



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

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Prishtina, 6 October 2017  
Ref. No.:RK 1133/17

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI78/16

Applicant

**Driton Syla**

**Constitutional review of Judgment Rev. No. 7/2016 of the Supreme  
Court, of 18 January 2016**

**CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

Composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

### **Applicant**

1. The Referral was submitted by Driton Syla, residing in Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The challenged decision is Judgment Rev. No. 7/2016 of the Supreme Court of Kosovo, of 18 January 2016, which was served on the Applicant on 10 February 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 [Right to a fair trial], Article 13 [Right to an effective remedy] and Article 14 [Prohibition of discrimination] of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution, Article 47 [Individual requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and Rule 29 [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 19 May 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 June 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Selvete Gërxhaliu-Krasniqi.
7. On 29 June 2016, the Court notified the Applicant about the registration of the Referral, and sent a copy of the Referral to the Supreme Court as well as to the Municipal Directorate for Education in Gjilan (hereinafter: MDE)
8. On 13 January 2017, the President of the Court appointed Judge Altay Suroy, as Presiding Judge of the Review Panel, replacing Judge Robert Carolan, who on 9 September 2016 resigned from the position of the Judge of the Court.
9. On 6 September 2017, the Review Panel, after having considered the report of the Judge Rapporteur, unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts in the administrative proceedings**

10. On 22 July 2011, the MDE in Gjilan, announced the vacancy for hiring a building caretaker at the Preschool Institution "Ardhmëria I" (hereinafter: IP "Ardhmëria I") in Gjilan.
11. On 12 October 2011, the MDE, by Decision 05. No.821/2011, announced the results on the basis of which in the post of caretaker of the facility in IP "Ardhmëria I" in Gjilan, was admitted the candidate who was third according to the assessment of the Interviewing Committee while the Applicant was ranked first.
12. On 18 October 2011, the Applicant filed a complaint with the Municipal Complaints Review Committee (hereinafter: the Complaints Committee) against Decision 05.No. 821/2011 of the MDE of 12 October 2011, claiming that *"the MDE decision is contradictory to the results from the interview procedure, because by the decision in question, the name – B. M., who has no adequate qualification for the position and who had less points was published"*.
13. On an unspecified date, the Applicant addressed with a request the MDE director, requesting him *"to interrupt the further administrative actions under the announcement of 12 October 2011 until a final decision is rendered upon my complaint filed with the Complaints Committee and by the Court having jurisdiction."* The Applicant alleges that he has never received any response regarding this request.
14. On 25 November 2011, the Complaints Committee, by Decision No. 02-16-46560, approved the Applicant's complaint as grounded and decided to modify part II of Decision 05 No. 821/2011 of MDE of 12 October 2012, so that instead of the candidate B.M., decided to assign the Applicant in the working place. In this decision, among other things, is emphasized *"the Municipal Directorate for Education is obliged to systematize Driton Sylja, within the time limit of 15 days, to the job position of Caretaker of the Building of PI Ardhmëria 1, based on the results of the interview."*
15. From the case file it results that on an unspecified date, the Applicant also filed a complaint with the Labor Inspectorate, against Decision 05. No. 821/2011 of the MDE, of 12 October 2011.
16. On 2 December 2011, the Labor Inspectorate (Notification No. 02-999/11) approved as grounded the complaint and ordered the MDE to admit within 8 (eight) days, the Applicant according to the ranking list of the Interviewing Committee.

## **Summary of facts in the enforcement proceedings**

17. On an unspecified date, the Applicant submitted a proposal to the Municipal Court in Gjilan for enforcement of Decision No. 02-16-46560, of 25 November 2011, of the Complaints Committee.

18. On 16 December 2011, the Municipal Court in Gjilan, by Decision E. 2318/2011, authorized the enforcement upon the Applicant's proposal, against the Municipality of Gjilan, for compensation of personal income based on Decision No. 02-16-46560, of 25 November 2011, of the Complaints Committee.
19. On 23 January 2012, the Municipality of Gjilan filed an objection with the Municipal Court in Gjilan against Decision E. 2318/2011 of 16 December 2011, claiming that *"the proposal for execution does not mention the amount of money the creditor has to pay"*.
20. On 5 March 2012, the Municipal Court in Gjilan, by Decision E. 2318/2011, approved the objection of the Municipality of Gjilan as grounded.
21. On an unspecified date, the Applicant filed an appeal with the District Court in Gjilan against Decision E. 2318/2011 of 5 March 2012 of the Municipal Court in Gjilan.
22. On 24 April 2012, the District Court in Gjilan, by Decision AC. No. 129/2012, rejected as ungrounded the Applicant's appeal and upheld the Decision of the Municipal Court in Gjilan, E. No. 2318/2011 of 5 March 2012. In the Decision, it is reasoned that *"the challenged decision contains sufficient, complete, and convincing reasons with which this Court agrees in entirety [...], Whereas, as regards the appealing allegation of the creditor according to which the court applies the rules under the substantive law based on its discretion, such appealing allegations is ungrounded because pursuant to Article 24, b) of the LEP, "Execution titles are execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen otherwise, in the case at hand, we do not have to do with monetary obligation and there is no executive title", therefore the first instance court fairly granted the objection of the Debtor!"*.
23. On 7 October 2013, the Applicant filed a request for reopening of the proceedings with the Basic Court in Gjilan, on the grounds that *"he was informed that on 11 December 2012, the Supreme Court of Kosovo, by letter Agj. no. K. 584/2012, had changed its previous principled stance and concluded that a decision that is final in an administrative procedure is a decision which the court should execute, therefore, he proposed that the reopening of the procedure be allowed."*
24. On 8 October 2013, the Basic Court in Gjilan issued Notification E. 2318/2011, stating that *"in the present case the Basic Court in Gjilan, according to Decision No. 02-16-46560/2 of the Municipal Committee for Review of Complaints, of 25 November 2011, could not conduct an enforcement procedure because the enacting clause of the decision does not state the amount of money"*.

25. On an unspecified date, the Applicant filed a request for repetition of the procedure with the Court of Appeals against Notification E. 2318/2011 of the Basic Court in Gjilan, of 8 October 2013.
26. On 24 November 2014, the Court of Appeals of Kosovo, by Decision No. 322/2013, rejected as inadmissible the Applicant's request for repetition of the procedure. In the reasoning of this decision, the Court of Appeal stated that *“the revision is not allowed, or the repetition of the procedure in the enforcement procedure.”*

### **Summary of facts in contested procedure**

27. On 21 December 2011, the Applicant filed a statement of claim against the MDE in Gjilan, requesting to enforce Decision No. 02-16-46560, of the Complaints Committee of 25 November 2011. The Applicant requested to be assigned in the working place and obliged the MDE to compensate all salaries from the date of issuance of Decision No. 02-16-46560, of the Complaints Committee, of 25 November 2011.
28. On 5 November 2012, the Municipal Court in Gjilan (Judgment C. No. 888/2011) approved the Applicant's statement of claim. The judgment further adds that *“the claimant’s statement of claim is entirely grounded, because based on the examined items of evidence, it was confirmed that the respondent has not executed the decision of the Municipal Committee for Review of Complaints and the failure to execute it resulted in the failure to assign the claimant Driton Sylja [...] although the respondent, pursuant to Article 16 of the Law on the Administrative Procedure, was obliged to execute the said decision [...] The Court obliged the respondent to pay to claimant- Driton Sylja the unpaid salaries for the period from December 2011 until October 2012 .”*
29. On an unspecified date, the MDE filed an appeal with the Court of Appeals of Kosovo against the aforementioned decision of the Municipal Court in Gjilan claiming that there has been a substantial violation of the provisions of the contested procedure, erroneous determination of factual situation and erroneous application of the substantive law.
30. On 7 October 2013, the Court of Appeals of Kosovo (Decision Ac. No. 5020/2012), approved the appeal of the MDE and annulled the Judgment of the Municipal Court in Gjilan, C. No. 884/2011 of 5 November 2012 and remanded the case for consideration to the Basic Court in Gjilan. In the judgment, it is argued that *“the conclusion of the first instance court cannot be considered as fair and lawful because, according to the assessment of the present court, the challenged judgment was rendered by essential violation of the provisions of the contested procedure, under Article 182 paragraph 2, item n) of the LCP, whereof the second instance court is obliged to take care ex-officio, with this being the main reason why the challenged judgment is to be quashed [...].”*

31. On 17 December 2013, the Basic Court in Gjilan, deciding on a repeated proceeding (Judgment C. No. 783/2013) partially approved the Applicant's claim, concluding the following: *"The statement of claim of claimant Driton Sylja from Gjilan is partially approved and the respondent is obliged [...], to assign claimant Driton Sylja in the job position of Caretaker of the building of PI Ardhmëria 1 in Gjilan, and to pay the claimant the unpaid salaries from December 2011 until May 2012 [...] The part of the statement of claim of claimant Driton Sylja, whereby he requested to oblige the respondent [...] to pay the claimant the unpaid salaries for the period of time covering June 2012 until 30 November 2013 is rejected as ungrounded."* Regarding the rejection of the salary for the period in question, in the reasoning of the judgment is emphasized that *"during this time period, the claimant was not damaged in the form of the lost profit with the respondent's guilt because he worked on the GorenjeNikiTiki company [...] higher personal incomes than he would have earned if he had worked for the respondent."*
32. On an unspecified date, the Applicant and the Municipality of Gjilan filed an appeal with the Court of Appeals of Kosovo, claiming a violation of the provisions of the contested procedure, erroneous determination of factual situation and erroneous application of the substantive law.
33. On 17 November 2015, the Court of Appeals of Kosovo (Judgment Ac. No. 925/2014), rejected the appeal of the Applicant and the Municipality of Gjilan as ungrounded. In the reasoning of the decision, *inter alia*, it is noted that *"the Court of Appeals, as second instance court, approves the legal assessment of the first instance court as correct and lawful, because the challenged judgment does not contain essential violations of the provisions of contested procedure under Article 182.2 n) of the LCP, and, as alleged by the parties, there is no erroneous and incomplete determination of the factual situation and there is no erroneous application of the substantive law"*.
34. On an unspecified date, the Applicant and the MDE in Gjilan filed the revision with the Supreme Court against Judgment Ac. No. 925/2014, of the Court of Appeals of Kosovo, of 17 November 2015, claiming essential violations of the contested procedure provisions and erroneous application of the substantive law.
35. On 18 January 2016, the Supreme Court of Kosovo, by Judgment Rev. No. 7/2016, decided as follows: **I.** *The revision of claimant Driton Sylja from Gjilan in the part which refers to part II of the Judgment of the first instance court concerning the compensation of personal income for the time period from June 2012 until 30.12.2013, is rejected as ungrounded;* **II.** *The revision of the respondent filed against Judgment Ac. No. 925/2004 of the Court of Appeals of Kosovo, dated 17.11.2015, in the part which refers to the obligation of the respondent to pay the claimant the unpaid salaries from December 2011 until May 2012, is rejected as inadmissible."*

## **Applicant's allegations**

36. The Applicant alleges that the challenged decision violated his rights guaranteed by the Article 24 [Equality Before the Law] Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution, as well as Article 6 [Right to a fair trial], Article 13 [Right to an effective remedy] and Article 14 [Prohibition of discrimination] of the ECHR.
37. Specifically, the Applicant alleges that “[...]The failure to execute Decision No. 123/2008 of the Committee for Review of Appeals and Submissions and the unreasonable delay for resolution of this legal matter by the authorities of the MA of Gjilan, constitutes a violation of Article 31 as read in conjunction with Article 32 of the Constitution, as well as Article 6 as read in conjunction with Article 13 of the Convention [...]. This failure and the lack of effectiveness of proceedings as well as the failure to execute the decisions produce effects which make us face situations that are not compatible with the principle of rule of law, this being a principle which the authorities of Kosovo are obliged to respect”.
38. In addition, the Applicant alleges that “There is no doubt that the rejection of the execution proposal by the Municipal Court in Gjilan and the District Court in Gjilan constitutes a violation of Article 24 of the Constitution, because in the same legal situations, the citizens have not been treated equally before the law and did not provide equal legal protection [...] It is an indisputable fact that the damage was caused by the Employer [...] the court partially approved the statement of claim, thereby encouraging the Employer not to execute the enforceable decisions”.
39. The Applicant further alleges that “the partial compensation of salary by the courts is contradictory to the law, and that the Basic Court in Gjilan has exceeded the statement of claim, since it was requested the reinstatement to previous job position and compensation for the salary [...] and not the lost profit [...]”.
40. The Applicant requests the Court, as follows:

*“to hold the violation of my rights in respect of partial compensation, to hold unreasonable delay of proceedings”.*
41. Finally, the Applicant requests the Court to annul Judgment Rev. No.7/2016 of the Supreme Court of Kosovo, of 18 January 2016.

## **Admissibility of Referral**

42. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and the Rules of Procedure.

43. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

*“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.”*

44. The Court also refers to Article 48 of the Law, which provides:

*“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.”*

45. The Court further takes into account Rule 36 [Admissibility Criteria] (1) (d) and (2) (b) of the Rules of Procedure, which provides for:

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

*(...)*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*(...)*

*(d) the Applicant does not sufficiently substantiate his claim”.*

46. In the present case, the Court considers that the Applicant is an authorized party, that he has exhausted all available legal remedies and he has submitted the Referral within the foreseen time limit.

47. However, the Court must also assess whether the requirements established in Article 48 of the Law and Rule 36 of the Rules of Procedure have been met.

48. In this regard, the Court recalls that the Applicant alleges that the Judgment of the Supreme Court, Rev. No. 7/2016 of 18 January 2016, violated his rights guaranteed by the Constitution, namely equality before the law, right to fair and impartial trial, right to legal remedies and judicial protection of rights in conjunction with the right to a fair trial, right to an effective remedy and prohibition of discrimination of the ECHR.

49. The Court recalls that in the present case there are several decisions rendered in various proceedings, namely in the administrative, enforcement and contested proceedings.

50. Based on the case file, the Court notes that the Applicant does not file allegations relating to his or her systematization or non- systematization in



the working place, but only the issue of compensation of salary and only for a certain period of time.

51. However, the Court notes that the essence of the Referral relates to the decisions of the regular courts only in respect of the compensation of a part of unpaid personal income.
52. In this regard, the Court notes that the final decision, which the Applicant explicitly challenges, is the Judgment of the Supreme Court Rev. No. 7/2016 of 18 January 2016, by which Judgment the Applicant's request for revision against the judgment of the Court of Appeals was rejected as ungrounded.
53. As regards the Applicant's allegation that the regular courts, which rejected the Applicant's request for full compensation of salaries, violated his rights guaranteed by the Constitution, the Court notes that the Supreme Court in its aforementioned judgment concluded that the challenged judgment of the Court of Appeals was clear and comprehensible, and that it contained sufficient grounds and decisive facts for the adoption of a lawful decision.
54. The Court further notes that the Supreme Court found that *"in the present case the two courts have correctly assessed these circumstances and have correctly concluded that the claimant is not entitled to the right to compensation of personal income, since during this time period, the claimant was not damaged in the form of lost profit (Article 189 of the LCT), because he has realized higher personal income in the other job position than the incomes he would have realized in the job position of a caretaker"*.
55. In this respect, the Court considers that the Judgment of the Supreme Court addressed and decided on the Applicant's allegations, which had already been brought before the lower instance courts.
56. Accordingly, the Court considers that the regular courts provided sufficient answers and justifications for their decisions as to why the Applicant's claim for compensation of salaries was not fully implemented.
57. In addition, the Court considers that the Applicants' allegations relate to the manner in which the regular courts have made the relevant qualifications and interpretations of the facts and applicable laws in the present case.
58. The Court emphasizes that findings and qualifications of the facts as well as legal interpretations are the prerogative of the regular courts.
59. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts, when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). The constitutional control over the court decisions, exercised by the Constitutional Court, is limited to the

functioning of the protection of the constitutional rights of the individual and respective constitutional standards. Accordingly, the Constitutional Court cannot act as a “fourth instance court” in relation to the decisions of the regular courts (see *Akdivar v. Turkey*, ECtHR, Application No. 21893/93, Judgment of 16 September 1996, para. 65, also *mutatis mutandis*, see Case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

60. Regarding the Applicant's allegation of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, due to the excessive length of the proceedings, the Court notes that the Applicant has not submitted arguments and facts supporting this claim. In addition, based on the case file and in the light of the circumstances of the case, the Court notes that the regular courts were active in the adjudication of the case from the moment of initiation, and, accordingly, did not cause unreasonable delays of the proceedings.
61. Regarding the Applicant's allegation that “*in the same legal situation, the citizens were not treated the same before the law and did have not been provided equal legal protection*”, the Court considers that the Applicant has not filed any facts and has not sufficiently substantiated his allegation of unequal treatment. When alleging such constitutional violation, the Applicant must submit a reasoned allegation and a convincing argument (See: Case No. KI32/16, Applicant: *Ibrahim Svarça*, Constitutional Court, Resolution on Inadmissibility of 15 September 2016).
62. The Court emphasizes the fact that the Applicant does not agree with the outcome of the case, is not sufficient in itself to argue an alleged constitutional violation (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005)
63. In conclusion, the Court considers that the Applicant has not substantiated his allegations of violation of the human rights and fundamental freedoms guaranteed by the Constitution, because the facts presented by him do not in any way indicate that the regular courts have denied him the rights guaranteed by the Constitution, as alleged by the Applicant.
64. Therefore, the Referral is manifestly ill-founded on constitutional basis, in accordance with Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, on 6 September 2017, 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.

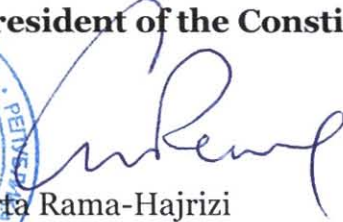
**Judge Rapporteur**



Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi