



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

Prishtina, on 10 February 2014
Ref.no.:RK 547/14

RESOLUTION ON INADMISSIBILITY

in

Cases Nos.

KI135/13

KI137/13

KI138/13

Applicants

Isuf Isufi, Tahir Sejdiu and Abedin Halimi

**Constitutional review of the Decision ASC-11-0069 of the
Appellate Panel of the Special Chamber of the Supreme Court of Kosovo,
dated 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 .

The Applicants

1. The Referrals KI135/13, KI137/13 and KI138/13 were submitted, respectively, by Mr. Isuf Isufi, Mr. Tahir Sejdiu and Mr. Abedin Halimi, all from Podujevo (hereinafter, the Applicants).

Challenged decisions

2. The Applicants challenge the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 22 April 2013, and related with the Judgment SCEL-09-0001 of the Trial Panel of the Special Chamber, dated 10 June 2011. The last decision was served on the Applicants on 29 April 2013.

Subject matter

3. The subject matter of the Referrals is the constitutional review of the challenged decision, which denied to the Applicants the entitlement to a share of proceeds allegedly acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter, SOE "Ramiz Sadiku"). The Applicants *"believe that (...) human rights and labor rights have been violated and (...) have been discriminated"*.

Legal basis

4. The Referrals are based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the Law), and Rules 29 and 37 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 3 September 2013, the Applicants have submitted their referrals with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 24 September 2013, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 8 October 2013, the President ordered the Joinder of the Referral KI 137 and KI 138 to the Referral KI 135/13.
8. On 9 October 2013, in accordance with Rule 37 of the Rules of Procedure, the Court notified the Applicants about the registration and joinder of the Referrals. On the same date, the Court communicated the Referrals to the Special Chamber. The Applicants did not file any request in relation to the joinder of the Referrals.
9. On 31 October 2013, the Court requested to the Special Chamber additional documents.
10. On 4 and 13 November 2013, the Special Chamber replied to the Court's request.

11. 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

12. In March 2009, the Applicants started judicial proceedings with the Trial Panel of the Special Chamber in order to ensure their alleged right to be included in the list of employees entitled to a share of proceeds from the privatization of the SOE "Ramiz Sadiku", which was privatized on 27 June 2006.
13. Finally, on 22 April 2013, the Appellate Panel of the Special Chamber of the Supreme Court (Judgment ASC-11-0069) rejected the appeals of the Applicants and upheld the Judgment of the Trial Panel of the Special Chamber, establishing that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as they reached the retirement age prior to the privatization of the SOE "Ramiz Sadiku".

Applicants' allegations

14. The Applicants claim that *"they have worked in the SOE "Ramiz Sadiku" in Prishtina for many years until 28 February 1990 whereby Serbian forces coercively removed them from work and discriminated them"*.
15. The Applicants allege that the Kosovo Privatization Agency and the Special Chamber violated their rights guaranteed by the Constitution, because they had contributed to the SOE "Ramiz Sadiku" for many years, and, therefore, are allegedly entitled to a share of proceeds from the privatization of said SOE. The Applicants do not invoke any constitutional provision in particular.

Assessment of admissibility

16. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
17. In this respect, the Court refers to Article 113 (7) of the Constitution, which establishes:

"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."

18. However, 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".

19. The Court further 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...”.

20. The Court notes that the Applicants have filed their Referrals on 3 September 2013, whereas the final decision of the Appellate Panel of the Special Chamber was served on them on 29 April 2013. Thus, 29 August 2013 was the last day of the deadline for the Applicants to file the Referral.

21. The Court considers that the Applicants have filed their referrals with the Court four (4) days later than the legal deadline prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of procedure.

22. It follows that the Referrals are out of time.

23. Therefore, the Referrals must be rejected as inadmissible in accordance with 113 (7) of the Constitution, 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 49 of the Law, and Rule 36 (1) b) of the Rules of procedure, on 2 December 2013, unanimously:

DECIDES

- I. TO REJECT the Referrals 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



Almiro Rodrigues



President of the Constitutional Court



Prof. dr. Enver Hasani