



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

---

Prishtina, 25 November 2013  
Ref.no.:RK501/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI10/12**

Applicant

**Rasim Kozmaqi**

**Request for constitutional review of the Judgment of the Supreme Court  
of Kosovo Rev.no.297/2011 dated 19 December 2011**

**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  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Rasim Kozmaqi (hereinafter: the Applicant).

## **Challenged decision**

2. The challenged decision of the public authority is the Judgment of the Supreme Court of the Republic of Kosovo Rev.nr.297/2011 dated 19 December 2011.

## **Subject matter**

3. The subject matter of the case submitted in the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), is the Constitutional Review of the Judgment of the Supreme Court in Prishtina Rev.nr.297/2011 dated 19 December 2011.

## **Legal basis**

4. Article 113.7 of the Constitution; Article 22 and Article 27 of the Law on Constitutional Court of the Republic of Kosovo, Nr. 03/L-121, dated 15 January 2009; and Rule 54, Rule 55 and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

## **Proceedings before the Constitutional Court**

5. In February 2012, the Applicant submitted Referral to the Constitutional Court and the same was registered with No. KI10/12.
6. On 7 February 2012 by Decision GJR.KIKEK IV, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur, and Judges Altay Suroy (Presiding), Ivan Čukalović and Enver Hasani as members of the Review Panel.
7. On 17 June 2013, 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**

8. Kosovo Energy Corporation (KEK) – Pension Fund, rendered Decision on Application for Pension, which is dedicated to the Applicant Mr. Rasim Kozmaqi, by which is approved to Mr. Kozmaqi the request for premature pension in Kosovo Energy Corporation (hereinafter: KEK) and namely the pension of “B” category, all this in compliance with UNMIK Regulation 2001/35 and with the KEK Pension Fund Statute.
9. In the abovementioned decision was determined that the payment of pension for Mr. Kozmaqi will start from 1 July 2003 and will end on 1 August 2008, while the amount of monthly pension shall be 105 Euros. In the decision was also stated that the unsatisfied party may file appeal within the time limit of 15 days to the “Committee for Reconsideration of Disputes”, through the Pension Fund Administration.
10. From the documentation submitted by the Applicant together with the Referral, the Court finds that no appeal was filed against the decision of the Pension Fund.



11. After 1 August 2008, KEK terminated the payment of pension to Mr. Rasim Kozmaqi and this fact is concluded by the Judgment of the Municipal Court in Prishtina, Judgment of District Court and by Judgment of the Supreme Court.
12. On 29 January 2010, the Municipal Court in Prishtina rendered the Judgment CI. no. 342/2008 by which it approved the statement of claim of the claimant Mr. Rasim Kozmaqi and obliged the respondent KEK to pay him pension based on the decision, until the conditions for payment exist.
13. KEK lodged an appeal against this judgment in the District Court in Prishtina.
14. The District Court in Prishtina rendered the Judgment Ac.no.784/2009, rejecting as ungrounded the appeal of KEK and upheld the judgment of the Municipal Court with the justification:  
  
*"According to this court, the first instance court's conclusion, that the statement of claim of claimant is grounded, is fair. The first instance court judgment is based on a correct and complete determination of factual situation, upon which the substantive law was applied correctly."*
15. Against this judgment, a request for revision was filed in the Supreme Court of Kosovo.
16. On 19 December 2011, the Supreme Court of Kosovo approved the revision and in the reasoning of the Judgment the Supreme Court stated *"such a legal stance of the lower instance courts cannot be accepted as fair and lawful, since according to the evaluation of this Court on such determined factual situation the substantive law was incorrectly applied when both courts of lower instances found that the claimant's statement of claim is grounded."*

### **Applicant's allegations for constitutional violations**

17. The Applicant has not specified any provision of the Constitution of the Republic of Kosovo. He alleges that by the challenged Judgment an injustice was made to him.

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

18. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
19. The Court also takes into consideration the Rule 36 of the Rules of Procedure of the Constitutional Court, where is provided:

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

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

20. Referring to the Applicant's Referral and of alleged violations of the constitutional rights, the Constitutional Court concludes that the Applicant has exhausted all legal remedies, provided by the law, which he had at his disposal, as he has filed Referral within legal time limit, provided by Article 49 on Law on Constitutional Court, therefore in these circumstances, the Court will review merits of the alleged constitutional rights, as presented by the Applicant.
21. In this aspect, the Court states that the Constitutional Court is not a fact-finding court and on this occasion it wishes to emphasize that the correct and complete determination of factual situation is full jurisdiction of regular courts, as in this case of the Supreme Court, by rejecting the claimant's revision or of the District Court in Prishtina by rejecting the appeal of the appellant and that its role (the role of the Constitutional Court) is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and, therefore, cannot act as "a fourth instance court" (see, *mutatis mutandis*, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65).
22. The mere fact that Applicant is unsatisfied with the outcome of the case cannot serve as the right to file an arguable claim on violation of Article 31 of the Constitution or of the Article 6 of ECHR (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005 or Tengerakis vs. Cyprus, no. 35698/03, decision dated 9 November 2006, § 74).
23. The Applicant did not present any valid argument that would substantiate his allegations for violation of Article 49 of the Constitution and, apart from the claim that he had a lawful decision on pension and his request that the pension should continue to be paid, he did not justify how his right, guaranteed by Constitution, was violated. Furthermore, the regular courts, in regular and legal proceedings have concluded that the obligations that derive from the decision of the respondent KEK and that are favorable to the claimant Mr. Kozmaqi, have been fulfilled in entirety. In fact, the Applicant did not at all challenge the proceedings and the process in entirety, but he challenged the final outcome of the court processes, which was not favorable to him.
24. Furthermore, to declare a Judgment or a Resolution of a public authority as unconstitutional, the Applicant should *prima facie* show before the Constitutional Court that, "the decision of the public authority, as such, will be an indicator of a violation of the request to a fair trial and if, the unfairness of that decision is so evident, that the decision can be considered as extremely arbitrary." (See, ECtHR, Khamidov against Russia, no. 72118/01, Judgment dated 15 November 2007, § 175).
25. The Constitutional Court in the Judgment of Supreme Court 316/2011 of 14 June 2012 did not find elements of arbitrariness and neither of alleged violation of human rights, as the Applicant had alleged.
26. As to the allegation for violation of the right guaranteed by Article 24 of the Constitution (Equality before the Law) which the Applicant alleges that it was violated, substantiating it by the fact that the Supreme Court rendered a different judgment in an identical case, the Court concludes that in the case



mentioned by the Applicant, the conducted judicial process was essentially different.

27. The Court also states that the Applicant did not present as evidence an act of an individual agreement concluded between him and KEK, as the Applicants of the Referrals filed by a group of KEK employees had, as well as former pensioners of this company, where it was stated that the pension would be paid "*until the establishment and functioning of the Pension Disability Insurance Fund of Kosovo*" (See Judgments of the Constitutional Court, dated 23 June 2010 of the Applicant Mr. Imer Ibrahim and 48 others, and of the Applicant Mr. Gani Prokshi and 15 others), but had a decision on pension on precisely fixed term, which he accepted and did not challenge it, therefore the Court did not find arguments to treat this Referral as other cases of this court, mentioned above filed by former KEK employees.
28. In these circumstances, the Applicant did not "sufficiently substantiate his allegation". The Court, pursuant to Rule 36, paragraph 2, item c and item d, finds that the Referral should be rejected as being manifestly ill-founded and, consequently

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

### DECIDES

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

**Judge Rapporteur**

Kadri Kryeziu



**President of the Constitutional Court**

Prof. Dr. Enver Hasani