



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

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Pristina, 9 February 2015  
Ref. No.: RK767/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI147/14**

Applicant

**Avni Ejupi**

**Constitutional review  
of the Decision Rev. no. 81/2014, of the Supreme Court,  
of 16 July 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 Applicant is Mr. Avni Ejupi from the Municipality of Ferizaj.

## **Challenged decision**

2. The challenged decision is the Decision, Rev. no. 81/14 of the Supreme Court, of 16 July 2014, by which the Applicant's revision against the Decision (Ac. no. 4792/12 of 13 January 2014) of the Court of Appeal, was rejected as ungrounded.

## **Subject matter**

3. The subject matter is the constitutional review of the abovementioned decision of the Supreme Court. In his Referral the Applicant does not specify what rights and freedoms have been violated nor which concrete constitutional provision substantiates his Referral, but he requests the review of the issue of the time limit of his claim.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on 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 3 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 November 2014, by Decision GJR. KI147/14, the President of the Court appointed Judge Arta Rama-Hajrzi as Judge Rapporteur. On the same date, by Decision KSH. KI147/14, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 14 November 2014, the Court notified the Applicant on the registration of Referral requesting from him to complete the Referral by submitting additional documents.
8. On 3 December 2014, the Court sent a copy of the Referral to the Supreme Court.
9. On 18 December 2014, the Applicant submitted to the Court the completed Referral form and the additional documents.
10. On 22 January 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

## Summary of facts

11. Starting from 1 July 2000 until 31 December 2001, the Applicant was employed as an officer for general legal affairs with the Municipal Department of Geodesy, Cadastre and Property in Ferizaj (hereinafter: the Employer).
12. On 8 January 2002, the Employer rendered a Decision (02 no. 77) on non-extension of the contract on the grounds that the Applicant had committed serious violation of work duties.
13. On 8 January 2002, the Applicant filed a complaint with the Employing authorities against the aforementioned Decision.
14. On 22 February 2002, as a result of non-response to a complaint by the Employer within the legal deadline, the Applicant submitted urgency for administrative silence.
15. On 10 April 2002, the Chief Executive of the Municipality of Ferizaj, as a response to the urgency submitted by the Applicant informed him that there were no convincing elements for modification of the Employer's Decision on non-extension of the contract.
16. On the same date, i.e. on 10 April 2002, the Applicant filed a lawsuit with the Municipal Court in Ferizaj for reinstatement to his working place.
17. On 29 December 2006, while the Applicant's lawsuit was pending in the Municipal Court in Ferizaj, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: the IOBK).
18. On 31 January 2007, the IOBK by Decision (A. no. 02/195/2006) rejected the Applicant's appeal as ungrounded, on the grounds that the Applicant had filed a lawsuit with the Municipal Court in Ferizaj, which was still pending.
19. On 13 November 2012, the Municipal Court of Ferizaj (Decision, C. no. 66/09) rejected the Applicant's lawsuit as out of time.
20. The Municipal Court in Ferizaj, based on the provisions of the Associated Labor Law, which law it considered as applicable in this case, found that since the Employer had not decided within 30 days on the Applicant's complaint of 8 January 2002, the Applicant had to submit his lawsuit to the court 15 days after the expiry of 30 days from filing of his complaint with the Employer's authorities. Consequently, the Municipal Court in Ferizaj found that the Applicant filed his claim with the court with a delay of 28 days.
21. The Applicant filed an appeal against the Decision of the Municipal Court in Ferizaj.
22. On 13 January 2014, the Court of Appeal (Decision, AC. no. 4792/12) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court in Ferizaj (C no. 66/09 of 13 November 2012).

23. On 18 February, 2014, the Applicant submitted a revision to the Supreme Court against the Decision of the Court of Appeal due to substantial violations of the contested procedure provisions and erroneous application of the substantive law.
24. On 16 July 2014, the Supreme Court (Decision, Rev. no. 81/2014) rejected the Applicant's revision as ungrounded.
25. The Supreme Court of Kosovo found that the Applicant's lawsuit in the first instance court was out of time, and found that the first and the second instance courts correctly applied the substantive law.

### **Applicant's allegations**

26. The Applicant addresses the Court with the request to assess the issue of the time limit of the lawsuit in the first instance court and remand the case for reconsideration.
27. The Applicant has not specified in his Referral, what rights and freedoms have been violated and what constitutional provision in particular substantiates his Referral.

### **Admissibility of the Referral**

28. In order to be able to adjudicate the Applicant's Referral, it is necessary for the Court to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

29. The Court takes into account 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".*

30. The Court also 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.*

31. As it was stated above, the Applicant addresses the Court with the request to review the issue of the time limit of the lawsuit in the first instance court and remand the case for reconsideration.
32. The Court notes that the Applicant is not mainly satisfied with legal qualification of facts and the law applied by the regular courts. Legal

qualification of facts and applicable law are the matters which fall within the scope of legality.

33. In this respect, the *Court* reiterates that it is *not the duty* of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the Supreme Court, including the regular courts, unless and *in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality)*.
34. The Court also notes that the Applicant has not specified in his Referral, what right has been violated and what Article of the Constitution substantiates his Referral.
35. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia*, Report of the European Commission of Human Rights in case *Edwards v. United Kingdom*, No. 13071/87, adopted on 10 July 1991).
36. The Court considers that the Applicant has not explained how and why the conclusion of the Supreme Court on "the applicable law at the time", in his case has allegedly violated his rights and freedoms, nor he has alleged any injustice and arbitrariness in the proceedings.
37. Furthermore, the Court 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*, Resolution on Inadmissibility of 16 December 2011).
38. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated his claim.
39. Therefore, the Referral is manifestly ill-founded, and consequently inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 48, Rule 36 (2) d) of the Rules of Procedure, on 9 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**

  
Arta Rama-Hajrizi

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

