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

Pristina, 21 march 2011
Ref. No.: RK91/11

# RESOLUTION ON INADMISSIBILITY

in

**Case No. KI 65/09**

Applicant

**Zejni Selimi**

requesting

**Constitutional review of the Decision of the Judgment of the Supreme Court of Kosovo, A. Nr. 727/2009**

## 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 Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Unanimously approves the following **Decision** on the inadmissibility of the case.

## INTRODUCTION

### Applicant

1. The Applicant is Ms. Zejni Selimi, from Prishtina.

### Challenged decision

2. Judgment of the Supreme Court of Kosovo, A. Nr. 727/2009, dated 22 October 2009.

### Subject matter

3. On 24 November 2009, Ms. Zejni Selimi, from Prishtina, submitted a Referral to the Constitutional Court of Kosovo. The Applicant, requests an assessment of the constitutionality of Judgment of the Supreme Court of Kosovo A.Nr. 727/2009, dated 22 October 2009, which is in relation to her right on disability pension.

### Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 Court

5. The referral was submitted to the Constitutional Court on 24 November 2009. On 17 December 2010 after having considered the Report of the Judge Rapporteur Snezhana Botusharova, the Review Panel, composed of judges, Kadri Kryeziu (Presiding), and Gjyljeta Mushkolaj and liriana Islami, members, made a recommendation to the full Court on the inadmissibility of the Referral.

### Summary of the facts

6. On 24 November 2009, the Applicant filed a referral with the Constitutional Court of Kosovo, registered by no. KI - 65/09. Although she fails to concretely state the constitutional rights which have been allegedly violated, it may be concluded that she has challenged the Judgment of the Supreme Court of Kosovo, ref. no. A. no. 727/2009, which rejects the claim of the Applicant as ungrounded, in relation to the right to pension.

7. From case files, it may be ascertained that in compliance with Regulation No. 2003/23, the Department of the Kosovo Pension Administration, Ministry of Labour and Social Welfare, on 22 February 2006 rendered a Decision thereby recognizing the Applicant's right to disability pension, retroactively since 1 January 2004, at the amount of forty Euros (40 €). Also, the Decision states that three (3) years from the date of acquiring the right to pension, the Applicant shall be invited to this Ministry for revision.

8. On 2 April 2009, The Department of Kosovo Pension Administration, Ministry of Labour and Social Welfare, based on the assessment of the Medical Commission, which concluded that the Applicant does not have full abilities, and disability is present and permanent, it rendered a Decision thereby rejecting the application of Mrs. Selimi for Disability Pension.

9. On 22 October 2009, the Supreme Court of Kosovo issued a Judgment, thereby rejecting the claim of the Applicant.

10. In this Judgment, the Supreme Court maintains that Medical Commissions established by the Ministry of Labour and Social Welfare, in compliance with Article 3.2 of the Law on Pensions of Disabled Persons (LPDP), consisting of specialist physicians of respective fields, after examining the medical documentation and direct examination, found that the Applicant does not have any full and permanent disability. Therefore, it concluded that the Ministry of Labour and Social Welfare had fairly and fully ascertained the factual situation and had applied material law when finding that the Applicant ,Mrs. Selimi, does not meet criteria set forth by Article 3 of the LPDP to acquire the right to pension for disabled persons.

**Assessment of the admissibility of the Referral**

11. Article 113.7 of the Constitution of the Republic of Kosovo provides the following:

> *"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".*

11.1. From the documentation submitted, it may be found that the Applicant has exhausted all legal remedies provided by law.

12. Paragraph 1 of Article 49 of the Law on the Constitutional Court provides the following:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced".*

12.1. The most recent decision related to this case is the decision of 22 October 2009. The Applicant filed her referral before the Constitutional Court on 24 November 2009, which means that she filed the referral before this Court in compliance with the deadline set forth by Article 49.

13. Even though, the Applicant has exhausted all legal remedies in order to realize her alleged right on disability pension foreseen by law, she has not provided any evidence - relevant fact to support that the "administrative or judicial authorities have made any violation of her rights guaranteed with the Constitution", (see Vanek v. Slovak Republic, ECtHR Decision on Admissibility of the case No. 53363/99 dated 31 May 2005).

14. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

15. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).

16. However, having examined the documents submitted by the Applicants, the Constitutional Court does not find any indication that the proceedings before Supreme Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis* Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of 31 May 2005).

**THEREFORE**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, unanimously,

**DECIDES**

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.

III. This Decision is effective immediately.

**Judge Rapporteur** **President of the Constitutional Court**

Dr . Snezhana Botusharova Prof. Dr. Enver Hasani