



REPUBLIKA E KOSOVËS
Republika Kosova-Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
Adresa: Perandori Justinian, PN, Prishtinë
T: +381 (0)38 220 104; F: +381 (0)38 220 112; www.gjk-ks.org

Prishtina, date: 25 January 2010
Ref.: Nr. RK-03/10

DECISION

Case No. 10/09

The Constitutional Court of the Republic of Kosovo, acting through the Review Panel composed of

Mr. Almiro Rodrigues, Presiding Judge, and
Mrs. Snezhana Botusharova, Judge and
Mrs. Gjylieta Mushkolaj, Judge,

With the minute taker, Mr. Naser Hasani, head of the registration, statistics and archives within the Secretariat of the Court and Mr. Robert Carolan, judge rapporteur, in the meeting held 24 November 2009 took into consideration Application No. 10/09 filed with the Court on 09 March 2009, where the

Applicant is

Avdullah Beqiri
Lagjja e Vreshtave
Str. E Ulqinit n.n. Prishtina
Tel.: 038 254 352
044 836 541

And the OPPOSING PARTY is
Ministry of Labour and Social Welfare

I. Subject Matter

On *26 November 2004* the Ministry of Labor and Social Welfare (MLSW) initially approved Applicant's application for disability benefits retroactive to 1 January 2004 at the rate of 40 Euros per month. That decision informed the Applicant that it would be reviewed after five years. Then in a decision dated *13 December 2006 (No. 5016335)* the Ministry of Labour and Social Welfare annulled Applicant's pension benefits because the MLSW found that Applicant's physical, sensory and mental condition did not qualify him for a disability pension. Applicant then appealed this decision. On *13 February 2007* this decision was upheld by the Appeals Council on Disability Pension within the Ministry of Labour and Social Welfare pursuant to **Article 10 of the Law Nr. 2000/23 on Disability Pensions** in Kosovo. Applicant then appealed this adverse decision to the Supreme Court of Kosovo. On *24*

December 2007 the Supreme Court of Kosovo decided that Applicant's appeal and lawsuit was unfounded based upon a finding that Applicant did not fulfill the criteria of **Article 3 of UNMIK Regulation No. 2003/40** dated 27 October 2004 of the **Law on Disability Pensions** and on the opinion of the Doctor's Council of the first instance body, dated 08 November 2004 which concluded that Applicant did not have a permanent disability. In *Judgment No. 1561/2007* the Supreme Court of Kosovo specifically concluded that the administrative bodies correctly applied the provisions of **Article 3 of UNMIK Regulation No. 2003/40**.

Article 3 of UNMIK Regulation No. 2003/40 requires an applicant for disability payments to prove:

- (1) whether they can or cannot be employed in any capacity given the total circumstances of their disease or disability;
- (2) whether the applicant has been completely disabled for one year or more during which time the applicant was medically incapable of employment for remuneration; and,
- (3) a prognosis of the permanence of the disability.

Article 1.5 of this Regulation defines a permanent and total disability as:

".....medically diagnosed physical, sensory or mental condition, disease or disability rendering him or her incapable of any work for remuneration and where the Ministry has assessed the person and subsequently decides that they fulfill the medical criteria set out in this Law."

The applicant, Avdullah Beqiri, has submitted some of his medical records. Those records reflect that he suffers from coronary heart disease and that he has been treated for that disease. The treatment has included a successful coronary bypass surgery. None of those records suggests that the applicant, Avdullah Beqiri, cannot work for remuneration nor do they suggest that he was not medically able to work for remuneration for a year or more. None of those medical records suggest that he has a permanent disability.

II. Allegations of the Applicant

Applicant alleges that the decision of the Ministry of Labour and Social Welfare and the Judgment of the Supreme Court of Kosovo violates the **Constitution of the Republic of Kosovo**. He does not describe what specific provisions of the **Constitution** are violated.

III. Response of Opposing Party or Other Interested Parties

Neither the Ministry of Labour and Social Welfare nor the Supreme Court of Kosovo filed a formal response.

The government authorities and the Supreme Court appear to believe that:

- (1) the Applicant has not proven that he is disabled as that term is defined by applicable law; and,
- (2) that he was given a fair and thorough opportunity to present his claim and a fair opportunity to appeal and litigate his appeal from the adverse decision of the Ministry of Labour and Social Welfare.

After having heard the judge rapporteur, Mr. Robert Carolan, and the positions of the parties as described in the documents in the court file with respect to the referral and after having discussed the matter in its entirety in the deliberations held on 24 November 2009 the Court finds and concludes what follows.

Assessment of the Admissibility of the Referral

Article 51 of the Constitution provides:

1. "Healthcare and social insurance are regulated by law."
2. "Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law."

Article 54 of the Constitution provides:

"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."

The Applicant, Avdullah Beqiri, appears to rely upon the above-referenced provisions of the Constitution in support of his claim although he does not specifically state what provisions of the Constitution support his claim.

It appears that the Applicant has exhausted all of his remedies provided by law which is a pre-condition to his having a right to make an admissible referral to this Court. See **Section 7 of Article 113** of the **Constitution of the Republic of Kosovo**.

The Applicant's grievance is limited to his disagreement with the conclusions the administrative agencies made about the facts of his individual claim and his speculation that those agencies did not appropriately consider all relevant evidence in evaluating his claim suggesting that he believes that he did not receive an effective legal remedy for his right to disability insurance as regulated by law. See **Articles 51 and 54 of the Constitution of the Republic of Kosovo**.

The Applicant received a complete and fair administrative hearing as well as a fair and complete administrative appeal of that decision. The Supreme Court thoroughly reviewed Applicant's complaint and accurately assessed his appeal and properly concluded that the applicable law on disability claims was applied in his case and that he was afforded a complete and thorough hearing with respect to his claims. *Therefore, Applicant's referral is not admissible and it should be denied.*

Assessment of the Substantive Legal Aspects of the Referral

There is no substantive legal basis for the Applicant's referral because he was allowed a thorough, complete and fair hearing of his claim pursuant to the applicable law relating to disability claims. *Therefore, the Applicant's referral should be denied.*

**FOR THESE REASONS THE COURT RENDERED ITS DECISION AND
RESOLVED:**

- I. To declare as inadmissible the application regarding the Applicant's claim for disability benefits from 1 January 2004 through the present time and
- II. To notify the applicant, Mr. Avdullah Beqiri, the opposing party, the Ministry of Labour and Social Welfare, and for informational purposes, the Supreme Court of Kosovo.
- III. This decision enters into force and effect immediately.

Robert Carolan
Judge Rapporteur



Enver Hasani
President of the Court

