



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

Pristina, 4 July 2013
Ref. no.:RK434/13

RESOLUTION ON INADMISSIBILITY

in

Case no.KI27/13

Applicant

Kadri Çitaku

Constitutional Review of the Judgment of the Supreme Court of Kosovo
A. no. 556 / 2011 dated 28 September 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. Kadri Çitaku from village Gjurakoc, Municipality of Istog.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo A. no. 556/2011 dated 28 September 2012, which was served on the Applicant on 16 October 2012.

Subject matter

3. The Court assumes that according to the submitted documentation the subject matter is the Judgment of the Supreme Court of Kosovo A.No.556/2011 dated 28 September 2012, by which was upheld the Resolution of the Ministry of Labor and Social Welfare (hereinafter: MLSW)– Department of Pension Administration (hereinafter: DPA), no. 5097359 dated 15 March 2011, by which was rejected the Applicant's request for recognition of the right to disability pension.
4. The Applicant neither filled the Referral form which was provided by the Constitutional Court by notification no. ref. 713/13/rl dated 04 April 2013, nor indicated which Articles and rights, guaranteed by the Constitution were violated to the Applicant.

Legal basis

5. Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 of the Law on Constitutional Court of the Republic of Kosovo dated 15 January 2009 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 04 March 2013, the Applicant insisted that the Constitutional Court registers and receives the documentation, which the Applicant submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: „the Court“) although he was instructed by legal advisor that he should fill the Referral Form and indicate which constitutional articles and rights were violated to the Applicant.
7. On 04 April 2013, the Constitutional Court notified the Applicant that the Court registered the case, submitted to the Applicant the Referral Form with the request to fill the Referral and to submit it to the Court.
8. On 14 May 2013, the Constitutional Court requested from the Supreme Court to submit additional documentation with evidence when the Judgment of the Supreme Court of Kosovo A.No.556 /2011 dated 28 September 2012 was served on the Applicant.
9. On 17 May 2013, the Supreme Court of Kosovo submitted to the Constitutional Court the return receipt, which shows that the Judgment of the Supreme Court of Kosovo A.No.556/2011 dated 28 September 2012 was served on the Applicant on 16 October 2012.

10. On 14 June 2013, after the review of the report of the Judge Rapporteur Kadri Kryeziu, the Review Panel composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Prof. Dr.Ivan Čukalović, recommended to the full Court the inadmissibility of the Referral.

Summary of facts

11. On 04 June 2010, the Applicant submitted request to MLSW-DPA in order that the right to disability pension is recognized to the Applicant. MLSW-DPA by decision no. 5097359 dated 04 September 2010, rejected the request of the Applicant, because he did not meet the requirements for recognition of the right to disability pension.
12. On 06 January 2011, the Applicant lodged an appeal against MLSW-DPA decision No. 5097359 of 04 September 2010, to the MLSW-DPA Council of Appeals for Disability Pensions, which deciding on the Applicant's appeal, by Resolution No. 509739 dated 15 March 2011 rejected the appeal of 06 January 2011, on recognition of the right to disability pension, as ungrounded and upheld the decision of the first instance Doctor's Commission, as grounded in entirety, in compliance with the Law No. 2003/23.
13. The Applicant filed a lawsuit with the Supreme Court of Kosovo against the Resolution of MLSW-DPA-Council of Appeals and Disability Pensions No. 5097359 of 15 March 2011.
14. Deciding on the Applicant's lawsuit the Supreme Court of Kosovo by Judgment A.No.556/2011 of 28 September 2012, rejects the Applicant's claim by reasoning;

"During the appellate procedure, the respondent body provided the finding and opinion of the respondent's medical committee No.5097359 dated 25.02.2011, and the evaluation of the medical committee for disabled people, the factual body, that is concurrent with the previously given findings and opinions of medical committees and therefore, with the impugned decision it rejected the claimant's appeal as ungrounded and upheld the attacked decision."

"Taking into consideration that the legally authorized medical committees have confirmed that the claimant does not manifest disability for work, the Court finds that the administrative bodies have correctly implemented Article 3 of the abovementioned Law, pursuant to which the claimant's request to acknowledge his right to disability pension was rejected."

Applicant's allegations

15. The Applicant has submitted to the Constitutional Court 49 pages of various documents, where most of them are related to the realization of right to disability pension.
16. The Applicant, despite the written notice by the Constitutional Court no. ref. 713/13/rl of 04 April 2013, did not fill the form, nor indicated which Articles of

the Constitution and which rights guaranteed by the Constitution were violated to the Applicant.

Assessment of admissibility of the Referral

17. 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 and further specified by the Law and Rules of Procedure.
18. Regarding this, the Court refers to Article 49 (Deadlines) of the Law, which stipulates:

"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. The Court states that from the additional documentation, submitted by the Supreme Court of Kosovo was determined that the Judgment of the Supreme Court of Kosovo A.No.556/2011 dated 28 September 2012, was served on Applicant on 16 October 2012, when the Applicant signed the return receipt.
20. Final judgment of the Supreme Court of Kosovo was served on the Applicant on 16 October 2012, while the Applicant submitted the Referral to the Constitutional Court on 04 March 2013.
21. It results that the Referral is inadmissible for review, pursuant to Article 49 (Deadlines) of the Law and Rule 36. (1b) of the Rules of Procedure, which provides: *"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."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 49 of the Law and Rule 36 (1b) of the Rules of Procedure, in the session held on 4 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;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Dr. Sc. Kadri Kryeziu


Prof. Dr. Enver Hasani

