



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

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Prishtina, 10 August 2015  
Ref. no.: RK 816/15

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI61/14**

Applicant

**Faik Tërnav**

**Constitutional Review of Judgment, Rev. no. 195/2013, of the Supreme  
Court of Kosovo of 10 January 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  
Bekim Sejdiu, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Faik Ternava from Vushtrri (hereinafter: the Applicant), represented by Mr. Nexhat Beqiri, lawyer from Vushtrri.

## **Challenged decision**

2. The Applicant challenges the Judgment (Rev. no. 195/2013, of 10 January 2014) of the Supreme Court which was served on him on 13 February 2014.

## **Subject matter**

3. The subject matter is the Applicant's request for the constitutional review of the challenged decision, by which the Supreme Court had partially rejected his request for revision with regards to "*unjust enrichment*".
4. The Applicant does not refer to any right or freedom guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) which may have been violated.

## **Legal basis**

5. 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 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 31 March 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 3 April 2014, the President of the Court, by Decision no. GJR. KI61/14, appointed Judge Ivan Ćukalović as Judge Rapporteur. On the same date, by Decision no. KSH. KI61/14, the President of the Court appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova, and Arta Rama-Hajrizi.
8. On 16 May 2014, the Court notified the Applicant of the registration of the Referral and requested that he submits a power of attorney for Mr. Nexhat Beqiri, whom he had declared as his representative. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 22 May 2014, the Applicant submitted the requested document to the Court.
10. On 2 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

## **Summary of Facts**

11. From 1999 until 2000, the Applicant states that he worked at the Municipality of Vushtrri, namely the Commission for War Crimes Investigations and Missing Persons (hereinafter: the Commission).

12. This Commission, according to the Applicant, was established by the Interim Government of Kosovo by the Decision [unnumbered] of 5 July 1999. Based on this decision, the Chairperson of the Municipal Assembly of Vushtrri had authorized the Applicant to work for the Commission.
13. Since the Municipality of Vushtrri had not responded to the Applicant's requests for monetary compensation, he, along with several other persons, filed a claim with the Municipal Court in Vushtrri, requesting that they be paid for the work performed as members of the Commission.
14. On 5 July 2002, the Municipal Court in Vushtrri (Judgment C. no. 13/2001) approved the Applicant's and other claimants' statement of claim and obliged the Municipality of Vushtrri to pay to each claimant, including the Applicant, the requested amount of money, including legal interest, for the work performed as members of the Commission.
15. The Municipality of Vushtrri filed an appeal against the Judgment of the Municipal Court in Vushtrri with the District Court in Mitrovica.
16. On 11 December 2002, the District Court in Mitrovica (Judgment Ac. no. 93/2002) rejected the appeal filed by the Municipality of Vushtrri as ungrounded and upheld the Judgment of the first instance court.
17. The Municipality of Vushtrri filed a request for revision against the Judgment of the District Court in Mitrovica with the Supreme Court, due to procedural violations, erroneous determination of factual situation and erroneous application of substantive law.
18. Meanwhile, whilst the request for revision filed by the Municipality of Vushtrri was being reviewed by the Supreme Court, the Applicant had filed a proposal to execute the Judgment (C. no. 13/2001, of 5 July 2002) of the Municipal Court in Vushtrri, before the District Court in Mitrovica. The latter had upheld the Judgment of the Municipal Court in Vushtrri.
19. On 5 March 2003, the Municipal Court in Vushtrri (Decision E. no. 59/2003) approved the proposal for execution, by which the Applicant's and other claimants' statement of claim on payment of a certain amount of money by the Municipality of Vushtrri was granted.
20. On 11 September 2003, namely, several months later, the Supreme Court (Judgment Rev. no. 48/2003) approved the revision filed by the Municipality of Vushtrri as grounded, thus deciding to modify the Judgment (C. no. 13/2001, of 5 July 2002) of the Municipal Court in Vushtrri and the Judgment (Ac. no. 93/2002, of 11 December 2002) of the District Court in Mitrovica. The Supreme Court reasoned its decision as follows:

*"The Supreme Court of Kosovo cannot uphold the stance of the lower instance courts, because, according to the assessment of this Court, the challenged judgments have been rendered by the erroneous application of the substantive law. Based on the United Nations Resolution no. 1244 and UNMIK Regulations no. 1999/01 and 1999/24, a new reality has been*

*created after the war in Kosovo. [...] Pursuant to the UNMIK Regulation No. 1999/45 [...] the bodies of self-government of municipalities and municipal civil service have been established. Due to the fact that the claimants do not possess the contracts wherefrom obligations derive, according to the consideration of this Court, in the present case, the material law has been erroneously applied, therefore the judgments of the two courts were modified, so the claimants' statement of claim was rejected as ungrounded. [...] According to the consideration of the Court reviewing the revision, the lack of real passive legitimacy of the sued municipality derives from the situation existing in the case files, and by acting ex-officio, the Court will, by a judgment, reject the Claimants' statement of claim as ungrounded, upon confirming the lack of active or passive legitimacy of the litigant".*

21. Upon this, the Municipality of Vushtrri filed a claim with the Municipal Court in Vushtrri, requesting to reclaim the financial means paid to the Applicant from his bank account, based on Decision (E. no. 59/2003, of 5 March 2003) of the Municipal Court in Vushtrri.
22. On 11 July 2005, the Municipal Court in Vushtrri (Judgment C. no. 18/2004) approved the statement of claim of the Municipality of Vushtrri, now the claimant, thereby obliging the Applicant to repay the Municipality of Vushtrri, due to unjust enrichment, the amount of financial means received, with a certain interest rate, starting from 10 February 2004 until the final payment.
23. The Applicant filed an appeal against the Judgment of the Municipal Court with the Court of Appeal, alleging that it was rendered "*in essential violation of the provisions of the Law on Contested Procedure, erroneous and incomplete determination of factual situation, and erroneous application of substantive law*".
24. On 7 March 2013, the Court of Appeal in Prishtina (Judgment C. no. 678/2012) rejected the appeal filed by the Applicant, finding that "*the first instance court has neither essentially violated the contested procedure provisions, nor erroneously applied the substantive law [...]*".
25. The Applicant filed a request for revision against the Judgment of the Court of Appeal with the Supreme Court, requesting the annulment of the decisions of the lower courts and the return of the matter for retrial.
26. On 10 January 2014, the Supreme Court (Judgment Rev. no. 195/2013) rejected as ungrounded the revision of the Applicant in relation to his obligation to repay the amount of financial means due to unjust enrichment, thereby confirming his obligation to make the repayment.
27. The Supreme Court, with the aforementioned decision, approved as grounded the Applicant's revision only in relation to the amount of the interest rate set by the Municipal Court in Vushtrri (Judgment C. no. 18/2004, of 11 July 2005), thus modifying this Judgment only in regards to the amount of the interest rate, which the Applicant was obliged to pay. In its reasoning, the Supreme Court stated as follows:

*“The Supreme Court of Kosovo assessed as ungrounded the following allegations of the respondent [Applicant] stipulated in the revision: that he received the money from the Municipality of Vushtrri based on judgments of the lower instance courts, that for such money he had performed work in Commission, that he received the money in good trust and that he is not obliged to return them. Such allegations [of the Applicant] are ungrounded since the judgments of the lower court instances based on which the payment was made to the respondent [Applicant] in the procedure of execution were modified, so that the statement of claim [...] is rejected. Therefore, the lower instance courts have correctly concluded that the respondent benefited materially without legal ground as per Article 210, para.1 and 2 of LOR, whereas according to paragraph 4 of this Article, the obligation to return the money derives also when you receive something having into account the legal ground, which later on ceased to exist. However, the Supreme Court of Kosovo finds that in the decision relating to interest rate, the provision of Article 277 of LOR was applied incorrectly, since this interest rate was not determined in compliance with this legal provision, [...]. Therefore, given the fact that in relation to the received interest rate, the first instance judgment contained erroneous application of substantive law [...] the same judgment in this part was modified as per Article 224 para. 1 of LCP”*

### **Applicant’s allegations**

28. As stated above, the Applicant does not refer to any right guaranteed by the Constitution, which could have been violated.
29. The Applicant, in general, alleges that *“[...] the courts in the present case were partial and that the procedures conducted after the judgment Rev. no. 48/2003 were unfair, since they have violated my right to receive monetary compensation for the performed work, and they [the courts] have applied erroneously the UNMIK Regulations for competencies of the Kosovo Provisional Government as well as those of the Municipal Council of Vushtrri.”*
30. In his Referral, the Applicant also states as follows: *“I consider that I have worked based on Decision of Municipal Council and under its authorization whereby the same Commissions have functioned throughout Kosovo and have been paid based on decision of Interim Government established in accordance with UNMIK Regulations”.*
31. Furthermore, the Applicant states that: *“[...] the legal provisions have allowed the work performed by me and other members of the commission, so there is no legal ground that those undertaken actions to not be approved as work [...]”.*

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

32. The Court first examines whether the Applicant has fulfilled the admissibility criteria laid down in the Constitution and further specified in the Law and Rules of Procedure.

33. In this respect, the Court refers to Article 48 of the Law which provides that:

*“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”.*

34. In relation to this, the Court notes that the Applicant has specified the concrete act of the public authority that he challenges, namely, the Judgment (Rev. no. 195/2013, of 10 January 2014) of the Supreme Court, as required by Article 48 of the Law. However, the Court notes that the Applicant did not refer to any right or freedom guaranteed by the Constitution which could have allegedly been violated by the Supreme Court.

35. The Court also notes that in his Referral, the Applicant did not state anything in relation to what he is requesting from the Constitutional Court or what the statement of relief sought by his Referral is.

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

*“(1) The Court may consider a referral if:*

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

*[...], or*

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

*[...]*

37. As mentioned above, the Applicant challenges the constitutionality of the Judgment (Rev. no. 195/2013, of 10 January 2014) of the Supreme Court, by which his request for revision was partially rejected, and, consequently, the Judgment (Ac. no. 678/2012, of 7 March 2013) of the Court of Appeal and the Judgment (C. no. 18/2004, of 11 July 2005) of the Municipal Court in Vushtrri, related to the Applicant’s unjust enrichment, were upheld.

38. In relation to this, the Court notes that the Applicant despite his general allegations that *“the courts have been partial”*; he has not provided any procedural or substantial reasoning in his Referral. He did not refer to any right guaranteed by the Constitution hence he did not sufficiently substantiate his allegation that the courts have been partial.

39. The Court recalls that, at first, the regular courts had granted the Applicant’s statement of claim, thus obliging the Municipality of Vushtrri to pay the requested amount of financial means to the Applicant, for the work he had performed as a member of the Commission. The regular courts had also approved the Applicant’s request for execution and, as a result, he had received such financial means in his bank account.

40. However, the Court also recalls that, later, following the request for revision filed by the Municipality of Vushtrri, the Supreme Court had modified the decisions of the lower instance courts and annulled the decision on approving the request for execution. After this decision, the Municipality of Vushtrri had sued the Applicant due to unjust enrichment and requested a repay of the amount received by him.
41. Furthermore, the Court observes that the Municipal Court has granted the statement of claim of the Municipality of Vushtrri related to Applicant's "*unjust enrichment*" and obliged the latter to repay the amount of money he had received in his bank account, as well as the interest rate set by the Court. This decision of the Municipal Court was then upheld by the Court of Appeal.
42. The Court further notes that the Supreme Court has also upheld the decision of the Municipal Court and that of the Court of Appeal as regards the Applicant's "*unjust enrichment*", by modifying them only in relation to the manner of the calculation of legal interest rate. In its decision, the Supreme Court emphasized that:
- "[...] the lower instance courts have correctly concluded that the respondent benefited materially without legal ground as per Article 210, para.1 and 2 of LOR, whereas according to paragraph 4 of this Article, obligation of returning the money is established also when you receive something having into account the legal ground, which later on ceased to exist. [...]"*
43. In this respect, the Court notes that the Basic Court, the Court of Appeal, and the Supreme Court have reasoned their decisions based on the legal provisions and responded to the Applicant's allegations related to the alleged "*essential violation of the provisions of the Law on Contested Procedure*", "*erroneous and incomplete determination of factual situation*" and "*erroneous application of substantive law*".
44. In this regard, the Court reiterates that it is not the task of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the public authorities, unless, and in so far as, they may have infringed the rights and freedoms protected by the Constitution (constitutionality).
45. The Constitutional Court also reiterates that it cannot act as a court of the fourth instance in relation to the decisions rendered by the regular courts or other public authorities. It is the duty and obligation of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *Garcia Ruiz v. Spain*, no. 30544/96, paragraph 28, European Court on Human Rights [ECHR]; see also Resolution on Inadmissibility in case no. KI70/11, of 16 December 2011, Applicants *Faik Hima, Magbule Hima, and Bestar Hima*).
46. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (See, *inter alia*, Report of the European Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).

47. The Court considers that the proceedings before the Municipal Court, the Court of Appeal, and the partial rejection by the Supreme Court of the Applicant's request for revision, have been fair and reasoned (See, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Application No. 17064/06, of 30 June 2009).
48. As a result, the Court considers that the general allegations of the Applicant that the regular courts have been partial, without referring to any right or freedom guaranteed by the Constitution, are not reasoned and substantiated, therefore being manifestly ill-founded.
49. Based on the abovementioned reasons, the Court concludes that, pursuant to Article 48 of the Law and Rule 36 (2) (d), the Referral is inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (2) (d), on 10 August 2015, unanimously

### DECIDES

- I. TO REJECT 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;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Arta Rama-Hajrizi

