



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 18 October 2013
Ref.No.: RK483/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI24/13

Applicants

Gani Visoka and Ismajl Zhitia

**Constitutional review
of the Decision of the Appellate Panel of the Special Chamber
of the Supreme Court ASC-11-0035,
dated 23 November 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 Applicants

1. The Referral was submitted by Gani Visoka and Ismajl Zhitia, both residents of the village of Konushec, Podujevo Municipality.

Challenged decision

2. The Applicants challenge the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (ASC-11-0035), dated 23 November 2012. This Decision was served on each applicant individually on 09 January 2013.

Subject matter

3. The Applicants allege that the Decision of the Appellate Panel of the Special Chamber of the Supreme Court, rejecting the Applicants' requests for recognition as workers of the privatized Socially Owned Enterprise *Ramiz Sadiku*, violated their rights to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 (1) of the European Convention on Human Rights (hereinafter, the ECHR).

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court (hereinafter, the Law), and Rules 28, 29 and 30 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Court

5. On 28 February 2013, the Applicants submitted the Referral to the Court.
6. On 01 March 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 05 March 2013, each Applicant submitted additional documentation to the Court.
8. On 26 March 2013, the Constitutional Court informed the Applicants, the Privatization Agency of Kosovo (PAK) and the Special Chamber of the Supreme Court of Kosovo of the registration of the Referral. The Court requested the Special Chamber of the Supreme Court to provide copies of the return receipt of service of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court.
9. On 29 March 2013, the Special Chamber of the Supreme Court provided the Court with copies of the return receipts indicating the date of service on the Applicants of the Appellate Panel Decision.
10. On 09 September 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The facts of the case

11. At some point in time, the Applicants were employed as workers of the Socially Owned Enterprise *Ramiz Sadiku*, in Pristina.
12. On 27 June 2006, the Socially Owned Enterprise *Ramiz Sadiku* was privatized.
13. On 4, 5 and 7 March 2009, the PAK published a final list of eligible employees entitled to share in the benefit from the fund of 20% of the proceeds of the privatization. The final deadline for filing a complaint against this list was 27 March 2009.
14. On 11 June 2009, the Trial Panel of the Special Chamber of the Supreme Court (SCSC) declared this list to be 'null and invalidated', because the Review Committee compiling this list was not lawfully composed. The Trial Panel instructed the PAK to compose a new Review Committee which should compile a new list of eligible workers. However, if the new list would be identical to the original list, the PAK would not be required to publish the new list, but merely to inform the SCSC.
15. The Decision of the Trial Panel of the SCSC further specified that:

“Any complainant aggrieved by his/her non-inclusion in the published list and who has already filed a complaint in this matter with the Special Chamber does not need to file a new complaint with the Chamber.”
16. On 18 June 2009, this Decision of the Trial Panel of the SCSC was published in the daily newspaper *Koha Ditore*, accompanied by the abovementioned informative text.
17. On 22 July 2009, Applicant Gani Visoka filed a complaint with the SCSC regarding his non-inclusion in the original list of eligible employees.
18. On 29 September 2009, the PAK, in accordance with the Decision of the Trial Panel of the SCSC, apparently composed a new Review Committee, which proceeded to adopt a revision of the list of eligible workers.
19. On 13 October 2009, Applicant Ismajl Zhitia filed a complaint with the SCSC regarding his non-inclusion in the original list of eligible employees.
20. On 15 October 2009, the PAK informed the SCSC that the new Review Committee had adopted a revised list and that there were no variations to the original published list of eligible workers.
21. The revised list was not published, in accordance with the Decision of the Trial Panel of the SCSC of 11 June 2009. However, a notification of the adoption of a revised list was published. The published notification further specified:

“Any complainant aggrieved by his/her non-inclusion in the published list and who has already filed a complaint in this matter with the Special Chamber does not need to file a new complaint with the Chamber.”

22. On 22 March 2010, the Trial Panel of the SCSC issued an order to all complainants who had filed a complaint outside of the legal deadline, to provide the Trial Panel with explanations giving the reasons for missing the deadline.
23. On 24 February 2011, the Trial Panel of the SCSC (SCEL-09-0001) dismissed the Applicants' complaints (along with the complaints of 181 other persons) as having been submitted out of the established deadline of 27 March 2009. The Trial Panel considered that claimants who showed valid reasons could still be considered to have submitted their complaints on time, by application of the relevant rules contained in Articles 117 and 118 of the Law on Contested Proceedings (Official Gazette 4/77-1478) for the claimants to be 'restored to the previous position'.
24. The Trial Panel specifically did not consider the merits of the Applicants' complaints, reasoning that:

"Taking into account that the complaint was filed three months after the expiration of the deadline for filing a complaint (the deadline for filing a complaint had expired on 27 March 2009), based on the reasons mentioned above in paragraphs (2) and (4) of the "legal reasoning" of this decision, the claim for restoration to the previous position cannot be approved and the complaint is considered as out of time, therefore, the complaint is dismissed as inadmissible."

25. The Applicants both submitted appeals to the Appellate Panel of the SCSC, arguing that, as the original list of 4, 5 and 7 March 2009 had been declared 'null and invalidated', the deadline of 27 March 2009 had also become null and invalid. Following the communication, on 15 October 2009, by the PAK to the SCSC of the revised list, a new deadline should come into effect based on this date.
26. On 23 November 2012, the Appellate Panel of the SCSC (ASC-11-0035) declared the Applicants' appeals admissible but ungrounded, reasoning that:

"The Trial panel correctly assessed that the complaint against the final list, which [the Applicant] filed after 27 March 2009, was untimely. As the Appellant did not submit a motion for restitution to the Trial Panel it is of no relevance whether he missed the deadline by his fault or not."

27. The Appellate Panel further reasoned that:

"The Trial Panel clarified in the decision on 24 February 2011 that it would only examine the justifications alleged by Complainants filed with the Trial Panel until 27 June 2009 and only in case the Complainants replied timely to the order for clarification. The Trial Panel explained that all complaints filed after 27 June 2009 should be considered definitely untimely and inadmissible. The Trial panel also came to the conclusion that the untimely complaints cannot be implied as requests for restitution to the previous position, based on Articles 117 and 118 of the Law on Contested Procedure (published in the Official Gazette 4/77-1478, as amended, LCP) and on

Section 70.3 of UNMIK Administrative Direction (AD) 2008/6, given that they were submitted with a delay of more than three months from the omission to complain against the list. A restoration to the previous position cannot, according to the Trial Panel, be requested any more after that time. The Complainants who complained after 27 June 2009 were not issued any sort of order to provide clarifications for the reasons of missing the legal deadline.”

The legal arguments presented by the Applicant

28. The Applicants claim that the Appellate Panel of the Special Chamber of the Supreme Court violated their rights to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6(1) of the ECHR.
29. The Applicants contend that the Appellate Panel of the SCSC had denied them a fair hearing on the merits of their complaints, because their complaints regarding the workers list had been declared inadmissible because out of time,.
30. The Applicants argue that, when the original list, as published on 4, 5 and 7 March 2009, had been declared null and invalidated by the Trial Panel of the SCSC, thereby the deadline for submission of complaints against this list had also become null and invalid. When the PAK informed the Special Chamber on 15 October 2009 that a revised list had been adopted, automatically a new deadline should have come into effect for the submission of complaints. It should be considered irrelevant that the revised list was identical to the original list.
31. The Applicants further argue that the Special Chamber of the Supreme Court, by reverting back to the original deadline for the submission of complaints against the original list, had invalidated their complaints, and thereby denied them a hearing on the merits of their claims.

Admissibility of the Referral

32. The Court examines whether the Applicants have fulfilled the admissibility requirements set out in the Constitution, and as further specified in the Law and the Rules.
33. In the case, the Court has specifically to determine whether the Applicants have met the requirements of Article 113 (1) of the Constitution and Article 49 of the Law and of Rule 36 (1) (b) of the Rules.
34. The Court refers to Article 113 of the Constitution, which establishes:
 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.*
35. The Applicants are authorized parties and have exhausted all legal remedies provided by law.
36. Article 48 of the Law on the Constitutional Court also establishes 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 a public authority is subject to challenge”.
37. In addition, Rule 36 (2) of the Rules provides that,
“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or
(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...], or
(d) when the Applicant does not sufficiently substantiate his claim;”
38. As seen above, the Applicants allege that their right to a fair trial has been violated because the Appellate Panel of the SCSC rejected as ungrounded their complaints as being out of time.
39. However, the Court considers that the Applicants have not shown why and how their right to a fair trial was violated nor have they substantiated their allegation on that violation.
40. On the other hand, the Court notes that the Trial and Appellate Panels of the SCSC thoroughly and reasonably explained why the Applicants' complaints were rejected as inadmissible because out of time.
41. The mere fact that the Applicants are dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of Article 31 of the Constitution or of Article 6 (1) of the European Convention on Human Rights (see *Memetoviq v. Supreme Court of Kosovo*, KI 50/10, 21 March 2011; see, *mutatis mutandis*, *Mezotur-Tiszazugi Tarsulat v. Hungary*, ECtHR App. No. 5503/02, 26 July 2005).
42. In this connection, 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 the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see *Avdyli v. Supreme Court of Kosovo*, KI 13/09, 18 June

2010; see *mutatis mutandis* García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights 1999-1).

43. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (see, *inter alia*, European Commission of Human Rights, *Edwards v. United Kingdom*, App. No. 13071/87, 10 July 1991).
44. In the present case, the Applicants were afforded ample opportunities to present their case and to contest the interpretation of the law which they considered incorrect, before the Trial Panel and the Appellate Panel of the Special Chamber of the Supreme Court. The interpretation of the legal deadline for the filing of a complaint against the list of eligible workers to benefit from the proceeds of the privatization of a Socially Owned Enterprise is a matter for the Special Chamber to determine, and falls outside the scope of constitutional review of the right to a fair and impartial trial by the Court.
45. The Constitutional Court finds that the relevant proceedings were fair and not tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECtHR App. No. 17064/06, 30 June 2009). In addition, nothing is found in the Referral indicating that the Trial and Appellate Panels of the SCSC lacked impartiality or that the proceedings were otherwise unfair.
46. Therefore, the Constitutional Court finds that the Applicants' claims have not been substantiated and must be dismissed as manifestly ill-founded.

FOR THESE REASONS,

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 46 of the Law and Rule 36.2 (b) of the Rules of Procedure, on 9 September 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court



Almiro Rodrigues



Prof. Dr. Enver Hasani