



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

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Pristina, 03.November 2011  
Ref. No.: RK 151 /11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 38/11**

Applicant

**Bejta Vitija**

**Constitutional Review of the Decision of the Pension Administration  
Department within the Ministry of Labour and Social Welfare, No. 5022876,  
dated 1 December 2008.**

### **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 Mr. Bejta Vitija, residing in Prishtina.

## **Challenged decision**

2. The Applicant challenges the Decision of the Pension Administration Department of Kosovo (hereinafter: "DAPK") within the Ministry of Labour and Social Welfare, No. 5022876, of 1 December 2008.

## **Subject matter**

3. The Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 16 March 2011 requesting the Court to "[...] *grant me my rights in line with my disabilities [...]*" because "*I am in a grave health condition and suffer from several diseases in my head and I am not capable of doing any easy or ordinary job.*"

## **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 16 March 2011, the Applicant submitted the Referral to the Court.
6. On 18 April 2011, the President, by Order No. GJR. 38/11, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No. KSH. 38/11, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
7. On 29 April 2011, the Court requested the Applicant, pursuant to Article 48 of the Law,;
  - a. to accurately clarify what rights and freedoms he/she claims to have been violated; and
  - b. what concrete act of a public authority is subject to challenge.
8. On 10 May 2011, the Applicant submitted additional documents to the Court, but did not reply to the questions posed by the Court on 29 April 2011.
9. On 20 June 2011, the Court communicated the Referral to the Pension Administration Department.
10. On 4 October 2011, 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 the facts

11. On 29 December 2004, DAPK rendered a decision approving the Applicant's request for an invalidity pension, since he *"fulfilled the requirements foreseen in the Law (No. 2003/23) on disability pensions in Kosovo."*
12. On 13 December 2006, DAPK abrogated its decision of 29 December 2004 and terminated the payment of the pension based on the report of the Commission for re-evaluation, monitoring and selection pursuant to Section 7.3 and Section 7.4 of the Law (No. 2003/23) on disability pensions in Kosovo. Based on the report, the Applicant did not fulfill the requirements foreseen in the Law on Disability Pensions. The Applicant complained to the Supreme Court against this decision.
13. On 24 December 2007, the Supreme Court rejected the Applicants complaint as unfounded and upheld the decision of DAPK of 13 December 2006 (Judgment A.no. 342/2007). The Supreme Court considered that, based on the submitted evidence, the Applicant was not entitled to a disability pension.
14. On 12 November 2008, the Applicant complained once more to DAPK claiming his right to a disability pension.
15. On 1 December 2008, DAPK rendered a decision, rejecting the complaint of the Applicant, since the Applicant did not fulfill the requirements of Section 3 of the Law on Disability Pensions (Decision 5022876). The Applicant has had a right to file a complaint with the Supreme Court within 30 days, but based on the submissions of the Applicant he has not filed such a complaint.

## Assessment of the admissibility of the Referral

16. The Applicant alleges that the Court should *"[...] grant me my rights in line with my disabilities [...]"* because *"I am in a grave health condition and suffer from several diseases in my head and I am not capable of doing any easy or ordinary job."*
17. However, in order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
18. In this respect, the Court notes that Article 56 of the Law enables an authorized party to initiate a procedure as to matters falling within the jurisdiction of the Court (since the entry into force of the Constitution on 15 June 2008) and having arisen in last instance, before the entry into force of the Law (on 15 January 2009) and to do so within the relevant deadlines which would begin to be counted on the day of entry into force of the Law. Hence, an applicant can complain to the Court about a Judgment issued by the final instance court, which had been served upon him after 15 June 2008, but before 15 January 2009, if he files the Referral with the Court within a period of four months (see Article 49 of the Law) after the date of entry into force of the Law, i.e.

before 15 May 2009. In this case, the Applicant challenges the decision of DAPK of 1 December 2008, a date which is prior to 15 June 2008, the date of the entry into force of the Constitution.

19. It follows that the Referral is out of time pursuant to Article 56 (in conjunction with Article 49) of the Law.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 56 (in conjunction with Article 49) of the Law, and Rule 56 (2) of the Rules of Procedure, on ... 2011, ...

### 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**

**President of the Constitutional Court**

  
Mr. Sc. Kadri Kryeziu

  
Prof. Dr. Enver Hasani

