



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

---

Pristine, on 06 July 2012  
Ref. No.: RK265/12

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI34/12**

Applicant

**Hala Krasniqi**

**Constitutional review of the Judgment of the Supreme Court of the Republic of  
Kosovo, A. no. 29/2011 of 15 February 2011**

### 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 and  
Ivan Čukalović, Judge

#### **Applicant**

1. The Applicant is Ms. Hala Krasniqi from village Martinaj/Plavë, Republic of Montenegro, with permanent residence in Prishtina.

### **Challenged court decision**

2. The challenged decision of the public authority is the Judgment of the Supreme Court of the Republic of Kosovo A. nr. 29/2011 of 15 February 2011 (hereinafter: the Supreme Court). The Judgment it was served to the Applicant on 20 May 2011.

### **Subject matter**

3. The subject matter of the Referral filed on 28 March 2012 to the Constitutional Court of the Republic of Kosovo (hereinafter : Court) is the constitutional review of the Judgment of the Supreme Court A. no. 29/2011, of 15 February 2011, concerns violation of the applicant's right to disability pension.

### **Legal basis**

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2008, which entered into force on 15 January 2009 (hereinafter: Law) and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

### **Applicant's Appeal**

5. The Applicant complains that the Doctor's commissions of the Ministry of Labor and Social Welfare (hereinafter: MLSW) rejected in an unlawful way "the right to pension of people with disabilities". The applicant complains although that applicant meets the requirements for such a pension, while she alleges the Supreme Court with the Judgment A. no. 29/2011, of 15 February 2011, by rejecting her claim regarding this issue, has violated her constitutional rights. as The applicant claims, "she does not have work abilities and this has proved with medical documentation."

### **Proceeding before the Court**

6. On 28 March 2012 the Constitutional Court received the Referral of Ms. Hala Krasniqi and registered it with no. KI 34/12.
7. On 29 March 2012, the President, by decision GJR 34/12, appointed judge Iliriana Islami as Judge Rapporteur. On the same day, the President, by decision KSH 34/12 appointed the members of the Review Panel, composed of judges: 1. Almiro Rodrigues (Presiding), 2. Mr. sc. Kadri Kryeziu (member) and 3. Prof. Dr. Enver Hasani (member).
8. On 17 May 2012, the Court notified the Applicant and the Supreme Court, on the registration of the Referral
9. On 2 July 2012, the President, by decision GJR 34/12, appointed judge Snezhana Botusharova as Judge Rapporteur, replacing Judge Iliriana Islami, because her mandate as Judge of the Court has expired on 26 June 2012.
10. On 3 July 2012, the Review Panel considered the Report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

11. On 20 November 2004, MLSW, respectively Department of the Pension Administration of Kosovo (hereinafter: DPAK) issued the Decision with the number of file 5014327, according to which was approved the right to disability pension to the Applicant.
12. On 28 April 2010, DPAK, by acting upon the appeal of the Applicant, issued the Decision with the file no. 5014327, by which it rejected the request of the Applicant. DPAK stated that, "there were no sufficient evidences to become the user of the disability pension and at the same time had concluded that the decision of the first instance was fair and based on the law".
13. On 31 May 2010, the Applicant filed a claim in the Supreme Court against the Decision with file no. 5014327 of DPAK.
14. On 8 September 2010, the Supreme Court, acting upon the claim filed by the Applicant for the initiation of the Administrative Conflict, issued the Judgment A.no.516/2010. It approved the claim of the applicant and annulled the Decision of the Appeals Commission of MLSW, the file no. 5014327 of 28 April 2010, due to essential violations of the provisions of Article 84.2 item c and Article 85.1 item a of the Law on Administrative Procedure.
15. On 24 November 2010, the MLSW, respectively the Appeals Commission within DPAK, issued for the second time the Decision case file no. 5014327. It rejected the appeal of the Applicant, by leaving in force the decision of the Doctor's Commission of the first instance of 28 April 2010. Against this decision, the Applicant filed a claim for initiation of the administrative conflict in the Supreme Court.
16. On 15 February 2011, the Supreme Court, issued Judgment A.no.29/2011. It stated rejecting the claim filed by the Applicant, with a justification that the doctor's commissions authorized by the law had determined that the applicant (plaintiff) did not have limited ability for work and that the administrative bodies had rightly applied the provision of the Article 3 of the Law on Administrative Conflicts.

### **Applicant's allegations**

17. The Applicant alleges that with the Judgment of Supreme Court A. no. 29/2011 of 15 February 2011, were violated her constitutional rights guaranteed by: Article 51.2 [Health and Social Protection], Chapter VII, [Justice System], Article 102 paragraph 3 [General Principles of the Judicial System], Article 22 [Direct Applicability of International Agreements and Instruments], and Article 13 of the Social Charter.

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

18. In order to be able to adjudicate the Referral of the Applicant, the Court has to assess beforehand whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.
19. From the submission, the Court notes that the decision challenged by the Applicant is the Judgment of the Supreme Court A. no.29/2011, of 15 February 2011, which was served to the Applicant on 20 May 2010. The Applicant submitted the Referral to the Court on 28 March 2012, which implies that the request was filed to the Court out of deadline of four (4) months as provided by Article 49 of the Law and the Rule 36.1 9 (b) of the Rules of Procedures.

20. Regarding this , the Court refers to Article 49 of the Law, which determines:

*Article 49 [Deadlines].*

*“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 [.. .]”*

21. The Applicant did not justify in any way the delay in submitting the Referral, hence the burden of substantiation is on the parties submitting their Referrals to the Court. Therefore the Court, pursuant to Article 49 of the Law and Rule 36.1 (b) of the Rules of Procedure, considers that the referral is out of time and as such rejects it as inadmissible,
22. It follows that, the Referral is inadmissible pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56.2 of the Rules of Procedure.

#### **FOR THESE REASONS**

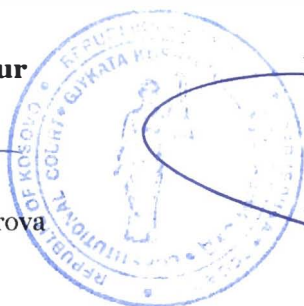
The Constitutional Court, pursuant to Article 49 of the Law on the Constitutional Court and Rule 36.1 (b) of the Rules of Procedure, on 3 July 2012, unanimously:

#### **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 on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

Snezhana Botusharova



**President of the Constitutional Court**

Prof. dr. Enver Hasani