RESOLUTION ON INADMISSIBILITY

in

Case no. KI-99/12

Applicant

Emine Tahiri

Constitutional review of the Judgment of the Supreme Court of Kosovo Ac. no. 583/2012 of 14 September 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

The Applicant

1.   The Applicant is Emine Tahiri from village Batllava, Municipality of Podujeva.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Ac. no. 583/2012 of 14 September 2012 which rejected the lawsuit filed against the Resolution of Ministry of Labor and Social Welfare (hereinafter: MLSW) – Department of Pension Administration (DPA) no. 5079885 of 27 January 2012 by which the Applicant's request for recognition of the right to disability pension was rejected.

Subject matter

3. The subject matter is the Judgment of the Supreme Court of Kosovo Ac. no. 583/2012 of 14 September 2012 by which the Applicant's request for recognition of the right to disability pension was rejected and Applicant's request to the Constitutional Court to *"...review the legality of the Judgment and decisions of administrative bodies that have conducted the proceedings..."*

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 16 October 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.99/12 of 31 October 2012) appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision no. KSH. 99/12 the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.

7. On 19 November 2012, the Constitutional Court notified the Applicant and Supreme Court of Kosovo of the initiation of constitutional review proceeding on the decisions in case no. KI-99-12.

8. On 6 December 2012, after having considered the report of Judge Snezhana Botusharova, the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy and Prof. dr. Ivan Čukalović made a recommendation to the full Court on the inadmissiblity of the Referral.

Summary of the facts

9. The Applicant was granted the right to disability pension during the period from 2006 until 21 December 2011: twice in duration by one year and on the third time in duration of three years.

10. The Applicant requested from MLSW – DPA to extend her right to disability pension. MLSW – DPA by Decision no. 5079885 of 29 December 2011 rejected the request for reconsideration of the use of the right to disability pension.

11. On 26 January 2012, the Applicant announced an appeal against the Decision of the MLSW – DPA no. 5079885 of 29 December 2011.

12. Deciding upon the appeal of the Applicant MLSW – DPA Council of Appeals for disability pensions in Prishtina by Decision no. 5079885 of 27 January 2012 rejected Applicant's request for recognition of the right to disability pension and confirmed Decision of MLSW – DPA no. 5079885 of 29 December 2011.

13. Against the Decision of MLSW – DPA Council of Appeals for disability pensions in Prishtina no. 5079885 of 27 January 2012 the Applicant filed a lawsuit with the Supreme Court of Kosovo.

14. Deciding upon the lawsuit of the Applicant, the Supreme Court of Kosovo by Judgment Ac. no. 583/2012 of 14 September 2012 rejected the lawsuit of the Applicant with the reasoning:

"From the case file it is obvious that the body of the first instance with the decision nr. 5079885, dated 29.12.2011 rejected the claimant's application for the acknowledgement of the right to pension with disability with the reason that it does not meet the criteria under article 3 of the Law 2003/23 on disability pensions and it bases the said decision on the conclusion and the opinion of the medical commission of the first instance body dated 20.12.2011 which assessed that the permanent disability to work was not manifested to the claimant as provided by the above mentioned legal provision.

In the appeal procedure the sued body obtained the conclusion and the opinion of the medical commission nr. 5079885 dated 20.02.2012 for the assessment of the medical commission of the persons with disability of the body of the fact which is consistent with the conclusion and the opinion of the medical commissions given before, therefore by the challenged decision it rejected as unfounded the appeal of the claimant and confirmed the challenged decision.

Considering that the medical commissions authorized by law have confirmed that the claimant is not disabled for work, the court finds that the administrative bodies have duly applied the provision of the article 3 of the abovementioned Law, on the basis of which the application of the claimant for the acknowledgement of the right to disability pension has been rejected."

Applicant's allegations

15. The Applicant does not specify which Article of the Constitution of Kosovo has been violated by the Decision of the Supreme Court except for alleging the following:

The case file contains evidence - medical reports, hospital release sheets certifying the serious health condition of the party, release sheet no. 7814 dated 30.12.2003 follow up sheet for histopathological examination and Cytological dated 22, 12.2003, ultra-sonographic abdomen report dt.27.12.2005, Diagnostic Center report Endocrinological dated 28.05.2005 Report no.1793 dated 09.09.2005 and personal cards oncology Tirana.

The administration authority has not acted in conformity with the health status of the party and of the evidence and facts presented, but with no legal grounds in the revaluation procedure has rejected the request for the extension of the right to retirement of persons with disabilities without providing any justification for the reason of rejection of the request only upon a finding that to the party do not exist causes for recognition-extension of the right to a pension of persons with disabilities.

16. The Applicant addresses the Constitutional Court with the following request:

"By submitting the application to the Court we wish that the Constitutional Court of the Republic of Kosovo assess the legality of the judgment and decisions of administrative bodies that have conducted this procedure, to overrule them and oblige the Supreme Court and the Ministry of Labor and Social Welfare to avoid legal violations and to extend my right to use the disability pension. My right to this (pension) has been unfairly terminated."

Assessment of the admissibility of Referral

17. 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.

18. Article 48 of the Law on the 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."

19. Under the Constitution, the Constitutional Court is not a court of appeal in respect of the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-1).

20. The Applicants have not provided any *prima facie* evidence which would point to a violation of her constitutional rights (see Vanek vs. Slovak Republic, ECHR decision on admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not specify what right was violated to her and what Article of the Constitution supports her Referral, as it is stipulated in Article 113.7 of the Constitution and Article 48 of the Law.

21. In the present case, the Applicant has been provided numerous opportunities to present her case and to challenge the interpretation of the law, which she considers as being incorrect, before the Doctor's Commissions of both first and second instance, MLSW – DPA and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

22. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point out and support with evidence the allegation that her constitutional rights and freedoms have been violated by the challenged decision.

23. It therefore results that the Referral is manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure which provides: *„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 (2b) 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   **President of the Constitutional Court**

Snezhana Botusharova   Prof. Dr. Enver Hasani