



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

Prishtina, 07 December 2020  
Ref.no.:RK1656/20

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

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI232/19**

Applicant

**Xhemajl Bajraktari**

**Request for interpretation of Article 35 points 8 and 9 of the Collective  
Agreement on Education in Kosovo**

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

composed of:

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

### **Applicant**

1. The Referral was submitted by Mr. Xhemajl Bajraktari from Ferizaj (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant does not challenge any concrete decision of any public authority within the meaning of paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo.

## **Subject matter**

3. The subject matter is the Applicant's request for interpretation of Article 35, points 8 and 9 of the Collective Agreement on Education of Kosovo (hereinafter: the Collective Agreement) concluded between the Ministry of Education and Technology (hereinafter: MEST) and the United Trade Union of Education, Science and Culture (hereinafter: SBASHK).

## **Legal basis**

4. The Referral is based on Article 113 (1) and (7) of the Constitution, Article 47 [Individual Requests] of 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**

5. On 16 December 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 December 2019, the President appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha.
7. On 23 January 2020, the Court notified the Applicant about the registration of the Referral.
8. On 11 November 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. On 18 April 2017, MEST and SBASHK signed the Collective Agreement.
10. The Collective Agreement is applicable to all employees in all public and private institutions of Pre-University Education and higher education institutions throughout the territory of the Republic of Kosovo, which are members of SBASHK.

## **Applicant's allegations**

11. The Applicant does not refer to the violation of any constitutional provision in particular, but claims that his constitutional rights have been “*seriously violated*”, because his rights are restricted due to the obligation to join the SBASHK.
12. The Applicant alleges: “*Membership in the Education Union of Kosovo is voluntary and not mandatory. Based on the wording of Article 35, points 8 and 9, there are tendentious elements of the obligation of teachers to join and pay the membership fee, to then have guaranteed the rights provided in the cited article*”.
13. The Applicant addresses the Court with a request “*With my referral, I seek an INTERPRETATION and information on my rights, more specifically, will I also enjoy my rights as a teacher, after I retire, since some of the rights listed in Article 35 point 8 and 9, are supplemented after retirement and other rights, which are decisively listed in Article 35 point 8 and 9*”.

## **Admissibility of the Referral**

14. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and the Rules of Procedure.
15. In this respect, the Court refers to Article 113 (1) and (7) of the Constitution which establish:

*“(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”.*

16. The Court also refers to Articles 47.1 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which stipulate:

### *[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”.*

### *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”.*



17. In this regard, the Court refers to Rule 39 (1) (a) [Admissibility Criteria] of the Rules of Procedure, which specifies:

“(1) *The Court may only deal with Referrals if:*  
[...]  
*(a) the referral is filed by an authorized party*”.

18. In the assessment whether the Applicant meets the constitutional and legal criteria for the constitutional review of his Referral, the Court recalls that under Article 113 of the Constitution, 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. The same criterion is also set out in Article 47 of the Law.
19. In the circumstances of the present case, the Court notes that the Applicant does not challenge any act of a public authority that may have resulted in a violation of his fundamental rights and freedoms. Moreover, the Applicant has not accurately clarified what rights and freedoms have allegedly been violated by any act of public authority, as required by Article 48 of the Law.
20. In fact, the Applicant requests the interpretation *in abstracto* of the Collective Agreement regarding his rights as a “*teacher after retirement*” and whether he can enjoy “*some of the rights listed in Article 35 point 8 and 9*” of the Collective Agreement.
21. However, the Court, based on paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, has jurisdiction to decide only on cases referred to it in a legal manner by an authorized party.
22. In this regard, the Court notes that the individuals (natural and legal persons), within the meaning of Article 113, paragraph 7 of the Constitution, have no right to address directly the Constitutional Court and to request it to assess *in abstracto* the constitutionality of a legal norm, or to raise before it hypothetical questions of interpretation of the laws for which they are not authorized pursuant to Article 113, paragraph 7 of the Constitution (see, *mutatis mutandis*, the Constitutional Court cases, KI60/17, Applicant: KRU “Radoniqi” Gjakova, Resolution on Inadmissibility, of 24 October 2017, paragraph 30; KI21/19 Applicant Pjetër Boçi, Resolution on Inadmissibility, of 27 May 2019, paragraph 25).
23. In this regard, the Court recalls its consolidated case law, regarding the interpretation of Article 113 of the Constitution, which states that persons, natural or legal, have no right to challenge *in abstracto* normative acts of a general nature (See cases of the Constitutional Court: KI05/17 Applicant Osman Sylanaj, Resolution on Inadmissibility of 20 November 2017; KI102/17 Applicant Meleq Ymeri, Resolution on Inadmissibility of 10 January 2018; KI196/18 Applicant Dardan Bunjaku, Resolution on Inadmissibility of 23 April 2019 and KI113/19 Applicant Islam Qerimi, Resolution on Inadmissibility of 9 July 2020).

24. Thus, according to the case law of this Court, the Constitution does not provide for a possibility that individuals can complain *in abstracto* in the Constitutional Court for an unconstitutionality of a Law. The individuals may file constitutional referral regarding actions or failure to act by public authorities only within the scope provided by Articles 113 (1) and 113 (7) of the Constitution, which requires the Applicants to show that they are: (1) authorized parties, (2) directly affected by a concrete act or failure to act by public authorities, and (3) that they have exhausted all legal remedies provided by law (See KI113/19 *Applicant Islam Qerimi*, cited above, paragraph 29 and references mentioned therein).
25. Therefore, the Court reiterates that the referrals that basically raise issues of legality, such as the present case, as a rule, fall within the jurisdiction of the regular courts. In fact, it is not the task of the Constitutional Court to deal with the allegation and interpretation of the relevant legislation to determine whether the Applicant, as a “*teacher, after retirement, can enjoy his rights based on the relevant provisions of the Collective Agreement*” (see, KI21/19, *Applicant Pjetër Boçi*, cited above, paragraph 26; and also see, case of the Constitutional Court KI27/17, *Applicant Maliq Zeqiri*, Resolution on Inadmissibility, of 13 November 2017, paragraph 24).
26. The Court may interfere only where the allegations of violation of the rights guaranteed by the Constitution are substantiated on constitutional basis and fall within its jurisdiction as provided by the Constitution, after all the formal and procedural criteria required by the Constitution, the Law and the Rules of Procedure elaborated above have been met (see KI27/17, *Applicant Maliq Zeqiri*, cited above, paragraph 25).
27. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality of the Collective Agreement *in abstracto* nor to seek its interpretation, and, consequently, his Referral is to be declared inadmissible.
28. For the reasons above, the Court finds that the Applicant is not an authorized party as provided by Article 113 (1) and (7) of the Constitution, Article 47.1 of the Law and Rule 39 (1) (a) of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113 (1) and (7) of the Constitution, Article 47.1 of the Law and Rule 39 (1) (a) and 59 (2) of the Rules of Procedure, in the session held on 11 November 2020, 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**

Nexhmi Rexhepi

Arta Rama-Hajrizi



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