



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

Prishtina, 01. November 2011
Ref. No.: RK 147/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI-58/11

Applicant

Sylë Shlivova

Constitutional Review of the Resolution of the Supreme Court of Kosovo
Rev. No. 82/2002 of 21 August 2002

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 Cukalovic, Judge
Gjyljeta Mushkolaj, Judge
Ilirian Islami, Judge

Applicant

1. The Applicant is Sylë Shlivova from Jashanica village, Klina Municipality.

Challenged decision

2. The challenged decision is the Resolution of the Supreme Court of Kosovo Rev. No 82/2002 of 21 August 2002 rejecting the revision of the Resolution of the Municipal Court in Peja Ac. No. 54/2002 of 8 April 2002.

Subject Matter

3. The Applicant challenges the Resolution of the Supreme Court of Kosovo Rev. No. 82/2002 of 21 August 2002 considering that his right to work, as stipulated by the Constitution of the Republic of Kosovo, has been violated.

Legal Basis

4. Article 113.7 and Article 21.4 of the Constitution, Article 20, Article 22.7 and Article 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 of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Constitutional Court

5. On 28 April 2011 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 22 June 2011 the Constitutional Court notified the Supreme Court of Kosovo that proceedings on reviewing the constitutionality of the Resolution of the Supreme Court Rev. Br. 82/2002 of 21 August 2002 have been initiated.
7. On 04 October 2011, after having considered the Report of the Judge Snezhana Botusharova the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Prof. Dr. Enver Hasani, recommended to the full Court to reject the Referral as inadmissible.

Summary of the facts

8. The Applicant has been employed at the Municipal Office in Jashanica village from 1968 until 1998, when he was allegedly "*...forcibly dismissed by Serbian authorities*".
9. The applicant was reinstated back to his workplace as assistant at the Municipal Office in Jashanica by resolution No.153/99, of 1 October 1999, of Klina Municipal Council, Kosovo Interim Government, "*...for a limited period of time, until the next vacancy opening*".
10. On 5 October 2000, there was a vacancy opening for all administration employees to which the Applicant applied for the assistant's position at the Municipal Office in Jashanica village; however another person was hired for the position the Applicant had applied.
11. Unsatisfied with the decision of the vacancy committee, the Applicant filed a lawsuit to the Municipal Court of Klina requesting the annulment of the vacancy

opening alleging, in its pertinent part, that he was interviewed by the competent Committee, "... *but the person who got hired did not meet the requirements.*"

12. On 7 December 2001, at the hearing in the Municipal Court of Klina, representatives of Klina Municipality stated that "the law-suit against them was ungrounded, that the vacancy has been announced by the UNMIK Administration and not by the Municipality of Klina." Furthermore, they stated that according to the UNMIK Regulation 2000/47, " *UNMIK bodies have immunity, that the office in Jashanica village doesn't exist since it was affiliated to the office in Klina Municipality, and finally that all the deadlines, within which a court protection could've been sought, have expired.*"
13. After reviewing all the facts, the Municipal Court of Klina by Resolution C. No. 89/2001, of 1 December 2001, rejected the law-suit as out of time, since all the preclusive deadlines provided by the laws and UNMIK Regulations applicable at that time in the Republic of Kosovo, had expired.
14. The Applicant filed an appeal against the resolution of the Municipal Court of Klina, to the District Court in Peja, which by Resolution Ac. No. 54/2002 of 8 April 2002 rejected the appeal and upheld the resolution of the Municipal Court of Klina C. No. 89/2001 of 7 December 2001.
15. The Applicant filed a request for revision with the Supreme Court of Kosovo against the resolution of the District Court in Peja Ac. No. 54/2002 of 8 April 2002, which got rejected by Resolution Rev.No.82/2002 of 21 August 2002.

Applicant's allegations

16. The Applicant alleges that the resolution of the Supreme Court of Kosovo Rev. No. 82/2002 of 21 August 2002 violated his right to work, stipulated by the Constitution. He did not point out any specific Article of the Constitution, but requested to return to work.

Assessment on the admissibility of the Referral

17. 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 as further specified in the Law and the Rules of Procedure of Constitutional Court.
18. In the present case, considering that the challenged Resolution of the Supreme Court of Kosovo Rev. Br. 82/2002 was issued on 21 August 2002, it appears that the Referral concerns events before 15 June 2008, the date when the Constitution of the Republic of Kosovo entered into force. Based on that, it is obvious that the Referral has not been filed within the time limit, and is incompatible, "*ratione temporis*", with the provisions of the Constitution and the Law (see *mutatis mutandis Jasiūniēnė against Lithuania, App. No. 41510/98, Judgments of the ECHR of 6 March and 6 June 2003*).
19. It follows that the Referral is inadmissible pursuant to Rule 36.3 (h) of the Rules of Procedure which provides that "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 and Article 20 of the Law, and Rule 36.3 (h) of the Rules of Procedure, in its session of 04 October 2011 unanimously

DECIDED

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court;
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani