



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

Pristine, 14 December 2012
Ref. no.: RK 330 /12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 84/12

Applicant

**Independent Union of Pensioners and of Labour Disabled Persons of Kosovo,
represented by Mr. Rifat Halili, president of the union, branch in Vushtrri**

**Request for improvement of welfare of pensioners and for the realization of
the right of obtaining pensions for labour disabled persons from state
authorities**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Applicant is Independent Union of Pensioners and of Labour Disabled Persons of Kosovo, branch in Vushtrri, represented by its President, Mr. Rifat Halili.

Subject matter

2. The subject matter of the case submitted in the Constitutional Court of the Republic of Kosovo (hereinafter: the Constitution) has to do with the Referral/appeal of the Independent Union of Pensioners and of Labour Disabled Persons of Kosovo, branch in Vushtrri for improvement of welfare of pensioners of the Republic of Kosovo and exercising the right of obtaining pensions for labour invalids.
3. The Applicant also submitted the following requests:
 - a. To set a pension and disability level for contribution payers at the amount of 60% from the average salary of employees in the Administration and in Public Services;
 - b. To bring a new law on pensioners and labour disabled , because there is no law on pension and disability insurance ;
 - c. To bring a Law on Health Insurance, because 13 years have passed and this law has not been adopted.

Legal basis

4. Article 113.7 of the Constitution, Article 22 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 18 September 2012, the Applicant submitted an incomplete Referral to the Court.
6. On 25 September 2012, the Applicant was required to complete the submitted Referral with necessary documentation.
7. On 1 October 2012, the Applicant submitted the response to the request and the Referral was registered under the no. KI84/12.
8. On 5 October 2012, the President of the Court, with Decision No. GJR. KI 84/12 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, with Decision No. KSH. KI 84/12 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy (member) and Ivan Cukalovic (member).
9. On 6 December 2012, the Review Panel after having considered the report of the Judge Rapporteur, made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 3 June 2003, the Independent Union of Pensioners and of Labour Disabled Persons of and the Union of Independent Trade Unions of Kosovo, filed a claim with the Municipal Court in Prishtina, as it is said, against the Republic of Serbia, by referring to the former Constitution of Kosovo (Official Gazette of SAPK, no. 4/1974, the Law on pension and disability insurance, Official Gazette of SAPK, no./26/1983 and no. 26/1986, Official Gazette of SAPK, no. 44/1983).

11. Independent Union of Pensioners addressed a request to the Prime Minister of the Government of Kosovo for the implementation of the Decision of Kosovo Assembly dated 7 July 2005 and has requested to draft a law on pension and disability insurance (act no.01.05.2006, addressed the Minister of Health, for undertaking measures to bring a law as well as the request for cure of pensioners in the account of the state).
12. Later, the Applicant (Union) wrote to the President of Kosovo Assembly, notifying him of, as it is said, the violation of the law on pension and disability insurance and of the violation of UNMIK Regulation no. 1999/24 dated 12 December 1999 on payment of pensions. The Applicant also wrote a letter to the President of Kosovo, where among the other things, it requested to talk about the state of pensioners and the possibility of improvement of their welfare. According to the Union, President of Kosovo did not accept to talk about the abovementioned issues (act, no. 6/22.01.2007). Later, the Applicant wrote to the Minister of LSW and asked from him that the law on pensions and labour disabled persons and UNMIK Regulation no. 1999/24, be implemented. The Applicant also addressed all political parties and requested support in exercising the rights of pensioners, by implementing the law in force.
13. The Applicant states that it wrote continuously to the state authorities and requested from them exercising of its rights to pension and disability insurance. Finally, it stated that the deputies of Kosovo Assembly of the Republic of Kosovo were informed about the dissatisfaction and disregard towards requests of pensioners and of labour disabled persons by the competent authorities of the country.

Applicant's allegations

14. The Applicant alleges that by non-adoption of the Law on pension and disability insurance and the Law on Health Insurance, as well as by refusal of giving pensions to labour disabled person by the governmental authorities, the pensioners' rights as guaranteed by: Article 3.1 [Equality Before the Law], 7.1 [Values], 16.1 [Supremacy of the Constitution], 19 paragraph 1 and 2 [Applicability of the International Agreements], Article 22 paragraph 1, 2 and 3 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 25.1 [Right to Life], Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], Article 51 paragraph 1 and 2 [Health and Social Protection], Article 84.2 [Competencies of the President], Article 119.4 [General Principles] of the Constitution of the Republic of Kosovo and Article 7, 22 and 25.1 of the Universal Declaration of Human Rights were violated.

Preliminary assessment of admissibility of the Referral

15. In order to be able to adjudicate the Applicant's Referral, the Court first has to assess whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure of the Court.
16. The Applicant seems to be unsatisfied with the governmental authorities that are competent to foresee and regulate issues that have to do with social policy, respectively the regulation of the status of pensioners and of labour disabled persons. The Applicant also complains on the decisions issued by the authorities of the Ministry of Labour and Social Welfare (MLSW), regarding the refusal of the right to obtain pensions for labour disabled persons.
17. The Applicant has also addressed to the Court his concerns over the Law on Pension Insurance for the pensioners and labour disabled persons, as well as unreasonable delay in adoption of the Law on Health Insurance by the Government of the Republic of Kosovo, respectively by the respective ministry.

18. The Court notes that the Applicant did not specify any act of public authority (*see, Article 48 of the Law on Constitutional Court*), by which he alleges that his rights guaranteed by the Constitution and International Conventions that are directly applied in the Republic of Kosovo have been violated. He only raised the issues that have to do with the regulation of social policy, respectively of the improvement of welfare of pensioners and labour disabled persons, requesting from the Court to clarify why the requests of the Applicant, regarding the rights of pensioners and of labour disabled persons were not taken into account by the state authorities.

19. The Court refers to Article 113.1 of the Constitution, which provides:

Article 113 [Jurisdiction and Authorized Parties]

1. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."

20. In the present case, the Applicant has requested from the Court to call on Government authorities, respectively the responsible ministries to draft a law on pensioners and labor disabled persons and to adopt a law on health insurance.

21. In this regard, the Court refers to Article 4 of the Constitution which clearly establishes the form of government and the separation of powers:

"Article 4 [Form of Government and Separation of Power]

[...]

2. The Assembly of the Republic of Kosovo exercises the legislative power.

[...]

4. The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control."

22. Article 65 of the Constitution clearly sets forth the competencies of the Assembly of the Republic of Kosovo:

Article 65 [Competencies of the Assembly]

[...]

(1) adopts laws, resolutions and other general acts;

23. Further, Article 93 of the Constitution clearly sets forth the competencies of the Government:

Article 93 [Competencies of the Government]

The Government has the following competencies:

(1) proposes and implements the internal and foreign policies of the country;

[...]

(3) proposes draft laws and other acts to the Assembly;

(4) makes decisions and issues legal acts or regulations necessary for the implementation of laws;

24. Nevertheless, Article 113 of the Constitution clearly establishes the authorized parties that may refer constitutional matters with respect to the constitutional review of an act by a public authority and the constitutionality of a law.

25. In fact the Applicant in this case acts as a legal person and refers to Article 113.7 of the Constitution as a legal basis for the filing of his Referral.
26. Having assessed and carefully analyzed the Applicant's requests, the Court finds that the Applicant as a legal person cannot be considered an authorized party to refer constitutional matters *in abstracto* with respect to his request for the issuance and adoption of laws even though the Applicant possesses legitimate authority to represent and protect the interests and the rights of the trade union, in this case, the rights of the pensioners and labor disabled persons.
27. Furthermore, the Constitution of the Republic of Kosovo does not provide for *actio popularis* which is a modality of individual complaint enabling every person who seeks to protect the public interest and constitutional order to approach the Constitutional Court with certain questions and requests hinting at a violation of the constitutional rights to a certain individual or group.
28. Therefore, the Court considers that the Applicant is not an authorized party to refer constitutional matters in abstracto with respect to the regulation of the status of the pensioners and labour disabled persons. For this reason, in accordance with Article 113.1 of the Constitution this Referral is considered as inadmissible.
29. Consequently, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 56.2 of Rules of Procedure, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution and Rule 56.2 of the Rules of Procedure, on 6 December 2012, unanimously:

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and it shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani