



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 16 December 2013
Ref.no.:RK519/13

RESOLUTION ON INADMISSIBILITY

In

Case No. KI 101/13

Applicant

Veton Berisha

**Constitutional review of the Decision ASC-10-0038 of the Special
Chamber of the Supreme Court, of 14 May 2013**

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.

The Applicant

1. The Referral was submitted by Mr. Veton Berisha, with residence in Prishtina, who is the owner and represents the Construction Company "Exterier" (hereinafter, the Applicant).

Challenged Decision

2. The Applicant challenges the Decision ASC-10-0038 of the Special Chamber of Supreme Court, of 14 May 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violated the Applicant's right to fair trial as guaranteed by Article 31 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), as well as Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the European Convention).

Legal basis

4. The Referral is based on Article 113 (7) and Article 21 (4) of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter, the Law) and Rules 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure)

Proceedings before the Court

5. On 7 July 2013, the Applicant submitted his Referral to the Court.
6. On 5 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 16 September 2013, the Court notified the Special Chamber of the Supreme Court of Kosovo on registration of the Referral.
8. On 16 September 2013, the Court requested from the Applicant to submit the power of attorney for representing the Company „Exterier“.
9. On 18 September 2013, the Applicant submitted to the Court “Information About Business”, indicating that the Applicant is the owner of the Construction Company „Exterier“.
10. On 18 October 2013, 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

11. On 30 January 2001, the Construction Company „Exterier“ from Prishtina concluded a contract with Prishtina Airport on performance of construction works for building a residential building in Prishtina.

12. On 26 April 2005, the Construction Company „Exterier“ requested to the Special Chamber of the Supreme Court to render a decision on some additional expenses, which were made for the construction of the abovementioned building.
13. On 14 February 2007, the Special Chamber of the Supreme Court (Judgment SCC-05-0132) rejected the request as ungrounded. Item 3 of the enacting clause of the Judgment states that *“The Judgment is final, binding and non-appealable”*.
14. On 7 May 2007, the Applicant filed with the Public Prosecution Office of Kosovo *“the request for protection of legality to the Supreme Court of Kosovo by the Public Prosecutor of Kosovo, against the Judgment of the Special Chamber of the Supreme Court of Kosovo SCC-05-0132 of 14 February 2007”*, because of *“Erroneous application of substantive law- Article 356 of LCP”*.
15. On 9 October 2007, the Public Prosecution Office in Kosovo stated that *“in our request for submitting the case file from Special Chamber of the Supreme Court of Kosovo, for examination of the latter, in relation to your initiative for filing the request for protection legality against the abovementioned judgment in request, this file was not forwarded to us, with a justification that every judgment, which the Special Chamber brings is final, therefore such requests should be rejected.”*
16. On 30 June 2009, 22 February 2010 and 29 March 2010, the Applicant requested the Special Chamber to reconsider the Judgment SCC-05-0132, of 14 February 2007, due to the adoption of UNMIK Regulation 2004/04 and UNMIK Administrative Instruction 2008/06 of 11 June 2008, which allows the right to appeal to the Special Chamber of the Supreme Court.
17. On 14 May 2013, the Appellate Panel of the Special Chamber of the Supreme Court (Decision ASC-10-0038) rejected the request as inadmissible reasoning that the Applicant *“has not used the legal time limit to submit request for repetition of the procedure, which is 30 days, therefore the request is rejected as inadmissible”*.

Applicant's allegations

18. The Applicant alleges that the challenged Decision of the Appellate Panel of the Special Chamber violated his rights protected by the Constitution, namely Article 31 (Right to Fair and Impartial Trial), Article 53 (Interpretation of Human Rights Provisions) as well as Article 6 of the European Convention.
19. The Applicant requests from the Constitutional Court to *“quash the decision of the Special Chamber of the Supreme Court ASC- 10—0038 of 14 May 2013 and enable retrial of the case in the Special Chamber of the Supreme Court”*.

Admissibility of the Referral

20. The Court examines whether the Applicant has met the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
21. In that respect, the Court refers to Article 113 of the Constitution, which establishes:
 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.*
22. The Court also refers to Article 48 of the Law which provides:

In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.
23. The Court also takes into account the Rule 36 (1) c) of the Rules of Procedure which provides:

The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.
24. The Court notes that “erroneous application of substantive law- Article 356 of LCP” was the main allegation made by the Applicant in his request for protection of legality. The Applicant alleges for the first time before the Constitutional Court that the Decision of the Appellate Panel of the Special Chamber violated his rights protected by the Constitution, namely Article 31 (Right to Fair and Impartial Trial), Article 53 (Interpretation of Human Rights Provisions) as well as Article 6 of the European Convention.
25. However, the Court notes that, further to mentioning the constitutional legal provisions, the Applicant does not explain how and why the Decision of the Appellate Panel of the Special Chamber, on concluding that “*the Judgment is final, binding and non-appealable*”, has violated his rights to fair and impartial trial.
26. In fact, the Court notes that the Appellate Panel of the Special Chamber concluded that “the Judgment is final, binding and non-appealable”, explained that the Applicant “has not used the legal time limit to submit request for repetition of the procedure” and the State Prosecutor also stated that “*every judgment, which the Special Chamber brings is final*”

27. The Court further considers that the Decision SCC-05-0132, of 14 February 2007, the Decision ASC-10-0038 of 14 May 2013 of the Special Chamber and the notification of the State Prosecutor are well justified and reasoned in answering to the claim of the Applicant. The mere reference to a violation of his right to a fair and impartial trial is not enough to substantiate an allegation on the ground of constitutionality.
28. Thus, the Constitutional Court cannot 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 [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).
29. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, among other, the Report of the European Commission on Human Rights in the case Edwards v. United Kingdom App. No 13071/87, adopted on 10 July 1991)
30. Therefore, the Constitutional Court considers that relevant proceedings were fair and justified (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. In sum, the Applicant has not substantiated an allegation on a constitutional basis and has not proved that any of his fundamental rights and freedoms were violated by the Special Chamber of the Supreme Court.
32. It follows that the Referral is inadmissible as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and the Rule 36 (1) c) of the Rules of Procedure, on 18 October 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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. TO DECARE this Decision effective immediately

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani