



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

Prishtina, 8 July 2013
Ref.no.:RK448/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI12/13

Applicant

Fatime Thaqi

Constitutional review of the Judgment of the Supreme Court of Kosovo
A no. 1330/2012 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 Ms. Fatime Thaqi from village Llapushnik, Municipality of Drenas.

Challenged decision

2. The challenged decision of the public authority is the Judgment of the Supreme of Kosovo, A. no.1330/2012, of 27 December 2012, which was served on Applicant on 16 January 2013.

Subject matter

3. The subject matter of the case submitted to the Constitutional Court of the Republic of Kosovo on 4 February 2013 is the constitutional review of the Judgment of the Supreme Court of Kosovo A. no. 1330/2012 of 27 December 2012 by which the Supreme Court rejected the lawsuit of the Applicant for assessment of the legality of the Ruling of the Ministry of Labor and Social Welfare no. 506-406 dated 20.06.2012 in the procedure of the administrative conflict.

Alleged violations of the constitutionally guaranteed rights

4. The Applicant alleges that the challenged judgment has violated the following human rights protected by the Constitution:
 - a) Article 24 (Equality Before the Law),
 - b) Article 31 (Right to Fair and Impartial Trial),
 - c) Article 6 of European Convention of Human Rights (Right to a Fair Trial).

Legal basis

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

Applicant's complaint

6. The Applicant stated that the doctor's commissions of the Ministry of Labor and Social Welfare (hereinafter: the MLSW) rejected in illegal way "the right to disability pension" although she met criteria for such a pension, while the Supreme Court of Kosovo, by rejecting her claim in the procedure of administrative conflict, made also the same violation, because according to the Applicant, she has permanent disability for work and she proved this by medical documentation.

Proceeding before the Court

7. On 4 February 2013, the Constitutional Court received the Referral of Ms. Fatime Thaqi and registered it with no. KI 12/13.

8. On 26 February 2013 by decision GJR 12/13, the President of the Court appointed the Judge Rapporteur, the judge prof.dr. Ivan Čukalović and the Review Panel composed of judges: Altay Suroy (presiding) and Snezhana Botusharova and Arta Rama as panel members, and by a subsequent decision of the President, Judge Arta Rama-Hajrizi was replaced by the President of the Court, Prof. Dr. Enver Hasani, as a member of the Review Panel.
9. On 12 March 2013, the Constitutional Court notified the Supreme Court of Kosovo and the Applicant's representative.
10. On 15 May 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

11. On 27 December 2004 Ms. Fatime Thaqi from village Llapushnik, Municipality of Drenas submitted a request to the Ministry of Labor and Social Welfare–Department of Pension Administration (hereinafter: MLSW-DPA) of Kosovo, by which she requested from this institution to recognize her the right to Disability Pension.
12. On 1 November 2005, MLSW-DPA rendered decision with file no. 5064068, approving her request for pension and informing her that this Applicant enjoys the right to pension at the amount of 40€ per month, while for the previous months she will be paid the amount of 200 €.
13. In this decision it was also stated that Ms. Thaqi "will be invited for the review" of this decision after three years from the day of approval of the decision on pension. In the decision, in the legal remedy it was also stated that "an appeal against this decision is allowed within fourteen (14) days from the day this decision was notified", namely to the Appeals Council of this Ministry.
14. On 14 December 2011, the Doctor's Commission for reassessment of MLSW rendered "Decision after Reassessment" with the same number of file 5064068 which was dedicated to Ms. Fatime Thaqi, where it was stated that "your request for disability pension has been REJECTED," by concluding at the same time that the Applicant "does not have full and permanent disability" which consequently implied that the pension approved by the decision of 1 November 2005, from 14 December 2011 was no longer paid to Ms. Fatime Thaqi.
15. On 20 June 2012, the Appeals Council for Disability Pensions of the MLSW rendered Ruling no. of file 5064068, by which it rejected the appeal of Ms. Fatime Thaqi and concluded that the Decision of the first instance was "fully based and in compliance with the Law no. 2003/23."
16. In the reasoning of this Ruling, it was stated that the Doctor's Commission of first instance has correctly and completely determined the factual situation and the fact that the candidate does not meet the criteria under Article 3 of the Law 2003/23 and the fact that the commission of the second instance, composed of medical experts of respective fields, has completely analyzed the health

documentation of the Applicant and concluded the same situation as in the enacting clause of the decision of first instance.

17. On 27 December 2012, the Supreme Court of Kosovo, deciding upon the lawsuit of Ms. Thaqi in Administrative Conflict proceedings, rendered Judgment A. no. 1330, REJECTING the lawsuit filed by Ms. Thaqi.
18. In the reasoning of its judgment, the Supreme Court stated that “the respondent has correctly applied the substantive law, when it concluded that the claimant does not meet the criteria provided by Article 3 of Law for Disability Pensions and that the doctor’s commissions, composed of medical experts of respective fields have correctly determined the health condition of the plaintiff, therefore the Supreme Court from the allegations in the lawsuit does not find any evidence that it should have decided differently or that the decisions of MLSW are illegal.
19. On 4 February 2013, the Applicant submitted her referral to the Constitutional Court, by attaching to it also the discharge list from the University Clinical Center of Kosovo (UCCCK), from which could be seen that she was treated in that center from 15 January 2013 until 24 January 2013.

Assessment of admissibility of the Referral

20. In order to be able to adjudicate the Applicant’s Referral, the Court has to assess beforehand whether the Applicant has met all the admissibility requirements, which are laid down in the Constitution, the Law on the Constitutional Court and the Court’s Rules of Procedure.
21. With respect to this, the Court refers to Article 113.1 of the Constitution (Jurisdiction and the Authorized Parties), which provides that:

“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”

22. The Court also takes into account:

Rule 36 of the Rules of Procedure, which provides that:

“(1) The Court may only deal with Referrals if:

c) the Referral is not manifestly ill founded.”

23. With reference to the Applicant’s Referral and her rights guaranteed by the Constitution, which are alleged to have been violated, the Court concludes that:
24. In Article 51 of the Constitution [Health and Social Protection] paragraph 2 is clearly foreseen: *“Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law.”*
25. From legal definition of Article 51 of the Constitution it is clearly seen that the social insurance for “disability, unemployment and old age” is regulated by

LAW, in this case the issue of disability pension is regulated by the Law No.2003/23 on Disability Pensions in Kosovo approved by Kosovo Assembly on 6 November 2003.

26. The procedures for application and meeting the criteria for enjoying this right are set forth in this Law, and so is the right to appeal the decisions, when the parties are unsatisfied with decisions regarding their requests.
27. The Administrative Committees of MLSW, by rendering the decision dated 14 December 2011 and the Ruling dated 20 June 2012, acted precisely in compliance with the provisions of this law. Furthermore, the Supreme Court while reviewing their legality in the administrative conflict proceedings by its final Judgment A. no.1330, of 27 December 2012, qualified them as entirely legal and grounded.
28. The Constitutional Court, after having reviewed the Applicant's allegations of the violation of Article 24 of the Constitution (Equality Before Law), concluded that before this court, the Applicant did not present facts which would prove her allegation, because in fact, apart from the conclusion that she met the criteria for pension, she did not provide any evidence as to what was the inequality before the law that she was subject to and vis-à-vis which persons she was treated as unequal before the law in the judicial and administrative bodies.
29. With respect to the allegations regarding the violation of Article 31 of the Constitution and Article 6 of ECHR (Fair and Impartial Trial), however the Constitutional Court did not find facts, which would confirm grounded allegation for violation of these provisions, because, beside mentioning the same fact about meeting the criteria for disability pension, the Applicant did not substantiate by any fact the irregularity of the proceedings, be those before medical committees as administrative bodies that decided based on the law, or before the Supreme Court in the administrative conflict proceedings.
30. The Constitutional Court is not a fact-finding court and on this occasion it wants to emphasize that the correct and complete determination of the factual situation is a full jurisdiction of regular courts and in this case also of administrative bodies and that its role is only to ensure compliance with the rights guaranteed by the Constitution, therefore, it cannot act as a "fourth instance court" (see, *mutatis mutandis*, i.a., *Akdivar v. Turkey*, 16 September 1996, R. J. D, 1996-IV, para. 65).
31. The Constitutional Court has subsidiary role compared to regular national judicial or administrative systems and it is desirable that the national courts or competent administrative bodies with effective decision making competencies initially have a possibility of deciding on the issues of the compliance of the internal law with the Constitution (see ECtHR decision-A, *B and C against Ireland* [DHM], § 142).
32. The mere fact that applicants are dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur-Tisazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).

33. In the same conditions and circumstances, the Constitutional Court had decided in the same way in case KI101/11 when it rendered the Resolution on inadmissibility, by rejecting the Referral filed before it as manifestly ungrounded.
34. Under these circumstances, the Applicant “has not sufficiently substantiated his claim” ,has failed to submit the referral in legal manner , and based on the foregoing, the Court finds pursuant to Rule 36 paragraph 2 items c and d that it should reject the Referral as manifestly ill-founded, and consequently

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on Constitutional Court and in compliance with the Rule 56 (2) of the Rules of Procedure, on 8 July 2013, 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



Prof. Dr. Ivan Čukalović



President of the Constitutional Court



Prof. Dr. Enver Hasani