



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 23 December 2013  
Ref. no.:RK530/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI100/13**

Applicant

**Selim Hajra**

**Constitutional Review of the Judgment of the Supreme Court of the  
Republic of Kosovo Rev. I. no. 29/2009, of 15 January 2012**

### **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 Referral is submitted by Selim Hajra (hereinafter: the Applicant) from village Krasaliq, Municipality of Skënderaj.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. I. no. 29/2009, of 25 January 2012, which was served on him on 13 June 2013.

## **Subject matter**

3. The subject matter of this Referral is the constitutional review of the challenged decision. The Applicant alleges that by that decision, his rights guaranteed by the Constitution, Article 56 [Fundamental Rights and Freedoms During a State of Emergency]; Article 49 [Right to Work and Exercise Profession]; Article 46 [Protection of Property]; Article 31 [Right to Fair and Impartial Trial] as well as Article 1 Protocol I of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

## **Legal basis**

4. The Referral is based on Article 113.7 of Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 and 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

5. On 11 July 2013, the Applicant submitted the Referral to the Court.
6. On 5 August 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 4 September 2013, the Secretariat notified the Applicant of the registration of Referral.
8. On the same day, the Secretariat notified the Supreme Court of Kosovo of registration of the Referral.
9. On 18 October 2013, 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 the facts**

10. On 28 March 2003, the Applicant filed a claim with the Municipal Court in Prishtina against the Ministry of Labor and Social Welfare (MLSW), requesting *“reinstatement to his working place and compensation of personal income.”*
11. According to him, the Applicant was in permanent employment relationship with MLSW from 11 June 1970 until 1 October 2001, while he received personal

income until 1 October 1999. He did not receive personal income for the remaining period. On 25 September 2000, the MLSW announced a competition for hiring new employees, in which case, the majority of previous employees have not succeeded in being hired in violation of *“the law in force on the employment relationships, by violating legal status of claimant, who until that moment was in employment relationship with the respondent... and at the same time the respondent does not render any decision on termination of employment relationship.”*

12. On 23 September 2004, the Municipal Court by Judgment Cl. no. 105/2003, rejected the Applicant's the statement of claim as ungrounded, since there was no *“evidence that the claimant has ever been in a possible obligation relationship with the respondent”*. According to the Municipal Court, the Applicant was in employment relationship with the Republican Fund of Serbia for Pension and Disability Insurance of Employees in Prishtina until NATO strikes, during which period he received his personal income.
13. Further on, the Municipal Court concludes that, *“neither the previous departments nor the Ministry of Labor and Social Welfare are in continuity of and they are not the successors of any institution of Kosovo from the pre-war period, which means that, they are not the successors of the then Republican (of Serbia) Pension and Disability Insurance Fund of Employees in Kosovo-whose employee was the claimant himself.”* The Municipal Court reached the conclusion that *“the claimant's statement of claim was addressed against an entity, which does not have any obligation towards the claimant, since they were never in any material-legal relation, from which mutual rights and obligations would derive”*.
14. The Applicant filed an appeal against the Judgment of the Municipal Court (Cl.no.105/2003), with the District Court in Prishtina due to violation of the procedural provisions; the erroneous determination of factual situation and erroneous application of the provisions of the substantive law requesting the annulment of that Judgment and adjudication of the case on merits or the return of the case to the first instance for reconsideration and retrial.
15. On 5 June 2008, the District Court in Prishtina, by Judgment Ac.no.874/06, rejected as ungrounded the appeal of the representative of claimant Selim Hajra from Prishtina and upheld the Judgment of the Municipal Court (Cl. no. 105/2003). According to this court, *“the first instance court determined the factual situation in a correct and complete manner by concluding that the respondent has passive legitimacy in this legal matter ... therefore the first instance court has correctly adjudicated when it rejected the claimant's statement of claim as ungrounded.”* The District Court further held that *“the recruitment of new employees was done in accordance with legal and applicable rules on civil service in Kosovo, which provided that the department takes care that the entire employment is based on professional background, on the skills and merits and in harmony with the requirements of the competition dated 25 September 2000.”*

16. On 21 November 2008, the Applicant filed a revision with the Supreme Court of Kosovo against the Judgment of the District Court (Ac.no.874/2006) due to “*erroneous application of the substantive law*”.
17. On 25 January 2012, the Supreme Court of Kosovo, by Judgment Rev. I. no. 29/2009, rejected as ungrounded the claimant’s revision filed against the Judgment of the District Court in Prishtina (Ac.no.874/2006), considering “*as fair and lawful the legal stance and the reasoning of the lower instance court, according to which the claimant’s statement of claim was rejected*”.

### **Applicant’s allegations**

18. The Applicant alleges that during the proceedings before the regular courts his rights guaranteed by the Constitution, Article 56 [Fundamental Rights and Freedoms During a State of Emergency]; Article 49 [Right to Work and Exercise Profession]; Article 46 [Protection of Property]; Article 31 [Right to Fair and Impartial Trial] as well as Article 1 Protocol I of ECHR have been violated.
19. The Applicant requests from the Court that the “*respondent returns me to my previous working place and work duties*” and that “*the respondent pays to me personal income starting from 1 October 1999 until the day of my retirement – with legal interest and court expenses*”.

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

20. In order to be able to adjudicate the Applicant’s Referral, the Court should examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
21. The Court must first determine whether the Applicant is an authorized party to file a Referral with the Court in accordance with the requirements of Article 113.7 of the Constitution. The Applicant is a natural person and he has proved that he is an authorized party in accordance with the abovementioned provision.
22. The Court also determines whether the Applicant has proved that he has fulfilled the requirements of Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure, regarding the exhaustion of effective legal remedies. The Applicant has submitted sufficient evidence that he has fulfilled the criterion set forth in the abovementioned provisions.
23. In addition, the Applicant must prove that he has fulfilled the requirements of Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, with regard to the submission of the Referral within the legal time limit. From the case file it can be clearly noted that the last decision in the Applicant’s case is the Decision of the Supreme Court Rev. no. 29/2009 of 25 January 2012, which the Applicant received on 13 June 2013, whereas the Applicant submitted his Referral to the Court on 11 July 2013, which means that the Referral has been

submitted within the four month time limit prescribed by the abovementioned provisions

24. Further, the Court refers to 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.”*

25. For the purposes of the admissibility, the Court should also take into consideration whether the Applicant’s Referral meets the admissibility criteria set forth in Rule 36 (1) c) and 36 (2) a) and b) which read as follows:

*(1) The Court may only deal with Referrals if:*

*(c) the Referral is not manifestly ill-founded.*

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

*(a) the Referral is not prima facie justified, or*

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

26. According to the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court and the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

27. Therefore, the Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a manner that the Applicant has had a fair trial (see *mutatis mutandis*, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

28. In the present case, the Applicant alleges that the regular courts have committed violation of Article 56 of the Constitution [Fundamental Rights and Freedoms During a State of Emergency], this being an Article that is activated only in cases of official declaration of the state of emergency, pursuant to which:

*“1. Derogation of the fundamental rights and freedoms protected by this Constitution may only occur following the declaration of a State of Emergency as provided by this Constitution and only to the extent necessary under the relevant circumstances.*



2. *Derogation of the fundamental rights and freedoms guaranteed by Articles 23, 24, 25, 27, 28, 29, 31, 33, 34, 37 and 38 of this Constitution shall not be permitted under any circumstances.*”

29. The Applicant has not provided any evidence on the declaration of the state of emergency during the period, in which he alleges that a violation of human rights was committed and the Court does not have any other document or information to confirm this.
30. Furthermore, the Court cannot conclude that the Applicant’s constitutional rights were allegedly violated, while the mere fact that the Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of alleged articles of the Constitution (see *Memetoviq vs. Supreme Court of Kosovo* KI 50/10, 21 March 2011; see *mutatis mutandis* the Constitution or Article 6 of ECHR (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tisazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
31. After having reviewed the proceedings before the Supreme Court, which rejected the Applicant’s revision against the Judgment of the District Court as ungrounded, due to the reasons, mainly mentioned in the Judgment of the Municipal Court, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of the Application No. 17064/06 of 31 May 2009).
32. In conclusion, the Applicant has neither built a case on violation of rights, alleged by him, nor has submitted any *prima facie* evidence on such a violation (see *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005 and Case KI 70/11, *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional review of the Judgment of the Supreme Court, No 983/08, dated 7 February 2011, Resolution on Inadmissibility no 70/11).
33. Therefore, it results that the Referral is manifestly ill-founded, and consequently inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (2) a) and b) and Rule 56 (2) of the Rules of Procedure, on 18 October 2013,

## DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the parties and published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Prof. Dr. Enver Hasani