimant Ajshe Leka after an inhuman and degrading treatment by the respondent's director on 08.02.2007, the next day on 09.02.2007 she was suspended and a decision on suspension was issued to her."*

*"Violation of Article 49 of the Constitution of the Republic of Kosovo consists in the fact that the respondent's actions and the Judgment of the Supreme Court of Kosovo violate the claimant's right to work and exercise her profession as a nurse."*

*“Violation of Article 54 of the Constitution of the Republic of Kosovo consists in the fact that the Supreme Court of Kosovo in Prishtina through its Judgment by erroneously applying the provisions of Articles 199, 200 and 202 of the Law of Contract and Torts (old Law), rejects the statement of claim unjustly, by approving an illegal act so that the claimant Ajshe Leka from Gjilani was denied the judicial protection, thereby her rights guaranteed by the Constitution and the law are violated, and consequently there is definitely a violation of the rights under Article 22 of the Constitution of the Republic of Kosovo, that is related to the direct implementation of international agreements and instruments.”*

31. The Applicant addresses the Constitutional Court requesting the following:

*“Protection of Applicant’s human rights, constitutional review of the Judgment Rev.no.250/2012 of 07.06.2013 of the Supreme Court of Kosovo in Prishtina regarding the correct application of the laws and protection of the substantive law.”*

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

32. The Applicant alleges that Articles 22 (Direct Applicability of International Agreements and Instruments), 23 (Human Dignity), 27 (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment), 49 (Right to Work and Exercise Profession) and 54 (Judicial Protection of Rights) of the Constitution are the basis for her Referral.
33. In order to be able to adjudicate the Applicant’s Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.
34. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:
- “In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*
35. Under the Constitution, the Constitutional Court is not a court of appeals when reviewing decisions taken by the regular courts. The role of the regular courts is to interpret the law and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz vs. Spain [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).
36. The Applicant has not submitted any *prima facie* evidence indicating a violation of her constitutional rights (see Vanek vs. Slovak Republic, ECHR decision as to the admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state in what way Articles 22, 23, 27, 49 and 54 of the Constitution support her Referral, as prescribed by Article 113.7 of the Constitution and Article 48 of the Law.



37. The Applicant alleges that her rights (Judicial Protection of Rights) have been violated due to the erroneous application of the law by the Supreme Court without stating clearly in what manner that Judgment has violated the Applicant's constitutional rights.
38. In the present case, the Applicant has been provided numerous opportunities to present her case and to challenge the interpretation of the law, which she considers as being incorrect, before the Supreme Court of Kosovo. After having reviewed the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
39. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegation that her constitutional rights and freedoms have been violated by the challenged decision.
40. Consequently, the Referral is manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure which provides: *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."*

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 and Article 48 of the Law, and Rule 36. (2b) of the Rules of Procedure, in the session held on 22 October 2013, 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; and
- III. Decision is effective immediately.

**Judge Rapporteur**

Kadri Kryeziu



**President of the Constitutional Court**

Prof. Dr. Enver Hasani