



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

Prishtina, on 18 May 2015
Ref. No.: RK 793/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI02/15

Applicant

**The Social, Sports, Cultural and Economic Centre, “Pallati i Rinisë”
Prishtina**

**Constitutional Review of the Judgments of the Special Chamber of the
Supreme Court: AC-I.-14-0077-A000I, AC-I.-14-0078-A000I, AC-I.-14-
0079-A000I, and AC-I.-14-0080-A000I, of 15 September 2014**

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 and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is the Social, Sports, Cultural and Economic Centre in Prishtina represented by Acting Director, Mr. Fatmir Gashi, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges the Judgments of the Special Chamber of the Supreme Court (hereinafter: the SCSC): AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-I.-14-0079-AOOOI, and AC-I.-14-0080-AOOOI, of 15 September 2014. The Applicant reiterates as disputable the Judgments SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482, SCC-06-0524, all of 15 October 2009; SCC-04-0010, SCC-04-0011, SCC-04-0012, SCC-04-0098, SCC-04-0116, SCC-04-0121, SCC-04-0199, SCC-05-0028, SCC-05-0067, SCC-05-0072, SCC-05-0073, all of 29 October 2009; and ASC-09-0084, ASC-09-0101, of 13 September 2012, on which the Court decided in the Resolution on Inadmissibility in Case KI23/14, filed by the same Applicant.

Subject Matter

3. The subject matter is the request for constitutional review of the judgments mentioned above of the SCSC, which allegedly violated the Applicant's rights guaranteed by the Constitution, the European Convention of Human Rights (ECHR) and the Universal Declaration on Human Rights. By these Judgments, the Applicant was ordered to compensate the material damage to 16 (sixteen) claimants caused by fire in the building of the Social, Sports, Cultural and Economic Centre in Prishtina. By Judgments of the Appellate Panel of the SCSC, the Applicant's appeals against the first instance decisions were rejected.
4. In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an Interim Measure in order to suspend the execution of the SCSC judgments, until the decision of the Court is rendered.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 21.4 of the Law on Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rules 54, 55 and 56 of the Rules of Procedure.

Proceeding before the Court

6. On 9 January 2015, the Applicant submitted the Referral to the Court.
7. On 13 January 2015, the President, by Decision GJR. KIO2/15, appointed Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision KSH. KIO2/15 appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 19 February 2015, the Court notified the Applicant on the registration of the Referral. On the same date, the Court submitted a copy of the Referral to the SCSC.
9. On 14 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of Facts

10. On 7 February 2014, the Applicant submitted to the Court another Referral which was registered as case KI23/14, with the same appeal allegations and most of the same evidence, which did not include only the last challenged judgments of 2014.
11. Full summary of facts, except new facts regarding the Judgments AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, of 15 September 2014, AC-I.-14-0079-AOOOI, of 15 September 2014; AC-I.-14-0080-AOOOI, of 15 September 2014 was dealt and presented in a chronological order in the Resolution on Inadmissibility of the Court, KI23/14, of 3 March 2014.
12. The Court however recalls that the basic issue of the Referral, is the fact that between 2004 and 2005, 16 (sixteen) claimants filed their claims with the SCSC, seeking compensation for damages from the Applicant, for goods that were inside the warehouses they rented, which were destroyed by fire.
13. By Judgments as in item 2 of this report, the SCSC in 2009 approved individual claims of the claimants and the amount of compensation that should be paid to claimants, while the Appellate Panel of the SCSC, following the appeal of the Applicant in 2012, partially modified the judgments only related to the part of the amount of compensation, by reducing it.
14. On 18 October 2012, the Applicant submitted a request for revision to the SCSC for the Supreme Court, claiming erroneous application of the substantive law in the judgments of the Appellate Panel (ASC-09-0101 and ASC- ASC-09-0084).
15. On 23 October 2012, based on the proposal of the Applicant, the State Prosecutor filed with the Supreme Court the requests for protection of legality KMLC. no. 101/12-1 and KLMC. no. 101/12-2 request for protection of legality for all SCSC decisions related to this case.
16. On 15 September 2014, the Appellate Panel of the SCSC rendered decisions AC-I.-14-0077-AOOOI, AC-I.-14-0078-AOOOI, AC-I.-14-0079-AOOOI, and AC-I.-14-0080-AOOOI, by which it rejected the request for revision and the request for protection of legality as inadmissible.
17. The four decisions had almost similar reasoning, where it was stated:

“Pursuant to Article 10, paragraph 14 of the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (LSC), all judgments and decisions of the Appellate Panel of the SCSC are final and not subject to any further appeal” and that “The LSC and its Annex do not contain reference to any extraordinary legal remedy to be pursued against the decisions and judgments of the Appellate Panel. Such extraordinary legal remedies have not been also provided either by UNMIK Regulation No. 2008/4 or in the UNMIK Administrative Direction no. 2008/6.”

Applicant's allegation

18. The Applicant alleges that the judgments and the decisions of the Special Chamber of the Supreme Court violated its rights guaranteed by the Constitution, namely Article 24 [Equality Before the Law] in conjunction with Article 7 of the Universal Declaration of Human Rights (UDHR), Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 and 13 of the European Convention of Human Rights (ECHR), Article 32 [Right to Legal Remedies] in conjunction with Article 8 of (UDHR) and Article 41, para. 1 and 2 of the Constitution [Right of Access to Public Documents].
19. In this regard, the Applicant alleges as following:

“The Supreme Court of Kosovo, in terms of provision of Article 21 and Article 22, paragraph 1, sub-paragraph 1.1 of the Law on Courts (Law no. 03/L-199), has exclusive jurisdiction to review and decide over the extraordinary legal remedies filed AGAINST the final court decisions. Therefore, in the present case, the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, was obliged to further refer the request for REVISION and the request for protection of legality filed by the State Prosecutor, along with the case, to the Supreme Court of Kosovo and not to render a decision on which the law does not give to it authority for review.”

Admissibility of the Referral

20. The Court notes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
21. In this respect, the Court refers to Article 113.7 of the Constitution which provides:

“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”.

22. The Court also refers to Rule 36 of the Rules of Procedure which provides:

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim.

23. The Court finds that, for all the SCSC judgments of 2009 and 2012 and which are again challenged by the Applicant, it has already made a constitutional assessment, and by Resolution on Inadmissibility KI23/14 it decided the case and cannot reconsider it.

24. In these circumstances, the Court will assess the main issue of the existence of a legal remedy against the decisions of the SCSC Appellate Panel and its eventual effectiveness in light of recent decisions of the SCSC Appellate Panel regarding the violations alleged by the Applicant.
25. In view of the above, the Court refers to the Constitution of Kosovo, which provides:

Article 32 [Right to Legal Remedies]

“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law”.

Article 54 [Judicial Protection of Rights]

“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated”.

26. The Court also takes into account the Law on SCSC on PAK related matters, LAW No. 04/L-033, published in the Official Gazette no. 20, on 22 September 2011, which provides:

Article 1 paragraph 3

“The Special Chamber is a part of the Supreme Court of Kosovo, as provided by Article 21 of Law No.03/L-199 on Courts”.

Article 3 paragraph 14

“The appellate panel shall have final and exclusive appellate jurisdiction over all appeals from Decisions or Judgments of a specialized panel or any court with respect to matters or cases that have previously been referred to such court by the Special Chamber”.

Article 10 paragraphs 14 and 15

“14. All Judgments and Decisions of the appellate panel are final and not subject to any further appeal.

15. Nothing in the present law shall be interpreted or applied as limiting or attempting to limit the constitutional right of any person to petition the Constitutional Court of Kosovo, in accordance with the law and procedural rules governing such a petition, to review the constitutionality of any Decision or Judgment issued by the Special Chamber or another court.”

27. As stated above, it follows that the Applicant had submitted a request for revision against the final decisions of the Appellate Panel of the SCSC, and that the State Prosecutor had filed the request for protection of legality against the

same decisions, whereas the SCSC-Appellate Panel rejected these requests as inadmissible.

28. The Court points out that the Constitution of Kosovo in Article 32 provided that *“Every person has the right to pursue legal remedies...in the manner provided by law”* and recalls that the Law on SCSC on PAK related matters in Article 10 par. 14 explicitly provided that *“all Judgments and Decisions of the appellate panel are final and not subject to any further appeal”*.
29. It is quite clear that the SCSC decisions cannot be subject to any further proceedings, even the court proceedings, except the subject of review in the Constitutional Court, therefore as such are implementable and the SCSC by its judgments only reconfirmed this fact. The Applicant knew this fact also from the Resolution on Inadmissibility of this Court in the case KI23/14, when this matter was dealt (See Resolution on case KI23/14, para. 31, of 3 March 2014, by the same Applicant).
30. The Court notes that to assess efficacy of the legal remedy *“The existence of such remedies must be sufficiently certain not only in theory but also in practice”* (See, *Vernillo v. France*, Judgment of 20 February 1991, Series A no. 198, para. 27). In the present case the legal remedy was not provided in theoretical aspect in the law, and it was not tried in practice and could not produce legal effects regarding substantial aspects of the case.
31. In fact, the Applicant did not substantiate before the Court by any concrete evidence that the Supreme Court has dealt with cases of revision against the decisions of the SCSC Appellate Panel, in order for them to be indicative of unequal treatment before the law, and in such circumstances the Court cannot find any evidence that the court proceedings were unfair or arbitrary, and that its right to a legal remedy has been violated.
32. Consequently, when the Applicant does not sufficiently substantiate the alleged violations, the Court cannot find violation of Article 31 of the Constitution in conjunction with Articles 6 and 13 of the ECHR.
33. Furthermore, as to the allegation of violation of Article 54 of the Constitution, the Court considers that the Applicant was allowed "judicial protection of its rights" because a court established by law and with procedures provided by law assessed its appeals and rendered a final decision.
34. Considering the fact that under Article 1 of the Law on SCSC, the Special Chamber is part of the Supreme Court, and taking into account its special specifics in the functioning of the judicial system of the Republic of Kosovo, and also considering the procedures which are conducted in this judicial institution, the Court does not find that by decisions which rejected the revision and the request for protection of legality, were violated the rights guaranteed by the Constitution, the UDHR and the ECHR.
35. In conclusion, the Court finds that the Applicant did not sufficiently substantiate its allegations.

36. Therefore, the Referral is manifestly ill-founded, and thus inadmissible.

Request for Interim Measure

37. The Applicant requests the Court *"to render a decision granting the interim measure until the Constitutional Review of challenged decisions, in order to avoid the Applicant to pay the compensation in the amount set by the SCSC, as the amount is extremely high and unbearable taking into account that the orders for execution have already been rendered by private executors."*

38. Furthermore, the Applicant claims that *"the execution of the above mentioned Judgments will cause financial hardship for the Applicant and possibly cause the privatization of the enterprise if an interim measure is not granted."*

39. In order that the Court grants the Interim Measure, in accordance with Rule 55 (4) of the Rule of Procedure of the Court, it is necessary to find that:

"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted.

(...)

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".

40. As mentioned above, the Referral is inadmissible and, there is no *prima facie* case for imposing an Interim Measure, therefore, the request for Interim Measure is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 56 of the Rules of Procedure, on 18 May 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the request for Interim Measure;
- III. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;
- IV. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani