



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

Pristina, 15 July 2013
Ref.no.:RK454/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI57/13

Applicant

Hajzer Beqiri

**Constitutional Review of the Special Chamber of the Supreme Court
Judgment 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
Arta Rama-Hajrizi, Judge.

Applicant

1. The referral was filed by Hajzer Beqiri (Applicant), residing in Pristina.

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0035 of the Appeal Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (Special Chamber), dated 23 November 2012, which according to the Applicant, was served on him 11 January 2013.

Subject matter

3. The Applicant claims that *“the final decision...is discriminatory against me, since the Court had to consider the real situation in our health care system, and the patients scheduling major services in state hospitals have to wait for long periods due to large number of patients, and at time to file a complaint against the Court ruling, I had scheduled my graph with UCKK...”*
4. The Applicant claims that Article 24 [Equality before Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution have been allegedly violated by the Special Chamber.

Legal basis

5. The referral is based on Article 113.7 of the Constitution, Articles 46, 47, 48 and 49 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (No. 03/L-121), (hereinafter, the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

6. On 17 April 2013, the Applicant submitted the Referral to the Court.
7. On 29 April 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 13 May 2013, the Secretariat notified the Applicant, Special Chamber and Privatization Agency in Kosovo (PAK) with the referral.
9. On 20 June 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 23 November 2012, the Appeal Panel of Special Chamber of Kosovo issued the challenged judgment (ASC-11-0035) and rejected the Applicant's complaint against the final list of employees with eligibility to 20% to proceeds of privatisation of SOE “Ramiz Sadiku” in Pristina as out of time.

11. The Appeal Panel reasoned that *“Trial panel correctly evaluated the claim against final list, which he submitted after 27 March 2009, which was out of time. The trial panel came into conclusion that the complainant could not manage to provide valid justification for not respecting the legal time-limit since the medical evidence did not match with the time of time-limit claim.... Due to this and based on reasons presented in legal reasoning, the Appeal Panel reject the claim as ungrounded.”*

Applicant’s allegations

12. The Applicant alleges that, although he presented medical evidence with his complaint to the Special Chamber, his complaint was rejected. He argues that, during the time he had to make medical check up, he had to wait for almost a year and, therefore, he missed the opportunity to submit his complaint to the Special Chamber in time.
13. The Applicant requests from the Court to *“annul the decision mentioned above and order the competent authorities to render a merit-based decision.”*

Admissibility of the Referral

14. The Court first examines whether the Applicants have fulfilled the admissibility requirements set out in the Constitution, and as further specified in the Law and the Rules of Procedure.
15. The Court refers to Article 113 (1) of the Constitution which establishes that
“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”
16. The Court takes into account Article 48 of the Law on the Constitutional Court which 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 a public authority is subject to challenge”.
17. In addition, the Court takes into consideration Rule 36 (2) of the Rules which foresees that
*“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
(d) when the Applicant does not sufficiently substantiate his claim;”*
18. The Constitutional Court recalls that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or of law (legality) allegedly committed by the Special Chamber in Kosovo, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

19. Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
20. In this regard, the Constitutional Court notes that the Applicant have used all legal remedies prescribed by the Law on Contentious procedure, by submitting the appeal against Judgment of Trial Chamber of the Special Chamber and that the Appeal Chamber of the Special Chamber have taken into account and indeed answered his appeals on the points of law.
21. Therefore, the Court considers that there is nothing in the Referral indicating that the case lacked impartiality or that proceedings were otherwise unfair (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
22. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
23. It follows that the Referral is manifestly ill-founded, pursuant to Rule 36 1. (c) of the Rules of Procedure, which provides that "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
24. Accordingly, the Court finds that the Referral was not referred to the court in a legal manner, pursuant to Article 113 (1) of the Constitution, Article 48 of the Law and Rule 36 (1) (c) and (2) d) of the Rules, and as such is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (1) of the Constitution, Article 48 of the Law and Rule 36 36 (1) (c) of the Rules of the Procedure, on 15 July 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; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court

Prof. Dr. Enver Hasani