



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

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Pristine, 30 April 2012  
Ref. No.: RK228/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI125/11**

Applicant

Shaban Gojnovci

**Request for constitutional review of the Judgment of the Supreme Court of  
Kosovo Rev. 217/2008**

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

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicant**

1. The Applicant is Mr. Shaban Gojnovci from village Lismir, Municipality of Fushë Kosova.

## **Challenged decision**

2. Challenged decision of the public authority alleging the violations of the rights guaranteed by the Constitution of the Republic of Kosovo, is the Judgment of the Supreme Court of Kosovo Rev. 217/2008 of 10 June 2011, which was served on the applicant on 01 August 2011.

## **Subject matter**

3. The subject matter submitted with the Constitutional Court of the Republic of Kosovo on 28 September 2011, is the Constitutional Review of the Judgment of the Supreme Court rev. 217/2008 of 10 June 2011, whereby the Applicant claims that he has been denied the Constitutional right to work.

## **Legal Basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo of 16 December 2009, which entered into force on 15 January 2010 (hereinafter: Law), and Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules).

## **Proceedings before the Court**

5. On 28 September 2011, the Constitutional Court received the Referral of Mr. Shaban Gojnovci and registered it under KI 125/11.
6. On 03 October 2011, the President by Decision GJR. 125 /11, appointed Judge Dr. Iliriana Islami as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI 125/11 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Kadri Kryeziu.
7. On 20 February 2012, the Constitutional Court informed Supreme Court and the Applicant on registering of the Referral.

## **Summary of the facts**

8. On 28 February 2001 the Kosovo Railways (hereinafter: K. R.) issued the Decision no. 175 on termination of employment due to awaiting retirement of employee Shaban Gojnovci assigned in the workplace as train driver namely from 28 February 2001 due to reaching the waiting period to retirement.
9. The paragraph two of this decision stipulates that the employee is awarded a long-term service benefit in amount of 120 DM for the whole year.
10. In the introduction of the decision, as legal basis for its issuance are determined the: "Administrative Instructions 2001/3 of the Department of Transport and Infrastructure" approved on 27 February 2001. Whereas in its reasoning states that according to these instructions, to all the active and reserve employees of the K.R. (about 350 of them), that in 2001 have reached or will reach the age of 60, or have 35 years of experience, taking into account the benefit length of service, will be awarded this material benefit for long-term service.
11. On 04 May 2007, the Municipal Court in Pristine issued Judgment CI. No. 428/06 approving as grounded the claim of the plaintiff's representative, Mr. Gojnovci and

hereby has annulled the K.R. decision No. 175 of 28 February 2001, by forcing the respondent K.R. to return the plaintiff at the duty of the train driver or at any other working duty that corresponds to his professional experience, by recognizing all his rights arising from employment contract of 28 February 2001.

12. The Municipal Court in the reasoning of its Judgment stated that was found indisputably that the plaintiff was employed for an indefinite period at the respondent, and that the “Administrative Instructions” of the Department of Transport and Infrastructure of 27 February 2001, had no power of Legal Acts and that in legal-formal sense were not instructions or regulations of UNMIK, nor administrative regulations, therefore termination of employment based on their provisions, was unlawful.
13. Against this Judgment, the respondent K. R. appealed with this District Court in Prishtina.
14. On 26 February 2008, the District Court in Prishtina, by Judgment Ac. No. 853 /2007, rejected as ungrounded the appeal of the respondent K.R. and confirmed by upholding the Judgment of the Municipal Court in Pristine CI. 428/ 2006.
15. Against this Judgment, the respondent K.R. within the legal deadline filed a request for Revision with the Supreme Court of Kosovo.
16. On 10 June 2011, the Supreme Court of Kosovo by Judgment Rev. No. 217/2008 approved as grounded the Revision of the Respondent K.R., and herewith changed the Judgment of the District Court in Pristine Ac. No. 853 /2007 of 26 June 2008, and the Judgment of the Municipal Court in Pristine CI. No. 428/06 of 04 May 2007, in order to reject as UNGROUNDED the claim of the plaintiff, Mr. Shaban Gojnovci, for annulment of the decision on termination of his employment.
17. The Supreme Court in the reasoning of its Judgment of Revision noted that the courts of lower instances have proved “fully and fair” the factual situation regarding the decisive facts, but in this proven situation had erroneously applied the substantive law because K. R. on the basis of the presented factual documents, have been registered and they operated under the name of “UNMIK Railways”, and have been administered by UNMIK, and in line with Article 3.1 of UNMIK Regulation 2000/47 of 18 August 2000: “UNMIK, its property, funds and assets” are exempt from any legal process.
18. On 28 September 2011, finally unsatisfied with the Judgment of Supreme Court, Gojnovci filed a referral with the Constitutional Court claiming that his right to work guaranteed under Article 49 of the Constitution of Kosovo, is violated.

### **Assessment of admissibility**

19. In order to be able to adjudicate on the Applicants’ Referral, the Court has first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
20. In this respect, the Court refers to Article 113.7 of the Constitution which provides as follows:

*“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.”*

The Court also considers the:

Rule 36 of the Rules of Procedure of the Constitutional Court, which provides:

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

*c) The Referral is not manifestly ill-founded”.*

21. Referring to the Applicant's claim for alleged violation of rights guaranteed by the Constitution of the Republic of Kosovo and of International Conventions and other Instruments, the Court finds:
22. In Article 102 [General Principles of the Judicial System] paragraph 3 of the Constitution it is clearly provided: that “ **the Courts judge based on the Constitution and the Law**”
24. In Article **103** [Organizing and the Jurisdiction of the Courts], of the Constitution in paragraph 2 it is also clearly provided that: “The Supreme Court of Kosovo is the highest judicial authority”
25. Constitutional Court is not a court of verifying fact and wants to note that finding of fair and factual situation is full jurisdiction of regular courts and that the role of the Constitutional Court is only to ensure compliance with rights that are guaranteed with the Constitution and other legal instruments and therefore can not act as a “forth instance court” (see, *mutatis mutandis* Akdivar vs. Turkey, 16 September 1996 R.J. D. 1996-IV, par. 65).
26. Regarding the alleged violation of the right to work as guaranteed under Article 49 of the Kosovo Constitution, the Constitutional Court notes that the Constitution of Kosovo guaranties this basic human right and enables all Kosovo citizens to exercise this right without discrimination and under the same conditions, the Constitution of Kosovo does not specify the conditions to enjoy this right, but these terms are defined by the relevant laws of the scope of labor. In this regard, if the establishment and the termination of the employment relationship, or other work-related conditions is respected, is a matter of assessing the legality and not the Constitutionality, so if the Law is applied right or not is a competence assessed by the regular Courts and is related to the issue of verification of facts.
27. In this regard the Constitutional Court does not find that the applicant has provided a crucial fact, that the Supreme Court deciding upon the request for revision for which is expressively authorized under the Article 212 of the LPK, to have violated the Article 31.2 (Right to a Fair and Impartial Trial) or Article 49 (The Right to Work and Exercise Profession), for which the Applicant has alleged to have been violated.
28. The simple fact that the applicants are unsatisfied with the result of the case can not serve them the right to file a substantiated referral on the violation of Article 31 of the Constitution (see *mutatis mutandis* ECHR Judgment, Application No. 5503/02, *Mezotur-Tiszazugi Tarsulat* against Hungary, Judgment of 26 July 2005.)
29. In these circumstances, the Constitutional Court finds no evidence that the Supreme Court has not judged “fairly and impartially” by deciding upon the above-mentioned revision and does not find that with that decision to be violating the constitutionally guaranteed rights.
30. In these circumstances the Applicant, “did not sufficiently substantiate his claim”, and the Constitutional Court finds no violation of the rights guaranteed by the Constitution

and therefore according to the Rule 36 par. 2 item c and d, decides to reject the Referral as manifestly ill founded, and

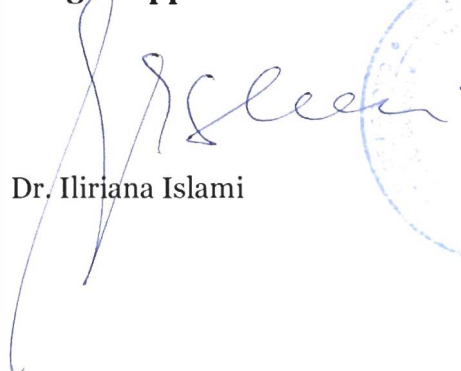
**FOR THESE REASONS**

Pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on Constitutional Court and Rule 36 of the Rules of Procedure, the Constitutional Court on 18 January 2012, unanimously

**DECIDES**

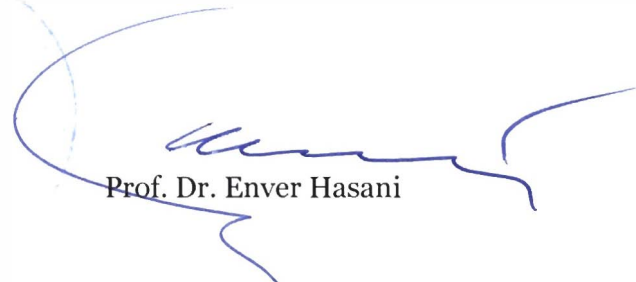
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Dr. Iliriana Islami

**President of the Constitutional Court**



Prof. Dr. Enver Hasani