



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT
SEKRETARIA / SEKRETARIJAT / SECRETARIAT

Pristina, on 12 January 2012
Ref. no.: RK 180/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 101/11

Applicant

Isma Bunjaku

**Constitutional review of the Judgment of Supreme Court of Kosovo PPA No.
4/2009, dated 27 April 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
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Mrs. Isma Bunjaku from village Vinarc, Municipality of Mitrovica, with permanent residence in village Samadrexhë, Municipality of Vushtrria.

Challenged decision

2. Challenged decision of the public authority which has allegedly violated the rights guaranteed by the Constitution of Kosovo is the Judgment of the Supreme Court of Kosovo, PPA. No. 4/2009 of 27 April 2011.

Subject matter

3. Subject matter of the Referral filed on 28 July 2011 with the Constitutional Court of Republic of Kosovo is the constitutional review of the Judgment of Supreme Court of Kosovo PPA. No. 4/2009 dated 27 April 2011. The Applicant has not specified the date of its receipt.

Alleged violations of the constitutionally guaranteed rights

4. The Applicant has not specified which constitutionally guaranteed right has been violated but she emphasized that the challenged decisions have violated her rights that are guaranteed "by the laws in force, the Constitution and the international conventions".

Legal basis

5. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter referred to as: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of 16 December 2009 which entered into force on 15 January 2010 (hereinafter referred to as: the Law) and Rule 29 of Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Applicant's complaint

6. The Applicant has claimed that the Medical Committees of the Ministry of Labor and Social Welfare (hereinafter referred to as MLSW) have in an unlawful manner rejected to her "the right to disability pension", even though she fulfilled the requirements for such a pension, whereas the Supreme Court of Kosovo by rejecting her lawsuit in this matter and by rejecting the request for repeating the proceeding has committed the same violation because according to the Applicant she suffers from permanent working disability and she has proved it with medical documentation.

Proceedings before the Court

7. On 28 July 2011, the Constitutional Court received the Referral of Mrs. Isma Bunjaku and registered it under no. KI 101/11.
8. On 17 August 2011, by Decision GJR. 101/11 the President appointed Judge Dr. Iliriana Islami as a Judge Rapporteur.
9. On the same date, the President of the Court appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Mr. sc. Kadri Kryeziu, members of the Panel.
10. On 17 October 2011, the Constitutional Court notified the Supreme Court of Kosovo and the representative of the Applicant of the registration of the Referral but it did not receive comments from any of them. On this date, the Court has also notified the Department of Pension Administration of MLSW of the Referral requesting relevant documentation from this Department.

11. On 1 November 2011, the Constitutional Court of Kosovo received the requested documentation from the Department of the Pension Administration.
12. On 30 November 2011, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. On 27 December 2004, Mrs. Isma Bunjaku from village Samadrexhë filed a request with the Ministry of Labour and Social Welfare – Department of Pension Administration of Kosovo requesting from this Institution to recognize to her the right to disability pension.
14. On 16 August 2005, the Department of Pension Administration of Kosovo rendered Decision with case file no. 5057358 rejecting the request of Mrs. Bunjaku with the reasoning that the medical committee had found that she did not suffer from **“complete and permanent disability”**.
15. On 30 November 2005, the Appeals Council for disability pensions with the Ministry of Labour and Social Welfare (MLSW) rejected as ungrounded the appeal of Mrs. Isma Bunjaku and by Resolution with case file no. 5057358 it concluded that the decision of the first instance was correct and based on Law.
16. On 5 April 2006, the Supreme Court of Kosovo acting upon the lawsuit of Mrs. Isma Bunjaku in the proceedings of administrative conflict rendered Resolution A. no. 223/2006, approving the lawsuit and annulling the Resolution of the Appeals Council of MLSW with case file no. 5057358, dated 30 November 2005, due to the missing of the reasoning in the Resolution.
17. From the documents in the case file that have been officially submitted by MLSW – Department of Pension Administration, it is ascertained that the Appeals Council had decided for the second time on the appeal of Mrs. Isma Bunjaku on 31 May 2006, rendering again a resolution by which it rejected the Applicant’s appeal and it left in force the decision of the first instance medical committee of 16 August 2005.
18. On 26 September 2007, the Supreme Court of Kosovo again deciding upon the new lawsuit for administrative conflict against Resolution of the Appeals Council of MLSW of 31 May 2006 rendered Judgment A. no. 1558/2006, by which it approved for the second time the lawsuit of Mrs. Isma Bunjaku and annulled the Resolution of the Appeals Council of MLSW of 31 May 2006 which held the same case file no. 5057358.
19. On 7 November 2007, MLSW Appeals Council acting upon the Judgment of the Supreme Court A. no. 1558/2006, dated 26 September 2007 for the third time decided on the appeal of Mrs. Isma Bunjaku, whereby it rendered the Resolution with same case file no. 5057358, again REJECTING the appeal filed by Mrs. Bunjaku, but this time giving the proper reasoning for rendering this Resolution.
20. Mrs. Bunjaku again filed a lawsuit for administrative conflict against this Resolution and the Supreme Court by Judgment no. A.956/2008 of 17 November 2008 rejected the filed lawsuit.

21. On 3 March 2009, against this Judgment Mrs. Bunjaku, through lawyer Mrs. Fatmire Braha, filed with the Supreme Court of Kosovo a "Request for repeating the administrative proceeding".
22. On 27 April 2011, the Supreme Court rendered Resolution PPA. No. 4/2009 REJECTING the Request for repeating the proceeding with the reasoning that the applicant did not provide new evidence which would justify the repeating of the proceeding.
23. Finally, on 28 July 2011, unsatisfied with the abovementioned decisions Mrs. Isma Bunjaku filed a Referral with the Constitutional Court of Kosovo.

Assessment of the admissibility of Referral

24. In order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled all admissibility requirements, laid down in the Constitution.

25. In reference to this, the Court refers to Article 113.7 of the Constitution, which stipulates:

*"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**".*

26. The Court also takes into consideration:

Rule 36 of the Rules of Procedure of the Constitutional Court which provides:

*"(1) The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded."*

27. In fact with regard to the alleged violation of the right to pension, the Court ascertains that the Constitution of Kosovo refers to the right to pension only in Article 105 and 109, namely in its reference to the mandate and reappointment process of Judges and Prosecutors for whom it is used the constitutional wording "**until the retirement age as determined by law**".
28. Article 51 of the Constitution [**Health and Social Protection**] paragraph 2 clearly provides: "Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law."
29. From the legal definition of Article 51 of the Constitution it is clear that the social insurance related to "disability, unemployment and old age" shall be regulated by LAW, and in the present case the issue of the disability pension is regulated by LAW NO. 2003/23 ON DISABILITY PENSIONS IN KOSOVO approved by Kosovo Assembly on 6 November 2003.
30. The procedure of application, fulfilling of the requirements for enjoying this right is set out in this Law as well as the right to appeal on the decisions when the parties are not satisfied with the decisions regarding their requests.
31. Administrative Committees of the MLSW have acted precisely in accordance with the provisions of this Law and the Supreme Court in its final Judgment A. 956/2008 dated 17 November 2008 has found that these decisions were lawful.

32. The Constitutional Court is not a Court of fact and on this occasion it wishes to emphasize that the establishment of the factual situation in a complete and correct manner falls under the full jurisdiction of the regular courts and in this case under the jurisdiction of the administrative bodies and that the Court's role is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and it therefore cannot act as "a court of fourth instance" (see *mutatis mutandis*, i.a., Akdivar vs. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).
33. From the facts submitted with the Referral it appears that the Applicant has not met the legal obligation regarding the accuracy of the Referral, because he has failed to accurately clarify what rights guaranteed by the Constitution have been violated by acts of public authority. Moreover, the Court considers that there is nothing in the Referral which indicates that the court, and in this case also the committees of MLSW during the proceedings in the case, lacked impartiality or that the proceedings were otherwise unfair. The mere fact that applicants are dissatisfied with the outcome of the case does not grant them the right to file a substantiated Referral on the violation of Article 31 of the Constitution (see *mutatis mutandis* Judgment of ECHR Appl. No. 5503/02, Mezotur-Tisazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).
34. In such circumstances, the Applicant "has not sufficiently substantiated his claim", therefore I propose the Review Panel to reject the Referral as manifestly unfounded, in accordance with Rule 36 paragraph 2 items c and d of Rules of Procedure, and

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure, in its session, held on 30 November 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;
- III. This Decision is effective immediately.

Judge Rapporteur

Dr. Iliriana Islami

President of the Constitutional Court

Prof. Dr. Enver Hasani