



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

Prishtina, on 13 December 2013
No. ref.:RK516/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI132/13

Applicant

Muharrem Shabani

Constitutional review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, SCEL-09-0001, of 24 February 2011

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 Muharrem Shabani from village Bradash, Municipality of Podujevo (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: the Trial Panel of the Special Chamber), SCEL-09-0001, of 24 February 2011.

Subject matter

3. The subject matter is the realization of the right to the 20 % share from the privatization of the socially-owned enterprise Ramiz Sadiku (hereinafter: SOE Ramiz Sadiku), in Prishtina.

Legal basis

4. The Referral is based on Articles 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 20 and 22.7 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 paragraph 2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 27 August 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 September 2013, the President appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of the Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 17 September 2013, the Court informed the Applicant and the Special Chamber of the Supreme Court of the registration of the Referral.
8. On 21 October 2013, 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 the facts

9. The Applicant had an established employment relationship with "SOE Ramiz Sadiku" from 15 August 1974 all the way through 10 July 1994.
10. On 8 March 1995, Pension and Invalidity Insurance Fund issued a decision awarding to the Applicant an invalidity pension due to a disease.
11. On 27 June 2006, SOE "Ramiz Sadiku" completed the privatization process.
12. On 27 March 2009, Privatization Agency (hereinafter: the Agency) published the final list of employees who were entitled to the 20 % share from the privatization of SOE "Ramiz Sadiku".

13. On 18 February 2010, the Applicant filed a complaint with the Special Chamber of the Supreme Court against the final list of employees prepared by the Agency because he, as a former employee, was not included in the list.
14. In the complaint he stated that due to a disease he was not able to file an objection to the preliminary list within the legal deadline.
15. On 24 February 2011, the Trial Panel of the Special Chamber issued Decision SCEL-09-0001 rejecting the Applicant's complaint as inadmissible.
16. In the reasoning of its decision, the Trial Panel of the Special Chamber stated: *"taking into consideration that the Applicant's complaint was received on 18 February 2010, which means after the expiry of the deadline for submission of complaints, there is no possibility to enable the return to previous situation, respectively for the Applicant's complaint to be considered as if it were filed within the deadline. Having that in mind, the Trial Panel of the Special Chamber rejects the Applicant's complaint as inadmissible "*.

Applicant's allegations

17. The Applicant alleges that the said Decision violates his right to work and his right to human dignity because he has worked for 20 years in the above-mentioned enterprise.
18. The Applicant addresses the Constitutional Court with the request:

„He wishes that the 20% share from the privatization be awarded also to him as he is entitled to it under the applicable law“.

Assessment of the admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
20. In this regard, the Court notes that Article 113.7 of the Constitution provides:

"7. 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."

Furthermore, Article 47.2 of the Law provides: *"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

21. In that regard, the subsidiarity principle means that the Applicant should exhaust all procedural possibilities in a regular proceeding in order to prevent a

violation of the Constitution, or if there is a violation, to put right such violation of the fundamental human rights.

22. In the present case, the Court notes that the Applicant has not filed an appeal with the Appellate Panel of the Special Chamber of the Supreme Court against the Decision of the Special Chamber Trial Panel SCEL-09-0001, of 24 February 2011, to which he was entitled under the law.
23. The Court also refers to article 10.6 (Judgments, Decisions and Appeals) of the Law no.04/L-033 on Special Chamber, which provides:

“A party shall have the right to appeal any Judgment or Decision of a single judge, sub-panel or specialized panel – or of a court having jurisdiction over a claim, matter, proceeding or case under paragraph 4. of Article 4 of the present law to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty one (21) days...”

24. The Court wishes to emphasize that the rationale for the legal remedies exhaustion rule, is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the legal order of Kosovo will provide an effective legal remedy for the violation of the constitutional rights. (See case, Selmouni v. France, no. 25803/94, ECtHR, Decision of 28 July 1999).
25. In that regard, the Court concludes that the Applicant has not exhausted the legal remedies available to him under the applicable law, as it is provided by Article 113.7 of the Constitution and Article 47.2 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) a) of the Rules of Procedure, 21 October 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;
- IV. This Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani