



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

Prishtina, 15 July 2013
Ref. no.:RK453/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI-26/13

Applicant

Vahide Bajrami

Constitutional Review of the Judgment of the Supreme Court of Kosovo
A. no. 1107/2012 dated 05 November 2012

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 Applicant is Vahide Bajrami from the village Dumnica e Poshtme, Municipality of Vushtrri.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, A. no. 1107/2012 dated 05 November 2012.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo, A. no. 1107/2012 dated 05 November 2012, which rejected the request of the Applicant that the right to pension of disability to be recognized.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: Law), and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Court

5. On 4 March 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 29 March 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that a procedure on constitutional review of decisions on the case no. KI-26-13 has been initiated.
7. On 17 June 2013, after the review of the report of the Judge Rapporteur Ivan Čukalović, the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Enver Hasani, recommended to the full Court the inadmissibility of the Referral.

Summary of facts

8. The Applicant was by the Ministry of Labour and Social Welfare (hereinafter: MLSW) - Department of pension administration of Kosovo (hereinafter: DPAK) recognized her right to a disability pension for a period of five years, from 2004 to 2009, which was further extended for three years, from 2009 to 2012.
9. In 2012, following the end of the three-year period of entitlement of a disability pension, the Applicant was invited again for an assessment by the Medical Commission of the MLSW-DPAK.
10. On 17 May 2012, following the assessment of the Medical Commission, the MLSW-DPAK, by decision no. 5010360, rejected the request of the Applicant to be granted the continued right to a disability pension.
11. On 29 June 2012, the Applicant filed a complaint against the decision of the MLSW-DPAK, no. 5010360, of 17 May 2012.

12. On 14 August 2013, the Appeals Panel for Disability Pensions of MLSW-DPAK rejected the request of the Applicant to be recognized the right to a disability pension, and upheld the decision of the MLSW-DPAK, no. 5010360 dated 17 May 2012.
13. On 27 September 2012, against the decision of the Appeals Panel for Disability Pensions of MLSW-DPAK in case no. 5010360 of 14 August 2012, the Applicant filed a claim with the Supreme Court of Kosovo.
14. On 05 November 2012, by Judgment (Ac. no. 1107/2012) the Supreme Court of Kosovo rejected the claim of the Applicant with the following reasoning:

“Pursuant to the mentioned provision [Article 3.2 of Law no.2003/23 on Disability Pensions (LDP)] during the procedure of rendering the challenged resolution, evaluations and opinions of competent committees have been acquired. Those committees comprised of specialist doctors of respective fields, after evaluating the medical documentation and results of the direct review by the first instance committee, found that the claimant is not totally and permanently disabled.”

“The committees’ opinions are clear and properly reasoned and present sufficient ground for rendering the challenged resolution, whereas the statement of claim does not manage to put them in doubt.”

“Considering that the legally authorized committees have found that the claimant is not totally and permanently disabled, that the first instance body and the respondent, during the procedure preceding the rendering of the challenged resolution respected the provisions of the administrative procedure, the Court found that the respondent, by rejecting the claimant’s claim, correctly implemented the substantive right when it found that the claimant does not meet the criteria envisaged in Article 3 of the LDP, on benefiting from the right to a disability pension.”

Applicant’s allegations

15. The Applicant claims that by Judgment of the Supreme Court A. no. 1107/2012, dated 05 November 2012, the following articles of the Constitution of Kosovo are violated: Article 51 [Health and Social Protection], Article 1 [Definition of state], Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights], and the following articles of the European Convention on Human Freedoms: Article 1 [Obligation to Respect Human Rights], Article 6 [Right to Fair Trial] and Article 13 [Right to Effective Remedy].
16. The Applicant also demands from the Constitutional Court that;

“... through this referral I refer to the Constitutional Court to consider all presented facts and to declare the Supreme Court Judgment A.no. 1107/2012 unlawful and to return it for reconsideration...”

17. Finally, the Applicant proposes the Constitutional Court to:

“... Due to the closed session held by the Supreme Court, my right was not defended by anyone, therefore in this case I consider all legal remedies have been used to exercise my right and I believe that there is a ground that my case to be considered by the Constitutional Court...”

Relevant legal provisions valid at the time of the judgment of the Supreme Court

18. Law on Administrative Disputes no. 537,
Article 34. (1) provides:

“Administrative disputes are to be decided by the court in a session without the presence of the public.”

Assessment of admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, it is necessary to first 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.

20. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

„In his/her referral, the Applicant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.“

21. The Applicant does not provide the precise date of receipt of the Decision of the Supreme Court A.No.1107/2012 of 05 November 2012, but from the case files, it may be seen that the referral of the Applicant was filed with the Constitutional Court on 04 March 2013, while the final decision on this case is the decision of the Supreme Court of Kosovo, A.No.1107/2012 of 05 November 2012. Hence, the Court finds that the Referral was duly filed in compliance with Article 49 of the Law.
22. According to the Constitution, the Constitutional Court is not a court of appeal, when reviewing the decisions rendered by regular courts. It is the role of regular courts to interpret the law and apply pertinent rules of procedure and material law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court for Human Rights [ECHR] 1999-I).

23. The Applicant alleges that her rights were violated “*due to the closed session held by the Supreme Court, my right was not defended by anyone.*”
24. The legal provisions cited above of the Law on Administrative Disputes no. 537, which was the applicable law at the time of the contested judgment of the Supreme Court, clearly shows that the Supreme Court decides on administrative disputes in a session without the presence of the public.
25. In this case, the Applicant was provided with numerous opportunities to present her case and challenge the interpretation of law which she considers to be erroneous, before the Medical Commissions of first and second instance, the MCYS-DPAK and the Supreme Court of Kosovo. Upon review of the proceedings in their entirety, the Constitutional Court could not find that the respective proceedings were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, Decision of the ECtHR on admissibility of application, no. 17064/06 of 30 June 2009).
26. The Applicant has not provided any *prima facie* evidence to prove any violation of her constitutional rights (see, Vanek V. Slovak Republic, Decision of the ECtHR on admissibility of application, no. 53363/99 of 31 May 2005). The Applicant does not indicate in which manner in which the Article 24 of the Constitution and the Article 6 [ECHR] support her Referral, as provided by Article 113.7 of the Constitution and Article 48 of the Law.
27. Finally, the Court finds that the admissibility requirements were not met in this Referral. The Applicant did not manage to support by evidence that her constitutional rights and freedoms were violated by the challenged decision.
28. In consequence, the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure, which provides that “*The Court shall reject a Referral as being manifestly ill-founded when it concludes that b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights*”.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Article 36 (2.b) of the Rules of Procedure, in the session held on 15 July 2013, unanimously

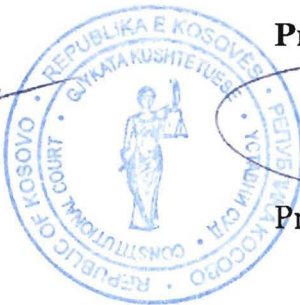
DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Resolution to the Parties;
- III. TO PUBLISH this Resolution in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and
- IV. TO DECLARE this Resolution effective immediately.

Judge Rapporteur



Ivan Čukalović



President of the Constitutional Court



Prof. Dr. Enver Hasani