



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

Pristina, 01 november 2011
Ref. No.:RK146/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 40/11

Applicant

Zef Prenaj

**Constitutional Review of The Administrative Instruction No. 11/2010,
on Basic Pension Payments
issued by the Ministry of Labor and Social Welfare in October 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

The Applicant

1. The Applicant is Zef Prenaj, a retired lawyer from Pristina.

Challenged Decision

2. The Applicant challenges the Administrative Instruction No. 11/2010, issued by the Ministry of Labor and Social Welfare (hereinafter: "MLSW") in October 2010, on registration, suspension, reactivation, re-application and termination of basic pension payments after the death of pensioners (hereafter: the Administrative Instruction).

Legal Basis

3. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22(7) and 22(8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereafter: 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

4. On 22 March 2011, the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereafter: the "Court").
5. On 8 April 2010, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Ivan Čukalović (presiding), Enver Hasani and Iliriana Islami.
6. On 24 March 2011, the Court requested the Applicant to provide additional information regarding his representation of all Kosovo pensioners and the exhaustion of other legal remedies, if any.

Description of the facts of the case

7. On 10 May 2007, the Applicant retired, when he met the requirements of 40 years of service and 65 years of age, as provided by the applicable law.
8. On 28 January 2011, when the Applicant went to the Raiffeisen Bank to receive his pension, he noticed that his pension had not been paid into his account as usual.
9. In fact, the Applicant found out that he had been paid 2.120 Euro for the period of 38 months, while the Pension Administration Department of MLSW should have paid him 3.040 euro, a difference of 820 Euro.
10. Thereupon, the Applicant complained to the Pension Administration Department, requesting that the 820 Euro with accrued interest be paid into his account.
11. On 11 February 2011, the Pension Administration Department replied, stating that all procedures regarding pension payments had been followed, in accordance with the Administrative Instruction.

Legal arguments presented by the Applicant

12. The Applicant argues that, "pursuant to Article 113.7 of the Constitution of the Republic of Kosovo and Articles 46, 47, 48 and 49 of the Law on the Constitutional Court", there is a ".....violation of the constitution and human rights of all Kosovo pensioners".
13. The Applicant concludes that "The Constitutional Court should closely analyze this (...) Administrative Direction 11/2010 and declare it null and void and unconstitutional, so that all Kosovo pensioners are paid back the pensions they have been denied so far".

14. The Applicant further concludes that the “Administrative Direction No. 11/2010 is unconstitutional and unlawful, inhuman and in violation of the basic rights of pensioners and humanity in general”.
15. In addition, the Applicant submits that the Constitutional Court “.....should act in line with our [his] request so that all the Kosovo pensioners are paid back their pensions that have been suspended without any legal basis....”

Assessment of the admissibility of the Referral

16. The admissibility requirements are laid down in the Constitution and further specified in the Law and the Rules of Procedure.
17. Articles 113.1 and 113.7 of the Constitution establish the general legal framework required for the admissibility of individual referrals. They provide :

*“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.”
18. In the present case, the Applicant requests “....the constitutional review of Instruction No. 11/2010....”, submitting that “The Constitutional Court should closely analyze this (...) Administrative Direction 11/2010 and declare it null and void and unconstitutional.”
19. Such a request on suspending the Administrative Instruction in favor of all Kosovo pensioners suggests that the Applicant is challenging in abstract the said Administrative Instruction. If that is the intention of the Applicant, as an individual, he cannot be considered as an authorized party.
20. In fact, the Applicant refers to Article 113.7 of the Constitution as a legal basis to submit his Referral. However, he has not provided any evidence proving that he was a direct victim of the issuance of the Administrative Instruction.
21. Only the entities that are explicitly stated in Article 113..2 to 113.6 of the Constitution are authorized parties to refer to the Court matters of abstract constitutional review.
22. In addition, the Kosovo constitutional legal system does not provide for an “*actio popularis*”, which is a modality of an individual complaint, allowing individuals, who seek to defend the public interest and the constitutional order, to refer violations to the constitutional court without being a victim of such violations themselves.
23. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality in abstract of the Administrative Instruction and, thus, his Referral should be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.1 and 113.7 of the Constitution, Articles 46, 47 and 48 of the Law and Rule 36(1) (a) and (3)(c) of the Rules of Procedure, at the session held on 23 September 2011, unanimously

DECIDED

- 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

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

