



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

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Prishtina, 01.november 2011  
Ref. No.:148/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case Nr. KI52/11**

Applicant

**X**

**Constitutional review of a Judgment of 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 a resident of Republic of Kosovo, who requested protection of identity.

## **Challenged Decision**

2. The challenged decision is a Judgment of Supreme Court of Kosovo by which it was rejected the Appeal on a Decision of Ministry of Labor and Social Welfare (hereinafter referred as to the “MLSW”) – Department of Social Welfare (hereinafter referred as to the DSW).

## **Subject matter**

3. The Applicant alleges that the Judgment of Supreme Court of Kosovo has violated the right to social protection provided by the Constitution of Republic of Kosovo.

## **Legal basis**

4. Articles 113.7 and 21.4 of Constitution, Articles 20, 22.7 and 22.8 of Law Nr. 03/L-121 on Constitutional Court of Republic of Kosovo of 16 December 2008 (hereinafter referred as to the “Law”), and Rule 56 Paragraph 2 of Rules of procedure of Constitutional Court of Republic of Kosovo (hereinafter referred to as the “Rules of Procedure”).

## **Proceedings before the Court**

5. On 15 April 2011, the Applicant filed the Referral with the Constitutional Court of Republic of Kosovo.
6. On 10 May 2011, the Constitutional Court notified the Supreme Court of Kosovo that it has been initiated the proceeding of constitutional review of Kosovo Supreme Court Judgment.
7. On 23 September 2011, after considering the report of Judge Ivan Čukalović, the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Dr. Iliriana Islami made a recommendation to the full Court on inadmissibility of the Referral and on granting the protection of identity of the Applicant.

## **Protection of identity of the Applicant**

8. The Court noted the reasons of the request of the Applicant for protection of identity, which due to its very nature are not disclosed. The Court considered the request grounded and thus granted the protection of the identity. For that reason, the different elements of fact which could lead to the identity of the Applicant will be omitted in the decision.

## **Summary of the facts**

9. The Applicant claims that suffers from incurable disease and that his/her child also inherited the disease. Since the Applicant was not able to provide for medications, he/she submitted a request for recognition of the right to material support to the Centre for Social Welfare in Z for support to families of children with special needs.
10. The Centre for Social Welfare in Z decided to reject as unfounded the request for recognition of the right to material support for families that take care of children with permanent disability for the child Y, based on the opinion of the first instance medical commission.

11. The Applicant filed an Appeal on this Decision with MLSW - DSW Appeal Board in Prishtina, as a second instance body.
12. In reviewing the appeal, the Appeals Commission in Prishtina, as a second instance body, decided to reject the appeal and confirmed the Decision of Centre for Social Welfare in Z. This Decision was made based on the opinion of second instance medical commission, where it is stated that there is no permanent disability.
13. The Applicant filed an appeal with the Supreme Court of Kosovo against the Decision of Appeals Commission in Prishtina.
14. The Supreme Court of Kosovo rejected the appeal as unfounded, stating that from the case file it appeared that the medical opinions by both the first and second instance medical commission concluded that the right to material support to child Y cannot be recognized because there is no permanent disability.

### **Applicant's allegations**

15. The Applicant alleges that the Judgment of Supreme Court of Kosovo violated the right to social protection. The Applicant alleges that Article 51 Paragraph 2 of Constitution which provides the right to health and social protection has been violated.
16. The Applicant further alleges that there was violation of Article 102, paragraph 3 of Constitution, which obliges the Courts to adjudicate based on Constitution and the law, stating that Supreme Court has not applied correctly Articles 6, 10, 11 and 13 of Law on Material Support to Families of Children with Permanent Disability.
17. Finally, the Applicant alleges that there is violation of Article 22 of the Constitution that provides direct application of international agreements and instruments, precisely Article 13 of European Social Charter from 1996.

### **Assessment of admissibility of Referral**

18. The Applicant states that Article 51 Paragraph 2 (Right to social and health care) , Article 102 Paragraph 3 (General Principles of Judicial System), and Article 22 (Direct application of international agreements and instruments) of Constitution of Kosovo are the basis of his Referral.
19. Article 48. Of Law on Constitutional Court of republic of Kosovo envisages:  
  
*"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."*
20. Under the Constitution, the Constitutional Court is not a court of appeal when it reviews decisions taken by lower courts. The role of lower courts is to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis*, García Ruiz vs. Spain [GC], No. 30544/96, Paragraph 28., European Court for Human Rights [ECHR] 1999-I).
21. The Applicant did not provide any *prima facie* evidence indicating a violation of his constitutional rights (see Vanek vs. Republic of Slovakia, Decision ECHR on admissibility of request, No. 53363/99 of 31 May 2005). The Applicant does not state in what manner Articles 22, 51 and 102 support his Referral, as prescribed by Article 113.7 of Constitution and Article 48 of the Law.

22. The Applicant alleges that his rights were violated by erroneous establishment of facts and erroneous application of Law by lower courts, without clearly stating in what way these decisions violated his constitutional rights.
23. In this case, the Applicant was provided with many opportunities to present his case and to challenge the interpretation of law which he/she deems to be incorrect, both before the Ministry of Labor and Social Welfare and before the Supreme Court. After reviewing the proceedings in its entirety, the Constitutional Court did not find that relevant proceedings were in any fashion incorrect or arbitrary (see *mutatis mutandis*, Shub vs. Lithuania, Decision of ECHR on admissibility of request, No. 17064/06 of 30 June 2009).
24. Finally, admissibility requirements have not been met in this Referral. The applicant has failed to substantiate the allegation that the challenged decision violated his/her constitutional rights and freedoms.
25. Therefore, it results that that 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 Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 paragraph 2 and Rule 36 (2b) of the Rules of Procedure, in 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**

**President of the Constitutional Court**

Ivan Čukalović

Prof. Dr. Enver Hasani

