



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

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Prishtina, 8 July 2013  
Ref. no.:RK441/13

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI128/12**

Applicant

**Shaban Hoxha**

**Request for constitutional review of the Judgment of the Supreme Court  
of Kosovo, Rev. no. 316/2011, of 14 June 2012**

**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 and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Shaban Hoxha (hereinafter: the Applicant) from Prishtina, with residence in Prishtina, "Nazim Gafurri" Str., no. 13.

## **Challenged decision**

2. The challenged decision of the public authority is the Judgment of the Supreme Court in Prishtina, Rev. no. 316/2011, dated 14 June 2012, for which, in the form for submission of Referral to the Court the party has stated that it was served on him on 4 December 2012.

## **Subject matter**

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 6 December 2012 is the constitutional review of the Judgment of the Supreme Court in Prishtina, Rev. no. 316/2011, dated 14 June 2012, by which the Applicant's revision, filed against the Judgment of the District Court in Prishtina, Ac. no. 784/2009, dated 11 March 2011, was rejected.

## **Legal basis**

4. Article 113.7 of the Constitution; Article 22 of the Law on Constitutional Court of the Republic of Kosovo, Nr. 03/L-121, of 15 January 2009, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

## **Proceedings before the Court**

5. On 10 December 2012, the Applicant submitted the Referral to the Constitutional Court and the same was registered with the Court under No. KI128/12.
6. On 14 January 2013, by Decision GJ. R. KI128/12, the President of the Court appointed the Deputy President, Prof. Dr. Ivan Čukalović, as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).
7. On 25 March 2013, the Court notified the Applicant and the Supreme Court of the registration of Referral.
8. On 17 June 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of the facts**

9. On 23 October 2003, Kosovo Energy Corporation( hereinafter: KEK) – Pension Fund, rendered Decision no. 171/29 on application for pension, which is dedicated to the Applicant Mr. Shaban Hoxha, thereby approving Mr. Hoxha's request for early pension at the KEK, namely pension of "B"

category, all this in compliance with UNMIK Regulation 2001/35 and with KEK Pension Fund Statute.

10. In the abovementioned decision it was determined that the payment of pension for Mr. Hoxha will start on 1 November 2003 and will end on 1 December 2008, while the amount of monthly pension shall be 105 Euros. In the decision it was also stated that the unsatisfied party may file an appeal within the time limit of 15 days with the Committee for Resolution of Disputes, through the KEK- Pension Fund Administration.
11. From the documentation submitted by the Applicant together with the Referral, the Court finds that no appeal was filed against the decision of the KEK -Pension Fund.
12. After 1 December 2008, KEK terminated the payment of pension to Mr. Shaban Hoxha and this fact is concluded by the Judgment of the Municipal Court in Prishtina, CI. No. 437/2008.
13. On 26 March 2009, the Municipal Court in Prishtina rendered Judgment CI. No. 437/2008, by which it rejected the claim of the claimant, Mr. Shaban Hoxha from Prishtina, where he had requested from the Court to oblige the respondent KEK to pay the pension to him according to the Decision no. 171/129, dated 23 October 2003, starting from 1 December 2008 until the conditions for payment exist.
14. In the reasoning of this Judgment, the Municipal Court in Prishtina concluded among others:

*“The parties did not dispute the fact that the claimant realized supplementary pensions for 60 months, at a monthly amount of 105 Euros, nor they disputed the fact that after 60 months, to the claimant such payment was terminated, respectively, on 01.12.2008.”* The Court also concluded that *“the fact was determined that the respondent fulfilled in entirety its obligations towards the claimant, provided by the claimant’s decision on pension”* and that *“it follows that the statement of claim of the claimant on extension of the pension of payment even after the date 01.12.2008 is ungrounded, therefore it decided to reject the same as such.”*
15. On 11 March 2011, the District Court in Prishtina rendered Judgment Ac. no. 784/2009, by which it rejected the appeal of Mr. Shaban Hoxha as ungrounded, with the reasoning that *“according to this court, the first instance court’s conclusion, that the statement of claim of claimant is ungrounded, is fair. The first instance court judgment is based on a correct and complete determination of factual situation, upon which the substantive law was applied correctly.”*
16. On 14 June 2012, the Supreme Court of Kosovo, deciding upon the request of the Applicant, rendered Judgment Rev. 316/2011, by which it rejected the revision filed by the Applicant against the Judgment of the District Court in Prishtina as ungrounded.

17. In the reasoning of the Judgment, the Supreme Court stated that: *“The Supreme Court of Kosovo, starting from such state of the matter, found that the courts of lower instances have correctly applied the substantive law, when they found that the statement of claim of the claimant is ungrounded.”*
18. Finally, on 10 December 2012, unsatisfied with the courts’ decisions, Mr. Hoxha filed a Referral with the Constitutional Court.

### **Applicant’s allegations of constitutional violations**

19. The Applicant alleges that the challenged judgment has violated his rights guaranteed by the Constitution of the Republic of Kosovo, as follows: Article 49 (Right to Work and Exercise Profession), Article 24 (Equality before the Law) and Article 6 of European Convention on Human Rights (Right to a Fair Trial).
20. The Applicant also states that the Supreme Court of Kosovo, by rendering the revision upon his request, put him into unequal position before the law, because in the case identical with his case, it rendered the Judgment Rev. no. 152/2009, dated 12 April 2010, by which that court approved the revision of that Applicant, while it rejected the revision filed by him.

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

21. In order to be able to adjudicate the Applicant’s Referral, the Constitutional Court first assesses whether the Applicant has met the admissibility requirements laid down in the Constitution, the Law on Constitutional Court and Rules of Procedure.
22. In this regard, the Court refers to Article 113.1 of the Constitution [Jurisdiction and Authorized Parties] which provides:

*“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”.*

23. The Court also takes into consideration Rule 36 of the Rules of Procedure of the Constitutional Court, which provides:

*“(1) The Court may only deal with Referrals if:*

*(c) the Referral is not manifestly ill-founded.*

24. Referring to the Applicant’s Referral and alleged violations of the constitutional rights, the Constitutional Court concludes that the Applicant has exhausted all legal remedies available to him under the law, and he has filed the Referral within legal time limit provided by Article 49 of the Law on Constitutional Court, therefore in these circumstances, the Court will review merits of the alleged constitutional violations, as presented by the Applicant.

25. In this respect, the Court emphasizes that the Constitutional Court is not a fact-finding court and on this occasion it wants to emphasize that the correct and complete determination of factual state is the full jurisdiction of regular courts, as in this case of the Supreme Court by rejecting the claimant's revision or of the District Court in Prishtina by rejecting the appeal of the appellant and that its role (the role of the Constitutional Court) is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, cannot act as a fourth instance court (see, *mutatis mutandis*, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, par. 65).
26. The mere fact that Applicants are unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of Article 31 of the Constitution or Article 6 of ECHR (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Meztur-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005 or Tengerakis vs. Cyprus, no. 35698/03, decision dated 9 November 2006, § 74).
27. The Applicant did not present any valid argument that would support his allegations of violation of Article 49 of the Constitution and apart from the claim that he had a lawful decision on pension and his request that the pension should continue to be paid, he did not justify how his constitutionally guaranteed right was violated. Further, the regular courts, in regular and legal proceedings, have concluded that the obligations that derive from the decision of the respondent KEK and which are in favor of Mr. Hoxha have been fulfilled in their entirety. In fact, the Applicant did not challenge at all the proceedings and the process in its entirety, but he challenged the final outcome of the court process, which was not in his favor.
28. Furthermore, in order for a judgment or a resolution of a public authority to be declared unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that, "the decision of the public authority, as such, will be an indicator of a violation of the request to a fair trial and if, the unreasonableness of that decision is so striking, that the decision can be considered as grossly arbitrary." (See, ECtHR, Khamidov vs. Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).
29. In the Judgment of Supreme Court, Rev. 316/2011, dated 14 June 2012, the Constitutional Court has not found elements of arbitrariness or alleged violation of human rights, as alleged by the Applicant.
30. As regards the allegation of violation of the right guaranteed by Article 24 of the Constitution (Equality before Law), which the Applicant alleges that it has been violated, justifying this with the fact that in an identical case the Supreme Court rendered a different judgment, the Court concludes that in the case mentioned by the Applicant, the judicial process was in essence fundamentally different.
31. In fact, in the case of the Applicant Z. B. (which is alleged to be identical), also a KEK pensioner, the Municipal and District Court decided in favor of the Applicant Z. B., while, after revision filed by KEK, the Supreme Court (Rev.

no. 152/2009, of 12 April 2010), approved as grounded the KEK revision, that is, the revision of the responding party and not claimant's revision, and in these circumstances, the Court cannot conclude that there was a violation of Article 24 of the Constitution.

32. The Court also states that the Applicant did not present as evidence the act of individual agreement concluded between him and KEK, as the Applicants of the Referrals filed by groups of KEK employees had, as well as former pensioners of this company, where it was stated that the pension would be paid "until the establishment and functioning of the Invalidity and Pension Insurance Fund in Kosovo" (*See Judgments of the Constitutional Court, dated 23 June 2010, of the Applicant Mr. Imer Ibrahimimi and 48 others, and the Applicant Mr. Gani Prokshi and 15 others*), but he had a decision on pension on a precisely fixed term, which he accepted and did not challenge it, therefore the Court has not found arguments to treat this Referral as other abovementioned cases before this Court which were filed by groups of former KEK employees.
33. In these circumstances, the Applicant has not sufficiently substantiated his allegation and he has not referred the matter in a legal manner and it cannot be concluded that the Referral is well-founded, therefore the Court, pursuant to the Rule 36 paragraph 2 items c and d, finds that the Referral should be rejected as manifestly ill-founded and consequently

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on Constitutional Court and in compliance with the Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

## DECIDES

- I. TO REJECT 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; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Prof. dr. Ivan Čukalović

**President of the Constitutional Court**



Prof. dr. Enver Hasani

