



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

Prishtina, on 22 April 2016
Ref. No.:RK925/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI124/15

Applicant

Arif Kryeziu

**Constitutional Review of non inclusion in proceedings of Privatization of
the Socially Owned Enterprise “Liria”**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Arif Kryeziu from Prizren (hereinafter, the Applicant).

Challenged decision

2. The Applicant does not challenge any concrete act of a public authority. He only requests to be included in the list of employees who benefit from a share of proceeds from privatization of the Socially Owned Enterprise "Liria" from Prizren (hereinafter, SOE "Liria").

Subject matter

3. The Applicant complains about his non-inclusion in the list of employees that benefited from the 20% of the proceeds from the privatization of SOE "Liria".
4. The Applicant has previously filed to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) an identical Referral (KI19/15).
5. The Applicant does not invoke any constitutional violation.

Legal basis

6. 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. 03/121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Court

7. On 16 October 2015, the Applicant submitted the Referral KI124/15 to the Court.
8. On 5 November 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Ivan Čukalović and Arta Rama-Hajrizi.
9. On 9 December 2015, the Court notified the Applicant about the registration of the Referral and, in accordance with Rule 29 of the Rules of Procedure, requested him to complete his Referral. A copy of the Referral was sent to the Kosovo Privatization Agency (hereinafter, the KPA).
10. On 28 January 2016, the Court requested the Applicant to clarify whether he has filed any appeals. However, the Applicant did not answer the requested information.
11. On 9 March 2016, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 23 February 2015, the Applicant submitted to the Court Referral KI19/15, which was dismissed on 23 September 2015.

13. On 6 October 2015, the Applicant filed a request with the Kosovo Privatization Agency (hereinafter, the KPA) pertinent to his non-inclusion in the list of employees benefiting from a share of proceeds from the sale of SOE "Liria".
14. On 6 October 2015, the KPA informed the Applicant that all employees that were not included in the list to benefit from the sale of SOE "Liria" have a right to complain.
15. The relevant part of the above-stated KPA notification reads that "(...) the last date for filing appeals against the initial list was 24.12.2011" and "the last day to file an appeal against the final list was 31.03.2012".
16. In that respect, the Applicant has not answered to the clarification requested on 28 January 2016 and has not presented any evidence that he has filed appeals with the KPA or the Special Chamber of the Supreme Court, pursuing his right to appeal in accordance with the guidance of KPA and with the applicable law in Kosovo.

Applicants' allegations

17. The Applicant does not refer to any constitutional provision in particular; rather he states: *"I rely on you, because I have reasons. No one will give me the right, except you"*.
18. The Applicant has listed Decision to Dismiss the Referral in case no. KI19/15 as the last decision in his case. However, he does not state any complaint with regard to that Decision on dismissal.

Assessment of admissibility

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
20. In this respect, the Court refers to Article 113 (7) of the Constitution which establishes:

"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 makes also refers to Article 47 of the Law which provides:

"Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority."

The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

22. In addition, the Court also takes note of the Rule 36 (1) (b) of the Rules of Procedure which specify:

(1) The Court may consider a referral if:

(a)...

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.

23. The Court notes that the Referral KI19/15 was dismissed, because the Applicant did not specify “a concrete act of public authority” and did not provide “supporting documents and material evidence”, as required by Articles 22.4 and 48 of the Law, and Rule 29 (2) (h) of the Rules of Procedure.
24. The Court further notes that, in the current Referral KI124/15, the Applicant was asked whether he has pursued his right to appeal, as instructed by the KPA notification of 6 October 2015. The Applicant has not submitted any evidence that he has appealed in accordance with the KPA notification or with the applicable law in Kosovo.
25. Therefore, the Court considers that the Applicant has waived his right to further complain and thus has not exhausted all legal remedies afforded to him by the applicable law in Kosovo. (See, for example, Case. No. KI07/09, *Demë and Besnik Kurbogaj*, Resolution on Inadmissibility of 19 May 2010, paragraphs 28-29; see also *mutatis mutandis* Case No. KI39/11, *Tomë Krasniqi*, Resolution on Inadmissibility of 30 January 2013, paragraph 44).
26. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the constitutional provisions. (See Case no. KI116/14, *Fadil Selmanaj*, Resolution on Inadmissibility of 26 January 2015, paragraph 48).
27. Before the foregoing, the Referral must be declared inadmissible, due to non-exhaustion of all legal remedies as established by Article 113.7 of the Constitution and as further provided for by Article 47 of the Law and specified by Rule 36 (1) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 9 March 2016, unanimously

DECIDES

- I. TO DECLARE the Referral 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 effective immediately;

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi