



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

Pristine, 01 November 2012
Ref. No.:RK320/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 53/12

Applicant

Aziz Amrushi

Constitutional Review of the Decision of the Ministry of Labour and Social Welfare, dated 23 February 2011, denying the Applicant a Kosovo Liberation Army (KLA) invalid pension

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy President
Robert Carolan, judge
Altay Suroy, judge
Almira Rodrigues, judge
Snezhana Botusharova, judge
Kadri Kryeziu, judge and
Arta Rama-Hajrizi, judge

The Applicant

1. The Applicant is Aziz Amrushi of Pjetershtice, in the Municipality of Shtime. The Applicant is unrepresented.

Subject Matter

2. The subject matter of the Referral is the claim of the Applicant that the Decision of the Ministry of Labour and Social Welfare, dated 23 February 2011, in relation to his request to be entitled to a Kosovo Liberation Army invalidity pension was wrongfully made.

Challenged Decision

3. The Challenged decision is the Decision of the Ministry of Labour and Social Welfare, dated 23 February 2011, denying the Applicant a Kosovo Liberation Army invalidity pension.

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), 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).

Procedure before the court

5. On 21 May 2012, the Applicant filed a Referral with the Constitutional Court.
6. On 4 July 2012 the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy and Ivan Čukalović (members).
7. On 3 August 2012 the Court acknowledged the making of the Referral to the Applicant.
8. On 21 August 2012 the Referral was notified to the Ministry of Labour and Social Welfare.
9. On 19 September 2012, after having considered the report of the Judge Rapporteur the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts of the case as presented by the Applicant

10. The Applicant was a member of the KLA during the unrest in Kosovo in the 1990s and that he was wounded during the conflict and he furnished evidence of this from the Association of KLA War Invalids. He applied for a KLA invalidity pension from the Department for Martyr Families, Invalids of war and Civil Victims of the Ministry of Labour and Social Welfare.
11. The Decision of the Ministry, dated 23 February 2011, was to deny him the right for pension as a KLA invalid. This Decision informed the Applicant that he was entitled to appeal that Decision within 15 days of receipt. The Appeal was to be addressed to the Sector for Appeals at the Department for Martyr Families, Invalids of War and Civil Victims.
12. The Applicant has furnished no evidence that any such appeal was made by him.

Assessment of the admissibility of the referral

13. 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.

14. Article 113 Section 1 and 7 of the Constitution establish the general legal frame required for admissibility. It provides:

“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.”

15. In this case there is no evidence that the Applicant has made any attempt to appeal the challenged decision and therefore he has not exhausted all legal remedies provided by law.
16. As indicated in Case No. KI.41/09, AAB-RIINVEST University v. the Government of the Republic of Kosovo (Resolution Nr. RK-04/10 of the Constitutional Court of the Republic of Kosovo, dated 27 January 2010, the Court wishes to emphasize that the rationale for the exhaustion rule as interpreted by the European Court of Human Rights (see Article 53 of the Constitution), is to afford authorities concerned, including the Courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (see, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, *Decision of 28 July 1999*). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no 56679/00, *Decision of 28 April 2004*).
17. The Referral therefore must be rejected as inadmissible on the basis that the Applicant has failed to exhaust all legal remedies available to him, as it is required by Article 113.7 of the Constitution, Article 47.2 of law and Rule 36.1 (a) of the Rules of Procedure.
18. Therefore, pursuant to Article 113.7 of the Constitution, Article 20 Law and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law on the Constitutional Court and Rule 36.1 (a) of the Rule of Procedure, on 19 September 2012, 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 on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani