



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

Prishtina, 3 December 2015
Ref. no.: RK866/15

RESOLUTION ON INADMISSIBILITY

in

Case Nr. KI99/15

Applicant

Axhi Thaçi

Constitutional Review of Judgment (SCEL-09-0009) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, of 12 November 2013

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 is submitted by Mr. Axhi Thaçi from Prizren (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Judgment (SCEL- 09-0009 of 12 November 2013) of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: Specialized Panel of the SCSC), which was served on the Applicant on 13 November 2013.

Subject Matter

3. The subject matter is the request for the constitutional review of the abovementioned Judgment of the Specialized Panel of the SCSC. The Applicant considers that the judgment was rendered *"by not respecting the equality of parties – employees during the preparation of the list for exercising the right to 20%,"* whereby Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) was violated.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on 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 Constitutional Court

5. On 23 July 2015, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 August 2015, by Decision GJR. KI99/15 the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision KSH. KI99/15 the President appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.
7. On 14 September 2015 the Court informed the Applicant and the Specialized Panel of the SCSC about the registration of the Referral.
8. On 14 October 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

9. On 31 August 2006 the SOE "Hotel Theranda" from Prizren was privatized.
10. The final list of employees eligible to 20% share from privatization of the SOE "Hotel Theranda" from Prizren was published in the daily newspapers on 21, 22, 23 and 24 May 2009.
11. In accordance with Article 67.6 of the Administrative Instruction 2008/06 in conjunction with Article 10.6 (a) of UNMIK Regulation No. 2003/13, the

complaint against the final list must be filed within 20 (twenty) days after the publication of the final list.

12. The deadline for filing appeals before the Specialized Panel of the SCSC against the final list of employees of the SOE "Hotel Theranda" was 13 June 2009.
13. On 22 June 2009 the Applicant (Appellant C-0022) filed an appeal with the Specialized Panel of the SCSC, by which he requested to be included in the final list of employees of the SOE "Hotel Theranda".
14. On 12 November 2013 the Specialized Panel of the SCSC by Judgment (SCEL-09-0009) rejected the Applicant's appeal (Appellant C-0022) as "... inadmissible as it was filed after the deadline..." with the following legal remedy:

"An appeal may be filed against this Judgment within 21 days with the Appellate Panel of the Special Chamber. [...] The provided deadline starts at midnight of the day when the Judgment was served on the Appellant in writing".

Applicant's Allegations

15. The Applicant alleges that the Specialized Panel of the SCSC rendered the challenged judgment *"by not respecting the equality of parties –the employees when compiling the list for exercising the right to 20% share,"* whereby Article 24 [Equality Before the Law] of the Constitution was violated as it follows:

"... I was denied the right to 20% share as an employee of SOE "Hotel Theranda" from Prizren, after its privatization ... completely without any basis, and on the first page of the list of the Judgment in question, were included persons and have exercised this right, who have not been active at all in this enterprise ... whereas I was removed from the list of 20%, even though I have been active and involved in this issue..."

16. The Applicant alleges that *"... I was ill and cured the psychiatric diagnosis from 08 April 2009 until 15 September 2009, which was the time limit for filing an appeal; I could not act due to health issues [...] and it is not true that I have been served with the Judgment – my signature is not in the delivery note"*.
17. The Applicant requests the Constitutional Court *"to enable me ... to be included in the list of exercising the right to 20% share, to which I am entitled after the privatization of the enterprise – SOE "Hotel Theranda"*.

Admissibility of the Referral

18. The Court shall examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedures.
19. The Court refers to Article 113.7 of the Constitution, which establishes:

“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”.

20. In addition, the Court 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”.

21. The Court further refers to Rule 36 (1) (c) of the Rules of Procedure, which foresees that:

“(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”.

22. The Court notes that the Judgment (SCEL-09-0009 of 12 November 2013) of the Specialized Panel of the SCSC, was served on the Applicant on 13 November 2013; the Applicant submitted his Referral to the Court on 23 July 2015; the Referral was filed with the Court after the expiry of 4 months from the date the Judgment of the Specialized Panel of the SCSC was served on the Applicant.

23. In this regard, the Court reiterates that the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is of preclusive nature and is established to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See case *O’LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).

24. It follows that the Referral was filed out the deadline provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible.

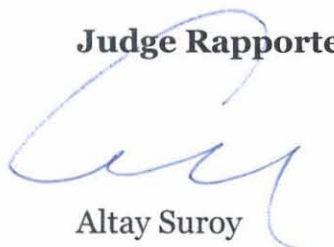
FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 49 of the Law, and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 14 October 2015, 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; and
- IV. This Decision is effective immediately.

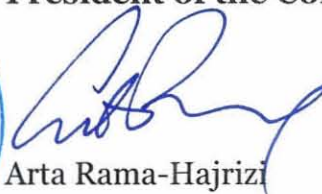
Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi