



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

Prishtina, 14 June 2013  
Ref. No.:RK425/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI23/13**

Applicant

**Melihate Hakiqi**

**Constitutional review of the Judgment of the Supreme Court of Kosovo  
A.No.1197/2012, 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. Melihate Hakiqi from village Llapashticë e Epërme, Municipality of Podujevo.

### **Challenged decision**

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, A.No. 1197/2012, of 27 December 2012. The Applicant did not specify the date of receipt.

### **Subject matter**

3. Subject matter of the Referral submitted to the Constitutional Court of the Republic of Kosovo, on 27 February 2013, is the review of the constitutionality of the Judgment of the Supreme Court of Kosovo A. No. 1197/2012, of 27 December 2012, by which the Supreme Court rejected the Applicant's lawsuit for review of legality of the Resolution of the Ministry of Labor and Social Welfare No. 5081032, of 7 September 2012, in administrative conflict procedure.

### **Legal basis**

4. 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 the Republic of Kosovo, of 15 January 2009 (hereinafter: the Law), and Rule 29 of the Rules of Procedure.

### **Proceedings before the Constitutional Court**

5. On 27 February 2013, the Constitutional Court received the Referral of Ms. Melihate Hakiqi and registered it under No. KI23/13.
6. On 28 February 2013, President of the Court, by decision GJR 23/13, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (presiding) and Ivan Čukalović and Enver Hasani (members).
7. On 21 March 2013, the Constitutional Court notified the Supreme Court and the Applicant on registration of the Referral.
8. On 15 May 2013, by decision of the President for replacement of a member of the Review Panel, Judge Snezhana Botusharova is appointed as presiding of the Review Panel.

### **Summary of facts**

9. On 20 July 2006, the Department of Pension Administration of Kosovo issued a decision with case file number 5081032, by which, based on Applicant's request filed on 19 July 2005, approved her request for disability pension.
10. No appeal was filed, within the legal time limit, against this decision by any party.

11. On 21 May 2012, the Doctor's Commission for reassessment of the MLSW issued a decision with the same case file number 5081032 concerning Ms. Melihate Hakiqi, thereby REJECTING her right to a disability pension.
12. On 7 September 2012, the Complaint Commission for disability pensions of the MLSW issued the Resolution with case file no. 5081032, by which rejected the Applicant's appeal and at the same time established that the first instance Decision was "fully grounded and in compliance with the Law No. 2003/23"
13. In the reasoning of the Resolution was mentioned that the first instance Doctor's Commission has correctly and completely determined the factual situation, by the fact that the Applicant does not meet the criteria from Article 3 of the Law 2003/23 and the fact that the commission of the second instance, composed of medical experts of relevant fields, has completely analyzed the medical documentation of the Applicant and has determined the same condition as in the enacting clause of the first instance decision.
14. Against this resolution, the Applicant filed a lawsuit with the Supreme Court of Kosovo, requesting the review of its legality.
15. On 27 December 2012, the Supreme Court of Kosovo, deciding upon the lawsuit of the Applicant in the administrative conflict procedure, issued the Judgment A.No. 1197/2012, REJECTING the lawsuit filed by the Applicant.
16. In the reasoning of its Judgment the Supreme Court stated that the respondent has applied correctly the substantive law, when determining that the plaintiff did not meet the criteria from Article 3 of the Law on DP, and also, that the Doctor's Commissions composed of experts of relevant fields have, unequivocally, correctly determined health condition of the Applicant, therefore the Supreme Court from the allegations in the lawsuit could not find evidence that it should have been decided differently or that the MLSW decisions were unlawful.

### **Applicant's allegations**

17. The Applicant claims that the Doctor's Commission of the Ministry of Labor and Social Welfare (hereinafter: the MLSW) in an unlawful manner rejected her "right to a disability pension" even though she met the criteria for such a pension, whereas the Supreme Court by refusing the Applicant's lawsuit in Administrative Conflict procedure, also made the same violation.
18. The Applicant alleges that by challenged Judgment have been violated the following human rights protected by the Constitution:
  - a). Article 23 ( Human Dignity)
  - b). Article 24 (Equality before the Law)
  - c) Article 25 (Right to Life)



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

19. In order to be able to adjudicate the Referral of the Applicant, the Court has to examine whether the Applicant has met all the requirements of admissibility, laid down by the Constitution.

20. Therefore, the Court refers to the Article 113.7 of the Constitution which provides:

*"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. The Court also refers to:

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

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

22. Referring to the Referral and the rights guaranteed by the Constitution, allegedly violated, the Court concludes that: Article 51 of the Constitution [Health and Social Protection] paragraph 2 clearly provides:

*"Basic social insurance related to unemployment, disease, disability and old age shall be regulated by law".*

23. From the legal definition of Article 51 of the Constitution it is clear that the social insurance related to "disability, unemployment and old age" shall be regulated by LAW, and in the present case the issue of the disability pension is regulated by LAW NO. 2003/23 ON DISABILITY PENSIONS IN KOSOVO adopted by Kosovo Assembly on 6 November 2003.

24. The procedure of application, meeting of the requirements to enjoy this right is set out in this Law, as well as the right to appeal against decisions when the parties are not satisfied with the decisions regarding their requests.

25. Administrative Committees of the MLSW by issuing the decision of 21 May 2012 and resolution of 7 September 2012, have acted precisely in accordance with the provisions of this Law. Furthermore, the Supreme Court, reviewing their legality in the Administrative conflict procedure, in its final Judgment A.nr.1197/2012, of 27 December 2012, qualified them as entirely legal and grounded.

26. The Constitutional Court reviewing Applicant's allegations on violation of Article 23 (Human Dignity), Article 24 (Equality before the Law), and Article 25 (Right to Life) of the Constitution, established that the Applicant did not submit facts to this Court that would confirm her allegations, in fact, besides ascertaining that she meets the requirement for pension, she never provided evidence that would prove the alleged violations nor which judicial or administrative organs have treated her unequally.

27. The Constitutional Court is not the fact finding court, and in this case emphasizes that the fair and complete determination of factual situation is under full jurisdiction of the regular courts, and in this case was the jurisdiction of the administrative organs and its role is only to ensure compliance with the rights guaranteed by the Constitution, therefore it cannot act as the "court of fourth instance", (*see, mutatis mutandis, i.a., Akdivar against Turkey, 16 September 1996, R.J.D, 1996-IV, par. 65*).
28. The Constitutional Court has a subsidiary role, compared to the regular domestic judicial and/or administrative system, and it is desirable that the national courts or competent administrative organs with effective decision-making competences initially have the opportunity to decide on issues concerning the compliance of the internal law with the Constitution (*see Decision of the ECHR -A, B and C against Ireland [DHM], § 142*).
29. The mere fact that the Applicants are unsatisfied with the outcome, cannot serve as the right to file an arguable claim on violation of the Article 31 of the Constitution (*see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat against Hungary, Judgment dated 26 July 2005*).
30. The Constitutional Court, under similar conditions and circumstances, acted in the same way in case KI101/11 when issued the Resolution on inadmissibility, rejecting the Referral as manifestly ill-founded.
31. In these circumstances, the Applicant "did not sufficiently substantiate her allegations", therefore, I propose to the Review Panel that, pursuant to the Rule 36 paragraph 2 items c and d, the Referral should be rejected as manifestly ill-founded, and

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 36.2 item (c) and (d) of the Rules of Procedure, on 14 June 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;
- III. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Prof. Dr. Enver Hasani