



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

Pristina, 15 July 2013
Ref. No.:RK452/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI63/13

Applicant

Safet Voca

Constitutional Review of the requirement of the Special Chamber of the Supreme Court for appellants to provide English language translations of all documents

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.

The Applicant

1. The Applicant is Safet Voca, President of the Mitrovica Branch of the Chamber of Advocates. The Applicant is represented by Kapllan Baruti, a lawyer based in Mitrovica.

Challenged decision

2. The Applicant challenges the requirement of the Special Chamber of the Supreme Court that appellants to the Special Chamber must provide English language translations of all documents related to their appeal, based on Law no. 04/L-033, on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency Related Matters (hereinafter: Law on the Special Chamber). This requirement is specified in Article 25 (8) of the Rules of Procedure of the Special Chamber, in Annex to the Law on the Special Chamber.

Subject matter

3. The Applicant alleges that the requirement to submit English language translations of all documents constitutes a violation of the Constitution of Republic of Kosovo. The Applicant refers to Article 5 (1) on the Official Languages of Kosovo, Article 16 (1) and (4) on the Supremacy of the Constitution, and claims that the requirement discriminates on the basis of language in violation of Article 24 (2) of the Constitution.

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Articles 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court (hereinafter, the Law), and Rules 28, 29 and 30 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).

Proceedings before the Constitutional Court

5. On 23 April 2013, the Applicant submitted the Referral to the Court.
6. On 29 April 2013, the President, by Decision nr.KSH.KI63/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and appointed the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 13 May 2013, the Constitutional Court informed the Applicant of the registration of the Referral, and requested the Applicant to submit a duly completed official application form together with copies of all relevant decisions of public authorities.
8. On 16 May 2013, the Applicant submitted a completed application form.
9. On 17 June 2013, the President appointed Judge Robert Carolan as Judge Rapporteur, to replace Judge Arta Rama-Hajrizi.
10. On 20 June 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Facts of the case

11. On 23 April 2013, the Applicant sent a letter to the Constitutional Court requesting a review of the constitutionality of the requirement of the Special Chamber of the Supreme Court for appellants to submit translations into English of all documents and decisions in relation to their appeal.
12. It does not appear that the Applicant was a party to any legal proceedings, or has initiated any legal or other proceedings in relation to this request.
13. Article 25 (8) of the Annex to the Law on the Special Chamber provides that:

“Pleadings and supporting documents may be submitted in either the Albanian or Serbian language and accompanied by an English translation. Such translation shall be at the expense of the person or party submitting such pleading or document.”

Legal arguments presented by the Applicant

14. The Applicant alleges that the provision contained in Article 25 (8) of the Annex of the Law on the Special Chamber, requiring appellants to submit translations into English of all documents and decisions in relation to their appeal, is in violation of the constitutional determination of the official languages of Kosovo.
15. Furthermore, the Applicant argues that, *“According to the provision of Article 5 (1) of the Constitution, the official languages in the Republic of Kosovo are Albanian and Serbian. Article 16, para.1 provides that the laws and other legal acts are in accordance with this Constitution, while paragraph 4 of the same provision states that every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution.”*
16. The Applicant points out that Article 102 (3) of the Constitution provides that, *“Courts shall adjudicate based on the Constitution and the Law”*.
17. Furthermore, Article 2 (1) of the Law on the Use of Languages (Law No.02/L-37) specifies that, *“Albanian and Serbian and their alphabets are official languages of Kosovo and have equal status in Kosovo institutions,”* and Article 2 (2) states that, *“All persons have equal rights with regard to the use of the official languages in Kosovo institutions.”*
18. Finally, Article 12 (1) of the Law on the Use of Languages specifies that, *“Official languages shall be used on an equal basis in judicial proceedings.”*
19. The Applicant alleges that the requirement to provide translations of documents into the English language also constitutes discrimination on the basis of language against all citizens of Kosovo when making an appeal to the Special Chamber of the Supreme Court, in violation of Article 24 (2) of the Constitution.

20. The Applicant indicates in his Referral that his arguments and remarks are of a general nature and character, and that he is not referring to any particular case or set of proceedings.
21. The Applicant also requests that, pursuant to Article 116 (2) of the Constitution, the Court orders the temporary suspension of the application of the requirement to provide English language translations, as contained in Article 25 (8) of the Annex of the Law on the Special Chamber, pending a final decision of the Court on the Referral.

Assessment of the admissibility of the Referral

22. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. The Court has specifically to determine whether the Applicant has met the requirements of Article 113 (1) of the Constitution and Article 47 (1) of the Law and of Rule 36 (3) (c) of the Rules of Procedure.
24. The Court refers to Article 113 (1) and (7) of the Constitution, which establish:
 1. *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
 - [...]
 7. *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."*
25. Article 47 (1) of the Law provides that:

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority."
26. Furthermore, Rule 36 (3) (c) of the Rules of Procedure provides that:

"3. A Referral may also be deemed inadmissible in any of the following cases:

[...]

c) the Referral was lodged by an unauthorized person;"

27. The Court notes that the Applicant states that he is not referring to any case or set of proceedings, but that his comments and arguments are of a general nature and character.
28. The Court notes further that the Applicant does not provide information regarding any legal or other proceedings or actions in relation to his complaints.
29. With regard to the Applicant's right to submit a Referral under Article 113 (7) of the Constitution, the Court considers that the Applicant does not articulate an individual right or freedom which may have been violated, nor does he refer to any concrete action or decision of a public authority which may have violated his fundamental rights.
30. In substance, the Court considers that the Applicant is asking for an advisory opinion, or an abstract review, of the constitutionality of the provision contained in Article 25 (8) of the Annex to the Law on the Special Chamber.
31. In these circumstances, the Court finds that, under Article 113 (1) of the Constitution, in conjunction with Rule 36 (3) (c) of the Rules of Procedure, the Applicant is not an authorized party to request a review of the constitutionality of a legal provision.
32. Therefore, the Court finds that the Applicant is also not an authorized party to request the temporary suspension of the application of Article 25 (8) of the Annex to the Law on the Special Chamber. For this reason, the Applicant's request for an interim measure under Article 116 (2) of the Constitution must be rejected.
33. In conclusion, the Court finds that the referral has not been submitted in a legal manner by an authorized party, within the meaning of Article 113 (1) of the Constitution, and must be rejected as inadmissible because the Applicant is not an authorized party.
34. Consequently, for the reasons outlined above, the Referral is inadmissible.

FOR THESE REASONS

Pursuant to Article 113 (1) of the Constitution, Articles 46 and 47 (1) of the Law, and Rule 36 (3) (c) of the Rules of Procedure, on 15 July 2013, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the Request for an Interim Measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani