



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

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Prishtina, on 2 August 2021  
Ref. No:RK1820/21

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI192/20**

Applicant

**Muhamed Aliu**

**Constitutional review of Decision Rev. no. 87/2020 of the Supreme Court  
of Kosovo, of 6 April 2020**

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

composed of:

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

#### **Applicant**

1. The Referral was submitted by Muhamed Aliu, from Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision [Rev.no. 87/2020] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 6 April 2020.
3. The Applicant had received the Decision of the Supreme Court on 17 December 2020.

## **Subject matter**

4. The subject matter of the Referral is the constitutional review of the challenged decision of the Supreme Court, which allegedly has violated the Applicant's fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights (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, Articles 20 [Decisions], 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 29 December 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 30 December 2020, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu Krasniqi and Gresa Caka-Nimani, members.
8. On 18 January 2021, the Court notified the Applicant about the registration of the Referral and requested from him to submit to the Court the Decision of the Basic Court and that of the Court of Appeals.
9. On the same date, the Court sent a copy of the Referral to the Supreme Court.
10. On 29 January 2021, the Applicant submitted the requested documents to the Court.
11. On 22 April 2021, the Court sent a letter to the Basic Court in Prishtina (hereinafter: the Basic Court) and requested from it to provide the

acknowledgment of receipt proving the date when the Applicant has received the Decision [Rev.no.87/2020 ] of the Supreme Court, of 6 April 2020.

12. On 27 April 2021, the Basic Court submitted the requested acknowledgment of receipt to the Court.
13. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Court Constitutional. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court KK-SP 71-2/21, it was determined that Judge Gresa Caka-Nimani, shall take over the duty of President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.
14. On 25 May 2021, based on point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of a judge at the Constitutional Court.
15. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision KSH192/20, appointed Judge Safet Hoxha as a member of the Review Panel instead of Judge Bekim Sejdiu.
16. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision no. KK160/21 on the replacement of the presiding judges in review panels, appointed the elected President of the Court Gresa-Caka Nimani, as presiding judge of the panel for the case KI192/20.
17. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of President of the Court, whilst based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
18. On 22 July 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

19. Based on the case file, the Applicant had entered into an employment relationship with the Socially Owned Enterprise “Stacioni i Autobusëve (Eng. Bus Station)” in Prishtina (hereinafter: the SOEBS) from 31 December 2011, in the position of gatekeeper/entrance fee collector at the bus station service.
20. On 7 June 2013, the SOEBS by Decision [No.02/187] had terminated the Applicant’s employment relationship, on the grounds that the Applicant was temporarily suspended from work in the period from 14 November 2012 until 31 May 2013, and that even after that date he had failed to report for work.

21. On 1 July 2013, the Applicant filed a claim with the Basic Court in Prishtina (hereinafter: the Basic Court) seeking the annulment of the Decision of the Respondent SOEBS [No.02/187] of 7 June 2013, due to the unlawful termination of the employment relationship and obliging of the respondent to reinstate the claimant to his job position with all the rights from the employment relationship.
22. On 20 October 2016, the Basic Court through Decision [C.no.1545/13] considered the Applicant's claim as withdrawn, reasoning that even after being summoned by the court in regular manner, he failed to respond and did not justify his absence.
23. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court, due to essential violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law, by proposing to the Court of Appeals to approve his appeal as grounded, whilst the challenged decision to be quashed and the case to be remanded for retrial and reconsideration.
24. On 12 December 2018, the Court of Appeals by Decision [Ac.no.3125/18] dismissed the Applicant's appeal as being out of time.
25. On an unspecified date, the Applicant filed a revision with the Supreme Court against the Decision of the Court of Appeals, due to essential violation of the provisions of the contested procedure and erroneous application of the substantive law, by proposing that the revision be accepted as grounded, whilst the decisions of both courts to be annulled and the case to be remanded to the court of the first instance for retrial and reconsideration.
26. On 6 April 2020, the Supreme Court by Decision [Rev.no.87/2020] rejected as ungrounded the Applicant's revision filed against the Decision of the Court of Appeals.

### **Applicant's allegations**

27. The Applicant challenges the Decision [Rev.no.87/2020] of the Supreme Court, of 6 April 2020, alleging that it was issued in violation of his fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, as well as Articles 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.
28. As regards the alleged violations of the above-mentioned Articles of the Constitution and the ECHR, the Applicant, apart from mentioning these Articles, has not argued in any way how and why have his rights protected by the Constitution and the ECHR been violated.
29. The Applicant requests, inter alia, as stated by him, *"the opportunity to provide a statement in the Basic Court, in relation to my case which is vital*

*for me and my family as I have now remained jobless and no one is willing to hire me”.*

30. Finally, the Applicant requests from the Court to remand the case to the Supreme Court for reconsideration. He also states that his case is the same as that of Court KI71/18.

## **Relevant Legal Provisions**

### **LAW No. 03/L-006 on Contested Procedure**

#### ***Change of Address*** **Article 116**

*116.1 If the party or his or her representative during the proceeding or before completion of six months period following completion of procedure by adjudicative decision changes the address where the documents shall be served it shall immediately notify the court.*

*116.5 If the party or his representative does not promptly inform the court on the change of address, the court shall order further service to take place in the court's announcements table. This service shall be effected until the party or his representative informs the court about the new address.*

*116.6 The service from the paragraph 5 of this article is assumed effected after the seven days period of announcement of the documents in the announcement table of the court has exceeded.*

#### **PREPARATORY SESSION** **a) General provisions**

##### **Article 409**

*409.1 If the plaintiff does not come to the preparatory session even though he/she is summoned regularly, it is considered that the charge is withdrawn, except if the accused asks for it.*

*409.2 If the accused does not come to the preparatory session, and he/she is summoned regularly, then the session continues with the present plaintiff.*

## **Admissibility of the Referral**

31. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
32. In this respect, 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.”*

33. In the following, the Court also examines whether the Applicant has fulfilled the admissibility criteria, as provided for by Law. In this respect, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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...”*

34. As to the fulfilment of these criteria, the Court finds that the Applicant is an authorized party, who is challenging an act of a public authority, namely the Decision [Rev.no. 87/2020] of the Supreme Court, of 6 April 2020, after having exhausted all legal remedies provided for by law. The Applicant has also clarified the fundamental rights and freedoms which he alleges to have been violated pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
35. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure



establishes the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

*“The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*

36. In this respect, the Court and initially recalls that the Applicant had challenged before the regular courts the Decision of the SOEBS [No.02/187] on termination of employment relationship, claiming its illegality, because in essence, according to him despite his will to return to work he was prevented by the court.
37. The Applicant's case was reviewed through 3 (three) court decisions, initially decided by the Basic Court, according to which, the Applicant's claim was considered withdrawn because the Applicant failed to respond to the court's summons court and did not justify his absence. The Court of Appeals had dismissed the Applicant's appeal as being out of time, whilst the Supreme Court had rejected the revision as ungrounded. The Applicant requests *“the opportunity to provide a statement in the Basic Court, in relation to my case which is vital for me and my family as I have now remained jobless and no one is willing to hire me”*.
38. In relation to this allegation, and as reflected in the part relating to the Applicant's allegations, beyond the allegation that the decisions of the regular courts are in contravention with Articles 31, 32, 53 and 54 of the Constitution and Article 6 of the ECHR, the Applicant has not submitted to the Court any concrete argument and/or reasoning regarding the violations of his rights alleged by him.
39. In this respect, the Court recalls its case law according to which the mere mention of an article of the Constitution, without a clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that takes cares of the respect for fundamental human rights and freedoms (see, in this context, the cases of Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility, of 20 June 2019, paragraph 36; and KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility, of 8 October 2019, paragraphs 30-31; KI26/20, Applicant *Fatmir Kahrmani*, Resolution on Inadmissibility of 12 October 2020, paragraph 34).
40. Such a stance of the Court is based upon the case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution. Based on this case law, and on the already consolidated case law of the Court, the unreasoned allegations or complaints, which are not substantiated with arguments and evidence, are declared

inadmissible as manifestly ill-founded on constitutional basis. (See, the ECtHR Guide of 30 April 2019 on Admissibility Criteria; part I. Inadmissibility based on merits; A. Manifestly ill-founded applications; 4. Unsubstantiated complaints: lack of evidence, paragraphs 280 to 283).

41. The Court also recalls that the Supreme Court had substantiated in detail the Applicant's allegations regarding the deadline of his appeal. In this regard, the Supreme Court, by its Decision, inter alia, had reasoned as follows:

*“In the present case, the court did not have the opportunity to communicate the documents in person to the claimant, because the claimant did not notify the court about the change of address. The provision of Article 116, para.1 of the LCP, determines the obligation of the party and their representative to notify the court about the change of address. Failure to notify about the address produces legal consequences in the sense of Article 116, para.5 of the LCP; because this provision provides that the announcement of documents is done by posting them on the announcement board at the court. In this case, applies the legal presumption that the communication was carried out in a regular manner after the expiration of the legally determined deadline, by the announcement of the documents on the announcement board at the court (Article 116 para.6 of the LCP). In this case it does not matter whether the document must be submitted in person or not as defined by Article 110 of the LCP.*

*Therefore, the conclusion of the court of the second instance is legally correct and as such it should remain in force because the claimant has not filed the appeal against the decision of the court of the first instance within the legal deadline according to Article 176, para.1 of the LCP, as correctly assessed by the court of the second instance; this is due to the fact that the decision on the withdrawal of the claim was announced on the court announcement board on 20.10.2016, the decision was withdrawn on 31.10.2016, after it stood posted/announced during the foreseen legal deadline. The claimant's appeal filed on 19.03.2018, is out of time after having exceeded the deadline for more than one year, from the day of regular submission of the decision, through the court announcement board.*

*The allegations raised in the revision that the claimant was notified with a delay about the decision of the court of the first instance upon his release from detention and his pronouncement as innocent in the criminal proceedings, were considered ungrounded because the claimant failed to support his allegations by facts in the appellate proceedings and in the revision, whilst on the basis of the acknowledgment of receipt contained in the case file it results that the decision on withdrawal of the claim was announced/posted on the court announcement board due to the unknown address of the claimant. In this sense, this Court rejected the claimant's allegations as ungrounded; the Applicant alleged that his appeal was not treated fairly in this procedure, and consequently the right to a fair trial which is guaranteed by Article 31 of the Constitution of the Republic of*



*Kosovo and European Convention for the Protection of Human Rights and Fundamental Freedoms, has been violated.”*

42. In this context, the Court notes that the Court of Appeals and specifically the Supreme Court had found that the Applicant was late in filing the appeal, and on this occasion he had missed the legal deadlines stipulated by the legal provisions for filing an appeal.
43. Consequently, the Court notes that the Court of Appeals and the Supreme Court had assessed that the decision to withdraw the claim rendered by the Basic Court was correct, because the Applicant had not notified the court about the change of address, and that the failure to notify the court about the new address produces legal consequences, therefore the communication of documents was done by having them posted on the announcement board at the court, in which case also the deadline started to be calculated from that date.
44. The Court also recalls that the Applicant alleges that the decisions of the regular courts are illegal and in contravention with the Constitution, by referring also to the case of Court KI71/18.
45. In this respect, the Court notes that apart from the fact that the Applicant has mentioned and cited the case of Court KI71/18, he has not elaborated on its factual and legal relevance to the circumstances of the present case. The Court notes that the reasoning of other court decisions must be interpreted in the context and in the light of the factual circumstances in which they were rendered (see, inter alia and in this context, the Judgment in case KI48/18 of 4 February 2019, Applicant *Arban Abrashi and the Democratic League of Kosovo (LDK)*, paragraph 275; case KI119/17, Applicant *Gentian Rexhepi*, Resolution on Inadmissibility, of 3 May 2019, paragraph 80; and KI115/19, Applicant *Sadete Jusufi*, Resolution on Inadmissibility, of 21 April 2020 , paragraph 51).
46. As explained above, the Applicant does not provide any additional arguments or reasoning before the Court in support of his allegations for violation of his constitutional rights. Consequently, the Court, based upon its Rules of Procedure, namely paragraph 2 of its Rule 39, must declare this Referral inadmissible as manifestly ill-founded on constitutional basis, because the Applicant does not sufficiently prove and substantiate his claim.
47. In the end, the Court emphasizes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim for violation of the right to fair and impartial trial (see, the case of the ECtHR *Mezotur- Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21, and, inter alia, the case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 October 2017, paragraph 42).
48. Therefore in these circumstances, based on the foregoing and taking into account the allegations raised by the Applicant and the facts presented by him, the Court, having relied also on the standards established in its case law in similar cases and the case law of the ECHR, finds that the Applicant has not sufficiently proved and has substantiated his allegation for violation of his

fundamental rights and freedoms guaranteed by the Constitution and the ECHR.

49. Consequently, the Referral is manifestly ill-founded on constitutional basis, and must be declared inadmissible pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 39 (2) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 22 July 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**

Remzije Istrefi-Peci

Gresa Caka-Nimani



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