



**REPUBLIKA E KOSOVËS**  
**Republika Kosova - Republic of Kosovo**  
**Gjykata Kushtetuese / Ustavni sud / Constitutional Court**

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Pristina, 18 October 2010  
Ref. No.: RK 60/10

**Resolution on Inadmissibility**

in

**Case No. K.I. 42/09**

**Halil Karafeta**

vs.

**Decision of the Supreme Court of Kosovo,  
No. 262/2009, dated 26 June 2009**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

Composed of

Enver Hasani, President  
Kadri Kryeziu, Deputy President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Cukalovic, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

**Applicant:**

1. The Applicant is Halil Karafeta from the Municipality of Pristina

**Challenged decision:**

2. The Challenged Decision is that of the Supreme Court of the Republic of Kosovo, No. 262/2009, dated 26 June 2009.

**Opposing Party**

3. The Opposing Party is Kosovo Railways in Fushe-Kosova.

**Subject matter**

4. This Referral concerns the Decision of the Supreme Court of the Republic of Kosovo (hereafter: the "Supreme Court"), No. 262/2009, dated 26 June 2009 and served on the Applicant on 10 July 2009, wherein Halil Karafeta was the Applicant and the Respondent was Kosovo Railways.
5. The Supreme Court decided that the Applicant did not have a legal right to be restored to his previous employment with Kosovo Railways or to have it annul its decision per an internal vacancy announcement to re-hire someone other than the Applicant. The Supreme Court reversed the decisions of the Municipal and District Courts in Pristina and quashed the Judgments of those respective courts in this case.

#### **Legal basis**

6. Article. 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Article. 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

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

7. The Application was lodged with the Constitutional Court on 23 September 2009. The Judge Rapporteur appointed by the President of the Court was Judge Robert Carolan. A Review Panel of the Court was appointed comprising the President Enver Hasani, Chair, Judge Ivan Čukalović and Judge Snezhana Botusharova. On 29 April 2010 the Review Panel examined the Applicant's Referral and made a recommendation on the inadmissibility thereof to the full Court.

#### **Facts**

8. Applicant was employed as a machinist with Kosovo Railways until 1 September 2005. At that time his employment was terminated along with 145 employees of Defendant because of economic and structural changes for the Defendant. This decision was made in compliance with UNMIK Regulation 2001/27.
9. On or about 27 June 2007 Kosovo Railways advertised internal vacancies for four employees in the position of machinist. The Applicant applied for one of those positions. On 10 July 2007 the Applicant was notified that he had not been selected for appointment to any one of those positions and explained that four other employees had been appointed to these positions because they met the requirements of the internal vacancies.
10. The Applicant then filed a claim with the Municipal Court of Pristina, alleging that, pursuant to UNMIK Regulation 2001/27, Section 12, he should have been awarded preferential treatment in the recruiting for those positions. He further claimed that he was terminated in 2005 for economic and structural reasons, pursuant to this regulation and that his termination was part of a large scale layoff of more than 50 employees within a 6 month period of time as that term is used in Regulation 2001/27. He also claimed that when an employer such as the Defendant subsequently recommences re-employment within a two year period of time from the date of his termination that preference (for re-hiring) would have to be given to those equally qualified

employees who have been discharged (within the previous two years). Indeed, he finally claimed that another named employee, "a person who was never employed after the war ... and did not enjoy the same right as (he) did" was one of the persons to be successfully recruited for the position he was seeking.

11. The Municipal Court approved the Applicant's claim and the District Court of Pristina affirmed the decision of the Municipal Court. Kosova Railways then appealed to the Supreme Court from the decision of the District Court.
12. The Supreme Court reversed the decision of the District Court as well as the decision of the Municipal Court. It reasoned that the decision not to award one of the four available positions did not violate the law because:
  - a) the other successful candidates for the posted positions were current employees of the Defendant who had the same preferential qualifications for the posted positions as the Applicant, and;
  - b) Regulation 2001/27 was not violated, because the successful recruits were also employees of the Defendant.

#### **Allegations of the Applicant**

13. Applicant alleges that the decision of the Supreme Court is unfair and unlawful based upon an erroneous interpretation of the applicable law and implies that his right to work as guaranteed by Article 49 of the Constitution has been effectively denied as a result of the allegedly erroneous decision of the Supreme Court.

#### **Response of the Opposing Party**

14. The Opposing Party, Kosovo Railways in Fushe-Kosova, did not respond to this Referral.

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

15. **Article 49** of the Constitution provides that:

*"The right to work is guaranteed."*

16. **Article 54** of the Constitution provides that:

*"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."*

17. The Applicant appears to rely upon the above-referenced provisions of the Constitution as a basis for his claim although he does not state what specific provisions of the Constitution support his claim.
18. 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*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1]).

19. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *Constitutional Court Judgment of 23 June 2010, in the Case No. KI 40/09, Imer Ibrahim and 48 other former employees of the Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras 66 and 67*).
20. The Applicant merely disputes whether the Supreme Court correctly applied the applicable law and merely disagrees with the factual findings of the Supreme Court decision with respect to the employee status of the successful recruits for the disputed position it appears that the Applicant's claim is inadmissible
21. Having examined proceedings before the ordinary courts 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)\_
22. Furthermore the Applicant had not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
23. It follows that the Referral is manifestly ill-founded and must be rejected.

**FOR THESE REASONS:**

24. The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law, and Section. 55 of the Rules of Procedure, 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 Art. 20(4) of the Law.
- III. This Decision is effective immediately.

**Judge Rapporteur**

  
Robert Carolan

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

