



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

Prishtina, 2 December 2013
Ref. No.:RK510/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 93/13

Applicant

Mustafë Osmani

Constitutional Review of the Judgment of the Appellate Panel of the Special Chamber of Supreme Court of Kosovo, on Privatization Agency of Kosovo Related Matters, ASC-II-0069, of 22 April 2013

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. Mustafë Osmani born on 20 October 1946, from the village Llausha, Municipality of Podujevo (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber) ASC-II-0069, of 22 April 2013, which was served on the Applicant on 21 June 2013.

Subject matter

3. The subject matter is exercising the right to 20% share from 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 of the Republic of Kosovo (hereinafter: 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 01 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 05 August 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and a Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 26 August 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court on the registration of Referral.
8. On 21 October 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 27 June 2006, the SOE Ramiz Sadiku completed the privatization process.
10. On 12 March 2009, the Applicant filed an appeal to the Special Chamber of the Supreme Court against the final list of employees, who gained the right to 20 % share, which was compiled by the Agency for Privatization (hereinafter: the Agency).
11. In the appeal, the Applicant alleged that he is the victim of discrimination, but at the same time he did not provide evidence to the Special Chamber to substantiate his allegation.

12. On 10 June 2011, the Trial Panel of the Special Chamber rejected the Applicant's complaint as ungrounded. In the reasoning of its decision, the Trial Panel stated: *„that based on the examination of the case file, submitted by the Agency and the Applicant, it was determined that in the proceedings before the Agency there are two claims with the same names, one is Mustafë Osmani (the Applicant), who is born in Llausha on 20 October 1946, and who according to the evidence of the Agency, is not eligible to exercise right to 20% share, and another person, with the same name and surname, who was born in 1939, and who according to the evidence of the Agency meets requirements to be included on the list.“*
13. On an unspecified date, the Applicant filed a complaint to the Appellate Panel of the Special Chamber against the Trial Panel of the Special Chamber decisions of 10 June 2011.
14. During the hearing procedure before the Appellate Panel of the Special Chamber, the Applicant did not submit evidence, by which he would justify his allegation that he was an employee in the "SOE Ramiz Sadiku", but he only reiterated the appeal allegations of 12 March 2009.
15. On 22 April 2013, the Appellate Panel of the Special Chamber rendered the judgment [ASC-11-0069], whereby rejecting the Applicant's complaint as ungrounded, because the Applicant failed to prove his allegations pursuant to Article 10.4 of UNMIK Regulation 2003/13.

Relevant law

16. *“REGULATION NO. 2003/13, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY OWNED IMMOVABLE PROPERTY*

Section 10 Entitlement of Employees

Article 10.4 „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.“

Applicant's allegations

17. The Applicant addresses the Constitutional Court, with only one request that:
„He wants that he is entitled to 20% share from privatization, same as his colleagues“

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court should first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure

19. In this respect, 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 exhausting all legal remedies provided by law.”

20. The Court notes that the Applicant in his Referral has not specified what constitutional rights have been violated to him by the Judgment of the Appellate Panel of the Special Chamber [ASC-II-0069], of 22 April 2013, even though Article 48 of the Law on Constitutional Court of the Republic of Kosovo 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.”

21. The Court also refers to Rule 36 (1) c) of the Rules of Procedure:

*(1) The Court may only deal with Referrals if:
[...]
(c) the Referral is not manifestly ill-founded.*

22. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, in respect of the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see Case Garcia Ruiz v. Spain, no. 30544/96, ECHR Judgment of 21 January 1999).

23. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, the case Edwards v. United Kingdom App. No 13071/87, Report of the European Commission on Human Rights, which was adopted on 10 July 1991).

24. The Court considers that the justification provided by the Judgment of the Appellate Panel of the Special Chamber, in answering the allegations made by the Applicants, is clear and well reasoned.

25. The fact that the Applicant is unsatisfied with the outcome of the case, cannot of itself raise an arguable claim of a breach of rights guaranteed by the Constitution (see case Mezotur-Tisazugi Tarsulat vs. Hungary, Appl. No. 5503/02, ECHR Judgment of 26 July 2005).

26. In the present case, the Applicant did not base his allegations on constitutional grounds, because he did not show how the regular courts have violated his rights guaranteed by the Constitution.
27. It follows that the Referral is manifestly ill-founded and it should be rejected as inadmissible pursuant to Rule 36 (1) c) 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) a) of the Rules of Procedure, on 21 October 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. TO DECLARE this Decision immediately effective.

Judge Rapporteur

President of the Constitutional Court


Altay Suroy




Prof. Dr. Enver Hasani