



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

Prishtina, on 14 March 2013
Ref.No.:RK392/13

RESOLUTION ON INADMISSIBILITY

Case No. KI19/10

Applicant

Sh.P.K. “Syri”

Concerning the constitutionality of the Order issued by the Special Chamber of the Supreme Court of the Republic of Kosovo, SCA -09-0041 of 9 February 2010

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 Sh.P.K. “Syri” of Gjakova, represented by its Mr. Enver Mulliqi from Gjakova.

Subject Matter

2. The Applicant challenges the constitutionality of the Order issued by the Special Chamber of the Supreme Court of the Republic of Kosovo (Special Chamber), SCA -09-0041 of 9 February 2010 (Order of 9 February 2010), according to which the Applicant, as the Plaintiff in the civil proceedings before the Special Chamber, was requested to submit translation of all submissions and relevant documents in the English language on its own cost.
3. Subsequently, the Applicant challenges the constitutionality of Section 25.7 of UNMIK Administrative Direction No. 2008/6 amending and replacing UNMIK Administrative Direction No. 2006/17, implementing UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereinafter: UNMIK AD 2008/6).
4. The Applicant argues that the challenged order of 9 February 2010 that was issued in accordance with Article 25.7 of UNMIK Administrative Direction No. 2008/6 contravenes Article 5 [Languages], Article 23 [Human Dignity], Article 24 [Equality before the Law] and Article 31 [Right to Fair and Impartial Trial] and Articles 6, 14 and 1 to the Protocol 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. The Applicant further argues "that EULEX judges should not apply any provision that violates basic human rights, especially in the provision called the Administrative Order, which is in fact a sublegal act."
5. The challenged Section of Administrative Direction No. 2008/6 is Section 25.7 and it provides for the language in which cases submitted to the Special Chamber must be furnished to the Chamber in the following terms:

25.7 Pleadings and supporting documents may be submitted in Albanian, Serbian or English. However, if submitted in Albanian or Serbian, an English translation of all pleadings and supporting documents shall be provided together with the pleadings. Such translation shall be performed at the party's expense.
6. The Applicant requests the Constitutional Court to find a violation of human rights and to require the Special Chamber to translate documentation at its own expense.

Legal Basis

7. Article 113.1. and 7 of the Constitution of Kosovo (hereinafter: "the Constitution"); (hereinafter: "the Law"); Article 20 of the Law and Rule 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

8. On 1 March 2010, the Applicant submitted his Referral to the Court.
9. On 17 March 2010 the President of the Court appointed Deputy President Kadri Kryeziu as the judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Enver Hasani and Iliriana Islami.

10. On 24 August 2010 the Court sent the Referral to the Special Chamber and requested their comments and/or observations on the Referral.
11. The Special Chamber replied on 10 November 2010. Their reply is dealt with below.
12. On 10 March 2011, the Secretariat of the Constitutional Court forwarded the reply of the Special Chamber to the Applicant and requested its comments. The Court also asked for copies of additional documents concerning the case of the Applicant in the District Court Commercial Court.
13. On 23 March 2011, the Applicant replied to the Court. It informed it that since “the non-implementation, pursuant to the Order of the Special Chamber of the Supreme Court of Kosovo on KTA Related Matters, risked the rejection of the appeal, the plaintiff paid for the translation of the judgment and sent the translated judgment, appeal and supporting evidence. It should be mentioned that translation services are relatively high, one page costs 10 Euros.”
14. The Applicant further added that “the concerned Administrative Direction is in contradiction to Article 6 – Right to a fair trial, Article 14 – Prohibition of discrimination, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 1, Protocol 1 to the Convention, in relation to Article 53 of the Constitution of the Republic of Kosovo and constitutional provisions and guarantees with Articles 5, 23, 24, 31 of the Constitution of the Republic of Kosovo. EULEX judges should not apply any provision that violates basic human rights, especially in the provision called the Administrative Order, which is in fact a sublegal according act”. The Applicant also attached the Appeal against the judgment of the District Commercial Court which was the subject matter of the issue before the Special Chamber.
15. On 2 July 2012, the President appointed the members of the new Review Panel, consisting of judges: Robert Carolan (Presiding), replacing Judge Iliriana Islami because her mandate on the Court had expired on 26 June 2012, Snezhana Botusharova and Enver Hasani (members).
16. Also, on 2 July 2012, the Review Panel deliberated on the report of Judge Report and postponed it for further consideration.
17. On 24 September 2012, the Secretariat of the Court asked both the Applicant and the Special Chamber about status of the Applicant’s case before the Special Chamber.
18. The Applicant has passed the Court has not received any reply to the letter of 24 September 2012.
19. The Special Chamber has not submitted reply to the Court’s letter of 24 September 2012, either.
20. On 27 November 2012, 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

21. The following fact can be summarized from the documents submitted by the parties in the proceedings.

22. The District Commercial Court in Pristina on 19 June 2008 rejected the Applicant's complaint against the respondent Kosovo Energy Corporation-Network Division, Gjakova District, for an alleged debt in the amount of 28.689,85 Euro.
23. On 6 April 2009 the Applicant filed an appeal to the Special Chamber against a Judgment of the Commercial District Court I.C.no. 198/2007, dated 19 June 2008.
24. The appeal and supporting documentation, i.e. the text of the challenged Judgment was in the Albanian language and it was not submitted to the Special Chamber with an English translation.
25. On 9 February 2010 the Special Chamber of the Supreme Court issued an Order which requested that the Applicant in this Referral to deliver to the Special Chamber within a time limit of 14 (fourteen) days of receiving the Order in the following terms:

Order

"We request from the Plaintiff/Complainant to deliver the following within a time limit of 14 (fourteen) days of receiving this Order:

- 1. Pursuant to Articles 58.2 and 25.4 (b) of the Administrative Direction (UA) of UNMIK 2008/6 the statement of authorization, which gives authority to represent the plaintiff in the proceedings at the Special Chamber (including the name, surname and the address of the lawyers together with the English Translation):*
 - 2. Pursuant to Article 60.2 of UA of UNMIK 2008/6, a copy of the Judgment of the Economic District Court I.c. no.198/2007, against which the complaint has been made to, together with the English translation:*
 - 3. Pursuant to Article 58.2 and 25.7 of the Administrative Direction of UNMIK 2008/6, the English translation of the complaint, as well as other supporting documents.*
 - 4. Pursuant to Article 25.7 of the Administrative Direction of UNMIK 2008/6: "Submissions and attached documents can be presented in the Albanian language, Serbian or English, However, if they are presented in the Albanian or Serbian language, they must have the relevant translation in English of all the submissions and relevant documents. The party will bear responsibility for the translation fees". Pursuant to Article 58.2 of the Administrative Direction of UNMIK 2008/6 is applicable in the complaints procedures.*
 - 5. If the plaintiffs or the complainants do not present the completed complaint or a rectified one which fulfils all the foreseen requirements as in Article 28.2 of the UD of UNMIK within 14 days from the admission date of this Order or does not deliver the above documentation within 14 days, then the Special Chamber will refuse the Complaint/lawsuit in the basis of inadmissibility.*
26. This Order of the Special Chamber of the Supreme Court was signed by an EULEX Judge. Following the issuing of this order on 9 February 2010 the Referral was made to the Constitutional Court on 1 March 2010.

27. Notwithstanding the lodging of the Referral with the Constitutional Court the Applicant complied with the Order within the time limit of 14 days and provided translations of the required documents on 29 March 2010.

Comments of the Special Chamber

28. On 10 November 2010 the Special Chamber replied to the Constitutional Court notification received by them on 25 August 2010.

29. In their reply the Special Chamber stated as follows: "The Claimant SH.P.Syry, in Gjakovë/Djakovica, on 6 July 2009, filed an appeal before the Special Chamber against the Judgment of the Commercial District Court I.C. ni.198/2007 dated 19 June 2008. Since the appeal filed by the Claimant ...was only submitted in Albanian language, the judge in charge issued an order to the Claimant/Appellant SH.P.K. Syri requesting from the Claimant to submit the judgment against which appeal was brought and the English translation of the appeal and supporting documents as well in accordance with Section 25.7 of UNMIK Administrative Direction (UNMIK AD) 2008/6 in conjunction with Section 58.2 of UNMIK AD. ...Section 58.2 of the UNMIK Administrative Direction 2008/6 envisages that the rules of procedure and evidence that govern proceedings in the Trial Panel shall apply *mutatis mutandis* to proceedings in the Appellate Panel. On the other hand, Section 60.2. of the UNMIK Administrative Direction 2008/6 requires that the decision of the Trial panel or the Court against the decision of which the appeal is brought shall be attached to the appeal. As the Claimant did not provide the decision and the translation into English of the appeal and decision against which the appeal was brought, the Claimant was ordered to provide the Court with them. This was a part of general practice of the Court in accordance with the Administrative Direction 2008/6 which is applied to all claims/appeals submitted with the Special Chamber since the Court's working language is English. It is worth to mention that if the claimant/appellant is natural party, (s)he is reminded of the possibility of that (s)he may ask for assistance in translation. On 29 March 2010, the Claimant/Applicant complied with the abovementioned order and submitted to the Special Chamber the requested documents and translation."

Assessment of Admissibility

30. The admissibility requirements are laid down in the Constitution and further specified in the Law and the Rules of Procedure.

31. In that regard, the Court refers to Article 113.7 of the Constitution which 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."

32. On the other side, Article 47 (2) of the Law also establishes that:

The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.

33. Furthermore, Rule 36 (1) a) foresees that:

The Court may only deal with Referrals if all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted.

34. As it mentioned above, the Court has not received reply to its letter requesting information about the status of the case pending before the Special Chamber neither from the Applicant nor from the Special Chamber.

35. It appears therefore, in this case that the Applicant had failed to exhaust all legal remedies available to him, since the proceedings before the Special Chamber are still pending.

36. Therefore, in the circumstances of a pending matter in the Special Court, the Constitutional Court is unable to proceed further to assess the admissibility of the Referral. It appears that his Referral is premature.

Conclusion

37. Having said that, the Court finds that the Referral does not fulfill the requirements of Article 113 (7) of the Constitution, Article 47(2) of the Law and Rule 36 (1) (a) of the Rules, and as such is inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 (1) (a) of the Rules of the Procedure by majority:

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


Dr. sc. Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani