



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 4 August 2014
Ref. No.: VTK687/14

DECISION TO STRIKE OUT THE REFERRAL

in

Case No. KI62/14

Applicant

Rexhep Haziri

**Constitutional Review of final list of eligible employees Fi-64/90
entitled to compensation from privatization of SOE „Ramiz Sadiku“ from
Prishtina, published by Privatization Agency of Kosovo, of 27 March
2009**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Rexhep Haziri (hereinafter: the Applicant) from the village of Kaçandol Municipality of Mitrovica, who is represented by Mr. Ismail Haziri from Vushtrri.

Challenged decision

2. The Applicant challenges the final list of employees Fi-64/90, of the Privatization Agency of Kosovo (hereinafter: PAK), which was published on 27 March 2009.

Subject matter

3. The subject matter is exercising the right to 20% share from the privatization of the SOE „Ramiz Sadiku“ (hereinafter: SOE „Ramiz Sadiku“). The Applicant does not specifically state the Articles of the Constitution, which are violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 2 April 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 May 2014, the President by Decision no. GJR. KI62/14 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI62/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 21 May 2014, the Court notified the Applicant on the registration of Referral and requested from the Applicant to submit to the Court relevant decision (the certified copy) and to specify which of the submitted decisions violates his constitutionally guaranteed rights and in what part.
8. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.
9. On 30 June 2014 the President of the Court, by Decision no. KI KSH. 62/14, replaced Judge Kadri Kryeziu as a Judge Rapporteur, and in his place appointed Judge Artta Rama-Hajrizi.
10. On 2 June 2014, the Applicant submitted a written reply, to which he did not attach any relevant decision and he did not specify how and what constitutionally guaranteed rights were violated in his case, but he only reiterated the same allegations from the original referral.
11. On 3 July 2014, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 2 April 2014, the Applicant submitted the Referral to the Court, using the referral form for submission of referrals. Regarding the summary of facts, he stated that he was an employee of the SOE „Ramiz Sadiku“ for more than 11 years, from 1978 until 1990. According to the Applicant's claims, despite his submitted requests that his name is included in the final list of the eligible employees to 20% share of proceeds from privatization of the SOE „Ramiz Sadiku“ he was rejected with a justification that this right does not belong to the employees who did not work 3 years after the war.
13. The Applicant submitted: Records on pension and disability insurance, community decision of municipal employees, a copy of the work booklet, a copy of the statement of SOE "Ramiz Sadiku" employees and the power of attorney for the legal representative.
14. On 21 May 2014, the Court requested from the Applicant to complete and clarify the Referral. In the notification, the Applicant was notified that if he does not submit the requested information and documents, the Court will not be able to review the Referral.
15. On 2 June 2014, the Applicant submitted the written reply, to which he did not attach any additional documents and clarification, but he only repeated his requests from the original referral.

Applicant's allegations

16. The Applicant alleges:

„I consider that in my case was violated the Constitution, because to me was not paid the amount that belongs to me on the basis of 20% share of the privatization of SOE "Ramiz Sadiku", given that I was an employee and I paid contribution to this company from 1978 until 1999".

17. The Applicant requests from the Court:

„I seek from the Constitutional Court to hold that there was a violation of the law and the Constitution, since it was not made possible to me to request what belongs to me, 20% share of proceeds from the sale of SOE „Ramiz Sadiku“ from Prishtina, from the management and the Commission, as well as from former KTA.“

18. The Applicant requests further from the Court:

„I want that the public is informed that the management of the SOE „Ramiz Sadiku“ from Prishtina and all the others who are mentioned in this Referral, have committed violation of the law and the Constitution.“

Admissibility of the Referral

19. The Court examines beforehand whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and Rules of Procedure.
20. In this respect, the Court refers to Article 113.7 of the Constitution [Jurisdiction and Authorized Parties] of the Court, 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.”

21. The Court also refers to Article 48 of the Law, which provides:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.

22. The Court also takes into account Rule 29 (2) of the Rules of Procedure, Filing of Referral and Replies, which provides:

“(…)

(2) The referral shall also include: (a) the name and address of the party filing the referral; (b) the name and address of representative for service, if any; (c) a power of Attorney for representative, if any; (d) the name and address for service of the opposing party or parties, if known; (e) a statement of the relief sought; (f) a succinct description of the facts; (g) the procedural and substantive justification of the referral; and (h) the supporting documentation and information.

(3) Copies of any relevant documents submitted in support of the referral shall be attached to the referral when filed. If only parts of a document are relevant, only the relevant parts are necessary to be attached”.

23. In addition, the Court takes into account Rule 32 (4) of the Rules of Procedure, which provides:

“The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy”.

24. In the present case the Court notes that the Applicant has submitted an unclear and unintelligible Referral. Furthermore, he has failed to take any actions in order to clarify and specify his Referral, despite a request from the Court to do so.

25. In fact, the proceedings before the Constitutional Court are adversarial in nature. Therefore, it is up to the Applicant to substantiate his allegations (by providing the Court with the necessary factual arguments), and also the legal arguments (explaining why and how, in his view, the constitutional provisions have been breached). The Court is responsible for establishing the facts; it is up

to the Applicant to provide the Court with necessary information and relevant documents.

26. Before all the foregoing, it is not up to the Court to build the case on behalf of the Applicant. On the contrary, it is up to the Applicant, while referring the matter to the Court, to comply with all requirements on admissibility of a referral.
27. The Court recalls that a letter has been sent to the Applicant, warning him that if he does not provide the requested information and documents, the Court will not be able to consider the Referral. The Court further states that in his reply the Applicant did not provide any relevant documents for review, including the final list of employees that were eligible to receive a compensation from the privatization of SOE "Ramiz Sadiku", published under number Fi-64/90.
28. Based on the above, the Court considers that the abovementioned Referral does not reach the minimum threshold to be considered as a referral, furthermore, the Court considers that it is legitimate to assume that the Applicant is not anymore interested in further proceeding with his Referral. (see case KI143/13, Applicant *Nebih Sejdiu*, Decision to strike out the Referral, of 24 April 2014, also *mutatis mutandis* see case *Starodub v. Ukraine*, No. 5483/02, ECHR, Decision of 7 June 2005).
29. The Court concludes that there is no case or controversy pending in relation to the referral above, and in compliance with Rule 32 (4) of the Rules of Procedure the Referral must be declared inadmissible.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 32 (4) of the Rules of Procedure, in its session held on 3 July 2014, unanimously:

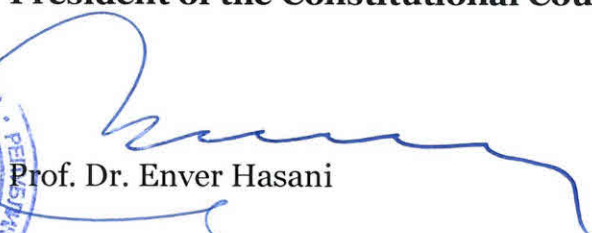
DECIDES

- I. TO STRIKE OUT the Referral;
- II. TO NOTIFY this decision to the parties;
- 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


Arta Rama-Hajrizi

President of the Constitutional Court


Prof. Dr. Enver Hasani

