



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 18 November 2013  
Ref:RK494/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Cases Nos.**

**KI 73/13,  
KI102/13,  
KI105/13,  
KI106/13,  
KI113/13,  
KI117/13  
KI130/13**

Applicants

**Hamdi Ademi and 6 others**

**Constitutional review of the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, dated 22 April 2013, and Judgment SCEL-09-0001 of the Trial Panel of the Special Chamber of the Supreme Court, dated 10 June 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 and  
Arta Rama-Hajrizi, Judge

## **The Applicants**

1. The Referrals were submitted by Hamdi Ademi from the village of Gllamnik in Podujevo; Fejzullah Humolli from the village of Lupç i Poshtëm in Podujevo; Rifat Agushi; Selman Tahiri; Ismail Maksuti; Ukë Rrustemi from Podujevo; and Ferat Haliti from Obiliq (hereinafter, the Applicants).

## **Challenged decisions**

2. The Applicants challenge the Decision ASC-11-0069 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter, the Special Chamber), dated 22 April 2013, and Judgment SCEL-09-0001 of the Trial Panel of the Special Chamber, dated 10 June 2011. The date of the service of the decisions to the Applicants is unknown.

## **Subject matter**

3. The subject matter of the Referrals is the review of constitutionality of the challenged decision on the Applicants alleged entitlement to a share of proceeds acquired from the privatization of the Socially Owned Enterprise "Ramiz Sadiku" Prishtina (hereinafter, SOE "Ramiz Sadiku").

## **Legal basis**

4. The Referrals are based on Article 113 (1) and (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 22 and 49 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the Law), and Rule 56 (2) 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. The Applicants have submitted their referrals starting from the 16 May 2013 until 21 August 2013.
6. On 10 June and 29 August 2013, the Court notified the Applicants about the registration of the Referrals. On the same dates, the Court communicated the Referrals to the Special Chamber and the Kosovo Privatization Agency (hereinafter, the KPA).
7. On 10 September 2013, the President ordered the joinder of the Referrals KI102/13, KI105/13, KI106/13, KI113/13, KI117/13 and KI130/13 to the Referral KI73/13.
8. On 10 September 2013, the President appointed judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

9. On 16 September 2013, the Court in accordance with Rule 37 of the Rules of Procedure notified the Applicants about the joinder of the Referrals.
10. On 17 October 2013, 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 in relation to referrals**

**KI102/13 (Fejzullah Humolli),**

**KI105/13 (Rifat Agushi),**

**KI106/13 (Selman Tahiri)**

11. At some point in time, the Applicants were employed as workers of the SOE “Ramiz Sadiku.”
12. On 27 June 2006, the SOE “Ramiz Sadiku” was privatized.
13. In March 2009, the Applicants requested to the Special Chamber to be included in the list of employees entitled to a share of proceeds from the privatization of the SOE “Ramiz Sadiku.”
14. On 10 June 2011, the Trial Panel of the Special Chamber (Judgment SCEL-09-0001) rejected the Applicant’s requests, holding that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended, as they reached the retirement age prior to the privatization of the SOE “Ramiz Sadiku”.
15. In July 2011, the Applicants appealed to the Appellate Panel of the Special Chamber against the Judgment of the Trial Panel.
16. On 22 April 2013, the Appellate Panel of the Special Chamber (Judgment ASC-11-0069) rejected the appeals of the Applicants and upheld the Trial Panel Judgment.

**Summary of facts in relation to referrals**

**KI73/13 (Hamdi Ademi)**

**KI113/13 (Ferat Haliti)**

**KI117/13 (Ismail Maksuti)**

**KI130/13 (Ukë Rrustemi)**

17. In March 2009, the Applicants requested to the Special Chamber to be included in the list of employees entitled to a share of proceeds from the privatization of the SOE “Ramiz Sadiku”.
18. On 10 June 2011, the Trial Panel of the Special Chamber (Judgment SCEL-09-0001) rejected the Applicants requests, holding that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended as they reached the retirement age prior to the privatization of the SOE “Ramiz Sadiku”.



19. The Applicants appealed to the Appellate Panel of Special Chamber against the Judgment of the Trial Panel, “*due to: Erroneous facts, Violation of substantive law and Violations of procedural law*”.
20. On 18 November 2011, the Appellate Panel of the Special Chamber ordered (ASC-11-0069-A0076) to the Applicants that within fourteen (14) days from the receipt of said order: i) (...); ii) to state the dates when the appealed judgments were received; and iii) if the applicants failed to submit completed or corrected appeals which meet the requirements set forth in Section 28.2 (f) of UNMIK AD 2008/6 (in conjunction with section 58.2 leg cit) (...), the Appellate Panel of the Special Chamber shall reject the appeal on the grounds of inadmissibility.
21. On 22 April 2013, the Appellate Panel of the Special Chamber (Judgment ASC-11-0069) rejected the appeals of the Applicants and upheld the Trial Panel Judgment (SCEL-09-0001) in its entirety for the part that pertains to the Applicants appeals.

