



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

Pristine, 11 May 2012
Ref. No.: RK232/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI150/11

Applicant

Naser Shala

**Constitutional Review of the Judgment of the Supreme Court of Kosovo A.no.
396/11, dated 7 June 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.

Applicant

1. The Applicant is Naser Shala resident of Pristina.

Subject Matter

2. The subject matter of the Referral is the alleged violation of the Applicant's right to invalid pension guaranteed by the Law No. 02/L-2 on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War.

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged decision

4. The Applicant challenges the Judgment of the Supreme Court of Kosovo A.no.396/11 dated 7 June 2011, which was served on him on 10 October 2011.

Procedure before the Court

5. On 21 November 2011 the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter the "Court")
6. On 17 January 2011 the President appointed Kadri Kryeziu as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.
7. On 4 May 2012, 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

8. According to the documents submitted by the Applicant, the facts of the case may be summarised as follows.
9. On 28 January 2011 the Department for Martyr Families, Invalids of War and Civil Victims in Prishtina by its decision no.01-01/7043 rejected the Applicant's claim to a KLA invalid pension since it lacks the original certificate from KPC General Headquarters.
10. Unsatisfied with this decision the Applicant complained to the appeal division of the above mentioned Department.
11. On 8 April 2011 the appeal division of that Department issued its Decision rejecting the Applicant's appeal. According to the Decision of 8 April 2011, the Applicant's claim was rejected because the document the Applicant submitted did not demonstrate that he was a member of the KLA and was wounded between 30.12.1991 and 19.09.1999 in the course of his KLA membership as prescribed in Article 7.4 and Article 19 Paragraph 4 of the Law on War Values No. 02/L (hereinafter "Law No. 02/L") and Administrative Instruction no.09/2006 of the MLSW.
12. The Applicant brought a claim to the Supreme Court on 5 May 2011 for the annulment of Decision of 8 April 2011. The Applicant alleged that the challenged Decision was unfair and illegal because of an incomplete and erroneous confirmation of the factual

situation and wrong application of the substantive law. The Applicant emphasized that the first instance body has erroneously concluded the factual situation, without proper consideration given to the medical documents submitted by the Applicant.

13. On 7 June 2011 the Supreme Court of Kosovo by its Judgment A.no.396/2011 rejected the Applicant's claim. The Supreme Court found that the Department for Martyr Families, Invalids of War and Civil Victims appeal division had in a complete and right manner confirmed the factual situation when it rejected the appeal of the Applicant. The Supreme Court concurred with the reasoning in the first and second administrative decision that the Applicant failed to produce a certificate that would prove the date and place of the alleged wound in the course of the Applicant's duty as a KLA soldier.

Applicant allegations

14. The Applicant alleges that the Supreme Court as well as previous administrative bodies have incorrectly ascertained the facts, and that he has in fact been a wounded KLA member who therefore qualifies for benefits under the applicable laws.
15. The Applicant argues that there has been violation of the relevant provisions of the Law No. 02/L-2 on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War
16. The Applicant, by implication, alleges that the previous courts violated his right to a fair trial under Article 31 of the Constitution and Article 6(1) of the ECHR.

Assessment of admissibility

17. In order to be able to adjudicate the Applicant's referral, the Court needs first to examine whether the Applicant has fulfilled all the admissibility requirements laid down in the Constitution.
18. Under the Constitution, the Constitutional Court is not a court of appeal when it reviews decisions taken by lower courts. The role of lower courts is to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis*, Garcia Ruiz vs. Spain [GC], No. 30544/96, Paragraph 28, European Court for Human Rights [ECHR] 1999-1)
19. With regard to the Applicant's claim to an invalid pension, the Applicant was provided with many opportunities to present his case and to challenge the interpretation of the law which he deemed to be incorrect both before the Department for Martyr Families, Invalids of War and Civil Victims and before the Supreme Court. After reviewing the proceedings in its entirety, the Court did not find that relevant proceedings were in any fashion incorrect or arbitrary (see *mutatis mutandis* Shub vs. Lithuania, Decision of ECtHR on admissibility of request, No. 17064/06 of 30 June 2009)
20. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to substantiate the allegation that the challenged decision violated the Applicant's constitutional rights and freedoms.
21. Therefore, it results that the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides that: " The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution and Rule 36 of the Rules, 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; and
- III. This Decision is effective immediately.

Judge Rapporteur



Kadri Kryeziu
Deputy President

President of the Constitutional Court



Prof. Dr. Enver Hasani