



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

Pristina, 20 September 2013
Ref.no.:RK473/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI71/13

Applicant

Sadije Tërbunja

**Constitutional Review of the Judgment of the Special Chamber of the
Supreme Court of the Republic of Kosovo, ASC-11-0069, dated 22 April
2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, 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 Referral is submitted by Sadije Tërbunja-Sopjani (hereinafter: the "Applicant") on behalf of her deceased husband Mr. Hasan Tërbunja. The

spouse had taken part in the regular court proceedings on behalf of her deceased husband.

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court, ASC-11-0069, of 22 April 2013, which was served on the Applicant on 3 May 2013.

Subject matter

3. The Applicant alleges that the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court, ASC-11-0069, by removing her spouse from the list of eligible employees to 20 % of the proceedings from the privatization of the Socially Owned Enterprise “KNI Ramiz Sadiku” has violated the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), without specifying what articles of the Constitution have been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (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 14 May 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 27 May 2013, the President of the Constitutional Court, with Decision No.GJR.KI-71/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-71/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 10 June 2013, the Referral was communicated to the Special Chamber of the Supreme Court of the Republic of Kosovo and the Privatization Agency of Kosovo.
8. On 12 June 2013, the Court requested the Special Chamber of the Supreme Court of the Republic of Kosovo:
 - a. To submit the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court, ASC-11-0069, dated 22 April 2013; and
 - b. To inform the Court about decision taken or response to the appeal of the Applicant against the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo of 10 June 2011.

9. On 13 June 2013, the Special Chamber of the Supreme Court of the Republic of Kosovo replied to the Court submitting the requested information and documents.
10. On 13 September 2013, 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 facts

11. On 27 June 2006, the Socially Owned Enterprise “KNI Ramiz Sadiku” was privatized.
12. In March 2009, the Privatization Agency of Kosovo published the final list of eligible employees entitled to 20 % of the proceeds of the privatization of the Socially Owned Enterprise “KNI Ramiz Sadiku”, whereby was included also Mr. Hasan Tërbunja. The inclusion of Mr. Hasan Tërbunja was contested by the Complainant R.D. to the Special Chamber of the Supreme Court of the Republic of Kosovo.
13. On 10 June 2011, the Trial Panel of the Special Chamber of the Republic of Kosovo (Judgment SCEL-09-0001) held that *“The following employees, who were included by Privatization Agency of Kosovo in the final published list and whose inclusion was contested before the Special Chamber, shall be removed from the final list: [...] 47. Hasan Tërbunja. [...]”*. The Trial Panel held that complainants who have reached retirement age or who died before the date of the privatization do not fulfill the requirements set by Section 10.4 of UNMIK Regulation 2003/13 on the Transformation of the Right of use to Socially Owned Immovable Property which provides: *“For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.”* Privatization Agency of Kosovo had attached to the Trial Panel the death certificate showing that Mr. Hasan Tërbunja had passed away on 7 June 2006 and a copy of his workbook indicating that he was an SOE employee from 21 April 1980 to 31 January 1990 and from 8 March 1990 to 1 May 1993. Thus, the Trial Panel considered that the request of Complainant R.D. for the deletion of the employee Mr. Hasan Tërbunja from the list is grounded and shall therefore be accepted.
14. The Applicant, the spouse of the deceased husband Mr. Hasan Tërbunja, filed an appeal to the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo against the Judgment of the Trial Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo.
15. On 22 April 2013, the Appellate Panel of the Special Chamber of the Republic of Kosovo (Judgment ASC-11-0069) rejected as ungrounded and upheld the Judgment of the Trial Panel. The Appellate Panel of the Special Chamber held

that no evidence was submitted to prove that they was discriminated in any specific way and they did not even allege any fact from which it may be presumed that there has been direct or indirect discrimination.

Applicant's allegations

16. The Applicant alleges that *"My husband, Hasan Tërbunja, used to work for the Industrial Combine "Ramiz Sadiku", from 21.04.1980, until its bankruptcy on 31.01.1990, and after the bankruptcy, 01.08.1990, and until 01.05.1993. in 1993, he was forcefully expelled from work, because of the forced regime of Serbia, and was maltreated by the Serbian paramilitary, and as a result of such abuse, he died. If he would be capable, he would still be working like his colleagues did."*
17. In this respect, the Applicant alleges that the Special Chamber of the Supreme Court of Kosovo has violated the Constitution without specifying any provision of the Constitution.

Admissibility of the Referral

18. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether she has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
19. In this respect, the Court refers to Rule 36 (1) c) of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*
20. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
21. In sum, the Court can only consider whether the evidence has been presented in such a manner that 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).
22. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by the regular courts. The Special Chamber of the Supreme Court provided the Applicant with a well reasoned judgment why her spouse was removed from the list of eligible employees to 20 % of the

proceedings from the privatization of the Socially Owned Enterprise “KNI Ramiz Sadiku”.

23. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
24. In sum, the Applicant did not show why and how her rights as guaranteed by the Constitution have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, the matter was not referred to the Court in a legal manner by the Applicant because pursuant to Rule 36 (1.c) of the Rules of Procedure, the Referral is manifestly ill-founded and therefore it is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 13 September 2013, unanimously

DECIDES

- I. TO REJECT the Referral as 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. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani