



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

---

Prishtina, 14 April 2014  
Ref. No.: RK 596/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI196/13**

Applicant

**Alisait Qerimi and four others**

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,  
Rev. no. 235/2011, of 12 July 2013**

### **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 Applicants are: Mr. Alisait Qerimi, Mr. Abdylaziz Ahmeti, Mr. Nexhat Osmani, Mr. Fehmi Shala and Mr. Nuhi Robelli from the Municipality of Gjilan, duly represented by Mr. Alisait Qerimi (hereinafter: Applicants).

## **Challenged decision**

2. The Applicants challenge the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 2013, served on the Applicants on 5 August 2013.

## **Subject matter**

3. The subject matter of the Referral is the request for constitutional review of the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 2013, which upheld judgments of lower instances, thereby rejecting as ungrounded the request of applicants for reinstatement to their working places, with all rights deriving from their working relationship.

## **Legal basis**

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

## **Proceedings before the Court**

5. On 12 November 2013, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 December 2013, the President of the Court, by decision no. GJR. KI196/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by decision no. KSH. KI196/13, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 11 December 2013, the Court notified the Applicants and the Supreme Court on the registration of the case.
8. On 19 December 2013, the representative of the Applicants submitted to the Court an authorization, by which he shall represent all other applicants.
9. On 17 February 2014, 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 facts**

10. On 2 February 2011, the Municipal Court in Gjilan, deciding upon the claim suit of Applicants against the "NLB-Prishtina" Bank, Branch in Gjilan, by which the Applicants requested to be reinstated to their working places with the "NLB-Prishtina" Bank, branch in Gjilan, with all rights deriving from their working relationships, rendered the Judgment C. no. 714/09, thereby rejecting the claim suit as ungrounded.
11. On 14 June 2011, the District Court in Gjilan, deciding upon complaint of the Applicants, rendered the Judgment AC. no. 82/11, thereby rejecting the

complaint as ungrounded, and upheld the Judgment of the Municipal Court. In its Judgment, the District Court finds:

*“... this court evaluated the conclusion and legal stance of the first instance court and found that the same is correct and based on law and it is based on submitted evidence and that there are justifiable reasons, which this court approves.*

*This court considers that the factual situation is determined correctly and completely by the court of first instance and that correctly is applied the substantive law...”.*

12. On 12 July 2013, the Supreme Court of Kosovo, deciding upon revision filed by the Applicants, decided that the revision is ungrounded. In its reasoning of the ruling, the Supreme Court notes :

*“... the Supreme Court of Kosovo found that lower instance courts by determining correctly and completely the factual situation have applied correctly the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded...”.*

13. On 10 September 2013, the Applicants addressed the Public Prosecution of Kosovo with a “motion to file a request for protection of legality”.
14. On 23 September 2013, the State Prosecutor, through his notice KMLC. No. 98/13 informed the Applicants that *“legal time limits have expired to submit the request for protection of legality”*.

### **Applicant’s allegations**

15. The Applicants allege that the Judgment of the Supreme Court of Kosovo, Rev. no.235/2011, of 12 July 2013, has violated their rights protected by the Constitution, Article 24 (Equality before Law), Article 31 (Right to Fair and Impartial Trial), Article 54 (Judicial Protection of Rights) and Article 49 (Right to Work and Exercise of Profession) of the Constitution, Article 101 of the Universal Declaration of Human Rights, and Article 6 of the European Convention on Human Rights.
16. The Applicants conclude by requesting from the Constitutional Court to:

*“We request to annul judgments of all court instances, such as that of Municipal Court in Gjilan C.no.714/09 of 02.02.2011, that of District Court in Gjilan AC.no.82/11 of 14.06.2011 and that of Supreme Court of Kosovo Rev.no.235/2011 of 12.07.2013”.*

### **Admissibility of the Referral**

17. In order to be able to adjudicate the Applicants’ Referral, the Court has to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

18. In this regard, Article 113.7 of the Constitution 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”.*

19. In addition, Article 49 of the Law provides that *“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”.*

20. In this concrete case, the Court notes that the Applicants have addressed the Municipal Court in Gjilan, the District Court in Gjilan, and ultimately the Supreme Court of Kosovo, for the protection of their rights. The Court also notes that the Applicants have received the Judgment of the Supreme Court Rev. no. 235/2011, of 12 July 2013, on 5 August 2013, while they filed their referral with the Court on 12 November 2013.

21. Therefore, the Court considers that the Applicants are an authorized party, and that they have exhausted all legal remedies available under the applicable law, and that the referral was submitted within the four-month time limit.

22. However, the Court also takes into account Rule 36 of the Rules of Procedure, which provides:

*“(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:*

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

*(d) when the Applicant does not sufficiently substantiate his claim”.*

23. The Applicants allege that the Judgment of the Supreme Court of Kosovo, Rev. no. 235/2011, of 12 July 2013, which upheld the Judgment of the Municipal Court in Gjilan, C. no. 714/09, of 2 February 2011, and the Judgment of the District Court in Gjilan, AC. no. 82/11, of 14 June 2011, has violated their rights protected by the Constitution, namely Article 24 (Equality before Law), Article 31 (Right to Fair and Impartial Trial), Article 54 (Judicial Protection of Rights) and Article 49 (Right to Work and Exercise of Profession) of the Constitution, Article 101 of the Universal Declaration of Human Rights, and Article 6 of the European Convention on Human Rights.

24. In this regard, the Constitutional Court wishes to reiterate that according to the Constitution, it is not its duty to act as a fourth instance court in respect of 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 material law (see, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECtHR, judgment of 21 January 1999; see also case KI70/11, of applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

25. The Constitutional Court can only consider whether the evidence has been presented in such a manner, and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants have had a fair trial (see, *inter alia*, case Edwards v. United Kingdom, Application no. 13071/87, Report of the European Commission on Human Rights of 10 July 1991).
26. Based on the case files, the Court notes that the reasoning provided by the Judgment of the Supreme Court is clear, and after reviewing the entire procedure, the Court also finds that the regular court proceedings have been in no way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECtHR, decision of 30 June 2009).
27. Furthermore, the Supreme Court, in its Judgment, confirmed that “*the Supreme Court of Kosovo found that lower instance courts by determining correctly and completely the factual situation have applied correctly the contested procedure provisions and substantive law whereby they found that the statement of claim of claimant is ungrounded [...]*”.
28. Based on the above, the Court considers that the facts presented by the Applicants have in no way justified the allegation of a violation of the constitutional rights, and that the Applicants have not sufficiently substantiated their allegation.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (2) b) and (d) of the Rules of Procedure, on 7 February 2014, unanimously

## DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision immediately effective

**Judge Rapporteur**

  
Arta Rama-Hajrizi



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani