



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

Pristina, 29 January 2013
Ref. No.:RK 359/13

RESOLUTION ON INADMISSIBILITY

In

Case No. KI 69/12

Applicant

Association of Second World War Civilian Invalids

Constitutional Review

**of the Decision of the Supreme Court of Kosovo KRJA, No. 6/2011 dated 8 May
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 the Association of Second World War Civilian Invalids.

Challenged Decision

2. The Applicant challenges the Decision of the Supreme Court KRJA, No. 6/2011 dated 8 May 2012, submitted to the Applicant on 18 May 2012.

Subject Matter

3. The Applicant alleges that the aforementioned Decision violated its rights guaranteed by the Constitution, namely Article 3, paragraph 2 [Equality before the Law], Article 22 [Direct Applicability of International Agreements and Instruments], and Article 24 [Equality before the Law].

Legal Basis

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, in conjunction with Article 22 of the Law No. 03/L-121 on Constitutional Court (hereinafter: the Law) and Rule 56 (2) of Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 13 July 2012, the Applicant submitted the Referral to the Court.
6. On 4 September 2012, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Altay Surroy and Ivan Čukalović.
7. On 10 December 2012, the Referral was communicated to the Supreme Court.

Summary of the Facts

8. The Applicant, namely the Association of Civilian Invalids of War, was registered under UNMIK Regulation 1999/22 as an NGO with Public Benefit Status on 6 March 2000.
9. The Civilian War Invalids enjoyed the rights and protections under the provisions of the Law on Protection of Civil War Invalids (published in Official Gazette of Kosovo No.32), and adopted by the Assembly of Kosovo on 26 July 1976 (hereinafter: the Law of 1976).
10. On the occasion of promulgation of the UNMIK Regulation 2000/66 on benefits for the war invalids of Kosovo and for the next of kin of those who died as a result of the armed conflict in Kosovo [UNMIK/REG/2000/66], this category of invalids was not included.
11. After the Judgment of the Municipal Court of Prishtina, C.No. 595/05, dated 7 March 2006, rejecting the claim of the Applicant and declaring itself as not competent, reasoning that in this case the applicable administrative procedures should be followed, on 3 May 2006, the Applicant requested from the Center for Social Work in Podujeva (Request No. 33422, dated 3 May 2006), the determination of discrimination, compensation due to discrimination, and recognition of the right to protection and care in the future, namely equal treatment with other war invalids' categories. The Centre did not reply to the request of the Applicant.

12. On 17 October 2006, the Applicant filed a claim in the Supreme Court of Kosovo, requesting the determination of discrimination and the amount of financial compensation of the caused damage due to discrimination and recognition of the right to protection and care in the future to the Applicant, namely equal treatment with other categories of war invalids.
13. On 31 March 2009, the Supreme Court of Kosovo in its Decision A. no. 2630/2006 rejected the claim as ungrounded due to the lack of legal framework supporting the Applicant.
14. On 30 November 2011, the Applicant submitted a request for review of the Decision of the Supreme Court A. no. 2630/2006, alleging that Second World War Civilian Invalids are discriminated since the Law on War Civilian Invalids of 1976 was not being applied towards them and further proposing to recognize their rights as Second World War Invalids, which they claim they have under the Law against Discrimination No. 2004/3.
15. The Supreme Court of Kosovo, by its Decision KRJA No. 6/2011, dated 31 March 2009, dismissed the request as inadmissible, reasoning that the Law of 1976 is not in force and given the lack of a special law for this category of invalids, their request cannot be approved.
16. The Supreme Court in its Decision KRJA No. 6/2011 further argues that "the civil invalids of World War II enjoy the rights of financial protection according to the conditions and criteria prescribed by the Law on Disability Pensions (Law No. 2003/23 – UNMIK Regulation 2003/40), so it cannot be said that their rights have been violated in this regard".

Allegations of the Applicant

17. As stated above, the Applicant alleges that the Decision of the Supreme Court of Kosovo KRJA No. 6/2011, dated 8 May 2012 violated its rights guaranteed by the Constitution, namely Article 3, paragraph 2 [Equality before the Law], Article 22 [Direct Applicability of International Agreements and Instruments] and Article 24 [Equality before the Law] of the Constitution.
18. The Applicant argues that the rights of the Applicant and their family members guaranteed by the Law on Protection of Civilian War Invalids were violated. According to the Applicant, this Law remains to be in force. In this regard, the Applicant refers to the provisions of UNMIK Regulation No. 1999/24 on the Law applicable in Kosovo, stipulating that the "The Law applicable in Kosovo [...] shall be the Law in Force in Kosovo on 22 March 1989."
19. The Applicant further argues that the Law on Disability Pensions does not include this category of persons, which is included in the Law of 1976 and therefore "the Law of 1976 is still in force and as such should be further applied."
20. The Applicant considers that there has been a continuous violation against the category of Second World War Civilian Invalids as prescribed in the provisions of the Law against Discrimination No. 2003/4.
21. The Applicant requests the Constitutional Court to determine that there has been a violation of Article 3, paragraph 2, Articles 22 and 24, and to annul the Decisions of the Supreme Court KRJA No. 6/2011 dated 8 May 2012, and Decision A. No. 2630/2006 dated 31 March 2009.

Admissibility of the Referral

22. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine 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.
23. The Court should first examine if the Applicant is an authorized party to submit a Referral with the Court, pursuant to the requirements of Article 113.7 of the Constitution. As to the present Referral, the Court notes that the Applicant is a legal person. Article 21 (4) of the Constitution provides that

"fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

The Applicant is, therefore, entitled to submit a constitutional complaint (See, Resolution in Case No. KI 41/09, AAB – Riinvest University L.L.C., Pristina v. Government of the Republic of Kosovo, paragraph 14).

24. The Court has also to determine whether the Applicant has met the requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law.

Article 113, paragraph 7 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."

The final decision on the Applicant's case is the Decision of the Supreme Court KRJA, No. 6/2011 dated 8 May 2012. As a result, the Applicant has shown that it has exhausted all legal remedies available under the applicable laws.

25. The Applicant must also prove to have met the requirements of Article 49 of the Law concerning the submission of the Referral within the legal time limit. It can be seen from the case file that the final decision on the Applicant's case is the Decision of the Supreme Court KRJA, No. 6/2011 dated 8 May 2012, whereas the Applicant submitted the Referral with the Court on 13 July 2012, meaning that the Referral has been submitted within the four month deadline prescribed by the Law and Rules of Procedure.
26. Meanwhile, the Court emphasizes that, under the Constitution, it is not up to it to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).
27. The Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).
28. As a matter of fact, the Applicant has not substantiated a claim on constitutional grounds and has not provided evidence that its rights and freedoms have been violated by the regular courts (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

29. Rule 36. 2 (d) of the Rules foresees that “*the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (...) the Applicant does not sufficiently substantiate his claim.*”

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of Law, and Rule 36.2 (b) and (d) of the Rules of Procedure, on 17 January 2013, by majority of votes:

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



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani

