



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

Prishtina, 27 May 2013
Ref.no.:RK414/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 127/12

Applicant
Zade Zeqiroviq

**Constitutional Review
of the Judgment of the Appellate Panel of the Special Chamber of the
Supreme Court of Kosovo on Privatisation Agency of Kosovo related
matters ASC-09-0084 dated 12 September 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 and
Arta Rama-Hajrizi, Judge.

The Applicant

1. The Referral is filed by Zade Zeqiroviq (hereinafter: the Applicant), represented by Shemsi Uka.

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court on Privatisation Agency of Kosovo related matters ASC-09-0084 of 12 September 2012, served on the Applicant on 22 September 2012.

Subject matter

3. The Applicant alleges that the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court on Privatisation Agency of Kosovo related matters ASC-09-0084 of 12 September 2012 violated the rights guaranteed by Article 24 [Equality before the Law] and Article 31 [the Right to Fair and Impartial Trial] the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in the case of, as alleged by the Applicant, non recognition of the right to annual interest on the amount of the compensation for a damage caused by fire.

Legal basis

4. The Referral is based on Articles 113.7 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 Rule 56.2 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 7 December 2012, the Applicant submitted the Referral to the Constitutional Court (hereinafter: the Court).
6. On 10 January 2013, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Almiro Rodrigues (member) and Arta Rama-Hajrizi (member).
7. On 5 February 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency of Kosovo related matters on the registration of the Referral.
8. On 29 April 2013, by Decision of the President on the replacement of Judge Rapporteur with No. GJR. KI 127/12, Judge Snezhana Botusharova was appointed as Judge Rapporteur. On the same day, by Decision of the President No. KSH. 127/12, the Review Panel was appointed, composed of judges: Altay Suroy (presiding), Almiro Rodrigues (member), and Enver Hasani (member).

9. On 14 May 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to full Court on the inadmissibility of the Referral.

The facts of the case

10. According to the documents attached to the Referral, the Applicant is the owner of the Company "Muki Trade", who from 26 October 1999 until 25 February 2000 had a lease contract for the use of a warehouse with the Socially Owned Enterprise "Social, Sportive, Cultural and Economic Center" in Prishtina. On 25 February 2000, a fire broke out in the "Social, Sports, Cultural and Economic Center" in Prishtina, which spread to the other, rented warehouses, including the rented warehouse by the Applicant.
11. On 9 March 2005, the Applicant filed a claim at the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters seeking damage compensation from the "Social, Sportive, Cultural and Economic Centre" in Prishtina. The copy of the claim of 9 March 2005 has not been attached to the Referral by the Applicant. It is the Judgment of the Special Chamber of the Supreme Court dated 18 August 2006, which refers to the claim submitted by the Applicant.
12. The Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters in its Judgment of 18 August 2006, No. SCC-05-80 decided that *"no relief can be awarded in respect of this claim as matter of law"*, and further explaining that the claim was not filed within the 5 (five) year time limit as prescribed by article 376, paragraph 2, of the Law on Obligations. Whereas on the same date, the Special Chamber issued judgments on 12 (twelve) related cases, adjudging the "Social, Sports, Cultural and Economic Center" in Prishtina liable for damages suffered by Claimants and awarding damage compensation in their favor.
13. On 25 March 2008, the Applicant submitted a request to reopen the case. The legal representative of the Applicant submitted evidence to the Special Chamber that on 16 March 2004 a claim had been filed for the same compensation of damage in the Municipal Court of Prishtina. The evidence submitted to the Special Chamber was in the form of a decision of the Municipal Court of Prishtina dated 6 February 2008.
14. Based on the evidence submitted by the Applicant, confirming that a claim had been filed for the same compensation in the Municipal Court, on 20 June 2008, the Special Chamber of the Supreme Court decided to reopen the case.
15. On 10 September 2008, the Special Chamber of the Supreme Court referring to its jurisdiction pursuant to UNMIK Regulation 2002/13 also issued a decision to remove from the Municipal Court of Prishtina the case C. No 254/08 submitted by the Applicant.
16. Special Chamber ordered a general expertise for the assessment of the amount of damage that has been caused by the fire.

17. On 15 October 2009, the Trial Panel of the Special Chamber of the Supreme Court in its Judgment SCC-05-0080 found the Social, Sports, Cultural and Economic Centre in Prishtina responsible for damage and therefore ordered the Social, Sports, Cultural and Economic Center in Prishtina to pay to the Claimants the compensation of damages. In the case of the Applicant, the Trial Panel ordered to pay 106,650 EUR as damage instead of the alleged amount of 195,000 EUR.
18. On 12 November 2009, the Applicant filed an application with the Special Chamber of the Supreme Court requesting the Special Chamber to correct the Judgment of 15 October 2009 and include an interest of 3.5 % for the Applicant in the enacting clause of the Judgment.
19. On 21 May 2010, the Trial Panel of the Special Chamber of the Supreme Court rejected the application as inadmissible arguing that the Judgment of 15 October 2009 was served on the Applicant on 18 October 2009 and that the Applicant filed her request on 12 November 2009, whereby the application was considered to be out of time pursuant to Section 49.1 of UNMIK Administrative Direction (AD) 2008/6. In fact, the Trial Panel did not consider that the claimed omission was included in the term "*Clerical Errors*". The Trial Panel further argued that the Applicant requested for "supplemental and not for a corrected judgment" and found that the request for complementing the judgment was on time but ungrounded considering that the original judgment implicitly said that the Applicant did not request a legal interest. The Trial Panel noted that "*any objection considering this is to be rectified, if found grounded, only by the second instance decision.*" In this case, the Trial Panel concluded that the request of the Applicant cannot be considered as a new claim since the procedure of registration is a specific one, nor can it be considered as an appeal since it did not satisfy the criteria promulgated by Section 60.1 of the UNMIK Administrative Direction (AD) 2008/6.
20. On 7 July 2010, the Applicant filed an appeal with the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency of Kosovo related matters requesting compensation of delay of payment of legal interest to the same amount as in other cases starting from 25 February 2000 until the definitive payment. The Applicant alleged that several cases have been deliberated in a collective manner obliging the "Social, Sports, Cultural and Economic Centre" in Prishtina to pay the interest and also alleged that in earlier documents it has required compensation for all procedural costs. The Applicant in her appeal also referred to the Judgment of the Special Chamber of Supreme Court of 18 August 2006, in which the Special Chamber of the Supreme Court stated that the "claim consists of a request to oblige the Social, Sports, Cultural and Economic Centre in Prishtina *to pay interest because of the delay in the amount of 5 % per annum starting from the day of the fire until the final payment.*"
21. The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency of Kosovo related matters with its Decision ASC-10-0045 dated 13 September 2012 rejected the appeal filed by the Applicant as ungrounded and upheld the decision of the Trial Panel SCC -05-0080 dated 21 May 2010.

22. The Appellate Panel in the aforementioned decision notes that:

[...]

“It is correct that the SCSC on 18 August 2006 in its judgment states that the Appellants’ claim on 9 March 2005 consists of a request to oblige the 1st Respondent to pay interest because of the delay in the amount of 5 per cent per annum starting from the day of the fire until final payment. However, this request can neither be found in the case file SCC-05-0080, nor in the documents in the appeal to the Appellate Panel. The statement of the SCSC on 18 August 2006 can therefore not be considered as evidence that there was a request for interest before 18 August 2006.”

The Appellate Panel further refers to a claim from the Applicant in the Trial Panel file SCC-05-0080 submitted on 15 December 2008 in which the Applicant requested payment of legal interest, but argues that [...] *“pursuant to Article 376.2 of the Law on Obligations the right to file a claim shall expire five years after the occurrence of injury or loss, thus being the request of the Applicant of 15 December 2008 not timely.”*

23. The “Social, Sports, Cultural and Economic Centre” in Prishtina, the Privatisation Agency of Kosovo and World Company filed appeals with the Special Chamber of the Supreme Court of Kosovo, respectively on 23 November 2009, 20 November 2009 and 16 November 2009 against the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of 15 October 2009 on the joint cases SCC-05-80, SCC-06-0029, SCC-06-0470, SCC-06-0482 and SCC-06-0524.
24. The Appellate Panel of the Special Chamber of the Supreme Court in its Judgment of 12 September 2012 decided to consider the appeal of the “Social, Sports, Cultural and Economic Centre” in Prishtina as partly grounded and to modify the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of 15 October 2009 ordering the “Social, Sports, Cultural and Economic Centre” in Prishtina to pay to the Applicant and other claimants the following: 75,000 EUR to the Applicant; 75,000 EUR and 3.5% of annual interest for the damage from 26 February 2000 until the day of payment to the second claimant; 80,000 EUR and 3.5% of annual interest for the damage from 26 February 2000 until the day of payment to the third claimant; 65,000 EUR and 3.5% of annual interest for the damage from 26 February 2000 until the day of payment to the fourth claimant; 180,000 EUR and 3.5% of annual interest for the damage from 26 February 2000 until the day of payment to the fifth claimant.

Applicant’s Allegation

25. As stated above, the Applicant alleges that the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency of Kosovo related matters ASC-09-0084 dated 12 September 2012 violated the

rights guaranteed by the Constitution, namely Article 24 [Equality before the Law] and Article 31 [the Right to Fair and Impartial Trial].

26. The Applicant further alleges that *“According to UNMIK Direction No.6/2008 on implementation of UNMIK Regulation No. 13/2002, Article 70 of the Direction in its final provisions states that in interpreting the present Administrative Direction, or in considering any question which is not answered sufficiently, applicable provisions of the Law on Contested Procedure shall be applied accordingly. Pursuant to Article 190 of the Law on Contested Procedure, as the law in force at that time, it was foreseen that the claimant could have modified the claim until the moment of the closure of the main hearing. Even if the claimant did not request by claim the legal interest, when requesting by submissions and allegations in the hearings before the conclusion of the main hearing, then this allegation should have been considered by the Chamber as being on time.”*

Assessment of the admissibility of the Referral

27. 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.
28. The Court should first examine whether the Applicant is an authorized party to submit a referral with the Court, in accordance with requirements of Article 113.7 of the Constitution.

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.”

In relation to this Referral, the Court notes that the Applicant is a natural person, and is an authorized party in accordance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

29. The Court must also determine whether the Applicant, in accordance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In the present case, the final decision on the Applicant's case is the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court on Privatisation Agency of Kosovo related matters ASC - 09-0084 of 12 September 2012. As a result, the Applicant has shown that it has exhausted all legal remedies available under the applicable laws.
30. The Applicant must also prove that he has fulfilled the requirements of Article 49 of the Law in relation to submission of Referral within the legal time limit. It can be seen from the case file that the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court on Privatisation Agency of Kosovo related matters ASC-09-0084 of 12 September 2012 was served on the Applicant on 22 September 2012, while the Applicant filed the Referral to the

Court on 7 December 2012, meaning that the Referral was submitted within the four month time limit, as prescribed by the Law and the Rules of Procedure.

31. In relation to the Referral, the Court also takes into account Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may review referrals only if: c) The referral is not manifestly ill-founded.”

32. Based on the case files, the Court notes that the reasoning provided in the Judgment of the Appellate Panel of the Supreme Court is clear and, after reviewing the entire procedure, the Court also found that regular court proceedings have not been unfair and arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, Decision of the European Court of Human Rights on admissibility of referral, no. 17064/06, of 30 June 2009).
33. The Court reiterates that according to the Constitution, the Constitutional Court is not a court of fourth instance, when considering decisions taken by regular courts. It is a mandate of regular courts to interpret and apply rules of procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain [DHM]*, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, See also, *Resolution on Inadmissibility in the case no. 70/11, Applicants Faik Hima, Magbule Hima and Besart Hima, Constitutional Review of the Judgment of the Supreme Court*, A. No. 983/08, of 7 February 2011).
34. The fact that the Applicant is not content with the outcome of the Supreme Court decision cannot be used by him as a right to raise an arguable claim for violation of Articles 24 [Equality before the Law] and 31 [the Right to Fair and Impartial Trial] of the Constitution. (See, *mutatis mutandis* *ECHR Judgment Appl. No. 5503/02, Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
35. For all the aforementioned reasons, the Court is satisfied that the facts presented by the Applicant did not in any way justify the allegation of a violation of the constitutional rights and the Applicant did not provide evidence that its rights and freedoms guaranteed by the Constitution have been violated by the regular courts.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 36.2 and 56.2 of the Rules of Procedure, on 27 May 2013, 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani