



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

Prishtina, 17 June 2013
Ref. No.:RK426/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 110/12

Applicant

Dara Menkovič

**Constitutional Review of the Decision to publish the final list of 20 %
compiled by 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 and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Referral was submitted by Ms. Dara Menkovič, with residence in Cernicë, village in municipality of Gjilan.

Challenged decision

2. The Applicant challenges the Decision to publish the final list and the non-payment of 20% share from privatization of the textile enterprise "INTEGJ" with its seat in Gjilan, by the Privatization Agency of Kosovo (hereinafter: "the PAK").

Subject matter

3. The Applicant complains that she was excluded from the payment of 20 % share from privatization of Socially Owned Enterprise "INTEGJ" with seat in Gjilan, despite timely submission of all the necessary documents for payment of this amount.
4. The Applicant does not refer to any provision of the Constitution.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, dated 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: Rules of Procedure).

Proceedings before the Constitutional Court

6. On 1 November 2012, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo.
7. On 6 November 2012, the Court requested from the Applicant to fill in the Referral pursuant to the Rule 36.4 of the Rules of Procedure.
8. On 22 November 2012, the Applicant submitted an additional document to the Court "Resolution on determination of the coefficient for payment of salary."
9. On 4 December 2012, the President by Decision No.GJR.KI-110/12 appointed the Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI-110/12, appointed Review Panel composed of judges: Snezhana Botusharova (Presiding Judge), Ivan Čukalović and Arta Rama-Hajrizi.
10. On 14 December 2012, the Court notified PAK regarding the registration of the Referral.
11. On 5 February 2013, the Court requested from PAK to provide comments within the time limit of 15 days as to why the Applicant has been excluded from the list and why she has not received the amount (20 %) from the sale proceeds of Socially Owned Enterprise "INTEGJ" with seat in Gjilan.
12. On 14 February 2013, PAK responded to the issues raised by the Court.

13. On 29 April 2013, by Decision (No.KSH.KI110/12) of the President is replaced a judge in the Review Panel, thereby President Prof.Dr.Enver Hasani is appointed as member of the Review Panel under No.KSH110/12, instead of Judge Arta Rama-Hajrizi.

Summary of facts

14. The Applicant complains that, against her will, she was excluded from the payment of the 20% share from privatization of Socially Owned Enterprise "INTEGJ" with its seat in Gjilan, despite submission of all necessary documents for payment of this amount on time.
15. On 14 February 2013, PAK in its response addressed to the Court regarding the issues raised by the Court, stated that the Applicant is on the final list of eligible employees to 20% share from privatization of Socially Owned Enterprise "INTEGJ" from Gjilan. In its response PAK states further that some of complainants have challenged the Applicant's right to receive this amount, therefore the Applicant has not been excluded from the list but her right was challenged by the complainants and PAK is waiting for the decision on merits of Special Chamber of Supreme Court regarding the objection in order to proceed further with the distribution of means.

Applicant's allegations

16. The Applicant alleges that PAK during the procedure for distribution of 20 % share from the privatization of the enterprise "INTEGJ" with its seat in Gjilan made discrimination with payment of eligible employees to payment pursuant to Article 2 paragraph 1 item a-b, pursuant to Article 3 paragraph 1 in conjunction with Article 4 paragraph a, i, j, k of the Anti-Discrimination Law no. 2004/3, since other employees, who were on the list have received an amount of means from 20 %.
17. The Applicant alleges that "she was on this list, but that she did not receive money, respectively she alleges that she was excluded from payment against her will".

Preliminary assessment of admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court first has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
19. With respect to this, the Court is referred 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."*
20. PAK in the letter dated 14 February 2012, addressed to the Court states that the Applicant's right to receive 20% share from privatization of Socially

Owned Enterprise "INTEGJ" with seat in Gjilan, was challenged by the complainants and that PAK is waiting for the decision on merits of the Special Chamber of Supreme Court, regarding the challenge to proceed further with the distribution of means. As long as there is ongoing process and there is no final decision by Special Chamber of Supreme, the Applicant has not exhausted all legal remedies.

21. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective legal remedy for the protection of the constitutionally guaranteed rights. (see *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999)
22. This Court applied the same reasoning when rendered Decision on inadmissibility of 27 January 2010, on the grounds of non-exhaustion of legal remedies in case No.KI41/09, AAB-RIINVEST University L.L.C., Prishtina, against the Government of Republic of Kosovo; and the Decision on case no.KI73/09 of 23 March 2010, Mimoza Kusari-Lila against the Central Election Commission.
23. Based on the document sent by PAK on 14 February 2013, it can be understood that the matter raised by the Applicant is still pending before the Special Chamber of the Supreme Court therefore the referral is premature. The Applicant has not exhausted legal remedies provided by law, as required, in order to be able to submit the Referral to the Constitutional Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 36.1 item (a) of the Rules of Procedure, on 16 June 2013, 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

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani