



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

Prishtina, 19 October 2011
Ref. No.: RK 143 /11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 67/11

Applicant

Mr. Selim Berisha

Constitutional Review of the Judgment of the Supreme Court of Kosovo
A. No. 85 /2011, of 31 March 2011

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. Selim Berisha, from Prishtina, residing in Prishtina at “Shkodra” St. 21.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo A. No. 85/2011, dated 31. 03. 2011, by which was rejected the request for review of legality of Resolution with case file no. 5097046, of Appeals Council of the Ministry of Labor and Social Welfare (hereinafter referred to as "MLSW") regarding the right on disability pension.

Subject matter

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 24 May 2011 is the constitutional review of the Judgment of the Supreme Court of Kosovo A. No. 85/2011 dated 31.03. 2011, which the Applicant, according to his claim, received on 08.04.2011.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009, which entered into force on 15 January 2010 (hereinafter referred to as the "Law"), and Section 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 24 May 2011, z. Selim Berisha submitted Referral with the Constitutional Court of Kosovo by which requested Constitutional Review of the Judgment of Supreme Court of Kosovo A. No. 85/2011, dated 31.03.2011.
6. On 24 June 2011, the Constitutional Court notified the applicant and the Supreme Court on the registration of the case also seeking written reply by the parties.
7. On 21 July 2011, the Applicant sent a written response to the Constitutional Court, by attaching also the decisions of the MLSW regarding refusal of his request.
8. On 17 August 2011, the President appointed Judge Robert Carolan as Judge Rapporteur and appointed a Review Panel composed of Judges Snezhana Botusharova, (Presiding), Mr. Sc. Kadri Kryeziu and Dr. Gjyljeta Mushkolaj, members of the Panel.
9. On 5 October 2011, after having considered the report of the Judge Rapporteur Robert Carolan, the Review panel composed by Judge Snezhana Botusharova (Presiding), Mr. Sc. Kadri Kryeziu and Dr. Gjyljeta Mushkolaj, members of the panel unanimously recommended to the full Court to reject the Referral as inadmissible.

Summary of the facts

10. On 2 June 2010, Mr.Selim Berisha submitted a request with the Ministry of Labor and Social Welfare- Department of Pension Administration of Kosovo, requesting the recognition of his right to disability pension.
11. On 6 September 2010, the Department of Pension Administration of Kosovo had issued a decision rejecting Mr.Berisha's request, reasoning that the Medical

Committee has concluded that he does not have “**full and permanent disability**”. Mr. Selim Berisha received this decision on 6 October 2010.

12. On 7 October 2010, Mr. Berisha filed an appeal against this decision with the Appeals Council on Disability Pensions, within MLSW, because of erroneous confirmation of the medical situation of the Applicant for disability pension.
13. On 25 November 2010, the Appeals Council on Disability Pensions issued a Resolution, with dossier number 597046, rejecting Mr. Selim Berisha’s appeal as ungrounded, confirming that the decision of the first instance was based on law and just. Mr. Berisha received this resolution on 10 January 2011.
14. On 26 January 2011, Mr. Selim Berisha filed a lawsuit with the Supreme Court of Kosovo requesting the assessment of the legality of the Resolution of the Appeals Council of MLSW, qualifying that resolution as ungrounded, because according to him, he has presented sufficient medical documentation proving his permanent disability.
15. On 31 April 2011, the Supreme Court of Kosovo issued Judgment A.No. 85/2011 rejecting the lawsuit and assessing that Committees of MLSW are authorized by law to assess the full and permanent disability of persons claiming such a right, and that, in the actual case, these Committees have assessed that Mr. Berisha does not have such a disability, thus the Supreme Court concludes that administrative authorities have correctly applied legal provisions while deciding on this case and that all conditions exist to reject the lawsuit. Mr. Berisha received this judgment on 08.04.2011.
16. On 24 May 2011, finally dissatisfied with all decisions of administrative and judicial authorities, Mr. Selim Berisha submitted a referral with the Constitutional Court of the Republic of Kosovo.

Applicant’s Allegations

17. The Applicant stressed that the Medical Committee of the Ministry of Labor and Social Welfare (hereinafter referred to as “MLSW”) have unlegally rejected his “right for disability pension”, although he has fulfilled conditions for such a pension, whereas the Supreme Court of Kosovo, rejecting his lawsuit related to this issue, committed exactly the same, because, according to the Applicant, he has permanent work disability and he substantiated it with medical documentation.
18. The Applicant has not determined exactly which right guaranteed by the Constitution has been violated, but stressed that he was denied the “**right for disability pension.**”

Assessment of the admissibility of the referral

19. In order to be able to adjudicate the Applicant’s referral, the Court needs first to examine whether the Applicant has fulfilled all the Admissibility requirements laid down in the Constitution.
20. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates:

“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.”

21. Court also takes into account:

Rule 36 of the Rules of Procedure of the Constitutional Court, which stipulates:

“(1) The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded.

22. In fact, referring to the alleged violation of the right to pension, the Court concludes that the Constitution of Kosovo refers to the right to pension only in Articles 105 and 109, while referring to the process of the mandate and reappointment of judges and prosecutors, from whom the constitutional wording “**until the retirement age by law**” is used.
23. Article 51 of the Constitution [**Health and Social Protection**], paragraph 2, clearly stipulates: “Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law”.
24. From the legal definition of Article 51 of the Constitution, it appears that social insurance for “disability, unemployment and old age” shall be regulated by LAW. In the actual case, the disability pension issue is regulated by Law No. 2003/23 ON DISABILITY PENSIONS IN KOSOVO, approved by the Assembly of Kosovo on 6 November 2003.
25. The procedures of applying and fulfilling the conditions to enjoy this right are provided by this Law, like the right to appeal decision when parties are not satisfied with those decisions regarding their request.
26. Administrative Committees of MLSW had acted exactly conformity with the provisions of this Law and the Supreme Court had concluded that these decisions were lawful.
27. The Constitutional Court is not a Court of facts. The Constitutional Court wishes to emphasize that the determination of that factual situation, correct and complete, is a full jurisdiction of regular court and, in this case, of administrative authorities as well, and its role is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and can, therefore, not act as a “fourth instance court” (see *mutatis mutandis*, i.e., *Akdivar v. Turkey*, 16 September 1996, R. J. D, 1996 –IV, para. 65).
28. From the facts submitted with the Referral, it appears that its Applicant has not met the legal obligation regarding the accuracy of the referral, because he did not accurately specify what rights guaranteed by the Constitution have been violated by acts of public authorities. Moreover, the Court considers that there is nothing in the Referral which indicates that the court, and in this case the Committees of MLSW examining the case, lacked impartiality or that the proceedings were otherwise unfair. The mere fact that Applicants are dissatisfied with the outcome of the case can not serve to them as a reason to raise and arguable claim of a breach of Article 31 of if Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, judgment of 27 July 2005).
28. In these circumstances, the Applicant has not “sufficiently substantiated his claim”, so,

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 49 of the Law on the Constitutional Court, and Rule 36 para. 2, items (b) and (c) of the Rules of Procedure, the Constitutional Court in the session of 5 October 2011, unanimously

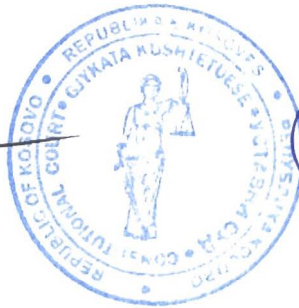
DECIDED

- 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 the Article 20 (4) of the Law on the Constitutional Court;
- III. This decision is effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani