



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
G.JYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

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Pristina, 22 March 2013  
Ref. No.: RK400/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI103/12**

Applicant

**INTEGRAL L.L.C.**

**Constitutional Review of the Special Chamber of the Supreme Court of Kosovo  
Judgment ASC-11-0056-A0001 of 7 June 2012**

### **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

### **Applicant**

1. The Applicant is “Integral”, Private Company from Pristina, represented by Agim Aliu, Director.

### **Challenged decision**

2. The challenged decision is the Judgment of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereinafter “the Special Chamber”) issued under ASC-11-0056-A0001, on 7 June 2012 that was served to the Applicant on 5 July 2012.

### **Subject matter**

3. The Applicant claims that its property rights as guaranteed by Article 46 of the Constitution and Article 1 Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms (hereinafter “the European Convention on Human Rights” or “ECHR”) have been violated by challenged judgment of the Special Chamber.
4. The Applicant requests the Constitutional Court to annul the challenged judgment and return the matter for the reconsideration to the Special Chamber.

### **Legal Basis**

5. The Referral is based on Article 113. 7 of the Constitution, Articles 46, 47, 48 and 49 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

### **Proceedings before the Constitutional Court**

6. On 19 October 2012, the Applicant filed the Referral with the Constitutional Court of Kosovo (hereinafter: the Court).
7. On 31 October 2012, by Decision No. GJR.103/12, the President of the Court appointed Judge Arta Rama-Hajrizi as a Judge Rapporteur and by Decision No. KSH.103/12 from the same date a Review Panel composed of Judges: Almiro Rodrigues (Presiding), Kadri Kryeziu and Enver Hasani.
8. On 13 March 2013, 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 the Facts**

9. On 7 September 2006, the Applicant filed a claim with the Special Chamber against Kosovo Trust Agency (hereinafter “KTA”) and Privatization Agency Kosovo (hereinafter “PAK”), requiring the verification of the ownership for the immovable property, business premise located in Pristina, UÇK Street No.2 (former AP) Street, then Kralja Milutina Street, in total surface of 814.00 m2. The Applicant based his claim on the Sales Contract concluded between the Applicant and “Investbank SHA” (in bankruptcy) in Belgrade. The Sales Contract was verified it in the First Municipal Court in Belgrade under No 900/61, dated 19 April 2006.

10. On 15 March 2007, KTA submitted the response to the Applicant's claim stating, *inter alia*, that the contesting property belongs to the Bank of Kosovo known as Bankos Basic Bank of Pristina, which is part of Bank of Kosovo JSC (hereinafter "the Bank"). KTA also declared that they carried investigations and verified that the Bank was established by the Socially Owned Enterprise (SOE) and that its assets are socially owned property.
11. On 13 April 2011, the Trial Panel issued a Judgment SCC-06-0394 and rejected the Applicant's claim as ungrounded.
12. The Trial Panel stated in the reasoning as follows: "[S]ince the Court found that the Claimant [i.e. "the Applicant"] does not possess the evidence of a legal title, the property dispute remains between Investbank and Bankos (as administrated or not by KTA), no determinations being made in this file. This is why the title exhibited by the Claimant cannot constitute a valid reason for the claim."
13. On 23 May 2011, the Applicant submitted an Appeal to the judgment of the Trial Panel of the Special Chamber before the Appellate Panel of the same court, due to violations of the provisions on contested procedure, incomplete and erroneous determination of the facts and erroneous application of material law.
14. The Appellate Panel of the Special Chamber issued the contested Judgment no. ASC - 11-0056-10001 on 7 June 2012, and rejected the Applicant's appeal as ungrounded and uphold the Judgment SCC- 06-0394 of the Trial Panel of the Special Chamber, dated 13 April 2011,.
15. In the legal reasoning the Appellate Panel of the Special Chamber stated that "*the Trial Panel of the SCSC has emphasized very clearly in the justification...that the 'claimant does not possess any legal title evidence.'*"
16. Furthermore, the Appellate Panel confirmed view of the Trial Panel that "*transfer of the ownership right to the claimant through 'the ownership title 'that he possessed was not conducted in a legal manner.'*" The Appellate Panel also confirmed that the contested assets "*are socially owned property*".
17. In addition, the Appellate Panel of the Special Chamber stated that "*the transfer of the property right for the contested assets was done based on a contract concluded in Belgrade, which did not meet the legal requirement of the applicable law in Kosovo. Therefore, this contract does not present any lawful legal action of the applicable law in Kosovo, and it is not evidence of the legal title as to allow the claimant to transfer and registered without any interruption his property right for purchased assets.*"
18. Moreover, the Appellate Panel of the Special Chamber noted that since the assets purchased by the Applicant are located in Pristina, and that the Sales Contract verified at the Court in Belgrade that "*the form of this legal action is without any legal effect, as this important element is not fulfilled in this case.*"
19. Finally, the Appellate Panel of the Special Chamber found that the "*the legal action was in violation also with Article 4 of the law on transaction of the Immovable Property... a provision which prohibits alienation of the socially owned real estates to private persons.*"

### **Applicant's Allegations**

20. In his referral to the Constitutional Court, the Applicant alleges that its human rights guaranteed by the Constitution have been violated since the Special Chamber "*unjustly*

*alleges that the claimant does not possess any evidence related to the legal title in order to prove his right over business premise". The Applicant alleges that "bank as a financial institution cannot be treated as a socially owned enterprise or publicly owned enterprise" The Applicant noted that "Investbanka JSC, in accordance with the law, has implemented the bankruptcy procedure, the decision on sale of property not only in Kosovo but also in other countries of the former Yugoslavia..." The Applicant considers that the Sales Contract was concluded and verified before the competent court in Belgrade in accordance with applicable law.*

21. *Consequently the Applicant requests that "any claim, either by the court or any other institution for denying its property rights to Integral L.L.C., regarding the premise purchased, while challenging legal title for the transfer of property rights, is illegal and is a violation of constitutional provisions, namely Article 22 and 46 of the Constitution of the Republic of Kosovo."*

#### **Assessment of the Admissibility of the Referral**

22. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirement laid down in the Constitution, the law and Rules of Procedure.
23. In that respect, the Court notes that, in accordance with Article 113.7 of the Constitution and Article 47.2 of the Law, the Applicant has exhausted all legal remedies provided by the Law.
24. The Court further notes that the Applicant submitted the Referral in the time-limit prescribed by Article 49 of the Law.
25. The Court has also to consider if the Applicant's referral satisfy further admissibility requirement as prescribed by Rule 36.2 of the Rules of Procedure, that reads as follows:

*"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

- (a) the Referral is not prima facie justified, or*
- (b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
- (c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
- (d) when the Applicant does not sufficiently substantiate his claim;"*

26. The Constitutional Court recalls that is not 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 [GC], no.30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
27. The Constitutional Court notes from the facts submitted in the Referral that the Applicant at various stages of the proceedings was able to submit the arguments it considered relevant to the case. The factual and legal reasons for the first-instance decision dismissing the Applicant's claim were set out at length. In the judgment at the appeal stage the Appellate Panel endorsed the statement of the facts and the legal reasoning set out in the judgment of the Trial panel, and in so far as they did not conflict with its own findings. Consequently, both Trial Panel and Appellate Panel of the Special Chamber took into account and indeed answered the Applicant's appeals on the points of law.

28. The Court reiterates that it has only limited power to deal with alleged errors of fact or law committed by the regular courts and it cannot substitute its view for that of those courts on the Applicant's ownership of business premises (see the ECtHR, Jantner v. Slovakia, no. 39050/97, para 32, judgment 4 March 2003).
29. Accordingly, even assuming that the judgments of the Special Chamber interfered with the Applicant's right to property, they were based on the law and proportionate to the public interest of protecting the rights of the real owners (*mutatis mutandis* ECtHR, Case of Čadek and others v. The Czech Republic, para. 51, judgment of 21 November 2012). These complaints are thus manifestly ill-founded.
30. Thus, the Court, in accordance with Rule 36.2 (c) of the Rules of Procedure shall reject a Referral as being manifestly ill-founded.

### **FOR THESE REASONS**


The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36. 2 of the Rules of the Procedure 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

  
**Arta Rama- Hajrizi**



  
**Prof. Dr. Enver Hasani**