



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

Pristine, 21 January 2013
Ref. No.: RK349/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI65/11

Applicant

Holding Corporation “EMIN DURAKU”

Constitutional Review of Order SCC- 0041 issued on 27 April 2011 by the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is the Holding Corporation “EMIN DURAKU” from Gjakova, represented by Mr. Myrteza Duli, residing in Gjakova.

Challenged decision

2. The Applicant challenges the Order SCC- 0041 of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereinafter: the “Special Chamber”), dated 27 April 2011 pursuant to which the Applicant was requested to provide the English translation of all documents.
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).

Subject matter

4. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) of the constitutionality of the Order SCC-0041 of the Special Chamber dated 27 April 2011 that was issued pursuant to Section 25.7 of UNMIK Administrative Direction No. 2008/6.
5. The Applicant also requests to be compensated in the amount of 20,000 Euro pursuant to Article 53 of the Constitution in conjunction with Article 41 of the ECHR.

Legal basis

6. Article 113.7 of the Constitution, Articles 47 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (No. 03/L-121),(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

7. On 9 May 2011, the Applicant submitted the Referral to the Court.
8. On 17 August 2011, the President, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.
9. Also on 17 August 2011, the Secretariat of the Constitutional Court notified Special Chamber with the Applicant’s referral.
10. 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.
11. On 29 September 2012, the Applicant’s representative informed the Court that the Applicant case is still pending before the Special Chamber.
12. The Special Chamber informed the Court by its letter of 2 October 2012 that the hearing in the Applicant’s case has been scheduled for 12 October 2012.
13. On 21 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 facts

14. The facts of the case as presented by the Applicant and supported by the documents may be summarized as follows.
15. On unspecified date the Applicant filed a claim against the Privatization Agency of Kosovo (PAK) before the Special Chamber.
16. On 27 April 2011, the Trial Panel of the Special Chamber issued Order SCC- 0041 dated 27 April 2011, pursuant to Article 28.4 UNMIK AD 2008/6 in conjunction with Article 25.7, requesting the Applicant to provide the English translation of all documents within 7 days with the written pleadings and the supporting documents into English.
17. On 4 May 2011 the Applicant's representative submitted request for extension of 7 days time-limit arguing that due to economic and logistic shortages the Applicant is experiencing difficulties in organizing translation of the documents.
18. The Applicant's representative also argued that the request from the challenged Order "*is incomprehensible and unclear because the Albanian language is official language in Kosovo according to the Constitution, ... and that an act called Administrative Direction cannot be above the Constitution...*"
19. However, the Applicant's representative confirmed their intention to follow the request from the challenged Order and provide the Special Chamber with the translated documents.

Applicant's allegations

20. The Applicant alleges that Section 25.7 of the UNMIK AD 2008/6 is in violation of Articles 5 [Languages], 7 [Values; non-discrimination], 21 [General Principles], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 102 [General Principles of the Judicial System] of the Constitution and Article 6 [Right to fair trial] in conjunction with Article 14 [Prohibition of discrimination] of the ECHR.
21. Moreover, the Applicant alleges that it does not know any case in the world that obliges the party to address the court in an unofficial language. The fact that pleadings brought before a court have to be translated into English on the expenses of the party bringing in the pleadings, despite and beside the official languages, is a fundamental injustice.
22. Furthermore, pursuant to Article 53 of the Constitution in conjunction with Article 41 of the ECHR, the Applicant requests from the Republic of Kosovo to be paid the amount of 20,000 Euro as compensation for damages the Applicant allegedly suffered.

Assessment of the Admissibility of the Referral

23. At the outset, the Court would like to reiterate that it can only decide on the admissibility of a Referral, if the Applicant shows that it has exhausted all effective legal remedies available under applicable law pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law, providing:

"113 .7 of the Constitution: 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."

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

24. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: AAB-RIINVEST University L.L.c., Prishtina vs. the Government of the Republic of Kosovo, KI-41/09, of 21 January 2010, and see mutatis mutandis, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).
25. In the present case, the Court finds the Applicant's case still pending before the Special Chamber and that the hearing in the case was scheduled for 12 October 2012.
26. It follows, that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47(2) of the Law.
27. As to the request of the Applicant to review the constitutionality of UNMIK AD No. 2008/6, he Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit the question of compatibility of laws with the Constitution. Therefore, the Applicant is not an authorized party under Article 113.2 of the Constitution (see Resolution on Inadmissibility Sami Burnjaku, Constitutional Review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court, SCC 10-0079, dated 21 January 2011 and the Constitutionality of UNMIK Administrative Direction No. 2008/6..., Case no. KI34/11, of 8 December 2011).

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure of the Constitutional Court the Constitutional Court, unanimously:

DECIDES

- I. TO DECLARE the Referral 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

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani