



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

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Prishtina, on 17 May 2021  
Ref. no.: RK 1775/21

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

## **RESOLUTION ON INADMISSIBILITY**

in

**case no. KI193/20**

Applicant

**Bujar Hoti**

**Constitutional review of Decision C. No. 257/2019 of the Basic Court in  
Prishtina - branch in Glllogoc, of 17 December 2020**

### **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 Referral was submitted by Bujar Hoti (hereinafter: the Applicant), residing in village Polac, municipality of Skenderaj.

## **Challenged decision**

2. The Applicant challenges the constitutionality of Decision C. No. 257/2019 of the Basic Court in Prishtina – branch in Glllogoc, of 17 December 2020.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Decision, whereby, according to the Applicant's allegation, the right to equal treatment before the law and the right to work, guaranteed by Article 24 and 49 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), have been violated).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 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 29 December 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 December 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban (members).
7. On 15 January 2021, the Court notified the Applicant about the registration of Referral KI193/20 and sent a copy of the Referral to the Basic Court in Prishtina - branch in Glllogoc.
8. On 5 May 2021, 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. The Applicant, in his capacity as Applicant, submits a Referral to the Court for the third time. He previously filed Referrals KI39/18 and KI178/18. However, in the current Referral KI193/20, the challenged subject is Decision C. No. 257/2019 of the Basic Court in Prishtina - branch in Glllogoc, of 17 December 2020, which in the abovementioned referrals was not subject of review.
10. The Applicant alleges that from 1983 he worked as an engineer in the Ferronikeli enterprise, and from 1992 to 1999 he was on compulsory leave. While from 1999 to 2006 he stated that he did not have a statute of an

employee. In July 2006, the Applicant started to work on the renovation of the smelter in Glllogoc, which was put into production in 2008 and continued production until 2013.

11. On 28 February 2013, the Applicant's employment contract was terminated.
12. On 7 June 2019, the Applicant submitted a statement of claim to the Supreme Court, which forwarded the case to the Basic Court in Prishtina - branch in Glllogoc. The statement of claim was filed against the respondent NewCO Feronikeli LLC, while the subject of the claim was the reinstatement to work and compensation of unpaid salaries.
13. On 15 October 2019, the Basic Court in Prishtina – branch in Glllogoc, by Decision C. No. 257/2019, requested the Applicant to complete and specify the claim within 3 (three) days.
14. On 15 October 2020, the Basic Court in Prishtina - branch in Glllogoc, invited the Applicant to pay the court fee in the amount of 20 (twenty) euro, under the obligation that if the fee would not be paid on time, the claim will be considered withdrawn.
15. On 17 December 2020, the Basic Court in Prishtina - branch in Glllogoc, by Decision C. No. 257/2019, dismissed the claim of the Applicant, on the grounds that: *"the claimant had the opportunity to file a request with the respondent and if the respondent within 15 days did not decide on his request, the latter had to file a claim within 30 days if he was not satisfied with the decision of the respondent or was dissatisfied, but the claimant filed his claim late because if we count from 01.03.2013 when the claimant's employment relationship was terminated it turns out that the claim of the claimant was filed with a delay of 6 years and 3 months and 6 days"*.

### **Applicant's allegation**

16. The Applicant alleges that public authorities and courts violated his rights to equal treatment before the law and to work, by alleging that there was an agreement which provided that the investor (buyer) of the Glllogoc smelter employ 1000 (one thousand) professional workers. In this case, the Applicant alleges that his work as an engineer in this enterprise was ignored by the Feronikeli company and was replaced by workers with lower or middle qualification of the profession.
17. The Applicant requests the Court to allow him to return to work and be compensated for unpaid salaries.

### **Admissibility of the Referral**

18. 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.

19. The Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] 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”.*

*[...]*

20. The Court also examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Article 47 [Individual Requests], which establishes:

*Article 47*  
*[Individual Requests]*

*“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.*

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

21. The Court also refers to Rule 39 (1) (b) of the Rules of Procedure, which specifies:

*“(1) The Court may consider a referral as admissible if:*

*[...]*

*(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.*

*[...]*

22. The Court recalls that the rule for exhaustion of legal remedies under Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) of the Rules of Procedure, obliges those who wish to bring their case before the Constitutional Court that they must first use the effective legal remedies available to them in accordance with law, against a challenged act or decision of the public authority or the regular court.

23. Only in that way, the regular courts must be afforded the opportunity to correct their errors through a regular judicial proceeding before the case arrives to the Constitutional Court. The rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR that under the domestic

legislation there are available legal remedies to be used before the regular courts in respect of an alleged breach regardless whether or not the provisions of the ECHR are incorporated in national law (see, *inter alia*, case *Aksoy v. Turkey*, paragraph 51 of Judgment of ECtHR of 18 December 1996).

24. The principle is that that the protection mechanism established by the Constitutional Court is subsidiary to the regular system of judiciary safeguarding human rights (see, *inter alia*, *Handyside v. United Kingdom*, paragraph 48, ECtHR Judgment of 7 December 1976).
25. Under Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violations. The existence of such legal remedies must be sufficiently certain not only in theory but also in practice, and if this is not so, those legal remedies will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France* paragraph 27 of the ECtHR Judgment of 20 February 1991, and *Dalia v. France*, paragraph 38 of the ECtHR Judgment of 19 February 1998).
26. It falls to the Court to examine whether the legal remedies have been exhausted, and whether it was effective, available in theory and practice at the relevant time, that is, that the remedy was accessible, and that it could redress the violations in relation to the objections of the Applicant and that it enables reasonable prospect for success (see, *inter alia*, *Civet v. France* paragraphs 42-44, of the ECtHR Judgment of 28 September 1999).
27. However, when a legal remedy is provided by law, it is up to the Applicant to prove that the legal remedy provided by law has in fact been exhausted, or that for any reason it was not available and effective in the particular circumstances of the case, or that there have been special circumstances due to which he or she is exempted from the requirements of exhaustion of legal remedies.
28. In the present case, the Court notes that against the challenged Decision C. No. 257/2019 of the Basic Court in Prishtina- branch in Glogoc, of 17 December 2020, there is a possibility to file an appeal as a regular legal remedy with the Court of Appeals, as instructed by the Basic Court in Prishtina - branch in Glogoc in the legal remedy, which states: "*against this decision is allowed the appeal within 15 days from the day of receiving the latter, with the Court of Appeals in Prishtina, through this Court*".
29. However, the Applicant did not use such an opportunity, therefore, the Court concludes that his Referral should be declared inadmissible, as not all legal remedies have been exhausted in accordance with Article 113.7 of the Constitution, Article 47 (2) of the Law and Rule 39 (1) (b) of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Articles 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (1) (b), and 59 (2) of the Rules of Procedure, on 5 May 2021, 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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