



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 25 April 2014
Ref. no.: RK568/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI83/13

Applicant

Dragoljub Stanković

Constitutional Review of the Notification Fi 21/90 of the preliminary list of employees entitled to receive compensation from the privatization of SOE „Stan/Banesa“ in Prizren, published by the Privatization Agency of Kosovo

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 was filed by Mr. Dragoljub Stanković (hereinafter: the Applicant), residing in Štrpce/Brezovica.

Challenged decision

2. The Applicant challenges the Notification Fi 21/90 of the preliminary list of employees entitled to receive a share from the 20% of proceeds from the privatization of the SOE „Stan/Banesa“ in Prizren, published by the Privatization Agency of Kosovo (hereinafter: PAK).

Subject matter

3. The subject matter is constitutional review of the Notification Fi 21/90 of the preliminary list of employees, which the Applicant alleges to have violated his basic human rights, and the right to work and remuneration, and in his Referral filed with the Constitutional Court (hereinafter: the Court), requests the enjoyment of rights to a share of proceeds from the privatization of SOE „Stan/Banesa“ in Prizren.

Legal basis

4. The Referral is based on Article 113.7 of 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 Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 10 June 2013, the Applicant filed a Referral with the Court.
6. On 20 June 2013, the President of the Court, by Decision no. GJR. KI83/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI83/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member).
7. On 2 July 2013, the Court requested from the Applicant to fill in the official Referral Form, and to submit documentation on the actions taken by the Applicant and relevant institutions on the preliminary list of employees entitled to receive a share of 20% from the proceeds of privatization of SOE „Stan/Banesa“ in Prizren, published by the PAK.
8. On 15 July 2013, the Applicant filed with the Court the completed referral form, in which he notifies the Court that since 7 May 2012, he has filed a claim with the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC), and until the date of submission of this form, he has not received any reply.
9. On 27 August 2013, the Court notified the SCSC of the registration of the Referral.
10. On 29 August 2013, the Court notified the PAK of the registration of the Referral.

11. On 1 October 2013, the SCSC submitted a copy of the decision no. C-II-12-0016-001 of 06 August 2013, against which the Applicant had a right to appeal within the specified legal deadline.
12. On 24 December 2013, the Court notified the Applicant of the reply of the SCSC.
13. On 20 January 2014, 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

14. The Applicant, starting from 1987 was an employee of the SOE „Stan/Banesa“ in Prizren, , holding the position of Director of Enterprise, until the year 1999, when due to security reasons, he left his residing place (Prizren).
15. On 24 July 2009, the SOE „Stan/Banesa“ in Prizren was privatized. On 28 November 2010, the PAK published the final list of employees entitled to a share of 20% of the proceeds from the privatization of SOE „Stan/Banesa“ in Prizren. The final deadline for filing an appeal against the final list of employees with the SCSC was 27 November 2010.
16. On 7 May 2012, the Applicant filed a complaint with the SCSC against the PAK, thereby requesting that his name is included in the list of employees entitled to a share of 20% of privatization proceeds.
17. On 16 April 2013, the SCSC notified the PAK of the complaint of the Applicant.
18. In its reply to the SCSC, the PAK stated that:

“The complainant has no rights, due to the fact that the complaint has been filed after the expiry of the legal deadline. The final deadline for filing a complaint to the SCSC was 27 November 2010. The Complainant filed his complaint on 07 May 2012. In relation to this, the Agency proposes that such complaint be rejected as inadmissible.”

19. On 6 August 2013, the Special Chamber of the Supreme Court rendered the decision no. C-II-12-0016-001, against which the Applicant could have complained within the legal deadline. In its decision, the SCSC found that:

“The complaint with the Special Chamber was filed beyond the final deadline of 27 November 2010. There was no justification given for such delay in filing complaint. The Court finds that the evidence filed by the Claimant do not meet the requirements of Article 10.6 (a), and therefore, the complaint is inadmissible, since it is time-barred.

[...] LEGAL REMEDY

Pursuant to Article 10, paragraph 6 of the Law on the Special Chamber, a complaint against this decision may be filed within a deadline of 21

(twenty-one) day period. The prescribed time limit shall begin to run at midnight on the day of service of decision to the parties in writing. Within the same deadline, the Complainant is required to file the complaint to other parties.“

Applicant's allegations

20. The Applicant does not specify which Article of the Constitution of Kosovo was violated by this Decision of the Supreme Court, and only claims the following:

“The Privatization Agency of Kosovo, by publication of the preliminary list of employees entitled to a share of revenues of the privatization of the SOE “Stan-Banesa” Prizren, in which I was not part, or any of the colleagues from my ethnicity, has violated by fundamental human rights, and the right to work and remuneration.“

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

“By this referral, I want to enjoy the right to the revenues created by privatization of the Enterprise “Stan-Banesa” Prizren, which I am entitled to, due to the fact that I have been an employee of this enterprise between 1987-1999.“

Admissibility of the Referral

22. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down by the Constitution, and further specified in the Law and the Rules of Procedure.

23. In this regard, 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”.

24. The Court also takes note of the Rule 36 (1) a) of the Rules of Procedure, which provides that:

“1. The Court may only deal with Referrals if:

a) “all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted”.

25. The Court notes that the Applicant complained before the Special Chamber of the Supreme Court against the PAK final list of employees entitled to a share of proceeds of the privatization of SOE “Stan/Banesa”, but whether he has filed his case with the Appellate Panel of the Special Chamber remains unknown.

26. Furthermore, the Court notes that the Applicant is requested and is given an opportunity to prove that he has exhausted all legal remedies, while the Applicant has not informed the Court on the procedure as per legal remedy of the decision of the SCSC, as noted in paragraph 19 of the present Report.
27. The reasoning of the exhaustion rule is to provide an opportunity to the competent authorities, including courts, to prevent or rectify the alleged violation of the Constitution. This rule is grounded upon the assumption that the Kosovo's legal order shall provide effective legal remedies against violations of constitutional rights. This is an important aspect of the subsidiary nature of the Constitution (see case KI41/09, Applicant AAB-RIINVEST University LLC, Prishtina, Resolution on Inadmissibility of 21 January 2010, and *mutatis mutandis*, see case Selmouni v. France, no. 25803/94, ECHR, decision of 28 July 1999).
28. It follows that the Referral must be declared inadmissible, since all legal remedies have not been exhausted.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rule 36 (1) a) of the Rules of Procedure, in its session held on 20 January 2014, unanimously:

DECIDES

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

Judge Rapporteur

Dr. Sc. Kadri Kryeziu

President of the Constitutional Court

Prof. Dr. Enver Hasani

