



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

Prishtina, on 24 October 2016
Ref. No.:RK977/16

RESOLUTION ON INADMISSIBILITY

in

Case KO95/16

Applicant

Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo

Review of “*legality and constitutionality*” of paragraphs 2 and 3 of Article 4 of Administrative Instruction No. 07/2015 of the Ministry of Labor and Social Welfare, of 31 December 2015

THE 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 Gërzhaliu-Krasniqi
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by 11 deputies of the Assembly of the Republic of Kosovo, namely by Mr. Slavko Simić, Mr. Nenad Rašić, Mr. Slobodan Petrović, Ms. Milka Vuletić, Mr. Adem Hodža, Mr. Saša Milosavljević, Ms. Jelena Bontić, Ms. Milena Milićević, Ms. Jasmina Živković, Mr. Bojan Mitić and Ms. Srđan Popović.

Challenged act

2. The Applicants challenge the “*legality and constitutionality*” of paragraphs 2 and 3 of Article 4 of the Administrative Instruction (No. 07/2015, of 31 December 2015) issued by the Minister of the Ministry of Labor and Social Welfare (hereinafter: the Administrative Instruction).

Subject matter

3. The subject matter is the Applicants’ request for assessment of the “*legality and constitutionality*” of paragraphs 2 and 3 of Article 4 of the Administrative Instruction which allegedly is in violation of Article 3 [Equality Before the Law]; Article 4 [Form of Government and Separation of Power]; Article 7 [Values]; and Article 51 [Health and Social Protection] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The Applicants also allege that paragraphs 2 and 3 of Article 4 of the Administrative Instruction are in violation of Articles 1, 2, 3 and 7 of Law No. 04/L-131 on Pension Schemes Financed by the State.

Legal basis

5. The Referral is based on Article 113.5 of the Constitution, Articles 42 and 43 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules).

Proceedings before the Constitutional Court

6. On 20 June 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On the same date, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova (member) and Gresa Caka-Nimani (member).
8. On 29 June 2016, the Court informed the Applicants about the registration of the Referral.
9. On the same date, the Court sent a copy of the Referral to the President of the Republic of Kosovo, the President of the Assembly of the Republic of Kosovo, Prime Minister of the Republic of Kosovo and the Ombudsperson. The Court invited them to submit their comments regarding the Referral until 8 July 2016.
10. On the same date, the Court further sent a copy of the Referral to the Minister of the Ministry of Labor and Social Welfare (hereinafter: Minister of MLSW) and requested additional information regarding the date of adoption and entry

into force of the Administrative Instruction. The Court invited him to submit the required information and comments about the Referral until 8 July 2016.

11. On 7 July 2016, Minister of MLSW submitted a request for extension of the deadline for submitting the required information and comments regarding the Referral.
12. On 8 July 2016, the Court informed the Minister of MLSW about the approval of the request for the extension of the deadline. On the same date, the Court notified the Applicant, the President of the Republic of Kosovo, the President of the Assembly of the Republic of Kosovo, Prime Minister of the Republic of Kosovo and the Ombudsperson that the new deadline for submitting the comments regarding the referral is 18 July 2016.
13. On 18 July 2016, Minister of MLSW submitted the required information to the Court as well as his comments regarding the Referral. Within the time specified, the Court did not receive any other comment.
14. On 21 July 2016, the Court sent to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of the Republic of Kosovo, Prime Minister of the Republic of Kosovo and the Ombudsperson a copy of the comments received by the Minister of MLSW. On this occasion, the Court invited them to submit their comments within a period of seven (7) days of receipt of the notification letter.
15. On 27 July 2016, the Court received several comments from the Applicants as a response to the comments submitted by the Minister of MLSW.
16. On 29 July 2016, the Court sent to the Minister of MLSW, the President of the Republic of Kosovo, the President of the Assembly of the Republic of Kosovo, Prime Minister of the Republic of Kosovo and the Ombudsperson a copy of the comments received from the Applicants. On this occasion, the Court informed them that these comments are sent only for their information.
17. On 13 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

18. In 2014, the Assembly of the Republic of Kosovo adopted Law No. 04/L-131 on the Pension Schemes Financed by the State.
19. On 5 June 2014, the aforementioned law was published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after the date of publication.
20. On 31 December 2015, pursuant to the aforementioned Law, the Minister of MLSW issued Administrative Instruction Nr. 07/2015 [the challenged act]. The latter entered into force seven (7) days after its signing. Through this

Administrative Instruction was defined and regulated the administrative procedure for the implementation of the recognition of the right to basic age pension, early pension and family pension.

