



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

Prishtina, 2 June 2014
Ref. no.:RK637/14

RESOLUTION ON INADMISSIBILITY

in

Case KI224/13

Applicant

Mustafë Osmani

**Constitutional review of Resolution on Inadmissibility KI93/13 of the
Constitutional Court of the Republic of Kosovo, of 2 December 2013**

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 Referral has been filed by Mr. Mustafë Osmani from the village of Llausha, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Resolution on Inadmissibility KI93/13 of the Constitutional Court of the Republic of Kosovo, of 2 December 2013.

Subject matter

3. The subject matter is the Applicant's right to obtain a share of proceeds from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" (hereinafter: SOE "Ramiz Sadiku").
4. In this respect, the Applicant states that: *"The Constitutional Court of the Republic of Kosovo in Prishtina, in relation to my case registered with this Court as Case no. KI93/13 on 21.10.2013 decided to reject my Referral as inadmissible; therefore for this reason I challenge this decision as unlawful"*.

Legal basis

5. The Referral has been reviewed by the Constitutional Court of the Republic of Kosovo pursuant to Article 116.1 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Rules 63 (3) and 36 (3) f) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 10 December 2013 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 13 January 2014 the President by Decision No. GJR. KI224/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI224/13, appointed Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu (the members).
8. On 17 January 2014 the Court notified the Applicant of the registration of the Referral.
9. On 14 March 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 the facts

10. On 12 March 2009 the Applicant filed a complaint with the Special Chamber of the Supreme Court against the Privatization Agency of Kosovo final list of employees qualified for a share of proceeds from the privatization of SOE "Ramiz Sadiku".
11. On 10 June 2011 the Trial Panel of the Special Chamber rejected the Applicant's complaint as ungrounded.

12. On an unspecified date the Applicant filed an appeal with the Appellate Panel of the Special Chamber against the decision of the Trial Panel of 10 June 2010.
13. On 22 April 2013 the Appellate Panel of the Special Chamber upheld the decision of the Trial Panel of the Special Chamber and rejected the Applicant's appeal as ungrounded.
14. On 1 June 2013 the Applicant submitted a Referral to the Court, which was registered under number KI93/13.
15. On 21 October 2013 after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court to declare Referral KI93/13 inadmissible, because it was manifestly-ill founded.
16. On 2 December 2013 the Court rendered Resolution on Inadmissibility regarding Referral KI93/13, notified the decision to the Applicant and published it in accordance with Article 20.4 of the Law.
17. On 10 December 2013 the Applicant submitted another Referral, challenging Resolution on Inadmissibility KI93/13 as unlawful. On the same day, the Applicant's Referral was registered with the Court under no. KI224/13.

Applicant's allegations

18. The Applicant alleges that the Resolution on Inadmissibility KI93/13 contains procedural violation, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
19. The Applicant alleges that the Resolution on Inadmissibility KI93/13 is unlawful and that the Court should recognize his right to a share of proceeds generated from the privatization of the SOE "Ramiz Sadiku" in Prishtina: *"because he was a victim of discrimination and worked for several years in SOE 'Ramiz Sadiku' in Prishtina"*.

Admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, the Court should examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure.
21. Regarding the Applicant's Referral, the Court refers to Article 116.1 [Legal Effect of Decisions] of the Constitution, which provides:

"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo".
22. The Court refers to Rule 63 (3) of the Rules of Procedures, which provides:

“All physical and legal persons are obligated to respect and to comply with the decisions of the Court”.

23. The Court also takes into account Rule 36 (3) f) of the Rules of Procedure, which provides:

“A Referral may also be deemed inadmissible in any of the following cases:”.

(f) the Referral is incompatible ratione materiae with the Constitution;

24. In the case at issue, the Court emphasizes that its decisions are not subject to constitutional control, and as such, are final and binding on all natural and legal persons in the Republic of Kosovo.
25. The Court considers that requests for reconsideration of decisions rendered by the Court itself constitute a violation of the right to petition. However, taking into account that the Court is still in its early stage of building the case law, the Applicant’s Referral was registered again with the Court.
26. In fact, the European Court of Human Rights has established that *“any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application”.* (See *Mirolubovs and Others v. Latvia*, §§ 62 and 65).
27. Notwithstanding the foregoing elaboration, the Court considers that it rendered a final and binding decision on the Applicant’s Referral regarding the proceedings conducted before the Special Chamber of the Supreme Court, and that the Referral is incompatible *ratione materiae* with the Constitution.
28. Consequently, the Referral is inadmissible in accordance with Rule 36 (3) f) of the Rules of Procedure.

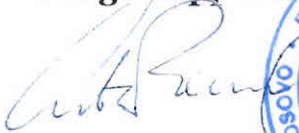
FOR THESE REASONS

The Constitutional Court, pursuant to Article 116.1 of the Constitution, and Rule 36 (3) f) of the Rules of Procedure, on 14 March 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. This Decision is effective immediately.

Judge Rapporteur



Arta Rama-Hajrizi



President of the Constitutional Court



Prof. Dr. Enver Hasani