



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

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Pristina, 27 May 2013  
Ref. No.: RK413/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI31/13**

Applicant

**Ramadan Muja**

**Execution of Judgment of the Municipal Court in Prizren  
C.no. 516/07, of 12 November 2007**

**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 Ramadan Muja, village of Strazha, Municipality of Prizren

### **Challenged decision**

2. The challenged is the Execution of the Judgment of the Municipal Court in Prizren C.no.516/07, of 12 November 2007.

### **Subject matter**

3. The applicant requests the execution of judgments of Courts related to his acquired rights. However, he does not mention what constitutional rights were violated.

### **Legal basis**

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter, 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 of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).
5. On 16 April 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Proceedings before the Court**

6. On 11 March 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 22 March 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judge Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama Hajrizi.
8. On 2 April 2013, the Constitutional Court through a letter informed the Applicant that the Referral had been registered. On the same date, the Referral was communicated to the Basic Court in Prizren as a successor of the Municipal Court in Prizren.
9. On 15 May 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 facts**

10. On 05 June 1969, the Applicant established employment relationship with the Trading Enterprise "Sredačka Župa" in Prizren and, due to some conflicts, he

started judicial proceedings through the regular courts aiming to ensure his alleged rights.

11. After a long way, on 24 July 2006, the Applicant filed a claim with the Special Chamber of the Supreme Court of Kosovo requesting to oblige "Sredacka Zhupa" to pay to the Applicant the amount of 19,568.22 euros.
12. On 2 July 2007, the Special Chamber delivered a decision (Case SCC-06-0344) referring *"this matter to the Municipal Court in Prizren thus giving the competence to that court to decide on this matter. In case the decision or Judgment of this court is appealed, the appeal is filed to the Special Chamber of the Supreme Court of Kosovo"*.
13. In fact, that decision was taken *"pursuant to Article 4.2 of UNMIK regulation 2002/13 and Article 17 of UNMIK Administrative Direction 2006/17, the Chamber can, regardless of its own competence, refer certain claims or claim's categories to any court that has real judicial competence pursuant to the higher law, pursuant to the request of the party or its own initiative, if it is convinced that conditions of Article 17.(b) are met. The conditions are as follows:*

*The Special Chamber is convinced that the court the claim is referred to will render an impartial decision by taking into consideration:*

- (i) The nature of parties;*
- (ii) Value of the litigated amount; and*
- (iii) Other circumstances of the claim".*

14. On 12 November 2007, the Municipal Court in Prizren rendered a judgment [C.no.516/07], ordering "Sredacka Zhupa" to pay the Applicant the debt for incomes for the period from 04 June 1990 to 02 February 1998, in the amount of 19.568,22 Euros, which included the costs of expertise and court proceedings.
15. On 01 April 2010, the Privatization Agency of Kosovo (hereinafter, PAK) informed the Municipal Court in Prizren *"that pursuant to Article 2.1 of the Law no. 03/L-067, it is authorized to manage, sell, transform or liquidate the enterprise and its property, in the manner provided by mentioned law"*. In its conclusion, the letter provides: *"that the Agency shall review all demands, including the claim of the applicant for realization of his rights, only for as much that the applicant files a request with the Liquidation Committee, pursuant to the legal provisions"*.
16. On 10 January 2011, the PAK informed the Applicant that *"the liquidation of the enterprise "Župa Rečane" started on 31 December 2010, and that all obligations to the applicant shall include all unpaid salaries, which the employer owes as per employment contract, shall be treated according to the Regulation on Liquidation."*
17. On 28 January 2011, the KPA requested the Applicant to *"confirm that your request remains unaltered from the liquidation day (...)"* and *"fill out the enclosed Request Form (...)"*. The Applicant should return the liquidation request form *"on or prior to 20 March 2011"*.

18. On 21 February 2011, the Applicant returned to the PAK the Liquidation Request Submission Form.

### **Applicant's allegations**

19. The applicant states that, despite the court decisions to his benefit, he has not been able to realize his rights for 23 years.
20. The Applicant claims that, *"on 31 December 2010 we, all the workers were notified and receive the decision that our enterprise is being liquidated and that we are all fired from work, and that we should submit to the enterprise all our claims, and within 3 months we would be notified on the evaluation of our requests, 2 years have passed we have not received any notification and neither have we received any valid evidence that they have received the documents (...)"*.
21. The Applicant also states: *"I do not know the Constitutional clauses I am not a jurist, I have presented myself in this referral as a peasant and I believe you understand me"*.
22. The Applicant further claims that, within legal deadline, he has delivered the requested documentation to the PAK, but has been waiting for 2 (two) years for an answer.
23. In sum, the Applicant requests that all unpaid salaries be paid, as confirmed with the judgment of the Municipal Court in Prizren [C.no.516/07] of 12 November 2007, including the rights to 20%, which he enjoys pursuant to the Law on Privatization.

### **Admissibility of the Referral**

24. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
25. In this regard, 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. On the other side, Article 47 (2) of the Law also establishes that:
- The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*
27. Furthermore, Rule 36 (1) a) of the Rule of Procedure foresees that:
- The Court may only deal with Referrals if all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted.*

28. The Applicant claims that, within the legal deadline, he has delivered to PAK all the documentation requested by PAK. However, the Applicant has been waiting for an answer, since 21 February 2011, the date of delivery of the documentation. That means that the matter is still pending in the PAK and exhaustion of legal remedies available under applicable law has not met yet.
29. The Court recalls that it can only decide on the admissibility of a Referral, if the Applicant shows that he/she has exhausted all effective legal remedies available under applicable law.
30. In fact, the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right.
31. The rationale for the exhaustion rule is to afford the authorities concerned, including the PAK, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, KI-41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).
32. In fact, as a general rule, the Constitutional Court will only intervene where there are infringements of the interpretation of the Constitution or the laws do not comply with the Constitution, but only after exhaustion of all legal remedies provided by law.
33. Therefore, the Referral, according to Article 113.7 of the Constitution, Article 47 (2) of the Law and Rule 36 (1) a) of the Rules of Procedure, is premature and thus inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 36.2 and 56 of the Rules of Procedure, on 27 May 2013, unanimously,

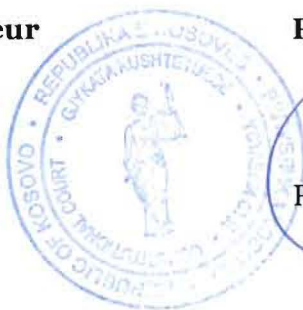
### **DECIDES**

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties and
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision immediately effective.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Prof. Dr. Enver Hasani