



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

SEKRETARIA / SEKRETARIJAT / SECRETARIAT

Pristina, on 18 July 2013

Ref. No.:RK457/13

## RESOLUTION ON INADMISSIBILITY

in

Case no. KI136/12

Applicant

Dušanka Petrović and 26 others

**Constitutional Review of the Judgment of the Special Chamber of the  
Supreme Court of Kosovo ASC-09-0005, ASC-09-0007, ASC-09-0008  
of 9 August 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 and  
Arta Rama-Hajrizi, Judge

### Applicants

- |                       |                         |                       |
|-----------------------|-------------------------|-----------------------|
| 1. Dušanka Petrović   | 10. Bosković Liljana    | 19. Bagaš Marina      |
| 2. Vulkić Vuko        | 11. Lekić Dragoljub     | 20. Nadica Martinović |
| 3. Mirjana Jovanović, | 12. Vojislav Bojović    | 21. Banjević Veljko   |
| 4. Gutić Snežana      | 13. Dušica Lakićević    | 22. Karać Biljana     |
| 5. Dobrila Bogićević, | 14. Vladislav Lakićević | 23. Sekulović Batrić  |
| 6. Babović Dušanka,   | 15. Darmanović          | 24. Radić Darko       |
| 7. Janković Vladan    | Valentina               | 25. Verica Aleksić    |
| 8. Jozović Irena      | 16. Kuć Zorica          | 26. Stanija Krstić    |
| 9. Čadenović Dragana  | 17. Lekić Marina        | 27. Zdravković Janko  |
|                       | 18. Dasić Dragan        |                       |

1. All of them employees of SOE “Metohija - Rugova” from Peja, represented by lawyer Dejan A. Vasić from Mitrovica.

### **Challenged decision**

2. The challenged decision is the Judgment of the Special Chamber of Supreme Court of Kosovo, ASC-09-0005, ASC-09-0007, ASC-09-0008 of 9 August 2012, which according to Applicant was served on him on 24 August 2012.

### **Subject matter**

3. The Applicants allege that by the Judgment of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0005, ASC-09-0007, ASC-09-0008 of 9 August 2012, the rights guaranteed by the Constitution of the Republic of Kosovo, Article 31 [Right to Fair and Impartial Trial] were violated, since the Applicants were removed from the final list drafted by the Privatisation Agency of Kosovo (hereinafter: the PAK), on the occasion of privatization of the enterprise and in this way were denied the right to compensation of 20% of the sale proceeds after the privatization of the enterprise.

### **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Republic of Kosovo (hereinafter: the Rules of Procedures).

### **Proceedings before the Constitutional Court**

5. On 28 December 2012, the Applicants' representative submitted the Referral to the Constitutional Court.
6. On 14 January 2013, by Decision GJR 136/12, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same day, the President of the Court appointed the Review Panel composed of judges: Almiro Rodrigues (Presiding) and Judges Snezhana Botusharova and Kadri Kryeziu, members.
7. On 28 January 2013, the Constitutional Court notified the Applicant regarding the registration of Referral, requesting from him to fill in the official form of the Court for registration of Referral.
8. On 28 January 2013, the Constitutional Court notified the Special Chamber of the Supreme Court of Kosovo and PAK regarding the registration of Referral.
9. On 7 February 2013, the Applicants' legal representative submitted to the Court the official form of the Court for registration of Referral.

## **Summary of facts**

10. The Applicants used to work in SOE "Metohija- Rugova" from Peja.
11. With the privatization of SOE "Metohija- Rugova" from Peja, the Applicants were on the list drafted by PAK for compensation of 20% of the sale proceeds from privatization of the enterprise.
12. A group of employees lodged an appeal against the list drafted by PAK in the Special Chamber of the Supreme Court.
13. On 6 February 2009, the Special Chamber of the Supreme Court, acting upon the appeal filed other employees, who challenged the right of the Applicants for their inclusion in the final list, rendered the Judgment SCEL-08-0003, by which partly approved the appeal by excluding the Applicants from the final list.
14. On 9 August 2012, the Appeals Panel of the Special Chamber of Supreme Court, acting upon the appeal filed by the Applicants' representative rendered the Judgment ASC-09-0005- ASC-09-0007- ASC-09-0008, by which it rejected the Applicants' appeal, with a justification that they do not meet the requirements provided under Article 60.2 of UNMIK Administrative Instruction 2008/6.

## **Applicants' allegations**

15. The Applicants in their Referral submitted on 28 December 2012 request *"the constitutional review of the Judgment of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0005, ASC-09-0007, ASC-09-0008 dated 9 August 2012, with a proposal that the Constitutional Court after reviewing of the Referral and providing necessary documents by Special Chamber of the Supreme Court, to determine that the Constitution of Kosovo has been violated, and that is Article 31, and as a consequence to ANNUL the challenged judgments and to return the matter for retrial or to approve the Referral and to MODIFY the challenged judgment so that in the final list of employees of SOE "Metohija-Rugova" from Peja are included the abovementioned employees and to allow them the right to compensation of 20% of sale proceeds from the privatization of the enterprise."*

## **Preliminary assessment of admissibility of the Referral**

16. 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, as further specified in the Law and the Rules of Procedure.
17. In this respect, the Court refers to Article 113.1 of the Constitution where is provided:

*"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*

18. Regarding the Applicants' Referral, 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."*

19. To determine the fact whether the Applicant submitted his Referral within a period of four months, the Court is referred to the time the last decision was served on the Applicant as well as to the date of filing the Referral to the Constitutional Court.
20. From submitted documents, the Court notes that the Referral was not submitted within time limit in compliance with Article 49 of the Law, because the Applicants' representative states that the Judgment ASC-09-0005- ASC-09-0007- ASC-09-0008 of the Special Chamber of the Supreme Court of 9 August 2012 was served on them on 24 August 2012.
21. The Court further notes that the Applicant submitted his Referral in the Secretariat of the Constitutional Court on 28 December 2012, which implies that the Referral was submitted 4 days after the expiry of time limit provided by the Law.
22. Based on the above, it results that the Referral is out of time.
23. Therefore, the Referral should be rejected as inadmissible, due to non-compliance with legal time limit, provided by Article 49 of the Law.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36.1 (b) of the Rules of Procedure, on 18 July 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 on Constitutional Court; and,
- III. This Decision is effective immediately.

**Judge Rapporteur**



Ivan Čukalović



**President of the Constitutional Court**



Prof. Dr. Enver Hasani