



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

Pristina, 7 March 2014
Ref. No.: RK572/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI112/13

Applicant

Bajram Sfishta

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

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. Bajram Sfishta (hereinafter: “the Applicant”), residing in Podujeva.

Challenged Decision

2. The Applicant challenges the decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, ASC-11-0035 of 23 November 2012, which was served on him on 15 January 2013.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly denied the Applicant's "*entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter "SOE 'Ramiz Sadiku')"*".
4. In this respect, the Applicant does not invoke violation of any constitutional provision in particular.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"), Article 47 of the Law No. 03/L-121 of the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56 of the Rules of Procedure of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Procedure before the Court

6. On 25 July 2013, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter "Court").
7. On 5 August 2013, the President, by Decision No. GJR. KI112/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI112/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 26 August 2013, the Court notified the Applicant about the registration of the referral. On the same date, the Privatization Agency of Kosovo (hereinafter: the "PAK"), was notified of the Referral.
9. On 24 September 2013, the Court asked the Applicant to submit additional documents. On the same date, the Special Chamber of the Supreme Court of Kosovo (hereinafter: the "Special Chamber"), was notified of the Referral.
10. On 2 December 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the referral.

Summary of facts

11. At some point in time, the Applicant was employed as a worker of the SOE "Ramiz Sadiku."
12. On 27 June 2006, the SOE "Ramiz Sadiku" was privatized.
13. On 4, 5 and 7 March 2009, the PAK published a final list of eligible employees entitled to a share of the proceeds from the privatization of the SOE "Ramiz Sadiku", along with a legal deadline for filing a complaint against the list by 27 March 2009.
14. On 30 June 2009, the Applicant filed a complaint with the Trial Panel of the Special Chamber against the final list of employees.
15. On 24 February 2011, the Trial Panel of the Special Chamber by Decision SCEL-09-0001 ruled that the Applicant's complaint against the final list of employees was filed after the legal deadline. The Trial Panel dismissed the complaint as inadmissible.
16. The Appellant filed an appeal with the Appellate Panel of the Special Chamber against the Trial Panel Decision SCEL-09-0001 dated 24 February 2011.
17. On 23 November 2012, the Appellate Panel of the Special Chamber by Decision ASC-11-0035 upheld the Trial Panel Decision SCEL-09-0001 dated 24 February 2011.
18. The Appellate Panel of the Special Chamber by Decision ASC-11-0035, dated 23 November 2012, reasoned *inter alia* that: "...the Trial Panel correctly assessed that the complaint against the final list, which he (Applicant) filed on 27 March 2009, was untimely. As the Appellant (Applicant) did not submit a motion for restitution to the Trial Panel it is of no relevance whether he missed the deadline by his fault or not.

Applicant's Allegations

19. The Applicant claims that "*he has worked in the SOE 'Ramiz Sadiku' in Prishtina for many years until 28 February 1990 whereby Serbian forces coercively removed him from work and discriminated him.*"
20. The Applicant alleges that at the time the names were published in the Kosovo daily newspapers, he was ill and did not see the names. Furthermore, he alleges that once he learned of the privatization through friends, he filed a claim with the PAK, but the claim was rejected as being out of time.
21. The Applicant alleges that his rights guaranteed by the Constitution were violated, to his detriment, by the PAK and the Special Chamber because he has contributed to the SOE "Ramiz Sadiku" for many years and therefore he is allegedly entitled to a share of proceeds from the privatization of said SOE.
22. The Applicant has not invoked any constitutional provisions in particular.

Assessment of Admissibility

23. 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.

24. 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 individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.

25. The Court notes that the Applicant has filed complaints before the PAK and subsequently before the Trial Panel and Appellate Panel of the Special Chamber. The Applicant has exhausted all legal remedies as is prescribed by Article 113(7) of the Constitution.

26. The Court also 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 (...)”.

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. From the submitted documents, the Court ascertains that the Applicant has filed his referral on 25 July 2013, whereas the last decision of the Special Chamber was served on him on 15 January 2013. The Applicant has filed his referral with the Court forty days (40) later than the legal deadline prescribed by Article 49 of the Law and rule 36 (1) b) of the Rules of procedure.

29. It follows that the referral is out of time.

30. Therefore, the referral must be rejected as inadmissible in compliance with Article 49 of the Law and rule 36 (1) b) 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 56.2 of the Rules of Procedure, on 2 December 2013, unanimously:

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20(4) of the Law; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court


Arta Rama-Hajrizi




Prof. Dr. Enver Hasani