



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

Pristina, 8 December 2011
Ref. No.: RK 167/11

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 34/11

Applicant

Sami Bunjaku

**Constitutional Review of the Decision of the Trial Panel of the Special Chamber
of the Supreme Court, SCC 10-0079, dated 21 January 2011,**

and the

**Constitutionality of UNMIK Administrative Direction No. 2008/6 amending
and replacing UNMIK Administrative Direction No. 2006/17, implementing
UNMIK Regulation No. 2002/13 on the establishment of a Special Chamber of
the Supreme Court of Kosovo Trust Agency Related Matters**

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. Sami Bunjaku from Gjakova, represented by Mr. Avdi Rizvanolli, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Decision of the Trial Panel of the Special Chamber of the Supreme Court (hereinafter: the “Special Chamber”), SCC 10-0079, of 21 January 2011, which was served upon the Applicant on 28 January 2011.
3. Furthermore, the Applicant challenges also the constitutionality of UNMIK Administrative Direction No. 2008/6 amending and replacing UNMIK Administrative Direction No. 2006/17, implementing UNMIK Regulation No. 2002/13 on the establishment of a Special Chamber for Trust Agency Related Matters of the Supreme Court of Kosovo (hereinafter: UNMIK AD No. 2008/6).

Subject matter

4. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) of the constitutionality of the Decision of the Trial Panel of the Special Chamber, SCC 10-0079, and the constitutionality of UNMIK AD No. 2008/6, whereby his rights guaranteed by Articles 5 [Languages], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to fair trial] in conjunction with Article 14 [Prohibition of discrimination] of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the “ECHR”) have been violated.

Legal basis

5. Article 113.7 of the Constitution, Article 22 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 1 February 2011, the Applicant submitted the Referral to the Court.
7. On 18 April 2011, the President, by Order No. GJR. 34/11, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Order No. KSH. 34/11, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Kadri Kryeziu.
8. On 6 May 2011, the Court requested the Applicant, whether he had appealed the Decision of the Special Chamber, SCC 10-0079, of 21 January 2011 to the Appellate Panel of the Special Chamber.
9. On 16 May 2011, the Applicant submitted to the Court the additional information requested, providing that he appealed the Decision of the Special Chamber, SCC 10-0079, of 21 January 2011 to the Appellate Panel of the Special Chamber.
10. On 15 June 2011, the Court communicated the Referral to the Special Chamber of the Supreme Court.
11. On 3 October 2011, the Court requested the Special Chamber to submit its comments on the complaint of the Applicant, where after the Special Chamber replied on 12 October 2011 that:

“ ...

According to the Section 25.7. of UNMIK AD 2008/6 the submissions of the proceedings have to be delivered to the SCSC in Albanian, Serbian or English. However, if they are submitted only in Albanian or Serbian, an English translation of the submissions and supporting documents: shall, as well be submitted to the court. If the party (a natural person) is not able, due to his/her financial situation, to take care of the translation of the documents on his/her own expenses, the court can grant the party upon an application exemption from the court fees and the assistance in translation.

The Trial Panel of the SCSC has with its decision on 21 January 2011 dismissed the claim of Sami Bunjaku and the others as inadmissible because the Claimant submitted the English translation of only the claim and the history of the respective cadastral plots but no translation of the other documents. The Claimant has appealed against the decision of the Trial Panel to the Appellate Panel of the SCSC. The appeal is still pending in the Appellate Panel. Therefore, it is not possible for the SCSC furthermore to take stance on the Complaint of Sami Bunjaku in a case which is still pending in the court.

...”

12. On 24 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 facts

13. On 19 April 2010, the Applicant initiated a procedure to verify his alleged ownership right before the Trial Panel of the Special Chamber.
14. On 22 November 2010, the Trial Panel of the Special Chamber issued an order to the Applicant, pursuant to Article 28.4 of UNMIK AD 2008/6, whereby the Applicant was requested to translate within two weeks the complaint and the documents into English.
15. On 8 December 2010, the Applicant only partially fulfilled the Order.
16. On 21 January 2011, the Trial Panel of the Special Chamber rendered a decision rejecting the Applicant's complaint, since the Applicant did not fulfill its order (SCC-10-079) of 22 November 2010.
17. On 31 January 2011, the Applicant appealed the Decision of the Trial Panel of the Special Chamber, SCC 10-0079, of 21 January 2011 to the Appellate Panel of the Special Chamber complaining that according to Article 5 of the Constitution, the official languages in Kosovo are Albanian and Serbian and that he is not obligated to translate the documents into English.

Applicant's allegations

18. The Applicant alleges that the UNMIK AD 2008/6 is in violation of Articles 5 [Languages], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to fair trial] in conjunction with Article 14 [Prohibition of discrimination] of ECHR.
19. Furthermore, the Applicant alleges that nowhere in the world the parties are obliged to communicate with the court in a language which is not an official language, according

to the Constitution. In this respect, the Applicant poses the question whether the Court is at the service of itself or for the citizens.

Assessment of the admissibility of the Referral

20. The Applicant alleges that his right guaranteed by Articles 5 [Languages], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to fair trial] in conjunction with Article 14 [Prohibition of discrimination] of ECHR have been violated. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
21. In this respect, the Court emphasizes that it can only decide on the admissibility of a Referral, if the Applicant shows that he/she has exhausted all effective legal remedies available under applicable law pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law, providing:

"113.7 of the Constitution: 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."

"47.2 of the Law: The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."
22. 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 legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, KI-41/09, of 21 January 2010, and see mutatis mutandis, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).
23. In the present case, the Court finds that the Applicant has filed an appeal against the Decision of the Special Chamber, SCC 10-0079, of 21 January 2011 to the Appellate Panel of the Special Chamber complaining that according to Article 5 of the Constitution, the official languages in Kosovo are Albanian and Serbian and that he is not obligated to translate the documents into English. The Appellate Panel of the Special Chamber has not yet rendered a decision in this matter. If his claim before the Appellate Panel would not be successful, then the Applicant can bring a Referral before this Court.
24. It follows, that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47(2) of the Law.
25. As to the request of the Applicant to review the constitutionality of UNMIK AD No. 2008/6, the Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit the question of compatibility of laws with the Constitution. Therefore, the Applicant is not an authorized party under Article 113.2 of the Constitution.
26. For these reasons, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.7 and 113.2 of the Constitution, Article 47 (2) of the Law, and Rule 56 (2) of the Rules of Procedure, on 24 November 2011, unanimously

DECIDES

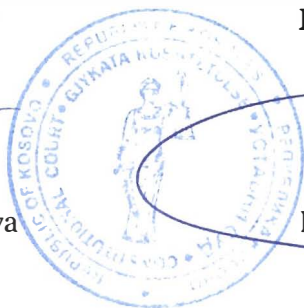
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani