



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Pristine, 29 May 2012

Ref. No.: RK247/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI95/11

Applicants

Hajrije Behrami and her daughter (a minor)

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 1230/2010, dated 15 February 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

Applicants

1. The Applicants are Hajrije Behrami and her daughter, who is a minor, from the village of Damanek in the Municipality of Drenas-Gllogog.

Subject Matter

2. The subject matter of the Referral is a claim by the former widow of a civil victim of war on her own behalf and on behalf of her minor child, to pensions under the Law on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War, Law No. 02/L-2.
3. The Applicants claim that there was a violation of Articles 21, 22, 24, 31, 37 Paragraph 3, 50, 51 and 54 of the Constitution of the Republic of Kosovo (hereinafter the "Constitution").

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 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)

Challenged decision

5. The Applicants challenged the Decisions of the Ministry of Labour and Social Welfare of Kosovo in Pristina-Department for Martyr Families War Invalids and Civil Victims (Hereinafter "DMFIWCV") no 01-03/6954 dated 20 October 2010 and no 01-03/6954 dated 11 November 2010 as well as the Judgment of the Supreme Court of Kosovo A.no.1230/10 dated 15 December 2010.

Procedure before the Court

6. On 13 July 2011 the Applicants submitted a referral to the Constitutional Court of Kosovo (hereinafter the "Court").
7. On 17 August 2011 the President appointed Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan, Snezhana Botusharova and Iliriana Islami.
8. On 07 March 2012 the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 20 October 2010 the DMFIWCV in its decision no.01-03/6954 rejected the Applicants' claim to a pension for the families of civilian war victims. The DMFIWCV stated that the claim was rejected because the first named Applicant had entered into a new marriage which according to Article 11 Paragraph 3 of the Law on the Status and the Rights of the Families of Heroes, Invalids, Veterans and Members of KLA and of the Families of Civilian Victims of War, Law No. 02/L-2 (hereinafter "Law No. 02/L-2") negates the right to the aforementioned pension. The Applicants were informed that they could appeal the Decision with 15 days upon receipt.
10. On 11 November 2010 the appeal division of the DMFIWCV issued its Decision rejecting the appeal made by Applicants. It also found that the Applicants had no right to the pension because the first named Applicant had entered into a new marriage.

11. The Applicants brought a claim to the Supreme Court on 20 December 2010 for the annulment of Decision of 11 November 2010. The Applicants alleged that the challenged Decision was unfair and illegal because of an incomplete and erroneous confirmation of the factual situation and wrong application of the substantive law. The Applicants emphasized that the first instance body has erroneously concluded the factual situation, with ungrounded reasoning that the first named Applicant does not enjoy the status of a family member of a civilian war victim, since she has entered into a new wedlock.
12. On 15 February 2011 the Supreme Court of Kosovo by its Judgment A.no.1230/2010 rejected the Applicants' claim. The Supreme Court found that the DMFIWCV appeal division had in a complete and right manner confirmed the factual situation when it rejected the appeal of the Applicants. The Supreme Court concurred with the reasoning in the first and second hearings that the first named Applicant was not entitled to the status of a family member because she had entered into a new marriage.

Allegations of the Applicants

13. The Applicants alleged that they were denied one of their fundamental rights guaranteed and protected by the provisions of Article 21 of the Constitution as well as their human rights and freedoms as guaranteed with international legal agreements and instruments pursuant to Article 22 of the Constitution
14. The Applicants claimed that they were denied their right of equality before the law, pursuant to Article 24 and they were denied the right to a fair and impartial trial pursuant to Article 31 of the Constitution
15. The Applicants asserted that there was a violation of Article 37 of the Constitution because the special protection by the state that families enjoyed was denied to them.
16. The Applicants alleged that they were denied their rights as guaranteed by the provisions of Article 50 [Rights of children] and Article 51 [Health and social protection] of the Constitution.
17. Finally the Applicants claimed that by violating their guaranteed legal rights they were denied the right to effective legal remedies pursuant to Article 54 of the Constitution.

Assessment of admissibility

18. With regard to Applicants' Referral, the Court refers to Article 49. of the Law which provides as follows:

"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. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

19. From the submission can be found that the Referral was not filed within the time lines provided by the Article 49 of the Law.
20. The latter decision is the Resolution of the Supreme Court of Kosovo Rev. No.1230/2010 of 15 February 2011, which the Applicants acknowledged that they received through their lawyer Cene Gashi, on 10 March 2011, the Applicants submitted their Referral to the Constitutional Court on 13 July 2011. This means that they submitted their Referral to the Court beyond the deadline provided by Article 49 of the Law.

21. It follows that the Referral is inadmissible pursuant to Article 36 (1b) of the Rules of Procedure, providing that "The Court may only deal with Referrals if: b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant,"
22. Even if the report were not inadmissible for reasons of time, The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (*see, mutatis mutandis, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1*).
23. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (*see, Constitutional Court Judgment of 23 June 2010, of the Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras. 66 and 67*).
24. Having examined proceedings before the ordinary courts as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (*see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009*).
25. Furthermore the Applicant had not submitted any prima facie evidence indicating a violation of his rights under the Constitution (*see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005*). The Applicants were provided with many opportunities to present their case and to challenge the interpretation of the law which they deem to be incorrect both before the DMFIWCV and before the Supreme Court. After reviewing the proceedings in its entirety, the Court did not find that relevant proceedings were in any fashion incorrect or arbitrary (*see mutatis mutandis Shub vs. Lithuania, Decision of ECtHR on admissibility of request, No. 17064/06 of 30 June 2009*).
26. In relation to claim of the second named Applicant the Court finds that the claim is ungrounded. The Court reaches this conclusion that the second named Applicant is not entitled to a family pension because she is in the custody of the first named Applicant and Article 11 Paragraph 3 of the Law No.02/L-2 only grants a family pension to children of civilian victims of war who are without parental care.
27. Because the Applicants merely disputed whether the Supreme Court applied the proper law and reached the proper factual conclusion it appears that the Applicants are simply asking this Court to reverse the legal decision of the Supreme Court. Therefore, this referral is manifestly ill-founded with respect to a violation of any of his constitutional or human rights, and consequently is inadmissible.
28. Therefore, the admissibility requirements have not been met in this Referral. The Applicants have failed to substantiate the allegation that the challenged decision violated the Applicants' constitutional rights and freedoms.
29. It results 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 Court, following deliberations on 7 March 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

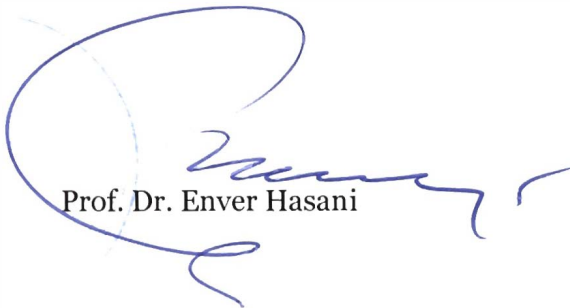
- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur



Dr. Gyljeta Mushkolaj

President of the Constitutional Court



Prof. Dr. Enver Hasani