



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

Prishtina, 20 January 2014
No. Ref.:RK539/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI153/13

Applicant

Adem Dushi

Constitutional review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters SCEL-09-001, of 10 January 2010

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

Applicant

1. The Applicant is Mr. Adem Dushi from village Lupç i Epërm, Municipality of Podujevo (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the decision of Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters SCEL-09-001, of 10 January 2010, which was served on the Applicant on 13 July 2010.

Subject matter

3. The Subject matter is constitutional review of the decision, which allegedly deprives the Applicant from the right to the 20% share from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 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 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 29 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 September 2013, the President, by Decision GJR. No. KI153/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President, by Decision KSH. No. KI153/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 9 October 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of Referral.
8. On 20 November 2013, the Review Panel considered the Report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. The Applicant was in employment relationship with SOE "Ramiz Sadiku" from 11 May 1979 until 28 February 1990.
10. On 27 June 2006, SOE "Ramiz Sadiku" completed the privatization process.
11. On 23 February 2009, the Applicant filed a complaint with Special Chamber of the Supreme Court against the final list of employees which was compiled by the Privatization Agency because he as a former employee was not in the list.

12. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he was in employment relationship with SOE “Ramiz Sadiku”, from 11 May 1979 until 28 February 1990, and that in 1999, he reported to the management of the enterprise requesting to enable him to return to his previous work position based on the contract of 11 May 1979.
13. During the hearing, the Trial Panel of the Special Chamber on the basis of the personal identification card of the Applicant found that he was born on 15 February 1941, respectively that on 15 February 2006 he turned 65 and thereby acquired the right to old age pension.
14. On 10 January 2010, the Trial Panel of the Special Chamber issued Decision SCEL-09-001, rejecting the Applicant’s complaint as inadmissible.
15. In the reasoning of its Decision the Trial Panel of the Special Chamber stated that *“during the hearing and based on the administration of evidence it found that the Applicant at the moment of the privatization of “SOE Ramiz Sadiku” was older than 65. Therefore, the position of Trial Panel of the Special Chamber is that the Applicant’s complaint does not meet the requirements provided under Section 10.4 of UNMIK Regulation 2003/13 (see paragraph 15).*

Relevant law

16. UNMIK Regulation no. 2003/13, of 9 May 2003, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY OWNED IMMOVABLE PROPERTY

Section 10.4 (Entitlement of Employees)

“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.”

Applicant’s allegations

17. The Applicant alleges that the said decision violates the constitutional rights guaranteed by Articles 21 and 22 of the Constitution of Kosovo.
18. The Applicant addresses the Constitutional Court requesting:

“He wants that the 20 % share from privatization belong also to him as he is entitled to it under the applicable law”.

Assessment of the admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.
20. In that regard, the Court notes that Article 113.7 of the Constitution provides:

"7. 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."
21. The court also 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."
22. The court also takes into account Rule 36 (1) b) of the Rules of Procedure which provides:

"(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."
23. Based on the submitted documents, the Court concludes that the Applicant submitted Referral to the Court on 29 September 2013, whereas the last decision of the Appellate Panel of the Special Chamber was served on him on 13 July 2010, which means after the expiration of legal time limit provided by Article 49 of the Law and Rule 36. (1) b) of the Rules of Procedure.
24. It follows that the Applicant's Referral is out of time.
25. Based on the foregoing, the Referral should be rejected as inadmissible for review, because it is not in accordance with Article 49 of the Law and Rule 36. (1) b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 20 November 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. This Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani