



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

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**Prishtina, 10 April 2014  
Ref.no.:RK560/14**

**RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI61/11 and KI55/13**

Applicant

**Naxhije Hasani and Vjollca Shoshi**

**Constitutional Review of 2 Judgments of the Supreme Court of the  
Republic of Kosovo namely, Rev. no. 434/2008 dated 23 February 2009  
and Rev. no. 164/2010 dated 11 January 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 Referrals were submitted by Ms. Naxhije Hasani and Ms. Vjollca Shoshi (hereinafter, the Applicants).

## **Challenged decision**

2. The challenged decisions are the Judgments of the Supreme Court Rev no. 434/2008 dated 23 February 2009 and Rev. no. 164/2010 dated 11 January 2013.

## **Subject matter**

3. The subject matter of the Referrals is the review of the constitutionality of the challenged Judgments of the Supreme Court, which allegedly violated the right to property and to a fair trial of the Applicants, as guaranteed by Article 46 of the Constitution, in conjunction with Article 1 Protocol 1 to the European Convention on Human Rights (hereinafter, the ECHR), and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
4. The present cases are identical to the following case already decided by the Constitutional Court “the Case of Vahide Hasani and others” (See the Resolution on Inadmissibility of the Constitutional Court of Kosovo dated 22 January 2013).

## **Legal basis**

5. The Referrals are based on Article 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter, the Law) and Section 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

## **Summary of the facts**

6. In general, the facts of these Referrals are identical to those cases abovementioned under paragraph 4.
7. In fact, in the course of 2001 and 2002, the Applicants signed an Agreement for Temporary Compensation of Salary for Termination of Employment Contract with their employer Kosovo Energy Corporation (hereinafter, KEK).
8. Article 1 of the Agreement established that, pursuant to Article 18 of the Law on Pension and Invalidity Insurance in Kosovo (Official Gazette of the Social Autonomous Province of Kosovo No 26/83, 26/86 and 11/88) and at the conclusion of KEK Invalidity Commission, the beneficiary (i.e. each of the Applicants) is entitled to a temporary compensation due to early termination of the employment contract until the establishment and functioning of the Kosovo Fund on Pension-Invalidity Insurance.
9. Furthermore, Article 2 of the Agreement specified that the amount to be paid monthly to each Applicant was to be 206 German Marks.
10. In addition, Article 3 of the Agreement specified that *“payment shall end on the day that the Kosovo Pension-Invalidity Insurance Fund enters into operation.*

*On that day onwards, the beneficiary may realize his/her rights in the Kosovo Pension and Invalidity Insurance Fund (the Kosovo Pension Invalidity Fund), and KEK shall be relieved from liabilities to the User as per this Agreement”.*

11. On 1 November 2002, the Executive Board of KEK adopted a Decision on the Establishment of the Pension Fund, in line with the requirements of UNMIK Regulation No 2001/30 on Pensions in Kosovo. Article 3 of this Decision reads as follows: *“The Pension Fund shall continue to exist in an undefined duration, pursuant to terms and liabilities as defined with Pension Laws, as adopted by Pension Fund Board and KEK, in line with this Decision, or until the legal conditions on the existence and functioning of the Fund are in line with Pension Regulations or Pension Rules adopted by BPK”.*
12. On 25 July 2006, the KEK Executive Board annulled the above mentioned Decision on the Establishment of the Supplementary Pension Fund and terminated the funding and functioning of the Supplementary Pension Fund, with effect from 31 July 2006.
13. According to the Decision of 25 July 2006, all beneficiaries were guaranteed full payment in line with the Fund Statute. The Decision further stated that KEK employees that are acknowledged as labour disabled persons by the Ministry of Labour and Social Welfare shall enjoy rights provided by the Ministry.
14. On 14 November 2006, KEK informed the Central Banking Authority that *“decision on revocation of the KEK Pension Fund is based on decision of the KEK Executive Board and the Decision of the Pension Managing Board... due to the financial risk that the scheme poses to KEK in the future”.*
15. In the summer of 2006, KEK terminated the payment stipulated by the Agreement without any notification.
16. The Applicants sued KEK before the Municipal Court in Prishtina, requesting the Court to order KEK to pay unpaid payments and to continue to pay 105 Euro (equivalent to 206 German Marks) until conditions are met for the termination of the payment.
17. The Municipal Court in Prishtina approved the Applicants’ claims and ordered monetary compensation. The Municipal Court of Prishtina found (e.g. the Judgment C. Nr. 646/2006 of 12 December 2007 in the case of the first Applicant Naxhije Hasani) that the conditions provided by Article 3 of the Agreements have not been met. Article 3 of the Agreements provides for salary compensation until the establishment of the pension invalidity fund. *“Which means an entitlement to a retirement scheme, would not have been possible for her husband if he were still alive, because he would have still not reached the age of 65 and that the applicant inherits the rights of her husband to continue to receive these payments”.*
18. KEK appealed against the judgments of the Municipal Court to the District Court, arguing, inter alia, that the Municipal Court judgment was not fair, because the Agreements were signed with the Applicants because of the invalidity of the Applicants and that they cannot claim continuation of their

working relations because of their invalidity. KEK reiterated that the Court was obliged to decide upon the UNMIK Regulation 2003/40 on the promulgation of the Law on Invalidity Pensions according to which the Applicants were entitled to an invalidity pension.

19. The District Court rejected as ungrounded the appeals of KEK.
20. KEK submitted a revision to the Supreme Court, arguing an alleged essential violation of the Law on Contested Procedure and erroneous application of material law. KEK repeated that the Applicants were entitled to the pension provided by the 2003/40 Law and that because of humanitarian reasons it continued to pay monthly compensation after the Law entered into force. KEK further argued that the age of the applicant was not relevant but that his invalidity was.
21. The Supreme Court rejected as unfounded the Applicants' lawsuits and quashed the judgments of the District and Municipal. The Supreme Court concluded that the termination of employment was lawful pursuant to Article 11.1 of UNMIK Regulation 2001/27 on the Basic Labour Law in Kosovo.
22. The Supreme Court argued that the manner of termination of employment was considered lawful pursuant to Article 11.1 of UNMIK Regulation 2001/27 on the Basic Labour Law in Kosovo.
23. In the Judgment the first applicant, Naxhije Hasani Rev. No. 434/2008 of 23 February 2009), the Supreme Court stated: *"Taking into account the undisputed fact that the respondent party fulfilled the obligation towards the plaintiff, which is paying salary compensation according to the specified period which is until the establishment and functioning of the Invalidity and Pension Insurance Fund in Kosovo effective from 1 January 2004, the Court found that the respondent party fulfilled the obligation as per the agreement. Thus the allegations of the plaintiff that the respondent party has the obligation to pay him the temporary salary compensation after the establishment of the Invalidity and Pension Insurance Fund in Kosovo are considered by this Court as unfounded because the contractual parties until the appearance of solving condition- establishment of the mentioned fund have fulfilled their contractual obligations..."*.
24. Furthermore, the Supreme Court reiterated that *"the right for Temporary Compensation cannot be transferred to other persons since it is a subjective right linked closely with the employer and employee and that KEK fulfilled its obligations by continuing to pay the applicants' 105 Euros for 60 months"*.
25. On 15 May 2009, Ministry of Labour and Social Welfare issued the following note: *"The finding of the Supreme Court of Kosovo, in its reasoning of e.g. Judgment Rev. No. 338/2008, that in the Republic of Kosovo there is a Pension and Invalidity and Pension Insurance Fund which is functional since 1 January 2004 is not accurate and is ungrounded. In giving this statement, we consider the fact that UNMIK regulation 2003/40 promulgates the Law No. 2003/213 on the pensions of disabled persons in Kosovo, which regulates over permanently disabled persons, who may enjoy this scheme in accordance with*



*conditions and criteria as provided by this law. Hence let me underline that the provisions of this Law do not provide for the establishment of a Pension and Invalidity Insurance in the country. Establishment of the Pension and Invalidity Insurance Fund in the Republic of Kosovo is provided by provisions of the Law on pension and Invalidity Insurance funds, which is in the process of drafting and approval at the Government of Kosovo.”* The same note clarified that at the time of writing that note, the pension inter alia existed “*Invalidity pension in amount of 45 Euro regulated by the Law on Pensions of Invalidity Persons (beneficiaries of these are all persons with full and permanent Invalidity)*” as well as “*contribution defined pensions of 82 Euro that are regulated by Decision of the Government (the beneficiaries of these are all the pensioners that have reached the pensions age of 65 and who at least have 15 years of working experience)*”.

### **Applicant’s allegations**

26. The Applicants claim that the termination of the payment is in contradiction to the signed Agreement.
27. The Applicants also claim that it is well known that the Kosovo Pension Invalidity Fund has not been established yet. On the other hand, in the original case no. KI40/09, KEK contested the Applicants’ allegations, arguing that it was widely known that the Invalidity Pension Fund had been functioning since 1 January 2004.
28. According to KEK, the Applicants were automatically covered by the national invalidity scheme pursuant to UNMIK Regulation No 2003/40 on Promulgation of the Law on Invalidity Pensions in Kosovo (Law No. 2003/23).
29. KEK further argued that, on 31 August 2006, it issued a Notification according to which all beneficiaries of the KEK Supplementary Fund had been notified that the Fund was terminated. The same notification confirmed that all beneficiaries were guaranteed complete payment in compliance with the SPF Statute, namely 60 months of payments or until the beneficiaries reached 65 years of age, pursuant to the Decision of the Managing Board of the Pension Fund of 29 August 2006.
30. KEK further argued that the Applicants did not contest the Instructions to invalidity pension and signature for early termination of employment pursuant to the conclusion of the Invalidity Commission.
31. In sum, the Applicants claim that their rights to property and to fair trial have been violated by the decision of KEK unilaterally annulling their Agreements. The Applicants further claim that they have not been able to remedy such violation before the regular courts.

### **Proceedings before the Court**

32. Between 2011 and June 2013, the Applicants individually, filed the Referrals to the Constitutional Court.

33. The President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and appointed a Review Panel of the Court composed of Judges Altay Suroy (Presiding), Enver Hasani and Ivan Čukalović.
34. On 25 June 2013, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referrals.

### **Admissibility of the Referral**

35. In order to be able to adjudicate the Applicant's referral, the Court needs first to examine whether the Applicant has fulfilled all the admissibility requirements laid down in the Constitution.
36. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no.30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).
37. The Court recalls the admissibility criterion provided by article 34 of the Convention, according to which any application has to be lodged by an applicant who could claim to be the victim of a violation of the Convention. A link should also be established between the applicant and the damage that he or she suffered because of the alleged violation.
38. The Supreme Court in its operative part of the decision stated that "*The right cannot be transferred to other persons since it is a subjective right linked closely with the employer and employee and that this issue relates to a temporary compensation for termination of employment and not legal pension and thus the fact that the Pension-Invalidity fund is not functional does not affect the applicants case as the Agreement was signed between the Applicants' husband (deceased) and thus according to Article 359 of the Law on Obligations, KEK has no further obligations*".
39. Furthermore, Article 51 of the Constitution [Health and Social Protection] which is referred to by some of the above mentioned applicants relating to pensions, merely states that, "*Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law.*" It does not mandate that a citizen have a pension or dictate how a person may qualify for a pension.
40. With regards to the reasoning of the Constitutional Court in its previous Judgments related to former employees of KEK, the latter cannot be applied to the present applicants' for the reason that they are were not signatories of the agreement signed with KEK and as such is of non-transferable nature.
41. Furthermore, the Applicants do not directly specify either any constitutional provision that could have been violated by the decision that they are challenging without being able to prove "*the status of the victim of the public*

*authority's act*" as it is foreseen in article 34 of the ECHR.

42. Having examined both administrative proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no.17064/06 of 30 June 2009).
43. In sum, the Applicants did not show why and how their rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36.1.c of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

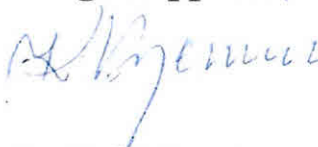
### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (c) a) and 56 (2) of the Rules of Procedure, on 25 June 2013, unanimously

### DECIDES

- I. TO DECLARE the Referral 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**



Dr. Kadri Kryeziu



**President of the Constitutional Court**



Prof. Dr. Enver Hasani