



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

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Prishtina, 29 January 2013  
Ref. No.: RK358/13

## RESOLUTION ON INADMISSIBILITY

In

**Case No. KI21/12**

Applicant

**Bedri Selmani**

**Constitutional review  
of the Judgment of the Trial Panel of the Special Chamber of the Supreme Court  
of Kosovo on Trust Agency Related Matters, SCC-06-0144 of the date 30 March  
2009 and the Judgment of the Appellate Panel of the Special Chamber of the  
Supreme Court of Kosovo on Trust Agency Related Matters, ASC-09-2006, of  
the date 13 October 2011**

### 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.

#### **Applicant**

1. The Applicant is Bedri Selmani from Prishtina.

## **Challenged Decision**

2. The Applicant challenges the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Trust Agency Related Matters (hereinafter: the Trial Panel), SCC-06-0144 dated 30 March 2009, and the Judgment of Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Trust Agency Related Matters (hereinafter: the Appellate Panel), ASC-09-0006 dated 12 October 2011.

## **Subject Matter**

3. The Applicant alleges that the aforementioned Judgments violated his rights guaranteed by the Constitution, namely Article 119 [General Principles], paragraph 1 and 2, and Article 121 [Property], paragraph 1 of Chapter IX [Economic Relations] of the Constitution.

## **Legal Basis**

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, in conjunction with Article 22 of the Law No. 03/L-121 on Constitutional Court (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

5. On 2 March 2012, the Applicant submitted the Referral to the Court.
6. On 5 March 2012, the President appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (presiding), Altay Surroy and Gjyljeta Mushkolaj.
7. On 4 December 2012, the President signed a Decision on Replacement of Judges in the Review Panel, composed of Judges Robert Carolan (presiding), Altay Surroy and Ivan Čukalović.
8. On 10 December 2012, the Referral was communicated to the Special Chamber of the Supreme Court and to the Kosovo Agency of Privatization.

## **Summary of the Facts**

9. On 5 April 2000, the Applicant, claiming to be the Founder, Owner and Director General of the Private Enterprise "Autokosova" concluded an Agreement with the Socially Owned Enterprise "Autoprishtina" in Prishtina (hereinafter: the Agreement). The Socially Owned Enterprise is the successor enterprise of Working Organization Vehicle House "Boshko Cakic" established in December 1989. The Applicant claims that according to the Agreement, he undertook to "renovate and rehabilitate" a building owned by the Socially Owned Enterprise "Autoprishtina". The partnership Agreement was registered in UNMIK Business Registry on 15 December 2000.
10. On 10 November 2000, the Supervisory Board of the Socially Owned Enterprise "Autoprishtina" unilaterally terminated the co-operation with the Applicant. Although the Socially Owned Enterprise claimed to have terminated the Agreement 2000, the workers of the Socially Owned Enterprise worked for Autoprishtina-Autokosova or another entity owned by the applicant up to October 2003. In October 2003, the workers cut ties with the Autoprishtina-Autokosova and commenced to operate the auto-servicing and spare parts business independently of Autoprishtina-Autokosova or any other entity associated with the applicant.

11. On 3 April 2006, the Applicant raised the dispute before the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters. In its initial claim the Applicant sought a preliminary injunction. This application was withdrawn by the Applicant at the oral hearing on 13 December 2006.
12. On 18 January 2007, the Applicant filed a submission requesting Hotel and Restaurant "Victory" be joined as a Claimant in the Proceedings. The Special Chamber made an order on joining Hotel and Restaurant "Victory" as the Second Claimant to the proceedings. A number of other amendments have been made to the claim, the last being the amendment of February 2007. The Applicant in its claim requested the following: the amount of 1,219,446.22 € to be paid to Autoprishtina-Autokosova in order to recognize the right to ownership on invested funds in the socially owned facility "Autoservis"; The amount of 1,036,994.32 € to be paid to Hotel and Restaurant "Victory" in order to recognize the right to ownership on invested funds in construction of the private hotel facility; Recognition of Autoprishtina-Autokosova's right to use the land containing "Autoservis"; Recognition of Hotel and Restaurant "Victory"'s right to use land containing Hotel Victory; Declaration of Autoprishtina-Autokosova's priority right to purchase the socially owned facility and land on which "Autoservis" is situated and Declaration of Hotel and Restaurant "Victory"'s priority right to purchase the socially owned land on which Hotel Victory is situated.
13. Kosovo Trust Agency (hereinafter: KTA) filed a defense and Counterclaim on its own behalf and on behalf of the Socially Owned Enterprise.
14. The Trial Panel of the Special Chamber in its Judgment SCC-06-0144 of 30 March 2009 rejected the claim against Socially Owned Enterprise "Autoprishtina" as ungrounded, rejected the request for a preliminary injunction against KTA as withdrawn and rejected the counterclaim of KTA as inadmissible.
15. On 15 May 2009, the Applicant lodged an appeal against the Judgment of the Trial Panel, SCC-06-0144, dated 30 March 2009. The appeal is based on grounds of essential violations of the Law on Contested Procedure, on wrongful or incomplete determination of facts of the case and on wrongful application of the substantive law.
16. On 18 November 2009, the KTA on behalf of itself and of the Socially Owned Enterprise Autoprishtina filed the response to the appeal, in which it maintained that the arguments of the Appellants are without any legal basis, requesting that the appeal should be rejected and the judgment of the Trial Panel of the Special Chamber upheld.
17. On 13 October 2011, the Appellate Panel of the Special Chamber in its Judgment ASC-09-0006 rejected the appeal as ungrounded, decided to uphold the Judgment of the Trial Panel of 30 March 2009 and amended the judgment of the Trial Panel by adding the following sentence: "the claim of Hotel and Restaurant "Victory" is rejected as ungrounded".
18. On 17 October 2011, the Judgment of the Appellate Panel was submitted to the Applicant.
19. On 30 January 2012, the Applicant filed a request for protection of legality of the Judgment of the Appellate Panel to the State Prosecutor.
20. On 2 February 2012, the State Prosecutor in its Announcement No. 6/2012 "found no legal ground to file a request for protection of legality".

## **Allegations of the Applicant**

21. As stated above, the Applicant alleges that the judgments of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters, that of the Trial Panel and the Appellate Panel have violated his rights guaranteed by the Constitution, namely Article 119 [General Principles], paragraph 1 and 2, and Article 121 [Property], paragraph 1 of Chapter IX [Economic Relations] of the Constitution.
22. In its referral, the Applicant claims the following: 1. His ownership rights over the funds he had invested for the refurbishment of "Autoservis" in the total amount of 1,356,882.00€; 2. His ownership rights over the invested funds in Hotel and Restaurant "Victory", in the total amount of 1,527,832.00€; 3. The right to use the urban land plot on which the "Autoservis" and Hotel and Restaurant "Victory" have been constructed; 4. The right to the priority to buy in the privatization proceedings of Socially Owned Enterprise on which the building of "Autoservis" and Hotel and Restaurant "Victory" were constructed.
23. The Applicant concludes his claim, alleging that *"This action of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters that was taken while violating in a flagrant way the provisions of the civil proceedings (foreseen with the Law on Contested Procedure), contradicts the provisions of the Law on Foreign Investments and provisions of the Constitution of Republic of Kosovo itself, more specifically – with Article 119, par.2, related to paragraph 1 of the same Article (Article 119) and Article 121, paragraph 1"*.

## **Admissibility of the Referral**

24. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules.
25. The Court should first examine if the Applicant is an authorized party to submit a Referral with the Court, pursuant to the requirements of Article 113.7 of the Constitution. As to the present Referral, the Court notes that the Applicant is a natural person and an authorized party pursuant to the requirements of Article 113.7 [Individual Referrals] of the Constitution.
26. The Court has also to determine whether the Applicant has met the requirements of Article 113 (7) of the Constitution and Article 47 (2) of the Law.

Article 113, paragraph 7 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."*

The Applicant has shown that it has exhausted all legal remedies available under the applicable laws.

27. The Applicant must also prove to have met the requirements of Article 49 of the Law concerning the submission of the Referral within the legal time limit. It can be seen from the case file that the Applicant on 30 January 2012, filed a request for protection of legality of the Judgment of the Appellate Panel to the State Prosecutor whereas the Applicant submitted the Referral with the Court on 2 March 2012, meaning that the Referral has been submitted within the four month deadline prescribed by the Law and Rules of Procedure.

28. In the present Referral, the Applicant has been provided numerous opportunities to present his case before the regular courts. Meanwhile, the Court emphasizes that, under the Constitution, it is not up to it to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of ordinary 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 Court can only consider whether 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 authorities, *Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
30. As a matter of fact, the Applicant has not substantiated a claim on constitutional grounds and has not provided evidence that his rights and freedoms have been violated by the regular courts (See, *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. Rule 36. 2 (d) of the Rules foresees that “*the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (...) the Applicant does not sufficiently substantiate his claim.*”

#### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of Law, and Rule 36.2 (b) and (d) of the Rules of Procedure, on 17 January 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
- III. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Prof. Dr. Enver Hasani