



REPUBLIKA E KOSOVËS
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Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtinë, më: 30 November 2010
Ref. Nr.: RK35/10

DECISION ON ADMISSIBILITY

for the

Case No. KI 44/09

Applicant

Metush Haziri

vs.

Judgment of the Supreme Court of Kosovo, A. Nr. 2705/2007

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

Unanimously adopts the following **Decision** on the inadmissibility of the case.



INTRODUCTION

Applicant

1. The Applicant is Mr. Metush Haziri, from Ferizaj

Challenged Decision

2. Judgment of the Supreme Court of Kosovo, A. Nr. 2705/2007, dated 10 March 2008.

Subject Matter

3. On 28 September 2009, Mr. Metush Haziri, from Ferizaj, submitted a referral in the Constitutional Court of Kosovo, registered under the number KI 44/09. The Applicant challenged the legality of the Judgment of the Supreme Court of Kosovo A. Nr. 2705/2007, on the rights to pension.

Legal Basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 20 of the Law Nr. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Article 55 of the Rules of Procedure of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Summary of Proceedings before the Court

5. The referral was submitted to the Constitutional Court on 28 September 2009. The President of the Court appointed Judge Iliriana Islami as Judge Rapporteur and established the review panel in the composition of Judge Altay Suroy, Presiding, Almiro Rodrigues and Gjyljeta Mushkolaj. On 16 June 2010, the Court reviewed the admissibility of the referral.

Facts

6. The Applicant has explained in his referral that he was employed in the state authorities from 15 March 1973 to 30 June 1989. Pursuant to Article 39 of the Law on Basic Rights on Pension and Disability Insurance, BVI-Disability Pension Insurance, the Organizational Unit in Ferizaj has issued a Decision, NR-V-3468/7006799138, dated 10 July 1992, recognizing the Applicant's rights to old-age pensions, starting from 1 July 1989.
7. On 6 December 1989, the Committee for Administrative and Staffing Issues of the Executive Council of the Assembly of the ASP Kosovo, in line with Article 124 of the Law on Internal Affairs, according to which, "Every 12 months elapsed shall calculated as 16 months of experience for purposes of insurance for authorized officials", has issued a Decision, which rejects the request of the Applicant to reinstate him in his previous employment position.
8. After 1999 and the establishment of the Provisional Institutions of Self-Government, the Applicant filed a request and asked from the Department of Pension Administration in Kosovo, the Ministry of Labor and Social Welfare, to extend his right to pension, pursuant to the Decision NR. 3468/7006799138, dated 10 July 1992.

9. On 22 October 2007, the Complaints Unit of the Pension Administration of Kosovo, of the Ministry of Labor and Social Welfare replied to the complaint of the Applicant, and stated that according to the UNMIK Regulation No. 2000/10, the Administrative Department for Health and Social Welfare is not successor of the BVI-Pension and Disability Insurance of Kosovo. It also states that, with a separate Instruction, No. 3/2001, the Fund for Social Insurances of Kosovo has been established, and from 1 July 2002, basic pensions are provided by the Transitional Department of Social Welfare only for persons over 65 years of age, in the amount of 40 Euros.
10. It also, in the same reply, rejects the Applicant's request to disability pension, for the fact that after professional medical examinations, the results have shown that the Applicant has no full and permanent disability.
11. On 29 July 2008, the Pension Administration Department of Kosovo, Ministry of Labor and Social Welfare, replied to the Complaint of the Applicant on the old-age pension (pension earned based on contributions), and stated that the request of the applicant cannot be realized due to the absence of legal infrastructure and the lack of budgetary means;
12. On 10 March 2008, the Supreme Court of Kosovo issued a Judgment under the reference number A. nr. 2705/2007, holding that the administrative bodies have not rightfully applied the applicable law in Kosovo and that the Plaintiff has not met the legal conditions for the recognition of the requested rights and, consequently, the Claim-suit is rejected as unfounded.

Assessment of the admissibility of the referral

13. In order to decide on the Applicant's Referral, the Court has to initially examine the available documentation and analyze if the Applicant has met the admissibility criteria, as envisaged in the Constitution. In this relation, the Court refers to Article 113.7 of the Constitution, which provides that:

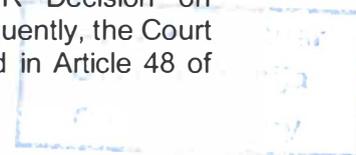
"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law"

It is clear from the submitted documentation that the Applicant has exhausted all legal remedies provided with the law.

14. Article 48 of the Law provides that:

"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."

The Applicant has not clearly specified or defined which rights or freedoms of the Constitution have been allegedly violated, and he doesn't provide any concrete fact to support the alleged violation of a right of the Constitution. Moreover, the Applicant has not provided any evidence – *relevant fact* – to demonstrate that the administrative or judicial bodies have made any violation of his rights guaranteed with the Constitution (see *Vanek v. Slovak Republic*, ECtHR Decision on Admissibility of the case No. 53363/99 dated 31 May 2005). Consequently, the Court **cannot** consider that the Applicant has met the criteria determined in Article 48 of the Law.



15. Article 56 of the Law provides that:

“The deadlines defined in this Law for the initiation of procedures on matters that fall under the jurisdiction of the Constitutional Court and which have arisen before the entry into force of this Law shall begin to be counted on the day upon which this Law enters into force”.

Article 56 of the Law is related to Article 49 of the Law, shown below, which determines the deadlines in submission of individual referrals in accordance with Article 113 (7) of the Constitution and Article 47 of the Law:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced”.

Hence, the Court observes that the Referral was submitted in the Constitutional Court on 28 September 2009, and the recent Decision in relation with this case was that of the Supreme Court of Kosovo, dated 10 March 2008, and the matter involves a period dating prior to the entry into force of the Constitution (see *Blecic v. Croatia*, referral No. 59532/00, *Judgment of the ECtHR*, 29 July 2004), thus concludes that the referral is time-barred.

However, had also the request been submitted in a timely fashion, the Court has not found that any rights guaranteed with the Constitution have been violated.

THEREFORE, FOR THESE REASONS

After the Court has analyzed all facts and evidences submitted by the Applicant, and after reviewing the matter, in line with 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 sent to the parties and shall be published in the Official Journal, in line with Article 20(4) of the Law.
- III. This decision shall enter into force immediately.

Judge Rapporteur

Dr. Iliriana Islami

President of the Constitutional Court

Prof. Dr. Enver Hasani

