



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

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Pristina, 4 April 2014  
Ref.no.: RK593/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI141/13**

Applicant

**Bajram Aliu**

**Constitutional Review of the Decision of the Special Chamber of the  
Supreme Court of Kosovo, under case no. SCEL-09-0001-C1131**

**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  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Referral was submitted by Mr. Bajram Aliu (hereinafter: the “Applicant”) residing in Podujeva.

## **Challenged Decision**

2. The Applicant challenges Decision of the Special Chamber of the Supreme Court of Kosovo, under case no. SCEL-09-0001-C1131 (Applicant has only provided an extract of the decision) rendered at an unknown date and served to him on unknown date.

## **Subject Matter**

3. The subject matter is the constitutional review of the challenged Decision, which allegedly *“has violated [his] rights and freedoms in this case, since it rejected [his] complaint as time-barred without proper legal grounds and denied him the entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise ‘Ramiz Sadiku’ Prishtina”*.
4. In this respect, the Applicant does not invoke violation of any constitutional provisions 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, on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

## **Proceedings before the Court**

6. On 4 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the “Court”).
7. On 24 September 2013, the President of the Constitutional Court, by Decision No. GJR. KI141/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KI141/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu, and Arta Rama-Hajrizi.
8. On 10 October 2013, the Court informed the Applicant of registration of his Referral and requested the Applicant to specify which decision of the Special Chamber of the Supreme Court he is challenging. On the same date, the Special Chamber of the Supreme Court of Kosovo (hereinafter, the “Special Chamber”), was notified of the Referral.
9. The Applicant has not submitted the requested information within the specified time frame.
10. On 20 January 2014, 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 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 share in the benefit from the fund of 20% of the proceeds of the privatization. The final deadline for filing a complaint against this list was 27 March 2009.
14. On 5 June 2009, the Applicant filed a complaint with the Special Chamber to be included in the final list of eligible employees.
15. On 22 March 2010, the Special Chamber (ORDER SCEL-09-001) “*issued an order asking the Complainant (Applicant) to clearly state why he had filed his complaint with the Special Chamber after the expiry of the time limit set by Section 10.6 (a) of UNMIK Regulation 2003/13, as amended by UNMIK Regulation 2004/45 and when the reason ceased to exist.*”
16. On 13 April 2010, the Applicant responded to the Special Chamber’s order stating that his wife was ill and because of her illness, he was unable to file his complaint within the mandated time period.
17. In an unspecified date, The Special Chamber by a decision under case no. “SCEL-09-0001-C1131” (as referred by the Applicant), further noted that the Applicant did not provide a valid justification to prove that he was hindered to file the complaint in time, thereby rejecting his complaint as inadmissible.
18. On 4 September 2013, the Applicant filed the Referral with this Court.

## Applicant’s Allegations

19. The Applicant claims that he “*was not informed in due time to file the complaint*” because his “*wife cannot walk, and needs a permanent caretaker.*”
20. The Applicant further alleges that “[*t*]*he Special Chamber of the Supreme Court has violated [his] rights and freedoms in this case, since it rejected [his] complaint as time-barred without proper legal grounds. [His] rights as guaranteed by the Constitution of Kosovo have thus been breached.*” The Applicant does not invoke any constitutional violations in particular.

## The Law

REGULATION NO. 2003/13

ON THE TRANSFORMATION OF THE RIGHT OF USE TO  
SOCIALY 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”.*

### **Assessment of Admissibility**

21. 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.

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

23. The Court refers to Article 47(2) of the Law, which provides:

*“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”*

24. The Court also takes into account Rule 36 (1) (a) of the Rules of procedure, which provides:

*“(1) The Court may only deal with Referrals if:*

*(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or...”*

25. Moreover, the Court refers to Article 48 of the Law, which provides:

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.*

26. The Court notes that the Applicant generally complains that “[t]he Special Chamber of the Supreme Court has violated [his] rights and freedoms in this case, since it rejected [his] complaint as time-barred without proper legal grounds”, without specifying how and why the alleged violations occurred and also without specifying clearly what is the concrete act of a public authority that he wishes to challenge.

27. Furthermore, the Court notes that the Applicant was afforded ample time and opportunity to clarify his referral, namely to specify what decision of the Special Chamber he is challenging and also to inform the Court whether he exhausted all legal remedies in compliance with Article 113.7 of the Constitution. The Applicant did not reply.
28. From the documents contained in the Referral, it appears that the Applicant has filed a complaint with the Trial Panel of the Special Chamber; however, he has not shown to also have appealed before the Appellate Panel of the Special Chamber before filing his referral with this Court.
29. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal system will provide an effective remedy for the violation constitutional rights. (See Case KI34/11, Applicant Sami Bunjaku, Resolution on Inadmissibility of 8 December 2011).
30. In sum, the Applicant has not exhausted all legal remedies available to him under applicable law.
31. It follows, that the Referral must be declared inadmissible due to non exhaustion of all legal remedies as prescribed by Article 113.7 of the Constitution, Article 47 (2) of the Law, and Rule 36 (1) a) 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 Rules 36 (1) a) and 56 (2) of the Rules of Procedure, on 20 January 2014, unanimously

## DECIDES

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

**Judge Rapporteur**



Robert Carolan



**President of the Constitutional Court**



Prof. Dr. Enver Hasani