



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

Prishtina, on 12 April 2016  
Ref. no.: RK919/16

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI148/15

Applicant

**Xhafer Selmani**

**Constitutional Review of Decision SCEL-09-0001-C1265 of the  
Specialized Panel of the Special Chamber of the Supreme Court on  
Privatization Agency of Kosovo Related Matters, of 11 December 2015**

**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, and  
Bekim Sejdiu, Judge  
Selvete Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

### **Applicant**

1. The Referral was submitted by Mr. Xhafer Selmani from village Dumnica e Poshtme, Municipality of Podujeva (hereinafter, the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision SCEL-09-0001-C1265 of 11 December 2015 of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel).

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Decision. The Applicant considers that he “*was discriminated against twice [...] by both Serbs and Albanians*”. However, the Applicant has not mentioned any Article of the Constitution that has been 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 No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 21 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 January 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 16. February 2016, the Court informed the Applicant about the registration of the Referral and requested him to clarify whether he filed any appeal with the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Appellate Panel). The Court also informed the Specialized Panel about the registration of the Referral.
8. On 22 February 2016, the Applicant responded to the Court’s request and confirmed that he didn’t file any appeal with the Appellate Panel.
9. On 9 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

10. On 7 March 2009, the Privatization Agency of Kosovo (hereinafter: PAK) published the final list of employees entitled to 20% of share of proceeds from the privatization of the SOE Ramiz Sadiku.

11. The deadline for filing the appeals with the Specialized Panel against that final Decision expired on 27 March 2009.
12. On 13 June 2013, the Applicant filed an appeal with the Specialized Panel requesting the return to the previous state.
13. On 11 December 2015, the Specialized Panel (Decision SCEL-09-0001-C1265) rejected the Applicant's appeal as out of time because, in accordance with Article 118.2 of the Law on Contested Procedure 4/77- 1478 of SFRY (applicable pursuant UNMIK Regulation 1999/24), "*...after the expiry of the deadline of 3 (three) months from the determined date, the return to previous state cannot be requested*".
14. Moreover, the Specialized Panel stated that "*This decision may be appealed within 21 days to the Appellate Panel of the Special Chamber. [...] The foreseen deadline begins to run in the midnight of the same date when the written judgment was served on the appellant*".

### **Applicant's allegations**

15. The Applicant claims that by the challenged Decision he "*was discriminated against twice [...] by both Serbs and Albanians*"; even though without mentioning any constitutional provisions grounding his claim.
16. The Applicant alleges that "*... from 1979 until 28.02.1990 I was in an employment relationship with SOE "Ramiz Sadiku" ..., where I was... dismissed from work against my will [...]. By doing this, they discriminated me and other Albanian workers in 1999 after the war [...]. I applied several times but to no avail, they did not admit me to work. After the privatization of SOE "Ramiz Sadiku" they did not include me in the register for 20%...."*
17. The Applicant addresses the Court with the following request:

*"I want PAK to pay me the amount of 20% in the sum I am entitled to [...]"*.

### **Admissibility of the Referral**

18. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
19. The Court refers to Article 113.7 of the Constitution, which stipulates:

*"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 mentions also Article 47.2 of the Law, which foresees:

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

21. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

*“The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.*

22. The Court notes that the Applicant neither appealed the Decision of PAK of 7 March 2009 nor the Decision the Specialized Panel of 11 December 2015, as indicated in the legal remedy of that last Decision.

23. In that respect, the Court recalls that Article 10 of Law No. 04/L-033 on the Special Chamber of the Supreme Court on Privatization Agency Kosovo Related Matters provides:

*“6. A party shall have the right to appeal any Judgment [...] of specialized panel [...] to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty-one (21) days. [...] The prescribed time limit shall begin to run at midnight on the day [...] specialized panel or court has provided the concerned Decision or Judgment to the parties in writing. The appellate panel shall reject the appeal if the party fails to file within the prescribed time period.”*

24. The Court further recalls that the Applicant claimed before the Constitutional Court an alleged discrimination against him. However, the Court considers that the alleged discrimination should have been previously raised before the Specialized Panel.

25. In this regard, the Court reiterates that the regular courts are independent in exercising legal powers and it is their constitutional obligation to interpret the issues of fact and law which are relevant to the cases filed before them.

26. The rationale for the exhaustion rule, as in the present case, is to afford the regular 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 shall provide an effective remedy for the violation of constitutional rights. (see Resolution on Inadmissibility, *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo*, Kl41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, No. 25803/94, Decision of 28 July 1999).

27. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, administrative or judicial proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See Resolution on case KI07/09, *Demë Kurbogaj and Besnik Kurbogaj*, Constitutional review of Judgment Pkl. no. 61/07, of 24 December 2008, para. 18).

28. Accordingly, the Constitutional Court cannot assess as a rule the alleged constitutional violations, without previously providing the opportunity to regular courts to finalize the proceedings filed before them.

29. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law as a requirement to submit his Referral, therefore, the Referral is rejected as inadmissible, in accordance with Article 113.7 of the Constitution and Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 47 of the Law, and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 9 March 2016, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- 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;

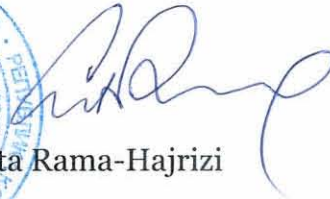
**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi