



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtinë, 21 November 2013
Ref.no.:VTK 499/13

DECISION TO STRIKE OUT THE REFERRAL

in

Case no. KI06/13

Applicant

Sylejman Mustafa

**Constitutional Review of the Ruling of the Supreme Court of Kosovo
A.no. 1408/2011, of 27 December 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Sylejman Mustafa from village Reznik, Municipality of Vushtrri.

Challenged decision

2. The challenged decision is the Ruling of the Supreme Court of Kosovo, A. no. 1408/2011, of 27 December 2012, which as stated by the Applicant was served on him on 18 January 2013.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) on 21 January 2013 is the constitutional review of the Ruling of the Supreme Court of Kosovo A. no. 1408/2011, of 27 December 2012. The Applicant states that by the decisions of the Ministry of Labor and Social Welfare (hereinafter: MLSW) his status was changed from KLA invalid to that of a civil invalid of war.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law on Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the Law) and Rule 32 and 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of procedure).

Proceedings before the Court

5. On 21 January 2013, the Court received the Referral of Mr. Sylejman Mustafa and registered it under the no. KI 06/13.
6. On 30 January 2013, by Decision No. GJR. KI06/13, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of judges: Robert Carolan (Presiding) and judges Almiro Rodrigues and Ivan Čukalović in capacity of the panel members.
7. On 4 March 2013, the Court notified the Supreme Court of Kosovo and the Applicant of the registration of the Referral.
8. On 29 March 2013, the Court requested from MLSW and the Applicant to submit to the Court all MLSW decisions concerning the Applicant's status as KLA invalid, or his status as a civil invalid of the war.
9. On 5 April 2013, the MLSW submitted to the Court all decisions that it possessed regarding the Applicant.
10. On 8 April 2013, the Applicant submitted to the Court all decisions that he possessed regarding the determination of his status as the KLA invalid and as the civil invalid of war.

11. On 28 May 2013, the Court requested from MLSW to inform the Court regarding the actions taken for execution of the Ruling of the Supreme Court A. no. 1408/2011, of 27 December 2012.
12. On 12 June 2013, the MLSW General Secretary submitted an explanatory letter to the Court.
13. On 25 July 2013, the MLSW, through electronic mail, submitted to the Court the MLSW Decision on the recognition of Applicant's right to pension of the KLA invalid.
14. On 23 September 2013, the MLSW submitted to the Court Decision no. 02-02/103 of the MLSW regarding the annulment of the first instance decision, no. 02-02/103 of 24 June 2013.
15. On 26 September 2013, the MLSW through electronic mail submitted a notification to the Court, stating that the Decision no. 02-02/103 of 12 September 2013 was annulled and the same was not executed.
16. On 16 October 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Summary of the facts

17. On 11 October 2002, the MLSW, the Department of Social Welfare, by acting upon the Applicant's request regarding his application for "Benefits of War Invalids", issued the Decision with the file number 02-02/103, based on which the Applicant's application was rejected with justification that the "Central Doctor's Commission found that the disability is below 40%".
18. On 17 February 2003, the MLSW Department of Social Welfare rendered the Decision with file number 02-02/103, based on which the Applicant's appeal was rejected with justification that "after the reassessment of the Doctor's Commission the degree of disability has remained unchanged".
19. On 14 April 2003, the MLSW Department of Social Welfare, acting upon the Applicant's appeal rendered the Decision with the file number 02-02/103, according to which the Applicant's request for benefits of the war invalids was approved.
20. On 15 February 2007, the MLSW Department for Martyrs' Families, War Invalids and Civil Victims rendered Decision no. 02-02/103, by which the Applicant is recognized the right to pension of the KLA invalid.
21. On 20 March 2008, the MLSW Department for Martyrs' Families, War Invalids and Civil Victims rendered the Decision with no.02-02/103, whereby the Applicant is recognized the right to pension of the Civil Invalid of War.

22. On 19 October 2010, the MLSW Department for Martyrs' Families, War Invalids and Civil Victims, rendered the Decision with no.02-02/103, whereby the Applicant is recognized the right to pension of the Civil Invalid of War.
23. On 10 December 2010, the MLSW Department for Martyrs' Families, War Invalids and Civil Victims, acting upon the Applicant's appeal, based on Decision no. 02-02/103, rejected the appeal as ungrounded with justification that the Commission had concluded that the degree of disability was 45 %.
24. On 15 February 2011, the Supreme Court of Kosovo, acting upon the Applicant's claim, rendered the Judgment A.no. 61/2011, whereby it rejected the claim with the reasoning that "the Court concludes that the proceeding which preceded the challenged ruling was correctly conducted by the first instance authority".
25. On 15 April 2011, the Supreme Court of Kosovo, based on Judgment no. A. No. 259/2011, approved the Applicant's claim, thereby annulling the MLSW Decision no. 02-02/103, of 10 December 2010, with the reasoning that "*the Decision has many flaws, which have to do with substantial violations of the provisions of the Law on Administrative Procedure.*" In addition, the Supreme Court obliged the responding authority to act in the retrial according to the remarks given in that Judgment and after it has avoided abovementioned flaws to render a fair decision, based on the law.
26. On 18 August 2011, the MLSW, deciding again upon the Applicant's appeal against the annulment of the first instance decision no. 02-02/103, of 19 October 2010, rejected the appeal as ungrounded.
27. On 12 October 2011, the Supreme Court of Kosovo, acting upon the Applicant's lawsuit, rendered Judgment A. no. 804/2011, whereby it approved the lawsuit, by annulling the MLSW Decision no. 02-02/103, of 18 August 2011, with the reasoning that "*the challenged ruling is legally unclear*". Furthermore, the Supreme Court *obliges the responding authority that in the retrial to act according to the remarks given in this Judgment and after it to correct the abovementioned flaws and to render fair decision, based on the law.*
28. On 23 November 2011, Ministry of Labor and Social Welfare, again deciding upon the Applicant's appeal on annulment of the first instance decision with no. 02-02/103, of 19 October 2010, rejected the appeal as ungrounded.
29. On 27 December 2012, the Supreme Court of Kosovo, again deciding upon the Applicant's claim, rendered the Ruling A. no. 1408/2011, in which case it rejected the claim with reasoning that the lawsuit is inadmissible because this case has been adjudicated.
30. On 12 June 2013, the MLSW Secretary General submitted to the Court a letter, requesting from the Director of the Department for Martyrs' Families and War Invalids to execute the Judgment of the Supreme Court no. 804/2011, of 2 October 2011, in its entirety.

31. On 24 June 2013, the MLSW by the Decision no. 02-02/103, the Applicant was recognized the right to pension of the KLA invalid. In its decision, the MLSW stressed that *"based on the Judgment no. 804/2011 of the Supreme Court of Kosovo of 12.10.2011, it is determined that the request is based on Article 4 paragraph 2 and Article 7 and 8 of the Law on Status and the Rights of Martyr's Families, Invalids, Veterans and KLA members and Families of Civil Victims of War, with degree of disability of 45 %"*.
32. On 23 September 2013, the MLSW rendered Decision no. 02-02/103, rejecting the appeal of the Applicant, who requests from the MLSW the recognition of the right to pension according to the new status, since 2001. The MLSW rejected the appeal and annulled the first instance decision no. 02-02/103 of 24 June 2013, in its entirety, due to *"exceeding of competencies regarding the change of the status of Sylejman Mustafa from war civil invalid to KLA invalid."*
33. On 26 September 2013, the Director of the MLSW Department for Martyrs' Families, War Invalids and Civil Victims, through electronic mail, submitted to the Court the Notification on annulment of the MLSW Decision no. 02-02/103 of 23 September 2013, whereby it upheld the first instance Decision of 24 June 2013, by which the Applicant was recognized the right to the pension of KLA invalid.

Alleged violations of constitutionally guaranteed rights

34. The Applicant alleges that the Ruling of the Supreme Court of Kosovo, A. no. 1408/2011, of 27 December 2012, has violated his constitutionally guaranteed rights. The Applicant has not specified these allegations.

Assessment of admissibility of the Referral

35. In order to be able to adjudicate the Applicant's Referral, the Court first examines whether the Applicant has met all admissibility requirements laid down in the Constitution, Law and the Rules of Procedure.
36. In this case, the Court also takes into account Rule 32 (Withdrawal of Referrals and Replies) of the Rules of Procedure, which provides that:

(4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.

37. The Court considers that the rendering of the Decision no. 02-02/103 of 24 June 2013, by MLSW, on the complete execution of the Judgment A. nr. 804/2011, of 12 October 2011, of the Supreme Court, which is the subject matter of the Applicant's Referral, shows that the position of the Applicant has changed significantly and that the Referral now does not have any justification, and the goal which the Applicant wanted to achieve has been completely achieved. In this respect, the Court considers that there is longer any merit to further review this matter.

38. However, the Court has the competence and the duty to address this matter, especially by taking into account its Rules of Procedure.
39. In fact, the Rule 32 (4) of the Rules of Procedure states that the Court may dismiss a Referral when the Court determines that the allegations are moot or do not present a case or controversy. This Rule in its relevant part provides as follows:

Rule 32
Withdrawal of Referrals and Replies

(4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.

(5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision.

40. In addition, the European Convention on Human Rights, which according to Article 22 paragraph 1 item 2 of the Constitution of Kosovo is directly applicable in the Republic of Kosovo, in the relevant part provides as follows:

Article 37
'Striking out application'

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or*
- (b) the matter has been resolved; or*
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.*

41. Taking into account the Decision no. 02-02/103 of 24 June 2013, rendered by MLSW on execution of the Judgment A. no. 804/2011 of 12 October 2011 of the Supreme Court in its entirety, the Court concludes that the Applicant does no longer have an unresolved case or a controversy regarding the constitutionality of the MLSW decisions and that the case is effectively moot.
42. The Decision of the Court does not preclude the party from initiating new proceedings with the Constitutional Court in case of emergence of new evidence regarding this matter.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 of the Rules of Procedure, on 16 October 2013, unanimously

DECIDES

- I. TO STRIKE OUT the Referral;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law on the Constitutional Court;
- IV. This Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani