



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

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Pristine, 29 January 2013  
Ref. No.: RK357/13

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI157/11

Applicant

**Union of Pensioners and Labor Disabled Persons of the Republic of Kosovo,  
represented by Mr. Azem Ejupi, lawyer**

**Request for regulation of status of pensioners and of labor disabled persons  
and improvement of welfare of pensioners of the Republic of Kosovo by state  
authorities**

### 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

#### **Applicant**

1. Union of Pensioners and of Labor Disabled Persons of the Republic of Kosovo (Applicant), represented by Mr. Azem Ejupi, lawyer.

### **Subject matter**

2. The substance of the case filed with the Constitutional Court of the Republic of Kosovo (hereinafter: the Constitution) has to do with the request of the Union of Pensioners and Labor Disabled Persons of the Republic of Kosovo regarding the recognition of the statutory and social right for pension and disability insurance.
3. The Applicant, among others, requests from the Court to influence on state authorities to implement the Law on Pension and Disability Insurance of former SAP of Kosovo, where according to the Applicant, the abovementioned law has not been yet repealed by any other act. By this Law, the pensioners and labour disabled persons claim that the status of pensioners was regulated and they enjoyed the rights, provided by this law.

### **Legal basis**

4. Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the "Law"), and Rule 28 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 2 December 2011, the Applicant submitted the Referral to the Court.
6. On 30 November 2012, the Court informed the Applicant about the registration of the Referral KI157/11.
7. On 5 January 2012, the President, with Decision GJR. KI157/11 appointed Judge Iliriana Islami as Judge Rapporteur. On the same date, the President of the Court, with Decision KSH. KI157/11 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy (member) and Gjyljeta Mushkolaj (member).
8. On 26 November 2012, the President, by Decision GHR. 157/11, appointed Judge Kadri Kryeziu as Judge Rapporteur, who is replacing Judge Iliriana Islami, whose mandate as a Judge of the Court had ended on 26 June 2012 and appointed the members of new Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy (member) and Arta Rama-Harizi (member) replacing Judge Gjyljeta Mushkolaj whose mandate as a Judge of the Court had also ended on 26 June 2012.
9. On 17 January 2013, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of the facts**

10. The Applicant states that since 1998 and until today the pensioners in Kosovo have not received the pension they deserve and they are still without health and social insurance, their status is not solved and they are in an inconvenient financial situation. The Applicant claims that the most vulnerable are pensioners who paid their contributions for pension and disability insurance, including the family pensioners.
11. The Applicant alleges that the pensioners were initially discriminated by the regime of Serbia, whereas after 1999 by UNMIK and lately by the governmental authorities of the Republic of Kosovo. The Applicant states among others:

*“Since the end of 1998 until August 2002, pensioners have not been paid any amount of pension. After the approval of UNMIK Regulation Nr.2001/35, dated December 21, 2001, on Pensions in Kosovo, as amended by Regulation Nr.2005/20, and the Law Nr.2002/1 on the Methodology of determining the level of basic pension in Kosovo and setting the date for the provision of basic pension, from July 1, 2002, has started a certain payment of basic pension, of 28 German Marks per month, for all persons aged over 65.”*

12. The Applicant mentions the fact that a lot of pensioners contribution payers, have acquired the right to pension pursuant to the Law on Pension and Disability Insurance of former SAP of Kosovo (Official Gazette of SAPK, No. 26/83, 26/86 and 11/88). According to the Applicant, the abovementioned law has not been repealed yet by any act and according to the provisions of that law, the pensioner according to the acquired legal status was entitled not only to receive pension, calculated based on work experience and the amount of paid contributions, but had a range of other privileges and rights.
13. The Applicant alleges that the pensioners today do not enjoy any of the rights obtained according to the Law at the time when they retired. They only receive a certain amount of 45+35 euro 80 euro in total and nothing more, regardless of duration of work experience or the amount of the paid contributions.

#### **Applicant’s allegations**

14. The Applicant alleges that by denying the rights obtained according to the Law on Pension and Disability Insurance, were violated the rights of pensioners contribution payers, guaranteed by Article 22, Article 23, Article 51 paragraph 1 of the Constitution, Article 17 paragraph 2 of Universal Declaration on Human Rights, Article 26 of the International Covenant on Civil and Political Rights and its protocols and Article 9 of European Convention on Protection of Human Rights and Fundamental Freedoms.

#### **Assessment of admissibility of the Referral**

15. In order to be able to adjudicate the Applicant’s Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, as further specified in the Law and the Rules of Procedure of the Court.
16. The Applicant seems to be unsatisfied with the governmental authorities that are competent to foresee and regulate issues that have to do with social policies, respectively the regulation of the status of pensioners and of labor disabled persons.
17. The Court observed that the Applicant did not specify any act of public authority (*see , Article 48 of the Law on Constitutional Court*), by which he alleges that his rights guaranteed by the Constitution and International Conventions that are directly applied in the Republic of Kosovo were violated. He only raised the issues that have to do with the regulation of social policies, respectively the improvement of welfare of pensioners and labor disabled persons, requesting from the Court to clarify why the requests of the Applicant, regarding the rights of pensioners and of labor disabled persons were not taken into account by the state authorities.
18. The Court is referred to Article 113.1 and 7 of the Constitution, which provides:

Article 113 [Jurisdiction and Authorized Parties]

1. *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*
19. In specific case, the Applicant requested from the Court to call on governmental authorities, respectively on respective ministries to draft the law on pensioners and labor disabled persons, as well as to adopt the Law on Health Insurance.
20. In this regard, the Court refers to Article 4 of the Constitution which clearly establishes the form of government and the separation of powers:
- “Article 4 [Form of Government and Separation of Power]  
[...]  
2. The Assembly of the Republic of Kosovo exercises the legislative power.  
[...]  
4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control.”*
21. Article 65 of the Constitution clearly sets forth the competencies of the Assembly of the Republic of Kosovo:
- Article 65 [Competencies of the Assembly]  
[...]  
(1) adopts laws, resolutions and other general acts;*
22. Further, Article 93 of the Constitution clearly sets forth the competencies of the Government:
- Article 93 [Competencies of the Government]  
The Government has the following competencies:  
(1) proposes and implements the internal and foreign policies of the country;  
[...]  
(3) proposes draft laws and other acts to the Assembly;  
(4) makes decisions and issues legal acts or regulations necessary for the implementation of laws;*
23. However, Article 113 of the Constitution has clearly provided who may be considered as authorized party to refer constitutional matters regarding the constitutional review of an act of a public authority and the constitutional review of a law.
24. In fact, the Applicant in this specific case acts as a legal person and refers to Article 113.7 of the Constitution as a legal basis for the filing of his Referral.
25. The Court analyzed and carefully assessed the requests of the Applicant and concluded that the Applicant as legal person in specific case cannot be considered as an authorized party that may refer constitutional matters *in abstracto* regarding the regulation of status of pensioners and labor disabled persons as well as on the improvement of their social welfare, based on the pension contributions paid over the years.
26. Apart from this, the Constitution of the Republic of Kosovo does not provide *actio popularis* which is a modality of individual appeals, which enable each individual who

attempts to protect public interest and constitutional order to address the Constitutional Court with certain questions and requests, indicating a violation of the constitutional rights of a certain individual or group.

27. Therefore, the Court considers that the Applicant is not an authorized party to refer a constitutional matter *in abstracto* regarding the regulation of status of pensioners and of labor disabled persons, for this reason pursuant to Article 113.1 of the Constitution this Referral is considered as inadmissible.
28. Consequently, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 56.2 of Rules of Procedure, the Referral is inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution and Rule 56.2 of the Rules of Procedure, on 17 January 2013, unanimously:

### DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and it 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**

**President of the Constitutional Court**

Kadri Kryeziu



Prof. Dr. Enver Hasani

