



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

---

Prishtina, 15 January 2013  
Ref. No.: RK384/13

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI49/11

Applicant

**Ibrahim Sokoli**

**Constitutional Review of the Judgment of the Supreme Court, Rev. no.  
362/2009 dated 4 February 2011**

### 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 Mr. Ibrahim Sokoli with residence in Kaçanik

## **Challenged decision**

2. Judgment of Supreme Court of Kosovo rev.no.362/2009 dated 4 February 2011

## **Legal basis**

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 20, 22.7 and 22.8 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Subject matter**

4. The subject matter has to do with the change of the job position of the Applicant by his Employer, orally without any written decision and offering of the new job position, which does not match with experience and professional qualification of the Applicant.

## **Proceedings before the Court**

5. On 14 April 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 April 2011, the President, by Decision No. GJR.KI-49/11, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No.KSH.KI-49/11, appointed the Review Panel composed of judges Robert Carolan (Presiding), Almiro Rodrigues and Mr.sc. Kadri Kryeziu.
7. On 25 January 2012, the Applicant was notified about the registration of the Referral. On the same date, the Referral was communicated to the Municipality of Kaçanik, Municipal Court in Kaçanik and to the Supreme Court of the Republic of Kosovo.
8. On 5 December 2012, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the full court the inadmissibility of the Referral.

## **Summary of facts as submitted by the Applicant**

9. The Applicant was in employment relationship in the Main Centre for Family Medicine as dental technician (hereinafter: CFM) in Kaçanik since 1977.
10. Since January 2007, due to new systematization, CFM in Kaçanik, notified orally, without any written decision that his job position will be changed. The Applicant filed appeal to the Steering Board of the CFM in Kaçanik.
11. On 20 February 2007, the Steering Board of the CFM in Kaçanik by Decision no.180 rejected the request of the Applicant and offered him to choose one of these job positions: 1) dentist's assistant; 2) worker in the information operation system; and 3) driver.
12. On 1 April 2007, personal income was terminated to the Applicant as well as in the registers' lists, where his name should have been marked with capital letters UL that implies unpaid leave. The Applicant appealed to the Appeals Committee in MA of Kacanik against these actions.

13. The Appeals Committee of MA of Kacanik did not respond to the Applicant within legal time limits. The Applicant filed appeal to the Independent Oversight Board of Kosovo (hereinafter: IOBK).
14. On 18 September 2007, IOBK by Decision 2081/07/07 *inter alia* determined: 1) partial approval of the Applicant's appeal, 2) return of case for review to the Appeals Committee of MA of Kaçanik, and 3) obligation for Chief of Executive of MA Kaçanik for authorization of the Appeals Committee for deciding in the case of Applicant.
15. On 9 November 2007, Municipal Appeals Committee by decision no.566/07 approved the Applicant's request and systematized him in the new position as the maintenance technician of the dental devices which corresponded to the Applicant's professional background, but the abovementioned decision was not executed by the competent body of the MA Kacanik.
16. On 8 February 2008, the Applicant filed claim in the Municipal Court Kaçanik, which (Judgment C.no.32/08 dated 30 May 2008) *inter alia* determined: 1) the approval in entirety the statement of claim of the Applicant, 2) obligation for MA Kaçanik to return the Applicant to his work place according to professional background, and 3) the obligation for MA Kaçanik to pay to Applicant the personal income starting from 1 April 2007.
17. Municipality of Kaçanikut filed appeal in the District Court in Prishtina against the abovementioned judgment. District Court in Prishtina (Judgment Ac.no.1014/2008 dated 12 March 2009) rejected as ungrounded the appeal of MA Kaçanik, and confirmed the judgment of Municipal Court in Kaçanik.
18. Against the judgment of the District Court, Municipality of Kaçanik filed revision in the Supreme Court of Kosovo, which (Judgment Rev.no.362/2009 dated 4 February 2011) received the revision of MA Kaçanik and modified the judgment of the District Court in Prishtina, respectively of the Municipal Court in Kaçanik.
19. Supreme Court *inter alia* reasoned:

*"...From the case files it is obvious that plaintiff (the Applicant) was employed since 1973 and since January 2007, due to new systematization, he was orally instructed to change his post without any written decision.... the plaintiff was offered the post of dentist assistant, worker in the operational information system or driver, so that the CFM Director made a decision and changed the post of the plaintiff as the dentist technician taking into account budgetary possibilities in relation with covering of personal income."*

*"...Given this state of affairs, Supreme Court evaluated that lower-instance courts completely confirmed factual situation, but erroneously implemented material law when decided that plaintiff's request was founded. This is due to a fact that change of the plaintiff's post was made in accordance with budgetary possibilities in relation with covering of personal income. In addition to this, proofs in case files indicate that for the post of dentist assistant or worker in the operational information system, which were offered to the plaintiff, salary level was the same as for his original post and it was in accordance with Article 11.1 of Administrative Instruction No. 2003/2 on implementation of UNMIK Regulation No. 2001/36 on Civil Service."*



*“...In addition to these facts, plaintiff was employed with limited duration up to 31 December 2006, and he received his personal income until 1 April 2007. Also, he was offered abovementioned posts but he refused those posts and refused to sign new three-year contract for continuation of the employment after expiration of the first contract, with the same salary and in accordance with his professional capabilities.”*

### **Applicant’s allegations**

20. The Applicant alleges that the Supreme Court of Kosovo deciding upon the revision of the respondent (MA Kaçanik) modified the decisions of the courts of lower instances and in this way has violated his rights guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution.
21. The Applicant alleges that in an arbitrary manner without any written decision and without legal support his personal income was terminated and in the workers’ list under the column with the Applicant’s name was marked UL with capital letters, which means unpaid leave.
22. Furthermore, the Applicant alleges that alternative job positions, which were offered to him by the Employing Authority do not match his professional background.

### **Assessment of the admissibility of the Referral**

23. In order to be able to adjudicate the Applicant’s Referral, it is necessary 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.
24. The Court is referred to the 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.”*
25. The Court is also referred to the 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.
26. In the specific case, the Court notes that the Applicant has exhausted all legal remedies pursuant to Article 113.7 of the Constitution.
27. The Court also notes that the Applicant has initiated administrative procedure and that the IOBK has partly approved his request while the Appeals Committee of the Municipality of Kaçanik has also approved the Applicant’s request, but the decision of the Appeals Committee was not executed by the Municipality of Kacanik.
28. The Court notes that the Applicant has initiated contested procedure by filing claim in the Municipal Court of Kaçanik, which issued favorable decision for the Applicant. The decision of the Municipal Court in Kaçanik was confirmed by the District Court in Prishtina, after the appeal of the respondent, respectively of MA of Kaçanik.
29. The Court also notes that the Supreme Court of Kosovo, modified the judgments of the lower instance courts, on which occasion it concluded that the courts of lower instances had erroneously applied the substantive law, because the change of the job position of

the Applicant was done according to budgetary possibilities and that the latter was offered new job positions at the same level and with previous salary, but the Applicant did not accept to sign a new contract.

30. In the specific case, from submitted documents, the Court concludes that the Supreme Court of Kosovo has evaluated the case from the aspect of the substantive law and elaborated the relationship between the employer and the employee as well as it gave its interpretation of legal provisions that regulate the relationship between the employer and the employee.
31. In this regard, the Applicant did not substantiate his allegations, by explaining how and why any violation has been made, or by offering evidence to confirm that any right guaranteed by the Constitution was violated to them.
32. In a similar way with the case KI-127/11, the Applicant Ardian Hasani – Constitutional Review of the Judgment of Supreme Court, Rev.no.219/2009, dated 10 June 2011, issued by the Court on 24 May 2012.
33. Constitutional Court is not the Court of verification of facts. Constitutional Court emphasizes in that the determination of complete and right factual situation is a full jurisdiction of regular courts that that its role is to provide the compliance with the rights, guaranteed by the Constitution and other legal instruments and therefore it cannot act as a "court of fourth instance ", (*see, mutatis mutandis, i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, para.65*).
34. Furthermore, the Referral does not indicate that the Supreme Court has acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to replace its determination of facts with those of the regular courts, as a general rule, it is the task of these courts to assess the evidence before them. The task of the Constitutional Court is to verify whether the procedures in the regular courts were fair in their entirety, including the way this evidence was taken, (*see ECtHR Judgment App. No 13071/87 Edwards against United Kingdom, paragraph 3, dated 10 July 1991*).
35. The fact that the Applicants are unsatisfied with the outcome of the case, cannot serve them as the right to file an arguable Referral for violation of the Article 49 [Right to Work and Exercise Profession] of the Constitution (*see mutatis mutandis ECtHR Judgment Appl. no. 5503/02, MezturTiszazugi Tarsulat against Hungary, Judgment dated 26 July 2005*).
36. Under these circumstances, the Applicant did not substantiate with evidence his allegations and the violation of Article 49 [Right to Work and Exercise Profession] of the Constitution, because the presented facts do not in any way show that the Supreme Court denied him the rights guaranteed by the Constitution.
37. Consequently, the Referral is manifestly ill-founded and should be rejected as inadmissible pursuant to the Rule 36 of the Rules of Procedure.

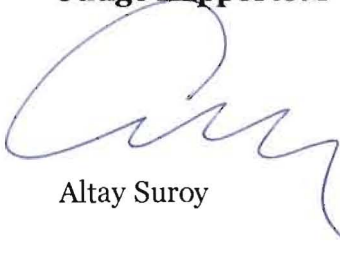
## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 20 of the Law and in compliance with the Rule 36 (1) c) of the Rules of Procedure, on 5 December 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 on the Constitutional Court; and,
- III. This Decision is effective immediately.

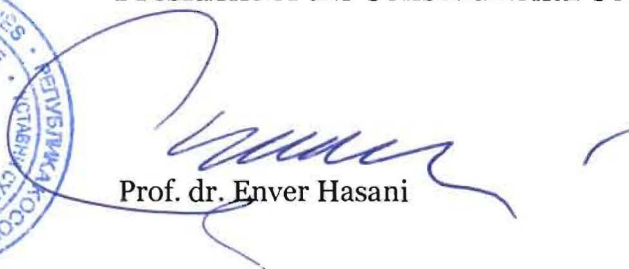
**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Prof. dr. Enver Hasani