



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

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Prishtina, 3 November 2014  
Ref. No.:RK719/14

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI108/14

Applicant

**Sevdije Sllovinja**

**Constitutional review of Judgement Rev. No. 107/2014 of the Supreme  
Court of the Republic of Kosovo dated 22 April 2014**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Referral was submitted by Ms. Sevdije Sllovinja (hereinafter: the Applicant) residing in Prishtina.

## **Challenged decision**

2. The Applicant challenges Judgment Rev. no. 107/2014 of the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court), dated 22 April 2014, which was served on an unspecified date.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment which allegedly *violated her rights guaranteed by the Constitution, namely, Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] in conjunction with Article 6 of European Convention for Human Rights.*

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (2) 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 24 June 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 July 2014 the President of the Court, with Decision No. GJR. KI108/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI108/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Enver Hasani and Arta Rama-Hajrizi.
7. On 23 July 2014 the Supreme Court was notified of the Referral.
8. On 17 September 2014 after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. On 13 February 2004 the Kosovo Energy Corporation (hereinafter: KEK), approved the Applicants request for pension under category "A" (Decision no. 43/14) in compliance with UNMIK Regulation 2001/35 and KEK Pension Fund Statute.
10. In the abovementioned decision of KEK it was determined that the payment of the pension for the Applicant will commence on 1 February 2004 and end on 28 February 2009, while the amount of monthly pension shall be 105 Euros. Furthermore, the decision stated that the unsatisfied party may file an appeal

within the time limit of 15 days to the Committee for Reconsideration of Disputes, through the Pension Fund Administration.

11. According the submitted documents, no appeal was filed against this decision.
12. After 1 March 2009 KEK terminated the payment of the pension of the Applicant as specified in the agreement.
13. The Applicant submitted a claim before the Municipal Court in Prishtina.
14. On 21 December 2011 the Municipal Court in Prishtina (Judgment C. no. 912/2009) approved the claim submitted by the Applicant and “ordered KEK to continue the payments until the establishment of the Kosovo Pension Invalidation Fund”.
15. KEK submitted an appeal to the Court of Appeal in Prishtina against the judgment of the Municipal Court (Judgment C. no. 912/2009).
16. On 8 November 2013 the Court of Appeal (Judgment Ca. no. 3382/2012) rejected as ungrounded the appeal submitted by KEK and upheld the judgment of the Municipal Court dated 21 December 2011.
17. KEK submitted a request for revision to the Supreme Court of Kosovo.
18. On 24 April 2014 the Supreme Court of Kosovo (Judgment Rev. no. 107/2014) approved the revision submitted by KEK.
19. The Supreme Court held:

*“Supreme Court of Kosovo does not accept as right and lawful such legal position of the courts of lower instances, because under the assessment of this court, the challenged judgment and that of the first instance have erroneously applied the substantive law upon approval of the claimant’s statement claim as grounded. This position, the court of revision took due to the fact that the liability of the respondent in the view of the duration of this right of the claimant respectively the defendant’s liability cannot be connected and conditioned with the establishment of the Fund for Pension and Disability as wrongly assess the courts of the lower instances, but the termination of the employment relationship was associated with the period of date 01.02.2004 and ends on date 02.29.2009. According to the agreement, the aforementioned decision (decision which was not challenged by the respondent), exactly defines the duration of obligation of the respondent, to compensate the payment of pension to the date 02.29.2009, this obligation on the part of the respondent is fulfilled for the period of 5 years (60 months), for each month in the amount of 105€, as it stands in the decision, even though based on the decision of the Executive Board of the respondent no. 3873/11-C, of 25.07.2006 and according to the decision of the Board of Managers SPF, the respondent ceased financing the fund on 31.07.2006”.*

### **Applicant's allegation**

20. The Applicant alleges that the Judgment of the Supreme Court of Kosovo “violates her rights guaranteed by the Constitution, namely, Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] in conjunction with Article 6 of European Convention for Human Rights”.
21. In conclusion the Applicant request from the court the following:

*“The factual situation to be certified, all files of the case to be fairly reviewed and to be compensated the amount certified by the Judgment of the Municipal Court of Prishtina, C. no. 912/2009 of 21 December 2011”.*

### **Assessment of the admissibility**

22. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements.
23. In this respect, the Court refers to Rule 36 (1) c) and 36 (2) b) of the Rules of Procedure, which provide that:

*“(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*

*(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*  
*[...]*  
*b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,*  
*[...]*
24. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her fundamental rights and freedoms have been violated by the regular courts.
25. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants have had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
26. The Court notes that the Supreme Court sufficiently reasoned its Judgment and thus the Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
27. In sum, the Applicant did not show why and how her rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. The Court

emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the 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*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

28. Thus, pursuant to Rule 36.(1).c) of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.
29. Moreover, with reference to other cases adjudicated by the Court regarding the Temporary Compensation for the Termination of Employment by KEK, the Court considers that based on the documents submitted and completed proceedings, this Referral differs from the afore-mentioned, because the agreement signed between KEK and other former employees of KEK in those referrals was until the establishment of the Kosovo Invalidation Pension Fund without any reference to an end date unlike the factual situation in the present referral (see Resolution on Inadmissibility in cases KI10/12, KI25/12 and KI54/14).

#### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 56 (2) of the Rules of Procedure, on 17 September 2014, unanimously

#### DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Prof. Dr. Enver Hasani