



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

Pristine, 16 January 2013
Ref. No.:RK347/13

RESOLUTION ON INADMISSIBILITY
in

Case No. KI76/12

Applicant

Qamil Xhemajli

**Constitutional Review of unspecified decision of the Government of the
Republic of Kosovo regarding pension of the doctor of sciences in the
University of Prishtina.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Qamil Xhemajli from the Municipality of Peja.

Challenged decision

2. Unspecified decision of the Government of the Republic of Kosovo regarding the pension of the doctor of sciences, who work in the University of Prishtina (hereinafter: U.P.) according to which they are entitled to the pension of 1000 euro, which the Applicant did not specify by number, date or any other way, nor that decision was published and in this way did not state the content of the decision, which he considers unconstitutional.

Subject matter

3. The subject matter of the Referral are the rights, which the Applicant considers he is entitled to pursuant to unspecified decision of the Government of the Republic of Kosovo regarding the pensions of the doctor of sciences, who work in the University of Prishtina, because of which the Applicant considers that the same rights should belong to other doctors of science, who did not work in UP, or who have not completed U.P.

Legal basis

4. The Referral is based on the Article 113.7 and on Article 21.4 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 of 15 January 2009, (hereinafter: the "Law"), and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 16 August 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: „the Court“).
6. On 17 August 2012, the Constitutional Court notified the Applicant to fill his referral in the form prescribed by the Constitutional Court, and at the same time to submit to the court the decision which he considers unconstitutional, as well as evidence that by that decision were violated his rights.
7. On 23 August 2012, the Applicant submitted the filled form for submission of the Referral, but not the decision of the Government, which he considers unconstitutional.
8. On 04 September 2012, by the decision no. GJR.76/12 the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same day, by the decision no.KSH. 76/12 the President appointed the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.
9. On 23 November 2012, after considering the report of Judge Ivan Čukalović, the Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. On 02 July 1986, the Applicant finished his PhD studies in the University of Belgrade .

11. On 19 June 2012, the Applicant filed appeal to Ombudsperson regarding the decisions of the Government of the Republic of Kosovo on pensions of the doctors of sciences who work in the UP.
12. On 30 July 2012, Ombudsperson Institution submitted to the Applicant the Notification on inadmissibility, where among the other is stated as following:

“From the evidence introduced and circumstances described in your appeal it results that the procedures related to your case are ongoing with the competent authorities. The Ombudsperson pursuant to Article 20, paragraph 1.3 of the Law on the Ombudsperson, has decided to reject the appeal as unfounded.”
13. The Applicant did not offer further evidence, which would be important for the decision of the court, although the court requested in written from the Applicant to submit the decision of the Government, which he considers unconstitutional.

Applicant’s allegations

14. The Applicant asserts the following:

“My complaint has to do with the decision of the government of RK regarding the pension of the doctors of sciences of the UP with the pension of 1000€ per month. This decision has been published by RTK. I have requested from the authorities, the decision in question but I have not received any answer.”

From the Deputy Prime minister and Minister of Justice Mr. Hajredin Kuqi, on 08.07.2012, I have requested that this decision to be supplemented also for the doctors of sciences that have contributed to the Kosovo economy, but the answer has lacked as usually.”

15. The Applicant further considers that:

“By this selective decision are violated the laws, because in all the University diplomas (Zagreb and Belgrade) writes that the “doctor of sciences is entitled to the rights as set in the law”.

This decision is selective, offending, unlawful, and non-constitutional because it divides the doctors of sciences in two groups: a) those that more meritorious and b) those that are less meritorious which an unprecedented absurd.”

16. The Applicants address the Constitutional Court by following Referral:

“I request from your court to announce the decision of the Government of Kosovo as non-constitutional.

I state that in 1996 I have been forcibly retired and that I had to wait for 12 years to fulfill the condition to get the pension of aged.

I am an aged person (74 years old) and I suffer from incurable diseases and I have fewer chances to use this legal right.”

Preliminary 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 the Law and the Rules of Procedure of the Court.
18. Regarding this, the Court refers to the Article 113. paragraphs 1 and 7 of the Court:
 1. *The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
 2. *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.*
19. Article 48 of the Law on Constitutional Court of the Republic of Kosovo provides :

"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."
20. Apart from this, the Rule 36 (2) (d) provides:
 2. *The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
 - d) *when the Applicant does not sufficiently substantiate his claim;"*
21. The Applicant has not submitted any *prima facie* evidence, which indicate on the violation of his constitutional rights (See, *Vanek against Republic of Slovakia, Decision of ECHR on the admissibility of request, no. 53363/99 dated 31 May 2005*).
22. The Applicant claims that his rights were violated by the decision of the Government of the Republic of Kosovo regarding the pensions of the doctors of science who work in the University of Prishtina, by not submitting the decision by which were violated Applicant's constitutional rights.
23. Finally, the admissibility criteria were not met by this Referral. The Applicant did not manage to state and sufficiently substantiate his claim by which decision of the Government of the Republic of Kosovo were allegedly violated his constitutional rights and freedoms, since he did not attach the latter to the Referral of the Constitutional Court.
24. From this it results that the referral is manifestly ill-founded, pursuant to the Rule 36 (2d) of the Rules of Procedure, which provides „2. *The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: d) when the Applicant does not sufficiently substantiate his claim;*

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 46, Articles 47 and 48 of the Law and Rule 36 (2d) of the Rules of Procedure, in the session held on 23 November 2012, unanimously

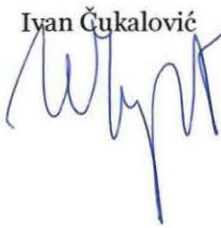
DECIDED

- 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

