



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

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Prishtina, on 12 April 2016  
Ref. no.:RK920/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI110/15**

Applicant

**Bedrije Rrahmani**

**Constitutional review of Decision E. no. 752/07, of the Municipal Court in  
Prishtina, of 31 May 2007**

### **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  
Selvete Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral is submitted by Ms. Bedrije Rrahmani residing in Prishtina (hereinafter: the Applicant).

### **Challenged decision**

2. The Applicant challenges Decision E. no. 752/07, of the Municipal Court in Prishtina of 31 May 2007.
3. This decision was served on the Applicant on 24 April 2015.

### **Subject matter**

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

### **Legal basis**

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

### **Proceedings before the Constitutional Court**

6. On 19 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 14 September 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
8. On 25 September 2015, the Constitutional Court informed the Basic Court in Prishtina that the procedure of the constitutional review of the Decision of the Municipal Court in Prishtina had been initiated. By this notification, the Court requested the Applicant and the Basic Court in Prishtina to submit a copy of the acknowledgment of receipt with the date of receipt of Decision E. no. 752/07 of the Municipal Court in Prishtina, of 31 May 2007.
9. On 1 October 2015, the Basic Court in Prishtina submitted the requested information. In the response of the Basic Court it stated that the Applicant was served with the challenged Decision of the Municipal Court in Prishtina on 24 April 2015.
10. On 8 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

### **Summary of facts**

11. From 2003 until 30 December 2005, the Applicant was employed in the Ministry of Labor and Social Welfare (hereinafter: MLSW) in the position of a therapist- head nurse.

12. On 30 December 2005, the MLSW Secretary [Decision no. 6999] assigned the Applicant in the position of nurse, namely in the lower position than the one she previously had.
13. The Applicant filed an appeal to the Appeals Commission of MLSW against this decision.
14. On 28 February 2006, the Appeals Commission of MLSW, by Decision No. 25/06 rejected the Applicant's appeal and upheld the decision of the Secretary of MLSW.
15. On 22 March 2006, the Applicant filed an appeal with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against the decision of the Appeals Commission of MLSW.
16. On 24 April 2006, the IOBK by Decision A, 02, 38/2006, approved the Applicant's appeal, annulled the Decision of the Secretary of MLSW and the Decision of the Appeals Commission of MLSW and ordered the MLSW to reinstate the Applicant to her previous position.
17. On 17 May 2007, the Applicant submitted to the Municipal Court in Prishtina a proposal for the execution of the IOBK decision.
18. On 31 May 2007, the Municipal Court in Prishtina, by Decision C. no. 752/07 allowed the execution of the IOBK decision, and thus, re-instated the Applicant to her previous position.
19. On 23 February 2009, the MLSW and the Applicant concluded a contract of employment, by which the Applicant was assigned to a new position which was stated to be equivalent to the previous position and the amount of salary.
20. On 15 July 2011, the Municipal Court in Prishtina sent an order to MLSW to provide the information on the execution of Decision C. no. 752/07 of the Municipal Court in Prishtina.
21. On 18 August 2011, MLSW submitted to the Municipal Court in Prishtina complete documentation regarding the execution of Decision C. no. 752/07 of the Municipal Court in Prishtina. In this notice, the MLSW, among other things, stated:
 

*„Based on personal file of the employee Bedrije Rrahmani we inform you that the Decision of M. C. in Prishtina was executed and the position of the employee was changed from Nurse to Therapist for Education and Rehabilitation in the Elderly without Family Support at Nursing Home on 01.02.2009.“*
22. On 10 April 2015, the Applicant submitted the request to the Basic Court in Prishtina for receipt of Decision C. no. 752/07 of 31 May 2007.
23. On 24 April 2015, the Applicant was served with Decision C. no. 752/07, of the Municipal Court in Prishtina.

## **Applicants' allegations**

24. The Applicant considers that by not executing the IOBK Decision A, 02, 38/2006 and Decision C. no. 752/07 of the Municipal Court in Prishtina, the MLSW violated the right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of Kosovo.

## **Assessment of the admissibility of Referral**

25. In order to be able to adjudicate the Applicant's Referral, the Court first examines whether the Applicant has fulfilled the admissibility requirements of the Constitution and further specified in the Law and Rules of Procedure.

26. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

*“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.”*

27. Article 48 of the Law also 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.“*

28. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of the Procedures, which provides:

(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:*

*[...]*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights“.*

29. The Court notes that the Applicant is satisfied with Decision C. no. 752/07 of the Municipal Court in Prishtina, but she is not satisfied with the way in which this decision was executed, namely the position in which the MLSW assigned her after the execution of Decision C. no. 752/07.

30. The Court also notes that the Applicant built her constitutional complaint on the allegations of violation of Article 49 [Right to Work and Exercise Profession] of the Constitution. Article states:

Article 49 [Right to Work and Exercise Profession]

1. *The right to work is guaranteed.*
2. *Every person is free to choose his/her profession and occupation.*

31. The Court emphasizes that the right to work and exercise profession under Article 49 of the Constitution is subject to protection in the constitutional system of Kosovo, where these rights are further exercised in a manner and under conditions prescribed by the Law. It guarantees a right to work if a person is qualified and if there is available work. It does not guarantee a right to work at or in a specific job position.
32. Having reviewed the case file, the Court found that the IOBK, in accordance with the law, examined the merits of the Applicant's statement of claim, and determined the factual situation, relevant for its decision, including Decision C. No. 752/07 of the Municipal Court in Prishtina, which allows the execution of the IOBK decision.
33. The Court finds that the execution Decision of the Municipal Court, which is challenged by the Applicant, does not in any way prevent her from working or exercising her profession or from receiving personal income provided for the position. Moreover, by signing a contract of employment, of 23 February 2009, the Applicant specifically agreed to be transferred from a job position equivalent to the position and the salary specified in the decision of IOBK, by which the IOBK decision is executed by MLSW.
34. Accordingly, the Court is of the opinion that there is no objective basis to support the Applicant's allegations that the challenged Judgment violated her right to work or exercise profession, guaranteed by Article 49 of the Constitution. Indeed, by signing the agreement of 23 February 2009, the Applicant achieved all the rights stipulated under Article 49 of the Constitution.
35. The Court notes that the Applicant's disagreement with the outcome of the case cannot in itself constitute an arguable claim of a violation of Article 49 of the Constitution (see case *Mezotur-Tiszazugi Tarsulat against Hungary*, no. 5503/02, ECtHR, Judgment of 26 July 2005).
36. The Court further reiterates that under the Constitution it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. The role of the regular courts or other public authorities is to interpret and apply, the pertinent rules of both procedural and substantive law (See case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case: KI70/n of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
37. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, given that the Applicant did not substantiate in the referral that the challenged Decision violated her rights guaranteed by the Constitution or the ECHR.

Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 8 March 2016, 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 effective immediately;

**Judge Rapporteur**

  
Robert Carolan



**President of the Constitutional Court**

  
Arta Rama-Hajrizi