



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

Prishtina, 28 April 2014
No. ref.: RK572/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI134/13

Applicant

Shaban Puka

Constitutional Review of the Judgment SCEL-10-00013, of the Special Chamber of the Supreme Court, of 26 December 2012 and Judgment AC-I-13-0004 of the Appellate Panel of the Special Chamber of the Supreme Court, of 22 August 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 Referral is submitted by Mr. Shaban Puka (hereinafter: the “Applicant”), residing in the village Pleshina, Municipality of Ferizaj.

Challenged decision

2. The Applicant challenges the Judgment SCEL-10-00013, of the Special Chamber of the Supreme Court, of 26 December 2012, affirmed by the Judgment AC-I-13-0004 of the Appellate Panel of the Special Chamber of 22 August 2013.

Subject matter

3. The Applicant requests the constitutional review of the Judgment SCEL-10-00013 of the Special Chamber of the Supreme Court, which allegedly violates his human rights as guaranteed by the Constitution. However the Applicant did not specify which constitutional provisions have allegedly been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 2 November 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 29 December 2013, the President of the Constitutional Court by Decision GJR KI134/13 appointed Judge Robert Carolan as Judge Rapporteur. On the same day, by Decision KSH134/13 the President appointed the Review Panel composed of Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 11 October 2013, the Applicant was notified of the registration of the Referral.
8. On 4 November 2013, the Applicant was asked to supply additional documents to the Court, which were mentioned in the referral, although not enclosed. The Applicant has not answered this request.
9. On the same date, the Court requested additional information from the Special Chamber of the Supreme Court related to the Applicant's referral.
10. On 03 December 2013, the Court received the requested information from the Special Chamber of the Supreme Court.
11. On 13 March 2014, after having reviewed the report of the Judge Rapporteur Robert Carolan, the Review Panel composed of judges: Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

12. On 23 July 2007, Socially Owned Enterprise “Agricultural Cooperative – Ferizaj” (hereinafter SOE– Ferizaj) was privatized.
13. On 1, 2 and 3 September 2010, the Privatisation Agency of Kosovo (hereinafter: PAK) published a final list of eligible employees entitled to a 20 % share of the proceeds, as a result of the privatization.
14. On 5 July 2011, the Applicant filed a complaint with the Special Chamber to be included in the final list of eligible employees.
15. In its written remark, PAK requested from the Special Chamber to reject the complaint as inadmissible because the complaint was submitted more than 20 days after the publication of the list of eligible employees. The deadline to submit the complaint was 27 September 2010, while the applicant filed the complaint on 5 July 2011.
16. On 14 September 2011, the Special Chamber sent the written remark of PAK to the Applicant, and requested the Applicant to explain why there was a delay in submitting the complaint.
17. On 26 December 2012, the Special Chamber rendered Judgment SCEL-10-00013, in which *inter alia* it stated that:

“The complaint of Shaban Puka (the Complainant C0005) is inadmissible; because it is submitted after the deadline for submission of complaints. The last date for submission of the appeal with the Special Chamber of the Supreme Court related to the issues of Privatisation Agency of Kosovo was 27 September 2010, while the complaint of the complainant was submitted on 5 July 2011. The deadline for return to the previous state which is foreseen by the Law on Contested Procedure was also missed by the time when the complaint was submitted. The Complainant (C0005) during the session and in his statement has stated that the reason for his delay in submitting the complaint is due to ill health , since during the time of publication of the final list of the eligible employees, he was in Prevala for recovery, as instructed by the doctors.”

[...]

“The Specialized panel cannot consider as a sufficient justification the statement of the Complainant, the last date of publication of the list was 4 September 2010, while the complaint was submitted much later , on 5 July 2011, more than (7) months later.”

18. In the letter of 4 November 2013, the Court requested from the Special Chamber the following:

“In his request, Mr. Puka appeal filed against the decision SCEL-10-00013, but did not provide information whether the Appellate Panel of the Special Chamber of the Supreme Court has decided on his complaint.

In order for the Constitutional Court to decide on Mr. Puka's referral, please provide the necessary information and documents regarding the eventual steps taken by the Appellate Panel of the Special Chamber".

19. In the reply to the Court's request for additional information the Special Chamber of the Supreme Court provided that:

"In this case 5 Appellants appealed against the Decision of the Specialized Panel SCEL-10-0013, dated 26 December 2012. Among the Appellants was also Shaban Puka, from the village Pleshinë, MA Feruzaj. With Judgment of the Appellate Panel, AC-I-13-0004, dated 22 August 2013, three appeals were accepted as grounded, whereas two were ungrounded, as it is the case also with Mr. Puka.

In the first instance the complaint of Mr. Puka was dismissed as untimely, whereas in the second instance, the Appellant with his appeal failed to provide evidence as to the reason of not filing the complaint within the prescribed legal time limit.

The final time limit for filing a complaint was 27 September 2010, whereas his complaint was filed on 5 July 2011.

Thus, the Appellate Panel deliberated and it was confirmed that the Decision was served to Mr. Puka."

The Law

REGULATION NO. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY OWNED IMMOVABLE PROPERTY

"10.6 Upon application by an aggrieved individual or aggrieved individuals, a complaint regarding the list of eligible employees as determined by the Agency and the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13".

(a) The complaint must be filed with the Special Chamber within 20 days after the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission".

Applicant's allegations

20. The Applicant does not invoke any constitutional violations in particular, but he claims: *"I want my right to 20% from the privatization, which my colleagues are enjoying to be recognized."*

Preliminary Assessment on the Admissibility of the Referral

21. The Court notes that to be able to adjudicate upon the Applicant complaint, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

22. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

“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”.

23. The Court notes that the Applicant has neither described the facts of the case nor has he substantiated his complaints. Instead he has only argued that he wants to be included in the final list of eligible employees, in order to obtain the 20% share that he is entitled to from the proceeds of the privatization of SOE - Ferizaj.

24. In this regard, the Court takes into account Rule 36 of the Rules of Procedure, which provides:

“(1) The Court may review referrals only if: (c) The referral is not manifestly ill-founded.”

25. The Constitutional Court notes that the Applicant has failed to comply with the deadlines that are foreseen by the legal provisions of Regulation No. 2003/13 on the transformation of the right of use to socially owned immovable property, which are applicable in his case. The Applicant was given the opportunity, but he failed to provide reasonable justification for his delays.

26. The Court, therefore, considers that there is nothing in the Referral which indicates that the case lacked impartiality or that proceedings were otherwise unfair (see, *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

27. In conclusion, the Applicant has neither built a case on a violation of any of his rights guaranteed by the Constitution nor has he submitted any *prima facie* evidence of such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

28. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to the Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1), c) of the Rules of Procedure, on 11 March 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani