



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

Pristina 08. July .2011,
Ref.No..126/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 41/11

Applicant

Shefki Gjergji

**Constitutional review of the Judgment of the Supreme Court of Kosovo
A No. 274/2010 of 22 September 2010**

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
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The applicant is Shefki Gjergji from Obranqa village, Podujevo municipality.

Challenged decision

2. The applicant challenges the Judgment of the Supreme Court of Kosovo 274/2010 dated 22 September 2010, by which was rejected his complaint on the decision of the Ministry of Labor and Social Welfare of Kosovo - Pension Administration Department No. 50040570 dated 20 November 2009.

Subject matter

3. The applicant challenges the Judgment of the Supreme Court of Kosovo 274/2010 dated 22 September 2010 as being, allegedly, in violation of Article 49 of the Constitution of the Republic of Kosovo.

Legal basis

4. Articles 113.7 and 21.4 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 16 December 2008. (hereafter: the „Law“) and Rule 56 Paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereafter: „Rules of Procedure“).

Proceedings before the Court

5. On 21 March 2011 the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereafter: the „Court“).
6. On 23 March 2011, the Constitutional Court communicated the Referral to the Supreme Court of Kosovo.
7. On 10 May 2011, the Constitutional Court of Kosovo received proof that the Judgment of Supreme Court was served to the applicant on 2 October 2011.
8. On 10 June 2011, after having considered the Report of the Judge Altay Suroy the Review Panel composed of Judges: Almiro Rodrigues (presiding), Gjyljeta Mushkolaj and Snezhana Botusharova, recommended to the full Court to reject the Referral as inadmissible.

Summary of the facts

9. The applicant requested from the Ministry of Labor and Social Welfare of Kosovo - Pension Administration Department as the organ of first instance, to acknowledge his pension right as a person with limited abilities. However, this first instance organ rejected his request on 19 October 2009, pursuant to the Article 3 of the Law 2003/23 on Disability pensions in Kosovo.
10. The first instance organ based its opinion on conclusion of the medical commission dated 15 October 2009, that the applicant didn't fulfill the requirements specified in the law on Disability pensions in Kosovo.
11. Furthermore, in the second instance proceedings before the Board of Appeals of the Pension Administration Department – Ministry of Labor and Social Welfare, the respondent provided the conclusion No. 5004057 of the second instance medical commission on the limited abilities of the actual organ (*body organ*), dated 8 December 2009, which concurs with the conclusion and opinion of the first commission, therefore, based on this, the complaint of the applicant was rejected as ill-founded and challenged decision has been confirmed.
12. Taking into account that the medical commissions, authorized by law, concluded that the Applicant has no limited abilities and that the law on disability pension in Kosovo was appropriately applied, the Supreme Court of Kosovo assessed that there

was no law violation, therefore by Judgement A. No. 247/2010 of 22 September rejected the Applicant's complaint as ill-founded.

Applicant's Allegations

13. The applicant claims that the Judgment of the Supreme Court of Kosovo 274/2010 of 22 September 2010, by rejecting his complaint on the decision of the Ministry of Labor and Social Welfare of Kosovo - Pension Administration Department No. 50040570 dated 20 November 2009, violated his rights guaranteed with Article 49 of the Constitution of the Republic of Kosovo.

Assessment of the admissibility of the Referral

14. In order to be able to adjudicate the Applicants' Referral, the Court needs first to 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.
15. In this connection, the Court refers to Article 49 of the Law, stipulating that:

„ 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.“
16. From the submitted documents, it appears that the Referral has not been filed within the time limit pursuant to Article 49 of the Law.
17. The final decision of the Supreme Court of Kosovo A. No 247/ 10 was taken on 22 September 2010, served upon the applicant on 2 October 2010 (proof: return receipt of Supreme Court of Kosovo), whereas he submitted his Referral to the Constitutional Court only on 21 March 2011. It follows that the Referral is out of time pursuant to Article 49 of the Law.
18. The Court after considering all the facts and evidence on the subject matter, and after having deliberated on the matter, found that the Referral was submitted after the time limit of 4 months, from the day when the latter decision was served to the applicant.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law on the Constitutional Court, and Rules 36(1b) and 56 (2) of the Rules of Procedure, in its session of 10 June 2011 unanimously

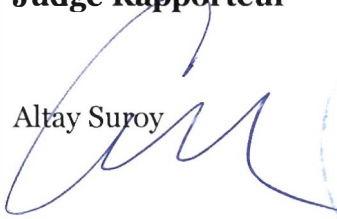
DECIDES

- 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;

III. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani

