



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 22 January 2015

Ref. no.:RK753/15

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI91/14**

Applicant

**Rexhep Sagdati**

**Request for constitutional review of the Judgment no. AC-I-12-0115 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 25 April 2013**

**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 Applicant is Mr. Rexhep Sagdati, village of Recane, Municipality of Prizren, who is represented by lawyer Mr. Salim Rexha.

## **Challenged decision**

2. The Applicant challenges Judgment no. AC-I-12-0115 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 of the Special Chamber), of 25 April 2013, which was served on the Applicant on 2 May 2014.

## **Subject matter**

3. The subject matter is the constitutional review of the Judgment [no. AC-I-12-0115] of the Appellate Panel of the Special Chamber, of 25 April 2013, which according to the Applicant, violates his rights from employment relationship and fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo.

## **Legal basis**

4. Article 113.7 of the Constitution, Article 49 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (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 Constitutional Court**

5. On 25 May 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 June 2014, the President of the Court, by Decision no. GJR. KI91/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI91/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 30 September 2014, the Court notified the Applicant and the Appellate Panel of the Special Chamber on the registration of Referral. At the same time the Court requested that the Applicant, pursuant to Article 22.4 of the Law, submit all relevant evidence, by which would justify his allegation that the challenged Judgment [no. AC-I-12-0115] of the Appellate Panel of the Special Chamber, of 25 April 2013, was served on him on 02 May 2014.
8. On 10 October 2014, the Applicant submitted a return receipt, as an evidence that the challenged Judgment [no. AC-I-12-0115] of the Appellate Panel of the Special Chamber, was served on him on 2 May 2014.
9. On 25 November 2014, after having considered the report of the Judge Rapporteur, Review Panel recommended to the Court the inadmissibility of the Referral.

## Summary of facts

10. On 10 March 1977, the Applicant established employment relationship with the socially owned enterprise „SOE Cooperative Prizrenkop“ (hereinafter: SOE Cooperative) where he used to work until 9 June 1999.
11. On 6 June 2008, the SOE Cooperative was privatized.
12. On 30 June 2009, the Privatization Agency of Kosovo (hereinafter: PAK) published the provisional list of employees who at that time were entitled to a share of 20% from the privatization of the enterprise SOE Cooperative, where the Applicant was not included.
13. On 19 August 2009, the Applicant filed an objection against the provisional list of 30 June 2009, published by PAK, in which he requested that his legitimate right to a share of 20% from privatization be recognized.
14. On 16 December 2010, the PAK published the final list of the employees who were entitled to a share of 20% from the privatization of the enterprise SOE Cooperative, where the Applicant was not included.
15. On 23 December 2010, the Applicant filed an appeal with the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber), in which he claimed to be a victim of the discriminatory policy of the management of the SOE Cooperative.
16. On 26 September 2012, the Special Chamber rendered the Judgment [SCEL-10-0040], by which the Applicant's appeal was approved as grounded.
17. On 17 October 2012, the Independent Trade Union and the Managing Committee of SOE Cooperative filed an appeal with the Appellate Panel of the Special Chamber against the Judgment [SCEL-10-0040] of the Special Chamber of 26 September 2012, by which they challenged the Applicant's right to 20% share. They also submitted evidence that supported the ground of their allegations that the Applicant is not the victim of a discriminatory policy.
18. On 25 April 2013, the Appellate Panel of the Special Chamber rendered the Judgment [no. AC-I-12-0115] by which the appeal of the Independent Trade Union and the Managing Committee of SOE Cooperative, of 17 October 2012, was approved whereas the Judgment [SCEL- 10-0040] of the Special Chamber, of 26 September 2012, was rejected as ungrounded.
19. In the conclusion of the Judgment of the Appellate Panel of the Special Chamber, it was stated that: *„the Appellate Panel finds that the appeal of 17 October 2012 is grounded, because the Applicant did not prove that he had been discriminated. On the contrary, the Independent Union and the Steering Committee substantiated their allegations by the fact that the brother of the Applicant and many other employees from minority communities worked at this enterprise until its privatization [...] therefore, the respondent's appeal is rejected as ungrounded“.*

## **Applicant's allegations**

20. In his Referral, the Applicant stated that based on the above, it can be concluded that he was discriminated and is still being discriminated as a member of the minority community in Kosovo.
21. The Applicant addresses the Court with the request:

*„that the Court declares unconstitutional Judgment [nr. AC-I-12-0115] of the Appellate Panel of the Special Chamber of 25 April 2013, since his constitutional rights as a member of national community are violated to him.“*

## **Admissibility of the Referral**

22. The Court notes that in order to be able to adjudicate the Applicants' referral, it needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
23. In this respect, Article 113, paragraph 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”.*

24. The Court emphasizes that the Applicant's Referral is considered from the aspect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, however, the Court notes that the Applicant has not specified in his Referral what constitutionally guaranteed rights and freedoms were violated by the Judgment [no. AC-1-12-0115] of the Appellate Panel of the Special Chamber, although Article 48 of the Law provides:

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*

25. In this case, the Court refers to Rule 36 (1) c) of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if:*

*[...]*

*c) the Referral is not manifestly ill-founded.”*

26. Furthermore, the Court notes that the Appellate Panel of the Special Chamber in the Judgment [no. AC-I-12-0115] of 25 April 2013, declared inadmissible the Applicant's appeal, with the reasoning: *„The Appellate Panel cannot accept as correct the approval of the discrimination aspect just because somebody is not*

*a member of majority community without any credible indicator regarding the possibility that the employee was really discriminated.”*

27. The Court also recalls that pursuant to Article 8.1 of the Anti Discrimination Law [Law no. 2004/3], is provided that:

*Article 8.1 “When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”*

28. Accordingly, the court holds that the explanation given by the Appellate Panel of the Special Chamber in Judgment [no. AC-I-12-0115] is clearly and legally substantiated, and that the proceedings before the Appellate Panel of the Special Chamber were not unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR Decision of 30 June 2009).
29. The Court points out that the mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of the provisions of the Constitution (see, *Mezotur Tiszazugi Tarsulat v. Hungary*, Appl. No. 5503/02, ECHR, Judgment of 26 July 2005).
30. In sum, the Court finds that the Applicant’s Referral does not meet the admissibility requirements, since the Applicant failed to prove that the challenged decision violates his rights guaranteed by the Constitution.
31. It follows that the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.


## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, on 25 November 2014, 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.

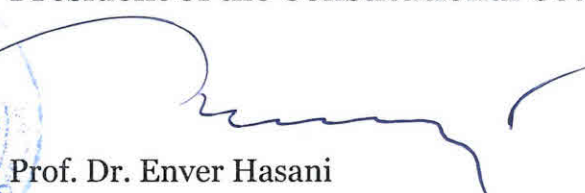
**Judge Rapporteur**



Arta Rama-Hajrizi



**President of the Constitutional Court**



Prof. Dr. Enver Hasani