



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

Prishtina, on 23 August 2021
Ref.No:RK 1839/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI73/21

Applicant

Minire Krasniqi-Zhitia

**Constitutional review of Judgment AC-I-20-0064 of the Appellate Panel
of the Special Chamber of the Supreme Court on Privatization Agency of
Kosovo Related Matters, of 17 December 2020**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Minire Krasniqi-Zhitia residing in the village of Llugë, Podujevë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment AC-I-20-0064 of the Appellate Panel of the Special Chamber of the Supreme Court Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of the SCSC) , of 17 December 2020.
3. The Applicant has received the challenged decision on 19 January 2021.

Subject matter

4. The Applicant has not clarified exactly which fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), she alleges to have been violated by the challenged Judgment.

Legal basis

5. The Referral is based on paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 19 April 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 22 April 2021, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (presiding), Remzije Istrefi-Peci, and Nexhmi Rexhepi.
8. On 26 April 2021, the Court notified the Applicant about the registration of the Referral and requested from her (i) to sign the Referral Form; and (ii) to clarify exactly what rights and freedoms she claims to have been violated. On the same day, the Court also notified the SCSC about the registration of the Referral.
9. On 14 May 2021, the Applicant submitted to the Court the signed form.
10. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Court Constitutional. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, it was determined that Judge Gresa Caka-Nimani, shall assume the duty of the President of the Court after the

conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.

11. On 25 May 2021, based on point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of a judge at the Constitutional Court.
12. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of the President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
13. On 29 July 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. According to the case file, the Applicant has worked as a journalist for the newspaper "Rilindja" from December 2000 to February 2002.
15. On 22 February 2017, the Privatization Agency of Kosovo (hereinafter: the PAK) issued a decision to initiate the Liquidation of the Enterprise SOE "Rilindja" Newspaper.
16. On an unspecified date, the Applicant submits a claim for compensation to the PAK due to early termination of employment.
17. On 16 May 2017, the Liquidation Authority by decision PRN142-0212 rejects the Applicant's claim for compensation. The Liquidation Authority had reasoned that the Applicant could not be recognized the right to severance payment due to early termination of the employment contract, as provided by Article 40, paragraph 1.6.2 of the Annex to Law No. 04 / L-034 on the Privatization Agency of Kosovo, because the dismissal did not occur as a result of an action taken by the PAK, respectively it did not result as a consequence of the liquidation.
18. On 16 June 2017, the Applicant filed an appeal with the SCSC against the Decision PRN142-0212 of the Liquidation Authority. In this appeal the Applicant requests to have the PAK obliged to pay the amount of 400 Euros in the name of the compensation due to early termination of the employment contract by SOE "Rilindja" Newspaper on 21 February 2002, and among other things alleges that they have been collectively dismissed from work on 21 February 2002, whereby there would be applied the UNMIK Regulation 2001/27, specifically Article 12 paragraph 2 (dh).
19. On 10 July 2017, the PAK submits a "Defence against the appeal" to the Applicant. The PAK, inter alia, states that (Article) 40, paragraph 1.6.2 of the

Annex to the Law on the PAK grants the right only to the persons who have been dismissed due to an action of the PAK, while in the Applicant's case, it stated that she has not been in the employment relationship with the SOE "Rilindja" for years before the liquidation.

20. On 18 July 2017, the Applicant submits a response to the allegations of the PAK, and states that she challenges the allegations of the latter, stating, *inter alia*, that pursuant to Section 12 paragraph 2 of UNMIK Regulation 2001/27, in the event of a large scale layoff, the following provisions shall apply: *(dh) an employee may not be discharged until the employer provides a single severance payment to the employee. The severance payment shall be paid to the employee on the date of termination at the following scale [...]*.
21. On 27 July 2017, the PAK submits a "Counter-response to the response to defence", stating that the Applicant has not provided any new legal evidence or arguments, and reiterated that the Applicant's employment relationship was not terminated due to the action of the PAK.
22. On 21 February 2020, the single judge at the SCSC, by Judgment C-VI-17-0261, decided to reject the Applicant's appeal as unfounded, by reasoning that the Applicant did not submit evidence which would support her arguments and she has failed to prove that she was served with a letter of termination of employment contract by the PAK in February 2002. According to the SCSC based on Article 40 paragraph 1.6.2 of the Annex to the Law on the PAK the employee shall enjoy compensation if (a) the employment contract was terminated as a consequence of the liquidation decision in February 2017; (b) the dismissal from work has occurred as a consequence of the PAK's Decision; and (c) any action by the Agency relating to the administration, sale, liquidation of the enterprise; whilst in the present case the Applicant has not met these requirements.
23. On 9 March 2020, the Applicant submits an appeal with the Appellate Panel of the SCSC, alleging (i) an essential violation of the provisions of the contested procedure; (ii) erroneous and incomplete determination of the factual situation; and (iii) erroneous application of the substantive law. The Applicant states that according to the case law, the payment after the termination of employment is provided by law. She alleges that when the employment is terminated, a decision on the termination of the employment must be issued and emphasizes that this decision does not exist. According to her *"This proves that the complainant's employment relationship was not terminated until the initiation of the liquidation process of the enterprise."*
24. On 17 December 2020, the Appellate Panel of the SCSC, by Judgment AC-I-20-0064, rejected the Applicant's appeal as unfounded and upheld the Judgment C-IV- 17-0261 of the first instance of the SCSC, of 21 February 2020. The Appellate Panel of the SCSC, first considered that it must be clarified what is it that the Applicant is requesting, namely (i) whether she is requesting 3 (three) unpaid salaries for a period that is not specified; or (ii) 3 (three) salaries in the name of compensation due to early termination of the employment contract. In the present case, the Appellate Panel found that the legal qualification of the legal nature of the Referral by the court of first

instance was not correct and considered that the Applicant's Referral is a claim for compensation due to early termination of the employment contract.

25. The Appellate Panel of the SCSC emphasized that the evidence provided by the Applicant whereby she proves whether she meets the criteria to be recognized the right to compensation due to early termination of the employment contract under Article 40.1 .6.1 of the Annex to the Law on the PAK must be assessed. In this respect, the Appellate Panel reasoned that the Applicant has proved that she was an employee of SOE "Rilindja", but *"with no evidence has she proved that the PAK has terminated her employment relationship as a result of any of its actions relating to the privatization of the SOE, to have the right, under Article 40.1.6.1 of the Annex to the Law on the PAK, to be recognized the right to compensation of 3 salaries in the amount of 400 euros in the name of compensation due to early termination of the employment contract. The burden of proof to prove this fact falls on the claimant. [...]"*

Applicant's allegations

26. The Applicant alleges that she was denied the right to compensation of 3(three) salaries and the right to compensation (severance payment) due to early termination of employment contract.
27. Further, the Applicant states that she has claimed the right to compensation due to early termination of the employment contract *"based on Article 40.1.6.1 of the Annex to the Law on the PAK. The latter as well as the Special Chamber of the Supreme Court have rejected my appeal as unfounded in both cases."*
28. Further, in her Referral the Applicant has only emphasized the following without providing a clarification in that regard *"According to Section 12.2 of the UNMIK Regulation 2001/27 and the Law on Labour No.03/L-212, Articles 70, 71, 72, 76."*

Legal framework

ANNEX OF THE LAW No. 04/L-034 ON THE PRIVATIZATION AGENCY OF KOSOVO

Article 40

Priorities of Claims and Interests

*„1. In liquidation proceedings all Claims of creditors shall be satisfied according to classes 1.1 – 1.8 hereunder and in the following order:
[...]"*

1.6. preferential workers claims in the following order:

1.6.1. claims for such wages of employees, which have remained unpaid until the date of decision by the Court or the Agency to

commence liquidation proceedings, limited to three months gross salary per person;
1.6.2. legally required severance pay claims brought by employees who have been made redundant as a consequence of the Enterprise Liquidation Decision, or in connection with, an action taken by the Agency under Article 6.1 or 6.2 of PAK law;
[...]"

UNMIK REGULATION No. 2001/27 ON ESSENTIAL LABOUR IN KOSOVO

Section 12

Termination of a Labour Contract due to Economic, Technological or Structural changes to the Enterprise

[...]

12.2 In the event of a large-scale layoff, the following provisions shall apply:

- (a) prior to introducing such changes, an employer shall notify its employees and, where applicable, the employees' union(s) in writing of the changes planned and their implications, including the number and type of employees to be discharged; the measures to be taken to alleviate the consequences of such changes; and the rights of its employees as set out in the labour contract and, where applicable, the collective agreement;
- (b) an employer shall notify its employees in writing of the termination of the labour contract at least 3 months prior to the date of termination;
- (c) an employer shall notify the employment office in writing of the employees to be discharged in order that it may provide such employees with assistance in seeking alternative employment;
- (ç) an employer shall take appropriate measures to limit the number of employees to be discharged by limiting or freezing the hiring of new employees; internal reassignment of employees; limiting overtime work; reducing working hours; providing vocational retraining; and promoting improvement of skills;
- (d) in determining the number and type of employees to be discharged, the employer shall take into account the following: an employee's performance; vocational training and skills; work experience; position; category and type of work; years of service; age; and other criteria that may be set out in a labour contract and, where applicable, collective agreement;
- (dh) an employee may not be discharged until the employer provides a single severance payment to the employee. The severance payment shall be paid to the employee on the date of termination at the following scale:
 - (i) from 2 to 4 years of service, 1 months' salary;
 - (ii) from 5 to 9 years of service, 2 months' salary;
 - (iii) from 10 to 19 years of service, 3 months' salary;
 - (iv) from 20 to 29 years of service, 4 months' salary;
 - (v) 30 years of service or more, 5 months' salary; and

(e) where an employer recommences employment within a 2 year period from the date of termination, preference will be given to those equally qualified employees who have been discharged. [...]

LAW No. 03/L-212 ON LABOUR

Article 70

Termination of Employment Contract by the Employer

1. An employer may terminate the employment contract of an employee with the prescribed period of notice of cancellation, when:

1.1. Such termination is justified for economic, technical or organizational reasons;

1.2. The employee is no longer able to perform the job;

1.3. The employer may terminate the employment contract in the circumstances specified in subparagraph 1.1 and 1.2 of this paragraph, if, it is impracticable for the employer to transfer the employee to other employment or to train or qualify the employee to perform the job or other jobs;

1.4. An employer may terminate the employment contract of an employee with providing the period of notice of termination required, in:

1.4.1. serious cases of misconduct of the employee; and

1.4.2. because of dissatisfactory performance of work duties.

1.5. An employer shall notify the employee about his/her dismissal immediately after the event which leads to this decision or as soon as the employer has become aware of it;

1.6. An employer may terminate the employment contract of an employee without providing the period of notice of termination required, in the case when:

1.6.1. the employee is guilty of repeating a less serious misconduct or breach of obligations;

1.6.2. the employee's performance remains dissatisfactory in spite of the written warning.

2. The employer may terminate the employment contract of an employee under sub-paragraphs 1.6 of paragraph 1 of this Article only when after the employee has been issued previous written description of unsatisfactory performance with a specified period of time within which they must improve on their performance as well as a statement that failure to improve the performance shall result with dismissal from work without any other written notice.

3. The employer should hold a meeting with the employee to explain termination of an employment contract or for the purpose of issuing a warning, the employee is entitled to be accompanied by a representative of his or her choice.

4. Collective agreements or Employer's Internal Acts may specify the types of misconduct or breaches of obligations that will make an employee liable to have his or her employment contract terminated after a single occasion without a notification period, after repetition on one or more occasions, with an appropriate warning.

Article 71

Notification period for termination of employment contract

1. The employer may terminate an employment contract for an indefinite period according to Article 70 of this Law with the following periods of notification:

1.1. from six (6) months - 2 years of employment, thirty (30) calendar days;

1.2. from two (2)- ten (10) years of employment: forty-five (45) calendar days;

1.3. above ten (10) years of employment: sixty (60) calendar days.

2. The employer may terminate an employment contract for a fixed term with thirty (30) calendar days notice. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.

Article 72

Procedure Prior to the Termination of the Contract

1. The decision to terminate an employment contract shall be issued in writing and shall include the grounds for the dismissal.

2. Decision, under paragraph 1 of this Article, shall be final on the day of submission to the employee.

3. Employer is obliged to execute the salary and other allowances up to day of the termination of employment relationship.

4. The employer may deny the employee access to the premises of the enterprises during the period of notification, namely prior to terminating the employment contract.

[...]

Article 76

Collective Dismissals

1. Cases where dismissals according to sub-paragraph 1.1 of paragraph 1, Article 70 of this Law, include at least ten percent (10%) of the employees but not less than twenty (20) employees discharged within a six (6) month period, shall be considered as collective dismissal;

2. In the event of a large-scale layoff, provisions from paragraph 3 of this Article shall apply.

3. Prior to introducing such changes, an employer shall notify its employees and, where applicable, the employees' trade union(s) one (1) month in advance in writing of the changes planned and their implications, including:

3.1. The number and type of employees to be discharged;

3.2. The measures to be taken by the employer, if any, to alleviate the consequences of collective dismissal, including:

3.2.1. limiting or stopping the hiring any new employees;

3.2.2. internal reordering of the employees;

3.2.3. limiting the overtime working hours;

- 3.2.4. *reducing the working hours;*
- 3.2.5. *offering professional retraining; and*
- 3.2.6. *The rights of its employees as set out in the Employment Contract, Employer's Internal Act or Collective Contract.*
- 4. *With the notification provided according to paragraph 3 of this Article, the employer may terminate the employment contract of the employees with a notification period according to Article 71 of this Law.*
- 5. *The employer shall notify in writing the Employment Office about removing of employees from work, so EO be able to provide assistance to them to find other employment.*
- 6. *An employee may not be discharged until the employer provides a single severance payment to the employee.*
- 7. *The severance payment shall be paid to the employees with indefinite period contract on the date of termination at the following scale:*
 - 7.1. *from two (2) to four (4) years of service, one (1) monthly salary;*
 - 7.2 *from five (5) to nine (9) years of service, two (2) monthly salary;*
 - 7.3. *from ten (10) to nineteen (19) years of service, three (3) monthly salary;*
 - 7.4. *from twenty (20) to twenty-nine (29) years of service, six (6) monthly salary; and*
 - 7.5. *from thirty (30) years of service or more, seven (7) monthly salary.*
- 8. *If, within a period of one (1) year from the termination of the employment contracts of employees under this article, the employer hires employees with the same qualifications or training, the employer shall not hire other persons before offering to hire the employees whose contracts have been terminated.*
- 9. *Employees discharged as a result of bankruptcy and reorganization administered by a court shall not be governed by the provisions of this Law.*

Assessment of the admissibility of Referral

- 29. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
- 30. 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."

[...]

31. In addition, the Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47
[Individual Requests]

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

Article 48
[Accuracy of the Referral]

“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”.

Article 49
[Deadlines]

“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...”

32. However, in addition, the Court also refers to Rule 39 (1) (d) of the Rules of Procedure, which specifies:

Rule 39
Admissibility Criteria

“(1) The Court may consider a referral as admissible if:

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.”

33. The Court finds that the Applicant is an authorized party who is challenging an act of a public authority, namely the Judgment AC-I-20-0064 of the Appellate Panel of the SCSC, of 17 December 2020, after having exhausted all legal remedies provided by law. In this respect, the Applicant's Referral meets the criteria provided by paragraphs 1 and 7 of Article 113 of the Constitution and Article 47 of the Law. The Applicant has also submitted the Referral in accordance with the deadline established in Article 49 of the Law.

34. Moreover, in assessing whether the Applicant has fulfilled the admissibility criteria provided by law, the Court must also refer to Article 48 of the Law, which specifically determines the applicants' obligation to clarify in their referrals to the Court Constitutional exactly what rights and freedoms they claim to have been violated. The same criterion is also stipulated in Rule 39 [Admissibility Criteria] paragraph (1) item (d) of the Rules of Procedure, which requires that the referrals submitted to the Constitutional Court must clarify accurately and adequately the facts and allegations for violation of constitutional rights or provisions. The same criteria shall be analysed by the Court in the following.
35. The Court initially recalls that the Applicant has worked for the SOE "Rilindja" as a journalist from December 2000 to February 2002, and on the occasion of the liquidation of the SOE "Rilindja" in 2017, she filed a claim for compensation to the PAK due to early termination of employment. This claim was rejected by the Liquidation Authority on the grounds that the Applicant could not be recognized the right to severance payment due to early termination of the employment contract, as provided for by Article 40, paragraph 1.6.2 of the Annex to the Law No. 04/L-034 on the Privatization Agency of Kosovo, because the dismissal from work did not occur as a result of an action taken by the PAK, respectively it did not occur as a consequence of the liquidation. The same line of reasoning was followed also by the single judge at the SCSC. Finally, the Appellate Panel of the SCSC considered the Applicant's claim to be a claim for compensation due to early termination of the employment contract and emphasized that the Applicant did not provide evidence whereby she would prove that she meets the criteria to be recognized the right to compensation due to early termination of the employment contract pursuant to Article 40.1.6.1 of the Annex to the Law on the PAK.
36. The Court notes that the Applicant before the Court states that: (i) she was denied the right to compensation of 3 (three) salaries, and the right to compensation due to termination of the employment contract based on Article 40.1.6.1 of the Annex to the Law on the PAK; (ii) the PAK and the regular courts have rejected her appeal; and (iii) has emphasized without providing a clarification *"According to Section 12.2 of the UNMIK Regulation 2001/27 and the Law on Labour No.03/L-212, Articles 70, 71, 72, 76."*
37. Based on the foregoing, the Court notes that the Applicant challenges the decisions of the regular courts in respect of her alleged right to compensation due to the termination of the employment contract and the payment of three salaries.
38. In this connection, the Court recalls that the Applicant, despite the fact of having attached the decisions of the public authorities to her Referral submitted to the Court, and despite being given the opportunity by the Court's letter of 26 April 2021, to complete her Referral and to clarify what rights and freedoms, guaranteed by the Constitution, she is alleging to have been violated, the Applicant, in addition to the references to her right to compensation of salaries, and the reference to several legal provisions, has in no way clarified what rights and freedoms, guaranteed by the Constitution,

she claims to have been violated by the challenged Judgment of the Appellate Panel of the SCSC.

39. The Court states that in order to consider that a Referral meets the admissibility criteria, the Applicant is obliged to clarify in his Referral exactly what rights and freedoms, guaranteed by the Constitution, have been violated and to adequately present the facts and allegations for violation of constitutional rights or provisions (see, in this context the cases of Court KI91/17, Applicant *Enver Islami*, Resolution on Inadmissibility, of 22 November 2018, paragraph 31; case KI206/19, Applicant *Mladen Nikolić*, Resolution on Inadmissibility, of 26 February 2019, paragraph 33, as well as see case KI97 / 20, Applicant *Nehat Salihu*, Resolution on Inadmissibility of 26 March 2021, paragraph 54).
40. The Court notes that the Applicant, in a way does not agree with the decisions of the regular courts, given the fact that she has claimed the relevant compensation and this has been rejected by all instances. However, the Applicant has not clarified what rights and freedoms, guaranteed by the Constitution, she claims to have been violated and she raises generalized allegations without specifying the constitutional rights which she claims to have been violated and without clarifying the facts that justify the concrete allegations.
41. Consequently, the Court finds that this is not sufficient to meet the requirements of Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure. Finally, the Court finds that the Referral is inadmissible on constitutional basis.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20,47 and 48 of the Law and Rule 39 1 (d) of the Rules of Procedure, on 29 July 2021, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi



Gresa Caka-Nimani

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