



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

Pristina, 18 October 2010
Ref. No.: RK 57/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 33/09

Fillim Musa Guga

vs.

**Decisions of the Special Chamber of the Supreme Court of Kosovo,
SCEL-08-0001 of 17 June 2008 and SCEL-08-0001 of 10 September 2008**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Fillim Musa Guga, residing in Gjakova.

Challenged Decisions

2. The Applicant challenges Decisions SCEL-08-0001 of 17 June 2008 and SCEL-08-0001 of 10 September 2008 of the Special Chamber of the Supreme Court of Kosovo (hereinafter "the Special Chamber").

Subject Matter

3. The Applicant alleges that the decisions of the Special Chamber are in violation of Article 24 [Equality before the Law], Article 29 [Right to Liberty and Security] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: "Article 1 of the Protocol").

Legal Basis

4. Article 113 (7) of the Constitution, Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008, (hereinafter: "the Law") and Section 54 (b) 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 27 July 2009, the Applicant submitted the Referral to the Court, requesting the Court to evaluate the constitutionality of the above Decisions of the Special Chamber. On 30 January 2010, the Applicant submitted additional documents and supplemented the Referral with further arguments.
6. On 4 February 2010, the Court sent a request to the Special Chamber to submit to the Court those decisions of Special Chamber to which the Applicant had referred in his Referral. On 15 March 2010, the Special Chamber sent the decisions and documents in connection with the decisions concerned.
7. On 4 February 2010, the Court sent a request to the Applicant requesting the decisions of the Special Chamber and other supporting documents for his statements in his Referral. The Applicant has not replied.
8. On 24 June 2010, the Court requested the Applicant to reply to certain questions, but he has, so far, not responded to these questions. Instead he submitted a copy of the response of the Special Representative of the Secretary General (hereinafter: the "SRSG") to the UNMIK Advisory Panel for Human Rights, Ref. No. 47/08, to which the Applicant had submitted a similar claim. The Panel, however, rejected the Applicant's claim as manifestly ill-founded.
9. On the same day, the Court requested the Municipal Court of Gjakova to submit the court decisions referred to by the Applicant. On 5 July 2010, the Municipal Court of Gjakova submitted to the Court copies of these decisions.
10. On 13 July 2010, the Review Panel, consisting of Judges Altay Surroy (Presiding), Enver Hasani and Ivan Čukalović, considered the Report of the Judge Rapporteur Snezhana Botusharova and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. It appears from the documents submitted by the Applicant that he worked at the Socially Owned Enterprise (SOE) KNI "Dukagjini OTHPB-BP IMN Tjegulltorja" (hereinafter the "IMN") until 1999, when he was forced to leave Kosovo for Montenegro due to the events which happened in Kosovo at that time.

12. The Contract of Employment of the Applicant was terminated by the Disciplinary Commission of the "IMN" on 24 August 2000 with effect from 23 March 1999 (Decision to terminate the contract of employment no. 185/00 of 24 August 2000).
13. The workers were notified and summoned to a disciplinary hearing, but only certain workers replied. The Applicant did not reply to the summons. "IMN" took into consideration the situation that existed in Kosovo at the time and, therefore, did not take any disciplinary procedures one year after these events. However, the contract of employment of the workers who had not replied and had been absent from work without any valid reasons was terminated.
14. "IMN" was privatized on 31 July 2006 and, consequently, pursuant to Section 10 (3) of UNMIK Regulation 2003/13 on the Transformation of the Right to use Socially Owned Immovable Property (hereinafter: UNMIK Regulation 2003/13), the Kosovo Trust Agency (hereinafter: "KTA") published the official list of the employees eligible to receive 20 % of the proceeds from the privatization of the SOE. In this list only the names of a number of non-Albanian workers, who had returned to work after the war and had been put in the list of eligible workers for the 20% of the proceeds from the privatization of the SOE, appeared.
15. Apparently, it is the representative body of employees in the enterprise, in cooperation with the Federation of Trade Unions of Kosovo, which establishes the list of eligible employees and submits it to the KTA. The KTA then reviews the list and makes the necessary amendments to ensure equitable access by all eligible employees to the funds to be distributed. Afterwards, the list is published, together with a notice of the right of any aggrieved party to complain, which is published in major newspapers in the Albanian and Serbian languages.
16. Section 10 (4) of UNMIK Regulation 2003/13 expressly provides that an employee shall be considered eligible, if such employee is registered as an employee with the SOE at the time of privatization and if it has been established that his name has appeared on the payroll of the enterprise for less than three years. The failure to fulfill such requirement shall not preclude the inclusion in the list of an employee who claims that he would have been eligible, had he not been subject to discrimination.
17. Since his name did not appear on the list of the 20 % of the sale proceeds of "IMN", the Applicant submitted a complaint to the Special Chamber, pursuant to UNMIK Regulation No. 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereafter: "UNMIK Regulation 2002/13).
18. On 17 June 2008, the Special Chamber concluded, in its Decision SCEL-08-0001, that the Applicant had indeed worked with the SOE from 1979 to June 1999. After June 1999 he stayed in Montenegro for a long time due to security concerns and after his return to Kosovo he tried to be reinstated into his former employment. The Special Chamber concluded that the Applicant failed to submit facts from which it could be presumed that he had been directly or indirectly discriminated against. Further, he failed to comply with the requirements of Section 10 (6) read in conjunction with Section 10 (4) of UNMIK Regulation 2003/13. Hence, his inclusion in the list of eligible employees was not accepted.
19. The Applicant submitted an appeal against the decision of the Special Chamber, pointing out that, through the contested decision, he had been denied the right of appeal contrary to UNMIK Regulation 2008/4 (Amending UNMIK Regulation No. 2002/13).

20. By Decision SCEL-08-0001 of 10 September 2008 the Special Chamber concluded that Section 9 (7) of UNMIK Regulation 2002/13 prescribes that the decision, taken in relation with the decision of a claim, is final and binding for the present party and must be executed by the responsible executive bodies in compliance with the applicable law. According to the Special Chamber, the allegations of the Applicant did not have any legal basis, due to the fact that Section 9(5) of UNMIK Regulation 2008/4, which enables the appeal of the decisions of the Special Chamber, was not applicable and could not be invoked. Through UNMIK Regulation 2008/19 Amending UNMIK Regulation No. 2008/4 and UNMIK Regulation 2008/29 Amending UNMIK Regulation No. 2008/4, the applicability of UNMIK Regulation 2008/4 was postponed until 31 October 2008. Consequently, when the decision of the Special Chamber was taken on 17 June 2008, UNMIK Regulation 2008/4 was not applicable at that time.

Applicant's allegations

21. The Applicant alleges that he has never received the decision of the Disciplinary Commission and that he was not invited to the disciplinary hearing. Furthermore, he claims that he had never received any response of the Kosovo Trust Agency.
22. The Applicant also alleges that, after his return from Montenegro, he tried to return to work, but was refused, allegedly, because he is of Egyptian origin. He submits that he even took steps to initiate the procedure before the regular courts of Kosovo to be reinstated in his previous employment, but that his request was rejected.
23. The Applicant states that he had never submitted the decisions from the regular courts to the Special Chamber, because he was of the opinion that the object of the claim before the Special Chamber was the 20 % of the sale proceeds. Hence, he had thought that they were of no importance.
24. In sum, the Applicant complains of the failure of KTA to include him, during the privatization process of "IMN" and the subsequent decisions of the Special Chamber in the list of employees eligible to the 20 % of the proceeds of the privatization of the "IMN". In the Applicant's view, the exclusion from the list was made in a discriminatory way due to his Egyptian ethnicity, while the same right had not been denied to a number of Serbian workers, whom he mentions by name.

Assessment of the admissibility of the Referral

25. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
26. As to the Applicant's Referral, the Court refers to Article 49 of the Law, which reads as follows:

"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced.
27. From the submitted documents, it appears that the Referral has not been filed within the time limit pursuant to Article 49 of the Law.

28. The final decision of the Special Chamber was taken on 10 September 2008, whereas the Applicant filed the Referral with the Secretariat of the Constitutional Court on 27 July 2009.

29. The Court, therefore, concludes that the Referral must be rejected as inadmissible, pursuant to Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law, and Section 54 (b) of the Rules of Procedure, unanimously,

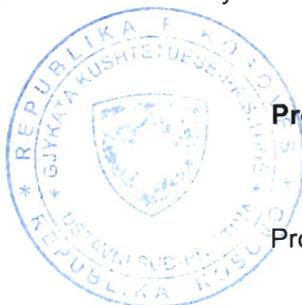
DECIDES

- 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.
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani