



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 10 March 2014

Ref.no.: RK 573/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI188/13**

Applicant

**Fetije Bajrami-Shala**

**Constitutional review of the Judgment Rev. no. 181/2013,  
of 9 July 2013, and Judgment Rev. no. 48/2003, of 11 September 2003,  
of the Supreme Court**

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

composed of:

Enver Hasani, President  
Ivan Cukalovic, 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 Mrs. Fetije Bajrami-Shala (hereinafter: Applicant), residing in Oshlan, Municipality of Vushtrri.

## **Challenged decision**

2. The Applicant challenges the Judgment Rev. no. 181/2013, of 9 July 2013 and Judgment Rev. no. 48/2003, of 11 September 2003, of the Supreme Court. The Applicant has not specified the date of receipt of the last decision.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the Judgment Rev. no. 181/2013, of 9 July 2013, and the Judgment Rev. no. 48/2003, of 11 September 2003, of the Supreme, by which the Applicant alleges violation of Article 31 [Right to Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121, of 16 December 2008, entered into force on 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 Court**

5. On 4 November 2013, the Applicant filed her Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 December 2013, the President of the Court, by Decision no. GJR. KI188/13 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court appointed the members of the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodriguez and Ivan Čukalović.
7. On 13 September 2013, the Constitutional Court notified the Applicant and the Supreme Court of the registration of the Referral.
8. On 20 January 2014, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. From 1999 to 2000, the Applicant claims to have worked for the Municipality of Vushtrri, namely the Commission for investigating war crimes and missing persons. This commission, according to the Applicant, was established by the Provisional Government of Kosovo, by decision of 5 July 1999. Based on such a decision, the President of the Municipal Council of Vushtrri had authorized the Applicant to work with the relevant commission.



10. Since the Municipality of Vushtrri had not replied to the requests of the Applicant for monetary compensation, the Applicant with other persons filed a claim with the Municipal Court in Vushtrri.
11. On 5 July 2002, the Municipal Court in Vushtrri, by Judgment C. no. 13/2001 approved the Applicant's statement of claim of the Applicant and of other claimants. By this decision, the Municipality of Vushtrri (the respondent) was obliged to pay each claimant, including the Applicant, 1.794 Euros for the debt.
12. The Municipality of Vushtrri, filed a complaint with the District Court in Mitrovica against the Judgment of the Municipal Court in Vushtrri.
13. On 11 December 2002, the District Court in Mitrovica, by Judgment Ac. no. 93/2002, rejected as ungrounded the complaint filed by the Municipality of Vushtrri, and upheld the first instance court judgment as fair.
14. On 5 February 2003, the Municipality of Vushtrri filed a revision with the Supreme Court, against the Judgment Ac. no. 93/2002, of the District Court in Mitrovica, due to procedural violations, erroneous determination of factual situation, and erroneous application of the substantive law.
15. Since the District Court in Mitrovica upheld as fair the judgment of the Municipal Court in Vushtrri, the Applicant addressed the latter with a proposal for execution of the Judgment C. no. 13/2001 of 5 July 2002.
16. On 5 March 2003, the Municipal Court in Vushtrri, by Decision E. no. 59/2003, allowed the execution proposal, by which was approved the statement of claim of the Applicant for compensation of debt at the amount of 1.794 Euros by the Municipality of Vushtrri.
17. On 11 September 2003, the Supreme Court, by Judgment Rev. no. 48/2003, approved as grounded the revision filed by the Municipality of Vushtrri, thereby deciding to modify the Judgment C. no. 13/2001, of 5 July 2002, of the Municipal Court in Vushtrri, and the Judgment Ac. no. 93/2002, of 11 December 2002, of the District Court in Mitrovica. This Court reasoned as the following:

*“The Supreme Court of Kosovo cannot admit such stance of lower instance courts, since according to evaluation of this Court, the appealed judgments are rendered by violating the substantive law. Pursuant to Resolution of United Nations 1244 of UNMIK Regulation 1999/1 and 1999/24, after the war was created a new reality in Kosovo. Whereas, by provision of Article 1 of this Regulation it is provided that the entire legislative and executive power is exercised by UNMIK and UN Special Representative as well as by accessory instruments issued in compliance with them. By UNMIK Regulation have been established all legislative, executive and administrative institutions both at central level and self-governing of Kosovo municipalities. According to UNMIK Regulation no. 1999/45, Article 48.12, the administrator approves every appointment or dismissal of senior officers and supervises all other appointments with the purpose to provide necessary representation of communities in those appointments.*”



*Such appointments and dismissals cannot enter into force without the co-signature of Municipal Administrator. Pursuant to Article 2.4 of the same Regulation, every municipality should have its own legal statute, the right to possess and administer the property, possibility to file a claim and to be respondent in the court, the right to sign contracts and the right to hire people.*

*By this Regulation are established self-governing authorities of Municipalities and Municipal Civil Service. For the fact that the claimants do not possess contracts for establishment of obligations, according to this Court, in the instant case was erroneously applied the substantive law, thus judgments of both courts were modified, so that the statement of claim of claimants were rejected as ungrounded.*

*According to evaluation of the Court of revision, lack of passive real legitimacy of respondent municipality comes out that the situation which exists in case file and the court, with ex-officio due regard, the moment it certifies the lack of active or passive legitimacy of litigation parties, will reject by judgment the statement of claim of claimants as ungrounded.”*

18. Upon this, the Municipality of Vushtrri filed a claim with the Municipal Court in Vushtrri, thereby requesting to reclaim the financial means paid to the Applicant from its account, as per Decision E. no. 59/2003 of 5 March 2003, of the Municipal Court in Vushtrri.
19. On 26 October 2005, the Municipal Court in Vushtrri, by Judgment C. no. 20/2004 approved the statement of claim of the Municipal Court in Vushtrri, now the claimant, thereby ordering the Applicant to repay the Municipality of Vushtrri, due to unjust acquisition, the amount of 2.485,75 Euros, to the official account, on annual interest rate of 3%, starting from 10 February 2004, until the final payment. The Court, upon review of matter, had found that:

*“From the conducted proceedings, the court concluded that we have to do with the case of unjust acquisition – payment according to the ground that failed later on, since for the claimant at the moment of payment existed the ground, paid the amount of money to the respondent based on final judgment of Municipal Court in Vushtrri mentioned above, but this ground later on failed since by judgment of Supreme Court mentioned above was modified the judgment of Municipal Court in Vushtrri and that of District Court in Mitrovica as well as statement of claim of the now respondent is rejected as ungrounded”.*

20. On 18 March 2013, the Court of Appeal in Prishtina, by Judgment Ac. no. 373/2012, rejected the appeal filed by the Applicant, and upheld as fair the Judgment of the Municipal Court in Vushtrri, C. no. 20/2004, of 26 October 2005. This court had found as fair and lawful the first instance court decision, due to the fact that it was not rendered by any substantial violation of the contested procedure provisions, as per Article 354.2 of the LCP, which this court reviews ex officio, as per Article 365.2 of the LCP.



21. On 9 July 2013, the Supreme Court, by Judgment Rev. no. 181/2013, rejected the revision filed by the Applicant, as a claiming party in this case, filed against the judgment. The Court reasoned:

*“Setting from this situation of the matter, the Supreme Court of Kosovo assesses that the lower instance courts, based on factual situation determined correctly and completely the substantive law, when they found that the statement of claim of claimant to return the money at the adjudicated amount is grounded. The first instance court has correctly applied the provision of Article 210 of LOR, since by Judgment of Supreme Court of Kosovo, Rev.no.48/2003 of 11.09.2003, in that contest was rejected the statement of claim of now the respondent for the payment of debt adjudicated by Judgment of Municipal Court in Vushtrri, C. no. 13/2001 of 05.07.2002. This amount, the first instance court determined based on the ruling on allowing the execution of the Municipal Court in Vushtrri E.no.59/2003 of 05.03.2003, whereby the amount of €691,75 or the total amount of €2,485,75 was paid to the respondent in the name of main debt the amount of €1,794,00 and of interest rate.*

*The allegations in the revision in relation to the height of the norm of interest rate of 3% at the adjudicated amount, this court assessed as ungrounded since the adjudicated interest rate is annual interest rate, which is received in the Bank in the term deposited amounts for more than one year without certain destination. The allegations of revision in relation to the works and work duties, which the respondent performed and her right to compensation, this Court did not evaluate, since by Judgment of this Court Rev.no.48/2003 of 11.09.2003, it was decided in relation to this matter.”*

### **Applicant’s allegations**

22. The Applicant alleges that by challenged decisions were violated her constitutionally guaranteed rights, as per Articles 31 and 53 of the Constitution, due to the fact that the Supreme Court had rejected her claim related to compensation of money for the work done with the Commission for War Crimes and Missing Persons.
23. The Applicant alleges that: *“The stance of Supreme Court of Kosovo in Judgment Rev.no.48/2003 that the courts have implemented erroneously the substantive law is not accurate. The court states that by Regulation 1999/1, 1999/24, 1999/45 have been established all legislative, executive, and administrative institutions both at central and municipal level, but, by UNMIK Regulation no.2000/01 of 14. January 2000 on joint interim administrative structure of Kosovo, it is stated the opposite of what is stated in the reasoning of this judgment. Legis specialis derogat legis generalis. By this regulation is regulated the basis of administrative structure in Kosovo, respectively all power institutions established by Provisional Government in Kosovo according to this Regulation are considered that they have existed and have acted legally in Kosovo up to adoption of this Regulation.”*

## The admissibility of the Referral

24. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. In regard to the Applicant's Referral, 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".*

26. The Court also refers to Article 49 of the Law, which provides:

*"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..."*

27. The Court also refers to the Article 48 of the Law, which provides that *"the claimant should accurately clarify what rights and freedoms he/she claims to have been violated..."*

28. In the case at issue, the Court finds that the Applicant is an authorized party, and has exhausted all legal remedies available by law, in compliance with requirements of the Article 113.7 of the Constitution, and that the Referral was filed within the legal timeline of four months, as provided by Article 49 of the Law.

29. In relation to the applicant's allegation on violation of rights guaranteed by the Constitution, the Court refers to the Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure, which provides that:

*"(1) The Court may only deal with Referrals if:*

*[...]*

*c) The Referral is not manifestly ill-founded.*

*"(2) 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".*

30. The Court has entirely reviewed all documents attached to the referral, and has found that the Applicant has not provided sufficient evidence on the basis of constitutional argumentation to support the allegation that Judgments, Rev. no. 181/2013, of 9 July 2013, and Rev. no. 48/2003, of 11 September 2003, of the Supreme Court have violated the rights of the Applicant, as guaranteed by Articles 31 and 53 of the Constitution.



31. The Court notes that the challenged decisions have been sufficiently reasoned, and from them, it finds that the Supreme Court, in both cases, has reviewed all circumstances of the case to base its verdict, which is also its full jurisdiction to review the legality of court decisions rendered by lower instance courts.
32. In the regular proceedings, it is clearly noticed that the Applicant was offered all possibilities of presenting arguments, facts and evidence before the courts, in relation to violation of alleged constitutional rights. It is not the duty of the Court to review decisions of regular courts only because the Applicant is not satisfied with the outcomes of the regular courts decisions.
33. The Court must remind the Applicant that the Constitutional Court is not a fourth instance court, to review legality and accuracy of decisions rendered by regular courts, unless there is convincing evidence that such decisions were rendered in a manifestly unfair and unclear manner. It is the role of regular courts to interpret and apply the pertinent rules of procedural and material law (See *Garcia Ruiz v. Spain* [GC], No. 30544/96, 28, European Court for Human Rights [ECHR] 1999-I.).
34. In the present case, the Applicant has not presented any evidence showing that the alleged violations, mentioned in the Referral contain elements of violation of rights as guaranteed by the Constitution (See, *Vanek v. Slovak Republic*, ECtHR Decision on admissibility of Application, no. 53363/99, of 31 May 2005).
35. Therefore, the Court cannot consider that the relevant procedures, conducted before the Supreme Court, were in any way unfair or arbitrary (See, *mutatis mutandis*, *Shub vs. Lithuania*, ECtHR Resolution on admissibility of Application, no. 17064/06, of 30 June 2009).
36. From the reasons presented above, the Court finds that the Applicant' Referral does not meet the requirements of Rule 36 (1) c) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) c), Rule 36 (2) b) and Rule 56 (2) of the Rules of Procedure, on 24 January 2014, unanimously

### DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Dr. Kadri Kryeziu



Prof. Dr. Enver Hasani