



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

Pristine, 04 May 2012

Ref. No.: RK 229/12

RESOLUTION ON INADMISSABILITY

in

Case No. KI 27/11

Applicant

Xhevdet Rrahmani

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 820/2010, dated 25 January 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Xhevdet Rrahmani from Lladove Village in the Municipality of Podujeva.

Challenged Decision

2. Judgment of the Supreme Court of Kosovo, Rev. No. 820/2010, dated 25 January 2010.

Subject Matter

3. The Applicant alleges that his rights as a person with a disability have been violated. The Applicant does not specifically cite any article of the Constitution of the Republic of Kosovo which is said to have been violated. The Applicant requests recognition of his right to receive a pension as a person with disabilities.

Legal Basis

4. The Referral is based on Article 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").

Procedure before the court

5. On 28 February 2011, the Applicant filed a Referral with the Constitutional Court.
6. The President of the Constitutional Court appointed Judge Robert Carolan as Judge Rapporteur. The President of the Constitutional Court appointed a Review Panel composed of Judges Snezhana Botusharova (presiding), Prof. Dr. Enver Hasani, and Gjyljeta Mushkolaj.
7. On 07 March 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

8. On 5 September 1980, the Applicant's father was granted an entitlement to additional support for assistance and care for a child with disabilities (the Applicant) by the Self-Government Intern Republican Association of the Pension and Invalid Insurance of Employees, Association for the City of Belgrade.
9. On 27 January 2006, the Applicant was granted a disability pension, made retroactive to 12 January 2005. At that time, the Applicant was found to fulfill the criteria laid out in Law No. 2003/23 on Disability Pensions in Kosovo regarding eligibility for a disability pension and was informed by letter that his eligibility would be re-examined in five years.
10. On 20 April 2010, the Applicant's eligibility was re-examined by Medical Review Commission – Department of Pension Administration (hereinafter referred to as the "Commission") and the Applicant was denied a disability pension because he was deemed not to be fully and permanently disabled.
11. On 8 June 2010, the Applicant filed a complaint with the Board on Complaints for Disability Pensions (hereinafter referred to as the "Board").

12. On 28 July 2010, Applicant's appeal was refused as ungrounded. The Board found that the Commission's assessment that there was insufficient evidence to allow for eligibility for benefits from a full and permanent disability pension was correct and in compliance with Law No. 2003/23 on Disability Pensions in Kosovo.
13. The Applicant appealed the Board's decision to the Supreme Court. In this appeal, the Applicant disputed the legality of the Commission's decision and alleged the Commission did not take into account the evidence he presented regarding the severity of his medical condition and his inability to work.
14. On 25 January 2011, the Supreme Court rejected the appeal as unfounded in judgment A.No. 820/2010. The Supreme Court found that the Commission correctly applied Law No. 2003/23 on Disability Pensions in Kosovo in finding the Applicant does not meet the criteria in Article 3 of that law.
15. The Applicant was served with this decision on 15 February 2011.

Party which bears the burden of proof facts

16. In accordance with Rule 29 (2) h) of the Rules of Procedure, it is up to the Applicant to include in the Referral "supporting documentation and information".

Legal arguments presented by the Applicant

17. Applicant alleged that the findings of the Supreme Court, the Board and the Commission violate his rights as a person with a disability. Specifically, the Applicant seemed to argue that the Commission failed to consider evidence presented by the Applicant when concluding he was not eligible for a disability pension. The Applicant did not specify which Article of the Constitution of the Republic of Kosovo has been violated but it may be inferred he believes Article 51 [Health and Social Protection] has been violated.

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
19. Article 113 Section 1 and 7 of the Constitution establish the general legal frame required for admissibility. It 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."*
20. Furthermore, Article 48 of the Law states:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

21. Finally, Rule 36 of the Rules of Procedure states:
- “1. The Court may only deal with Referrals if:*
- c) the Referral is not manifestly ill-founded.*
- 2. The Court may reject a Referral as being manifestly ill-founded when it is satisfied that:*
- a) the Referral is not prima facie justified, or*
 - b) when the presented facts do not in any way justify the allegation of the violation of constitutional rights, or*
 - c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
 - d) when the Applicant does not sufficiently substantiate the claim”*

22. The Applicant seems to allege, but does not specifically state in the Referral that Article 51 of the Constitution of the Republic of Kosovo has been violated. Article 51 states:

“1. Health care and social insurance are regulated by law.

2. Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law.”

23. The relevant provision of the law at issue, Article 3 of Law No. 2003/23 on Disability Pensions in Kosovo, lays out the criteria for disability determinations:

“3.1 In order to be eligible for a Disability Pension, an Applicant must be habitually residing in Kosovo and must meet the Disability requirements of this Law.

3.2 Doctor’s Commissions will assess the medical condition of Applicants for Disability Pensions. Disability assessments by Doctor’s Commissions must be in writing and include the following:

 - (a) A specific statement of the diagnosis of the physical, sensory or mental condition, disease or disability that the Applicant is suffering and the date of the condition, disease or disability onset; the diagnosis must describe the condition, disease or disability as well as the particular impact of the condition, disease or disability on employment, including a specific description of impaired functioning of the Applicant.*
 - (b) An assessment of the Applicant’s functioning with respect to daily living tasks and tasks associated with employment; this must include reference to Applicant’s prior employment if any.*
 - (c) A determination of whether or not the Applicant can be employed, in any capacity, given the total circumstances of the disease or disability.*
 - (d) A determination of complete disability for a prior period of one year or longer, during which time the Applicant was medically incapable of employment for remuneration.*
 - (e) Prognosis of the permanence of disability.*

- 3.3 *Persons who reside in, are confined in, or are financially supported by institutions caring for the disabled, including psychiatric or medical establishments, religious institutions caring for the infirm or disabled, residential schools and prisons, and other institutions receiving support from the Kosovo Consolidated Budget to care for the disabled, are not eligible for Disability Pension payments under this Law.*
- 3.4 *Persons capable of employment or actually employed in any manner, including any Self-employment as defined in the tax laws of Kosovo, shall not be eligible for Disability Pensions. Actual employment, including Self-employment, shall constitute presumptive proof of the cessation of Disability. Disability Pension payments will cease as of the first date of employment or Self-employment. . ."*
24. Article 4.6 of Law No. 2003/23 on Disability Pensions in Kosovo addresses the evidence on which the Commission may base its decision, stating:
"The Doctor's Commission may base its decision as to the existence of total and permanent disability on evidence provided by the Applicant and/or on its own medical findings and examinations. All Applicants must undergo a medical examination arranged by the Doctor's Commission. The Doctor's Commission is not obliged to accept the medical evidence provided by the Applicant but may consider it in making its determination."
25. The Applicant presents no evidence in his Referral that Law No. 2003/23 was violated, thus resulting in a violation of Article 51 of the Constitution of the Republic of Kosovo. In fact, the law specifically states that the Commission does not have to rely on evidence provided by the Applicant when making its determination.
26. As stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:
". . . the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a "fourth instance" court (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65)."
27. Therefore 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 Court, following deliberations on 07 March 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

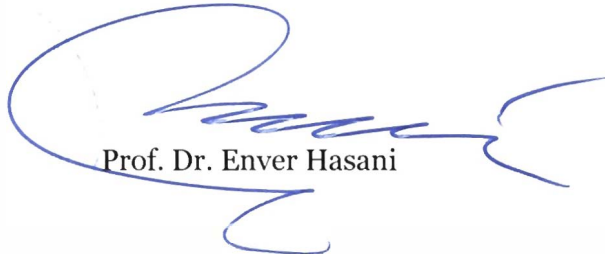
- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur

President of the Constitutional Court



Robert Carolan



Prof. Dr. Enver Hasani