



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

Prishtina, 12 May 2014
Ref.no.:RK 620/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI219/13

Applicant

Avdi Abdullahu

Constitutional review of the Decision of the Trial Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, SCEL-09-0001, of 24 February 2011

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Avdi Abdullahu from village Gllamnik, Municipality of Podujeva, (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges 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: the Trial Panel of Special Chamber), of 24 February 2011, which was served on the Applicant on 19 March 2011.

Subject matter

3. The subject matter is the constitutional review of the decision, which allegedly prevents the Applicant to exercise his right to 20% share from privatization of the enterprise Ramiz Sadiku (hereinafter: SOE "Ramiz Sadiku"), in Prishtina. The Applicant does not specify the Articles of the Constitution that have been violated.

Legal basis

4. The Referral is based on Article 113. 7 of the Constitution of the Republic of Kosovo, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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 Court

5. On 3 December 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 January 2014, the President by Decision GJR. No. KI219/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision No. KSH.KI219/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 27 January 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court of registration of the Referral.
8. On 25 March 2014, after having reviewed the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. The Applicant claims that he was an employee of the SOE "Ramiz Sadiku" for 8 (eight) years.
10. On 27 June 2006, the SOE „Ramiz Sadiku“ has concluded the privatization process.
11. On 05 March 2010, the Applicant unsatisfied with the Decision of the Privatization Agency (hereinafter: the Agency), which has not included him on

the list of employees who are entitled to a share of 20% from privatization, filed an appeal with the Special Chamber of the Supreme Court.

12. In the appeal to the Special Chamber of the Supreme Court, the Applicant stated that he was an employee of the SOE "Ramiz Sadiku", and that he worked until 1992, whereby he was coercively removed from his job. The Applicant attached to the appeal to the Special Chamber a copy of the certificate as a proof of his employment status in the SOE "Ramiz Sadiku", as well as a copy of the labor booklet.
13. The Agency, through a letter to the Special Chamber responded to the Applicant's appeal, alleging that the Applicant does not meet the requirements, since he did not file appeal within legal time limit (which has expired on 27 March 2009) against the final list of employees, compiled by the Agency.
14. On 24 February 2011, the Trial Panel of the Special Chamber rendered the Decision SCEL-09-0001, by which rejected the Applicant's appeal as inadmissible. In the reasoning of its decision, the Trial Panel stated: *„Considering that the appeal was submitted 3 months after the expiration of the time limit to submit the appeal (the time limit to submit the appeal expired on 27 March 2009), based on this, it is not possible to approve the return to the previous situation and consider the appeal as in time; therefore the appeal is rejected as inadmissible”.*
15. In the conclusion of the Ruling SCEL-09-0001, the Trial Panel of the Special Chamber states: *„Pursuant to Article 9.5 of UNMIK Regulation 2008/4, the appeal against this Ruling is submitted in writing to the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters within 30 days from the day this Ruling is served”.*

Applicant's allegations

16. The Applicant alleges that the Supreme Court of Kosovo committed procedural violations of legal provisions, and erroneously determined factual situation, and also the Constitution of the Republic of Kosovo, namely Articles 46, 47, 48, 49 and 50 of the Law on Constitutional Court were violated.
17. The Applicant addresses the Court with the request:

„I want to be entitled to 20% share, since this compensation is guaranteed to me, and which was received by a part of employees of „Ramiz Sadiku”.

Admissibility of the Referral

18. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
19. In relation to this, the Court refers to Article 113. 7 of the Constitution, which provides:

“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”.

20. The Court also refers to Article 49 of the Law, which stipulates:

“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 (...)”.

21. The Court also takes into account Rule 36 (1) b) of the Rules of Procedure, which stipulates:

“(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...”.

22. Based on information from the case file, the Court finds that the Applicant filed his Referral on 3 December 2013. Based on available documents, the Court determined that the final Ruling SCEL-09-0001 of the Trial Panel of the Special Chamber was served on the Applicant on 19 March 2011, therefore, the Applicant filed his Referrals to the Court after the expiration of the period prescribed by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

23. The Court also recalls that the purpose of the four-month legal time limit under Article 49 of the Law and Rule 36 (1) b) is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging (see case of O’ LOUGHLIN and Others v. the United Kingdom no. 23274/04, ECtHR decision of 25 August 2005).

24. From this results that the Referral is out of time.

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,

DECIDES

- I. TO DECLARE 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;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Altay Suroy



Prof. Dr. Enver Hasani