



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

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Prishtina, 10 February 2015  
Ref. No.: RK768/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI136/14**

Applicant

**Abdullah Bajqinca**

**Constitutional Review of the  
Judgment Rev. No. 99/2014 of the Supreme Court  
dated 12 May 2014**

### **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 Referral was submitted by Mr. Abdullah Bajqinca, with residence in Bardh i Madh, Municipality of Fushë-Kosova (hereinafter, the Applicant). The Applicant is represented by Mrs. Fehmije Bytyqi-Gashi, a practicing lawyer in Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment Rev. 99/2014 of the Supreme Court of 12 May 2014, which modified the Judgment Ac. no. 1870/2012 of the Court of Appeals dated 21 August 2013, and the Judgment C. no. 2146/2009 dated 22 April 2010 of the Municipal Court in Pristina.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment which allegedly violated Article 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

## **Proceedings before the Constitutional Court**

5. On 9 September 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 7 October 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 20 October 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 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. The Applicant was a worker in the Department of Maintenance and Coal of KEK (hereinafter, the Employer) from 1 October 2006.
10. On 16 May 2007, the Employer suspended the Applicant from his work based on the suspicion that he committed the criminal offense of theft of the property of the Employer.
11. Following that suspension, administrative, criminal and contested proceedings were established.

## **Administrative Proceedings**

12. On 27 July 2007, the Disciplinary Commission of the Employer decided to terminate the working relationship with the Applicant because of having violated his work duties.
13. On 31 July 2007, the Applicant filed an appeal with the second instance disciplinary body of the Employer against the Decision of the Disciplinary Commission.
14. On 6 August 2007, the second instance rejected the Applicant's appeal and upheld the Decision of the Disciplinary Commission.

## **Criminal Proceedings**

15. On 27 February 2009, the Municipal Court in Prishtina (Judgment, P. No. 2287/07) acquitted the Applicant from the charge of theft of the property of the Employer. The acquittal decision was final and binding.

## **Contested Proceedings**

16. On an unspecified date, the Applicant filed with the Municipal Court a claim for his reinstatement to the previous working place.
17. On 22 April 2010, the Municipal Court (Judgment, C. No. 2146/09) approved the Applicant's claim, annulled the Decisions of both Disciplinary bodies of the Employer and obliged the Employer to reinstate the Applicant to his previous working place.
18. The Municipal Court concluded that the Decisions of both Disciplinary Bodies of the Employer were rendered in violation of the Law in force, because "[...] *as it results from the criminal judgment, the wire which was taken by the claimant for which he is charged for (...) does not have the characteristics of the criminal offence 'theft'.*
19. The Employer filed an appeal with the Court of Appeals against the the Judgment of the Municipal Court, alleging violation of procedure, erroneous and incomplete ascertainment of the factual situation and erroneous application of substantive law.
20. On 21 August 2013, the Court of Appeals (Judgment, CA. No. 1870/2012) rejected as ungrounded the Employer's appeal and upheld the Judgment of the Municipal Court of 22 April 2010.
21. Then the Employer filed a revision with the Supreme Court against the Judgment of the Court of Appeals, alleging essential violations of the Law on Contested Procedure and erroneous application of the substantive law.
22. On 12 May 2014, the Supreme Court (Judgment, Rev. No 99/2014) approved the Employer's revision as grounded and amended the Judgment of the first and second instance courts.

23. The Supreme Court found that *“the substantive law was erroneously applied by the lower instance courts”*.
24. In fact, the Supreme Court explained that *“The employment relationship was terminated to the claimant due to serious violations of work duties- theft of respondent’s assets, provided by Article 6 par. 1, item 4 of the Regulation on Disciplinary and Material Responsibility of the KEC employees. The respondent conducted the disciplinary procedure pursuant to provisions of Regulation on Disciplinary and Material Responsibility and the responsibility of the claimant was determined in this procedure. When the disciplinary measure – the termination of employment relationship - was imposed by the respondent on the claimant, the provisions of Article 112 of the Law on Labor Relationship, which was applicable law when the disciplinary procedure was conducted, were respected. In this legal matter, the Court cannot examine the fact of existence or non-existence of the disciplinary offence, because this is determined in the procedure conducted with the employer. Based on the existing evidence in the case file, it results that the disciplinary procedure with the respondent against the claimant was conducted pursuant to the Regulation on Disciplinary and Material Responsibility and the Law on Labor which was applicable at that time”*.

### **Applicant’s allegation**

25. The Applicant does not present an allegation on a constitutional violation; he only claims that *“[...] by last decision of the Supreme Court his fundamental rights as set out by the Constitution, Article 49 and 55 of the Constitution of the Republic of Kosovo, have allegedly been violated”*.
26. The Applicant further requests the Court to annul the Judgment of the Supreme Court (Rev. No. 99/2014 dated 12 May 2014).

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

27. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
28. In this respect, the Court 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.*

29. In addition, the Court refers to Rule 36 of the Rules of Procedure, which provides:

*(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”.*

30. The Court recalls that the Applicant claims that the challenged Judgment of the Supreme Court has violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] and 55 [Limitations on Fundamental Rights and Freedoms ] of the Constitution.
31. However, the Applicant does not make any allegation on a violation of the constitutional rights as he is claiming.
32. The Court observes that the Applicant is not satisfied mainly with the legal qualification of the facts and the law applied by the Supreme Court. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.
33. The mere fact that the Applicant is not satisfied with the outcome of the Judgment of the Supreme Court or only mentioning Article 49 and 55 of the Constitution is not sufficient for the Applicant to build an allegation on a constitutional violation. When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument.
34. In fact, the Court observes that the Applicant invokes Article 49 [Right to Work and Exercise Profession] of the Constitution. However, the Court considers that the challenged Judgment of the Supreme Court does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the Applicant's claim that justifies a conclusion that his constitutional right to work has been violated.
35. The Court notes that the Supreme Court concluded namely that "*the disciplinary procedure with the respondent against the claimant was conducted pursuant to the Regulation on Disciplinary and Material Responsibility and the Law on Labor which was applicable at that time*".
36. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
37. The Constitutional 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 Applicant has had a fair trial. (See, among other authorities, the Report of the European Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
38. The Court considers that the Applicant has neither explained how and why the Supreme Court conclusion, on the "law applicable at that time" to his case, has violated the rights and freedoms he claims to have been violated, nor he has alleged any unfairness and arbitrariness in the proceedings.
39. Moreover, the Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions

taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

40. For the foregoing reasons, the Court concludes that the Applicant has not presented an allegation on a constitutional violation nor he has sufficiently substantiated and proved his claim.
41. Therefore, the Referral is manifestly ill-founded and thus inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rules 36 (2), d) and 56 (b) of the Rules of Procedure, on 10 February 2015, unanimously:

### DECIDES

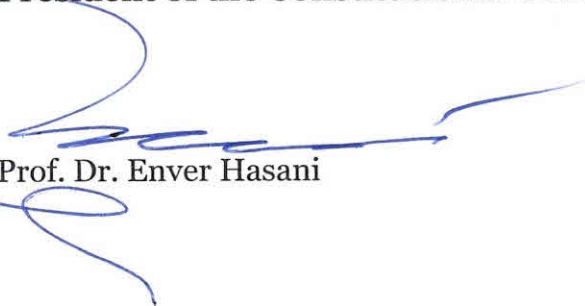
- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

  
Almiro Rodrigues



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani