



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

Pristine, 24 December 2012
Ref. No.: RK333/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 164/11

Applicant

Jetullah Mustafa

**Constitutional Review of Decision, Rev. no. 538/2008, of the Supreme Court,
dated 28 June 2011.**

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.

Applicant

1. The Applicant is Mr. Jetullah Mustafa, residing in Pristina.

Challenged Decision

2. The decision challenged by the Applicant is the Decision, Rev. no. 538/2008, of the Supreme Court of 28 June 2011, which was received by the Applicant on 20 September 2011.

Subject Matter

3. The Applicant requests that Decision, No. 89/98, of the District Court of 9 February 1998, by which his request for compensation for the period of 3 December 1993 to 2 October 1998 had been granted, be executed in its entirety and not partially, as has been done by the Municipal Court so far.
4. The Applicant further claims that the decision of the Supreme Court of 28 June 2011, which he received on 20 September 2011 was not appropriately adjudicated and biased.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution, Article 20 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 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter the "Rules of Procedure").

Proceedings before the Constitutional Court

6. On 20 December 2011, the Applicant filed a referral with the Court.
7. On 17 January 2012, the President of the Court, by Order No. 164/11 GJR, appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President of the Court, by Order No. 164/11 KSH, appointed the Review Panel consisting of Judges Robert Carolan (Presiding), Altay Suroy and Gjylieta Mushkolaj.
8. On 2 July 2012, President Enver Hasani replaced Gjylieta Mushkolaj on the Review Panel, whose mandate as a Judge of the Constitutional Court came to an end on 26 June 2012.
9. On 3 July 2012, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 3 December 1993, the employment contract of the Applicant, a permanent worker in the Labour Organisation of the Regional Water Supply Company "Batllava" Pristina (hereinafter: RWSC), was terminated.
11. By decision L. no. 407/96 of 1 July 1997, the Municipal Court in Pristina found that the Applicant's employment had been illegally terminated. The Applicant's ex-employer appealed this decision.

12. On 9 February 1998, by Ac. No. 89/98, the District Court in Pristina rejected the appeal as ungrounded and ordered RWSC to reinstate the Applicant to the original employment or to a similar position. The rights of the employment relationship were to necessarily be retained.
13. On 21 October 1998, the Applicant returned to work.
14. On 12 February 1999, the Municipal Court in Pristina approved the Applicant's request for the execution of his claim for salaries due to him between the 9th of February, 1998 and the 21st of September of the same year.
15. In a letter to the RWSC on 26 February 2001, the Applicant further claimed for compensation for the period from 3rd of December, 1993 to 21st of October, 1998. A letter dated 5th of April, 2001 in turn refused his request.
16. The Applicant filed a claim with the Municipal Court in Pristina on 26 December 2001 for compensation of damages for non-payment of salary during this period.
17. This was refused by the Municipal Court in Pristina by Decision C1. NO. 545/2001 of 22 January 2003. The Municipal Court adjudicated that the Applicant had lost the right to compensation for unpaid salaries over this period on the grounds that by Article 376 (1) of the Law on Obligations, the Statute of Limitations allows 3 years to claim compensation payments and the applicant was thus 4 months and 17 days outside the time frame. However, the Municipal Court did not elaborate as to what date they took into account in order to come to this conclusion.
18. On 17 February 2005, by decision CI. No. 377/ 2004, the Municipal Court in Pristina rejected the Applicant's further claim for compensation of unpaid salaries of 3rd of December 1993 to 21st of October, 1998, on the grounds that the Applicant was not entitled to it as by virtue of Article 376 (1) of the Law on Obligations, the Statute of Limitations stipulating 3 years to seek compensation. The Applicant appealed this to the District Court in Pristina.
19. The District Court in Pristina dismissed the Applicant's appeal on 14 October 2005, by Decision Ac. No. 521/ 2005. It felt the Municipal Court had acted fairly in deciding the Applicant's request for back pay was outside the time limits stipulated in the Statute of Limitations and keeping the period of bombardments of March to June 1999 in mind. Thus, the District Court confirmed Judgement CI. No. 377/ 2004 of the Municipal Court in Pristina.
20. On 31 August 2007, the Applicant requested a repetition of procedure of the Municipal Court, proposing Decision I. no. 2074/98 of the Municipal Court of 12th of February (see paragraph 4 above) as fresh evidence.
21. By Decision CI. No. 377/ 2004 (19th of September 2007), the Municipal Court rejected the request, inter alia, on the ground that the time limit of 30 days, within

which the request for repetition of procedure should have been submitted from the moment of discovery of said evidence had expired. The Applicant appealed this decision to the District Court.

22. The District Court rejected the Applicant's appeal by Decision Ac. No. 907/2007 of 27 August 2008. Thereupon, the Applicant filed a request for revision with the Supreme Court.
23. On 28 June 2011, by Decision Rev. no. 538/2008, the Supreme Court rejected the Applicant's request for revision, deeming it ungrounded. The Supreme Court opined that the lower courts had correctly applied the deadline for repetition of procedure- 30 days from discovery of fresh evidence- and it had in fact expired.
24. The Applicant received the Supreme Court's decision on 20 September 2011.

Applicant's allegations

25. The Applicant requests the execution of Decision Ac. no. 89/93 of the District Court in Pristina, 9th of February 1998 in which the RWSC was ordered to reinstate the Applicant to his original job or a similar position.
26. Furthermore, the Applicant alleges that in its judgment of 22 January 2003, the Municipal Court in Pristina did not acknowledge:
 - a. From what date the time period stipulated by the Statute of Limitations had begun to run.
 - b. How the Municipal Court decided the compensation figure to which the Applicant would be entitled.
27. Lastly, the Applicant puts forward that generally the Court Proceedings were lengthy and unfair and specifically that the decision of the Supreme Court of 28 June 2011 showed bias and lacked suitable adjudication.

Assessment of the admissibility of the Referral

28. From the Applicant's submission, it appears that two sets of proceedings are of issue:
 - a. The proceedings concerning the unpaid salaries, ending with Decision Ac. No. 521/ 2005 of 14 October 2005 in the District Court in Pristina, by which the Judgement CI. No 277/ 2004 of the Municipal Court in Pristina of 17 February 2005 was confirmed;
 - b. The proceedings concerning the repetition of procedure, ending on 28 June 2011 in Decision Rev. no. 538/2008 of the Supreme Court.

29. Regarding the proceedings enumerated in a, the Court noted that they relate to events taking place prior to 15 June 2008, the date of entry into force of the Constitution of the Republic of Kosovo. It follows that the Applicant's complaint is outside the jurisdiction of the Court and thus incompatible "ratione temporis" with the provisions of the Constitution and the Law (see *mutatis mutandis*, *Jasioniene v. Lithuania*, Application 41510198, EctHR Judgements of 6th of March and 6th of June 2003, and Case No. KI 61/09, *Adler Com v. Order of President of Municipality of Gjakova*).
30. As to the proceedings in b, the Court notes that the Supreme Court, in its Decision Rev. no. 538/2008 of 28 June 2011 (received by the Applicant on 20 September 2011) ruled that the lower courts had applied the law fairly in deciding the request for repetition of procedure, pursuant to Article 423(1) of the Law on Contentious Procedure. This request should have been submitted within a timeframe of 30 days from the day the party had the opportunity to submit new facts.
31. In this respect, the Court needs to consider whether the Applicant has fulfilled the admissibility requirements set out in Article 113.7 of the Constitution and Article 47.2 of the Law, according to which individuals who submit a referral to the Court must show that they have exhausted all legal remedies provided by the law.
32. The rationale for the exhaustion rule is to afford the authorities concerned (including the courts) the opportunity to prevent or rectify the alleged Constitutional violation (see, *mutatis mutandis*, *Selmouni v. France*, no. 25803/94, decision of the 28th of July 1999 and Case No. KI 41/09 *AAB-Rinvest University v. Kosovo Government*, Resolution of 27th of January, 2010).
33. In the Applicant's case, the Court notes that the courts found, pursuant to the Law on Contentious Procedure, that the Applicant initiated the repetition proceedings out of time. As a result, the courts were prevented from taking the newly submitted evidence into consideration.
34. In such circumstances, the Court concludes that the Applicant has not exhausted all legal remedies available to him under the applicable law.

FOR THESE REASONS

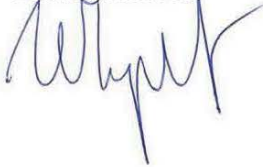
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure, on 3 July 2012, unanimously,

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;
- III. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

