



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

Prishtina, 25 March 2013
Ref.No.:VTK 401/13

DECISION TO STRIKE OUT THE REFERRAL

Case No. KI37/12

Applicants

Murtez Gashi and Shehide Gashi

**Constitutional challenge to the Decision of the Kosovo Judicial Council,
dated 29 November 2011**

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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicants are Murtez and Shehide Gashi, of Fushë Kosova, Prishtina, represented by Bahtir Troshupa for the European Centre for Minority Issues, Kosovo.

Subject matter

2. The Applicants maintain that their right to free medicaments included in the free list under the Law on Health was not provided to them and that this amounted to discrimination as they were members of a vulnerable community and marginalized group, i.e. the Ashkali Community.
3. Moreover, the Applicants maintain that the National Strategy to Reduce the Number of Pending Cases is inconsistent with the priority policy and the jurisprudence of the European Court for Human Rights, which gives rise to the violation of Article 53 of the Constitution, and as such must be declared unconstitutional by the Constitutional Court of the Republic of Kosovo.

Legal basis

4. The Referral is based on Art. 113.7 of the Constitution; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as "the Law"), and Section 32 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Summary of facts based on the documents furnished by the Applicants

5. On 16 September 2009 the Applicants submitted a written request to the Municipal Health Department of Fushë Kosova. In the mentioned request the local authorities were reminded of the Applicants' rights under the Article 22.1 of the Health Law pertinent to the essential medicaments included in the free list and the responsibility of the Republic of Kosovo to provide to the vulnerable communities and marginalized groups equal access to health care services without discrimination in consistency with the Law on the Protection and Promotion of the Rights of Communities
6. On 4 November 2009, the request of the Applicants was brought to the attention of the Unit on Human Rights within the Ministry of Health. The Head of the Unit, responsible for monitoring of discriminatory cases in the health sector did not undertake any inquiry to confirm any potential discrimination as initially promised.
7. On 12 March 2010 the Applicants filed a lawsuit against the Government of Kosovo, designated as the case with number No. 565/2010.
8. On 29 July 2011, the Applicants wrote to the President of the Municipal Court in Prishtina asking to give priority to their case. They did not get any reply.

9. On 28 October 2011 the Applicants wrote to the President of the Kosovo Judicial Council, asking to prioritize their case because the delay in hearing the case was harmful for the health of the Applicants.
10. On 29 November 2011, Applicants received a reply from the Legal Department of the Kosovo Judicial Council, whereby they were informed that the subject of the case that the claimants had filed was not included among the categories of cases given priority based on National Strategy to Reduce the Number of Pending Cases.

Procedure before the Court

11. On 29 March 2012 the Applicants filed a Referral with the Constitutional Court, through the European Centre for Minority Issues, Kosovo.
12. On 20 April 2012 the Court requested clarification as to the Authorisation of the European Centre for Minority Issues, Kosovo, to bring the Referral on the Applicants' behalf.
13. The Applicants' representatives replied stating that due to the illness of one of the Applicants they were unable to furnish the Authorisation at that time.
14. On 22 May 2012 the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President appointed a Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy and Gjyljeta Mushkolaj
15. On 25 May 2012 the Applicants' representative informed the Court that new facts had emerged that indicated that the Applicants were not in a position to proceed with the Referral.
16. On 2 July 2012, the President by Decision (No. K.SH KI-37/12) appointed Judge Ivan Čukalović as member of the Review Panel after the term of office of Judge Gjyljeta Mushkolaj as Judge of the Court had ended.

The Court's Assessment

17. In order to be able to decide what further steps to take following the communication from the Applicants' representatives the Court refers to Rule 32 of the Rules of Procedure of the Court.
18. Rule 32 of the Rules of Procedure reads as follows:

"Rule 32

Withdrawal of Referrals and Replies

- (1) *A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.*
- (2) *Notwithstanding a withdrawal of a referral, the Court may determine to decide the Referral.*

- (3) The Court shall decide such a referral without a hearing and solely on the basis of the Referral, any replies, and the documents attached to the filings.*
- (4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*
- (5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision”.*

19. On 19 September 2012, in the light of the above developments, the Judge Rapporteur, Snezhana Botusharova, recommended to the Review Panel, composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović, to discontinue further examination of the Referral. After having heard the Judge Rapporteur, the Review Panel agreed that there are no special circumstances concerning the protection of the human rights of the Applicants which would require further examination of the Referral and forwarded its recommendation to the Court on the same date.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law and Section 32 of the Rules of Procedure, unanimously,

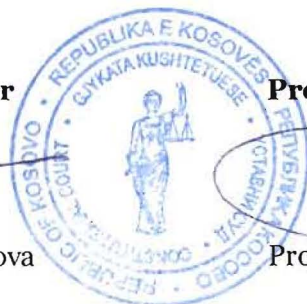
DECIDES

- I. TO STRIKE OUT the Referral.
- 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.
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani