



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

Prishtina, 10 June 2013
Ref. No.: RK421/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI13/13

Applicant

Nexhat Tahiri

**Constitutional review of the Resolution of the Special Chamber of the
Supreme Court of Kosovo ASC-09-0042 of 29 August 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 Nexhat Tahiri from Gjilan.

Challenged decision

2. The challenged decision is the Resolution of the Special Chamber of the Supreme Court of Kosovo ASC-09-0042 of 29 August 2012, by which the Applicant's appeal against the Resolution of the Special Chamber of the Supreme Court Kosovo ASC-09-0030 of 9 July 2009 was rejected as unfounded.

Subject matter

3. The subject matter is the legal-property dispute between the Applicant and third parties regarding the right to work and other property rights that the workers are entitled to in the privatization procedure which was concluded by the Resolution of the Special Chamber of the Supreme Court of Kosovo ASC-09-0042 of 29 August 2012, which according to Applicant's allegations has violated a number of Articles of the Constitution of the Republic of Kosovo.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 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 (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 4 February 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 March 2013, the Constitutional Court requested from the Special Chamber of the Supreme Court of Kosovo and Kosovo Privatization Agency to submit additional documents including proof as to when the Applicant received the Resolution of the Special Chamber of the Supreme Court of Kosovo ASC-09-0042 of 29 August 2012.
7. On 26 March 2013, the Special Chamber of the Supreme Court of Kosovo submitted to the Court the return receipt which proves that the Applicant received the Resolution of the Special Chamber of the Supreme Court of Kosovo ASC-09-0042 of 29 August 2012 on 6 September 2012.
8. On 15 May 2013 after having considered the report of Judge Rapporteur Kadri Kryeziu, the Review Panel composed of Judges: Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

9. The Applicant engaged in litigation concerning the termination of the employment relationship with the Industrial – Agricultural Combine „AGROKULTURA“ from Gjilan, and at the same time he requested to be

included in the list of eligible workers to the share of 20% of the proceeds from the privatization of the enterprise.

10. This litigation ended with the final Resolution of the Special Chamber of the Supreme Court of Kosovo ASC-09-0042 of 29 August 2012, which was served on the Applicant on 6 September 2012.
11. The Special Chamber of the Supreme Court of Kosovo by Resolution ASC-09-0042 of 29 August 2012 rejected the Applicant's appeal as unfounded with the following reasoning:

"...The substance of the previous case and that of the case at hand is in principal the same. The appeal regards the same subject matter and seeks the same relief. The Appellate Panel concludes that the case has been already previously adjudicated and there is a case of res judicata at hand. The claim must be dismissed ex officio..."

Applicant's allegations

12. The Applicant alleges that the following Articles have been violated: Article 3 (Equality before the Law), Article 22 (Direct Applicability of International Agreements and Instruments), Article 24 (Equality before the Law), Article 41 (Right of Access to Public Documents), Article 49 (Right to Work and Exercise of Profession), Article 54 (Judicial Protection of Rights) of the Constitution of the Republic of Kosovo, as well as the Universal Declaration of Human Right, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols.
13. The Applicant did not give reasons as to how the abovementioned Articles were violated. Instead he addressed the Constitutional Court alleging the following:

"If case files are viewed according to this appeal, the Court has not reviewed my statement of claim according to facts, but it only made approximate interpretation."

Assessment of the admissibility of the Referral

14. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine whether the Applicant has met the admissibility requirements laid down in the Constitution and the Law.
15. In this regard, the Constitutional Court refers to Article 49 (Deadlines) of the Law which prescribes:

"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

16. The Court notes that in the additional documents that were submitted by the Special Chamber of the Supreme Court of Kosovo it has been established that the Applicant has received the Resolution of the Special Chamber of the Supreme Court of Kosovo ASC-09-0042 of 29 August 2012 on 6 September 2012 when the Applicant signed the return receipt.
17. The final Resolution of the Special Chamber of the Supreme Court of Kosovo was served on the Applicant on 6 September 2012, whereas he submitted the Referral to the Secretariat of the Constitutional Court on 4 February 2013.
18. It follows that the Referral is inadmissible for consideration in accordance with Article 49 (Deadlines) of the Law and Rule 36 (1) (b) of the Rules of Procedure which provides „ *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*“.

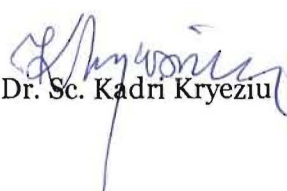
FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 36 (1) b), in its session held on 10 June 2013, unanimously

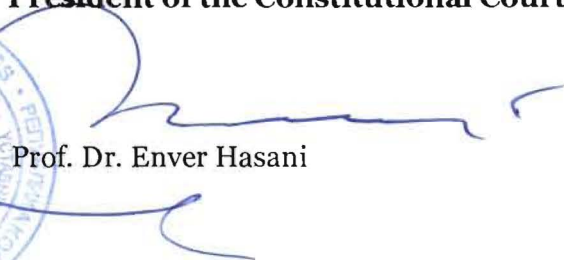
DECIDES

- 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 on the Constitutional Court;
- III. This Decision is effective immediately.

Judge Rapporteur


Dr. Sc. Kadri Kryeziu

President of the Constitutional Court


Prof. Dr. Enver Hasani

