



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

Prishtina, 20 March 2012
Ref. No.: RK214/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI-132/11

The Applicant

Sabile Sopjani

**Constitutional review of the Judgment of the District Court of Prishtina
Ac. No. 601/02 dated 15 September 2004**

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.

The Applicant

1. The Applicant is Sabile Sopjani from Prishtina.

Challenged decision

2. Challenged decision is the Judgment of the District Court of Prishtina, Ac. No. 601/02 dated 15 September 2004, upholding the Judgment of the Municipal Court of Prishtina, C. No. 123/2001 dated 18 September 2002, and rejecting the Applicant's request to be reinstated to permanent employment relationship with the Kosovo Energy Corporation (hereinafter: KEC), where the Applicant had a permanent employment before the war broke out in Kosovo.

Subject matter

3. The Applicant challenges the Judgment of the District Court of Prishtina, Ac. No. 601/02 dated 15 September 2004, without specifically mentioning articles of the Constitution which were violated, although it can be concluded from the Referral that the subject matter is the labor relationship dispute between the Applicant and KEC.

Legal Basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure.

Proceedings before the Constitutional Court

5. On 17 October 2011, the Applicant filed the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 27 January 2012, the Constitutional Court notified the Applicant and Municipal and District Court of Prishtina that a procedure on review of constitutionality of the decisions has been initiated in case No. KI 132/11.
7. On 20 March 2012, after having considered the Report of Judge Ivan Čukalović, the Review Panel, composed of judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Snezhana Botusharova, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. The Applicant entered into a permanent employment relationship with KEC, in the working place of a security clerk. The Applicant was employed until 1 April 1999 when she and her family were expelled from Prishtina and, as refugees, deported to Holland.
9. The Applicant and her family returned to Kosovo on 17 January 2001, whilst on 2 February 2001 she filed the request to return to her working place.
10. By Decision Number 26, dated 29 January 2001, KEC director rejected the Applicant's request to be reinstated to her working place as ungrounded, with justification that the final deadline for the expelled workers was 1 June 2000, as per KEC Interim Employment Rules.
11. On 1 March 2001, by Decision No. 835, Executive Board of KEC confirmed the director's decision No. 46 dated 29 January 2001.

12. The Applicant filed a claim suit against these KEC Decisions with the Municipal Court of Prishtina. In the claim the Applicant asked for annulment of the KEC Decisions and reinstatement to her working place, while she tried to justify her absence with illness and inability to come to the working place.
13. On 18 September 2002, by Judgment C. No. 123/2001, the Municipal Court of Prishtina rejected the Applicant's requests as ungrounded and evaluated the evidence on illness as unconvincing.
14. On 15 September 2004, by Judgment Ac. No. 601/2002, the District Court of Prishtina upheld the Judgment of the District Court of Prishtina, C. No. 123/2001 dated 18 September 2002 in its entirety.

Applicant's Allegations

15. The Applicant challenges the Judgment of the District Court of Prishtina, Ac. No. 601/02 dated 15 September 2004, stating:

"Through this claim I am addressing to you since the right to employment as basic human right was violated to me. Having emphasizing that I showed myself to the respondent, but I was told that I was late to be returned to work, by not having into consideration the circumstances that it was war and I was in Netherlands as refugee, and due to myself and my child bad health condition I could not return, also there is the other reason that I could not return willingly, but only through Dutch authorities, but it is surprising that there are many other employees at the respondents' who have returned quite long time after I have returned and they still have been returned to work by respondent".

Assessment of the Admissibility of the Referral

16. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
17. As to the submissions of the Applicant, the Constitutional Court concludes that the Applicant is challenging the Judgment of the District Court of Prishtina Ac. No. 601/02 dated 15 September 2004. This means that the Referral relates to events prior to 15 June 2008, which is the date of the entry into force of the Constitution of the Republic of Kosovo. Based on the foresaid the Referral is out of time, and, therefore, incompatible "*ratione temporis*" with the provisions of the Constitution and the Law (see, *mutatis mutandis*, *Jasiūnienė v. Lithuania*, Application No. 415101/98, ECtHR Judgments of 6 March and 6 June 2003).
18. Hence, the Referral is inadmissible according to Rule 36.3 (h) of the Rules of Procedure, which sets out the following: "*A Referral may also be deemed inadmissible in any of the following cases h) the Referral is incompatible ratione temporis with the Constitution*".

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.3 (h) of the Rules of Procedure, on 20 March 2012, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the parties and published in the Official Gazette, in accordance with Article 20.4 of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

