



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Pristina, 01 November 2011

Ref. No.: RK 155 /11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 86/10

Applicants

Zora Palić
Paško Palić

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev.no. 218/2006, dated 15 May 2008, and Judgment of the Municipal Court of
Lipjan, P.no. 177/2002, dated 9 January 2003**

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 Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants are Ms. Zora Palić and Mr. Paško Palić, residing in Lipjan.

Challenged court decisions

2. The decisions challenged by the Applicants are:
 - a. Judgment of the Supreme Court of Kosovo (hereinafter: the "Supreme Court"), Rev.no.218/2006, which was served upon the Applicant on 16 December 2008; and
 - b. Judgment of the Municipal Court of Lipjan, P.no. 177/2002, which was served upon the Applicant on 3 June 2003.

Subject matter

3. The Applicants allege a violation of Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

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").

Proceedings before the Court

5. On 15 September 2010, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 9 November 2010, the Referral was forwarded to the Municipal Court of Lipjan.
7. On 7 December 2010, the President, by Order No.GJR. 86/10, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order No. KSH. 86/10, appointed the Review Panel composed of Judges Almiro Rodrigues, Kadri Kryeziu and Gjyljeta Mushkolaj.
8. On 2 March 2011, 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 the facts

9. The Applicants requested the Municipal Court of Lipjan to be reinstated in their positions at the elementary school in Janjevë. On 9 January 2003, the Municipal Court rejected the claim of the Applicants as unfounded (Judgment P.no. 177/2002).
10. Before the Municipal Court, the Applicants asserted that:
 - a. they were permanently employed for 32 and 30 years, respectively;
 - b. they were prevented, without any ground, to continue their employment by UNMIK;
 - c. they received income on 31 December 1999 and that they were employed until 31 August 2000;
 - d. they have orally and in written asked the school to continue with their work; and
 - e. no disciplinary procedure was initiated against them and no decision on employment termination was delivered to the Applicants.

11. The responding party responded before the Municipal Court that:
- a. the Applicants had not been at work from 1 September 2000 until 29 September 2001;
 - b. the school was forced to recruit new staff to the positions that were held by the Applicants in order to provide normal teaching for the students, who had previously been taught by the Applicants; and
 - c. UNMIK Administration, Department of Education, was authorized to decide on recruitment and dismissal of the school staff.
12. The Municipal Court asserted that:
- a. the Coordinator for Local Communities in Lipjan/Lipljan had notified the Applicants of their positions being occupied by new staff, since they had voluntarily left their jobs;
 - b. the Applicants have not filed an objection with the competent body of the school in relation to the alleged violation of their rights under the labour law; and
 - c. pursuant to Article 83.2 of the Law on Basic Rights from Labour Relations it is provided that the protection of rights before competent court cannot be sought, unless protection of rights had previously been sought before the competent bodies of the organization.
13. The Applicants complained to the District Court in Pristina, which rejected their complaint and upheld the Judgment of the Municipal Court of Lipjan, holding that the application of the material and procedural law was correct (Judgment Gzh.no. 394/2003 of 14 July 2005).
14. The Applicants then complained to the Supreme Court claiming that:
- a. the lower courts did not review whether there was any legal basis for the termination of the employment;
 - b. there was no evidence that the Applicants had voluntarily left their work;
 - c. the lower courts had not taken into consideration all the evidence that the Applicants had presented; and
 - d. the judgment of the lower courts were not reasoned.
15. The Supreme Court rejected the complaint as unfounded (Judgment Rev.no. 218/2006 of 15 May 2008), holding that the factual situation and the material and procedural law had been correctly applied by the lower courts.

Applicant's allegations

16. The Applicants alleges that their employment contract had been illegally and unconstitutionally terminated without any decision.
17. Furthermore, the Applicants allege that the Constitution guarantees basic rights for the citizens, like the right to employment, as is the issue in their case.
18. Additionally, the Applicants state that they are citizens of Kosovo and are entitled to employment, because they are employed for over 30 years according to the employment contract, and thus, it is illogical that their employment should be terminated without any written decision made by the school.

Assessment of the admissibility of the Referral

19. As to the Applicant's allegation that their right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution has been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, 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.
20. As one of the requirements, the Applicants must establish that they have submitted the Referral within a period of 4 months after the final court decision taken in their case, as stipulated by Article 49 of the Law. However, it appears from the Applicant's submissions that the final court decision regarding their case, was the judgment of the Supreme Court of 15 May 2008, served upon them on 16 December 2008, whereas they submitted their Referral to the Constitutional Court only on 15 September 2010, that is more than 4 months after the entry into force of the Law (see Article 56 of the Law).
20. It follows that the Referral is out of time pursuant to Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Rule 56 (2) of the Rules of Procedure, on 2 March 2011, 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;
- III. This Decision is effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani