



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

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Prishtina, 23 June 2014  
Ref. no.: RK647/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI163/13**

Applicant

**Naser Dragusha and 6 other employees of the Kosovo Energy Corporation**

**Constitutional review of the Judgment Rev. No. 25/2012, of the Supreme Court of the Republic of Kosovo, of 10 May 2013**

**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 Applicants are: Mr. Naser Dragusha, Mr. Mehmet Shaqiri, Mr. Bajram Ahmeti, Mr. Shasivar Hashani, Mr. Qazim Igrishta, Mr. Fahri Asllani and Ms. Selvete Preniqi, represented by Mr. Ilaz Çerkinaj, lawyer from Prishtina.

## **Challenged decision**

2. The Applicants in their Referral complain against Judgment Rev. No. 25/2012, of the Supreme Court of Kosovo, of 10 May 2013, which was served on them on 10 July 2013, Judgment Ac. no. 270/2009 of the District Court in Prishtina of 28 February 2011 and Decision C. no. 268/07 of the Municipal Court in Prishtina of 2 June 2008.

## **Subject matter**

3. The subject matter is the constitutional review of the decisions, alleged to be *“erroneous and unconstitutional, because the Applicants were unjustly denied the salary compensation.”*
4. In this respect, the Applicants allege violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and of Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 18 October 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 31 October 2013, the President of the Court by Decision No. GJR. KI163/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI163/13, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 14 November 2013, the Applicants, the Supreme Court and the Kosovo Energy Corporation (hereinafter: KEK) were notified of the registration of Referral.
9. On 18 November 2013, the Court requested from the Applicants to submit additional documents.
10. On 19 and 20 November 2013, the Applicants submitted additional documents to the Court.
11. On 25 November 2013, the KEK Legal Office submitted its comments regarding the Applicants' Referral.

12. On 13 January 2014, the Court requested from the Basic Court in Prishtina to submit additional documents.
13. On 20 January 2014, the Basic Court in Prishtina submitted to the Court the additional documents.
14. On 8 May 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

15. On 1 October 2004, the Applicants established employment relationship with the KEK on indefinite term, with monthly salary in the amount of €296 in the job position of the assistant operator.
16. On 2 July 2007, the Applicants sued the KEK in the Municipal Court in Prishtina, by requesting to change the name of the job position, from the assistant operator to furnace operator and the payment of the difference of personal income by 41 € per month, for the period from 1 December 2004 to 1 January 2007.
17. On 2 June 2008, the Municipal Court in Prishtina, by Decision C. no. 268/07, decided:

*“The statement of claim of claimants Bajram Ahmeti from Prishtina, neighborhood “Ulpiana”, building 13, no.1, and Mehmet Shaqiri from village Svecel, Podujeva Municipality, by which they requested the change of the name of the work position and the payment of difference of personal income starting from 01.12.2004 until 01.01.2007 is rejected as out of time and the statement of claim of claimants Fahri Asllani from village Stanovc i Ulet, Vushtrri Municipality, Qazim Igrishta from village Stanovc i Ulet, Vushtrri Municipality, Shasivar Hashani from Obiliq, Latif Preniqi from Prishtina, neighborhood “Dardania”, SU 1/3, III entrance, no.23 and Naser Dragusha from village Prugovc, Prishtina Municipality, by which they requested the change of the name of work position and the payment of the difference of personal income starting from 01.12.2004 until 01.01.2007, is rejected as inadmissible.”*

18. On 4 March 2010, the Applicants filed an appeal with the District Court in Prishtina.
19. On 28 February 2011, the District Court in Prishtina, by Judgment Ac. no. 270/2009, decided:

*“The appeals of claimants Bajram Ahmeti from Prishtina, Mehmet Shaqiri from village Svecel, Fahri Asllani and Qazim Igrishta from village Stanovc i Ulet, Shasivar Hashani from Obiliq, Latif Preniqi from Prishtina and Naser Dragusha from village Prugovc, are REJECTED as ungrounded and the Ruling of the Municipal Court in Prishtina C1. no. 268/2007 of 02.06.2008 is UPHHELD.”*

20. On 20 May 2011, the Applicants filed a request for revision with the Supreme Court of Kosovo.
21. On 10 May 2013, the Supreme Court of Kosovo, by Judgment Rev. no. 25/2012, stated:

*“The claimants’ revision submitted against the Judgment of the District Court in Prishtina Ac. no. 270/2009 of 28.02.2011, is rejected as ungrounded in the part related to the change of the name of the work position.*

*The Judgments of the second and first instance are changed in the part related to the claimants’ statement of claim for the payment of difference of monthly salaries for the time period starting from 01.02.2004 until 01.01.2007 so that the claimants’ statement of claim in this part is rejected as not grounded.”*

22. In the abovementioned Judgment, the Supreme Court reasoned:

*“... from the case file it is found that the claimants have established with the respondent indefinite period employment relationship starting from 01.10.2004, in the job positions assistant operator, based on employment contracts no.8992/0 dated 01.10.2004 with Naser Dragusha, contract no.1223/0 with Bajram Ahmeti, contract no.3564/0 with Mehmet Shaqiri, contract no.8967/0 with Fahri Asllani, contract no.12310/0 with Qazim Igrishta, contract no.2099/0 with Shasivar Hashani, contract no.2268/0 with Latif Preniqi, and with these contracts they were allocated the monthly salary of 296 € and the latter are signed both by the claimants and the respondent.*

*The claimants by the claim submitted on 02.07.2007 requested that the respondent is obliged to name to each claimant the job position “furnace operators” as it had previously been and that each of them would be paid the difference of personal income of 41 € for each month starting from 01.12.2004 until 01.01.2007 with legal interest starting from the day of non-payment until the final payment all within the time limit of 8 (eight) days and the costs of the contested procedure.*

*The first instance court after administering the necessary evidence found that the claimants had established employment relationship with the respondent pursuant to employment contracts dated 01.10.2004 for the job position assistant operator, according to which their salaries were determined to be 296 €, and these contracts were signed both by the claimants and the respondent, and the same were not challenged by the claimants pursuant to the provisions of Article 83 of the Law on Basic Rights from the Employment Relationship, and found that the claimants Mehmet Shaqiri and Bajram Ahmeti, have lost the right to judicial protection, whereas the claimants Fahri Asllani, Qazim Igrishta, Shasivar Hashani, Latif Preniqi and Naser Dragusha, because the same have not*

*exhausted the out of court remedies for exercising their rights, by deciding as in the enacting clause of its Judgment.*

*Setting from this situation of the matter, the Supreme Court of Kosovo finds that the lower instance courts have correctly applied the material law when they found that the claimants' claim for changing the name of the work position pursuant to the contract is inadmissible and as such was rejected because this matter is not under the subject matter jurisdiction of regular courts.*

*The Supreme Court of Kosovo finds that the lower instance courts by correctly and completely determining the factual situation, have erroneously applied the material law when they rejected the claimants' claim for compensation of the difference of monthly salaries at the amount of 41 €, for the time period starting from 01.12.2004 until 01.01.2007 pursuant to Article 83, paragraph 1 of the Law on Basic Rights from the Employment Relation because pursuant to the provision of Article 83, paragraph 2 of the Law cited above it is provided that: the protection of rights before the competent court cannot be sought if previously the employee has not sought the protection of rights before the competent authorities of the organization, except the rights from the monetary demand, because pursuant to this provision, Article 83 paragraph 1 of the law quoted above is not applicable on the request for monetary compensation that derives from the employment relation, therefore this Court has changed the Judgments of the lower instance courts, in the parts pertaining to the claimants' statement of claim for the payment of the unpaid monthly difference for the time period 01.12.2004 until 01.01.2007, by rejecting the statement of claim as not grounded. Pursuant to the employment contracts established on 01.10.2004 the claimants worked for the respondent from 01.12.2004 until 01.01.2007, for an indefinite period of time, and pursuant to Article 2 in these contracts their monthly payment was set at the amount of 296 €. Pursuant to this contract, for the performed work, the claimants earned the monthly salaries from the respondent, as they had not challenged the signing of the contracts, a fact that was not contested between the litigating parties.”*

23. On 10 July 2013, the Applicants requested from the Supreme Court of Kosovo to provide logical interpretation of paragraph II of the enacting clause and of the reasoning of the Judgment Rev. No. 25/2012.
24. On 4 September 2013, the Supreme Court of Kosovo, by Decision Rev. No. 25/2012 rejected the Applicant's request as ungrounded.
25. In the abovementioned Decision, the Supreme Court of Kosovo, reasoned among the other:

*“The Supreme Court of Kosovo, having examined the case file and the abovementioned Judgment found that the claimants' request to correct and logically interpret paragraph II of the enacting clause of this Judgment is not grounded, because the Judgment in question does not contain clerical errors pursuant to the provision of the Article quoted above, and for this*

*part the Court has provided comprehensible reasons for rendering a decision pursuant to the provision of Article 224.1 of the LCP.”*

### **Relevant provisions**

#### **Law no. 03/L-006 on Contested Procedure, Article 224.1**

*“224.1 If the court of revisions ascertains that the material good right was applied wrongfully, through a decision it approves the revision presented or changes the decision attacked.”*

### **Applicant’s allegations**

26. The Applicants allege that *“it is not clear in what aspect have the lower court judgments been modified when the Revision was filed due to violation of the claimants’ rights due to non-payment of difference of personal income for the period stated in the Judgment of the Supreme Court of the Republic of Kosovo, because this claim was also rejected by the lower court judgments.”*
27. The Applicants allege violation of Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and of Article 54 [Judicial Protection of Rights] of the Constitution.

### **Allegations of KEK Legal Office**

28. The KEK Legal Office, among the other, alleged: *“KEK J.S.C. alleges and is convinced that the court decisions – Judgments and Decisions of the Municipal, District and of the Supreme Court of Kosovo are fair, lawful and meritorious, therefore setting from this principle, proposes that the Referral is rejected as inadmissible”.*

### **The admissibility of the Referral**

29. The Court observes that, in order to be able to adjudicate the Applicants’ Referral, it is necessary to examine first whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
30. Regarding the Applicants’ Referral, 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”.*

31. The Court also refers to Article 49 of the Law, which provides:

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is*

*made against a law, then the deadline shall be counted from the day when the law entered into force”.*

32. In the present case, the Court notes that the Applicants are authorized parties, that they have exhausted all legal remedies in compliance with Article 113.7 of the Constitution and that the Referral was submitted within the time limit of (4) four months, as provided by Article 49 of the Law.
33. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if:*  
...  
*(c) the Referral is not manifestly ill-founded”.*
34. Regarding the Applicants’ allegations, the Court notes that the Supreme Court of Kosovo has clearly explained the relations between the Applicants as the employees and the KEK as employer based on the contract established by the consent of both parties and the rights and obligations deriving from such a contract; and moreover, the Supreme Court of Kosovo has also made clear assessment of the decisions of the lower instance courts.
35. The Constitutional Court recalls that it is not a fact-finding Court and that correct and complete determination of the factual situation is within the full jurisdiction of regular courts, while the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, see also case KI86/11, *Applicant Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
36. Moreover, the Referral does not indicate that the regular courts have acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to determine whether the regular courts' proceedings were fair in their entirety, including the way in which evidence was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
37. The fact that the Applicants disagree with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] and of Article 49 [Right to Work and Exercise Profession] of the Constitution (See case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).
38. In these circumstances, the Applicants have not substantiated their allegations of a violation of Article 31 [Right to Fair and Impartial Trial] and of Article 49 [Right to Work and Exercise Profession] of the Constitution, because the facts

presented by them do not show in any way that the regular courts had denied them the rights guaranteed by the Constitution.

39. Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible, pursuant to Rule 36 (1) c) of the Rules of Procedure.

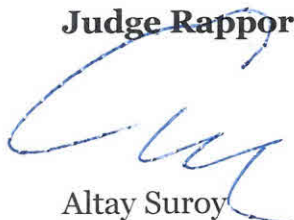
### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, on 8 May 2014, unanimously:

### **DECIDES**

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

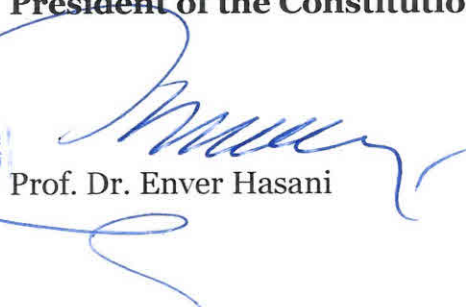
**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Prof. Dr. Enver Hasani