



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

Prishtina, on 10 February 2014
Ref.no.:RK 546/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI146/13

Applicant

Idriz Neziri

Constitutional review of the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters, ASC-11-0035, of 23 November 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 Mr. Idriz Neziri, Municipality of Fushë-Kosovë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Appellate Panel of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (hereinafter: Appellate Panel of Special Chamber) ASC-11-0035, of 23 November 2012, which was served on Applicant on 10 January 2013.

Subject matter

3. The Subject matter is constitutional review of the decision, which allegedly deprives the Applicant from realizing 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, 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 Rule 56 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 13 September 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 24 September 2013, the President by decision GJR. KI146/13 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President by decision KSH. KI146/13 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 11 October 2013, the Court notified the Applicant and the Special Chamber of the Supreme Court on the registration of Referral.
8. On 19 November 2013, the Review Panel considered the Report of Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. At some time (which was not specified in the Referral) Applicant was in employment relationship with SOE "Ramiz Sadiku", as a storekeeper.
10. On 27 June 2006, SOE "Ramiz Sadiku" has completed the privatization process.
11. On 24 February 2010, the Applicant filed a complaint with Special Chamber of the Supreme Court against the final list of employees which was compiled by the Privatization Agency (hereinafter: the Agency), because he as a former employee was not in the list.

12. In the complaint to the Special Chamber of the Supreme Court, the Applicant stated that he was in employment relationship with SOE "Ramiz Sadiku" in the position of the storekeeper, that he missed the legal time limit for filing appeal against the decision of the Agency, because he did not have access on the archive of the enterprise, so that he could not provide on time the necessary documentation, by which he would justify his allegations.
13. On 24 February 2011, the Trial Panel of the Special Chamber issued the Decision [SCEL-09-0001], rejecting the Applicant's complaint as inadmissible.
14. In the reasoning of its Decision the Trial Panel of the Special Chamber stated that: *„taking into account that the complaint was filed after the expiration of legal time limit (the time limit expired on 27 March 2009), there is no possibility to return to the previous situation and that the complaint of the Applicant to be considered as it was filed within legal time limit. As a result, the Trial Panel rejects the Applicant's complaint as inadmissible.“*
15. On 8 April 2011, the Applicant filed an appeal to the Appellate Panel of the Special Chamber against the decision of the Trial Panel of the Special Chamber [SCEL-09-0001], of 24 February 2011.
16. On 23 November 2012, the Appellate Panel of the Special Chamber rendered the Decision [ASC-11-0035], rejecting the Applicant's appeal as ungrounded.
17. In the reasoning of its Decision the Appellate Panel of the Special Chamber stated that: *The Applicant filed appeal against the final list of employees on 24 February 2010, which is considered as out of legal time limit. The Trial Panel of the Special Chamber rejected the Applicant's appeal as inadmissible due to failure of meeting the deadlines. The Applicant filed appeal to the Appellate Panel of the Special Chamber, where he repeated the allegations from the complaint, which he filed to the Trial Panel of the Special Chamber, whereas he did not submit any relevant evidence, by which he would justify his allegation. Therefore, the stance of Appellate Panel of the Special Chamber is that the Applicant's complaint to be rejected as ungrounded. “*

Applicant's allegations

18. The Applicant alleges that the said decisions violate his fundamental rights and especially Article 31 of the Constitution of Kosovo, because the courts have not decided the merits of his appeals.
19. The Applicant addresses the Constitutional Court, by requesting:

„That the Court quashes the Decisions of the Special Chamber of the Supreme Court of Kosovo [SCEL-09-0001] of 21 February 2011 and of the Appellate Panel of the Special Chamber [ASC-11-0035], of 23 November 2012, as unlawful and obliges the Special Chamber that regarding this legal matter decides on merits, so that I am entitled to the 20 % share, same as other employees I used to work with “.

Assessment of admissibility of the Referral

20. 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 on the Constitutional Court and the Rules of Procedure.
21. In that regard, the Court notes that Article 113 of the Constitution provide:

“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.”
22. The Court notes that the Applicant filed complaint to the Special Chamber of the Supreme Court, respectively with the Trial Panel of the Special Chamber, as well as with the Appellate Panel of the Special Chamber, by which he met the requirements from Article 113 of the Constitution, and therefore the Applicant is the authorized party to file Referral before this Court.
23. The Court also refers to Article 49 of the Law, which states:

„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.”
24. The Court also 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.”
25. Based on the submitted documents, the Court concludes that the Applicant submitted Referral to the Court on 13 September 2013, whereas the last decision of the Appellate Panel of the Special Chamber was served on him on 10 January 2013, which means 8 months and 3 days after the expiration of legal time limit provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.
26. It follows that the Applicant's Referral is out of time.
27. Based on the foregoing, the Referral should be rejected as inadmissible for review, because it is not in accordance with 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 20 of the Law and Rule 36 (1) b) of the Rules of Procedure, on 19 November 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

President of the Constitutional Court

Kadri Kryeziu



Prof. Dr. Enver Hasani