



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

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Pristine, 22 May 2012  
Ref. No.: RK243/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI16/12**

Applicant

**Gazmend Tahiraj**

**Constitutional Review of the Judgment of the Supreme Court, A. no. 1415/2011,  
dated 30 December 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  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge.

#### **Applicant**

1. The Applicant is Mr. Gazmend Tahiraj from the village Terdec, Glllogoc.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court, A. no. 1415/2011, of 30 December 2011, which was served on him on an unspecified date.

## **Subject matter**

3. The Applicant alleges that the abovementioned decision violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"), namely Article 51 [Health and Social Protection].
4. Furthermore, the Applicant requests the Court not to have his identity foreclosed.

## **Legal basis**

5. The Referral is based on 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").

## **Proceedings before the Court**

6. On 23 February 2012, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").
7. On 1 March 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Kadri Kryeziu.
8. On 5 March 2012, the Court communicated the Referral to the Supreme Court and to the Ministry of Labour and Social Welfare – Department of Pension Administration (hereinafter, the Department of Pension Administration).
9. On 7 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**

10. On 14 December 2004, the Department of Pension Administration approved the Applicant's request for disability pension pursuant to Law No. 2003/23 on Disability Pensions in Kosovo. This right to disability pension would be reviewed after three years from the date of gaining of this right.
11. On 16 September 2010, the Medical Commission reassessed the situation of the Applicant and the Department of Pension Administration, considering that the Applicant fulfills the requirements provided by Law No. 2003/23 on Disability Pensions, extended the right to disability pension.
12. On 15 February 2011, the Medical Commission reassessed again the situation of the Applicant and, on 22 March 2011, the Department of Pension Administration concluded that the Applicant does not fulfill the requirements provided by Law No. 2003/23 on Disability Pensions and, consequently, rejected the request to disability pension.

13. On 16 September 2011, the Applicant filed an appeal against that Decision with the Appeals Committee in the Department of Pension Administration.
14. On 20 October 2011, the Appeals Committee rejected the Applicant's appeal, because the Applicant had not respected the legal time limit for filing the appeal. In fact, the Applicant received the challenged decision on 22 March 2011, while he filed the appeal on 16 September 2011, i.e. more than 14 days from the day of service of the decision. The Applicant initiated an Administrative Conflict Procedure in the Supreme Court against that decision.
15. On 30 December 2011, the Supreme Court (Judgment A. no. 1415/2011) rejected the Applicant's claim as unfounded. The Supreme Court concluded that the Department of Pension Administration rendered a decision on 22 March 2011, while the Applicant challenged the decision on 16 September 2011. In this respect, the Supreme Court held that the Appeals Committee, by dismissing the Applicant's appeal, has rightly applied the law when it concluded that the appeal was filed after the provided legal time limit.
16. Furthermore, no supporting documentation and information was provided on the reasons for the Applicant to have his identity foreclosed.

### **Applicant's allegations**

17. The Applicant alleges that the Supreme Court "*in a partial manner denied my right to disability pension*".
18. The Applicant, therefore, considers that the Supreme Court have violated Article 51 [Health and Social Protection] of the Constitution and Articles 1, 2, 3, 4 of the Law on Disability Pensions in Kosovo.

### **Assessment of the admissibility of the Referral**

19. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
20. Article 113. Section 1 and 7 of the Constitution provides:
 

*"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties. (...)*

*7. 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".*
21. On the other side, Rule 36 1 (c) of the Rules provides that "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
22. First of all, the Applicant did not file the appeal with the Appeals Committee in the Department of Pension Administration in the legal time limit.
23. In fact, the Supreme Court concluded that the Applicant had not filed his appeal within the legal time limit foreseen by Article 10.1 on the Law on Disability Pension.

24. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Thus, the Applicant actually failing to take some procedural step in the regular courts in accordance with the established deadline is liable to have his case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation.
25. The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from his obligations to appeal before the competent bodies in due time (see *Whiteside v the United Kingdom*, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).
26. As said above, the applicant's allegations amount to a complaint that the proceedings have been conducted "*in a partial manner*" and were unfair.
27. Moreover, it is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the proceedings as a whole and in their entirety, including the way in which evidence was taken, were fair (see, *mutatis mutandis*, the *Vidal v. Belgium* judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, para. 33).
28. In addition, 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).
29. In sum, the Court can only consider whether the evidence has been presented in a fair 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).
30. Moreover, the Applicant merely disputes whether the Supreme Court entirely applied the applicable law and disagrees with the courts' factual findings with respect to his case. The Applicant did not show why and how the Supreme Court decided "*in a partial manner*", thus denying his right to disability pension.
31. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude 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).
32. In all, it follows that the Referral is inadmissible because of no exhaustion of all legal remedies provided by law and, even if exhausted, it is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

33. As to the Applicant's request for not having his identity foreclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 7 May 2012, unanimously

**DECIDES**

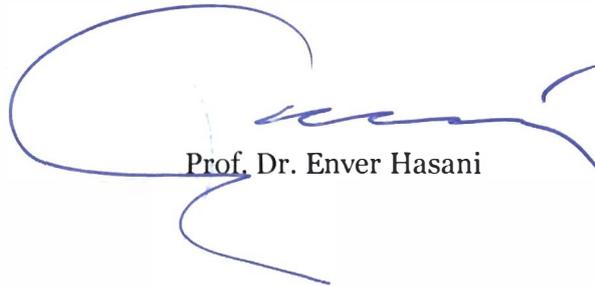
- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT his request not to have his identity foreclosed;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**



Almiro Rodrigues

**President of the Constitutional Court**



Prof. Dr. Enver Hasani