



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

Prishtina, on 19 June 2014
Ref. no.:RK643/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI104/13

Applicant

Adem Maloku

Constitutional review of the Decision ASC-11-0069, of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 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. Adem Maloku, represented by Mr. Ali Latifi, lawyer from Prishtina.

Challenged decision

2. The Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 22 April 2013.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rules 56 (1) and 74 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Subject matter

4. The subject matter of the Referral is the constitutional review of the Ruling ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 April 2013, regarding the alleged right of the Applicant to be included on the list of employees, to enjoy the right to a share of proceeds from the privatization of SOE KNI "Ramiz Sadiku" in Prishtina.

Proceedings before the Constitutional Court

5. On 16 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 August 2013, the President, by Decision No. GJR. KI104/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI104/13, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović (members).
7. On 29 August 2013, the Applicant was notified of the registration of Referral. On the same day, the Referral was communicated to the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber).
8. On 26 September 2013, the Court requested from the Applicant to clarify some aspects of his Referral.
9. On 13 September and 3 October 2013, the Court requested clarification from the Special Chamber of the decisions of the Trial Panel and the Appellate Panel of the Special Chamber regarding the Referral and the Applicant's allegations.
10. On 13 March 2014, the Review Panel after deliberating on the preliminary report appraised that the report needed further supplementation and decided to postpone its deliberation to another date.
11. On 18 March 2014, the Court asked the Applicant to comment on the clarifications of the Special Chamber dated 3 September respectively 3 October 2013.

12. On 1 and 2 April 2014, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On an unspecified date, the Applicant was employed as an employee of the SOE "Ramiz Sadiku".
14. On 27 June 2006, the SOE "Ramiz Sadiku" was privatized.
15. On 23 March 2009, the Applicant filed an appeal with the Special Chamber against the Privatization Agency of Kosovo (hereinafter: the PAK), whereby requesting to be included on the list of eligible employees to a share of proceeds from the privatization of the SOE KNI "Ramiz Sadiku" in Prishtina.
16. On 10 June 2011, the Trial Panel of the Special Chamber, by Judgment SCEL-09-0001, rejected the Applicant's appeal as inadmissible.
17. By the above-mentioned Judgment, SCEL-09-0001, of 10 June 2011, the Trial Panel of the Special Chamber, reasoned among the other:

"... The Trial Panel notes that at the time of privatization, the appellant was older than 65, according to the documents in the case file (born on 1 October 1939)..."

"The Trial Panel considers that the appellant does not fulfill requirements of Article 10.4 of UNMIK Regulation 2003/13 as amended, since he reached the retirement age prior to the privatization of the SOE, 27 June 2006".

18. On 24 October 2011, the Applicant filed an appeal with the Appellate Panel of the Special Chamber, against the Judgment of the Trial Panel.
19. On 22 April 2013, the Appellate Panel of the Special Chamber, by Ruling ASC-11-0069, rejected as ungrounded the Applicant's appeal, reasoning among the other:

"The Trial Panel found that the Appellant has met the requirements to be included on the list of employees, who are eligible to 20% share of proceeds from privatization of the SOE, therefore the appeal is inadmissible".

20. On 13 September 2013, the Court requested from the Special Chamber to clarify the abovementioned uncertainties between the Judgment SCEL-09-0001 and the Ruling ASC-11-0069, rendered by the Trial Panel, respectively the Appellate Panel of the Special Chamber.
21. On 20 September 2013, regarding the Applicant's referral, the Court received clarification from the Appellate Panel of the Special Chamber, where it was stated among the other:

“The Appellate Panel, following the review of the appeal, noted that Mr. Maloku (the Applicant) filed appeal erroneously, since he was included on the list. The Appellate Panel should have provided a solution to this appeal, therefore, such appeals are inadmissible by the Appellate Panel, because the latter is included on the list to benefit the right to 20 percent from the proceeds from the sale-privatization of the enterprise and should not have filed the appeal.”

22. On 3 October 2013, the Court requested from the Special Chamber to submit relevant documents, which would finally clarify whether the Applicant was included on the list of employees entitled to the right to a share of proceeds from the privatization of the SOE "Ramiz Sadiku", or not.
23. On 17 October 2013, the Court received another clarification, from the Appellate Panel of the Special Chamber, where is stated among the other:

“The Appellate Panel by Ruling ASC-11-0069 of 18 April 2013, rejected the appeal of the appellant (ASC-11-0069-A0091), as inadmissible, meaning for Mr. Adem Maloku from the village Bradash... Here was created a confusion due to the same names and surnames, therefore there was made an error in the procedure. It is clear that the appeal of Mr. Adem Maloku (the Applicant) from the village Bellopojë of Podujeva with number 619, was rejected in the first instance as ungrounded, and that the Appellate Panel, had to included the appeal of the appellant in the Judgment ASC-11-0069 of 22 April 2013 and to decide on merits, by rejecting his appeal as ungrounded.

Therefore, I inform you that even the appeal of the appellant Adem Maloku from Bellopoja was reviewed, it would have been rejected as ungrounded, because he has not fulfilled the requirements, provided by Article 10.4 of UNMIK Regulation 2003/13, because he reached the retirement age prior to the date of privatization of the SOE”.

24. On 20 March 2014, pertinent to the aforementioned clarifications by the Special Chamber, the Applicant, *inter alia*, remarked: “...the comments of this special court, [...] are contradictory to each other, I am not saying this but they are proving it themselves”.

Applicant’s allegations

25. The Applicant alleges: “... the Decision ASC-11-0069, of 18.04.2013, page no. 4, the reasoning for Adem Maloku that he is entitled, but excluded direct hearing that is a serious violation of the procedure”.
26. The Applicant also alleges: “...the Court itself (Special Chamber) has concluded that he was unjustly removed from the list of 20%”.
27. The Applicant requests to be included on the list of employees, entitled to the legitimate rights to proceeds accumulated from the privatization of SOE “Ramiz Sadiku” and also alleges “...I have been removed from the list by irresponsible

people. This is certified also by the Supreme Court which did not instruct me what to do, did not give me legal advice for what I am entitled to.”

Relevant provisions

Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Article 14

Repeal of Prior Legislation; Conflicts; Interpretation

4. In interpreting and applying this law, where necessary to resolve a procedural issue not sufficiently addressed in this law, the Special Chamber shall apply, mutatis mutandis, the relevant provision(s) of the Law on Contested Procedures.

LAW NO. 03/L-006 ON CONTESTED PROCEDURE

Article 165

Correction of the decision

165.1 Mistakes on the names and numbers as well as other written and calculating mistakes, absence in a aspect of ways of decision and discrepancies of copies with the original are corrected by the court in every time.

Assessment of admissibility

28. In order to be able to adjudicate the Applicant's Referral, the Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
29. The Court refers to Article 113.7 of the Constitution, which 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”.
30. The Court also 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.*
31. With regards to the Applicant's allegations to enjoy the right to 20% of proceeds from the privatization of the SOE 'Ramiz Sadiku', the Court notes that the Trial Panel rejected the Applicant's appeal as inadmissible, because he had reached

the retirement age before the privatization of the SOE "Ramiz Sadiku", on 27 June 2006.

32. The Court also notes that the Appellate Panel of the Special Chamber responded that the Applicant does not enjoy the right to 20% share of the proceeds from the privatization of the SOE "Ramiz Sadiku", because he had reached the retirement age before the date of privatization of the enterprise above.
33. As to the clerical errors or confusion of identities, the Court considers that they are the matter of legality and that it is not its task to correct the errors of such nature of the regular courts.
34. Furthermore, the Court notes that the Applicant's Referral does not have merits in substance, because the Trial Panel, namely the Appellate Panel of the Special Chamber has concluded that the Applicant does not enjoy the right to 20% share of proceeds from the privatization of the SOE "Ramiz Sadiku", because he has reached the retirement age before the date of privatization of the enterprise above.
35. The Constitutional Court recalls that it is not a fact-finding Court and correct and complete determination of the factual situation is within the full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility of 5 April 2012).
36. Moreover, the Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
37. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (See case *Mezotur- Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).
38. In these circumstances, the Applicant has not substantiated his allegation of a violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution.

39. Consequently, 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 1 and 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

President of the Constitutional Court


Dr. sc. Kadri Kryeziu


Prof. Dr. Enver Hasani

