



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

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Pristine, 15 January 2013  
Ref. No.: RK340/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI67/12**

Applicant

**Shaban Kadrija**

**Constitutional Review of the Supreme Court Judgment Rev. I. No. 366/2009  
dated 15 March 2012**

### **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 Applicant is Shaban Kadrija, residing in village Muzeqine, Municipality of Shtime.

### **Challenged decision**

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Rev. I. no. 366/ 2009 of 15 March 2012.

### **Subject matter**

3. The Applicant claims that his rights to work as guaranteed by the Constitution and international standards have been violated.
4. The Applicant expects the Constitutional Court to enable him to return to his earlier workplace. He requests the Court to nullify all judgments issued by regular courts. The Applicant also requests that the Constitutional Court order a monetary compensation for his alleged loss of income including the court fees.

### **Legal Basis**

5. The Referral is based on Article 113. 7 of the Constitution, Articles 46, 47, 48 and 49 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

### **Proceedings before the Constitutional Court**

6. On 12 July 2012, the Applicant filed the Referral with the Constitutional Court of Kosovo (hereinafter: the Court).
7. On 4 September 2012, the President of the Court appointed Judge Robert Carolan as a Judge Rapporteur and a Review Panel composed of Judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 27 November 2012, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of the Facts**

9. On 6 January 1990, the Municipal Assembly of Shtimje, Directorate of Social Incomes issued Decision No 04-011-17 according to which the Applicant established full time permanent employment with Directorate of Social Income as from 1 January 1990. The Applicant was assigned to work duties of Clerk for Collection of taxes.
10. On 12 October of the same year, the Municipal Assembly of Shtimje, Directorate of Social Incomes issued a new Decision No 118-21/90 by which the Applicant's employment was terminated without the Applicant's consent. The reasoning given was that he participated in the Independent Trade Union one-day general strike of employees of Albanian nationality on the 3rd of September, which the Directorate considered "as absent without justification" from the workplace. Furthermore, as the Applicant did not finish his work and, thus, was refusing his employment obligations, the MA considered that his behaviour was impeding the work and duties of other employees.
11. The Independent Trade Union of E.O.A. Sub-branch in Shtimje issued a statement (dated 18th of September 2002), on request of the Applicant, which states that the Trade Union has approached the Municipal Body, UNMIK and the Central

Organization of Kosovo in the attempt of restoring him (and other similarly dismissed employees) to their previous positions of employment.

12. After the war, since the Applicant was not restored to his previous position of employment, he attempted to restart employment with the Municipal bodies of Shtime, assuming that this position of employment remained his.
13. However, on the 16 March 2004, the Municipality of Shtime announced a vacancy (02. No. 111/406) for this position in the "KohaDitore" newspaper. The Applicant was interviewed for the Vacancy but was not hired.
14. It appears the Applicant filed two Appeals of the decision of the Interviewing Panel to the Appeals Commission of the Municipality of Shtime (no. 13 filed 15 December 2003, and no. 07/708 filed 07 May 2004). Both were rejected as ungrounded, deciding the procedure of the vacancy announcement and the work of the Selection Committee was in compliance with the law, respectively with UNMIK Regulation no. 2001/36 on KCS and Administrative Direction no. 2003/2 on implementation of UNMIK Regulation no. 2001/36 on KCS.
15. On 21 July 2004, the Applicant filed an appeal against the Independent Oversight Board of Kosovo, which by its decision A. 02/52/2004 rejected the Applicant's appeal and the decision of the Appeals Commission of 06 July 2004 was left in force.
16. Consequently, on 26 December 2006, the Applicant submitted his claim to the Municipal Court of Ferizaj against the Municipality of Shtime as the respondent. He requested that the Municipal Court of Ferizaj annul the decision on selection of candidates according the vacancy 02 No 111/406 dated 16 march 2004.
17. The Municipal Court in Ferizaj in its judgment C. no. 171/ 07 of 15 May 2008 determined that the Interview Panel had respected procedures foreseen by the aforementioned UNMIK Regulations in their selection and rejected the Applicant's claim as ungrounded.
18. The District Court of Pristina in its judgment Ac. No. 1018/08 of 06 April 2009, accepted the assessment of the first instance court (i.e. Municipal Court in Ferizaj) in entirety, asserting that it had rightly determined the factual situation, correctly applied the substantive law and that the judgement did not contain violations of provisions of the contested procedure.
19. The Applicant then submitted a petition for revision against the judgment of the District Court in Pristina, due to substantial violations of the provisions of the Law on Contested Procedure and erroneous application of the substantive law.
20. On 15 March 2012, the Supreme Court of Kosovo, issued judgment Rev. I. no. 366/2009 and rejected the Applicant's revision request as ungrounded. The Supreme Court in its reasoning stated that "the court of second instance has rightfully applied substantive law when it rejected the appeal of claimant and confirmed the first instance judgment, which reasons are completely accepted by this court."
21. The Supreme Court also asserted that "the allegations of the claimant in the revision that the vacancy "was not transparent, but that only applications were distributed," did not stand, because the file document announced a vacancy and published it in "Koha Ditore" newspaper. The Supreme Court further asserted that "the interviewing committee of the respondent .....evaluated candidates according to the documentation

submitted by the candidates and that the candidate HH was evaluated with the highest number of candidates....”

### **Applicant’s Allegations**

22. The Applicant alleges that he suffered injustice, most notably, since according to him, the interviewing panel for hiring to work was mainly comprised of persons with a political party background.
23. The Applicant further alleges that the regular courts did not pay attention to such injustice, and that according to him; the courts did not pay much attention to the substance of his problem and its legality.

### **Assessment of the Admissibility of the Referral**

24. As it was mentioned earlier, the Applicant’s main argument is that that injustice was made to him, most notably, since according to him, the interviewing panel for hiring to work was mainly comprised of persons with a political party background.
25. The Constitutional Court would like to recall that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no.30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
26. In this regard the Constitutional Court notes from the facts submitted in the Referral, the Applicant used all legal remedies available, and that the regular courts took into account and indeed answered his appeals on the points of law.
27. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
28. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any prima facie evidence on such a violation (see *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
29. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"

**FOR THESE REASONS**

Pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure of the Constitutional Court the Constitutional Court, 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; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

*Robert Carolan*

Robert Carolan



*Prof. Dr. Enver Hasani*