### **The Applicable Law**

#### REGULATION NO. 2003/13 ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY OWNED IMMOVABLE PROPERTY

##### Section 10 Entitlement of Employees

*10.4 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 privatization 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.*

### **Applicants’ Allegations**

22. The Applicants claim “*they have worked in the SOE “Ramiz Sadiku” in Prishtina for many years until 28 February 1990 whereby Serbian forces coercively removed them from work and discriminated them*”.
23. The Applicants allege that their rights guaranteed by the Constitution were violated, to their detriment, by the KPA and the SCSC, because they had contributed to the SOE “Ramiz Sadiku” for many years, and therefore are allegedly entitled to a share of proceeds from the privatization of said SOE. The Applicants have not invoked any constitutional provision in particular.

### **Assessment of Admissibility**

24. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

25. In that respect, the Court refers to Article 113 of the Constitution, which provides:

*1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”.*  
(...)

*7. 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”.*

26. 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 (...).”*

27. The Court notes that the Applicants appealed the Judgment of the Trial Panel of the Special Chamber and a final decision of the Appellate Panel of the Special Chamber was rendered on 22 April 2013. The Applicants have filed their Referrals with the Court on different days of May, July and 21 August 2013.

28. Thus, the Court considers that the Applicants are authorized parties and have exhausted all legal remedies afforded to them by the applicable law and the Referrals were submitted within the four months time limit.

29. However, the Court further refers to Article 48 of the Law which provides:

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.*

30. 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*

31. The Applicants allege in general that *“they had contributed to the SOE “Ramiz Sadiku” for many years, and therefore are allegedly entitled to a share of proceeds from the privatization of said SOE”.*

32. As said above, the Appellate Panel of the Special Chamber (Judgment ASC-11-0069) upheld the Trial Panel Judgment, which held that the Applicants did not fulfill the requirements of Section 10.4 of UNMIK Regulation 2003/13 as amended, as they reached the retirement age prior to the privatization of the SOE “Ramiz Sadiku”.



33. The Court considers that the justification provided by the Judgment of the Appellate Panel of the Special Chamber, in answering the allegations made by the Applicants, is clear and well reasoned.
34. The Court considers that the Applicants have not substantiated their allegations for violation of the provisions of the Constitution, because the facts presented by them do not show in any way that the trial and appellate panels of the Special Chamber have denied them the rights guaranteed by the Constitution
35. In this connection, the Constitutional Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
36. The Constitutional Court also emphasizes that the correct and complete determination of the factual situation is within the 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 cannot, therefore, act as a “fourth court instance” (see case *Akdivar v. Turkey*, No.21893/93, ECtHR, Judgment of 16 September 1996, para.65, also see case KI86/11, *Applicant Milaim Berisha*, Resolution on inadmissibility of 5 April 2012).
37. 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 in which evidence was taken (see case *Edwards v. United Kingdom*, No.13071/87, Report of the European Commission of Human Rights of 10 July 1991).
38. The Court notes that the Applicants neither indicate that the Special Chamber acted in an arbitrary or unfair manner nor they accurately clarify what rights and freedoms they claim to have been violated by the Special Chambers. In fact, the Applicants have neither built a case nor brought evidence on that they are entitled to a share of proceeds, regardless of having reached the retirement prior to the privatization of the SOE “Ramiz Sadiku”.
39. In sum, the Court considers that the Applicants have not justified and proved the main allegation that the entitlement to a share of proceeds occur also after having reached the retirement prior to the privatization. Thus, no violation of their fundamental rights and freedoms is substantiated.
40. Moreover, the disagreement of the Applicants with the outcome of the case cannot in of itself raise an arguable claim for a breach of the provisions of the Constitution (see case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, Judgment of 26 July 2005).

41. Therefore, the Referrals are manifestly ill-founded and, pursuant to the Rule 36(1) (c) of the Rules of Procedure, must be rejected as inadmissible.

### FOR THESE REASONS

The Constitutional Court pursuant to Article 113(1) of the Constitution, Article 49 of the Law, and Rule 36(1) c) of the Rules of procedure, on 17 October 2013, unanimously:

### DECIDES

- I. TO REJECT the Referrals as 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; and
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**



Almiro Rodrigues

**President of the Constitutional Court**



Prof. Dr. Enver Hasani