



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

Prishtina, 10 July 2017
Ref. No.:RK 1100/17

RESOLUTION ON INADMISSIBILITY

in

Case no. KI38/17

Applicant

Meleq Ymeri

**Constitutional Review of Decisions No. 202108, of the Ministry of Labor
and Social Welfare, Pension Department, of 3 June and 18
November 2016**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Meleq Ymeri (hereinafter: the Applicant), from the village Kuk, Municipality of Dragash.

Challenged decision

2. The Applicant challenges two Decisions under the same number, namely No. 202108, of the Ministry of Labor and Social Welfare, Pension Department (hereinafter: the MLSW), of 3 June and of 18 November 2016 of its Appeals Council (hereinafter: the challenged decisions). The last decision of the Ministry in question was served on the Applicant on 12 February 2017.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decisions, which allegedly have violated the Applicant's constitutional rights safeguarded by Article 47 [Right to Education] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 7 April 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 April 2017, the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 7 April 2017, the Court notified the Applicant about the registration of the Referral and requested him to fill in the referral form, attaching to it as well the supporting documentation.
8. On 18 April 2017, the Applicant submitted to the Court a completed referral form, together with the supporting documentation.
9. On 2 June 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral due to the non- exhaustion of effective legal remedies.

Summary of facts

10. On 26 January 2016, the Applicant submitted a request to the MLSW for the recognition of an age contribution-payer pension.

11. On 3 June 2016, the MLSW approved the Applicant's request for recognition of the right to an age contribution-payer pension at the amount of 172 euro, and categorized him in the second category of the pension scheme.
12. On 17 August 2016, the Applicant appealed to the MLSW Appeals Council against this Decision.
13. On 18 November 2016, the MLSW Appeals Council rejected the Applicant's appeal and upheld the Decision of 3 June 2016 of the MLSW.

Applicant's allegations

14. The Applicant alleges that the MLSW and its Appeals Council, in a selective and discriminatory manner, have categorized the beneficiaries of the pension schemes. Namely, based on Article 5 of the Administrative Instruction No. 09/2015, they did not provide the right to benefit from an age contribution-payer pension to university graduates who graduated after 1 January 1991. As a result of this categorization, the Applicant alleges that his right to education and the right to work and exercise profession have been violated.

Admissibility of Referral

15. The Court first will examine whether the Applicant has met the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
16. The Applicant, in the present case, is an individual who bases his Referral on Article 113.7 of the Constitution.
17. In this respect, the Court refers to Article 113, paragraph (7), which establishes:

"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. In addition, the Court refers to Article 47 [Individual Requests] of the Law, which stipulates that:

*"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.
2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
19. The Court also takes into account Rule 36 [Admissibility Criteria], under Rule (1) letter (b) of the Rules of Procedure, which provides:

*"(1) The Court may consider a referral if:
[...]"*

b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted; [...]"

20. From the case file the Court notes that the Applicant challenges the decision of the MLSW of 3 June 2016 and of its Appeals Council of 18 November 2016.
21. The Court notes that the Applicant as an individual is an authorized party to submit the Referral against two decisions being of a public authority and alleging violation of his constitutional rights.
22. The Court considers that as far as the constitutional requirement for exhaustion of all legal remedies provided by law are concerned, the Applicant has not addressed the Basic Court regarding the alleged violations of his rights, as stipulated by the legal advice of the Decision of the MLSW Appeals Council of 18 November 2016 as he should have done.
23. The MLSW Appeals Council explicitly advised in its decision that *"The unsatisfied party, within 30 days of service of this decision may file a lawsuit with the Department of Administrative Matters of the Basic Court of Prishtina"*.
24. It stems from the submitted documents that the Applicant had not used this legal possibility and thus waved his right to file a suite before the respective Court.
25. The Court reiterates that the rationale of the exhaustion rule of legal remedies is to afford competent authorities, including the courts, the opportunity to prevent or remedy an alleged violation of the Constitution. The rule is based on the assumption that Kosovo legal order provides an effective remedy for violations of constitutional rights. This is an important aspect of the subsidiary character of the Constitution Court and its jurisdiction (See: Resolution on Inadmissibility, KI142/13, *Fadil Maloku*, of 22 October 2014, Constitutional Review of the Decision of the President of the Republic of Kosovo, no. 686-2013, of 6 September 2013).
26. The Court finds for the reasons above that the Referral does not meet the procedural admissibility requirements stipulated by Article 113.7 of the Constitution, Art. 47 of the Law and Rule 36(1) (b) of the Rules of Procedure, and is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 36 (1) (b) and 56 (2) of the Rules of Procedure, on 2 June 2017, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. This Decision effective immediately;

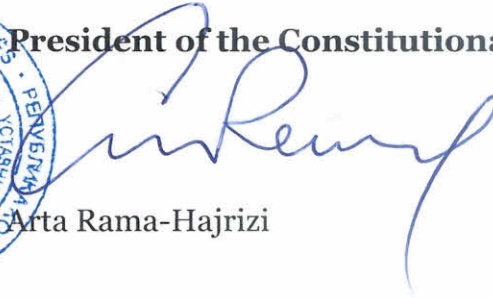
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi