



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

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Prishtina, 3 November 2014  
Ref. no.:RK716/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI83/14**

Applicant

**Sahit Rakaj**

**Request for constitutional review of the Judgment of the Supreme Court  
of Kosovo, Rev. no. 188/2013, of 7 November 2013**

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

composed of:

Enver Hasani, President  
Ivan Čukalovič, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge, and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Sahit Rakaj from village Vërmicë, Municipality of Prizren.

## **Challenged decision**

2. The decision challenged by the Applicant is Judgment of the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court), Rev. no. 188/2013 of 7 November 2013, which was served on the Applicant on 28 April 2014.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of Judgment of the Supreme Court, Rev. no. 188/2013 of 7 November 2013, which, as alleged by the Applicant, has violated his rights guaranteed by Articles: 3 and 24 [Equality Before the Law]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 23 [Human Dignity]; and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: Constitution).

## **Legal basis**

4. Article 113.7 of the Constitution, Article 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law).

## **Proceedings before the Court**

5. On 12 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. On 10 June 2014, the President, by Decision GJR. KI83/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President, by Decision KSH.KI83/14, appointed the members of the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 10 June 2014, the Court notified the Applicant and informed the Supreme Court on registration of the Referral.
8. On 15 September 2014, by decision of the President, Judge Robert Carolan has been replaced with Judge Altay Suroy as Presiding of the Review Panel.
9. On 23 September 2014, 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**

10. On 30 August 2010, the Applicant concluded an employment contract with the Municipality of Prizren- Directorate for Education and Science (DES), for a fixed duration from 1 September 2010 to 31 August 2011, as teacher of Biology and Environmental Protection, in two satellite classes of the High School "Remzi Ademaj" in Prizren.

11. On 19 October 2011, the Applicant filed a complaint with DES of the Municipality of Prizren, since his employment contract was not extended.
12. On 9 November 2011, DES rejected the complaint of the Applicant, due to the fact that Applicant should have previously filed a complaint with the school, reasoning the rejection of complaint with the fact the school where he worked was better informed of the real situation why the Applicant remained without classes as of September 2011.
13. On 21 November 2011, the Applicant filed a lawsuit with the Municipal Court in Prizren, requesting this court to conclude that the non-extension of the employment contract was in contradiction with the applicable legislation and requesting the court to oblige DES in Prizren to reinstate the Applicant to his working place.
14. On 6 November 2012, the Municipal Court in Prizren (Judgment C. nr. 795/11), approved the Applicant's statement of claim as grounded, holding that non-extension of the employment contract was in contradiction with the Law on Education and Law on Labor, and obliged the Municipality of Prizren to reinstate the Applicant to his working place where he worked until his contract was not extended.
15. In the reasoning of this Judgment among others the Municipal Court held: *"In conclusion, the court assesses that the respondent the Municipality of Prizren - Municipal Directorate of Education committed violation of legal provisions under Article 71.2, 72.1 and 72.2 of the Law on Labor, on the occasion of non-extension of the employment contract to the claimant, therefore it decided to approve the claimant's statement of claim as grounded in entirety on law and on facts."*
16. On 14 March 2013, the Court of Appeals, deciding on the appeal of the Public Attorney of Municipality of Prizren, rendered Judgment CA no. 3650/2012, approving as grounded the appeal of the Municipality of Prizren, and modified Judgment of the Municipal Court of Prizren, C. nr. 795/2011 of 6 June 2012, thereby, rejecting the Applicant's statement of claim as ungrounded.
17. In the reasoning of its Judgment, the Court of Appeals stated: *"Having considered the appealed judgment, this court found that in a grounded manner is shown by the appeal that the first instance judgment contains substantial violations of LCP, namely of Article 182 para. 2 item n ). In other words, the enacting clause of the appealed judgment is illogical and is in contradiction with itself as well as the reasons of decisive facts, provided in the reasoning."*
18. The Court of Appeals in addition reasoned the Judgment by stating that: *"the factual situation has been correctly and sufficiently determined, but on such determined situation was erroneously applied the material law"* and that *"Article 67 of the same Law, provides that the employment contract is*

*terminated according to the law, and among the other by expiration of time for which the contract was concluded.”*

19. On 7 November 2013, the Supreme Court of Kosovo, deciding on the Applicant's request for revision, rendered Judgment Rev. nr. 188/2013, by which, in item I of the enacting clause, rejected as ungrounded the Applicant's revision in the part referring to the reinstatement to his working place, or to assign him to any other working place corresponding to his professional qualification, and in item II approved the Applicant's revision in the part referring to the payment of one monthly salary, by obliging the Municipality of Prizren –DES, to pay to Applicant one monthly salary which he earned according to the employment contract.

### **Applicant's allegation**

20. The Applicant alleges that the Judgment of the Supreme Court violates the constitutional rights guaranteed by Articles: 3 and 24 [Equality Before the Law]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 23 [Human Dignity]; and Article 49 [Right to Work and Exercise Profession] alleging that Supreme Court based its Judgment on the “*institute of expiration of the employment contract*” even though all other employees have had the same employment status but their contracts have been extended.
21. The Applicant mentioned in the Referral the European Convention on Human Rights [ECHR] without specifying precisely the violation of any right protected by this Convention.

### **Admissibility of the Referral**

22. In order to be able to adjudicate the Applicant's Referral, the Court has to assess whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.
23. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

*“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*
24. In respect to the above the Court finds that the Applicant is authorized party under Article 113.7 of the Constitution, he has exhausted the legal remedies provided by law and that the Referral has been submitted to the Court within the four month deadline prescribed by Article 49 of the Law.
25. In assessing the Applicant's allegations of violations of the Constitution, the Court finds that the constitutional provisions, whose violation is claimed, have the following content:

Article 3 paragraph 2 [Equality Before the Law]

*“The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.”*

Article 23 [Human Dignity]

*“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”*

Article 24.1 [Equality Before the Law]

*“1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*

Article 49 [Right to Work and Exercise Profession]

*“1. The right to work is guaranteed. 2. Every person is free to choose his/her profession and occupation.”*

26. In respect to the above, the Court notes that the Applicant only stated the violation of this constitutional provision, without providing any evidence about the nature of that violation and the circumstances under which the alleged violation occurred and he did not explain the constitutional implications of eventual violations of the Constitution.
27. The Court notes that, the simple description of the provisions of the Constitution and the allegation that they have been violated, without presenting evidence of the way they were violated, without specifying the circumstances, without specifying actions of the public authority that are contrary to the constitutional norms, do not constitute sufficient ground to convince the Court that there has been a violation of the Constitution or of the ECHR.
28. Having considered the Applicant's Referral and the facts presented therein, the Court finds that in all court procedural stages, the complaints of the Applicant have been of the legal nature, not of the constitutional nature or complaints of possible violation of human rights protected by the Constitution, which have been for the first time raised before the Constitutional Court, which leads the Court to the conclusion that the Applicant is in fact unsatisfied with the final outcome of the adjudication of his case.
29. The Court further emphasizes that it is not a fact finding court, it does not adjudicate as a court of fourth instance, and it is not merely an additional instance court. The Court, in principle does not deal with the fact whether the regular courts have correctly and completely determined factual situation, or, whether as in the case at issue, the employment of the Applicant was

terminated on legal ground or not, because this is a jurisdiction of a regular court. For the Court are essential those issues on which depends the assessment of possible violations of the constitutional rights and not clearly legal issues as were in general the facts presented by the Applicant (See, *mutatis mutandis*, i.a., *Akdivar v. Turkey*, 16 September 1996, R.J.D, 1996-IV, para. 65).

30. The Court recalls that the mere fact that the Applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see, *mutatis mutandis*, Judgment ECHR Appl. No. 5503/02, *Mezotur Tizsazugi Tarsulat v. Hungary*, or the Resolution of the Constitutional Court, Case KI128/12 of 12 July 2013, *the Applicant Shaban Hoxha* in the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 316/2011).
31. In these circumstances, the Court finds that the facts presented by the Applicant do not in any way justify the allegation for violation of the right to a fair and impartial trial and therefore, in accordance with Rule 36 (1) c) of the Rules of Procedure, it can be concluded that the Referral is manifestly ill-founded.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 and 56 (2) of the Rules of Procedure, on 23 September 2014, unanimously

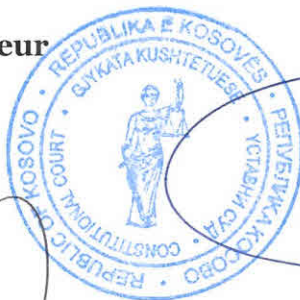
### DECIDES

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

**Judge Rapporteur**

  
Kadri Kryeziu

**President of the Constitutional Court**



  
Prof. Dr. Enver Hasani