



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

Pristina, 27 March 2015
Ref. No.:RK 785/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI175/14

Applicant

Sylejman (Daut) Dibra

Constitutional review of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, AC-I-13-0095-A0001-A0005, dated 20 May 2014.

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 Referral was submitted by Mr. Sylejman (Daut) Dibra (hereinafter: the "Applicant"), residing in Prizren.

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: the “Appellate Panel”), AC-I-13-0095-A0001-A0005, of 20 May 2014, which was served on the Applicant on 22 May 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Appellate Panel by which the Applicant alleges that Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) has been violated, “[...] because the contract of employment was not terminated in accordance with applicable law.”

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 (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 Court

5. On 9 December 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 13 January 2015 the President of the Court, by Decision No. GJR. KI175/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI175/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 20 January 2015 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Appellate Panel and the Privatization Agency of Kosovo (hereinafter: “PAK”).
8. On 12 February 2015 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 10 May 2013 the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the “Specialized Panel”) rejected as ungrounded the claim of the Applicant to be enrolled on the list of employees entitled to 20% share from the proceeds of privatization of the Socially Owned Enterprise “Lirija” from Prizren (Judgment C-II.-12-0007-C9). The Specialized Panel held that the Applicant did not fulfill the criteria stipulated in Article 10.4 of UNMIK Regulation

2003/13 on the transformation of the right of use to Socially Owned immovable property (hereinafter: “UNMIK Regulation 2003/13”). The Applicant appealed this Judgment to the Appellate Panel.

10. On 20 May 2014 the Appellate Panel (Judgment AC-I-13-0095-A0001-A0005) rejected as unfounded the appeal of the Applicant and upheld the judgment of the Specialized Panel, dated 10 May 2013. The Appellate Panel held that the Applicant had not presented evidence, proofs and other evidence confirming that he was on the payroll at the time of privatization.

Applicant’s allegations

11. The Applicant alleges that the contract of employment was not terminated in accordance with applicable law because he never received a decision on termination of the contract of employment which he could have challenged in accordance with applicable law. He claims that he was only notified orally that his contract of employment was terminated.

Admissibility of the Referral

12. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

13. In this respect, the Court refers to Article 49 of the Law, which provides:

“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. [...]”.

14. The Court also refers to Rule 36 (1) (c) of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if: (c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or [...]”.

15. The final judgment of the Appellate Panel, AC-I-13-0095-A0001-A00051, was taken on 20 May 2014, and was served on the Applicant on 22 May 2014, whereas the Applicant filed the Referral with the Court on 9 December 2014, i.e. more than 4 months from the day upon which the Applicant has been served with the Appellate Panel judgment.

16. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rules 36 (1) (c) and 56 (b) of the Rules of Procedure, on 27 March 2015, 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

Arta Rama-Hajrizi



President of the Constitutional Court

Prof. Dr. Enver Hasani