



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT
SEKRETARIA / SEKRETARIJAT / SECRETARIAT

Pristine, 05.July 2012
Ref. No.: RK264/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI37/10

Applicant

**Nebojša Stanojević, Dragan Marinković and 118 former employees of SOE
“Banja e Klllokotit”**

**Constitutional Review of the Judgment of the Special Chamber of the Supreme
Court No.SCEL-06-0016, dated 10 October 2006 and
Resolution No. SCEL 06-016, dated 31 January 2007**

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

Applicants are the following:

1. Stanojević Nebojša,
2. Marinković Dragan
3. Bukelić Miodrag
4. Bocić Aleksandar
5. Cvetković Petar,
6. Simić Ilija
7. Spasić M. Slobodan
8. Stoilković Trajan
9. Perić Ljubiša,
10. Stojanović Zoran,
11. Raković Novica
12. Perić Đoka
13. Nedeljković Milan
14. Tomić Trajan
15. Tomić Vesna
16. Zdravković S. Zoran
17. Nojković Vlasta
18. Bojić Stanimir
19. Zdravković Miroslava
20. Zdravković Nenad
21. Trajković M. Zoran
22. Cvetković (Marković) Deska
23. Marinković Slobodan
24. Ivković Srđan
25. Zdravković Dobri
26. Stanković Dušica
27. Antić Dragan
28. Spasić Milić
29. Vesić Ilija
30. Svilanović Stanislav
31. Mirković Zoran
32. Vesić Nataša
33. Spasić Mića
34. Aksić Živojin
35. Stojković Ivan
36. Radić Tihomir
37. Vasić P. Srećko
38. Stolić Miodrag
39. Vlajković Milan
40. Zdravković Živko
41. Cvetković Dragoljub
42. Marković Rodobljub
43. Milkić (Spasić) Slađa
44. Vesić (Simić) Biserka
45. Vasić B. Srećko
46. Vasić Bocka
47. Tomić Svetlana
48. Cvetković Trajan
49. Bogdanović Srđan
50. Nisić Ljubomir
51. Spasić Jadran
52. Spasić Boban
53. Cvetković Momčilo
54. Spasić Zoran
55. Vlajković Staniša
56. Mirković Nikola
57. Bogdanović Zvonko
58. Kecić Bogoslav
59. Dimić Čedomir
60. Kecić (Arsić) Blagica
61. Dimić Dobrila
62. Mirković Dragan
63. Simić Zoran
64. Vesić Lj. Srđan
65. Radić Ivica
66. Stolić Vesna
67. Radić Nenad
68. Savić Petar
69. Jovanović Ivica
70. Cvetković Božidar
71. Nojkić Tomislav
72. Stoilković Zoran
73. Zdravković V. Zoran
74. Svilanović Nenad
75. Marinković Trajko
76. Marinković Saša
77. Vesić Olga
78. Kojić Nenad
79. Spasić Dragan
80. Nisić Ivan
81. Marinković Srećko
82. Marinković Vesna
83. Marinković (Kojić) Radmila
84. Kojić Tomislav
85. Vesić M. Srđan
86. Trajković Nebojša
87. Ristić (Maksimović) Mileva
88. Spasić J. Slobodan
89. Stević Vesko
90. Jovanović Svetlana
91. Maksimović Dragan
92. Stanković Jelena
93. Stoilković Ivica
94. Pavić Zoran
95. Pavić Jovan
96. Mitić (Pavić) Sunčica
97. Savić Leposava
98. Zafirović (Stanković) Slobodanka
99. Tomić Zoran
100. Spasić Bogdan
101. Mikilić (Dinčić) Vesna
102. Savić Olivera
103. Stojanović Svetomir
104. Đorđević Žarko
105. Dimić Jadran
106. Zafirović Miodrag
107. Zafirović Todor
108. Stanković Srebrena
109. Vesić Ljubiša
110. Vasić (Cvetković) Snežana
111. Perić Slobodan
112. Bogdanović Milivoja
113. Bogdanović (Spasić) Radica
114. Cvetković T. Slobodan
115. Stanković Vlasta
116. Đorić Jovica
117. Arsić Nenad
118. Jovanović Slavica
119. Stanković Nebojša
120. Mirković Milorad

1. In this report, in order to facilitate reporting the Applicants are listed and collectively may be called Stanojević Nebojša, Marinković Dragan and 118 former employees of Socialy Owned Enterprise “Banja e Kllokotit” (Kllokot Spa) from Kllokot. In the proceedings at the Constitutional Court they are represented by Nebojša Stanojević and Dragan Marinković.

Challenged decisions

2. There are two challenged decisions of the Special Chamber of the Supreme Court on Kosovo Trust Agency Related Matters (hereinafter referred to as: “KTA”)

- a) The Judgment of the Special Chamber of the Supreme Court on KTA Related Matters no. SCEL-06-0016 dated 10 October 2006 and
- b) The Resolution of the Special Chamber of the Supreme Court on KTA Related Matters no. SCEL 06-016 dated 31 January 2007.

Subject matter

3. The Applicants challenge the abovementioned decisions of the Special Chamber of the Supreme Court without specifying any Article of the Constitution of Republic of Kosovo (hereinafter: "the Constitution"). The Applicants allege that there has been a violation of the rights in the area of employment (the right to compensation of 20% in the process of the privatization of socially-owned enterprises).

Legal basis

4. Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of Republic of Kosovo dated 16 December 2008 (hereinafter: "the Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Constitutional Court

5. On 2 June 2010, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court").
6. On 4 April 2011 the Constitutional Court, through letter Ref. No: 649/11/r.l., asked additional documentation and clarification from the PAK about proceedings conducted in regard to publications in Serbian language.
7. On 25 May 2011, in its response No. 10/1, PAK attached guidelines issued in 2004 by the Legal Office of the Special Representative of the Secretary General (hereinafter referred to as: SRSG) and the full list of workers which were eligible for a portion of sales proceeds upon privatization of the Socialy Owned Enterprise "Banja e Kllkotit" from Kllkot.
8. On 19 June 2012, after having considered the Report of the Judge Rapporteur Iliriana Islami, the Review Panel composed of judges: Snezhana Botusharova (presiding), Prof. Dr. Ivan Čukalović and Mr. Sc. Kadri Kryeziu, made a recommended to the full Court on the inadmissibility of the Referral.

Summary of facts

9. Socially-owned enterprise "Banja e Kllkotit" (hereinafter referred to as: the SOE "Banja e Kllkotit") consists of two working units:
 - a) Working unit Plant for producing Mineral Water in Kllkot; and
 - b) Working unit Resort Spa (Cure and Rehabilitation Center) also in Kllkot.
10. According to the UNMIK Regulation 2003/13 and amendments in UNMIK Regulation 2004/45 on the occasion of the privatization of the first part of the SOE "Banja e Kllkotit", i.e. working unit Plant for producing Mineral Water which was conducted on 24 November 2005, the KTA has confirmed the list of eligible employees to whom belongs the part of 20% of the proceeds from the privatization of the SOE "Banja e Kllkotit"

11. The list of eligible employees has been published in Albanian language in the dailies *Zëri and Koha Ditore* on 28 and 29 June and on 1 July 2006 whereas the list of eligible workers was published in Serbian language on 28 and 29 June and 1 July 2006 in dailies *Danas* and *Blic*.
12. With the list of workers eligible for a portion of sales proceeds upon privatization, the Legal Advice for workers that were excluded from the list also was published, and which had the possibility of filing an appeal to the Special Chamber of the Supreme Court in a preclusive time limit of 20 days and which expired on 24 July 2006.
13. A large number of workers which PAK did not include in the list of eligible workers initiated proceedings with the Special Chamber of the Supreme Court on KTA Related Matters, requesting to be included in the list of eligible employees.
14. The Special Chamber of Supreme Court on KTA related Matters on 10 October 2006 issued Judgment No. SCEL-06-0016 in relation to all appeals that were lodged within the time limit by which it ordered the KTA to include 12 (twelve) employees in the list of eligible employees and by the same Judgment rejected claims of eight (8) employees as **ungrounded** because they did not meet the requirements to be included in the list of eligible employees, as prescribed in the Regulation.
15. Special Chamber of the Supreme Court on KTA Related Matters on all appeals that were out of time issued a resolution No. SCEL 06-016, dated 31 January 2007, by which the Special Chamber of the Supreme Court rejects the claims of 135 (one hundred and thirty five) employees as **out of time** because they were submitted after 24 July 2010, i.e. after the preclusive deadline for lodging appeals expired.
16. By the same resolution the Special Chamber of Supreme Court notes that there is a big number of claims submitted out of the legal time-limit and it suggests that perhaps the list of the eligible employees was not published in an effective manner and it therefore advises *“de jure condendo to be conducted a more effective and widespread circulation of the list of eligible employees among the potentially damaged parties.”*
17. On 13 April 2010 the agreement for the privatization of the second part of SOE “Banja e Kllokotit” working unit Resort Spa (Cure and Rehabilitation Center) was signed whilst the distribution of 20% of the proceeds was done according to the common list that was established earlier by the PAK and approved by the Special Chamber of the Supreme Court in Judgment No. SCEL-06-0016 on 16. October 2006..
18. On 15 April 2010 the Applicants submitted a letter to the PAK requesting that another list of eligible workers should be made for the second part of the SOE “Banja e Kllokotit”, working unit Resort Spa (Cure and Rehabilitation Center) in Kllokot, and requestint PAK to include the Applicants in the distribution of shares of the second part of the enterprise.
19. On 29 October 2010, in its reply to the request for inclusion on the list of eligible workers, PAK stated that it cannot include the Applicants on the list of eligible workers since the list of eligible workers was established during the privatization of the first part of the SOE “Banja e Kllokotit”, working unit Plant for producing Mineral Water.
20. In its response PAK further stated that during the making of the list of eligible workers PAK had acted according to the instruction given in 2004 by the Legal Office of SRSG, which states the following: *“if an enterprise contains more than one working unit,*

joint list shall then be formed for all units whereas the official date of privatisation shall be the date of privatisation of the first enterprise's unit".

21. Finally, PAK states: *"that the final list of eligible workers was set as per Judgment of the Special Chamber of the Supreme Court, No. SCEL-06-0016 dated 10 October 2006, and that this Judgment is final, legally binding and no appeal is allowed against it"*.

The allegations of the applicant

22. The applicant alleges that by the Judgment in dispute no. SCEL-06-0016 dated 10 October 2006 and by Resolution of the Special Chamber of the Supreme Court on KTA Related Matters No. SCEL 06-016, dated 31 January 2007; his rights in the area of employment have been violated.
23. The Applicants state that they were dismissed from work during the period of July-August 1999, due to ethnic discrimination, that they were never served the resolutions on termination of employment, and that even though they met the requirements of 3 and more years of work experience they were excluded from the list of eligible employees because of ethnic discrimination.
24. The Applicants allege that they could not submit claims on the decision of KTA on time because they have not been informed about it in Serbian language and as a proof they attach a certificate of RADIO "KLLOKOT" as the only source of information in Serbian language in Klllokot Municipality, which reads that this radio station has never made an announcement for the population regarding the privatization of the SE "Banja e Klllokotit".
25. At the same time the Applicants stated that the dailies *Danas* and *Blic* are not published in the Republic of Kosovo therefore they do not exist in the territory of Klllokot Municipality.

Preliminary assessment of the admissibility

26. In order for the Referral to be admissible, the Court must first examine whether the Applicant has met all the admissibility requirements set out by the Constitution, the Law and Rules of Procedure of the Constitutional Court.
27. Regarding this Referral, the Court refers to the Rule 36 (3h) which provides the following:

„A Referral may also be deemed inadmissible in any of the following cases:

h) The Referral is incompatible ratione temporis with the Constitution.“
28. In this regard, the Court notes that the Applicants submitted the Referral to the Constitutional Court on 2 June 2010, while the last decision on this case, the resolution of the Special Chamber of Supreme Court on KTA Related Matters, No. SCEL 06-016 is dated 31 January 2007. This means that the Referral relates to events before 15 June 2008, respectively before the Constitution of Republic of Kosovo entered into force.
29. Therefore, the Referral was filed out of the time-limit and it is not in compliance *ratione temporis* with the provisions of the Constitution and the Law (see *mutatis mutandis* *Blečić vs Croatia*, Referral no. 59532/00, Judgment ECtHR, 29 July 2004), and hence concludes that the Referral is out of time.

30. It follows that the Referral is inadmissible, pursuant to Rule 36.3(h) of the Rules of Procedure providing: “*Referral may also be deemed inadmissible in any of the following cases: h) the Referral is incompatible ratione temporis with the Constitution*”

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 20 of the Law on Constitutional Court and Rules 36 (3h) of the Rules of Procedure, the Constitutional Court on 19 June 2012, by majority vote.

DECIDES

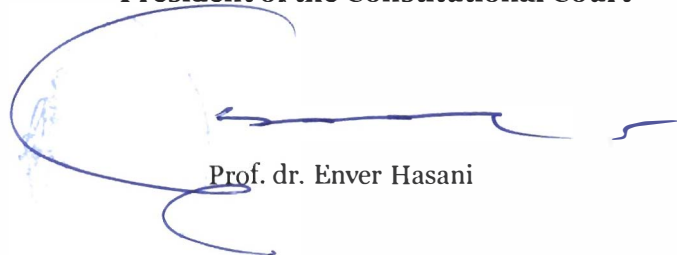
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Dr. Iliriana Islami

President of the Constitutional Court



Prof. dr. Enver Hasani