



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 4 April 2014

Ref. no.: RK594/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Cases no.**

**KI194/13**

**KI202/13**

**KI203/13**

**KI204/13**

Applicants

**Rrahman Rashiti, Ali Dragusha, Isak Dragusha, Nazim Dragusha**

**Constitutional review of the Decision SCEL-09-0001 of the Trial Panel of  
the Special Chamber of the Supreme Court of Kosovo on Privatization  
Agency of Kosovo Related Matters, of 4 February 2010**

### **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. Referrals KI194/13, KI202/13, KI203/13, KI204/13, are filed by: Mr. Rrahman Rashiti from the village of Obranča, Municipality of Podujeva, Mr. Ali Dragusha, Mr. Isak Dragusha, and Mr. Nazim Dragusha, all from the village of Prugovc, Municipality of Prishtina (hereinafter: Applicants).

## **Challenged decision**

2. The Applicants challenge the Decision SCEL-09-0001, of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Trial Panel of the Special Chamber), of 4 February 2010, served on the Applicants on various dates. The Applicant in the case KI194/13 claims that the decision was served upon him on 10 March 2010, the Applicant in case KI202/13 the decision was served upon him on 24 February 2011, while the Applicants in cases KI203/13 and KI204/13 were served on 13 July 2011.

## **Subject matter**

3. The subject matter is constitutional review of the decision which allegedly disables the Applicants from enjoying their entitlements to a share of 20% of proceeds from the privatization of the Socially-Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku"), in Prishtina.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rules 29 and 37 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

5. On 11 and 14 November 2013, the Applicants filed their Referrals with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 02 December 2013, the President by Decision no. GJR. KI194/13 appointed Judge Ivan Čukalović Judge Rapporteur. On the same day, the President by Decision no. KSH. KI194/13 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 10 December 2013, the President rendered decision on the joinder of cases KI202/13, KI203/13 and KI204/13 into the case KI194/13.
8. On 17 December 2013, in compliance with Rule 37 of the Rules of Procedure, the Court informed the Applicants of the registration and joinder of referrals, and the Court requested from the Applicants to submit evidence on the service of the challenged decision upon them.
9. On the same date, the Court notified the Special Chamber of the Supreme Court.
10. The Applicants have not filed any objection against the decision on the joinder of referrals, and also have not submitted the requested information.

11. On 21 January 2014, 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. The Applicants were at some time employees of the SOE “Ramiz Sadiku”.
13. On 27 June 2006, SOE “Ramiz Sadiku” concluded its privatization.
14. The Applicants were dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), for not being included on the list of employees entitled to a share of 20% of the proceeds from the privatization of SOE “Ramiz Sadiku”, and filed their complaints with the Special Chamber of the Supreme Court.
15. In their complaint to the Special Chamber of the Supreme Court, the Applicants alleged to be victims of discrimination, and that they worked with the SOE “Ramiz Sadiku” until they were forced out of their working places, and that after the war in 1999, they tried to go back to their working places. The Applicants attached to their complaints with the Special Chamber copies of their personal documents, showing that they were born: Applicant in KI194/13 on 1 December 1937; Applicant in KI202/13 on 14 February 1938; Applicant in KI203/13 on 23 May 1939, and Applicant in KI204/13 on 23 April 1939.
16. The Agency replied to the complaints of Applicants through the letter with the Special Chamber, thereby stating that the Applicants do not meet requirements to be included on the list of employees entitled to a share of 20% of the proceeds from the privatization of SOE “Ramiz Sadiku”, because at the time of privatization, they had reached the age of 65.
17. On an unknown date, in a hearing before the Trial Panel of the Special Chamber, the Applicants stated that their work-booklets were destroyed during the 1999 war, and that they have filed with the Agency documents which indirectly provide evidence for their working status with the SOE “Ramiz Sadiku”, and after 1999, they tried to go back to their working places, but their requests were not taken into account by the superiors in the enterprise. All Applicants filed their personal documents with the Trial Panel.
18. On 04 February 2010, the Trial Panel of the Special Chamber rendered the decision SCEL-09-0001, which rejected the complaints of the Applicants as ungrounded. In the reasoning of its decision, the Trial Panel found that: *„on the basis of submitted documents to the case files, and during the hearing, the Applicants at the moment of privatization of SOE ‘Ramiz Sadiku’ were older than 65 years, and therefore, they did not meet requirements as per Article 10.4 of the UNMIK Regulation no. 2003/13.“*

### **Relevant legislation**

19. UNMIK Regulation no. 2003/13, of 9 May 2003, ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

#### Section 10.4 (Entitlement of Employees)

*„For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatisation and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.“*

#### **Applicant's allegations**

20. The Applicants in their referrals allege that the challenged decision violates their rights to work, and Articles 19 [Applicability of International Law], 22 [Direct Applicability of International Agreements and Instruments] and 24 [Equality before the Law] of the Constitution of the Republic of Kosovo.

21. All applicants address the Court with the request:

*„to be entitled to a share of 20% of privatization proceeds, like all other employees of the SOE 'Ramiz Sadiku'. “*

#### **Admissibility of the Referral**

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

23. 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”.*

24. The Court also notes the 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 (...)”.*

25. 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...”.*

26. Based on case file, the Court finds that the Applicants filed their referrals on 11 and 14 November 2013. Based on available case file, the Court also determined that the final decision SCEL-09-0001, of the Trial Panel of the Special Chamber was served upon them on the following dates: the decision in the case KI194/13 was served on Applicant on 10 March 2010, the decision in the case KI202/13 was served upon the Applicant on 24 February 2011, while the Applicants in cases KI203/13 and KI204/13 were served on 13 July 2011, consequently the Applicants filed their referrals with the Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.
27. The Court recalls that the purpose of the four month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case o' LOUGHLIN and Others v. United Kingdom, No. 23274/04, ECtHR, Decision of 25 August 2005).
28. It results that the Referrals are out of time.

### **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 21 January 2014, unanimously

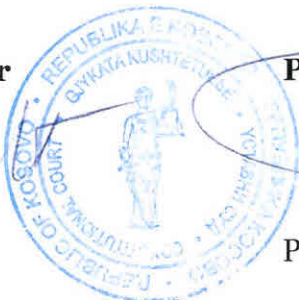
### **DECIDES**

- I. TO DECLARE the Referral 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. This Decision is effective immediately.

**Judge Rapporteur**



Ivan Čukalović



**President of the Constitutional Court**



Prof. Dr. Enver Hasani