



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Pristina, 10 March 2011  
Ref. No.: RK 98/11

**RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 46/09**

Applicant

**Miftar Sejdiu**

**Constitutional review of non-execution of Judgment A no. 1428/2005 , dated 13  
June 2006 of the Supreme Court of Kosovo**

**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. Miftar Sejdiu, from the village of Mirena, municipality of Lipjan.

### **Challenged decision**

2. The applicant challenges the non-execution of the Judgment of the Supreme Court of Kosovo, dated 13 June 2006.

### **Subject matter**

3. The subject matter raised for review with the Constitutional Court is the non-execution of the Judgment of the Supreme Court of Kosovo, A no. 1428/2005, dated 13 June 2006, approving Mr. Sejdiu's lawsuit as grounded and annulling Resolution no. 5053897, dated 31 May 2006, of the Ministry of Labor and Social Welfare - Appeals Council on Disability Pensions in Prishtina.

### **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 54 (b) of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: the Rules of Procedure).

### **Proceedings before the Court**

5. The Applicant filed the referral with the Constitutional Court on 1 October 2009.
6. On 18 February 2010, the Constitutional Court sent the notification on the registration of the case, Ref. no. DRLSA-226/10, to the Ministry of Labor and Social Welfare requesting their reply pursuant to Article 22.2 of the Law on the Constitutional Court of Kosovo.
7. On 2 April 2010, the Ministry of Labor and Social Welfare sent a written reply to the Constitutional Court explaining the progress of the case.
8. On 16 July 2010, the Review Panel, consisting of Judges Kadri Kryeziu, Enver Hasani and Iliriana Islami, considered the Report of the Judge Rapporteur Gjyljeta Mushkolaj and, on the same day, made its recommendations to the full Court on the inadmissibility of the Referral.

### **Summary of the facts**

9. On 1 October 2009, Miftar Sejdiu submitted the Referral with the Constitutional Court, claiming that the non-execution of the Judgment of the Supreme Court of Kosovo, A no. 1428/2005, dated 13 June 2006, violated his human rights. On 2 April 2010, the Ministry of Labor and Social Welfare sent a written reply to the Constitutional Court explaining the progress of the case.
10. On 9 August 2005, Miftar Sejdiu submitted an appeal with the Appeals Council of the Ministry of Labor and Social Welfare challenging the decision of the first instance body of this Ministry, which did not recognize him the right to be the beneficiary of the disability pension. Appeals Council of the Ministry of Labor and Social Welfare, through the Resolution of 31 October 2005 rejected the appeal stressing that Miftar Sejdiu had not provided evidence that he fulfilled the requirements specified in Article 3 of the Law on Disability Pensions in Kosovo. The Resolution contained the legal advice noting that the unsatisfied party can initiate an administrative contest through the lawsuit filed with the Supreme Court of Kosovo within 15 days.

11. Acting pursuant to the legal advice, Miftar Sejdiu filed a lawsuit with the Supreme Court of Kosovo within the prescribed time limit challenging the legality of the resolution of Appeals Council of the Ministry of Labor and Social Welfare, dated 9 August 2005.
12. Through Judgment A. no. 82/2006, dated 5 April 2006, the Supreme Court of Kosovo had:
  - accepted the lawsuit as grounded;
  - annulled the **Resolution** of Ministry of Labor and Social Welfare no. 5053897, because of the lack of necessary information in the reasoning part of the Resolution, pursuant to Article 209, paragraph 3 of the Law on General Administrative Procedure; and
  - obliged the Ministry of Labor and Social Welfare to act pursuant to remarks given in the judgment in the repeated proceedings.
13. Nonetheless, while rendering a decision in the new proceedings, on 31 May 2006, the Ministry of Labor and Social Welfare again issued the Resolution rejecting Miftar Sejdiu's appeal with the same deficient justification that "according to the law, he does not fulfill the requirements to be recognized the right to disability pension". According to the rule, the Resolution also contained the legal advice noting that the unsatisfied party can initiate an administrative dispute through the lawsuit filed with the Supreme Court of Kosovo within 15 days.
14. Miftar Sejdiu again filed a lawsuit with the Supreme Court challenging the legality of the resolution of the Appeals Council of the Ministry of Labor and Social Welfare, dated 31 May.
15. The Supreme Court, as in the first time, through Judgment A no 1428/2005, dated 13 June 2006, approved the lawsuit as grounded underlining that the respondent, respectively the Ministry of Labor and Social Welfare, did not act pursuant to the remarks of the Supreme Court, and based on authorizations under Article 62 of the Law on Administrative Conflicts, obliges the respondent, respectively the Ministry, to act pursuant to remarks underlined in Judgment A no 1428/2005, dated 13 June 2006, in the repeated proceedings.
16. In contradiction to Judgment A no 1428/2005, dated 13 June 2006, the Appeals Council of the Ministry of Labor and Social Welfare, through Judgment no. 5053897, dated 7 September 2007, again rejected Miftar Sejdiu's appeal. Again, pursuant to the applicable legislation, the Resolution contained the legal advice allowing the eventually unsatisfied party a 30-day time limit to initiate an administrative contest through the lawsuit filed with the Supreme Court of Kosovo.
17. Finally, unsatisfied with this situation, the Applicant Miftar Sejdiu does not respect the legal advice to challenge the Resolution of the Ministry of Labor and Social Welfare with the Supreme Court within the 30-day time limit, but on 1 October 2009, he directly referred to the Constitutional Court of the Republic of Kosovo.

#### **Assessment of the admissibility of the referral**

18. In order to be able to adjudicate the Applicants' 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. In connection with this, the Court refers to Article 49 (Deadlines) of the Law, which stipulates:

*"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced".*

20. However, the 4 (four) month deadline started to be counted before the Law on the Constitutional Court of the Republic of Kosovo entered into force, it shall start to be counted from the date of entry into force of the Law on the Constitutional Court. (see Article 56 of the Law). The Law entered into force "upon publication in the Official Gazette of the Republic of Kosovo (see Article 58 of the Law). The Law was published in the Official Gazette of the Republic of Kosovo number 46, dated 15 January 2009, page 20.
21. The challenged decision was served on the Applicant on 7 September 2007. Since the Law on the Constitutional Court entered into force on 15 January 2009, the defined legal deadline of 4 (four) months started to be counted from the day of entry into force of the Law, i.e. from 15 January 2009.
22. Consequently, pursuant to Article 17 1 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo the deadline of 4 (four) months within which the referral could be submitted, ended on 15 May 2009. As mentioned above, the Referral was submitted on 1 October 2009. As a result, the Referral was not submitted with the Court within the legal time limit defined under Article 49 of the Law.
23. The Referral therefore must be rejected as inadmissible.

### **FOR THESE REASONS**

Pursuant to Article 49 of the Law of the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, the Constitutional Court unanimously,

### **DECIDES**

- I. TO REJECT the referral as inadmissible.

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 on Constitutional Court.

This Decision is effective immediately.

**Judge Rapporteur**

Gjyljeta Mushkolaj

**President of the Constitutional Court**

Prof. Dr. Enver Hasani

