



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

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Prishtina, 28 April 2014  
Ref. no.: RK570/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI218/13**

Applicant

**Afrim Zeqiri**

**Constitutional Review of the Decision of the Supreme Court of Kosovo,  
Mlc.Rev. no. 57/2013, of 30 July 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  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Referral was filed by Mr. Afrim Zeqiri (hereinafter: the Applicant), village of Cernica, Municipality of Gjilan, represented before the Constitutional Court of Kosovo by lawyer Mr. Bajram Morina from Gjakova.

## **Challenged decision**

2. The Applicant challenges the decision of the Supreme Court of Kosovo, Mlc. Rev. no. 57/2013, of 30 July 2013.

## **Subject matter**

3. The subject matter is the constitutional review of the decision of the Supreme Court of Kosovo, Mlc. Rev. no. 57/2013, of 30 July 2013, which according to allegations of the Applicant, violated Articles 7 [Values], 23 [Human Dignity], 24 [Equality Before the Law], 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights], and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, and item 1 of Protocol I to this Convention (hereinafter: ECHR)

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 Court**

5. On 3 December 2013, the Applicant filed his Referral with the Constitutional Court of Kosovo (hereinafter: the Court).
6. On 8 January 2014, the President of the Court, by decision no. GJR. KI218/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by decision no. KSH. KI218/13, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi as members.
7. On 14 March 2014, after having considered the report of Judge Rapporteur Robert Carolan, the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi, made a recommendation to the full Court on the inadmissibility of the Referral.

## **Summary of the facts**

8. By Judgment of the Municipal Court in Prishtina, C.no. 65/2004, of 12 October 2009, the claim of Applicant was partially approved and it was ordered as follows:

*“I. The statement of claim of claimant Afrim Zeqiri from village Cerncia, Gjilan municipality IS APPROVED PARTLY AS GROUNDED.*

- II. *The respondent Kosovo Judicial Council in Prishtina IS OBLIGATED due to unlawful decision from 29.05.2000 until 11.02.2002 (617 days) to compensate to the claimant the material damage at the amount of €3.688.10 (three thousand and six hundred and eighty eight Euros and ten 10 cents) and non-material damage at the amount of €100,000 (one hundred and thousand Euros) with delayed legal interest rate of 3,5%, which is received by Kosovo banks with deposited money from 1 year without certain destination from the day of rendering this decision until the final payment together with procedural costs at the amount of €1,365.00 (one thousand and three hundred and sixty five Euros) – all these within 15 days from the day of rendering this judgment and under the threat of forced execution.*
- III. *The statement of claim of claimant on the adjudicated amounts IS REJECTED AS UNGROUNDED as in the enacting clause of this judgment as well as his request for medical expenses at the amount of €20,000”.*
9. By Judgment of the District Court in Prishtina, Ac. no. 524/2010, of 18 December 2012, the appeals of the plaintiff and the respondent were rejected as unfounded and the Judgment of the Municipal Court in Prishtina C. no. 65/2004 of 12 December 2009 was upheld.
10. Against the Judgment of the District Court in Prishtina, Ac. no. 524/2010, of 18 December 2012 and Judgment of the Municipal Court in Prishtina C. no. 65/2004 of 12 December 2009 extraordinary legal remedies were filed – a request for protection of legality by the State Prosecutor of the Republic of Kosovo due to erroneous application of the substantive law, and a revision by the respondent due to essential violations of the Law on Contested Procedure and erroneous application of the substantive law, with the proposal that the impugned Judgments be quashed and the legal matter be remanded to the first instance court for retrial.
11. By Ruling of the Supreme Court of Kosovo, Mlc. Rev. No. 57/2013, of 30 July 2013, the Supreme Court approved the request for protection of legality, filed by the State Prosecutor of the Republic of Kosovo, and the revision of the respondent, thereby annulling the Judgment of the District Court in Prishtina, Ac. no. 524/2010, of 18 December 2012, and Judgment of the Municipal Court in Prishtina, C. no. 65/2009, of 12 October 2009, and remanding the case to the first instance court for retrial.

### **Applicant's allegations**

12. The Applicant „*informs the Constitutional Court of Kosovo that the abovementioned Ruling of Supreme Court, as public authority, respectively as one of the state bodies in the case of reconsideration was partial and favored the other body of state – Kosovo Judicial Council in relation to Applicant, even though based on many evidence was aware that it was about unlawful detention, due to serious violation of dignity and human rights, as well as other rights guaranteed by the Constitution, which violations we are mentioning as following, and that: Articles 7, 23, 24, 27, 31, 54 and 102 of the*

*Constitution of the Republic of Kosovo, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms, and item 1 of Protocol 1 to this Convention (hereinafter: ECHR).*

13. The Applicant further alleges that: *“In the conducted court procedures was favored the state of Kosovo, respectively the Judicial Council, as Kosovo state body, in relation to Kosovo citizen – Afrim Zeqiri, since the Judicial Council, in order to avoid by all means to its material responsibility has impacted directly by using its monopolistic and subordinating position, based on the fact that Judicial Council is the body that impacts directly on selecting the judges, including here the judges of the Supreme Court of Kosovo, who decided same as in the contested Ruling, by which is determined that Afrim Zeqiri was not treated as equal party in relation to Kosovo Judicial Council in the procedure that was conducted in the Supreme Court of Kosovo”.*
14. The Applicant claims that *“In the present case, in the procedure conducted in the Supreme Court of Kosovo, the Applicant, Afrim Zeqiri, in relation to Kosovo Judicial Council.*
  - *Is discriminated and it was not treated as equal party before the law,*
  - *Was not provided equal protection, since by contested Ruling is favored the Kosovo Judicial Council, respectively the state of Kosovo, to the detriment of its citizen.*
  - *Was denied the right to fair and impartial public hearing in the proceeding of rendering the contested Ruling”.*
15. The Applicant requests from the Constitutional Court *“Abrogation– Annulment of the Ruling of Supreme Court of Kosovo MLc.Re.No.57/2013 of 30.07.2013, by which decision was admitted the request for protection of legality of State Prosecutor of Kosovo and Revision of Kosovo Judicial Council, and the case was remanded to the first instance court for retrial, and LEAVING INTO FORCE the Judgment of District Court of Prishtina, Ac.no.524/2010 of 18.12.2012 and Judgment of Municipal Court of Prishtina, C.No.65/2009 of 12.10.2009, by which to the Applicant – Afrim Zeqiri from village Cernica, Gjilan municipality, was approved the claim for compensation of material and non-material damage at the amount specified in the enacting clause of this judgment as grounded”.*

### **Admissibility of the Referral**

16. The Court notes that in order to be able to adjudicate the referral of the Applicant, it needs beforehand to examine whether the Applicant has met the admissibility requirements laid down in the Constitution, and further specified in the Law and in the Rules of Procedure.
17. In this regard, 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”.*

18. The Court further refers to Article 47 of the Law, which provides that:

*“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

19. Furthermore, the Court refers to Rule 36 (1) a) of the Rules of Procedure, which provides that:

*“The Court may only deal with Referrals if:*

*(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted...”.*

20. Having these in mind, and based on the documentation filed with the Constitutional Court by the Applicant, the Court notes by Ruling of the Supreme Court of Kosovo Mlc. Rev. no. 57/2013, of 30 July 2013, *“the case is remanded to the first instance court for retrial”* so that the competent court could decide on the subject matter of the dispute.
21. The Court wishes to reiterate that the rule for the exhaustion of legal remedies exists to provide the relevant authorities, including courts, with a possibility to prevent or rectify alleged violations of the Constitution. The rule is based upon the assumption that the legal order of Kosovo will provide effective legal remedies for violation of constitutional rights (see, *mutatis mutandis* ECtHR, Selmouni v. France, no. 25803/94, ruling of 28 July 1999).
22. This Court has applied the same reasoning when rendering the Decision of 27 January 2010 on inadmissibility, based on the fact that not all legal remedies were exhausted, in the case AAB-RIINVEST University LLC Prishtina v. Government of the Republic of Kosovo, case No. KI41/09, and Decision of 23 March 2010, in the case Mimoza Kusari-Lila v. Central Election Commission, case no. KI73/09.
23. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law, in order for him to be able to file a Referral with the Constitutional Court, and therefore, it must reject the Referral as inadmissible, in compliance with Article 47.2 of the Law, and Rule 36 (1) a) of the Rules of Procedure.



## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1) a) of the Rules of Procedure, in the session held on 14 March 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**



Robert Carolan



**President of the Constitutional Court**



Prof. Dr. Enver Hasani