Arguments submitted by the Applicants

21. The Applicants allege that paragraphs 2 and 3 of Article 4 of the Administrative Instruction, namely the challenged act, are in violation of Articles 3, 4, 7 and 51 of the Constitution and Articles 1, 2, 3 and 7 of Law no. 04/L-131 on Pension Schemes Financed by the State.
22. According to the Applicants:

*“The Law No.04/L-131, on pension schemes financed by the state [...] provides the definition of the basic age-related pension, and the conditions that a person must meet to qualify for this pension, as well as the list of documents that must be submitted to the competent authority. [...] the sublegal acts, and administrative instructions issued by the competent authorities and ministries, can only be for the purpose of clarification, processing and specification of the legal provisions. However, by Article 4, paragraph 2 and 3 of the Administrative Instruction on applying and complaining procedures on state-funded pension schemes [...] issued by the Ministry of Labour and Social Welfare was done something much more, and it should not happen in the regulated legal systems – by the challenged provisions of the abovementioned Administrative Instruction, **the Law has been changed**. This is because the Law on pension schemes financed by the state, in Article 7 sets the conditions and criteria for recognition of the right to basic age pension and the documents to be submitted to the competent authority to exercise the same right. By challenged paragraphs of Article 4 of the abovementioned Administrative Instruction, the list of required documents is expanded, in violation of the law, the additional documents to be submitted are emphasized so that the pension administration officer is given the freedom to decide at his discretion, whether to request the Applicant any other document, which opens the way to arbitrariness and different abuse in the practice of implementing the challenged instruction.”*

The relief sought by the Applicants

23. The Applicants request the Court to render a Judgment by which to:

“Hold that the provisions of Article 4 paragraphs 2 and 3 of Administrative Instruction No. 07/2015 for the Procedures of Applying and Complaining on State-Funded Pension Schemes, issued by the Ministry of Labour and Social Welfare are not in compliance with the provisions of Articles 3, 4, 7 and 51 of the Constitution of the Republic of Kosovo, and the aforementioned provisions of the Administrative Instruction are in violation of Articles 1, 2, 3 and 7 of the Law no. 04/L-131 on Pension Schemes Financed by the State.”

Comments received regarding Referral KO95/15

24. Minister of MLSW submitted these comments regarding the Applicants' Referral, where *inter alia* it was stated:

"[...] Article 113.5 [...] of the Constitution of the Republic of Kosovo was not used by the authorized party within the set deadline of eight (8) days, because the Administrative Instruction no. 07/2015 was issued on 31 December 2015 and entered into force [...] on 08 January 2016; therefore, based on this Article, the time limit for taking actions for challenging the constitutionality has expired [...].

The Ministry of Labour and Social Welfare emphasizes that Administration Instruction No. 07/2015 was issued in compliance with the relevant laws applicable in the Republic of Kosovo and simultaneously considers that the articles of this Instruction are in compliance with the Constitution of the Republic of Kosovo [...]."

25. The Applicants submitted these comments as a response to the comments submitted by the Minister of MLSW:

"[...] The submitter of the proposal [the Applicants] recalls that Article 113 paragraph 5 of the Constitution of the Republic of Kosovo provided a deadline of 8 days to challenge the constitutionality and legality of any law adopted by the Assembly. However, the submitter of the proposal recalls that the present case is not about challenging the constitutionality of a law adopted by the Assembly of Kosovo, but it is about challenging the Administrative Instruction [...]. Therefore, as this case is not about the constitutional review of a law, but about the assessment of the constitutionality and legality of the Administrative Instruction, the submitter of the proposal considers that there is a basis and that it is justifiable that the deadline provided by the Constitution of the Republic of Kosovo Article 113, paragraph 5 does not apply in this case [...]."

Admissibility of the Referral

26. The Court first examines whether the Referral has met the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.

27. 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."

28. The Court further refers to Article 113.5 of the Constitution, as the Applicants have submitted their Referral based on this constitutional provision. The latter specifies:

“Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.”

29. In this regard, the Court notes that Article 113.5 contains several requirements that must be met in order for the Applicants to be considered as an authorized party before this Court.
30. In this respect, it is quite clear that the Referral must be submitted by *“ten (10) or more deputies of the Assembly of Kosovo”*, and that this Referral must be submitted *within eight (8) days from the date of adoption* of the challenged act, and that the act must necessarily be a law or a decision adopted by the Assembly.
31. In the present case, the Court notes that the Applicants request the assessment of the *“constitutionality and legality”* of paragraphs 2 and 3 of Article 4 of the Administrative Instruction issued by the Minister of MLSW.
32. In this regard, the Court notes that the constitutional obligation regarding the legal nature of the act that may be challenged under Article 113.5, has not been met since the Applicants do not challenge any *“law”* or any *“decision adopted by the Assembly.”*
33. The Court notes that the Applicants challenge the provisions of an administrative act that was issued by the Minister of MLSW, and not by the Assembly, and they are not authorized to challenge it under Article 113.5 of the Constitution. Accordingly, the Court notes that the second condition required by Article 113.5 of the Constitution has not been met.
34. In the light of the foregoing facts, The Court concludes that the Applicants are not authorized parties to refer the matter in accordance with Article 113.5 of the Constitution. They meet the first requirement by the fact that the Referral was submitted by a sufficient number of deputies; however, they do not meet the second requirement as they do not challenge any law or decision adopted by the Assembly.
35. Consequently, the Court also refers to Rule 36 (1) (a) of the Rules of Procedure, which establishes:

“(1) The Court may consider a referral if:

(a) the referral is filed by an authorized party, [...]”

36. As mentioned above, the Referral is not submitted by an authorized party and accordingly the Court cannot consider the merits of the Applicants' Referral.
37. Referring to its own case law regarding the cases filed by the deputies of the Assembly of Kosovo in accordance with Article 113.5 of the Constitution, the Court notes that differently from the Applicants of this case, in other cases, the

Applicants challenged a legal act which was either a *law* or a *decision of the Assembly*, therefore, in those cases was met a requirement of the **authorized party** to file a referral with the Constitutional Court (see cases of the Constitutional Court: KO29/11 – Applicants *Sabri Hamiti and other deputies*, Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011, Judgment of 30 March 2011; KO05/12 – Applicants *Visar Ymeri and twelve other deputies*, Concerning the constitutionality of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-279, dated 20 January 2012., Judgment of 19 March 2012; KO45/12 and KO46/12 - Applicants *Liburn Aliu and 11 other deputies*, Constitutional review of the Law on the Village of Hoce e Madhe and the Law on the Historic Centre of Prizren, Judgment of 25 June 2012; KO63/12 - Applicants *Alma Lama and 10 other deputies*, Constitutional review of Articles 37, 38 and 39 of the Criminal Code No. 04/L-82 of the Republic of Kosovo, Resolution on Admissibility and Adjourning of 29 October 2012).

38. In sum, in accordance with Article 113.5 of the Constitution and Rule 36 (1) (a) of the Rules of Procedure, the Court concludes that the Applicants' Referral is to be declared inadmissible because they are not an authorized party to request the constitutional review of the challenged act.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113,5 of the Constitution and Rule 36 (1) (a) of the Rules of Procedure, on 13 September 2016, 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 paragraph 4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

Selvete Gërxhaliu-Krasniqi



President of the Constitutional Court



Arta Rama-Hajrizi