



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

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Pristine, 15 January 2013  
Ref. No.: RK342/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 75/12**

Applicant

**Faton Sefa**

**Constitutional Review of Judgment of the Supreme Court, Rev. no.  
106/2010, dated 2 May 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 and  
Arta Rama-Hajrizi, Judge

## **Applicant**

1. The Applicant is Mr. Faton Sefa, residing in Gjakova, represented by Mr. Teki Bokshi, a practicing lawyer from Gjakova.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court of the Republic of Kosovo Rev. no. 106/2010 of 2 May 2012, which was served on the Applicant on 20 June 2012.

## **Subject matter**

3. The subject matter of the Referral is the assessment of the constitutionality of the Judgment of the Supreme Court Rev. no. 106/2010 of 2 May 2012, whereby, allegedly, his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), namely Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession], Article 53 [Interpretation of Human Rights Provisions], Article 102 [General Principles of the Judicial System], and by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "ECHR"), namely Article 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol 1, were violated.

## **Legal basis**

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, No. 03/L-121, (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").

## **Proceeding before the Court**

5. On 13 August 2012, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 17 August 2012, the Applicant submitted the Power of Attorney.
7. On 4 September 2012, the President of the Court, with Decision No.GJR.KI-75/12, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, with Decision No.KSH.KI-75/12, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.

8. On 12 October 2012, the Court requested clarification from the Supreme Court in respect to their Judgment Rev. no. 106/2010 of 2 May 2012. The Constitutional Court, while reviewing the Referral noted that the copy of the Judgment Rev. no. 106/2010 contained a discrepancy between the date of the main hearing, which was 09.04.2012, and the date of publication of the Judgment referred to at the end of that Judgment, which was 09.02.2012. This meant that the Judgment was published 2 months before the date of the main hearing.
9. On 25 October 2012, the Supreme Court replied to the Constitutional Court providing a Decision on correcting the Judgment Rev. no. 106/2010 whereby it was provided that the correct date should be 2 May 2012.
10. On 27 November 2012, 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**

11. On 18 August 2006, the company "Hidrosistemi Radoniqi" in Gjakova (hereinafter: the "Company") terminated the Applicants employment contract because the Applicant had allegedly not fulfilled his work obligations pursuant to the employment contract.
12. On 24 August 2006, the Applicant filed a request for review to the Board of the company "Hidrosistemi Radoniqi".
13. Although this decision is not in the referral or the case file, the Applicant alleges that on 25 August 2006, the Disciplinary Commission upheld the decision of 18 August 2006 of the company to terminate the Applicant's employment contract.
14. On 30 August 2006, the Applicant complained against the decision of the Disciplinary Commission to the General Manager of the company.
15. Although this decision is not in the referral or the case file, the Applicant alleges that on 21 September 2006, the General Manager found as ungrounded the Applicant's complaint against the disciplinary commission.
16. Neither the Applicant's employment contract nor the minutes of the Disciplinary Commission are in the referral or the case file.
17. It is not clear whether the Applicant was invited to participate in the proceedings before the Disciplinary Commission.

18. On 8 January 2009, the Municipal Court in Gjakova (Judgment C. no. 172/08) annulled the Decision of the Disciplinary Commission of 25 August 2006 and the Decision of the General Manager of 21 September 2006. Further, the Municipal Court ordered the company to reinstate the Applicant in his work position and, if this return cannot be made due to objective reasons, then the Applicant should be "... systemized at work and work duties in compliance with professional background and skills achieved at work". The Municipal Court held that "the reasons for termination are conditioned under standard terms attached to employment and Basic Law of Labour of Kosovo." Furthermore, the Municipal Court held that "The review was conducted without the invitation of and without the presence of the employee, so it was impossible for him to present his defense." The company filed a complaint to the District Court in Peja against the Municipal Court's judgment.
19. On 9 February 2010, the District Court in Peja (Judgment Ac. no. 176/09) amended the Municipal Court Judgment of 8 January 2009 and the Applicant's claim was rejected as ungrounded. The District Court in Peja held that "[...] the substantive law was applied erroneously [...]", because the termination of the employment contract was done in accordance with the provisions, Article 11.2 and Article 11.4 (b), of the UNMIK Regulation 2001/27 on Essential Labour Law in Kosovo (hereinafter: "UNMIK Regulation 2001/27"). Moreover, the District Court also held that disciplinary measures were imposed on the Applicant and since the Applicant continued with other violations of work duties, the company in accordance with the UNMIK Regulation 2001/27 informed the Applicant in written and had a meeting as to the violations of the work duties and also the reasons for termination of the employment relationship were explained. The Applicant then filed a request for revision with the Supreme Court against the District Court judgment.
20. On 2 May 2012, the Supreme Court (Judgment Rev. no. 106/2010) rejected as unfounded the request for revision. The Supreme Court held that the "[...] *employment relationship of claimant is terminated in compliance with the procedure determined by applicable law, thus each claim in the revision based on this is inadmissible.*"

### **Applicant's allegations**

21. The Applicant alleges that the Judgment of the District Court in Peja and the Supreme Court was taken in violation of his constitutional rights as guaranteed by the Constitution and ECHR because both the District Court in Peja and the Supreme Court, allegedly, ignored the procedural violations before the disciplinary procedure.
22. Further, the Applicant alleges that the termination of the Applicant's employment contract was in contradiction with UNMIK Regulation 2001/27

because he never had a meeting with the company and the termination of employment relationship never specified what legal provisions were violated by him.

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

23. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
24. In this respect, the Court refers to Article 48 of the Law which provides that: "*In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*"
25. Further, the Court refers also to Rule 36 (1.c) of the Rules of Procedure, which determines that: "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
26. In this respect, the Court emphasizes that 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 Constitution (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*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
27. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
28. As a matter of fact, based on the submitted documents by the Applicant, the Court considers that the Applicant has not submitted any evidence that shows whether he was invited or not to participate in the disciplinary proceedings and whether the Supreme Court ignored this fact or not. The mere disagreement with the Judgment coupled with the enumeration of some constitutional provisions is not enough to build a case on constitutional violation.

29. Therefore, the Court finds that the Applicant does not meet the requirements for admissibility as foreseen by Article 48 of the Law and Rule 36 (1.c) of the Rules of Procedure and thus the Referral is manifestly ill-founded and must be rejected as inadmissible (see *Resolution on Inadmissibility Case no. KI 13/09, Sevdail Avdyli against Judgment of Supreme Court A. No. 533/2006 dated 11 September 2006 and Judgment of Supreme Court A. No. 533/2006 dated 2 December 2006, 17 June 2010*).

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 27 November 2012, unanimously

### DECIDES

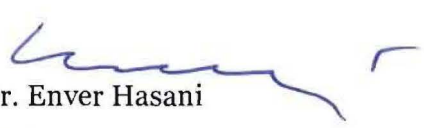
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**



Prof. Dr. Enver Hasani