



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

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Prishtina, on 30 June 2014  
Ref.no.:RK660/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI54/14**

Applicant

**Hamdi Ademi**

**Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 375/2007 of 26 November 2007 and of the Decision of the Appeals Committee of the Ministry of Labor and Social Welfare no. 5054321 of 10 November 2005**

**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. Hamdi Ademi, from the village Gllamnik, Municipality of Podujeva, who is represented by Mr. Mahmut Hoti, lawyer.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court of the Republic of Kosovo A. no. 375/2007 of 26 November 2007 (hereinafter: the Supreme Court), and the Decision of the Appeals Committee of the Ministry of Labor and Social Welfare no. 5054321 of 10 November 2005 (hereinafter: the MLSW Appeals Committee).

## **Subject matter**

3. The subject matter is the constitutional review of the Judgment of the Supreme Court A. no. 375/2007 and the Decision of the MLSW Appeals Committee no. 5054321, regarding the violation of the right to recognition of the status for disability pension.
4. In his Referral the Applicant did not specify any provision of the Constitution.

## **Legal basis**

5. The legal basis is: Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 25 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 2 April 2014 the President of the Court, by Decision GJR. KI54/14 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same day, the President by Decision KSH. KI54/14 appointed the members of the Review Panel, in the following composition: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 18 April 2014, the Court notified the Applicant, the Supreme Court and the MLSW on the registration of Referral.
9. On 19 May 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

## **Summary of the facts**

10. On 17 June 2005 the first instance of MLSW, by Decision no. 5054321, rejected the Applicant's request for recognition of the right to benefit disability pension. This instance concluded that the Applicant did not meet requirements under Article 3 of UNMIK Regulation no. 2003/40, on the Law on disability pension. The reason for rejection of the request was based on the conclusion of the

Medical Committee of 8 June 2005, which assessed that the Applicant was not permanently disabled, as provided by the abovementioned legal provision.

11. The Applicant filed an appeal within legal deadline against the said decision, with the Appeals Committee of the MLSW.
12. On 10 November 2005 the MLSW Appeals Committee, by Decision no. 5054321, rejected the Applicant's request for recognition of the right to disability pension, because the Applicant did not offer evidence for fulfillment of requirements to benefit the disability pension, as provided by Article 3 of the Law on disability pensions.
13. The Applicant filed an appeal against the Decision of the MLSW Appeals Committee with the Supreme Court, challenging the legality of the abovementioned decision, because the medical committees did not take into account the fact that his health condition was serious and that he was no longer able to work, and therefore, according to him, the factual situation was not determined in a correct and complete manner.
14. On 26 November 2007, the Supreme Court rendered Judgment A. no. 375/2007, by which the Applicant's appeal was rejected, with the reasoning:

[...]

*“Considering that the legally authorized medical committees have confirmed that the claimant has no work disability, the court finds that administrative authorities have correctly applied the provisions of Article 3 of the above mentioned Law, pursuant to which the claimant's claim to recognize his right to disability pension was rejected.*

*The court assessed the allegations in the claim and found that they do not have influence on this administrative matter in rendering a different decisions, because by the administered evidence pursuant to the above mentioned provisions it has been undoubtedly established that the claimant does not fulfill the legal criteria to recognize his right to disability pension, therefore pursuant to Article 42, paragraph 2 of the LAC it was decided as per the enacting clause of this Judgment.”*

[...]

### **Applicant's allegations**

15. The Applicant alleges that the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 375/2007, of 26 November 2007 and the Decision of the MLSW violate his right to benefit disability pension.
16. The Applicant requests, among others, that the Decision of the Appeals Committee of the MLSW no. 5054321 of 11 November 2005 be rejected as ungrounded and the right to disability pension be recognized to him.

## Admissibility of the Referral

17. In order to be able to review the Applicant's Referral, the Court first examines whether the Applicant has fulfilled the procedural requirements of admissibility, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
18. As to the Applicant's Referral, the Court refers to Rule 36 (3) h) which reads as follows:

*"A Referral may also be deemed inadmissible in any of the following cases:*

*(h) the Referral is incompatible ratione temporis with the Constitution."*
19. In order to establish the Court's temporal jurisdiction it is essential to identify, in each specific case, the exact time of alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of constitutional right alleged to have been violated (see, *mutatis mutandis*, European Court of Human Rights Chamber Judgment in case of *Blečić v. Croatia*, Application no.59532/0, dated 8 March 2006, para. 82).
20. The Court notes that the Applicant complains against the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 375/2007, of 26 November 2007, and the Decision of the MLSW. Thus, the final decision in the Applicant's case is the Judgment A. no. 375/2007, of 26 November 2007.
21. This means that the alleged interference with Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of entry into force of the Constitution and from which date the Court has temporal jurisdiction.
22. The Court, similarly decided in the case KI100/10 Resolution on Inadmissibility, the Applicant *Eduard Thaqi* (also known as Sokol Thaqi) – Constitutional Review of the Decision of the Kosovo Police, no.398-SHPK-2002 dated 22 October 2002.
23. It follows that the Applicant's referral is incompatible *ratione temporis* with the provisions of the Constitution.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, Rule 36 (3) h) and Rule 56 (2) of the Rules of Procedure, on 19 May 2014, unanimously:

### DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this decision to the parties.
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Prof. Dr. Ivan Čukalović

Prof. Dr. Enver Hasani

