



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

Pristine, 16 January 2013
Ref. No.: RK345/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI92/12

Applicant

Sali Hajdari

Constitutional review of the Law on Pensions

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

The Applicant

1. The Applicant is Sali Hajdari from Municipality of Gjilan.

Challenged decision

2. The Applicant challenges the Law on the Pensions, but he does not specify its number or date of adoption.

Subject matter

3. Subject matter of the Referral is the Applicant's request to the Constitutional Court to make a comment on the Law on Pensions and the way how the length of service is calculated.

Legal basis

4. The Referral is based on Articles 113.7 and 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 56 paragraph 2 of the Rules of Procedure.

Proceedings before the Court

5. On 12 September 2012, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. The President by Decision (no. GJR.92/12 of 5 November 2012) appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision no. KSH. 92/12 the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.
7. On 6 December 2012, after having considered the report of Judge Snezhana Botusharova, the Review Panel composed Judges: Robert Carolan (Presiding), Altay Suroy and Prof. dr. Ivan Čukalović made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. The Applicant has not furnished any evidence which would be of significance for the Court's decision, even though the Court had requested in writing from the Applicant to supplement his Referral in a way that is prescribed by Law.

Applicant's allegations

9. The Applicant alleges the following:

"Honorable Court I am requesting from you to make a comment on the Law on Pensions, with respect to the length of service. I have worked in SCI (Self-governing Community of Interest) for employment in Gjilan before the war for over 14 years, and after the war I work in the same place which is now called REC (Regional employment center) in Gjilan. Now I am about to retire and based on the information I have, in order for me to obtain a pension in the amount of 81 €, according to the Law, it is required that I have 15 years of length of service before the war as the length of service after the war is not recognized so I will receive only 45 €."

10. The Applicant further considers:

“Honorable Court I have 27 years of length of service from both the employment before and after the war. How is it possible for me to be compared with those who do not have a single day of service, if we calculate 27 years of employment and 10 years under outrageous occupier make a total of 37 years of employment and despite this to be treated as if I did not work a single day, I consider that this Law violates my human rights.”

“Honorable Court, my colleagues who accepted the occupier and remained employed during the occupation are now in a more favorable position and they will receive a 81 € pension and poor me I will be left with 45 €.”

11. The Applicant addresses the Court with the following request:

“So that I would not prolong this any further, I believe that you understand what I request from you. Please do return to me a comment as to whom should I address or should I just come to terms with these discriminatory laws and receive those 45 € like those who have never worked.”

Assessment of the admissibility of the Referral

12. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

13. In this regard, the Court refers to Article 113. paragraphs 1 and 7 of the Constitution:

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

“7. 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.”

14. In the present case, the Applicant has requested “a comment on the Law on Pensions” which does not yet apply to the Applicant. In this regard the Constitution clearly defines in Article 113 of the Constitution who may request a constitutional review of laws.
15. This kind of request for „ a comment on the Law on Pensions “ for the benefit of all Kosovar pensioners shows that the Applicant challenges the said Law in abstract. If this is the intent of the Applicant, as an individual he cannot be considered an authorized party.
16. In fact, the Applicant refers to Article 113.7 of the Constitution as the legal basis for the filing of his Referral. Besides that, the Applicant did not present any arguments which would prove that he is a direct victim by the adoption of this Law.
17. Article 113 paragraphs 2, 6 and 8 of the Constitution clearly stipulate who are the authorized parties that can address the Court on questions of abstract review of constitutionality of laws.
18. In addition, Kosovo's constitutional legal system does not provide for „*actio popularis*“, which is a modality of individual complaints that make possible for any individual who seeks to protect the public interest and the constitutional order to address the Constitutional Court in cases of such violations even if he/she lacks the status of victim.

19. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality of the Law on Pension in abstract and consequently this Referral should be declared inadmissible.

FOR THESE REASONS

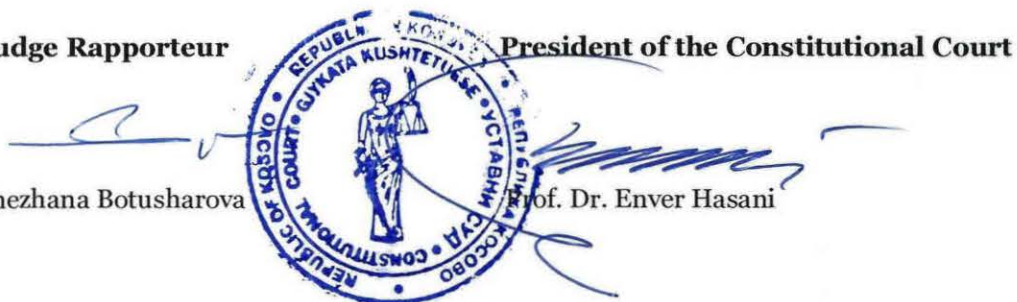
The Constitutional Court of Kosovo, pursuant to Article 113.1 and 113.7 of the Constitution, Articles 46, 47 and 48 of the Law and Rules 36 (1a) and 36 (3c) of the Rules of Procedure, in the session of 6 December 2012, unanimously

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

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani