



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

Pristine, 12 December 2011
Ref. No.: RK176/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 102/11

Applicant

Shahe Ramaj

vs

Government of the Republic of Kosovo, Ministry of Health

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

Applicant

1. The Applicant is Mrs. Shahe Ramaj residing in Terdece, Municipality of Glllogoc.

Subject matter

2. The Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 28 July 2011 complaining that the Government of the Republic of Kosovo (hereinafter: the "Government"), Ministry of Health has not promulgated the Law on Health Insurance.
3. The Applicant complains, that the Government, Ministry of Health, has violated:
 - a. Article 21.1 and 3 [General Principles] and Article 24.1 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution");
 - b. Article 29 of the Universal Declaration of Human Rights;
 - c. Article 1 [Obligation to respect human rights] and Article 14 [Prohibition of discrimination] of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter: "ECHR"); and
 - d. Article 2 of the International Covenant on Civil and Political Rights and its Protocols.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (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. On 28 July 2011, the Applicant submitted the Referral to this Court.
6. On 17 August 2011, the President, by Order No. GJR. 102/11, appointed Deputy-President Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No. KSH. 102/11, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Gjyljeta Mushkolaj.
7. On 24 October 2011, the Court communicated the Referral to the Ministry of Health, which replied on 9 November 2011 providing that the Draft Law on Health Insurance has been prepared and that the Ministry of Health is waiting only for the evaluation of the budget implications by the Ministry of Finance in order to proceed the Draft Law on Health Insurance to the Government.
8. On 29 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

9. On 28 March 2011, the Applicant filed a claim with the Municipal Court of Pristina against the Government, Ministry of Health, for not promulgating the Law on Health Insurance.
10. On 29 April 2011, the Applicant filed a request with the Municipal Court requesting it to review her claim.
11. On 24 May 2011, the Applicant filed a submission on modification of the claim with the Municipal Court.

12. On 31 May 2011, the Applicant filed a complaint with the Judicial Inspectorate of the Kosovo Judicial Council (hereinafter: the "KJC") against the Municipal Court in Pristina for failure to review and resolve her claim.
13. On 8 June 2011, the Office of the Disciplinary Counsel (hereinafter: the "ODC") of the KJC ruled that the Applicant's request is premature taking into consideration the fact that she had submitted her claim to the Municipal Court only on 28 March 2011 (ZPD/11/kb/0472).
14. On 13 June 2011, the Applicant filed a complaint against the decision of the ODC with the KJC.

Applicant's allegations

15. The Applicant alleges that:
 - a. so far she has not received any response from the KJC nor from the Municipal Court in Pristina.
 - b. the Government, respectively the Ministry of Health, has promulgated a lot of Laws, while the Law on Health Insurance has not been promulgated.
 - c. the Government, has stated that there is no budget to promulgate this Law, but this is not true. The Government has enacted a lot of laws and has allocated a budget for the construction of many social housing buildings in Kosovo, for the construction of universities in Kosovo and for the motorway in Kosovo. It has funds for everything, but not for the Law on Health Insurance.
 - d. By not promulgating this Law, the Government of Kosovo has made the biggest possible discrimination that a country could do to its citizens, especially this category.

Assessment of the admissibility of the Referral

16. The Applicant alleges that her rights guaranteed by Articles 21.1 and 3 [General Principles] and 24.1 [Equality Before the Law] of the Constitution, Article 29 of the Universal Declaration of Human Rights, Article 1 [Obligation to respect human rights] and Article 14 [Prohibition of discrimination] of ECHR and Article 2 of the International Covenant on Civil and Political Rights and its Protocols have been violated by the Government, Ministry of Health, by not promulgating the Law on Health Insurance. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether she has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In this respect, the Court refers to Article 113.1 of the Constitution which provides:

"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".

and Article 113.7 of the Constitution:

"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."

18. Accordingly, the Court emphasizes that the Constitution does not provide for an “actio popularis”, i.e. individuals cannot complain in the abstract about legislation or governmental acts which have not been applied to them personally through a measure of implementation.
19. From the submitted documents, the Court notes that she has not substantiated that a public authority has violated any of her individual rights and freedoms guaranteed by the Constitution, as required by Article 113.7 of the Constitution.
20. Accordingly, the Applicants’ Referral must be rejected as inadmissible.

FOR THESE REASONS

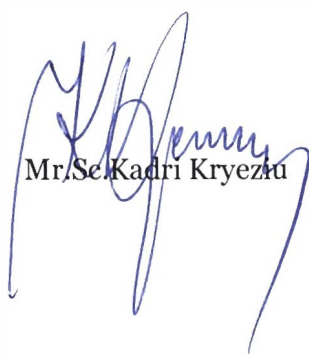
The Constitutional Court, pursuant to Articles 113.1 and 113.7 of the Constitution, Article 47 of the Law, and Rule 56 (2) of the Rules of Procedure, on 29 November 2011, unanimously

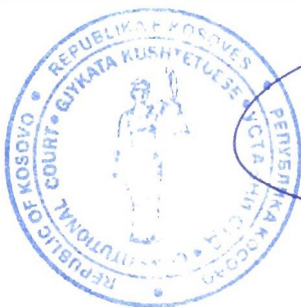
DECIDES

- 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; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Mr. Sc. Kadri Kryeziu




Prof. Dr. Enver Hasani