



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

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Pristina, 17 October 2012  
Ref. No.:RK314/12

## **RESOLUTION ON INADMISSIBILITY**

**Case No. KI 78/10**

Applicants

**Qerim Azizi, Shaip Recica, Bajram Troshupa, Idriz Retkoceri,  
Rukije Kastrati, Rashid Sejdiu and Ramadan Sylejmani**

**Constitutional Review of the Judgment of the Supreme Court of Kosovo, Rev.  
NO. 137/2007, dated 13 April 2010**

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

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy President  
Robert Carolan, judge  
Altay Suroy, judge  
Almira Rodrigues, judge  
Snezhana Botusharova, judge  
Kadri Kryeziu, judge and  
Arta Rama-Hajrizi, judge

#### **The Applicants**

1. The Applicants are Qerim Azizi, Shaip Recica, Bajram Troshupa, Idriz Retkoceri, Rukije Kastrati, Rashid Sejdiu and Ramadan Sylejmani. They are represented by their lawyer, Halim A. Sylujmani.

## **Challenged Decision**

2. The Applicants challenge the Judgment of the Supreme Court of Kosovo, Rev. NO. 137/2007, dated 13 April 2010, which was served on the Applicants on 7 June 2010.

## **Subject Matter**

3. The subject matter of the Referral concerns the request of the Applicants to be treated as employees of the Ministry of Culture, Youth and Sports (hereinafter “the Ministry”), which request was ultimately rejected by the Supreme Court.

## **Legal Basis**

4. The Referral is based on Art. 113.7 of the Constitution; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as “the Law”), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

## **Procedure before the court**

5. On 18 August 2010 the Applicants filed a Referral with the Constitutional Court.
6. On 19 August 2010 the Court notified the Applicants’ representative that the Referral had been received and that it was allocated reference number KI 78/10.
7. On 20 September 2010 the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President appointed a Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy and Ivan Cukalovic.
8. On the same date the Court requested the Ministry to respond to the Referral. After further correspondence between the Ministry and the Court the Ministry furnished replies on 1 March 2011 and 22 June 2012. The Response of the Ministry is dealt with below.
9. On 20 September 2012, the Review Panel after having considered the report of the Judge Rapporteur, made a recommendation to the Court on the inadmissibility of the Referral.

## **The facts of the case as alleged by the documents furnished by the Applicants**

10. The Applicants maintain that as former employees of the “Sports Federation of Kosovo” they are entitled to be treated as employees of the Ministry. They originally issued proceedings against the “Sports Federation of Kosovo” before the Municipal Court of Pristina on 25 September 2001. Subsequently, they applied to have the Ministry joined as a Respondent and this application was granted.
11. Judgment was given in the Applicants’ favour in the Municipal Court in Pristina, CI. no 414/2001, dated 28 February 2006, and they were awarded €150 per month from the 1 September 2000, together with legal interest and procedural costs. The District Court appears to have come to its decision, at least in part, on the basis that the Ministry was in receipt of rents from premises owned by it. The Ministry did not respond the proceedings in the Municipal Court and Judgment was entered against them in their absence and without their participation.

12. This Judgment was upheld on appeal by the District Court of Pristina, in its Judgment, Ac. No. 737/2006, dated 21 December 2006.
13. The Ministry appealed against this Judgment to the Supreme Court of Kosovo and in its Judgment, Rev 138/2007, dated 13 April 2010, the Court upheld the appeal and found against the Applicants and for the Ministry and it dismissed the claim of the Applicants.
14. The Supreme Court in their Judgment stated that the lower courts had reached their decisions by an erroneous application of material law and thereby amended both Judgments. In essence, the Supreme Court agreed the Ministry lacked passive legitimacy to be a party in the proceedings and that there was no material or legal relations created between the Applicants and the Ministry.

### **Response of the Ministry to the Constitutional Court**

15. In their responses the Ministry maintained that the Applicants are not and had never been employees of the Ministry. They maintained that there were no notes, evidence, documents or facts that prove that the Applicants were employees, nor that there were employment contracts for any of them, nor were they on the monthly salary lists of the list of those present at work and none of them had ever applied for employment with the Ministry.
16. The Ministry maintained that it lacked passive legitimacy to be a party in the proceedings. These arguments had also been made by the Ministry in the regular courts.

### **Alleged violations of the Constitution**

17. The Applicants maintain, generally, that there has been a grave violation of basic constitutional rights of employment. The Referral does not go into greater detail.
18. The Applicants maintains in a general way that the Courts at every level have violated the Family Law of Kosovo, the Provisional Criminal Code of Kosovo and constitutional guarantees.

### **Assessment of the admissibility of the referral**

19. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
20. Article 113 Section 1 of the Constitution establish the general legal frame required for admissibility. It provides:

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

21. However, upon reviewing whether the applicant has supported his Referral with evidence, the Court notes that Article 48 of the Law of the Constitutional Court stipulates that:

*“In his 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 [...]”.*

22. On the other side, the Rule 36.2 of the Rules of Procedure stipulates that:

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

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

*d) when the Applicant does not sufficiently substantiate his claim”.*

23. Finally, Article 46 of the Law stipulates that: *“The Constitutional Court receives and processes a Referral in accordance with Article 113, Paragraph 7 of the Constitution if determines that all legal requirements have been met”.*

24. The Court reiterates that the case should be built on constitutional grounds so that the Constitutional Court may intervene.

25. In the Supreme Court Judgment of 13 April 2010 the Court gave a reasoned decision why the Ministry laced the passive legitimacy to be a party to the proceeding brought by the Applicants. The evidence on which the Supreme Court relied supported that finding, particularly the complete lack of evidence of the creation of a relationship of employment between the Applicants and the Ministry.

26. The Applicants in the regular courts did not substantiate the claim that they were employees of the Ministry. Neither did they provide sufficient or any evidence to the Constitutional Court that would indicate that the Judgment of the Supreme Court was in error.

27. As stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

*“... the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a “fourth instance” court (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).”*

28. As further stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

*“The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Meztur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005).”*

29. From the abovementioned reasons, the Court finds that the Referral does not meet the criteria of Article 48 of the Law and Rule 36.2 (b) and (d) of the Rules of Procedure, therefore, is manifestly ill-founded, and pursuant to Article 46 of the Law, it cannot be received and processed.

30. Therefore, pursuant to Article 113.7 of the Constitution, Article 20 Law and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 of the Law on the Constitutional Court, Rule 36.2 (b) and (d) of the Rules of Procedure, on 20 September 2012, 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 on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Prof. Dr. Enver Hasani