



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

Prishtina, 23 July 2012
No. Ref.: RK 286/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI63/11

Applicant

Veli Kuqi

**Constitutional review of the Judgment of the Supreme Court of Kosovo
A. No. 1239/2010 dated 23 March 2011**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge

The Applicant

1. The Applicant is Mr. Veli Kuqi from the village of Shirokë, Municipality of Suhareka.

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo A. No. 1239/2010 dated 23 March 2011 rejecting as ungrounded the Applicant's claim for compensation of material and non-material damage, in the dispute for suspension of pension payments against the Ministry for Labor and Social Welfare (hereinafter: the "MLSW") – Central Administrative Department (hereinafter: the "CAD").

Subject Matter

3. The Applicant challenges the Judgment of the Supreme Court of Kosovo A. No. 1239/2010 dated 23 March 2011 claiming that his right for an early retirement obtained on accounts of labor and the right to a disability pension as foreseen by the Constitution of the Republic of Kosovo have been violated.

Legal Basis

4. The Referral is filed based on Articles 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, dated 16 December 2008 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure.

Proceedings before the Constitutional Court

5. The Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 11 May 2011.
6. On 20 June 2011 the Constitutional Court informed the Supreme Court of Kosovo that a procedure has been initiated for review of constitutionality of the Judgment of the Supreme Court of Kosovo, A. No. 1239/2010 dated 23 March 2011.
7. By Decision of the President (No. GJR. 63/11 dated 17 August 2011) Judge Gjyljeta Mushkolaj was appointed as Judge Rapporteur. On the same date, the President, by Decision no. KSH. 63/11, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Snezhana Botusharova and Prof. Dr. Iliriana Islami.
8. By Decisions of the President (No. GJR. 117/11 and No. KSH. 63/11 dated 2 July 2012) Judge Ivan Čukalović was appointed as Judge Rapporteur, replacing Judge Gjyljeta Mushkolaj; and Judge Altay Suroy was appointed as member to the Review Panel, replacing Judge Iliriana Islami, whose mandate as Constitutional Court Judges ended on 26 June 2012.
9. On 11 July 2012, after considering the report of Judge Ivan Čukalović, the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Altay Suroy made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

10. On 9 September 1973 the Applicant entered established employment relationship with the Provincial Secretariat for Internal Affairs (hereinafter: the "PSIA").
11. The Applicant worked at several positions within the PSIA as an authorized officer, and in conducting official duties with the PSIA the Applicant was wounded during the street protests (demonstrations) on 1 April 1981.

12. On 9 June 1989 the Applicant, in his letter No. 04-118-36, requested PSIA to allow early retirement for him, where in its pertinent part he stated: "... *due to wounding in 1981 I was declared as military disabled with a 40% level of damage to my health...*".
13. On 25 September 1989 by Decision No. 7004035303, based on the applicable law at that time, the Applicant's right for an early retirement was recognized. The Applicant received early retirement pension until 1998 when the Government of Serbia stopped paying pensions to persons of Albanian ethnicity.

Procedure for disability pension requests

14. On 31 May 2010 the Applicant filed a request with the Ministry for Labor and Social Welfare (hereinafter: the "MLSW") Pension Administration Department of the Republic of Kosovo (hereinafter: the "PADRK") to recognize his right for a disability pension.
15. On 10 February 2011 by decision of the PADRK, and based on the decision issued by the Appeals Council No. 5097090 dated 10 December 2010, the Applicant's right for a disability pension was recognized.

Procedure for early retirement and disability pension requests

16. However, in the meantime, on 5 July 2010 the Applicant addressed the MLSW with another request in which he asked for reactivation of his previously obtained early retirement and disability pension, which he used to receive before the beginning of the war skirmish in Kosovo.
17. On 21 July 2010 MLSW-PADRK in response No. 4920, in its pertinent part, stated:

"The pension that you are speaking of, that you enjoyed before the war, cannot be received again, because the entitlement to pension is provided for on the day one reaches 65 years of age."

With regards to the remaining pensions, it is not only you in that situation, but around 50,000 pensioners from Kosovo, who were beneficiaries of the fund of the former Yugoslav Federation ...or that worked in enterprises of Serbia..."

"According to your request made and the alternatives, you may only apply for the disability pension or social assistance ... and" (the Applicant's disability pension request which was approved on 10 February 2010 through decision of the PADRK and based on the decision of the Appeals Council No. No. 5097090 dated 10 December 2010).

18. On 22 December 2010 the Applicant initiates a lawsuit against the response No. 4920 dated 21 July 2010 of the MLSW-PADRK to the Supreme Court of Kosovo, by which he requested compensation of damage from MLSW for suspension of payments of the early retirement and disability pension for the period of 11 years.
19. On 23 March 2011 the Supreme Court of Kosovo, by Judgment A. No. 1239/2010 rejected the lawsuit as ungrounded, and in its pertinent part stated the following:

"The Supreme Court of Kosovo found that the plaintiff is ungrounded, because it assessed that the accused body, whose decision is disputed, is not the successor of various pension funds from the system of the former Yugoslavia. Pursuant to

Regulation 2001/35, Pension Administration was established within MLSW and is obliged to regulate the payments of basic pensions for persons fulfilling the criteria on the basis of present Regulation. The basic pension scheme of Kosovo, after the war, commenced on 1 July 2002, as part of the DPAK, and regulates pensions of the experienced contributors of the pension insurance according to Administrative Instruction No. 11/2007. Based on these facts, it results that institutions of the Republic of Kosovo are new authorities and are not legal successors of the authorities prior to 1999.”

Applicant’s allegations

20. The Applicant alleges that the Judgment of the Supreme Court of Kosovo A. No. 1239/2010 dated 23 March 2011 violates the right for an early retirement and disability pension, stating that Article 102.3 of the Constitution which provides: “*Courts shall adjudicate based on the Constitution and the law*”.
21. Finally, the Applicant alleges that Article 22 of the Constitution was violated, which sets forth Direct Applicability of International Treaties and Instruments, specifically the European Social Charter of 1996.
22. The Applicant asks for the following from the Constitutional Court of Kosovo:

“With the submission of this request I would like to prove that the Resolution of the Supreme Court of Kosovo A. No. 1239, dated 22.12.2010, is in contradiction with the Supreme Court of Kosovo and this Resolution has violated my right to benefit from the labour disability pension. Thus, I was denied my right to labour disability pension despite fulfilling all conditions to benefit from such pension. As a consequence of my disability, I was forced to leave work that I had for few years. For that reason I am disabled and still suffering from the violation of my right.”

Preliminary Assessment of Admissibility

23. The Applicant claims that Article 22 [Direct Applicability of International Treaties and Instruments] and Article 102.3 [General Principles of the Judicial System] of the Kosovo Constitution are the basis for his Referral.
24. Article 48 of the Law on Constitutional Court of the Republic of Kosovo stipulates:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”
25. Under the Constitution, the Constitutional Court is not a court of appeal, when considering decisions rendered by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).
26. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005). The Applicant does not specify how Articles 22 and 102 of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.

27. The Applicant claims that his rights were violated by the regular courts' erroneous finding of fact and application of law, without specific reference to how these decisions infringed on his constitutional rights.
28. In the present case the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Ministry of Labor and Social Welfare and the Supreme Court. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009).
29. It follows that the Referral is manifestly ill-founded pursuant to Rule 36.2(b) of the Rules of Procedure which stipulates: *"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights"*.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, in its session held on 11 July 2012, unanimously

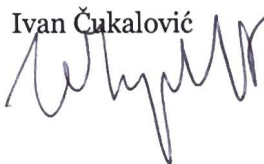
DECIDES

- 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; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

