



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

Prishtina, 30 June 2014
Ref.no.:RK657/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI198/13

Applicant

Privatization Agency of Kosovo

**Constitutional Review of the Decision of the Appellate Panel of the
Special Chamber of the Supreme Court, No. AC-II-12-0193, of 4 July 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

Applicant

1. The Applicant is the Privatization Agency of Kosovo (hereinafter: Applicant), represented by Mr. Ramush Bardiqi, Legal Officer.

Challenged decision

2. The Applicant challenges the Decision no. AC-II-12-0193, of 4 July 2013, of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: SCSC Appellate Panel), which the Applicant states to have received on 23 July 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision no. AC-II-12-0193 of 4 July 2013, of the SCSC Appellate Panel, in relation to the Applicant's allegation that such decision violates its rights as guaranteed by Articles 31. 2 and 102. 3 of the Constitution, and Article 6 of the ECHR.

Legal basis

4. Articles 113. 7 and 21. 4 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (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

5. On 11 November 2013, the Applicant filed its referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 December 2013, the President of the Court, by Decision no. GJR. KI198/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President appointed the members of the Review Panel, in the following composition: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 11 December 2013, the Constitutional Court notified the Applicant and the SCSC Appellate Panel of the registration of the referral.
8. On 13 March 2014, 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 the facts

9. On 13 January 2006, the Municipal Court in Podujeva rendered the Judgment C. no. 144/2005), thereby approving as grounded the claim of the claimant M.H. and ordering the respondent, SOE Fan Besiana FA Zahir Pajaziti, to compensate the claimant M.H. his personal incomes for the period 1993-1999, namely for 63 months and 17 days.
10. On 1 October 2012, the Privatization Agency of Kosovo (hereinafter: PAK), filed a complaint with the Special Chamber of the Supreme Court, for annulment of the Judgment of the Municipal Court in Podujeva, C. no. 144/2005, of 13 January 2006, due to substantial violations of contested procedure.

11. On 4 July 2013, the SCSC Appellate Panel rendered the Decision AC-II-12-0193, thereby rejecting the complaint of the Applicant, due to its filing beyond the legal timeline. The decision of the SCSC Appellate Panel contains the following reasoning:

“The appeal is out of time and therefore should be rejected as inadmissible.

Pursuant to Article 64.1 of the Annex of the Law no. 04/033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Annex), the Appellate Panel decided to not hold the oral part of the procedure. The Appellant in the appeal has not explained when he was notified of the appealed judgment and the reason why the appeal was filed after more than 6 (six) years after the appealed judgment became final. From the case file it is clear that the respondent was served with the appealed judgment on 19 January 2006. It is indisputable fact that the appellant has not filed appeal in SCSC within legal time limit against the Judgment of the Municipal Court in Podujeva. The fact whether he was informed on time regarding the appealed judgment, has not been determined by the Appellant and the burden of proof lies with him.

Because the appeal was filed after more than 6 (six) years from the time when the time limit expired for filing appeal and after waiving the right to appeal against the judgment, it is out of time.

The Appellate Panel assesses that the issue whether this Court had jurisdiction regarding the claim, cannot be presented anymore, since the inadmissibility of the appeal does not impede the Court to review the merits of the appeal.

One of the fundamental principles of the law is preserving the legal certainty for the parties through the law and the court rulings. The final rulings, where the parties, with or without knowledge miss the deadline to appeal or waive the right to file appeal, cannot become subject to court interference to change them later only due to the fact that the party after the time limit in a certain period has interest to modify them, since this causes legal uncertainty for the involved parties. The review on merits of the appeal, filed out of time would violate the rights of the parties in the procedure to a fair trial pursuant to Article 6.1 of European Convention on Human Rights”.

Applicant’s allegations

12. The Applicant claims that the Decision AC-II-12-0193 of the SCSC Appellate Panel, of 5 July 2013, which rejected the appeal of the PAK as inadmissible, and the Judgment of the Municipal Court in Podujevë, C. no. 144/2005, of 13 January 2006, contains the following violations:

“i) Violation of constitutionality and legality, as provided in Chapter VII, Article 102, paragraph 3 of the Constitution of the Republic of Kosovo, by

which is stipulated that the courts adjudicate based on the Constitution and the law.

ii) Violation of the European Convention on Human Rights (ECHR), Article 6, by which is provided fair and impartial trial”.

[...]

“The SCSC Appellate Panel did not deal at all with the jurisdiction of the Municipal Court in Podujeva, which court, pursuant to Article 15 of the Law on Contested Procedure, should have ex-officio due regard of its competence regarding the claim, but the Appellate Panel focused the entire legal reasoning on the time limit of the appeal.

PAK considers that the SCSC assessment that PAK appeal was filed out of time does not stand, since the SCSC has erroneously applied legal provisions of Article 186.1 of LCP, since in this case should have been applied provisions of Article 4, paragraph 5.1 of the Law no. 04/L-033 of the Special Chamber of the Supreme Court and PAK document should be treated by the Court as submission-notification by PAK and not as regular appeal, since in this case, the Court avoided application of concrete provisions, where is explicitly provided that every Judgment or Ruling rendered by a court regarding a claim, matter, proceedings or case, will be invalid and non-executable, while the Special Chamber, based on the submission of a person, or by own initiative, will issue an order with that effect.” By applying this legal provision, the Court had legal ground to annul the Judgment of the Municipal Court in Podujeva no. 144/2005 of 13 January 2006, since the respondent was Socially Owned Enterprise”.

[...]

To argue the practice of appeal review on annulment of the judgments rendered by the municipal courts by SCSC, PAK provided the SCSC decision (see evidence 5, ASC-09-0043 of 11 October 2010).”

13. Furthermore, the Applicant requests from the Constitutional Court to render a judgment declaring the Referral admissible, and annulling the Decision AC-11-12-0193, of 4 July 2013, of the Special Chamber of the Supreme Court of Kosovo, and for the merits of the case to be decided by the Special Chamber itself, pursuant to its subject matter jurisdiction.

Admissibility of the Referral

14. In order to be able to adjudicate the Referral of the Applicant, the Court must first examine whether the Applicant has met the requirements provided by the Constitution, and further specified by the Law and the Rules of Procedure.
15. With respect to the Applicant’s Referral, the Court refers to Article 113. 7 and Article 21. 4 of the Constitution which provide that:

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.*

Article 21 [General Principles]

4. *“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.*

16. The Court also refers to Article 49 of the Law, which provides that:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...”.

17. In the present case, the Court notes that the Applicant is an authorized party; it has exhausted all legal remedies provided by Law, in compliance with the requirements of Article 113. 7 of the Constitution, and that the Referral was filed within the four-month time limit, as provided by Article 49 of the Law.

18. In this regard, the Court considers that the Applicant’s Referral meets procedural criteria for review, and shall further examine the merits of the Referral, and in this regard, it refers to Rule 36 (1) c) and Rule 36 (2) of the Rules of Procedure, which provide:

*36 (1) “The Court may only deal with Referrals if:
[...]
c) the Referral is not manifestly ill-founded.*

36 (2) “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”.

19. The Court notes that the Applicant mainly alleges violations of Articles 31. 2 and 102. 3 of the Constitution, and violation of legal provisions.

20. In relation to the Applicant’s allegations of violation of Article 31. 2 of the Constitution [Right to Fair and Impartial Trial], the Court notes that the right to a fair and impartial trial involves numerous elements, and is a key component in protecting basic rights of the individual against the violations allegedly made by courts or public authorities by their decisions.

21. In this regard, the Court takes note of the Article 31 [Right to Fair and Impartial Trial] of the Constitution, which clearly provides that:

“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers”.

22. Article 6 of the European Convention on Human Rights (ECHR) also provides that:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.

23. In this regard, the Applicant does not clearly present how and why its allegation of violation of this concrete provision represents a constitutional violation of its fundamental right for a fair and impartial trial.

24. The reasoning of the Decision of the SPSC Appellate Panel is mainly based on the principle of the guarantee for the legal certainty of final judicial decisions, justifying the decision it made in line with the ECtHR case law regarding cases of similar nature. Below is the conclusion of the Panel with respect to the case:

“One of the fundamental principles of the law is preserving the legal certainty for the parties through the law and the court rulings. The final rulings, where the parties, with or without knowledge miss the deadline to appeal or waive the right to file appeal, cannot become subject to court interference to change them later only due to the fact that the party after the time limit in a certain period has interest to modify them, since this causes legal uncertainty for the involved parties. The review on merits of the appeal, filed out of time would violate the rights of the parties in the procedure to a fair trial pursuant to Article 6.1 of European Convention on Human Rights”.

25. Furthermore, the SCSC Appellate Panel decision, as quoted above, provides an extensive and comprehensive reasoning on the facts of the case and their findings.
26. Furthermore, dissatisfaction with the decision or merely the mentioning of articles and provisions of the Constitution does not suffice for the Applicant to raise an allegation of constitutional violation. When alleging Constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be grounded.
27. In relation to the allegation of violation of Article 102.3 of the Constitution, *“courts shall adjudicate based on the Constitution and the law”*, the Court finds that the Applicant again fails to argue how did the challenged decision infringe upon the right as guaranteed by the concrete provision of the Constitution mentioned above, since the Applicant does not raise any argument or proof that the SCSC Appellate Panel has failed to observe such provisions.

28. In relation to the allegation “*on violation of legal provisions*”, the Court finds that such allegations are of legal nature, and as such, do not represent any constitutional grounds of violation of fundamental rights guaranteed by the Constitution.
29. Indeed, the Court does not review the regular courts’ decisions on legality, and it does not examine the accuracy of the facts of the case, unless it is fully convinced that such decisions were rendered in a manifestly unfair and arbitrary manner.
30. In cases of alleged violations of constitutional rights, it is the duty of the Court to analyze and examine whether the proceedings, in their entirety, are fair and in compliance with protection expressly provided by Constitution. Hence, the Constitutional Court is not a fourth-instance court, when examining decisions rendered by lower instance courts. It is the duty of regular courts to interpret and apply pertinent rules of procedural and material rights (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court for Human Rights [ECtHR] 1999-I).
31. It can be clearly seen that in the course of the proceedings before the SCSC the Applicant was offered all possibilities of filing arguments, facts and evidence before the courts, in relation to the alleged violations of constitutional rights. It is not the duty of the Court to examine decisions of regular courts merely because the Applicant was not satisfied with the outcome of the regular courts’ decisions.
32. In this concrete case, the Applicant has not filed any convincing argument to establish that the alleged violations mentioned in the Referral represent constitutional violations (see, Vanek v. Republic of Slovakia, ECtHR Decision as to the Admissibility, no. 53363/99, of 31 May 2005).
33. Furthermore, in this case, the Court cannot find that pertinent proceedings held before the Special Chamber of the Supreme Court were in any way unfair or arbitrary (see, *mutatis mutandis*, Shub vs. Lithuania, ECtHR Decision as to the Admissibility of Application, no. 17064/06, of 30 June 2009).
34. In general, the Court finds that the Applicant’s Referral does not meet the admissibility criteria, since the Applicant has failed to prove that the challenged decision has violated its rights guaranteed by the Constitution.
35. Therefore, in accordance with Rule 36 (2) (b) and d) of the Rules of Procedure, the Court concludes that this Referral is manifestly ill-founded.

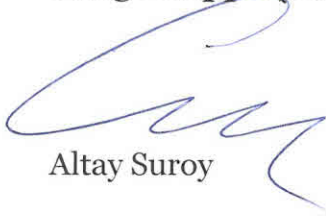
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rule 36 (2) b) and d) and Rule 56 (2) of the Rules of Procedure, on 13 March 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur


Altay Suroy



President of the Constitutional Court


Prof. Dr. Enver Hasani