



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

Pristine, 12 December 2011
Ref.No.:RK168/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 83/11

Applicant

Kadri Bytyqi

**Constitutional Review of the Order of the Special Chamber No. SCEL 09-0009,
dated 26 October 2010**

THE 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

Applicant

1. The Applicant is Mr. Kadri Bytyqi residing in Hoqë e Qytetit, Municipality of Prizren.

Challenged decision

2. The Applicant challenges the Order of the Special Chamber no. SCEL 09-0009, dated 26 October 2010, served on the Applicant on 30 October 2010.

Subject matter

3. Applicant's Referral is related to the alleged violation of Article 23 [Human Dignity], Article 24 [Equality Before the Law] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law and Rule 56(2) of Rules of Procedure.

Proceedings before the Court

5. On 20 June 2011, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 21 June 2011, the Court requested from the Applicant to submit the Order of the Special Chamber SCEL 09-0009, dated 26 October 2011 together with the receipt of the said Order that has been served on him.
7. On 29 June 2011, the Applicant submitted the reply to the request.
8. On 17 August 2011, the President, by Order No. GJR. 83/11, appointed Judge Robert Carolan as Judge Rapporteur. On the same day, the President, by decision No. KSH. 83/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Ćukalović.
9. On 25 August 2011, the Referral was communicated to the Special Chamber.
10. On 7 September 2011, the Applicant again submitted a reply to the request.
11. On 25 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

12. The Applicant has worked as a cook in the socially-owned enterprise THE (Tourism and Hospitality Enterprise) "Theranda" in Prizren from 7 July 1983 until 31 July 1995 and again continued to work from 21 June 1999 until 18 November 2002, when his contract was terminated by the said enterprise.
13. On 21 January 2002, THE "Theranda" through notification No. 16 informed the Applicant that the labor relationship would be terminated on 18 November 2002 even though the Applicant's contract was to expire on 20 January 2003.
14. On 26 October 2010, the Special Chamber issued Order no. SCEL-09-0009 and responded to Applicant's complaint filed against the Kosovo Privatization Agency (hereinafter: "PAK"). Pursuant to Article 10.6 (a) of UNMIK Regulation 2003/13 the Special Chamber states that the deadline for filing a complaint against the employees' list who have not benefited from the 20% (percent) of the enterprise THE "Theranda" was 10

days and that this deadline had expired on 13 June 2009, whereas the Applicant has filed a complaint on 21 September 2010. For this reason the Applicant has been invited to give explanations and provide evidence regarding the failure to file the complaint within the legal time limit, otherwise, as the Order of Special Chamber stated, the complaint would be rejected as inadmissible.

Applicant's allegations

15. The Applicant alleges that the Special Chamber of Supreme Court issuing the said Order has violated his constitutionally guaranteed rights, by not including him in the list of eligible employees entitled to 20 % share of proceeds from the sale of the privatized enterprise THE "Theranda" in Prizren.

Assessment of the admissibility of Referral

16. The Applicant alleges that his right guaranteed by Articles 23 [Human Dignity], 24 [Equality Before the Law] and 55 [Limitations on Fundamental Rights and Freedoms]5 [Languages], of the Constitution have been violated. The Court, in order to be able to adjudicate the Applicant's Referral, first needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure of the Court.
17. In the present case, the Court notes that the Applicant has not proved that he has exhausted all available legal remedies as it is prescribed by the Constitution, the Law and the Rules of Procedure.
18. This conclusion is based on the fact that the Special Chamber has requested the Applicant to substantiate and provide evidence regarding the delay in filing the complaint against the list of employees who have not benefited from the share of 20% of the funds of enterprise THE "Theranda" in Prizren within the time limit, stipulated by UNMIK Regulation 2003/13. There is no evidence that the Applicant ever responded to the Special Chamber's request. Consequently, based on this fact it appears that the Applicant for his case had not received yet a final decision and he has not proved that he has used the possibility that was given to him by the Special Chamber to substantiate his complaint.
19. Consequently, the Referral is considered premature due to the fact that the Applicant has failed to prove that he has exhausted all legal remedies available under the law in force.
20. The requirement for exhaustion of legal remedies is laid down in Article 47.2 of Law, which reads:

Article 47.2 [Individual Requests]

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

21. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (See Resolution on Inadmissibility: AAB-RIINVEST L.L.C., Prishtina vs. Government of Republic of Kosovo, KI-41/09 dated 21 January 2010 and mutatis mutandis, ECHR, Selmouni vs. France, no. 25 803/94, Decision of 28 July 1999).

22. However, even if the Applicant had exhausted all effective legal remedies, another important requirement that the Applicant should have fulfilled was to submit the Referral for the realization of a certain right within the time limit established in the Law and Rules of Procedure of the Court.
23. In the present case, from the Applicant's submissions it clearly appears that the Order of Special Chamber No. SCEL -09-0009, of 26 October 2010, was served on the Applicant on 30 October 2010, whereas the Applicant filed his Referral with the Constitutional Court on 20 June 2011, which is more than 4 months from the date of service of the said Order. Therefore, it results that the Referral has been filed after the time limit prescribed in Article 49 of the Law, and it should have been filed with the Court on 1 March 2011.
24. Article 49 of the Law on Constitutional Court explicitly provides:

Article 49 [Deadlines]

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.

25. Under these circumstances, the Referral must be rejected as being out of time, pursuant to Article 49 of the Law and Rule 36 (b) of the Rules of Procedure.
26. Consequently, pursuant to Article 113.7 of the Constitution and Article 47.2, Article 49 of the Law, Rule 36. (a) and (b) of Rules of Procedure, the Applicant's Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 and Article 49 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, on 25 November 2011, 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 on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani