



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

Pristine, 15 January 2013
Ref. No.: RK343/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 104/12

Applicants

Azem Kabashi
Tahir Badalli
Osman Zajmi
Nafije Krasniqi

**Review of the Constitutionality and Legality of the final list of 20 % of the
sale proceeds from the privatization of the Socially Owned Enterprise
“Industria Ushqimore”, Prizren, drafted by the Privatization Agency of
Kosovo**

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

Applicants

1. The Referral was submitted by Mr. Azem Kabashi, residing in the Korishë Village of Prizren, Mr. Tahir Badalli, residing in the Zhur Village of Prizren, Mr. Osman Zajmi, residing in Prizren, and Mrs. Nafije Krasniqi, residing in Prizren.

Challenged decision

2. The Applicants challenge Privatization Agency of Kosovo (hereinafter: "PAK") list of workers eligible for 20 % of the sale proceeds from the privatization of the Socially Owned Enterprise "Industria Ushqimore", Prizren, (hereinafter: the "SOE").

Subject matter

3. The Applicants allege that PAK has wrongfully interpreted the provisions, Articles 10.1, 10.2 and 10.4 of UNMIK Regulation No. 2003/13 on the Transformation of the right of use to Socially Owned Immovable Property (hereinafter: UNMIK Regulation No. 2003/13).
4. The Applicants do not refer to any provision of the Constitution.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 19 October 2012, the Applicants submitted a proposal to assess the constitutionality and the legality of the PAK list of workers eligible for 20 % of the sale proceeds from the privatization of the SOE with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
7. On 23 October 2012, the Court requested the Applicants to complete the Referral in accordance with Rule 36.4 of the Rules of Procedure which provides: *"In the event that a Referral to the Court is incomplete or it does not contain the information necessary for the conduct of the proceedings, the Court shall request that the Applicant make the necessary corrections within a specified*

time-limit, not exceeding 30 days.” The Applicants have not submitted a reply to this request.

8. On 5 November 2012, the President of the Constitutional Court, with Decision No.GJR.KI-104/12, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-104/12, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
9. On 8 November 2012, the Referral was communicated to PAK.
10. On 6 December 2012, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 19 October 2012, the Applicants submitted only a five page Referral composed of: 1. Proposal for Review of the Constitutionality and Legality of the final list of 20 % drafted by the Privatization Agency of Kosovo; 2. The PAK list of workers eligible for 20 % of the sale proceeds from the privatization of the SOE published in the daily news paper Kosova Sot; and 3. UNMIK Regulation 2003/13.

Applicants' allegations

12. The Applicants alleges that PAK has wrongfully applied and interpreted the provisions, Articles 10.1, 10.2 and 10.4 of UNMIK Regulation No. 2003/13, when it removed the Applicants from the list of eligible workers for 20 % of the sale proceeds from the privatization of the SOE because they did not have three years of work with the SOE. Instead, allegedly, PAK has inserted four other workers who have not worked with the SOE at all.
13. The Applicants allege that they have worked with the SOE from 2001 until 2011 and that they meet the requirement of Article 10.1, 10.2 and 10.4 of UNMIK Regulation 2003/13.

Assessment of the admissibility of the Referral

14. The Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether they have fulfilled the

admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

15. In this respect, the Court refers to Article 113.1 [Jurisdiction and Authorized Parties] of the Constitution which provides that *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*
16. The Court also refers to Rule 29 (2) (Filing of Referrals and Replies) which provides that: *“(2) The Referral shall also include: (a) the name and address of the party filing the referral; (b) the name and address of representative for service, if any; (c) a power of Attorney for representative, if any; (d) the name and address for service of the opposing party or parties, if known; (e) a statement of the relief sought; (f) a succinct description of the facts; (g) the procedural and substantive justification of the referral; and (h) the supporting documentation and information.”* Furthermore, pursuant to Rule 29 (3) it is provided that: *“(3) Copies of any relevant documents submitted in support of the referral shall be attached to the referral when filed. If only parts of a document are relevant, only the relevant parts are necessary to be attached.”*
17. In the present case, the Applicants have not:
 - a. submitted any supporting documentation whether they have exhausted all the legal remedies;
 - b. substantiated a claim on constitutional grounds; and
 - c. provided any evidence that their rights and freedoms have been violated by a public authority.
18. It follows that the Referral is inadmissible because it is manifestly ill-founded pursuant to Rule 36 (2) of the Rules of Procedure which provides that: *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: a) the Referral is not prima facie justified, or b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or d) when the Applicant does not sufficiently substantiate his claim;.”*

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2) and Rule 56 (2) of the Rules of Procedure, on 6 December 2012, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20(4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan

President of the Constitutional Court




Prof. Dr. Enver Hasani