



REPUBLIKA E KOSOVËS
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Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina, date: 17 Jun 2010
Ref. No.: RK25/10

RESOLUTION ON INADMISSIBILITY

Case No. KI 13/09

Sevdail AVDYLI

Against

Supreme Court Judgment A. No. 533/2006 of 11 September 2006
and
Supreme Court Judgement A. No. 353/2003 of 2 December 2003

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Judge
Robert Carolan, Judge
Altay Suroy, Judge
Snezhana Botusharova, Judge
Almiro Rodrigues, Judge
Ivan Čukalović, Judge
Gjylieta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant, Sevdail Avdyli, is residing in the village Metehi, Municipality of Podujeva.

Subject matter

2. The Applicant claims that Judgment A. No. 533/2006 of the Supreme Court of 11 September 2006 which confirmed Decision No. 5004857 of the Ministry of Labour and Social Welfare, has violated his right to receive a disability pension. The Applicant also claims that Judgment A. No. 353/2003 of the Supreme Court of 2 December 2003, which confirmed Decision No. 809 of the Centre for Social Labour of Podujeva, has violated his right to social assistance.



Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Court

4. The Applicant submitted his Referral to the Constitutional Court on 16 March 2009. On 17 March 2009 the Applicant was informed by the Provisional Secretariat of the Court that his case would be considered once the Constitutional Court becomes fully functional.

5. On 11 August 2009 the Constitutional Court informed the Supreme Court of Kosovo about the Applicant's case. On 12 November 2009 the Judge Rapporteur requested additional information from the Supreme Court. The Supreme Court has not sent any reply.

6. On 18 February 2010, after having considered the Report of the Judge Rapporteur, Kadri Kryeziu, the Review Panel, composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Gjyljeta Mushkolaj, on the same date, recommended to the full Court to reject the case as inadmissible.

Facts

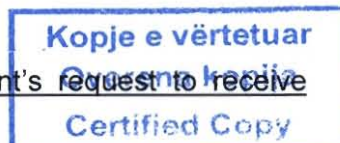
7. It appears from the documents submitted by the Applicants that, in the past ten years, he initiated two different sets of administrative proceedings, i.e. proceedings relating to his request to receive a disability pension and proceedings relating his request for social assistance. None of the Applicant's proceedings were successful.

As regards the administrative proceedings relating to the Applicant's request for a disability pension:

8. On 1 January 2004 the Ministry of Labour and Social Welfare, Department of Pension Administration, initially approved the Applicant's application for a disability pension in the amount of 40 Euro per month. The Applicant was also informed that the decision would be reviewed after one year. Then, by Decision dated 29 September 2005, the same authority annulled the Applicant's pension benefits, because it found that Applicant's medical condition did not allow him to qualify for a disability pension. The Applicant then appealed this decision. On 6 May 2006 the decision was upheld by the Appeals Council on Disability Pensions within the Ministry of Labour and Social Welfare.

9. The Applicant then initiated administrative dispute proceedings before the Supreme Court. In its judgment of 11 September 2006 (No. 1561/2007) the Supreme Court decided that the Applicant's appeal and lawsuit were unfounded, since the Applicant did not fulfil the criteria of Article 3 of the Law on Disability Pensions. The Court based itself on the opinion of the doctor's advice issued on 29 September 2004, according to which the Applicant did not have a permanent disability. This medical finding was confirmed by the medical commission in the appellate procedure. Consequently, pursuant to Article 40 of the Law on Administrative Dispute, the Applicant's lawsuit was rejected.

As regards the administrative proceedings relating to the Applicant's request to receive social assistance:



10. With regard to the Applicant's request for social assistance, it appears from the documents that, on 15 August 2002, the Department of Labour and Social Welfare of the Ministry of Labour and Social Welfare initially approved Applicant's request granting him social assistance in the amount of 64 Euro per month. The social assistance was granted for a limited period, i.e. from 1 August 2002 to 31 January 2003. Then, on 12 May 2003, the same authority rejected the Applicant's further request for social assistance arguing that "one of the family members did not satisfy one out of six criteria." The Applicant then appealed this decision.

11. The Institute of Social Policy of the Ministry of Labour and Social Welfare rejected the Applicant's appeal and reminded him that one of his brothers lived abroad and that in the Applicant's family there were several persons able to work. Therefore it was concluded that the Applicant is not entitled for social assistance. Against this decision the Applicant filed a lawsuit with the Supreme Court.

12. On 2 December 2003 the Supreme Court rejected the Applicant's lawsuit. The Court reiterated that it was established that the Applicant did not fulfil conditions foreseen by the Law on Social Protection and Social Assistance scheme approved by the Interim Administration of United Nations.

Applicant's claims

13. The Applicant complains, without specifying any particular provision of the Constitution, that his rights to a disability pension and social assistance have been violated.

Assessment of the Admissibility of the Referral

14. The Court notes that the Applicant filed the Referral with its Secretariat on 16 March 2009. However, Judgments A.No. 353/2003 and A.No. 533/2006 of the Supreme Court, which the Applicant submitted in support of his Referral, date back to, respectively, 2 December 2003 and 11 September 2006, whereas, pursuant to Article 49 of the Law on the Constitutional Court, the referral should be submitted within a period of four (4) months. Even assuming that the Court would extend its authority to deal with the Applicant's Referral on the theory that the Applicant's alleged violation of the Constitution may constitute a continuing situation, the Court finds that the Referral must be rejected for the following reasons:

15. The Applicant's complaint is limited to his disagreement with the conclusions the administrative bodies and the Supreme Court, reached about the facts of his individual claims and his speculation that those bodies as well as the Supreme Court, in evaluating his claims, did not appropriately consider all the relevant evidence.

16. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).

17. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case *Edwards v. United Kingdom*, App. No 13071/87 adopted on 10 July 1991).

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18. In the present case the Applicant was afforded ample opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Ministry of Labour and Social Welfare and the Supreme Court. Having examined both administrative proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no.17064/06 of 30 June 2009).

19. Furthermore the Applicant had not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

20. It follows that the Referral is ill-founded and must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Article 55 of the Rules of Procedure, 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.

III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Mr.Sc.Kadri Kryeziu

Prof. Dr. Enver Hasani

