



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

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Prishtina, 7 July 2014  
Ref.no.:RK667/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI05/14**

Applicant

**Bejtullah Sogojeva**

**Constitutional Review of the Judgment Rev. No. 396/2012 of the  
Supreme Court, dated 11 September 2013**

### **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  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Applicant is Mr. Bejtullah Sogojeva residing in Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court, Rev. No. 396/2012, of 11 September 2013, which was served on the Applicant on 18 December 2013.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court by which the Applicant alleges that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

## **Legal basis**

4. Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law"), and Rule 56 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 17 January 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 31 January 2014 the President of the Court, by Decision No. GJR. KI05/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date the President of the Court, by Decision, No. KSH. KI05/14, appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 12 February 2014 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 19 May 2014 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**

9. The Applicant was employed at the Medical Institute in Obiliq as a Medical Coordinator until 15 August 2006. On that date, his employment was terminated since he allegedly reached the full retirement age.
10. According to the Applicant, his working booklet wrongly stated that he was born on 15 March 1941 when in fact he was born on 15 August 1942. Thus, his employer wrongly calculated his retirement age and as a consequence he had to retire one year before he reached the full retirement age.

11. On 15 August 2006 the Applicant initiated civil court proceedings before the Municipal Court in Prishtina. Following that, on 8 December 2008, the Municipal Court issued a Judgment (Cl. No. 161/2007) and approved the Applicant's petition. The Applicant's employer as the respondent in the proceedings was obliged to compensate to the Applicant his annual personal income and the costs of the proceedings.
12. The Respondent submitted a timely appeal against the Judgment of the Municipal Court in Prishtina of 8 December 2008 to the District Court in Prishtina.
13. On 15 September 2009 the District Court in Prishtina issued Judgment (Ac. No. 569/2009) and quashed the above - mentioned Municipal Court Judgment. Thus, the case was remanded to the Municipal Court in Prishtina.
14. On 22 April 2011 the Municipal Court in Prishtina issued Judgment (C. No. 2360/09) and rejected the Applicant's petition. The Applicant appealed against that Judgment.
15. That Judgment of the Municipal Court in Prishtina was confirmed by the Judgment of the District Court in Prishtina of 24 January 2012 (Ac. No. 1356. 2011).
16. Against the Judgment of the District Court in Prishtina of 24 January 2012, the Applicant submitted a revision to the Supreme Court of Kosovo. He argued the challenged judgment was issued in violation of the Law on the Contested Procedure.
17. On 11 September 2013 the Supreme Court issued Judgment (Rev. No. 396/2013) and rejected the Applicant's revision as ungrounded.
18. In the reasoning of the Judgment the Supreme Court sated, *inter alia*, "[F]rom the case files, and this is not contested even by the claimant, it comes out that in the work file at the respondent where the claimant used to work there was his work booklet and birth certificate, from which it is confirmed that the claimant is born on 15 March 1941 based on these evidence ... is terminated the employment relationship... since he fulfilled the requirements for retirement. The Decision of Appeal Review Permanent Committee in Department of Civil Status, according to request of the claimant for correction of birth date was made on 9 February 2007, respectively 1 year after making the decision for retirement."
19. Consequently, the Supreme Court found that in the Applicant's civil case the facts of the case were established correctly and completely and that there was no violation of the substantive law.

### **Applicant's allegations**

20. The Applicant alleges that "*in the conducted procedures was not guaranteed a fair and impartial trail and that the right to work..., since none of the courts...*

*based on documentation... confirmed that the Applicant was born on 15 August 1942 and... in 1941."*

### **Assessment of admissibility of the Referral**

21. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
22. It is clear from the Applicant's allegations summarized above that the Applicant merely disputes whether the regular courts correctly applied the applicable law. The Applicant further disagrees with the Supreme Courts' factual findings with respect to his case.
23. In this regard, the Court notes that the Applicant has used all the available legal remedies prescribed by the Law on Contentious Procedure and that the Supreme Court has taken into account and answered his appeals on the points of law.
24. The Court recalls that it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
25. The Court further notes that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
26. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded*".

## FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 1. c ) of the Rules of the Procedure, in its session held on 19 May 2014, unanimously

## DECIDES

- I. TO REJECT the Referral as 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; and
- IV. TO DECLARE this Decision immediately effective.

**Judge Rapporteur**

**President of the Constitutional Court**



Prof. Dr. Ivan Čukalović



Prof. Dr. Enver Hasani