



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

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Prishtina, on 12 July 2012  
Ref. No.: RK/273/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI39/12**

Applicant

**Selver Dërmaku**

**Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 693/2011 dated 23 September 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 Mr. Selver Dërmaku, with permanent residence in Prishtina.

#### **Challenged decision**

2. The challenged decision of the public authority by which are alleged violations of the rights, guaranteed by the Constitution of the Republic of Kosovo (hereinafter “the Constitution”) is the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 693/2011 dated 23 September 2011 (hereinafter “the Supreme Court”), which was served on the Applicant on 1 October 2011.

#### **Subject matter**

3. The subject matter of the case /Referral filed on 13 April 2012 in the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) is the constitutional review of the Judgment of the Supreme Court A. no. 693/2011 dated 23 September 2011, that has to do with the right to disability pension.

## **Legal basis**

4. Article 113.7 of the Constitution, Article 47 of the Law Nr. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, entered into force on 15 January 2009 (hereinafter: the "Law") and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Applicant's Appeal**

5. The Applicant appeals that the Doctor's commissions of the Ministry of Labor and Social Welfare (hereinafter the MLSW) rejected in an unlawful way "the right to disability pension" although the same alleges that he meets the requirements for such a pension, while the Supreme Court with the Judgment A. no. 693/2011 dated 23 September 2011, by rejecting his claim regarding this issue alleges that it violated his constitutional rights.

## **Proceeding before the Court**

6. On 13 April 2012, the Constitutional Court received the Referral, submitted by Mr. Selver Dërmaku and registered it with no. KI 39/12.
7. On 23 April 2012, the President by the decision GJR 39/12 appointed the judge Dr. Gjyljeta Mushkolaj as Judge Rapporteur. On the same day, the President by decision KSH. 39/12, appointed the members of the Review Panel, consisting of judges: 1. Snezhana Botusharova (presiding), 2. Ivan Čukalović (member) and 3. Dr. Iliriana Islami (member).
8. On 29 May 2012, the Court notified the Applicant and the Supreme Court too, about the registration of the Referral.
9. On 2 July 2012, the President by the decision GJR 39/12 appointed the judge Robert Carolan as Judge Rapporteur replacing Judge Gjyljeta Mushkolaj because her mandate on the Court had expired on 26 June 2012. On the same day, the President by decision KSH. 39/12, appointed the members of the Review Panel, consisting of judges: 1. Altay Suroy (presiding), replacing Judge Iliriana Islami because also her mandate on the Court had expired on 26 June 2012, 2. Snezhana Botusharova (member) and 3. Ivan Čukalović (member).
10. On 10 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. The Applicant was the beneficiary of disability pension from 23 July 1983, categorized with first level of disability. This right was recognized to him by the BVI Disability Pension Insurance in Kosovo, respectively PROF-SERV-I. no. 28043.
12. On 1 January 2004, MLSW, respectively the Department of Pension Administration of the Republic of Kosovo ((hereinafter: DPAK) based on the documentation and evidences provided by the Applicant, recognized the right to benefit disability pension due to the fact that the Applicant met the requirements according to the Law 2003/23 on Disability Pensions.

13. On 13 April 2007, DPAK, based on the assessment of the Doctor's Commission, issued Decision no. 5001462, on which occasion it rejected the Applicant's request for extension of the right to the benefit of disability pension. The Applicant filed an appeal against this decision to the DPAK Appeals Commission.
14. On 30 July 2007, DPAK, respectively the Appeals Commission, by the Decision no. 5001462, approved the request submitted by the Applicant and recognized again the right to benefit of the disability pension.
15. On 1 October 2008, DPAK, since the Doctor's Commission assessed that the Applicant still meets requirements to benefit disability pension, pursuant to Article 3 of the Law 2003/23, issued decision no. 5001462 and decided that the right to benefit of disability pension is extended to the Applicant for another three (3) years, by leaving open a possibility that after the expiration of three-year time limit, the Applicant, becomes subject of review and reevaluation of the condition, which has to do with the right to benefit the disability pension, starting from the date of obtaining this right.
16. On 16 March 2011, DPAK by Decision no. 5001462, based on the evaluation of the Doctor's Commission, rejected Applicant's request for further extension of the benefit of disability pension, with a justification that, "there is no complete and permanent disability of the same". The Applicant filed an appeal against this decision to the Appeals Commission within DPAK.
17. On 6 May 2011, DPAK, based on the reassessment of the Appeals Commission, issued Decision no. 5001462 and decided to leave in force the decision of the Doctor's Commission, by rejecting the Applicant's right to a benefit disability pension. The Appeals Commission considered the Decision of the Doctor's Commission as fully grounded and in compliance with the Law 2003/23 on Disability Pensions, due to the fact that this commission assessed that the Applicant no longer meets the requirements to a benefit disability pension, as defined by Article 3 of the Law no. 2003/23. Dissatisfied with the decision of the administrative body of second instance, the Applicant filed a claim for initiation of the Administrative Conflict in the Supreme Court.
18. On 23 September 2011, the Supreme Court, acting upon the claim filed by the Applicant for initiation of Administrative Conflict, rendered the Judgment A.no.639/2011, rejecting the claim filed against MLSW, respectively of DPAK with no. of file 5001462, dated 6 May 2011. The Supreme Court concluded that the administrative bodies had applied the provision of the Article 3 of the Law 2003/23 on Disability Pensions, because the Commission confirmed that the Applicant did not continue to meet the legal requirements for recognition of the right to the disability pension.

### **Applicant's allegations**

19. The Applicant alleges that the Judgment of Supreme Court A. no. 29/2011 of 15 February 2011, by rejecting finally the right to recognition of the status of person with disabilities, has violated his 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 [Social Charter].

## Assessment of admissibility of the Referral

20. In order to be able to adjudicate the Referral of the Applicant, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, as are further specified in the Law and the Rules of Procedure of the Court.
21. The Court observes that the challenged decision of the Supreme Court of the Republic of Kosovo is the Judgment A. no.639/2011 dated 23 September 2011, which was served on the Applicant on 1 October 2011. The Applicant submitted the Referral to the Court on 13 April 2012, which implies that the Referral was submitted to the Court out of the four (4) month deadline as foreseen by Article 49 of the Law and the Rule 36.1 (b) of the Rules of Procedures, because the Referral should have been submitted to the Court not later than 1<sup>st</sup> February 2012.
22. 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 [.. .]”*

23. Applicant did not justify in any way the delay in submitting the Referral. Hence, the burden of proof is on the Applicant that submitted their Referral with the Court. Therefore, from this point of view, the Court should consider the Referral as one that is filed beyond the time limit authorized by law. It is, therefore, inadmissible. .
24. 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 10 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**

  
Robert Carolan

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani