



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

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Prishtina, on 30 December 2013  
Ref. No.:RK532/13

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI159/13**

Applicant

**Ferat Neziri**

**Constitutional Review of the Judgment ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo, of 22 April 2013 god.**

### 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. Ferat Neziri from Prishtina (hereinafter: Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment ASC-11-0069 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 Special Chamber), of 22 April 2013.

## **Subject matter**

3. The subject matter is constitutional review of the Judgment, which allegedly deprives the Applicant from the entitlement to a share of 20% of proceeds of the 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, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Court**

5. On 14 October 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. On 28 October 2013, the President appointed Judge Ivan Čukalović as Judge Rapporteur, and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 8 November 2013, the Court notified the Applicant of the registration of Referral, requesting to submit evidence on date of service of the Judgment on the Applicant.
8. On 11 November 2013, the Special Chamber of the Supreme Court was notified of the Referral.
9. The Applicant did not answer to the Court's request of 8 November 2013.
10. On 5 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

11. The Applicant had employment relationship with the SOE "Ramiz Sadiku" from 8 September 1977, until 5 March 1990.
12. On 27 June 2006, SOE "Ramiz Sadiku" concluded the privatization process.

13. On 13 March 2009, the Applicant filed a complaint with the Special Chamber of the Supreme Court, against the final list of employees compiled by the Privatization Agency of Kosovo (hereinafter: Agency), since he was not found in the list as a former employee.
14. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he worked in SOE "Ramiz Sadiku" for more than 12 (twelve) years, and filed his employment booklet as evidence to such claim.
15. By a letter to the Special Chamber, the Agency replied to the complaint of the Applicant, stating that the Applicant does not fulfill the requirements to be included in the list of eligible employees to a share of 20 % of proceeds of the privatization, since the evidence of Agency contains a copy of the decision upon which it is ascertained that the Applicant earned the right to disability pension on 5 May 1994. Furthermore, the Agency reviewed the documentation, and found that the Applicant was born on 1 May 1938 therefore, at the moment of privatization he had reached the age of 65 years.
16. On 15 March 2010, during the hearing before the Trial Panel of the Special Chamber, the Applicant confirmed the statements of the Agency, and repeated that on the basis of decision of 1994, he was retired on disability pension of the first (I) grade.
17. Also, the Trial Panel, on the basis of the available documentation and the review of the personal identification document of the Applicant, confirmed that he was born on 1 May 1938, namely he had been older than 65 years, namely acquiring entitlement to age pension.
18. On 10 June 2011, the Trial Panel of the Special Chamber rendered the decision SCEL-09-0001, thereby rejecting the complaint of Applicant as inadmissible.
19. In its reasoning, the Trial Panel of the Special Chamber found that: *"during the hearing procedure and evidentiary hearing, it was confirmed that the Applicant, at the moment of privatization of SOE 'Ramiz Sadiku' (concluded on 27 June 2006) was older than 65 years. Therefore, the Trial Panel of the Special Chamber is of the view that the complaint of the applicant does not meet conditions as provided by Article 10.4 of UNMIK Regulation 2003/13."*
20. On 22 March 2012, the Applicant filed a complaint to the Appellate Panel of the Special Chamber against the decision of the Trial Panel of the Special Chamber SCEL-09-0001.
21. On 22 April 2013, the Appellate Panel of the Special Chamber rendered the Judgment ASC-11-0069, thereby rejecting the complaint of the Applicant as ungrounded.

## **Relevant law**

22. UNMIK Regulation No. 2003/13, of 9 May 2003, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

Article 10.4 (Entitlement of employees)

*“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 10.6.”*

## **Applicant’s allegations**

23. The Applicant does not clarify the constitutional rights violated by the challenged judgment, but only claims that he is victim of discrimination.
24. The Applicant addresses the court with the following proposal:

*„That the Special Chamber of the Supreme Court renders a judgment thereby recognizing my entitlement to 20% of the privatization of SOE Ramiz Sadiku.”*

## **Preliminary assessment of admissibility of the Referral**

25. In order to be able to review the Referral of the Applicant, 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 Rules of Procedure.
26. In this respect, the Court refers to Article 113.7 of the Constitution, which provides that:
- 113.7 “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.*
27. The Court notes that the Applicant has filed a complaint with the PAK, and later before the Trial Panel, and the Appellate Panel of the Special Chamber. The Applicant has exhausted all legal remedies as provided by Article 113 (7).
28. The Court also refers to Article 49 of the Law, which provides that:

*“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. (...).”*

29. The Court also refers to Rule 36 (1) b) of the Rules of Procedure, which provides that:

*“(1) 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 ...”.*

30. On the basis of documents filed, the Court finds that the Applicant filed his Referral on 14 October 2013, but since the Applicant has not responded to the Court’s request and failed to provide any evidence on the date of service of the Judgment to him, the Court considers as the date of service of the Judgment the date when the Appellate Panel of the Special Chamber rendered the Judgment ASC-11-0069, which in this case is 22 April 2013, and therefore, the Applicant filed the Referral to the Court 1 month and 22 days after the legal deadline as provided by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.
31. It follows that the Referral is out of time.
32. Therefore, the Referral must be rejected as inadmissible, pursuant to 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, Article 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 5 December 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**



Ivan Čukalović



**President of the Constitutional Court**



Prof. Dr. Enver Hasani