



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Pristine, on 15 January 2013  
Ref. no.:RK338/13

**RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI39/11**

Applicant

**Tomë Krasniqi**

**Constitutional review of Notification no. 311/07 of 13 April 2007 and Certificate  
no. 322/07 of 30 April 2007 of the Ministry of Labor and Social Welfare**

**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. Tomë Krasniqi, a pensioner residing in Prishtina.

### **Challenged decisions**

2. Notification no. 311/07 of 13 April 2007 and Certificate no. 322/07 of 30 April 2007 of the Ministry of Labor and Social Welfare.

### **Legal basis**

3. Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, (hereinafter: the Law), and Rule 56.2 of the Rules of Procedure (hereinafter: Rules of Procedure).

### **Subject matter**

4. The subject matter treats the loss of his pensioner status, respectively the ceasing of pension payments that the Applicant had acquired by way of final decision No.181 – 1/98 of 11 June 1998 from the Kosovo Pension and Disability Insurance Fund in Prishtina.

### **Procedure before the Court**

5. On 16 March 2011, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 April 2011, the President by Decision No. GJR. KI-39/11, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 39/11, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy and Kadri Kyeziu.
7. On 6 July 2011, the Applicant was notified of the registration of the Referral. On the same date the Referral was communicated to the Ministry of Labor and Social Welfare, Municipal Court in Prishtina and the Institution of Ombudsperson.
8. On 4 August 2011, the Ministry of Labor or Social Welfare replied to the Referral of the Applicant.
9. On 14 October 2011, the Applicant submitted to the Court a document containing a legal interpretation of the “acquired right” entitled “THE ACQUIRED RIGHT IN PENSION AND ITS LEGAL CERTAINTY”.
10. On 19 July 2012, the President by Decision (No. GJR.KI-39/11) appointed Judge Altay Suroy as Judge Rapporteur after the term of office of Judge Gjyljeta Mushkolaj as Judge of the Court had ended. On the same date the President by Decision no. KSH 62/12 appointed the new Review Panel consisting of Judges Robert Carolan (presiding), Enver Hasani and Kadri Kryeziu.
11. On 27 November 2012, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Background of the Referral**

12. On 3 May 1998, the Applicant acquired the right to old age pension.
13. On 11 June 1998, the Applicant by final resolution no. 181-1/98 of the Pension and Disability Insurance Fund of Kosovo acquired the status of pensioner.

14. On the basis of his work and previous employment, and in accordance with the applicable legislation and according to the principles of solidarity and reciprocity as well as in compliance with the Law on Pension and Disability Insurance, the Applicant acquired this right under the Regional Community Fund for Kosovo Pensions in Prishtina.
15. The Applicant enjoyed the right to retirement pension until November 1998, but due to the circumstances in Kosovo in early 1999, the Applicant's right to retirement pension was terminated without any legal ground.

### **Summary of the facts related to the administrative proceedings**

16. On 11 April 2007, the Applicant filed an appeal with the Department of the Kosovo Pension Administration (hereinafter: DKPA), within the Ministry of Labor and Social Welfare (hereinafter: the Ministry), in relation to his status as a pensioner acquired by final decision no. 181-1/98 of 11 June 1998 from the Pension and Disability Insurance Fund of Kosovo.
17. On 13 April 2007, the DKPA issued a notice with Ref. no. 311/2007 and *inter alia* informed the Applicant that the problem of failing to pay pensions acquired on the basis of contributions currently represents one of the unresolved political questions.
18. On 30 April 2007, the DKPA issued the certificate No. 322/07 which *inter alia* stated that the Applicant is in the evidences of pension payments acquired on the basis of contributions from the Pensions and Disability Insurance in Prishtina since 1998 and onward".
19. On 24 January 2008, the Applicant filed a request to the Ministry-DKPA to recognize his pension rights based on paid contributions.
20. On 11 September 2009, the Supreme Court of Kosovo by Judgment no. 280/09 obliged the Ministry – DAPK to recognize the right of the Applicant as a contribution-payer pensioner.
21. On 23 September 2009, while the procedure in the Supreme Court of Kosovo was still pending, the Ministry –DKPA by decision 104474, recognized the right of the Applicant as contribution-payer to be paid a monthly sum of 35 €, and informing the Applicant that he may appeal against the decision of the Ministry –DAPK within 15 days from the date of receipt of decision to the Board of Appeal in DAPK.
22. On 19 November 2010, the Supreme Court of Kosovo by Resolution A. 837/2009 requested the plaintiff (Applicant) that, within 15 days from the day of receipt of the respondent' resolution (Ministry –DKPA) no. 280/09 of 11 September 2009, he should state whether he was satisfied with the decision, or would not give up his claim. The Applicant was informed that unless he did not act according to the decision, the Supreme Court would suspend the procedure.
23. On 23 February 2011, the Supreme Court, by Resolution A. no. 837/2009, suspended the procedure, noting *inter alia*:

*"The Resolution of the Court no. 9/2009, dated 1 June 2010, has been submitted to the plaintiff (Applicant) on 27 November 2010. The Applicant has not replied within the deadline by the Resolution.*

*Since the plaintiff (Applicant) has not replied within the deadline, the Court, in compliance to the Article 32 paragraph 1 of LCP, decides as in the enacting clause of this decision”.*

24. On 4 August 2011, the Ministry - DKPA responded to the Court in relation to the Applicant's referral, noting inter alia that the Applicant was granted the right of the basic pension and contribution-payer pension, and that the issue of pension from the former Yugoslav Federation fund can be resolved only after inter-state negotiations.

#### **Summary of the facts regarding the civil proceeding**

25. On 4 May 2007, the Applicant filed a claim (C. No. 1155/07) with the Municipal Court in Prishtina against the Government, respectively the Ministry DKPA, requesting to be reinstated with the status of a contribution pensioner and to be compensated for due and unpaid pensions to the amount of 18.360 €.
26. On 14 January 2008, the Applicant requested the Municipal Court in Prishtina to hold a hearing on claim C. No. 1155/07 of 4 May 2007.
27. On 16 June 2008, the Applicant filed a second request to the Municipal Court in Prishtina to hold a hearing on the claim C. No. 1155.07 of 4 May 2007.
28. On 17 December 2008, the Applicant repeated his request to the Municipal Court in Prishtina to hold a hearing on the claim.
29. On 9 January 2009, the Applicant filed a further submission with the Municipal Court Prishtina to conclude that the Applicant has the status of a pensioner with full pension rights payable from 1 December 1998 onwards on the basis of contributions paid by him for 40 years of work.
30. Moreover, on the basis of the above submission, the Applicant requested the Municipal Court in Prishtina, to oblige the Republic of Kosovo respectively the Ministry –DKPA, as the responding parties, to pay the pension due from 1 December 1998 until the submission of the claim, to an amount of 18.360 €, and starting from May 2007 to pay him the amount of 180 € per month, as long as he is entitled to this payment, as well as his procedural expenses, all these within 15 days from the date when the judgment became final.
31. On 28 June 2010, the Applicant filed another claim with the Municipal Court in Prishtina in which he requested the court to speed up the procedure and schedule the date for the main hearing in relation to his case, because since the submission of the claim more than 3 (three) years had passed.

#### **Proceedings in other institutions**

32. On 30 September 2009, the Ombudsperson Institution, upon the request of the Applicant, requested the Municipal Court in Prishtina to be informed of the actions taken by it in respect to the claim of the Applicant.
33. The Municipal Court in Prishtina replied to the request of the Ombudsperson Institution, underlining that it has received the claim by the Applicant, as well as the respondent's response, and that will proceed further with this dispute in order of the cases received at the Court.”

### **Applicant's allegation**

34. The Applicant claims a violation of Article 1 (2) [Definition of State], Article 22 [Direct Applicability of International Agreements and Instruments, Article 23 [Human Dignity], Article 24(1) [Equality before the Law], Article 31 (1) [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 51 [Health and Social Protection] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction to the Article 1 [Obligation to Respect Human Rights], Article 6 (1) [The Right to a Fair trial], Article 13 [Right to effective remedy], Article 14 [Prohibition of discrimination], Article 1 of the Protocol No.1 [Protection of Property], Article 1 of Protocol No.12 [General Prohibition of Discrimination] of the Convention.
35. The Applicant claims that the institutions of the Republic of Kosovo by their actions, respectively by their non-actions have violated the abovementioned provisions of the Constitution and the Convention to his detriment, and that he was discriminated and denied, among others, his property rights, health and social protection, the right to fair trial and the right to effective remedies.
36. The Applicant claims that his request has to do with general public interest and not just with his own interest. The general public interest includes pensioners of all categories (old age pensioners, disability and family pensioners).
37. The Applicant, in the administrative procedure requested from the respondent (Ministry –DPAK) to enable him the periodic payment of due and unpaid pensions, and to compensate him the damage caused, from the date when he claims that he has been denied this right. To fulfill this right, the Applicant claims that he has filed requests, appeals and repeated requests and has received negative reply.
38. Finally, the Applicant requests from the Court:
  - Reinstatement of the lost status of pensioner, that he acquired by his own individual work on the basis of his previous employment by paying obligatory legal contributions throughout all the time while he enjoyed the status of insured person; and
  - Full compensation on the basis of due and unpaid requests (pensions), according to the obtained pension installments and unpaid from the date when the Applicant has been terminated the pension installments up to the date of their payment in accordance with the applicable legal provisions;
  - To decide on the merits for the concrete case referring to the public legal interest;
  - To decide specifically by applying the possible justice mechanisms through the Municipal Court in Prishtina, that in the capacity of the regular court of competent jurisdiction to accomplish the personal and legal interest of the Applicant;
  - To decide on the Applicant's notification and other litigant parties, and those interested.

### Assessment on the admissibility of Referral

39. The Court observes that, in order to be able to adjudicate the Applicant's complaint it is necessary to first examine whether he has fulfilled the admissibility criteria laid down in the Constitution and further specified in the Law and the Rules of Procedure.
40. As to the Applicant's claim that his Referral does not concern only him as an individual but is of general public interest, the Court reiterates that the Constitution of Kosovo does not provide for an *actio popularis*, meaning that individuals cannot complain in abstract or challenge directly actions or failure to act by public authorities. The Constitution of Kosovo provides recourse to individuals regarding actions or failure to act by public authorities only within the scope provided by Articles 113.1 and 113.7 of the Constitution, which requires the Applicants to show that they are: (1) authorized parties, (2) directly affected by a concrete act or failure to act by public authorities, and (3) that they have exhausted all legal remedies provided by law. It follows that the Applicant's Referral on the grounds of public interest does not meet the aforementioned criteria and must therefore be rejected as inadmissible. (*see Resolution on Inadmissibility KI51/10, Zivic Ljubisa, Constitutional Review of the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravkovic Goran as a member of the Central Election Commission representing the Serbian Community, dated 2 March 2012*).
41. The Applicant has initiated two procedures, almost simultaneously, in order to reinstate him into the status of pensioner and to compensate unpaid pensions since 1 December 1998 until now: (1) the civil procedure before the Municipal Court in Prishtina on 4 May 2007 which is still pending, and (2) the administrative procedure initiated on 11 April 2007 before the Ministry- DKPA which ended with the Supreme Court's Resolution ( A.nr. 837/2009 of 23 February 2011).
42. The Supreme Court, by Resolution A. no. 837/2009 of 23 February 2011, suspended the administrative procedure in accordance with Article 32 paragraph 1 of the Law on Administrative Conflicts since the Applicant did not declare within the period prescribed by the resolution.
43. Article 32 paragraph 1 of the Law on Administrative Conflicts provides:

*"If during the court proceedings, the institution takes some other action derogating from the administrative act which the administrative dispute has been initiated, as well as in the case of the Article 26 of this law after the administrative act is to be brought, that institution will inform, besides the plaintiff, also the court were the case of administrative dispute has been initiated. In that particular case the court will ask the plaintiff to state in a time limit of 15 days whether he is satisfied with a new act or whether he maintains his complaint or will extend his accusation with additional reasons. If the plaintiff states that he is satisfied with subsequent act, or does not state the opposite in a term described by paragraph 1 of this article, the court will bring the decision on suspension of proceeding. If the plaintiff does state that he is not satisfied with new act, the court will continue proceeding"*.
44. As to the administrative procedure initiated within the Ministry-DPAK regarding the realization of his rights, the Applicant believed that he had received a negative reply and therefore without completing the administrative proceedings, he initiated a civil lawsuit before the Municipal Court in Prishtina. However, in the Courts view, the Applicant must prove why he has not exhausted the administrative procedure, and show that the legal remedies available to him under Kosovo law were insufficient or

unfruitful, or that there were special circumstances which exempted the Applicant from the obligation to exhaust such remedies, instead of pursuing the administrative procedure till the end. The Applicant's mere doubt does not exempt him from the obligation to exhaust the given legal remedy. (see: *Epözdemir v. Turkey*, no. 57039/00, Resolution of 31 January 2002; *Pellegriti v. Italy*, no.77363/01, Resolution of 26 May 2005; *MP Golub v. Ukraine*, no.6778/05, Resolution of 18 October 2005).

45. As to the present case, the Applicant has not proven that the administrative proceedings, which he had initiated, were ineffective or unfruitful, save for his statement that he has received negative reply. And at the same time the Applicant has conducted civil procedure also against the Ministry - DKPA with the Municipal Court in Prishtina, which was initiated on 4 May 2007.
46. In this respect, the Court refers to 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".*
47. The rationale for the exhaustion rule is to afford the authorities concerned, including the regular courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The exhaustion rule is based on the subsidiary character of the procedural framework of constitutional justice ( see: *Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, of 27 January 2010 and, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999*).
48. In the present case, the Applicant did not follow the administrative procedure to the end, and almost simultaneously initiated civil proceedings before the Municipal Court in Prishtina, without having received a final decision in the administrative procedure. The Applicant therefore, failed to comply with Article 113.7 of the Constitution and Article 47 of the Law on the Constitutional Court.
49. Furthermore, in relation to the lawsuit lodged by the Applicant with the Municipal Court of Prishtina, the Court refers to Article 31 paragraph 2 [Right to Fair and Impartial Trial] of the Constitution:

*"Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law".*
50. The Court emphasizes the aforementioned constitutional provision envisages expedited procedure in cases where individuals face criminal charges, whereas the case at issue has to do with a lawsuit, whereby the Municipal Court in Prishtina has received a reply from the respondent party, and it has also emphasized that it will proceed further with the lawsuit in question according to the order of the cases arrived at the selfsame court.
51. Consequently, the Referral should be rejected as inadmissible for non-exhaustion of all legal remedies specified under Article 113.7 of the Constitution and Article 47 of the Law.

**FOR THESE REASONS**

The Constitutional Court, Pursuant to Article 113.7 of the Constitution and Article 47 of the Law and in compliance with the Rules of Procedure, on 27 November 2012, unanimously:

**DECIDES**

- I. TO DECLARE the Referral 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; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Prof. Dr. Enver Hasani