



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 30 June 2014
Ref. no.:RK662/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI35/14

Applicant

Brahim Rama

**Constitutional review of the Decision AC-I-13-0079-A0001-A0004, of the
Appellate Panel of the Special Chamber of the Supreme Court of Kosovo,
of 23 January 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalovič, 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. Brahim Rama from village Stanovc, Municipality of Vushtrri.

Challenged decision

2. The Applicant challenges the Decision AC-I-13-0079-A0001-A0004, of the Appellate Panel of the Special Chamber of Kosovo (hereinafter: the Special Chamber), of 23 January 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which is alleged to have been *“discriminatory for the Applicant, because it denies him the right to receive a share from the generated proceeds from the privatization of the 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 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 27 February 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 March 2014, the President of the Court, by Decision No. GJR. KI35/14, appointed Judge Arta Rama-Hajrizi Judge Rapporteur. On the same day, the President of the Court, by Decision No. KSH. KI35/14, appointed Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).
7. On 11 March 2014, the Applicant and the Special Chamber were notified on registration of the Referral.
8. On 27 March 2014, after having considered 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. In a certain period of time, the Applicant was employed with the SOE “Ramiz Sadiku” in Prishtina.
10. On 27 June 2006, the SOE “Ramiz Sadiku” in Prishtina was privatized.
11. The final list of eligible employees, to receive 20% share from the proceeds of the privatization of the SOE “Ramiz Sadiku” was published by the Privatization Agency of Kosovo (hereinafter: the PAK) in March 2009 and the deadline for filing appeal with the Special Chamber was 27 March 2009.

12. On an unspecified date, the Applicant filed an appeal with the Special Chamber against the final list published by the PAK.
13. On 10 June 2011, the Trial Panel of the Special Chamber, by Judgment SCEL-09-0001, rejected the Applicant's appeal as ungrounded.
14. On 12 June 2013, the Applicant filed the appeal with the Appellate Panel of the Special Chamber against the Judgment SCEL-09-0001.
15. On 23 January 2014, the Appellate Panel of the Special Chamber, by Decision AC-I-13-0079-A0001-A0004, rejected the Applicant's appeal as inadmissible, because it was out of time.
16. In the abovementioned decision, the Appellate Panel of the Special Chamber reasoned: *"he was served with the appealed Judgment on 29 November 2011, while the deadline for filing appeal was 30 December 2011. The appeal with the Special Chamber was filed on 12 June 2013; consequently, the appeal was out of time, because it was filed after more than one year and a half, therefore, it should be rejected as inadmissible. Since the appeal was filed out of time, The Appellate Panel could not render legal stance regarding the findings and conclusions of the Trial Panel given in the appealed judgment upon the appeal of this appellant filed against the final list"*.

Applicant's allegations

17. The Applicant alleges that *"he was dismissed from his job in a discriminatory manner and that he should be included on the list of employees, eligible to 20% share of the proceeds from the privatization of the SOE 'Ramiz Sadiku' in Prishtina"*.
18. The Applicant also alleges that he was discriminated by decisions of the Special Chamber.
19. The Applicant does not refer to any constitutional provision in particular.

Admissibility of the Referral

20. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary first to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
21. 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 individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".

22. The Court also refers to 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. 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 the law entered into force".

23. In this case, the Court notes that the Applicant has exhausted all legal remedies in compliance with Article 113.7 of the Constitution and that the Referral was submitted within legal time limit as provided by Article 49 of the Law.
24. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provides:
 - (1) *"The Court may only deal with Referrals if:*
 - (...)
 - (c) *the Referral is not manifestly ill-founded."*
25. The Applicant alleges in general that *"he has the right to benefit a part of proceeds from the privatization of the SOE 'Ramiz Sadiku'"*.
26. In this particular case, the Court notes that the Applicant has filed an appeal out of the legal deadline with the Appellate Panel of the Special Chamber and therefore his appeal was rejected as out of time; furthermore the referred allegations and evidence presented by the Applicant for violations of the constitutional provisions, do not in any way indicate that the Appellate Panel of the Special Chamber has denied him the rights guaranteed by the Constitution.
27. In this respect, the Constitutional Court reiterates that the role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See *García Ruiz v. Spain*, no. 30544/96, ECtHR, Judgment of 21 January 1999, paragraph 28, see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
28. The Constitutional Court also reiterates that the correct and complete determination of the factual situation is a full jurisdiction of the regular courts; the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and therefore, cannot act as a "fourth instance court" (see cases KI73/13, KI102/13, KI105/13, KI106/13, KI113/13, KI130/13 – Applicants *Hamdi Ademi and 6 others*, Resolution on Inadmissibility of 18 November 2013, see also case *Akdivar v. Turkey*, No.21893/93, ECtHR, Judgment of 16 September 1996, para. 65).
29. Furthermore, it is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of the regular courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts'

proceedings were fair in their entirety, including the way evidence was taken, (see case *Edwards v. United Kingdom*, No.13071/87, the Report of the European Commission of Human Rights of 10 July 1991).

30. The Court notes that the Applicant has not submitted evidence that the Special Chamber has acted in an arbitrary or unfair manner, nor has accurately specified what rights and freedoms have been violated by the Special Chamber.
31. Furthermore, the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, the Judgment of 26 July 2005).
32. Accordingly, the Referral is manifestly ill-founded and should be declared inadmissible, in accordance with Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

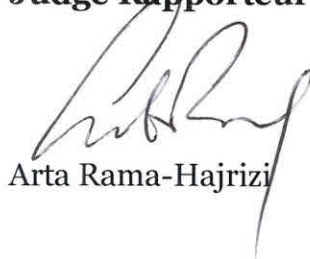
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule and 36 (1) c) and 56 (2) of the Rules of Procedure, on 27 March 2014, unanimously

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

Arta Rama-Hajrizi



President of the Constitutional Court

Prof. Dr. Enver Hasani

