



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

Prishtina, on 12 April 2016
Ref. No.:RK923/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI40/15

Applicant

Fatlume Meta

**Constitutional Review of the Judgment of the Court of Appeal,
P. nr. 35/10, of 4 April 2011**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Ms. Fatlume Meta, from Magure, municipality of Lipjan (hereinafter, the Applicant). She is represented by Mr. Safet Krasniqi who is also from Magure, municipality of Lipjan.

Challenged Decision

2. The Applicant challenges the Judgment (P. nr. 35/10, dated 4 April 2011) of the Court of Appeal which she has not submitted to the Court. She claims to have received on 12 March 2015.

Subject Matter

3. The subject matter is the constitutional review of the challenged decision which allegedly has violated Article 20 [Postponement of execution of sentences of imprisonment] of the Law No. 04/L-149 on Execution of Penal Sanctions (hereinafter, the Law on Execution of Penal Sanctions).
4. The Applicant does not refer to any rights or freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) that might have been violated.
5. The Applicant also requests from the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely to postpone the serving of the sentence in prison.

Legal basis

6. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. On 30 March 2015, the Applicant submitted the Referral to the Court.
8. On 2 April 2015, the Applicant submitted a power of attorney for Mr. Safet Krasniqi whereby she authorized him to represent her before the Court. On the same date, the Applicant submitted an additional letter where she requested from the Court to impose an interim measure.
9. On 4 April 2015 the President by Decision No. GJR. KI40/15 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date the President by Decision No. KSH. KI40/15 appointed the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
10. On 10 April 2015 the Applicant submitted another letter to the Court requesting from the latter to “[...] *postpone the serving of her sentence, to impose a more lenient sanction or to replace it with a conditional sentence.*”
11. On 14 April 2015 the Court notified the Applicant of the registration of the Referral and requested that she submits the challenged decision and other relevant documents to the Court.

12. On 14 May 2015 the Court sent another letter to the Applicant whereby it informed her that in case she does not submit the requested documents within a deadline of seven (7) days from the receipt of this letter, the Court will continue the procedure based on the existing case file.
13. On 1 June 2015 the Applicant replied to the letter sent by the Court but did not submit the requested documents. Instead, the Applicant submitted a medical report of her child.
14. In order to verify the Applicant's allegations about the date of service of the challenged Judgment, the Court requested the Basic Court in Prishtina to submit evidence indicating when the challenged Judgment has been served on the Applicant.
15. The Municipal Court in Prishtina responded at the request of the Court, but did not send the documentation of the decision, but only the return receipt of another decision which is not challenged by the Applicant, and that does not exist in the file case.
16. On 6 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

17. The Applicant was accused for committing a criminal offense, was found guilty and was sentenced to one (1) year imprisonment.
18. On 12 March 2015, the Municipal Court in Prishtina (ED. no. 51/2012) issued an order based on which the Applicant was asked to start serving the imprisonment sentence.
19. On 20 March 2015, the Applicant sent a letter to the Municipal Court in Prishtina whereby she requested to postpone the serving of the imprisonment sentence.
20. On 23 March 2015, the Applicant sent another letter to the Kosovo Judicial Council, requesting from it to postpone the serving of the imprisonment sentence for an unspecified period of time.
21. On 26 March 2015, the Applicant sent a similar letter to the Ministry of Justice, Directorate for Prisons, with the same request, namely *"to postpone the serving of her imprisonment sentence until her child increases in age."*

Applicant's allegations

22. The Applicant does not refer to any right guaranteed by the Constitution which might have been violated. She only claims that there has been a violation of Article 20 of the Law on Execution of Penal Sanctions.

23. In regards to this claim, the Applicant states that the Municipal Court in Prishtina has violated procedural requirements provided by Article 20 of the Law on Execution of Penal Sanctions because the latter foresees that *“the execution of the sanction must be postponed until the child is 3 years old and my child [...] is only 2 years old.”*

24. Finally, the Applicant concludes by requesting the following from the Court:

“[...] to postpone the serving of my sentence for a certain period of time until my child [...] and my other children have increased in age.”

Assessment of the admissibility of the Referral

25. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

26. In this respect, the Court refers to the following provisions of the Law:

Article 22.4 [Processing Referrals]

“4. If the referral ... is ... incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for supplementing the respective referral [...]”.

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 [...]”.

27. In addition, the Court refers to Rules 29 (2) [Filing of Referrals and Replies] and Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provide:

*“(2) The referral shall also include:
[...]
(h) the supporting documentation and information.”*

“(5) The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral [...]”.

28. The Court recalls that the Applicant alleges that the regular courts violated her right guaranteed Article 20 of the Law on Execution of Penal Sanctions by not approving her request to postpone the serving of the imprisonment sentence.

29. The Court also recalls that the Applicant has not alleged any violation of the rights guaranteed by the Constitution which might have been violated.

30. Pursuant to Article 22.4 of the Law, the Court requested the Applicant to submit the challenged decision and other decisions of the regular courts.

31. However, within the prescribed time limit, the Court has not received any decision of the regular courts.
32. The Court considers that it cannot take into account the Applicant's allegations without the supporting documents and material evidence, in accordance with Article 22.5 and 48 of the Law and Rules 29 (2) (h) and 32 (5) of the Rules of Procedure.
33. The Court further considers that the Applicant has not shown a *prima facie* case, in order for the Court to assess the fulfillment of all procedural requirements on admissibility.
34. In addition, the Court emphasizes that it is not a fact-finding court and the burden of proof lies with the Applicant who failed to meet the procedural requirements laid down in the Constitution, the Law and the Rules of Procedure.
35. In sum, the Court considers that the Applicant's Referral does not meet the procedural requirements for further consideration due to non-completion of her Referral with the relevant documents, as required by Articles 22.4 and 48 of the Law and Rule 29 (2) (h) of the Rules of Procedure.
36. Therefore, the Court concludes that Referral is to be summarily rejected and thus is inadmissible.

Assessment of the Request for Interim Measure

37. The Applicant also requests from the Court to impose an interim measure, namely "*to postpone the serving of the imprisonment sentence until her children increase in age.*"
38. In this connection, the Court notes that the Applicant has not submitted the challenged decision or any other decision of the regular courts and has not provided any evidence as to why the interim measure should be granted.
39. Therefore, the Court considers that the request for interim measure is not applicable since it does not meet the requirements set forth by the Law and Rules of Procedure.
40. In order for the Court to allow an interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it needs to determine that:

"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;
(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted.

[...]

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application”.

41. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is to be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 27 and 48 of the Law and Rules 29 (2) (h) 32 (5), 55 (4) and 56 (b) of the Rules of Procedure, in the session held on 06 July 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović

Arta Rama-Hajrizi

