



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

Prishtina, 12 August 2014
Ref. no.: RK688/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI68/14

Applicant

Fahri Rexhepi

**Constitutional review of the Decision ASC-II-0035, of the Appellate Panel
of the Special Chamber of the Supreme Court of Kosovo on Privatization
Agency of Kosovo Related Matters, 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Fahri Rexhepi from village Tenezhdoll, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision ASC-II-0035 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, (hereinafter: Appellate Panel), of 23 November 2012, which was served on the Applicant on 9 January 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision ASC-II-0035 of the Appellate Panel, which allegedly has violated the Applicant's rights, guaranteed by Article 24 [Equality before Law] of the Constitution and denied him the right to 20% share from privatization of 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 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 8 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 May 2014, the President by Decision no. GJR. KI68/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI68/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 26 May 2014, the Court notified the Applicant and the Special Chamber of the Supreme Court (hereinafter: SCSC) on the registration of Referral.
8. On 3 July 2014, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court, the inadmissibility of the Referral.

Summary of facts

9. On 5 March 2010, the Applicant, dissatisfied with the decision of the Privatization Agency (hereinafter: the Agency), which did not include him on the final list of employees entitled to 20% share from privatization, filed an appeal with the Special Chamber of the Supreme Court.
10. On 24 February 2011, the Trial Panel of the Special Chamber rendered the Decision SCEL-09-0001-C1175, by which the Applicant's appeal was rejected as ungrounded. In the reasoning of its decision, the Trial Panel stated that:

“The Appellate Panel considers that by taking account that the appeal was filed more than three months after the deadline for filing the appeals (legal deadline for submission of appeals has expired on 27 March 2009) (...) there is no possibility to return to previous situation and the appeal should be deemed on time. Therefore, the appeal is rejected as ungrounded.”

11. On 23 November 2012, the Appellate Panel of the SCSC, by Decision ASC-II-0035 rejected the Applicant’s appeal and upheld the Judgment of the Trial Panel, SCEL-09-001-C1175.

Applicant’s allegations

12. In his Referral, the Applicant alleges:

“The decisions and orders of the Special Chamber of the Supreme Court of Kosovo are unlawful, because in my opinion I continuously submitted appeals against this decision and orders however, they were always rejected with the reasoning that the appeal was out of time”.

13. The Applicant addresses the Court with the following request:

„I request from the Constitutional Court to render a fair decision and to oblige the Special Chamber to render a Decision to include my name in the list of employees that benefit 20% from the privatization”.

Admissibility of the Referral

14. The Court observes that, in order to be able to adjudicate the Applicant’s Referral, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

15. 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”.

16. The Court 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. (...)”.

17. 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 ...”

18. Based on the data from the case file, the Court concludes that the Applicant filed his Referral on 8 April 2014. Based on available documents, the Court found that the Decision of the Appellate Panel, ASC-II-0035 of 23 November 2012, was submitted to the Applicant on 9 January 2013, therefore the Applicant submitted his referral after the expiry of the legal deadline of four months, as provided by Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.
19. The Court recalls that the objective 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 the legal certainty, by ensuring that cases raising issues under the Constitution are dealt with 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, ECHR, Decision of 25 August 2005).
20. Therefore, the Court concludes that the Referral is out of time.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution and Rule 36 (1) b) of the Rules of Procedure, on 3 July 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. To notify this Decision to the parties to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur


Ivan Čukalović

President of the Constitutional Court


Prof. Dr. Enver Hasani

