



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETËSE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 30 June 2014  
Ref. no.: RK655/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI27/14**

Applicant

**Nexhmi Bërnica**

**Constitutional review of the Decision SCEL-09-0001, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 10 June 2011**

### **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. Nexhmi Bërnica from Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision SCEL-09-0001, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Trial Panel of the Special Chamber), of 10 June 2011, served on the Applicant on 15 July 2011.

## **Subject matter**

3. The subject matter is constitutional review of the decision which allegedly has deprived the Applicant from his enjoyment of right to a share of 20% of the proceeds of privatization of socially-owned enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku") in Prishtina. The Applicant does not specify what articles of the Constitution have been violated.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (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 10 February 2014, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 March 2014, the President of the Court, by Decision No. GJR. KI27/14 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI27/14, appointed the Review Panel composed of judges: Robert Carolan (Presiding), Ivan Čukalović and Almiro Rodrigues.
7. On 13 March 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of the referral.
8. On 12 May 2014, after having considered the report of the Judge Raporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

## **Summary of facts**

9. On 27 March 2009, the Applicant, dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), which did not include him in the list of employees entitled to a share of 20% of proceeds of privatization, filed a complaint with the Special Chamber of the Supreme Court.
10. In his complaint with the Special Chamber of the Supreme Court, the Applicant claims to have been an employee of the SOE "Ramiz Sadiku", from 1980 up to the privatization of SOE "Ramiz Sadiku".

11. On 15 April 2009, the Agency, by a submission to the Special Chamber, replied to the complaint of the Applicant, thereby stating that there is no evidence to support the legal basis for participation of the Applicant in the shares of the 20% of the privatization proceeds.
12. On 10 June 2011, the Trial Panel of the Special Chamber rendered the Decision SCEL-09-0001, thereby finding the complaint inadmissible. In its reasoning, the Trial Panel notes: *The Trial Panel considers that the evidence submitted by the complainant do not prove that he has met the conditions set forth by Article 10.4 of the UNMIK Regulation 2003/13. Therefore, his complaint is considered ungrounded, and is rejected as ungrounded*".
13. In the conclusion of the Decision SCEL-09-0001, the Trial Panel of the Special Chamber notes that: *"Pursuant to Article 9.5 of UNMIK Regulation 2008/4, a complaint against this decision is filed in written to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo for the Kosovo Trust Agency Related Matters, within a deadline of thirty (30) days from the date of service of the present decision"*.

### **Applicant's allegations**

14. The Applicant alleges that the Agency and the Special Chamber of the Supreme Court of Kosovo have violated his right to work.
15. The Applicant addresses the Court with the following request:

*"I request payment of 17 monthly salaries at the amount of 300 Euros, with legal interest, and a share from the 20% of privatization proceeds of SOE "Ramiz Sadiku" in Prishtina"*.

### **Admissibility of Referral**

16. The Court notes that in order to be able to adjudicate the complaint of the Applicant, it must assess beforehand whether the applicant has met the admissibility requirements, as provided by the Constitution and further specified by the Law and the Rules of Procedure.
17. In this regard, the Court refers to Article 113.7 of the Constitution, which provides:

*"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"*.

18. The Court further refers to Article 49 of the Law, which provides that:

*"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 (...)"*.

19. The Court also takes into account Rule 36 (1) b) of the Rules of Procedure:

*“(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...”.*

20. Based on the data from the case file, the Court finds that the Applicant has filed his referral on 10 February 2014. The Court, based on the available case files, has found that the last Decision SCEL-09-0001, of the Trial Panel of the Special Chamber was served upon the Applicant on 15 July 2011, and therefore, the Applicant has filed his referral with the Court beyond the timeline as set forth by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.
21. The Court recalls that the objective of the four-month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure is to promote legal certainty, by ensuring that cases which raising issues under the Constitution are dealt within reasonable time, and that past decisions are not continually open to challenge (see case *O’LOUGHLIN and others v. United Kingdom*, no. 23274/04, ECHR, decision of 25 August 2005).
22. Based on the above, it results that the Referral is out of time.

## 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 12 May 2014, unanimously:

### DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. To notify this Decision to the parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- III. This Decision is effective immediately.

**Judge Rapporteur**

Kadri Kryeziu



**President of the Constitutional Court**

Prof. Dr. Enver Hasani