



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

Prishtina, on 14 March 2016
Ref. no.:RK907/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI109/15

Applicant

Milazim Nrecaj

Request for constitutional review of Decision No. 171, of the Ministry of Labour and Social Welfare of the Government of Kosovo, of 09 June 2011

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Milazim Nrecaj from village of Sallagrazhda, Municipality of Suhareka (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision No. 171 of the Ministry of Labour and Social Welfare of the Government of Kosovo (hereinafter: Ministry of MLSW), of 9 June 2011.

Subject Matter

3. The subject matter of the Referral KI109/15 is the constitutional review of the decision, which according to the Applicant's allegations, deprives him the right which he is entitled to under the Law no. 04/L-054 on the status and rights of martyrs, invalids, veterans, members of the Kosovo Liberation Army, civilian victims of war and their families (hereinafter: the Law on the Status and Rights).

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on 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 of Procedure).

Proceedings before the Constitutional Court

5. On 18 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 September 2015, the President of the Court by Decision GJR. KI109/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI109/15, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 25 September 2015, the Court notified the Applicant and Ministry of MLSW of the registration of Referral.
8. The Court also requested the Applicant to supplement the Referral with necessary information and to submit the decision, which he challenges.
9. On 09 October 2015, the Applicant only partly responded to the request of the Court, of 25 September 2015; namely he submitted to the Court only Decision No. 171 which he challenges.
10. On 9 February 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

11. On 19 February 2013, the Applicant and his mother jointly filed a request with the municipal administration in Suhareka, requesting the Municipality to issue a certificate that the deceased Rr. N. (the Applicant's father) was a victim of the war of 1999.
12. On the same date, the Department of Administration and Inspection of the Municipality of Suhareka rendered a Decision confirming that Rr. N. was a victim of the war. Additionally, the Decision allowed for the late registration of the deceased Rr. N. in the respective book of the deceased.
13. On an unspecified date in 2013, the Applicant filed a request to the Ministry of MLSW requesting the recognition of his rights under the Law on Status and Rights. He based his claim on the fact that his father was a victim of the war.
14. The Ministry of MLSW refused to receive his request. The Ministry communicated to the Applicant that it cannot accept his request, because of the Decision No. 171 of the Minister of MLSW dated 09 June 2011. This Decision states, *inter alia*, that:
 - a. *The number of applicants for pensions and benefits under the Law on war values is closed as of 31 May 2011.*
 - b. *Until the adoption of a new political decision by the Minister, the MLSW will not accept any new requests for realization of pensions provided by the Law on the war values, as well as not accept any requests for the recognition of any related rights.*
 - c. *Whereas for the applications, which have been accepted up to 31 May 2011, the MLSW should find legal solution, in coordination with senior management.*

Applicant's Allegations

15. In the Referral, the Applicant alleges as follows: *"I have the certificate from the Department of Health and Social Welfare of the Municipality of Suhareka as required by Article 3, paragraph 10.1 of the Law on the status and rights of martyrs, invalids, civilian victims and their families No. 04/L-054 {...} and in accordance with this, I seek the rights which belong to me."*
16. The Applicant addresses the Court with the following request:

"I wish to confirm that my mother and I jointly benefit the right which belongs to us according to the law and not to make an injustice to us for 16 years. The Department of Social Welfare, by political decision of the Minister N. R., has neglected us and I ask the highest state authority to give us back the right to my mother, to me and to the whole family in this difficult financial situation."

Assessment of the Admissibility of the Referral

17. In order that the Court adjudicates the Applicant's Referral, it shall examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

18. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

"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."

19. The Court notes that the Applicant claims that he has not benefitted from the right to a pension in accordance with the Law on Status and Rights. The Applicant states that *"this is a direct consequence of Decision No. 171 of the Minister of MLSW to block all requests for such pensions which are submitted after 31 May 2011."*

20. Although this Decision relates, in general, to all requests for pensions under the Law on Status and Rights, the Court notes that the Applicant's rights are affected by this decision, therefore is an authorized party within the meaning of Article 113.7 of the Constitution.

21. Further, the Court refers to Article 47.2 of the Law, which provides:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

22. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

"The Court may consider a referral if:

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted."

23. The Court notes that the Applicant in his Referral challenges only Decision No. 171 of the Ministry of MLSW. The Applicant claims that this Decision prevents him from exercising his rights.

24. The Court notes that the Applicant has not pursued any legal remedies against either the Decision No. 171 of 09 June 2011 of the Minister of MLSW, which he claims violated his rights to a pension, or against the refusal of the Ministry of MLSW to receive his request for a pension.

25. The Court considers that the Applicant had legal remedies at his disposal, such as those which are regulated by Article 10 of Law No. 03/L-202 on Administrative Conflicts.

Article 10:

“Based on the Law, a natural and a legal person has the right to start an administrative conflict, if he/she considers that by the final administrative act in administrative procedure, his/her rights or legal interests has been violated.”

26. Therefore, the Court reiterates that it is the responsibility of the Applicant to exhaust all legal remedies before submitting the request for constitutional review of an act of a public authority to the Constitutional Court.
27. The Court recalls that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, administrative or court proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See Decision in case KI07/09, the Applicants. *Demë Kurbogaj and Besnik Kurbogaj*, constitutional review of Judgment Pkl. No. 61/07, of 24 November 2008, paragraph 8).
28. The rationale for the exhaustion rule is to afford the courts, the opportunity to prevent or to address alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see case KI41/09, Applicant *AAB-RIINVEST University L.L.C., Prishtina v. Government of the Republic of Kosovo*, KI41/09 of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, No. 25803/94, ECHR, Decision of 28 July 1999).
29. In sum, the Court considers that in this case there is no final decision of the competent authority, which in this stage would be a subject of review by the Constitutional Court, because the Applicant has not exhausted all available legal remedies, in accordance with Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

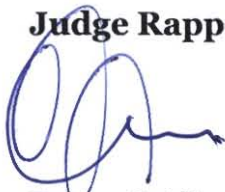
FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 9 February 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 20.4 of the Law;
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi