



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 6 June 2018

Ref. no.: AGJ 1247/18

JUDGMENT

in

Case No. KI69/16

Applicant

Nora Dukagjini-Saliu

Constitutional review of Judgment Rev. No. 295/2015 of the Supreme Court of Kosovo of 09 December 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Nora Dukagjini-Saliu from Prishtina (hereinafter: the Applicant), and she is represented by Petrit Prekazi, a lawyer practicing in Prishtina.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 295/2015 of the Supreme Court of Kosovo of 09 December 2015, which was served on her on 21 January 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which allegedly has violated the Applicant's rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6.1 (Right to a fair trial) of the European Convention of Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 20 April 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 11 May 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 2 June 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo and the Municipality of Prishtina.
8. On 30 May 2018, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral and the finding of a violation of the Constitution.

Summary of facts

9. On 10 July 1990, the management body of the Health House of Prishtina decided (Decision No. 160) that the Applicant had acquired the quality of an employee for an indefinite period as a dentist at the Health House in Prishtina (now Main Family Medicine Centre, hereinafter: MFMC).
10. On 01 January 2000, the Department of Health and Social Welfare of the Joint Interim Administrative Structure (JIAS-DHSW) adopted Administrative Instruction (Health) 17/2000, which regulated the establishment of a central board for the training of medical specialists.

11. Administrative Instruction (Health) 17/2000 stipulated under point E [General Administrative Arrangements], *inter alia*, that,

“6. Doctors who have successfully completed their specialist training and are registered as licensed specialist must apply by public competition for posts within Kosovo’s public health service. They will not be able to stay in their training posts nor automatically be offered posts in their training institution.

7. [...] When doctors accept an offer of specialist training from the Department of Health and Social Welfare they must end any commitment to a previous employer and no agreement in respect of future work shall be binding.”
12. On 17 January 2001, by Decision (Ref. No. 893/2000), the JIAS-DHSW agreed to allow the Applicant to pursue a specialization in orthodontics, financed by the JIAS-DHSW, under the terms of Administrative Instruction (Health) 17/2000.
13. On 02 April 2001, the Applicant and the JIAS-DHSW signed an “Employment Contract of Specialists”. This contract stipulated, *inter alia*, that the Applicant would take up a training position at the University Clinical Centre of Prishtina, that the employment contract would run from 10 January 2001 to 10 January 2005, and that she would be paid a monthly salary of 360 Deutsch Marks.
14. The employment contract also stipulated that,

“It is required that after successful completion of professional training and registration as a licensed doctor to work full working hours for five uninterrupted years for the Public Health Service of Kosovo or to return all salaries earned as a trainee specialist.”
15. Following the completion of her specialization training, the Applicant apparently met with the Director-General of the Health House of Prishtina, the Permanent Secretary of the Ministry of Health and the Director of the Health Directorate of the Municipality of Prishtina, to request a position as a specialist. Allegedly, the Applicant was informed by all these officials that there were no positions available.
16. On 04 May 2005, together with a number of other doctors who had completed their specialization training, the Applicant addressed a letter to the Director-General of the Health House of Prishtina requesting reinstatement to her previous position as a non-specialist dentist, and compensation for lost salaries.
17. It appears that the Director-General of the Health House of Prishtina did not respond to this letter.
18. On 12 May 2006, the Minister of Health rendered a Decision (No. 20-03-2006) which suspended the implementation of items 9 and 10 of the Agreement on financing of postgraduate studies (specialization) and the obligations taken by

trainee specialists after the completion of specialization. According to this decision, the specialists are exempted from the obligation to continue to work for another five years in the health sector in Kosovo. The decision in question was taken on the grounds that, “*budget cuts hamper the implementation of item 9 and item 10.*”

Request for a new position as specialist

19. On an unspecified date, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: IOBK) in which she requested the establishment of an employment relationship in the position of a specialist of orthodontics at the Health House in Prishtina.
20. On 13 July 2006, the IOBK (by Decision A. No. 02/117/2005) rejected as ungrounded the appeal of the Applicant for the establishment of an employment relationship in the position of specialist in orthodontics in the Health House in Prishtina.
21. The IOBK reasoned that the employment contract on specialization as signed between the Applicant and the Ministry of Health obliged the Applicant to continue to work for a period of five years in the public health service, but did not contain any reciprocal obligation on the Ministry of Health to provide the Applicant with an employment position. The IOBK considered that the lack of a reciprocal obligation for the Ministry of Health to provide a job was the reason for the Ministry of Health to suspend the obligation on the Applicant to continue to work for another five years in the public health service.

Request for reinstatement in the old position as dentist

22. The Applicant filed a claim with the Basic Court in Prishtina in which she challenged decision A. No. 02/117/2005, of the IOBK of 13 July 2006, and also requested that the respondent MFCM be ordered to reinstate her to her previous work assignment as a dentist, with all the rights arising from employment, starting from 04 January 2005.
23. On 29 August 2014, the Basic Court in Prishtina (Judgment C. No. 73/10) approved the request of the Applicant as grounded because the Applicant had a legitimate expectation that she would be provided with an employment position at the end of her specialization, due to the contractual obligation to continue to work for another five years in the public health service. The Basic Court ordered:

“The Responding party – MCFM, which falls under the management of the Municipality of Prishtina-Directorate for Health, is obliged to reinstate claimant [the Applicant] to her previous work and work duties (dentist), with all the rights that derive from the employment relationship, starting from 04 January 2005.”

24. Furthermore, the Basic Court considered that the Administrative Instruction (Health) 17/2000 did not apply in the Applicant’s case, because her employment in the civil service of Kosovo dating from 10 July 1990 had not

been terminated in compliance with the applicable law, namely UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, and UNMIK Administrative Instruction No. 2003/2 on the Application of UNMIK Regulation No. 2001/36, Article 35.

25. Both the MFMC and the Municipality of Prishtina filed Appeals against Judgment C. No. 73/2010 of the Basic Court in Prishtina.
26. On 7 April 2015, the Court of Appeals of Kosovo, by Judgment Ac. No. 4391/2014, rejected the appeals as ungrounded. The Court of Appeals assessed the reasoning of the Basic Court to be fair and justified on the basis of the relevant legal provisions.
27. Based on Judgment Ac. No. 4391/2014 of the Court of Appeals, the Applicant initiated enforcement proceedings with the Basic Court in Prishtina.
28. On 19 May 2015, the Basic Court in Prishtina, by Decision No.1087/2015, approved the Applicant's proposal for enforcement and ordered:

"ENFORCEMENT IS IMPOSED on the Debtor – Municipality of Prishtina, Municipal Directorate of Health in Prishtina, so the Debtor is obliged to reinstate [the Applicant] [...] in the workplace and work duties as Dentist within MFMC, and pay her 478.00 EUR on behalf of the contested proceeding costs within a time limit of 7 days starting from the date when this Decision is received."
29. The Municipality of Prishtina filed an objection with the Basic Court in Prishtina against the decision allowing the enforcement.
30. On 13 July 2015, the Basic Court in Prishtina, by Decision E. no. 1087/2015, rejected *"the objection of the debtor – Municipality of Prishtina, Municipal Directorate of Health in Prishtina, filed against Decision E. No. 1087/15 on allowing the enforcement, of 19 May 2015, is REJECTED as ungrounded."*
31. Against the Decision of the Basic Court, which rejected the objection as ungrounded, the Municipality of Prishtina filed an appeal with the Court of Appeals.
32. On 10 December 2015, the Court of Appeals, by Decision Ac. No. 3084/15, rejected *"the appeal of the representative of the debtor – Municipality of Prishtina, Municipal Directorate of Health in Prishtina - is REJECTED as ungrounded, whereas Decision E. No. 1087/2015 of the Basic Court in Prishtina, of 13 July 2015 is UPHELD."*
33. Simultaneously with the enforcement proceedings, the Municipality of Prishtina filed a request for revision with the Supreme Court of Kosovo against the Judgment of the Court of Appeals of Kosovo (Ac. No. 4391/2014) of 7 April 2015.

34. On 9 December 2015, the Supreme Court of Kosovo, by Judgment Rev. No. 295/2015, approved the request for revision and rejected as unfounded the statement of claim of the Applicant to be reinstated in her workplace.

35. The Supreme Court assessed that the lower instance courts,

“[...] have completely ascertained the factual situation, however they have erroneously applied the substantive law, when they found that the statement of claim of the claimant is grounded. This is due to the reason that pursuant to Administrative Instruction No. 17/2000 of the Department of Health and Social Welfare, under item D, item 6, it is foreseen that doctors who have successfully completed their specialization training and are registered as specialists with a work permit, should apply for job positions at the Public Health Services in Kosovo. They may not remain in their training posts, and posts in the training institutions may not be offered to them automatically, whereas by item 7, it was determined that the system of sponsoring trainings by various institutions shall end when doctors accept the offer for specialization training from the Department of Health and Social Welfare; they should stop every attempt for employment with the previous employer and no contract should be established which creates a future obligation.”

36. The Supreme Court further reasoned that,

“The allegation of the respondent mentioned in the revision that the lower instance courts have erroneously applied the substantive law was considered by this court as grounded, as pursuant to the Instruction mentioned above, it results that the respondent was entitled to request from the specialized persons to work with the respondent, however it was not obliged to secure them a job position automatically following the completion of the specialization, whereas the specialized persons should have applied for the job positions in accordance with the completed specialization.”

Applicant's allegations

37. The Applicant claims that she should have been reinstated in her job as a dentist, because UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, and UNMIK Administrative Instruction No. 2003/2 on the Application of UNMIK Regulation No. 2001/36, should have been applied to her case, because she had a permanent employment contract as a dentist. She considers that the Administrative Instruction (Health) 17/2000, which regulated the financing of her studies for specialization as an orthodontist, should not have been applied.

38. The Applicant alleges that, because the Supreme Court applied the Administrative Instruction (Health) 17/2000, instead of UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, and UNMIK Administrative Instruction No. 2003/2 on the Application of UNMIK Regulation No. 2001/36, the Supreme Court violated her right to equal treatment before the law as guaranteed by Article 24 [Equality Before the Law] of the Constitution. The

Applicant alleges that, thereby, the Supreme Court gave an unfair advantage to the Municipality of Prishtina, and disadvantaged the Applicant.

39. Furthermore, the Applicant alleges that she has been denied her right to a fair and impartial trial, as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and by Article 6.1 (Right to a fair trial) of the ECHR, because the Supreme Court did not provide proper reasoning in its Judgment.
40. The Applicant alleges that the Supreme Court not only incorrectly failed to apply the relevant law on civil service, but also incorrectly referred to the decision of the Ministry of Health (No. 20-03-2006) of 12 May 2006, which suspended the implementation of items 9 and 10 of the Agreement on financing of postgraduate studies (specialization) and the obligations taken by them after the completion of specialization. The Applicant alleges that this decision was taken more than one year after she had completed her studies for specialization, and, therefore, this decision of the Ministry of Health should not have been applied to her request for reinstatement in her previous position as a dentist.
41. The Applicant alleges that the Supreme Court did not provide proper reasoning to justify its Judgment, in violation of her right to a reasoned decision. The Applicant refers to the case law of the Constitutional Court, namely cases KI120/10 of 29 January 2013, and KI189/13 of 12 March 2013, as regards the failure of the Supreme Court to provide the proper reasoning in the Judgment rendered in relation to these cases.
42. In addition, the Applicant alleges that she *“has been deprived unfairly from benefiting from the final form which is in her favor. Therefore, non-application of the final Judgment Ac. No. 3084/15 of the Court of Appeals of Kosovo, of 10 December 2015 and the unreasonable delay of the resolution of this legal matter by the Employer – Main Family Medicine Center under the management of the Department of Health before the Municipality of Prishtina, according to the Applicant, constitutes a violation of Article 31 of the provisions of the Constitution, as well as of Article 6 of the European Convention on Human Rights.”*
43. The Applicant alleges that, because the Supreme Court has prevented the employer to reinstate the Applicant to her workplace, this is a denial of the Applicant’s right to work and exercise a profession, in violation of Article 49 [Right to Work and Exercise Profession] of the Constitution.
44. Furthermore, the Applicant alleges that by denying her right to reinstatement to her previous employment as a dentist, the Supreme Court has denied her right to judicial protection of her rights, in violation of Article 54 [Judicial Protection of Rights] of the Constitution.
45. The Applicant proposes that the Constitutional Court finds that there has been a violation of her constitutional rights and declares the Judgment Rev. No. 295/2015 of the Supreme Court of 9 December 2015 to be invalid.

Assessment of the admissibility of Referral

46. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
47. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:
- 1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
- [...]
- 7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.*
48. The Court also refers to Article 49 [Deadlines] of the Law, which provides:
- The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.*
49. The Court considers that the Applicant is an authorized party, has exhausted the available legal remedies and has submitted the Referral in due time.
50. However, the Court refers to Article 48 [Accuracy of the Referral] of the Law, which provides:
- 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.*
51. In addition, the Court refers to paragraphs (1)(d) and (2)(d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee:
- (1) *The Court may consider a referral if:*
- [...]
- (d) *the referral is prima facie justified or not manifestly ill-founded.*
- (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
- [...]
- d) *the Applicant does not sufficiently substantiate his claim.*
52. In that respect, the Court recalls that the Applicant claims that the Supreme Court violated her right to a fair trial by not applying the correct law when reasoning its decision. The Applicant alleges that the failure of the Supreme Court to properly reason its decision, and the fact that the Supreme Court reversed the previous decisions of the Basic Court and Court of Appeals

ordering the Applicant to be reinstated in her previous employment as a dentist, violated her right to a fair trial, as guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and by Article 6.1 (Right to a fair trial) of the ECHR.

53. The Applicant alleged that the Supreme Court, “[...] refers exclusively to Administrative Instruction No. 17/2000, on the basis of which the employment relationship of the Applicant is terminated by the employer. This sub-legal act cannot be applied in the case of the Applicant due to the fact that her employment relationship in the period of conclusion of the contract for specialization, is regulated by UNMIK Regulation No. 2001/36 on the Kosovo Civil Service.”
54. The Court notes that the Applicant has precisely clarified what rights have allegedly been violated by the challenged Judgment of the Supreme Court.
55. In sum, the Court considers that the Applicant is an authorized party, has exhausted all effective legal remedies provided by law, has submitted the Referral in due time, and has accurately clarified the alleged violation of her constitutional rights.
56. Having examined the Applicant’s complaints and observations, the Court considers that the Referral raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The Referral cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Rule 36 (1) (d) of the Rules of Procedures, and no other ground for declaring it inadmissible has been established (See Case of A and B v. Norway, [GC], applications nos. 24130/11 and 29758/11, Judgment of 15 November 2016, paragraph 55 and also see mutatis mutandis Case No. KI132/15, Visoki Dečani Monastery, Judgment of the Constitutional Court of 20 May 2016).

Merits of the referral

57. The Court recalls that the Applicant claims a violation of her right to a fair and impartial trial as guaranteed by Article 31 (2) of the Constitution and Article 6 (1) of the ECHR.
58. The Court recalls Article 31 (2) of the Constitution, which provides that,

“2. Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”
59. The Court also recalls Article 6 (1) of the ECHR, which in its relevant parts, provides that,

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public

hearing within a reasonable time by an independent and impartial tribunal established by law. [...].”

60. The Court is mindful of Article 53 [Interpretation of Human Rights Provisions] of the Constitution which stipulates that, “*human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*”
61. In that connection, the Court reiterates the jurisprudence of the ECtHR which held, *mutatis mutandis*, that “*its jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and that it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable.*” See ECtHR case *Anheuser-Busch Inc. v. Portugal*, Application No. 73049/01, Judgment of 11 January 2007, para. 83.
62. The Court also recalls that “[...] the [ECtHR] will not question the interpretation of domestic law by the national courts, save in the event of evident arbitrariness (see, *mutatis mutandis*, *Ādamsons v. Latvia*, no. 3669/03, § 118, 24 June 2008), in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions and/or a denial of justice (see, *mutatis mutandis*, *Farbers and Harlanova v. Latvia (dec.)*, no 57313/00 6 September 2001, and, albeit in the context of Article 1 of Protocol No. 1, *Beyeler v. Italy [GC]*, no. 33202/96, para. 108, ECHR 2000-I).” See ECtHR case *Andjelković v. Serbia*, Application No. 1401/08, Judgment of 9 April 2013, para. 24.
63. In light of the above, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. See, *mutatis mutandis*, ECtHR case *García Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, para. 28; and Case No. KI93/16, *Maliq Maliqi and Skender Maliqi*, Judgment of the Constitutional Court of 23 November 2017
64. The Court recalls that the Applicant’s primary complaint concerns the application of a sub-legal act by the Supreme Court in its decision on revision, rather than applying the relevant primary legislation, namely, the UNMIK Regulation No. 2001/36 on the Kosovo Civil Service. The Applicant alleges that she had a permanent contract as a civil servant and that this contract was never terminated.
65. Furthermore, the Applicant alleges that in 2001, by signing the employment contract on specialization, she had accepted an obligation to work for a period of five years in the public health service of Kosovo following her training as a specialist, whereas in 2006 the Ministry of Health had retroactively terminated this obligation by its Decision No. 20-03-2006.

66. The Applicant alleges that by failing to apply the UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, and disregarding the fact that the Applicant's employment as a civil servant had never been lawfully terminated, as well as by not taking into account the retroactive termination of the obligation to work in the public health service for a further five years, the Supreme Court had not properly reasoned its decision and had manifestly misinterpreted the law with arbitrary results for the Applicant.
67. The Court recalls that the Basic Court considered that the Administrative Instruction (Health) 17/2000 did not apply in the Applicant's case, because her employment in the civil service of Kosovo dating from 10 July 1990 had not been terminated in compliance with the applicable law, namely UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, and UNMIK Administrative Instruction No. 2003/2 on the Application of UNMIK Regulation No. 2001/36, Article 35. The Court of Appeals upheld this interpretation.
68. The Court notes that the Supreme Court accepted that the lower courts had correctly determined the factual situation, but determined that they had applied the wrong law. The Supreme Court reasoned that,
- "This is due to the reason that pursuant to Administrative Instruction No. 17/2000 of the Department of Health and Social Welfare, under item D, item 6, it is foreseen that doctors who have successfully completed their specialization training and are registered as specialists with a work permit, should compete for job positions at the Public Health Services in Kosovo. They may not remain in their training posts, and posts in the training institutions may not be offered to them automatically, whereas by item 7, it was determined that the system of sponsoring trainings by various institutions shall end when doctors accept the offer for specialization training from the Department of Health and Social Welfare; they should complete every attempt of the previous employer for employment and no contract should be concluded which creates a future obligation."*
69. The Court notes that, in accepting the determination of the factual situation by the lower instance courts, the Supreme Court had accepted that the Applicant had *"acquired the status of an employee for an unspecified period of time at the House of Health in Prishtina as a dentist."*
70. However, in providing its reasoning, the Supreme Court did not address the main question raised by the Applicant, which had been accepted by the Basic Court and the Court of Appeals, namely whether or not the Applicant's permanent contract as a civil servant had, in fact, ever been lawfully terminated.
71. The Court reiterates that the role of the Constitutional Court is to ensure compliance with the fundamental rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as "fourth instance court". (See ECtHR case *Akdivar v. Turkey*, No. 21893/93, Judgment of 16 September 1996, para. 65; see also, *mutatis mutandis*,

Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

72. In other words, the complete determination of the factual situation and the correct application of the law is within the full jurisdiction of the regular courts (matter of legality).
73. The Court also recalls that, according to the case law of the European Court of Human Rights (hereinafter: ECtHR), the right to a fair hearing includes the right to a reasoned decision.
74. According to its established case-law, the ECtHR considers that based on the principles of the proper administration of justice, the decisions of courts and tribunals should adequately state the reasons on which they are based. (See *Tatishvili v Russia*, ECtHR, application no. 1509/02, Judgment of 22 February 2007, paragraph 58; *Hiro Balani v. Spain*, ECtHR, application no. 18064/91, Judgment of 9 December 1994, prg 27; *Higgins and Others v. France*, ECtHR, application no. 134/1996/753/952, Judgment of 19 February 1998, para. 42).
75. However, in the present Referral, the Court considers that the reasoning provided by the Supreme Court has failed to clarify why the UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, and UNMIK Administrative Instruction No. 2003/2 on the Application of UNMIK Regulation No. 2001/36, did not apply to the Applicant's case.
76. Furthermore, the Court considers that the Supreme Court failed to explain why the Administrative Instruction (Health) 17/2000 applied, instead the UNMIK Regulation, and how this Administrative Instruction and the "Employment Contract of Specialists" signed by the Applicant effectively constituted a lawful termination of her permanent civil service contract.
77. The Court reiterates that the right to obtain a court decision in conformity with the law includes the obligation for the courts to provide reasons for their rulings with reasonable grounds at both procedural and substantive level. (See case *IKK Classic*, Judgment of 9 February 2016, paragraph 54).
78. In these circumstances, the Court considers that the Supreme Court has failed to adequately reason its decision regarding the relationship between the Applicant's employment status and the relevant applicable legislation, as required by the right to a fair trial.
79. The Court further considers that, in these circumstances, the Applicant has been deprived of her right to fair and impartial trial under Article 31 of the Constitution and Article 6 of the ECHR, and to be reinstated in her employment position as a dentist in the Health House of Prishtina.
80. Therefore, the Court finds that there has been a violation of Article 31 (2) of the Constitution, in conjunction with Article 6 (1) of the ECHR.
81. The Court recalls that the Applicant also alleges that, by determining that the Administrative Instruction (Health) 17/2000 applied to the Applicant's case,

the Supreme Court unfairly favoured the opposing party to the disadvantage of the Applicant. The Applicant alleged that this constituted a violation of her right to equality before the law, as protected by Article 24 of the Constitution.

82. The Court recalls that the Applicant also alleges that by refusing the Applicant's access to her previous place of employment, the regular courts have violated her right to work as protected by Article 49 of the Constitution.
83. Having found a violation of the Applicant's right to a fair and impartial trial under Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Court does not consider it necessary to examine the Applicant's further allegations in relation to Articles 24 [Equality Before the Law] and 49 [Right to Work and Exercise Profession] of the Constitution.

Conclusion

84. The Court finds that that there has been a violation of Article 31 (2) of the Constitution, in conjunction with Article 6 (1) of the ECHR.
85. Having found a violation of the Applicant's right to a fair and impartial trial under Article 31 of the Constitution, the Court does not consider it necessary to examine the Applicant's further allegations in relation to Articles 24 and 49 of the Constitution.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, in the session held on 30 May 2018,

DECIDES

- I. TO DECLARE by majority the Referral admissible;
- II. TO HOLD by majority that there has been a violation of Article 31 of the Constitution of the Republic of Kosovo, in conjunction with Article 6 (1) of the European Convention on Human Rights;
- III. TO HOLD by majority that it is not necessary to examine whether there has been a violation of Articles 24 and 49 of the Constitution of the Republic of Kosovo;
- IV. TO DECLARE by majority invalid the Judgment Rev. No. No. 295/2015 of the Supreme Court of Kosovo of 09 December 2015;
- V. TO REMAND the Judgment Rev. No. 295/2015 to the Supreme Court of Kosovo of 09m December 2015 for reconsideration in conformity with this Judgment of the Constitutional Court;
- VI. TO ORDER the Supreme Court to inform the Court, in accordance with Rule 63(5) of the Rules of Procedure, about the measures taken to enforce the Judgment of the Court;
- VII. TO REMAIN seized of the matter pending compliance with that order;
- VIII. TO NOTIFY this Judgment to the parties;
- IX. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20.4 of the Law;
- X. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Iyan Ćukalović



President of the Constitutional Court

Arta Rama-Hajrizi