



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

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Prishtina, 1 December 2015  
Ref. No.: RK864/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI25/15**

Applicant

**Faik Azemi**

**Request to return to previous situation the Resolution on Inadmissibility  
KI129/14, of the Constitutional Court, of 25 November 2014**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge

### **Applicant**

1. The Applicant is Mr. Faik Azemi from Prishtina (hereinafter: the Applicant).

## **Challenged Decision**

2. The Applicant requests the return to previous situation in terms of the provided time limit, of the Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014.
3. The Applicant has attached to this Referral several of his requests for access to the case file addressed to the regular courts. The Applicant had also attached the said documents in his previous Referral KI129/14.

## **Subject Matter**

4. The subject matter is the request for return to previous situation of the Referral KI129/14, of 25 November 2014.

## **Legal Basis**

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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**

6. On 9 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 21 April 2015, the President of the Court by Decision no. GJR. KI25/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI25/15 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Enver Hasani and Arta Rama-Hajrizi.
8. On 1 July 2015, by Decision GJR. KI25/15, the President of the Court appointed Judge Ivan Čukalović as a member of the Review Panel, replacing Judge Enver Hasani, whose mandate with the Constitutional Court ended on 26 June 2015.
9. On 21 July 2015, the Court informed the Applicant about the registration of the Referral.
10. On 20 September 2015, 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 Facts**

11. On 9 March, 2015, the Applicant submitted the Referral to the Court in which he requested the Court to return to previous situation in respect of the provided deadline of the Resolution on Inadmissibility KI129/14, of 25 November 2014, in which he appears as the Applicant.

12. The Applicant attached to the new Referral the same documentation that was attached to the Referral KI129/14, of 25 November 2014.

***Summary of facts regarding Resolution on Inadmissibility KI129/14, of the Constitutional Court, of 25 November 2014***

13. On 29 December 2008, the Municipal Court in Prishtina (Judgment C1. No. 515/2007) approved the Applicant's statement of claim that his employment relationship was terminated unlawfully and ordered the Municipality of Prishtina to recognize all the rights of the Applicant for the period from 1 October 2003 until 31 December 2007.
14. [...]
15. On 12 August 2013, the Court of Appeal of Kosovo (Decision CA. No. 3581/2012) rejected as ungrounded the appeal of the respondent Municipality of Prishtina, and upheld the Decision (C No. 1816/09) of the Municipal Court in Prishtina.
16. [...]
17. On 4 February 2014, the Supreme Court of Kosovo (Decision Rev. No. 270/2013) approved the revision filed by the Municipality of Prishtina, quashed the Decision of the Court of Appeal of Kosovo and remanded the case for retrial. This decision was served on the Applicant on 20 March 2014.
18. On 8 April 2014, the Court of Appeal of Kosovo, by Decision AC. no. 3779/13 rejected the appeal of the debtor Municipality of Prishtina and upheld Decision E. No. 1220/13, of the Municipal Court in Prishtina, of 12 November 2013.
19. On 13 August 2014, the Applicant submitted the Referral to the Constitutional Court, challenging the Decision [Rev. No. 270/2013] of the Supreme Court of 4 February 2015, received on 20 March 2015.
20. On the basis of all the facts and circumstances presented in the Referral, the Court on 25 November 2014, concluded that the Applicant's Referral, in accordance with Rule 36 (1) (c) of the Rules of Procedure, is declared inadmissible as out of time.

**Applicant's Allegations**

21. The Applicant alleges that:

*„When I was allowed to see the case file after 10 requests, I noticed that the Supreme Court, unfairly and in obstinate and arbitrary proceedings, rendered the unlawful decision which I challenged before the Constitutional Court.“*

22. The Applicant further alleges that in his previous Referral KI129/14, he requested in addition that his Referral be considered as admissible with regard



to the provided time limit but the Court did not register and review that Referral.

23. The Applicant requests the Court:

*„that based on Article 50 of the Law on the CC, approves my referral for returning to the previous situation and render a decision based on merits, namely, to annul the Decision of the Supreme Court, challenged in case KI129/14.“*

### **Assessment of the Admissibility of Referral**

24. Before considering the Applicant's Referral, the Court first assesses whether the Applicant's Referral has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. In this respect, the Court refers to Rule 36 (1) (d) and (2) of the Rules of Procedure, which provide:

*„36 (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:*

*[...]*

*b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*

*[...]*

*d) the Applicant does not sufficiently substantiate his claim;“*

26. The Court notes that the Applicant refers to Article 50 of the Law, which provides:

*“If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired.”*

27. The Court fully reviewed the documents attached to this Referral KI129-14. The Court notes the fact that the Applicant in his previous Referral KI129-14 requested subsequently that his Referral be considered as admissible with regard to the provided time limit, and that on three occasions (25 September 2014, 22 October 2014 and 30 October 2014) he submitted to the Court certain documents that have been registered by the Court.

28. The Court also notes that the Applicant on 20 March 2014 received Decision [Rev. No. 270/2013] of the Supreme Court of 4 February 2014. The Municipal Court in Prishtina confirmed this fact by attaching a copy of the return paper. The Applicant along with the additional documentation stated that he did not have access to the case files before the regular courts, and in fact the Supreme Court Decision was served on the Applicant on 20 March 2014, and by this the Applicant was aware of the content of the Supreme Court Decision but simply failed to file the Referral within the provided time limit.
29. In this respect, the Court held that in this specific case were not met the conditions to return to previous situation as it is provided in Article 50 of the Law, because the Applicant failed to substantiate his claim and has not presented any evidence which indicate how and why he failed to submit the Referral within the provided time limit, without his fault.
30. The Court finds that the Applicant's Referral is manifestly ill-founded, in accordance with Article 50 of the Law and Rules 36 (1) d) and 36 (2) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 50 of the Law on Constitutional Court and Rule 36 (1) (d) and 36 (2) of the Rules of Procedure, in the session held on 10 September 2015, unanimously:

### **DECIDES**

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;
- III. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi