



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

Prishtina, 20 January 2014
No. Ref.:RK540/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI182/13

Applicant

Xhevat Rrustemi

Constitutional review of the Judgment ASC-11-0035 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 23 November 2012

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. Xhevat Rrustemi (hereinafter: Applicant), from the village of Upper Pakashtica, Municipality of Podujeva.

Challenged decision

2. The Applicant challenges the Judgment ASC-11-0035, of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Special Chamber Appellate Panel), of 23 November 2012, which according to the Applicant's claim, was served on the Applicant on 25 February 2013, while based on the certification on receipt of documents, issued by the Special Chamber of the Supreme Court, was served on the Applicant on 9 February 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 the Article 113. 7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121, of 15 January 2009 (hereinafter: Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 24 October 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. On 31 October 2013, the President appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and a Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 11 November 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court of the registration of Referral.
8. On 5 December 2013, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

Summary of the facts

9. The Applicant had an employment relationship with SOE "Ramiz Sadiku" from 30 July 1974 to 28 February 1990.
10. On 27 June 2006, SOE "Ramiz Sadiku" concluded the privatization process.
11. On 07 April 2010, the Applicant filed a complaint with the Special Chamber of the Supreme Court against the final list of employees compiled by the Privatization Agency, since he as a former employee was not in the list.

12. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he was unfairly excluded from the list, which is discriminatory, since his employment relationship was terminated against his will.
13. The Trial Panel of the Special Chamber, during the hearing in the complaint procedure, found that the complaint of the Applicant was ungrounded.
14. In its reasoning of the ruling, the Trial Panel of the Special Chamber stated: *“that the complaint filed by the Applicant against the final list is out of time“*, and further stated: *„that the Applicant has not provided any proof of the reasons for missing the deadline as provided by law, and due to such fact, the Trial Panel of the Special Chamber rejected the Complaint of the Applicant as ungrounded.“*
15. On an unknown date, the Applicant filed an appeal with the Appellate Panel against the decision of the Trial Panel of the Special Chamber.
16. On 23 November 2012, the Appellate Panel rendered Judgment ASC-11-0035, thereby rejecting the Applicant’s appeal as ungrounded, and upholding the decision of the Trial Panel of the Special Chamber in its entirety.

Applicant’s allegations

17. The Applicant does not state in the Referral what are the specific constitutionally guaranteed rights violated by the challenged decision, and only states that these are rights that derive from the employment relationship.
18. The Applicant addressed the Court with the following request:

„I wish to enjoy the right to 20%, which belongs to me like any other employee, because I have worked in the enterprise for 16 years...“

Assessment of the Admissibility

19. The Court notes that in order to be able to adjudicate Applicant’s Referral, it must first examine whether the Applicant has met the admissibility requirements as provided by the Constitution, and further specified by the Law and Rules of Procedure.
20. 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 (...).”
21. The Court also takes into consideration 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 ...”.

22. Based on the submitted documents, the Court finds that the Applicant filed his Referral on 24 October 2013, while the last decision of the Special Chamber of the Supreme Court, according to the applicant’s claims, was served on him on 25 February 2013, which is 3 months and 29 days after the expiry of the legal deadline as provided by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure. However, based on the certification on receipt of documents, issued by the Special Chamber of the Supreme Court, the judgment was served on the Applicant on 9 February 2013, which is 4 months and 15 days after the expiry of the legal deadline as provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.
23. It results that in both cases, the Applicant’s Referral is out of time.
24. Therefore, the Referral must be rejected as inadmissible, in compliance with 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


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani