



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

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Pristina, 29 January 2013  
Ref. No.: RK 356/13

## **RESOLUTION ON INADMISSIBILITY**

In

**Case No. KI 15/12**

Applicant

**Xhavit Gashi**

**Constitutional Review of the Decision of the Supreme Court Rev. I. No.  
314/2009, dated 10 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 Applicant is Xhavit Gashi with residence in Prishtina.

### **Challenged Decision**

2. The challenged decision is the Judgment of the Supreme Court Rev. I. No. 314/2009 dated 10 January 2012.

### **Subject Matter**

3. The subject matter refers to the request of the Applicant to order the Ministry of Labour and Social Welfare to return the Applicant to his previous job position or to work duties that correspond to his professional background, as well as to compensate his personal income.

### **Legal Basis**

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, in conjunction with Article 22 of the Law No. 03/L-121 on Constitutional Court (hereinafter: the Law) and Rule 56 (2) of Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

### **Proceedings before the Court**

5. On 20 February 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. By Decision of the President on the appointment of Judge Rapporteur with No. GJR. KI 15/12 dated 21 February 2012, Judge Gjyljeta Mushkolaj was appointed as Judge Rapporteur. On the same day, by Decision of the President No. KSH. 15/12, the Review Panel was appointed, composed of judges: Snezhana Botusharova (presiding), Ivan Čukalović (member), and Iliriana Islami (member).
7. By Decision of the President on the replacement of Judge Rapporteur with No. GJR. KI 15/12 dated 2 July 2012, Judge Kadri Kryeziu was appointed as Judge Rapporteur. On the same day, by Decision of the President No. KSH. 15/12, the Review Panel was appointed, composed of judges: Snezhana Botusharova (presiding), Ivan Čukalović (member), and Enver Hasani (member).
8. On 10 December 2012, the Constitutional Court notified the Applicant and the Supreme Court on the registration of the Referral.

### **Summary of the Facts**

9. According to the documents attached to his Referral, the Applicant was employed as driver in the former Pension and Disability Insurance Fund of Employees in Prishtina. His employment relationship continued until 1 October 2000.
10. As a result of the process of establishment of the Department of Health and Social Welfare (established by UNMIK Regulation No. 2000/10), on 25 September 2000, job vacancies for the employment of personnel were announced. After his application and the recruitment procedures were completed, the Applicant was not hired in the position.
11. On 24 March 2003, the Applicant filed a claim against the Ministry of Labor and Social Welfare in the Municipal Court in Prishtina, requesting the return to his previous work as "driver", or to another job position or work duties that correspond to his professional background, as well as compensation of his income.

12. Municipal Court in Prishtina, by its Judgment Cl. No. 85/2003 dated 23 September 2004, rejects the statement of claim of the Applicant, by evaluating that neither the Department of Health and Social Welfare and nor the Ministry of Labour and Social Welfare have the continuity and are not the successors of the former Fund for Pension and Disability Insurance and as a result of this, the Ministry of Labor and Social Welfare cannot be forced to return the Applicant to work.
13. The Applicant filed an appeal against the Judgment of the Municipal Court to the District Court in Prishtina. The District Court in Prishtina, by its Judgment AC. No. 415/05 dated 19 February 2007 decided "that the court of first instance in the correctly determined factual situation has applied provisions of the substantive law, has rightly applied provisions of contested procedure when it rejected the statement of claim of the claimant."
14. The Applicant also filed revision against the Judgment of the District Court to the Supreme Court of Kosovo. The Supreme Court, by its judgment Rev. I. No. 314/2009 dated 10 January 2012 rejected the revision of the Applicant as ungrounded, by considering [...] "*as right and lawful the legal stance and the reasoning of the courts of lower instances according to which was rejected the statement of claim of the claimants, since the court of first instance determined that neither the Department of Administration of Health and Social Welfare established with UNMIK Regulation no. 2000/10, nor the Administrative Department of Labour and Employment established with UNMIK Regulation 2000/24, as well as the Ministry of Labour and Social Welfare, included as a respondent in this contest, are the successors of that Fund on Pension and Disability Insurance of Employees of Kosovo, whose employee was the claimant. The claimant has not established employment relationship with the respondent and that the respondent does not have obligation towards the claimant and that the same lacks passive legitimacy as the party in procedure*".

#### **Allegations of the Applicant**

15. The Applicant does not state which Article of the Constitution was violated by the Judgment of the Supreme Court and of other regular courts.
16. The Applicant addresses the Constitutional Court by the Referral [...] "*to decide in my favor, because the Ministry of Labor and Social Welfare made injustice against me, by dismissing me from my job, without any legal support.*"
17. The Applicant also requests the Constitutional Court to reject all aforementioned judgments, because according to the Applicant, justice was not respected in his case.

#### **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 in the Law and the Rules of Procedure.
19. Article 48 of the Law on Constitutional Court of the Republic of Kosovo 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."*

20. The Applicant does not state which right was violated to him and which Article of the Constitution supports his Referral, as it is provided in Article 113.7 of the Constitution and Article 48 of the Law.
21. According to the Constitution, the Constitutional Court is not a court of appeal, where the decisions rendered by the regular courts are reviewed, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-1)
22. The Applicant did not present any *prima facie* evidence that would show the violation of his constitutional rights (See, *mutatis mutandis*, Vanek against Republic of Slovakia, ECtHR Decision regarding admissibility of the Application, no. 53363/99 dated 31 May 2005).
23. In this case, the Applicant was offered many opportunities to present his case before the regular courts. After the review of the proceedings in their entirety, the Constitutional Court has not determined that the proceedings were otherwise unfair and arbitrary (See, *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
24. It follows that the Referral is manifestly ill-founded pursuant to Rule 36.2 (b) of the Rules of Procedure, which provides 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.*"

#### FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of Law, and Rule 36.2 (b) of the Rules of Procedure, on 17 January 2013, 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.
- III. This Decision is effective immediately.

**Judge Rapporteur**

Kadri Kryeziu




**President of the Constitutional Court**

Prof. Dr. Enver Hasani

