



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

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**Pristine, 26 April 2012**  
**Ref. No.: RK225/12**

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 153/11**

Applicant

**Fazilja Berisha**

**Constitutional Review of the Judgment of the Supreme Court, A. no.  
564/2011, dated 5 August 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 Ms. Fazilja Berisha, represented by her son, Mr. Ramadan Berisha, from Pristina.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court, A. no. 564/2011, of 5 August 2011, which was served on the Applicant on an unspecified date.

## **Subject matter**

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of the Judgment of the Supreme Court, A. no. 564/2011, by which, allegedly, her rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 24 [Equality Before the Law] and 51 [Health and Social Protection] have been violated.

## **Legal basis**

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Proceedings before the Court**

5. On 30 November 2011, the Applicant submitted the Referral with the Court.
6. On 17 January 2012, the President, with Decision No. GJR. KI 153/11 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, with Decision No. KSH. KI 153/11, appointed the Review Panel composed of Judges Ivan Čukalovič (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
7. On 3 February 2012, the Court requested the Applicant to notify this Court when the Applicant was served with the Judgment of the Supreme Court, A. no. 564/2011 of 5 August 2011 and to submit the decision of the Appeals Council, No. 5066727 dated 20 April 2011. So far no reply has been received.

8. On 6 February 2012, the Court communicated the Referral to the Supreme Court and to the Ministry of Labor and Social Welfare - Appeals Council (hereinafter: Appeals Council).
9. On 19 April 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**

10. On 19 January 2011, the Doctor's Commission, established to determine medical eligibility for Disability Pensions, rejected the Applicant's request for disability pension based on the findings and opinion of medical commission of the first instance court of 6 December 2010, which estimated that the Applicant did not show permanent disabilities to work as foreseen by Article 3 [Criteria for Disability Determinations] of the Law No. 2003/23 on Disability Pensions in Kosovo (Decision No. 5066727). The Applicant appealed this decision to the Ministry of Labour and Social Welfare – Department of Pension Administration (hereinafter: the Department of Pension Administration).
11. On 7 March 2011, the Department of Pension Administration rejected the appeal of the Applicant and upheld the decision of the Doctor's Commission (Decision No. 5066727). The Applicant appealed against this decision to the Appeals Council.
12. On 20 April 2011, the Appeals Council rejected the appeal of the Applicant as unfounded and upheld the decision of the Department of Pension Administration (Decision No. 5066727). The Applicant initiated an administrative conflict procedure with the Supreme Court.
13. On 5 August 2011, the Supreme Court rejected the Applicant's complaint as unfounded. The Supreme Court concluded that the evidence prove that the Applicant does not meet the legal criteria for recognizing the required right to pension disability (Judgment A. no. 564/2011).

### **Applicant's allegations**

14. The Applicant alleges that the Supreme Court "*did not properly examine the facts and the Supreme Court has not made an examination of the physical evidences at all, did not invite us in the hearing as plaintiff and the verdict is based only in the case file*".

## Assessment of the admissibility of the Referral

15. The Applicant alleges that her rights guaranteed by Articles 24 [Equality Before the Law] and 51 [Health and Social Protection] of the Constitution have been violated. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether she has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
16. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
17. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
18. In the present case, the Applicant merely disputes whether the Supreme Court correctly applied the applicable law and disagrees with the courts' factual findings with respect to her case.
19. Having examined the proceedings before the regular courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
20. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
21. It follows that the Referral is inadmissible

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Rule 36 (1) (c) and Rule 56 (2) of the Rules of Procedure, on 19 April 2012, 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**

  
Altay Suroy

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani