



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

Prishtina, 20 January 2020  
Ref. no.:RK 1501/20

*This translation is unofficial and serves for informational purposes only.*

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI180/18**

Applicant

**Metullahe Hoxha**

**Constitutional review of Decision Rev. 144/2018  
of the Supreme Court of 4 May 2018**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Applicant is Metullahe Hoxha, residing in neighborhood Sunny Hill nn, Municipality of Prishtina (hereinafter: the Applicant), who is represented by Ali Latifi, a lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges Judgment [Rev. No. 144/2018] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 4 May 2018.
3. The challenged decision was served on the Applicant on 13 June 2018.

## **Subject matter**

4. The subject matter is the request for constitutional review of the challenged decision, which allegedly violates the rights guaranteed by Articles 3 [Equality Before the Law], 4 [Form of Government and Separation of Power], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial] and 57 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] 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 16 November 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 29 November 2018, the President appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 14 November 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 14 November 2019, the Court requested the Basic Court in Prishtina to submit a copy of the acknowledgment of receipt, indicating the date when the Applicant was served with Decision [Rev. No. 144/2018] of the Supreme Court of 4 May 2018. On the same date, the Court forwarded a copy of the Referral to the Office of the Chief State Prosecutor of Kosovo.
10. On 27 November 2019, the Basic Court in Prishtina submitted to the Court the acknowledgment of receipt of the Decision [Rev. No. 144/2018] of the Supreme Court by the Applicant with the date of service of 13 June 2018.

11. On 18 December 2019, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

12. On 5 July 2012, the Applicant, by Decision [No. 03 no. 118-23644] of the Directorate of Education of the Municipality of Prishtina terminated the employment relationship due to reaching the age of 65 on 13 June 2012. This last-mentioned date represents the date of the Applicant's retirement.
13. On an unspecified date, the Applicant requested the Directorate of Education of the Municipality of Prishtina to pay her three accompanying monthly salaries upon retirement, two monthly salaries as jubilee rewards and holiday pay. The Applicant's request was rejected *„because there was no legal provision for the implementation of the collective agreement by the Government of Kosovo“*.
14. On 27 July 2012, the Applicant filed a claim with the Basic Court in Prishtina (hereinafter: the Basic Court), stating that when rendering the decision on retirement, the Directorate of Education of the Municipality of Prishtina did not respect the provisions of Articles 42, 43 and 44 of the General Collective Agreement, by which, according to the Applicant, she was not paid three accompanying monthly salaries upon retirement, two monthly salaries as jubilee rewards and holiday pay, in the amount of € 1921.50.
15. On 31 March 2014, the Basic Court in Prishtina [Judgment C. No. 2088/12] approved the Applicant's lawsuit and ordered the Directorate of Education of the Municipality of Prishtina to pay to the Applicant two monthly salaries for the jubilee rewards and two accompanying retirement salaries in the amount of € 1401, with an interest rate of 3.5%, which is calculated from the date of receipt of judgment until final payment.
16. On an unspecified date, the Directorate of Education of the Municipality of Prishtina filed appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina on the grounds of *“erroneous application of substantive law, with a proposal to approve the appeal so that the matter be remanded for reconsideration to the first instance court or to be modified and the statement of claim of the claimant be rejected as unfounded”*.
17. On 6 September 2017, the Court of Appeals by Judgment [AC. No. 3789/2014] approved, as grounded, the appeal of the Directorate of Education of the Municipality of Prishtina and modified the judgment of the Basic Court by rejecting as ungrounded the Applicant's claim to oblige the Directorate of Education of the Municipality of Prishtina to pay the Applicant two monthly salaries as the jubilee reward and two accompanying retirement salaries.
18. Against the abovementioned judgment of the Court of Appeals, the Applicant filed the request for revision with the Supreme Court, alleging violations of the provisions of the contested procedure and erroneous application of substantive law.

19. On 4 May 2018, the Supreme Court by Decision [Rev. No. 144/2018] rejected as inadmissible the Applicant's request for revision because the value of the dispute was below the legal limit on the basis of which the requests for revision could be considered.

### **Applicant's allegations**

20. The Applicant alleges that the Supreme Court by rejecting her request for revision as inadmissible violated her rights protected by Articles 3, 4, 21, 22, 23, 24, 31 and 57 of the Constitution, and the right guaranteed by Article 6 of the ECHR.
21. The Applicant alleges a violation of Articles 3 and 4 of the Constitution, which arose from the fact that everyone was not equally treated because, as she alleged: *"some of my colleagues have acquired the right to the jubilee salary upon retirement, whereas I have been claiming an undeniable right for years"*.
22. The Applicant also alleges a violation of Chapters I and II, in particular Articles 21, 22, 23, 24, 31 and Article 57 of the Constitution, which arose from the fact that the Directorate of Education of the Municipality of Prishtina *"failed to apply Article 90 of the Law on Labor and the Collective Agreement, thereby violating fundamental human rights and freedoms guaranteed by the International Convention of 1948, the Constitution of Kosovo, Chapters I and II, as well as the Law on Labor, the Collective Agreement signed by the Government of Kosovo, the Ministry of Labor and Social Welfare, the Chamber of Commerce, the Central Trade Union, which guarantee to all public and private services that, after retirement, for every 10 years one salary and two monthly salaries for retirement are paid"*.
23. The Applicant further alleges that the provisions of the Law on Labor, the Collective Agreement and the Convention, which are guaranteed by the Constitution of Kosovo, have not been applied in her case.
24. As regards the decision making by the Supreme Court, the Applicant states, *"In its judgment, the Supreme Court dismissed the revision as inadmissible, reasoning it by Article 215 of the LCP, but also by Article 211.3 of the LCP, stating that the total value of the subject-matter of the dispute does not exceed € 3,000, and that the court does not at all refer to item 4 of Article 211, item c), which states that: "Excluding, when dealt with the charge claim from the certain paragraphs of Article 211 of the LCP, the revision is always permitted: contests in work relations initiated by the employee against the decision for break of work contract."*
25. Finally, the Applicant requests the Court to: *"recognize to former teacher the entitlement to the accompanying salaries for every 10 years, 1 salary and 3 accompanying salaries"*.

## Admissibility of the Referral

26. The Court first examines whether the Applicant fulfilled all admissibility requirements, established in the Constitution, and further specified in the Law and the Rules of Procedure.
27. In this respect, the Court refers to of Article 113.7 of the Constitution which establishes:

### *Article 113*

*„(1) The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*[...]*

*(7) 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.“*

28. The Court also examines whether the Applicant has met the admissibility requirements as further specified by the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

### *Article 47* *[Individual Requests]*

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

### *Article 48* *[Accuracy of the Referral]*

*“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”.*

### *Article 49* *[Deadlines]*

*“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...”.*

29. As regards the fulfillment of this requirement, the Court finds that the Applicant is an authorized party challenging an act of a public authority, namely Decision Rev. No. 144/2018 of the Supreme Court. The Applicant also emphasized the rights and freedoms which she claims to have been violated, in accordance with the requirements laid down in Article 48 of the Law.
30. The Court also takes into account Rule 39 (1) (c) of the Rules of Procedure, which foresees:

*„The Court may consider a referral as admissible if:*

*“[...]”*

*(c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...].“*

31. In the present case, the Court notes that the challenged decision (Rev. No. 144/2018) of the Supreme Court was served on the Applicant on 13 June 2018, while the constitutional referral was filed on 16 November 2018.
32. In this regard, the Court notes that the constitutional referral was filed out of legal time limit of 4 (four) months, which is prescribed in Article 49 of the Law and further laid down in Rule 39 (1) (c) of the Rules of Procedure.
33. The Court recalls that the objective of the 4 (four) months legal deadline, in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that cases raising constitutional matters are dealt within a reasonable time and that past decisions are not continually open to be challenged. (see case *Sabri Güneş v. Turkey*, application no. 27396/06, Judgment of 29 June 2012, paragraph 39, and *mutatis mutandis*, see: case No. KI140/13, Applicant: *Ramadan Cakiqi*, Resolution on Inadmissibility of 3 March 2014).
34. Based on the foregoing, the Applicant's Referral was not submitted in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.
35. The Court finds that the Applicant's Referral was filed out of time and it is to be declared inadmissible, because it was not filed in accordance with Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.



## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1) c) of the Rules of Procedure, on 18 December 2019, unanimously

## **DECIDES**

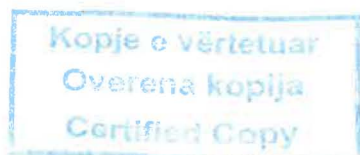
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Safet Hoxha

Arta Rama-Hajrizi



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