



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

Prishtina, 13 January 2014  
Ref. No.:RK536/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI107/13**

Applicant

**Hasan Salihu**

**Constitutional review of the Judgment of the Special Chamber of the  
Supreme Court, SCEL-09-0001-C1060, of 25 May 2010**

**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  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Hasan Salihu from village Bajčinë, Municipality of Podujevo.

## **Challenged decision**

2. The Judgment of the Special Chamber of the Supreme Court of Kosovo, SCEL-09-0001-C1060, of 25 March 2010.

## **Legal basis**

3. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 49 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, 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).

## **Subject matter**

4. The subject matter of the Referral is the Applicant's alleged right to be included in the list of employees that are entitled to a share of the proceeds from the privatization of SOE ICC "Ramiz Sadiku" in Prishtina.

## **Proceedings before the Constitutional Court**

5. On 19 July 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 August 2013, the President, by Decision No. GJR. KI107/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI107/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 30 August 2013, the Applicant was informed of the registration of the Referral. On the same date, the Referral was communicated to the Special Chamber of the Supreme Court (hereinafter: the Special Chamber).
8. On 21 October 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

## **Summary of the facts as evidenced by the documents submitted by the Applicant**

9. On 2 April 2009, the Applicant submitted a complaint to the Privatization Agency of Kosovo (hereinafter: PAK), requesting to be included in the list of employees that are entitled to a share of the proceeds from the privatization of SOE ICC "Ramiz Sadiku" in Prishtina.
10. On 5 May 2009, PAK informed the Special Chamber that the Applicant had not provided any relevant proof that he was in continuity in employment relationship with SOE "Ramiz Sadiku" in Prishtina; and that at the time of the privatization of this SOE, namely on 27 June 2006, he was not a registered employee of the SOE. Furthermore, KAP also informed the Special Chamber

that the Applicant had not submitted his complaint to KAP within the deadline set by Kosovo Trust Agency (predecessor of KAP) on 31 August 2007.

11. In the abovementioned reply of 5 May 2009, KAP replied to the Special Chamber: *"...taking into consideration the facts provided by the Complainant and additional investigations made by PAK, PAK is of the opinion that allegations made by the Complainant do not support his claim as required according to UNMIK Regulation No. 2003/13, Section 10, Article 10.4."*
12. The Special Chamber by Order SCEL-09-0001 requested from the Applicant to clearly state why he filed his complaint with the Special Chamber after the legal time limit. The Applicant replied to the Order stating that he had filed a late complaint because he lived in a village where postal deliveries are always delayed and that he was informed about the published list by his fellow villagers who had gone to the post office and had received the delivery with delay.
13. On 25 March 2010, the Special Chamber by Judgment SCEL-09-0001-C1060 rejected Applicant's complaint as unfounded.
14. By the abovementioned Judgment of 25 March 2010, the Special Chamber found that the Applicant's justification for filing the complaint after the deadline is unfounded and as such it will not be taken into consideration because the applicable law does not prescribe any requirement for the KAP to notify each and every employee, but only a publication of the list in the daily newspaper with a notice on the possibility of filing a complaint with the Special Chamber within 20 days.
15. The Special Chamber, in accordance with Section 9.5 of UNMIK Regulation 2008/4, also stated in the legal advice that the Applicant may file an appeal against its decision with the Appellate Panel of the Special Chamber within thirty (30) days of the receipt of that decision.

## **Law**

*"REGULATION NO. 2003/13  
UNMIK/REG/2003/13  
9 May 2003*

*ON THE TRANSFORMATION OF THE RIGHT OF USE TO  
SOCIALLY OWNED IMMOVABLE PROPERTY*

*Section 10  
ENTITLEMENT OF EMPLOYEES*

*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 privatisation 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 10.6.*

*10.6 Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13.*

*(a) The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission.*

### **Applicant's allegations**

16. The Applicant alleges *"...that he was employed with SOE "Ramiz Sadiku" in Prishtina since 1981, and on 28 February 1990 Serbian forces had discriminated him against and dismissed him"*.
17. The Applicant alleges that his constitutionally guaranteed rights have been violated because he was not included in the list of employees that are entitled to a share of proceeds from the privatization of SOE "Ramiz Sadiku" in Prishtina. The Applicant does not refer to a violation of any constitutional provision in particular.

### **Assessment of the admissibility**

18. In order to be able to adjudicate the Applicant's Referral, the Court first needs to assess whether the Applicant has met the admissibility requirements, laid down in the Constitution, the Law and further specified in the Rules of Procedure.
19. With regard to Applicant's Referral, 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"*.

20. The Court refers to Article 47 of the Law which stipulates:

*"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"*.

21. In the present case, the Court notes that the Special Chamber in accordance with the applicable law informed the Applicant through the legal advice of the possibility he has to appeal before the Appellate Panel of the Special Chamber against the decision of the Trial Panel of the Special Chamber.
22. From the submitted documents, the Court notes that the Applicant has not presented any evidence that he had acted in accordance with the legal advice of the Special Chamber and that he had pursued to the end the initiated court proceedings, respectively he has not proved that he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution and Article 47 of the Law.
23. The rationale for the exhaustion rule is to afford the competent authorities, including the courts, the opportunity to prevent or put right the alleged violations of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide effective legal remedies for the violation of the constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see, Case KI 41/09, Applicant AAB/RIINVEST University LLC, Prishtina, Resolution on Inadmissibility, of 21 January 2010; and, *mutatis mutandis*, see case Selmouni v. France, no. 25803/94, ECtHR Decision of 28 July 1999).
24. The Court refers to Article 49 of the Law which stipulates:

*“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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”*
25. The Court also refers to Rule 36 (1) b) of the Rules of Procedure which provides:

*“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...”*
26. Under these circumstances, the Court notes that the decision that is challenged by the Applicant is dated 25 May 2010, whereas the Referral has been submitted to the Court on 19 July 2013, which means that the Applicant’s Referral is not in compliance with Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure as it has been submitted to the Court with a delay of more than three years.
27. The Court reiterates that Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure require from the Applicants that, after exhaustion of all legal remedies, they be mindful to submit their Referrals to the Constitutional Court



within the four month time limit of the day when the last court decision is received.

28. It results that the Referral is out of time.
29. Consequently, the Referral must be rejected as inadmissible due to failure to comply with the criteria set forth in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 21 October 2013, unanimously,

### **DECIDES**

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and it 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**

Altay Suroy

**President of the Constitutional Court**

Prof. Dr. Enver Hasani

