



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 31 July 2015
Ref. no.: RK 813/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI184/14

Applicant

Maliq Demiri

**Constitutional Review of the list of the Privatization Agency of
Kosovo of the employees entitled to 20% proceeds from the sale
of Socially Owned Enterprise "Ramiz Sadiku"**

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

Applicant

1. The Referral was filed by Mr. Maliq Demiri, from the village Syriganë, Municipality of Skënderaj, with residence in "Ulpiana" neighborhood in Prishtina (hereinafter: the Applicant), who in this case represents also 3 (three) other individuals: Mr. Idriz Zhinipotoku; Mr. Rrahim Uka and Mr. Zoran Petrović.

Challenged Decision

2. The Applicant does not challenge any specific decision of a public authority, but only requests to be included in the list of the Privatization Agency of Kosovo (hereinafter: PAK), of employees entitled to receive a 20% share of the sale proceeds of the Socially-Owned Enterprise "Ramiz Sadiku" (hereinafter: the SOE "Ramiz Sadiku").

Subject Matter

3. The subject matter of the Referral is the constitutional review of the PAK list of employees entitled to 20% of the proceeds of the sale of the SOE "Ramiz Sadiku".

Legal Basis

4. The basis for filing the Referral is Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law and Rule 56 of the Rules of Procedure.

Proceedings before the Constitutional Court

5. On 22 December 2014 the Applicant submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) the Referral for assessment of the constitutionality and legality of the PAK list of employees entitled to 20% proceeds from the sale of the SOE "Ramiz Sadiku".
6. On 13 January 2015 the President, by Decision GJR. KI184/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision KSH. KI184/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani (members).
7. On 22 January 2015 the Court notified the Applicant of the registration of his Referral no. KI184/14.
8. On 24 February 2015 the Court, pursuant to Article 21 of the Law and Rule 29 (2) (c) of the Rules of Procedure, requested the Applicant to submit the power of attorneys signed by the persons, allegedly represented by him. The Court

requested the Applicant to attach the challenged decision and documents relevant to their case.

9. On 10 March 2015, the Applicant submitted to the Court the requested power of attorneys and a number of PAK and EULEX documents, but he did not submit any specific decision challenged by them.
10. On 26 June 2015, by Decision Nr. K.SH.KI 170/14, the President of the Court appointed Judge Arta Rama-Hajrizi as a member to the Review Panel replacing Judge Enver Hasani whose mandate in the Constitutional Court ended on 26 June 2015.
11. On 6 July 2015, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

Summary of Facts

12. Despite the fact, that the Applicant represents with power of attorney also three (3) other individuals, the allegations raised by him in the Referral, are mainly his personal allegations.
13. The Applicant was employed with the SOE "Ramiz Sadiku" as an installer of ceramic tiles from 1977 until 1989, when he was dismissed from his job.
14. By request of 19 December 2014, the Applicant requested from PAK, as the successor of the Kosovo Trust Agency (hereinafter: the KTA), to be included in the final list of employees who will receive 20% of the proceeds from the sale of the SOE "Ramiz Sadiku".
15. On 24 December 2014 PAK by responding to the Applicant's request, *inter alia*, clarified that:

"On 11 August 2007, the Agency published the preliminary list of employees who will receive 20% from the sale of the SOE. The Applicant was entitled to file an appeal against this list within twenty (20) days of the publication with the committee for review of appeals in the Agency. On 7 March 2009, the Agency published the final list of employees entitled to the proceeds from the sale of SOE. Against this list, the Applicant was entitled to appeal, within twenty (20) days from the day of its publication, with the Special Chamber of the Supreme Court (hereinafter: the SCSC). The SCSC decided on the final list of employees that would benefit from the 20%, by final Judgment of 22 April 2013."

16. The Applicant, in two separate letters of 10 June 2014 and 5 January 2015, requested assistance from EULEX to be included in the list of employees who

would benefit from the 20% of the proceeds from the sale of SOE "Ramiz Sadiku".

17. EULEX in two separate letters, of 17 June 2014 and 13 January 2015, responded to the Applicant, by explaining that EULEX is not competent for his case, as well as by clarifying the proceedings that he would need to follow to exercise his right.

Applicant's Allegations

18. The Applicant alleges that PAK violated his rights guaranteed by the Constitution, without mentioning any specific provision of the Constitution, because his name was not included in the list of employees who have benefited from 20% of the proceeds from the sale of the SOE "Ramiz Sadiku".

Assessment of the Admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
20. In this respect, Article 113. 7 of the Constitution 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."

21. In addition, Article 47.2 of the Law provides that:

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

22. In this case the Court also refers to Rule 36 (1) (b) of Rules of Procedure:

"(1) The Court may consider a referral if:

[...]

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

23. From the case file, the Court notes that the Applicant does not challenge any specific decision of a public authority, related to his allegation of the violation of his constitutional rights. In fact, the Applicant did not specify what provision of the Constitution has been violated. However, the Court, *inter alia*,

understands that it is about the rights deriving from Article 46 [Protection of Property], of the Constitution and Article 1 [Protection of Property], of Protocol 1 to the ECHR.

24. From the clarification provided by PAK to the Applicant regarding his request, the Court notes that the Applicant was entitled to file an appeal against the preliminary list of the KTA within 20 (twenty) days after the date of its publication, with the KTA Committee for Review of Appeals, and that he also had the right to appeal against the final list of PAK, within 20 (twenty) days from its publication, to the SCSC [pursuant to Article 10 (6) of UNMIK Regulation, No. 2003/13, of 9 May 2003].
25. The Court notes that, despite the fact that the Applicant had the possibility to appeal against the preliminary list of the KTA and the possibility of appeal against the final list of the PAK, he did not use this right and that there are no facts that indicate that he was prevented, in any way, from doing so.
26. In this case, it is clear that the Applicant missed the legal deadlines to exhaust effective legal remedies against the decisions of the KTA and PAK regarding the non-inclusion of his name in the list of employees that would benefit from 20% of the proceeds from the sale of the SOE "Ramiz Sadiku". In this regard, it cannot be said that the appellant did everything that could reasonably be expected of him to exhaust available legal remedies (see, *mutatis mutandis*, ECHR, Case *D. H and others v. Czech Republic*, no. 57325/00, § 116, Decision of 13 November 2007).
27. Therefore, in this regard, the Court considers that the Applicant's Referral does not meet the procedural admissibility requirements, as provided by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, due to the fact he failed to substantiate that he had exhausted all legal remedies under Kosovo law for challenging the KTA and PAK lists.
28. The Court reiterates that the principle of subsidiarity requires that the Applicant must exhaust all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of the fundamental rights. Otherwise, the Applicant risks to have his case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in regular proceedings. This rule is based on the assumption that the Kosovo legal order shall provide an effective legal remedy for the violation of constitutional rights. (See Resolution on Inadmissibility, KI41/09, of 21 January 2010, *AAB-RIINVEST L.L.C. Prishtina v. Government of the Republic of Kosovo*, and *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, Decision of 28 July 1999).

29. From the foregoing reasons, the Court concludes that the Applicant's Referral does not meet the procedural admissibility requirements due to non-exhaustion of legal remedies.

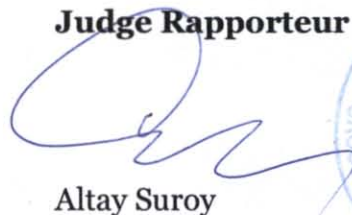
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 31 July 2015, unanimously:

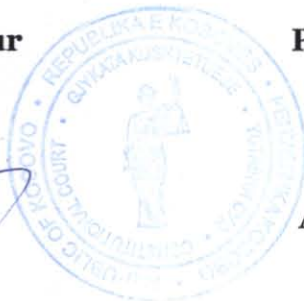
DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

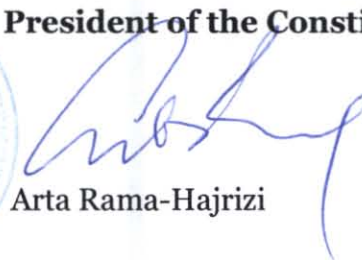
Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi