



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

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Prishtina, 3 March 2014  
Ref.no.: RK574/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI23/14**

Applicant

**Social Sports, Cultural and Economic Center**

**Constitutional Review of the Judgments of the Special Chamber of the  
Supreme Court, ASC-09-0101 and ASC-09-0084, dated 13 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  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Applicant is the Social Sports, Cultural and Economic Center in Prishtina hereinafter: (the Applicant) represented by the Acting Director, Mr. Bajram Uka .

## **Challenged decision**

2. The Applicant challenges the Judgments of the Special Chamber of the Supreme Court (hereinafter: the SCSC), ASC-09-0101 and ASC-09-0084, dated 13 September 2012, which were served upon the Applicant on 28 September 2012.

## **Subject matter**

3. The subject matter is the request for constitutional review of the Judgments of the SCSC, ASC-09-0101 and ASC-09-0084, of 13 September 2012. The above-mentioned judgments of the SCSC ordered the Applicant to compensate the material damages of sixteen claimants caused by a fire at the premises of the Applicant in Prishtina.
4. In addition, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure suspending the execution of the Judgments of the SCSC until a decision is rendered by the Court.

## **Legal basis**

5. The Referral is based upon Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 121/03 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54, 55, and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

6. On 7 February 2014, the Applicant filed a referral with the Court.
7. On 7 February 2014, the President, by Decision GJR.KI23/14, appointed Judge Snezhana Botusharova as the Judge Rapporteur. On the same date, the President, by Decision KSH. KI23/14, appointed the Review Panel composed of judges: Almiro Rodrigues (Presiding), Ivan Cukalovic and Enver Hasani.
8. On 7 February 2014, the Constitutional Court notified the Applicant of the registration of the referral.
9. On 10 February 2014, 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 facts**

10. On 25 February 2000, a fire occurred at the premises of the Applicant (Social Sports, Cultural and Economic Center) in Prishtina.

11. Between 2004 and 2005, sixteen (16) claimants lodged their claims with the SCSC seeking damages from the Applicant, for the goods that were inside the warehouses they rented, which were destroyed by the fire.
12. On 13 September 2012, according to the Judgments of the Appellate Panel of the SCSC (ASC-09-0101 and ASC-09-0084) *“on 18 August 2006 the SCSC (Judgments nos. unknown), issued individual verdicts in these case by declaring in principle the first defendant liable for damages that the claimants have suffered and further decided that a liquidation commission will be appointed by the Kosovo Trust Agency who will determine the final amount of damages suffered by the claimants.”*
13. Furthermore, the Appellate Panel held that *“On 7 September 2007, the SCSC was notified that the liquidation commission has never been appointed and based on the request of the claimants it was decided that an expert will be appointed to assess the amount of the damages, followed by supplementary Judgments in each case.”*
14. On 18 February 2009, the Privatization Agency expressed the intention to join the lawsuit on the Applicant’s side before the SCSC.
15. On 15 October 2009, the Trial Panel of the SCSC in the joint cases of five (5) claimants (SCC-05-0080, SCC-06-0029, SCC-06-0470, SCC-06-0482 and SCC-06-0524), ordered the Applicant to pay compensation for material damages.
16. On 29 October 2009, the Trial Panel of the SCSC in the joint cases of eleven (11) claimants (SCC-04-0011, SCC-04-0012, SCC-04-0098, SCC-04-0116, SCC-04-0121, SCC-04-0199, SCC-04-0028, SCC-05-0067, SCC-05-0072 and SCC-05-0073) ordered the Applicant to pay compensation for material damages.
17. The Trial Panel of the SCSC in their Judgments decided *“to treat the lawsuit of the PAK as a counter-lawsuit. It further rejected the lawsuit as ungrounded.”*
18. The Applicant filed an appeal against these Judgments of the Trial Panel of the Special Chambers, thereby claiming that the aforementioned Judgments contained substantial violations of the Law on Contested Procedure. The Applicant also complained of erroneous and incomplete determination of the factual situation.
19. On 18 September 2012, the Appellate Panel of the SCSC (Judgments ASC-09-0101 and ASC-09-0084) partially approved the appeal submitted by the Applicant, and the Judgments of the Trial Panel dated 15 October and 29 October 2012 were modified in the way that the amount that the Applicant was ordered to pay was lowered.

20. The SCSC found that:

[...]

*“At the time when the fire occurred there were no specialized companies to offer insurance of goods in Kosovo and such companies were created only after 5 October 2001 when UNMIK Regulation No. 2001/25 was promulgated. The responsibility of the Social Sports, Cultural and Economic Center in Prishtina is therefore intact even though the Claimants did not insure the goods in accordance with the contract.*

*Pursuant to the first paragraph of Article 376.2 of the Law on Obligations, a claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor. As at the time of the fire it was unclear who the tort-feasor was, it is reasonable instead to use the general time limit of five years as stipulated in the second paragraph”.*

21. On 18 October 2012, the Applicant, claiming erroneous application of substantive law in the Judgments of the Appellate Court (ASC-09-0101 and ASC-09) filed a request for revision with the SCSC. However, according to the Applicant this request has still not been forwarded to the Supreme Court for consideration.

### **Applicant’s allegations**

22. The Applicant alleges that the Judgments of the SCSC, have violated its rights guaranteed by the Constitution, namely Article 24 [Equality Before the Law] in conjunction with Article 7 of the European Convention for Human Rights (hereinafter: ECHR), Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 and 13 of the ECHR, Article 32 [Right to Legal Remedies] in conjunction with Article 8 of the ECHR and Article 41 [Right of Access to Public Documents].

23. In this regard, the Applicant alleges that:

[...]

*“he was denied the right of access to public documents because he was not allowed to submit before the Special Chamber the Police Report which states that the fire was accidental and that the cause of the accident is still yet unknown”*

[...]

*“that the Special Chamber of the Supreme Court by not submitting the request for revision to the Supreme Court is preventing the Applicant to exhaust all legal remedies and thus has violated the Law on Contested Procedure, The Law on the Special Chamber of the Supreme Court. The Law on Obligations, and Article 21 and 22 of the Law on Courts for the reasons*

*that the Supreme Court has the exclusive authority to deal with extraordinary remedies submitted against the decisions of regular courts.”*

### **Assessment of admissibility of the Referral**

24. The Court observes that, in order to be able to adjudicate the Applicants complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

25. The Court refers to Article 49 of the Law, which provides:

*“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 (...).”*

26. The Court also takes into consideration Rule 36 (1) b) of the Rules of Procedure, which provides that:

*“(1) The Court may only deal with Referrals if:*

*...*

*b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant ...”.*

27. Under these circumstances, the Court notes that the Judgments that are challenged by the Applicant are dated 13 September 2012, served on the Applicant on 28 September 2012, whereas the Referral was submitted on 7 February 2014, when it should have been submitted no later than 28 January 2013.

28. Thus the Court considers that the Applicant’s Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than one year and a half after the date of service of the challenged decisions.

29. Therefore, the Court concludes that the referral is out of time.

30. The Court recalls that the four month legal deadline under Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (see case O’Loughlin and Others v United Kingdom, No. 23274/04, ECtHR, Decision of 25 August 2005).

31. In relation to the allegation made by the Applicant regarding the attempt to “exhaust all legal remedies” and that this request for revision is being held by the SCSC the Court notes that Article 10 paragraph 14 of the Law on the Special Chamber of the Supreme Court which stipulates *that “All Judgments and Decisions of the appellate panel are final and not subject to any further*

*appeal.*” Thus the Applicant could have submitted the referral before the Constitutional Court within four months from the date on which the Judgments of the Appellate Panel of the SCSC were served to it.

### **Request for Interim Measure**

32. The Applicant request from the Court *“to render a decision granting the interim measure until the Constitutionality Review of Judgments ASC-09-0101 and ASC-09-0084, dated 13 September 2012, by the Constitutional Court in order to avoid the Applicant to pay the compensation amounting 2.770.000 plus the specified interest as the amount is extremely high and unbearable taking into account that the Basic Court in Prishtina has issued Order E.nr.341/2013, dated 31 January 2014, on the execution of the Judgments of the SCSC.”*

33. Furthermore, the Applicant claims that *“the execution of the above mentioned Judgments will cause financial hardship for the Applicant and possibly cause the privatization of the enterprise if an interim measure is not granted.”*

34. In that respect, the Court refers to Rule 55(4) of the Rules of Procedure, which foresees that:

*“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted.*

*(...)*

*If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”*

35. As concluded above, the Referral is inadmissible. Consequently, there is no *prima facie* case for imposing an interim measure. Therefore, the request for an interim measure is rejected.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rules 36 (1) b) and 55 (5) of the Rules of Procedure, on 10 February 2014, unanimously

## DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO REJECT the request for an Interim Measure
- III. 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;
- IV. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Prof. Dr. Enver Hasani