



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

Prishtina , 26 June 2014
Ref.no.:RK650/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI01/14

Applicant

Qazim Dragusha

**Constitutional Review of Decision ASC-11-0035 of the Special Chamber of
the Supreme Court of Kosovo, dated 23 November 2012**

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 is filed by Mr. Qazim Dragusha represented by Mr. Bejtush Isufi, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Decision ASC-11-0035 of the Special Chamber of the Supreme Court of Kosovo, dated 23 November 2012 served upon him on 12 January 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly *“is discriminatory to the detriment of the Applicant because it did not take into account all the evidence adduced by him and thereby denying him the entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise ‘Ramiz Sadiku’ in Prishtina”*.
4. In this respect, the Applicant claims violation of Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

Legal Basis

5. 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 Constitutional Court

6. On 3 January 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 30 January 2014, the President of the Constitutional Court, by Decision No. GJR. KI01/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI01/14, appointed a Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 26 February 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court of Kosovo (hereinafter, the Special Chamber) about the registration of the referral.
9. On 11 March 2014, the Court asked additional information from the Applicant and the Special Chamber.
10. On 13 March 2014, the Special Chamber submitted the required information by the Court.
11. On 2 April 2014, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

12. At some point in time, the Applicant was employed as a worker of the SOE “Ramiz Sadiku”.
13. On 27 June 2006, the SOE “Ramiz Sadiku” was privatized.
14. On 4, 5, and 7 March 2009, the Privatization Agency of Kosovo (hereinafter, the PAK) published a final list of eligible employees entitled to a share in the benefit from the fund of 20% of proceeds of the privatization. The final deadline for filing a complaint against the said list was 27 March 2009.
15. The Applicant complained against the final list of employees on 30 March 2009.
16. On 24 February 2011, the Trial Panel of the Special Chamber by Decision SCEL-09-0001 dismissed the Applicant’s complaint as inadmissible on the grounds of being untimely.
17. The Applicant filed an appeal with the Appellate Panel of the Special Chamber thereby alleging that he only filed his complaint with the Trial Panel only three to four days after the deadline, and that the Trial Panel should have taken into account the fact that there were objective difficulties for the Applicant to file a timely complaint.
18. On 23 November 2012, the Appellate Panel of the Special Chamber by Decision ASC-11-0035 upheld the Trial Panel’s decision and rejected the Applicant’s complaint as ungrounded.
19. In the abovementioned decision, the Appellate Panel of the Special Chamber, *inter alia*, reasoned: “*The Trial Panel correctly assessed that the complaints against the final list, which they filed after 27 March 2009, were untimely. As the Appellants did not submit a motion for restitution to the Trial Panel it is of no relevance whether they missed the deadline by their fault or not*”.

Applicant’s allegations

20. The Applicant claims that “... *for reasons of health I have missed the deadline, because during the deadline foreseen to file complaints I was suffering from a heart condition which can be verified by the medical reports, which I will attach later on since I don’t have the documentation with me because I have submitted it with the Special Chamber*”.
21. The Applicant claims that “... *because of illness I was languishing in my house; I could not get up from the bed and get informed by others about the deadlines*”.
22. The Applicant claims that “... *even though he has met all of the requirements he was not included in the final list of employees with the right to the 20%*”.

23. Finally, the Applicant claims violation of Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

Assessment of admissibility

24. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary first to examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

25. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“Individuals are authorized to refer violations by public authorities of their rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies.”

26. 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force”.

27. The Court also takes into account Rule 36 (1) b), of the Rules of Procedure, which provides:

(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.”

28. In this regard, the Court notes that the last decision complained of by the Applicant was served upon him on 12 January 2013, whereas the referral was submitted with the Court on 3 January 2014.

29. The Court notes that the Applicant did not submit his referral within the four months legal deadline as provided for in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure, as it was submitted with the Court almost one year after the date the challenged decision was served upon the Applicant.

30. The Court recalls that the object of the four month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is 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 challenge (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECtHR, Decision of 25 August 2005).

31. It follows, that the referral is out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule and 56 (2) of the Rules of Procedure, on 2 April 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.

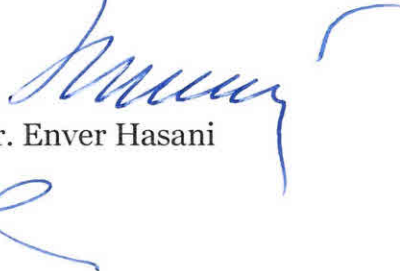
Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani