



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

Prishtina, 21 July 2014
Ref. no.: RK682/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI88/14

Applicant

Medija Smailji

**Constitutional review of the Decision of the Court of Appeal of Kosovo in
Prishtina, Ca. no. 3875/2012, of 31 January 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Ms. Medija Smailji (hereinafter: the Applicant), with permanent residence in the Municipality of Prizren.

Challenged decision

2. The Applicant challenges the Decision of the Court of Appeal of Kosovo in Prishtina Ca. no. 3875/2012, of 31 January 2014, which was served on the Applicant on 7 February 2014.

Subject matter

3. The subject matter is the constitutional review of the Decision Ca. no. 3875/2012, of the Court of Appeal of Kosovo in Prishtina of 31 January 2014, by which according to the Applicant's allegations, "*was denied the Applicant's right to work*".
4. In addition, the Applicant requests from the Court not to disclose her identity.

Legal basis

5. The Referral is based on Article 113. 7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 16 May 2014, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court.
7. On 10 June 2014, the President of the Court, by Decision no. GJR. KI88/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI88/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
8. On 11 June 2014, the Court notified the Applicant and the Court of Appeal of Kosovo in Prishtina on registration of the Referral.
9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court of the request for his recusal from the session for the period June-July 2014, until the Court decides on the allegations raised against him.
10. On 2 July 2014, after having considered the report of the Judge Rapporteur, Snezhana Botusharova, the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodriguez and Enver Hasani, recommended to the full Court the inadmissibility of the Referral.

Summary of facts

11. The Applicant, as a doctor specialist of physical medicine and rehabilitation in 2001, with an aim of professional advancement, in the Faculty of Medicine in Belgrade, enrolled the sub specialty.

12. The Applicant requested from her Employer, the Health Centre in Prizren to approve the absence from work for the period of the professional advancement, but this Applicant's request was rejected.
13. The Health Centre in Prizren, by Decision of the Disciplinary Commission no. 13/15 of 23 January 2001, dismissed the Applicant from work, whereas by Director's Decision no. 3/61 of 27 November 2001, was rejected the Applicant's request for recognition of the right to unpaid leave.
14. The Applicant, by a claim filed with the Municipal Court in Prizren requested to be quashed as unlawful the Decisions of the Disciplinary Commission of the Health Centre in Prizren no. 13/15 of 23 January 2001, and the Director's Decision no. 3/61 of 27 November 2001.
15. On 24 May 2005, the Municipal Court in Prizren, by Judgment, P. no. 64/2005, rejected the Applicant's statement of claim, by which she requested her reinstatement to the work position of the Specialist of Physical Therapy, the payment of unpaid personal income and the recognition and approval of the unpaid leave.
16. On 11 November 2005, the District Court in Prishtina, by Judgment Gž. no. 340/2005, rejected the Applicant's appeal and approved the Judgment of the Municipal Court in Prizren P. no. 64/2005 of 24 May 2005.
17. On 21 June 2006, the Supreme Court of Kosovo, by Judgment Rev. no. 15/2006 rejected the Applicant's revision, filed against the Judgment of the District Court in Prishtina, Gž. no. 340/2005 of 11 November 2005.
18. On 5 June 2009, the Applicant submitted the proposal for repetition of procedure to the EULEX Office in Prizren.
19. On 22 February 2010, the EULEX Judge, in the Reply, Ref. JC/EJU/PrzDC/061/vk/09, notified the Applicant the following:

"... we wish to emphasise that EULEX Judges are competent for cases which have not been yet adjudicated by the Kosovo courts. Unfortunately, your matter is not under this jurisdiction, since it was finalized on 21.06.2006. Therefore, the EULEX Judges of the District Court in Prizren shall take no further action".
20. On 6 March 2012, the Applicant submitted the proposal for repetition of procedure to the Municipal Court in Prizren.
21. On 3 July 2012, the Municipal Court in Prizren, by Decision P. no. 64/2005 rejected the proposal for repetition of the contested procedure, finalized by final Judgment P. no. 64/2005.
22. On 16 July 2012, the Applicant filed an appeal, by requesting that the Decision of the Municipal Court in Prizren P. no. 64/2005 of 3 July 2012 be quashed and

the matter to be remanded to the first instance court for repetition of the procedure.

23. On 31 January 2014, the Court of Appeal of Kosovo in Prishtina, by Decision Ca. br. 3875/2012, rejected the Applicant's proposal for repetition of procedure, finalized in the Municipal Court in Prizren, by Judgment P. no. 64/2005 of 24 May 2005, which became final on 11 November 2005, with the following reasoning:

"From the EULEX Information (Report of 22.02.2010), it results that EULEX judges have informed the claimant that the matter raised by her upon her proposal for repetition of procedure is not under the EULEX jurisdiction, and therefore, it shall undertake no action".

"Article 234.3 of the LCP provides: "After a five year deadline passed from the day when the verdict became absolute, the proposal for repeating the procedure cannot be submitted"... in the present case, the proposal for repeating the procedure refers to finding new facts (hearing of a witness) which constitutes grounds for repeating the procedure pursuant to Article 232 g) of the LCP. The Panel finds that the proposal for repetition of procedure filed by the claimant is out of time, since from 11.11.2005, when the judgment of the Municipal Court in Prizren, C.no.64/2005 became final until 06.03.2012, when the claimant filed her proposal with the Municipal Court in Prizren, more than 5 years have passed".

Applicant's allegations

24. The Applicant alleges that the Court of Appeal of Kosovo has erroneously calculated the time limits regarding the date when she submitted the request for repetition of procedure. The Applicant considers that the date when she filed the request with the Office of EULEX Judges in Prishtina should have been taken as the applicable date, and states as it follows:

"... I was convinced that the proposal for repetition of procedure, according to the law, would be forwarded to the Municipal Court in Prizren, which was not done, and which constituted a breach of the Constitution and the Law".

"Therefore, the stance of the Court of Appeal is ungrounded, when finding that the proposal for repeating the procedure is filed after the expiry of the deadline of 5 years from the day the judgment became final, by mentioning the date 06.03.2012, because it is an indisputable fact that on 19.02.2009, I filed a proposal for repetition of procedure, after I learned that other doctors were allowed by the Health Centre in Prizren both paid and unpaid leave, and in these terms, in this present case, the deadline of 5 years has not expired".

25. Based on what was presented in the Referral, the Applicant requests from the Constitutional Court of Kosovo, the following:

"I was deprived the right to work, which is guaranteed by the Constitution, and in all these years, I have been wondering how is it possible that I have

been deprived of my right to work because of professional advancement, and therefore, I have filed this referral with you, to hold that this proposal for repetition of procedure was timely filed, and that the decision of the Court of Appeal of Kosovo is in contradiction with the provisions of the Constitution of the Republic of Kosovo, laws and international conventions”...

Admissibility of the Referral

26. The Court observes that, in order to be able to adjudicate the Applicant’s Referral, it is necessary to first examine whether she has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
27. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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”.
28. The Court refers also to Article 48 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.”
29. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

...

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights“.
30. Reviewing the Applicants’ allegations for violations regarding the erroneous calculation of the time limits by the Court of Appeal of Kosovo, the Constitutional Court notes that it is not a court of appeal, when reviewing the decisions taken by the regular courts. It is the role of the regular courts 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 [ECHR 1999-1]).
31. The Decision of the Court of Appeal of Kosovo in Prishtina Ca. no. 3875/2012, of 31 January 2014, of 2 April 2014, in its reasoning explains in details the reasons for rejection of the request for repetition of the procedure and provides response to all Applicant’s allegations with regards to legal deadlines.

32. The Constitutional Court notes that the Applicant has not provided any *prima facie* evidence which would point out to a violation of her constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).
33. In the present case, the Applicant was provided numerous opportunities to present her case and to challenge the interpretation of the law, which she considers as being incorrect, before the Municipal Court in Prizren, the District Court in Prizren and the Supreme Court of Kosovo, as well as before the Basic Court in Prizren and the Court of Appeal of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis, Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
34. Finally, the admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that her constitutional rights and freedoms have been violated by the challenged decision.
35. Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (2) b) of the Rules of Procedure.
36. As to the Applicant's request for not having her identity disclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided to support the reasons for the Applicant not to have her identity disclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, in the session held on 2 July 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the Applicant's request not to have her identity disclosed;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani