



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

Pristine, 08 June 2012
Ref. No.: RK248/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI30/10

Applicant

Belkize Mustafa

Constitutional Review of the Judgment of the Supreme Court of Kosovo
A. no. 852/2009 dated 24 March 2010

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 Belkize Mustafa from Pristina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court of Kosovo A. No. 852/2009 dated 24 March 2010.

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 on the Constitutional Court"), 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").

Subject Matter

4. The Applicant alleges that there has been a violation of Article 3 [Equality Before the Law] and Article 51 Right to Health and Social Protection) of the Constitution of the Republic of Kosovo (hereinafter the "Constitution")

Procedure before the Court

5. On 7 May 2010 the Applicant submitted the Referral to the Court.
6. On 14 September 2010 the President appointed Prof Dr. Ivan Čukalović as Judge Rapporteur and a Review Panel composed of Iliriana Islami, Gjyljeta Mushkolaj and Robert Carolan.
7. On 11 December 2010 and 14 January 2011 the Court sent letters to MLSW seeking clarification on certain parts of the Referral.
8. On 18 January 2011 the Court received a response from the MLSW.
9. On 16 May 2011 after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. On 21 October 2005, the Department of Pension Administration of Kosovo (hereinafter "DPAK"), Ministry of Labour and Social Welfare (hereinafter "MLSW"), issued a decision recognizing applicant's right to disability pension retroactively from 1 January 2004, in the amount of forty Euros (€40) per month. The decision also states that 3 years from obtaining this right, this Ministry shall invite Mrs. Mustafa for review purposes.
11. On 12 July 2007, the DPAK, MLSW, pursuant to the assessment of the Medical Commission, which assessed that the Applicant did not have full and permanent disability, issued a Decision rejecting Mrs. Mustafa's request for disability pension.
12. On 11 December 2007, DPAK, MLSW following the examination of documents, appeals, medical documents and the assessments of the first instance and second instance Medical Commissions, concluded that there was no sufficient evidence that Mrs. Mustafa meets legal requirements to enjoy a disability pension, and, as a result, issued the Decision to reject her request as ungrounded.

13. On 27 May 2009, the Supreme Court of Kosovo, in the absence of documents and as a result of MLSW's inaction to provide said documents pursuant to the request of the Supreme Court, issued the Judgment A.nr.1287/2008, approving Mrs. Mustafa's lawsuit, submitted against the Resolution of MLSW- Appeals Council dated 11 December 2007, thereby annulling it.
14. On 5 August 2009, the Appeals Council on Disability Pensions of DPAK, MLSW acting pursuant to the Supreme Court Judgment A.Nr.1287/08, issued a Resolution rejecting as ungrounded Mrs. Mustafa's appeal for the recognition of the right to disability pension and confirmed the decision of the Medical Commission of the first instance as fully based on the Law on Disability Pensions 2003/23 (hereinafter the "LPD")
15. On 24 March 2010, the Supreme Court of Kosovo, based on accompanying documents, issued a judgment A.nr.852/2009, rejecting Mrs. Mustafa's lawsuit submitted against the Resolution dated 5 August 2009, of MLSW - Appeals Council.
16. In the same judgment, the Supreme Court stressed that the Medical Commissions established by the MLSW, pursuant to Article 3.2 of the LDP, comprising of medical experts in related fields, after the assessment of medical documents and results of direct examination found that the Applicant does not have a full and permanent disability. The Supreme Court therefore concluded that DPAK, MLSW, by rejecting plaintiff's lawsuit, correctly applied the material law when it concluded that Mrs. Mustafa does not fulfill requirements set forth to be eligible for the disability pension under Article 3 of the LDP.

Applicant's allegations

17. The Applicant alleges that there has been a violation of Article 3 of the Constitution, which guarantees equality before the law.
18. The Applicant also claims that there has been a violation of Article 51 of the Constitution, which states that health care and social insurance are to be regulated by law.

Preliminary assessment on admissibility

19. In order to be able to adjudicate the Applicant's Referral, the Constitutional 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.
20. In this respect the Court recalls that according to Rule 36(1) (c) "*the Court may only deal with Referrals if the Referral is not manifestly ill-founded.*"
21. Rule 36 (2) of the Rules of Procedure further prescribes that:

"The Court shall 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 a violation of the 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 his claim;"*

22. The Applicant has not submitted any prima facie evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
23. The Court should also reiterate, in this case, that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, regarding decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court of Human Rights [ECHRJ1999-1]).
24. The Constitutional 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 European Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).
25. In the actual case, the Applicant was offered many possibilities to present her case and challenge the interpretation of the law, which she considered inaccurate, before MLSW and the Supreme Court. Following the revision of the administrative procedures and the Supreme Court case as a whole, the Court does not notice that the relevant proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v Lithuania, European Court of Human Rights Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).
26. The Court concludes, therefore, that the Referral is manifestly ill-founded, within the meaning of Article 36 of the Rules of Procedure.

FOR THESE REASONS

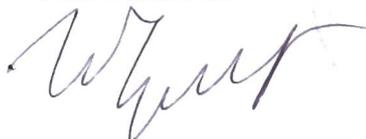
The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 27 of the Law and Rule 36 of the Rules of the Procedure unanimously:

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

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

