



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 22 January 2015
Ref. no.:RK754/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI128/14

Applicant

Fillim Guga

**Request for constitutional review of Judgment ASC-11-0073, of the
Appellate Panel of the Special Chamber of the Supreme Court of Kosovo
on Privatization Agency Related Matters, of 24 July 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Fillim Guga from Gjakova, who is represented by lawyer Mr. Teki Bokshi.

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0073, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatization Agency Related Matters (hereinafter: the Appellate Panel of the Special Chamber), of 24 July 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment [ASC-11-0073] of the Appellate Panel of the Special Chamber, of 24 August 2014, which according to the Applicant's allegation, has violated Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial] Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo, as well as Articles 1, 4, 6, 7, 12 and 13 of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on Constitutional Court of the Republic of Kosovo no. 03/L-121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 6 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 September 2014, the President of the Court, by Decision no. GJR. KI128/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI128/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 22 September 2014, the Court notified the Applicant and the Appellate Panel of the Special Chamber on the registration of Referral.
8. On 9 December 2014, 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

9. The Applicant established a permanent employment relationship in the period from 20 June 1980 until 23 March 1999, with „KNI Dukagjini-BP IMG Tjegulltorja“ (hereinafter: the IMG).
10. On 31 July 2006, the enterprise IMG was privatized.

11. On 10 April 2007, Kosovo Trust Agency (hereinafter: the KTA) published temporary list of employees eligible to 20% from privatization of the enterprise IMG, in which the Applicant was not included.
12. On 19 April 2007, the Applicant filed a request with the KTA, requesting to be included on the temporary list, claiming that he returned to Kosovo in 2001, when he appeared to work, but his request was rejected by the management of the enterprise.
13. On 26 March 2008, the KTA published the final list of employees, not including the Applicant.
14. On 11 April 2008, the Applicant filed an appeal with the Special Chamber of the Supreme Court of Kosovo against KTA Decision of 26 March 2008, claiming that he is a victim of discrimination since he belongs to the minority community of Kosovo.
15. On 29 April 2008, the Special Chamber of the Supreme Court forwarded to the Applicant the KTA response to his appeal of 11 April 2008. The KTA in its response explicitly stated that: *"that there are no indications that the complainant had lodged any claim against the decision to terminate his employment, or that he intended to return to his previous position"*. On the Applicant's allegations that he is a victim of discrimination, the KTA stated: *"...there is no evidence that the complainant had suffered any discrimination within the meaning of Section 10.4 of UNMIK Regulation No. 2003/13 of 9 May 2003 on the Transformation of the Right of Use to Socially-Owned Immovable Property"*.
16. On 12 May 2008, the Applicant responded to the KTA allegations of 29 April 2008, where he stated *"that he is a political refugee who had to leave Kosovo and fled to Montenegro"*.
17. On 17 June 2008, the Special Chamber of the Supreme Court rendered the Decision [SCEL-08-0001], by which rejected the Applicant's appeal as ungrounded.
18. In the conclusion of the Decision, the Special Chamber of the Supreme Court stated: *"The complainants claiming discrimination are required to submit facts from which it may be presumed that there has been direct or indirect discrimination, pursuant to Section 8.1 of the Anti-Discrimination Law. In addition, once the complainant presents a prima facie case of direct or indirect discrimination, the respondent is obliged to disprove discrimination."*

...

The Special Chamber has reviewed all the evidence and agrees with the analysis of the Respondent [the KTA]. Thus, the Special Chamber rejects the complainant's request to be included in the list of eligible employees."
19. On 14 July 2008, the Applicant filed an appeal against the Decision [SCEL-08-0001] of the Special Chamber of the Supreme Court, of 17 June 2008, referring to UNMIK Regulation no. 2008/4 of 5 February 2008.

20. On 10 September 2008, the Special Chamber of the Supreme Court rendered a decision, by which rejected the Applicant's appeal. In the conclusion of the decision, it is stated: *"The Special Chamber found that UNMIK Regulation No. 2008/4 was subsequently amended by another UNMIK Regulation no. 2008/29, postponing entrance into force of UNMIK Regulation No. 2008/4 until 31 October 2008. Therefore, no appeal was possible against the Judgment of 17 June 2008."*
21. On 15 July 2011, the Applicant filed a request with the Appellate Panel of the Special Chamber, by which requested the repetition of procedure.
22. On 24 July 2014, the Appellate Panel of the Special Chamber rendered the Decision [ASC-11-0073], by which the Applicant's appeal was rejected as inadmissible, with the reasoning: *"The Appeals Panel observed that according 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 Related Matters (LSC), all judgments and decisions of the Appeals Panel are final and not subject to any further appeal or request for repetition of procedure. Moreover, LSC and Annex, envisage no other extraordinary legal remedy against such final decisions of Appeals Panel (such extraordinary remedy is neither envisaged by UNMIK Regulation 2008/4, nor by UNMIK Administrative Direction 2008/6). [...] Therefore, claimant's motion for repetition of procedure is inadmissible, therefore it shall be dismissed "*.

Applicant's allegations

23. In his Referral the Applicant stated that by decisions of the Special Chamber were violated his human rights and fundamental freedoms, guaranteed by the Constitution and the European Convention on Human Rights, and that:
 - *"The rights provided by Article 22 of the Constitution of the Republic of Kosovo,*
 - *Right to fair and impartial trial, from Article 31 of the Constitution of the Republic of Kosovo,*
 - *The rights guaranteed by European Convention on protection of human rights and fundamental freedoms, accompanied by Protocols no. 1, 4, 6, 7, 12 and 13."*
24. The Applicant addresses the Court with the following request:

"To annul Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, ASC-11-0073 of 24.07.2014, as well as the challenged decisions in my request for repetition of procedure – Judgment SCEL-08-0001, of 17.06.2008, Decision of 10.09.2008 and that the PAK be obliged to pay the 20% from the proceeds of privatization of the SOE IMN in Gjakova."

Admissibility of the Referral

25. In order to be able to adjudicate the Applicants' Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility

requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

26. In this respect, Article 113 paragraph 7, of the Constitution 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”.

27. In this case, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

(1) *“The Court may only deal with Referrals if:*

[...]

c) the Referral is not manifestly ill-founded.”

28. The Court notes that the Applicant filed Referral with the Constitutional Court on 27 July 2009, whereby requesting the constitutional review of the Decision [SCEL-08-0001] of the Special Chamber of the Supreme Court of Kosovo, of 17 June 2008 and the Decision [SCEL-08-0001] of 10 September 2008.
29. On the same date, the Court registered the Applicant's Referral under the number KI33/09.
30. On 18 October 2010, the Court rendered the Resolution on Inadmissibility of Referral KI33/09, pursuant to Article 49 of the Law.
31. Regarding this, the Court notes that in Case KI128/14, it will exclusively deal with the constitutional review of the Judgment [ASC-11-0073] of the Appellate Panel of the Special Chamber of 24 July 2014, whereas it will not review again the decisions that have already been the subject of review in Case KI33/09.
32. As regards the Applicant's Referral KI128/14, the Court considers that the Applicant has not submitted new evidence to justify his claims that the Judgment [ASC 11-0073] of the Appellate Panel of the Special Chamber violated his rights and freedoms, set forth in paragraph 22 of this Resolution.
33. Moreover, the Court is of the opinion that the Appellate Panel of the Special Chamber in the Judgment [ASC-11-0073] of 24 July 2014, responded to the Applicant's request, when it stated: *„that in the case at hand, request for repetition of procedure is filed against Judgment of Special Chamber SCCL-08/0001 of 17.06.2008, which has already been decided by decision of 10.09.2008, which is final. Therefore, the claimant's motion of 15 July 2011, for repetition of procedure is inadmissible“.*
34. Based on this, the Court holds that the explanation given by the Appellate Panel of the Special Chamber in the Judgment [ASC 11-0073] is clear and legally supported, and that the proceedings before the Appellate Panel of the Special

Chamber have not been unfair or arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR Decision, of 30 June 2009.).

35. The Constitutional Court reiterates that under the Constitution, it is not its task 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*, no. 30544/96, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
36. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).
37. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).
38. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, since the Applicant failed to substantiate that the challenged decision violates his rights guaranteed by the Constitution.
39. Accordingly, the Referral is manifestly ill-founded and must be declared inadmissible, in accordance with Rule 36 (1) c) of the Rules of Procedure.

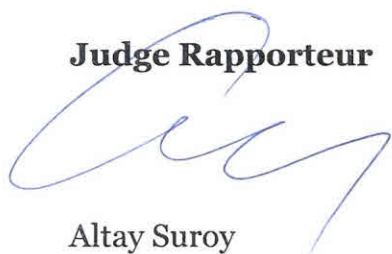
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, in the session held on 9 December 2014, unanimously:

DECIDES

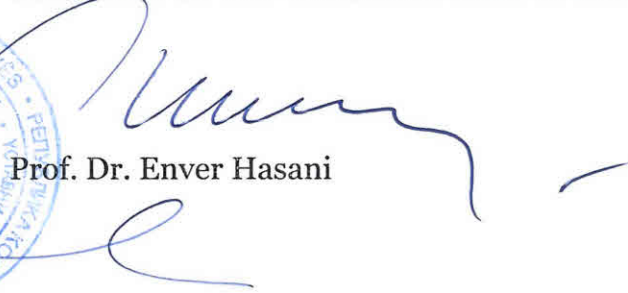
- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy

President of the Constitutional Court



Prof. Dr. Enver Hasani