



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

Prishtina, on 7 March 2019  
Ref. no.:RK 1333/19

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI93/18**

Applicant

**DPZ "ELEKTRON"**

**Constitutional review of Decision AC-I-17-0401 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 24 May 2018**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by DPZ "ELEKTRON", a private company from Prizren (hereinafter: the Applicant), which is represented by Ymer Kubati, a lawyer from Prizren.

## **Challenged decision**

2. The Applicant challenges the constitutionality of Decision AC-I-17-0401 of the Appellate Panel of the Special Chamber of the Supreme Court of 24 May 2018 (hereinafter: the Appellate Panel of the SCSC) on the Privatization Agency of Kosovo Related Matters (hereinafter: the PAK), which was served on the Applicant on 28 May 2018.

## **Subject matter**

3. The subject matter is the constitutional review of Decision AC-I-17-0401 of the Appellate Panel of the SCSC of 24 May 2018, which allegedly violates the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant did not specifically refer to any concrete provision or Article of the Constitution.

## **Legal basis**

4. The Referral is based on Article 21, paragraph (4), Article 113, paragraphs (1) and (7) of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and Rule 32 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

5. On 11 July 2018, the Applicant submitted the Referral to the Court.
6. On 16 August 2018, the President of the Court appointed Judge Remzie Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.
7. On 30 August 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the SCSC and the PAK.
8. On 30 January 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. On 15 March 2007, the Applicant filed a claim with the Privatization Agency of Kosovo (hereinafter: the PAK), requesting the payment of an amount of € 330,00 for the repair of the electrical network (invoice of 27 August 2002) and the other amount of € 97.00 for the supply of electric material (invoice of 19.10.2001) to the Socially Owned Enterprise Tehnoremont/Ekoplast, which was in the liquidation phase by the PAK.
10. On 7 July 2010, the Liquidation Authority rejected the Applicant's request, with the reasoning that the debt was statute barred based on Article 374 of Law No. 29/1978 on Obligational Relationships.

11. On 10 September 2010, against the Decision of 7 July 2010 the Applicant filed a request to the Liquidation Commission for the review of the SOE Tehnoremont/Ekoplast (hereinafter: the Liquidation Commission).
12. On 1 November 2010, the Liquidation Commission, by Decision LRC/10/0016/PZ, rejected as ungrounded the Applicant's request.
13. On 29 November 2010, the Applicant filed a complaint with the Specialized Panel of the SCSC, against the Decision of 10 September 2010 of the PAK Liquidation Commission. By this appeal, the Applicant requested to oblige the PAK to execute the payment of the amount of € 427, together with the legal interest of 8%, starting from 27 August 2002 for the amount of 330 euro, and from 19 October 2001 for the amount of € 97.
14. On 21 August 2015, the Specialized Panel of the SCSC, by Judgment SCL-10-0005, rejected as ungrounded the Applicant's complaint and upheld Decision LRC/10/0016/PZ of the PAK Liquidation Commission of 1 November 2010.
15. On 30 September 2015, the Applicant submitted an appeal to the Appellate Panel of the SCSC against the Judgment of 21 August 2015 of the Specialized Panel of the SCSC.
16. On 6 June 2017, the Appellate Panel of the SCSC rendered Judgment AC-I-15-0203, which rejected as ungrounded the Applicant's appeal.
17. On 10 July 2017, the Applicant again filed an appeal with the Appellate Panel of the SCSC, against the Judgment of 6 June 2017, alleging essential violation of the substantive law.
18. On 24 May 2018, the Appellate Panel of the SCSC rendered Decision AC-I-17-0401, which rejected as unlawful the Applicant's appeal, with the reasoning: *"The Law on the SCSC as well as its Annex does not foresee any legal remedy to challenge judgments or decisions of the Appellate Panel of the SCSC"*.

### **Applicant's allegations**

19. The Applicant alleges that the decisions of the SCSC have violated its rights protected by the Constitution and the applicable laws.
20. The Applicant proposes to the Court to review the relevant documentation, based on the legal norms of the Law No. 29/1978 on Obligational Relationship; to annul Decision AC-17-0401 of the Appellate Panel of the SCSC and to oblige the PAK, to pay the amount of € 427,00, within 15 (fifteen) days, after the Judgment of the Court becomes final, calculating also the annual interest rate of 8%, from 19 October 2001, namely 27 August 2002.

## Admissibility of the Referral

21. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.
22. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraphs (1) and (7), in conjunction with Article 21 (4) of the Constitution, which establish:

### *Article 113 of the Constitution*

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”.*

[...]

### *Article 21 of the Constitution*

[...]

4. *Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”*

23. The Court also refers to Article 48 [Accuracy of the Referral] of the Law, which stipulates:

*“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”.*

24. With respect to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, has exhausted all available legal remedies and specified the act of the public authority, the constitutionality of which is challenged before the Court.

25. However, the Court also refers to Article 49 [Deadlines] 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 [...]”.*

26. In addition, the Court also refers to Rule 39 (1) (c) of the Rules of Procedure, which foresees:

*“The Court may consider a referral as admissible if:*

*[...]*

*(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, and*

*[...]”.*

27. In assessing whether the requirements of Article 49 of the Law in conjunction with Rule 39 (1) (c) of the Rules of Procedure have been met, the Court needs to consider whether the criterion for the four-month deadline prescribed by the Law was respected in relation to the “final decision” as a result of “effective legal remedy”, as required by the admissibility criteria, established in the Rules of Procedure.
28. Accordingly, in assessing whether the admissibility criteria have been met, the Court must assess whether the challenged decision, namely Decision AC-I-17-0401 of the Appellate Panel of the SCSC of 24 May 2018 was rendered as a result of the effective legal remedy, namely, if the appeal filed by the Applicant against the Judgment AC-I-15-0203 of the Appellate Panel of the SCSC, of 6 June 2017, was a permissible legal remedy prescribed by law.
29. In this regard, the Court refers to Article 10 of Law No. 04/L-033 of the SCSC, which stipulates:

*[...]*

*“14. All Judgments and Decisions of the appellate panel are final and not subject to any further appeal.*

*15. Nothing in the present law shall be interpreted or applied as limiting or attempting to limit the constitutional right of any person to petition the Constitutional Court of Kosovo, in accordance with the law and procedural rules governing such a petition, to review the constitutionality of any Decision or Judgment issued by the Special Chamber or another court”.*

*[...]*

30. In this regard, the Court notes that the Appellate Panel of the SCSC, by Decision AC-I-17-0401, of 24 May 2018, dismissed as inadmissible the Applicant's appeal against Judgment AC-J-15-0203 of the Appellate Panel of the SCSC of 6 June 2017, reasoning:

*“...pursuant to Article 10, para. 14 of the Law No. 04/L-033 of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, all judgments and decisions of the Appellate Panel are final and are not subject to any other appeal. The Law on the SCSC, as well as its annex, does not foresee any legal remedy to challenge judgments or decisions of the Appellate Panel of the SCSC”.*

31. Consequently, the Court finds that, apart from the Constitutional Court, the Law on SCSC does not provide any other effective legal remedy for appeals against the final decisions of the Appellate Panel of the SCSC. This finding is also confirmed in the case law of the Court, in cases: KI02/15, Applicant: *Social, Sports, Cultural and Economic Centre "Pallati i Rinisë"*, Resolution on Inadmissibility of 18 May 2015, paragraph 29, KI120/17 Applicant *Hafiz Rizahu* Resolution on Inadmissibility of 7 December 2017, paragraph 34, KI18/17, Applicant *Isuf Bajrami*, Resolution on Inadmissibility of 19 April 2018, paragraph 33, and recently case KI41/18 Applicant *Gordana Dončić*, Resolution on Inadmissibility of 26 September 2018, paragraph 38, where the Court stated:

*"[It is quite clear that the SCSC decisions cannot be subject to any further proceedings, even the court proceedings, except the subject of review in the Constitutional Court]."*

32. By filing an "appeal" the Applicant in fact used a legal remedy which was not prescribed by the Law on the SCSC. This was also clearly confirmed by Decision AC-I-17-0401 of the Appellate Panel of the SCSC, of 24 May 2018, which constitutionality the Applicant challenges before the Court. However, the latter is not a decision related to the last effective remedy, as provided by Rule 39 (1) (c) of the Rules of Procedure in conjunction with the requirements of Article 49 [Deadlines] of the Law.
33. Therefore, the Court considers that the "final decision" within the meaning of Rule 39 (1) (c) and the case law of the Court, in the Applicant's case, is in fact Judgment AC-I-15-0203 of the Appellate Panel of the SCSC of 6 June 2017, from the receipt of which more than 4 (four) months have passed (See, *Paul and Audrey Edwards v. United Kingdom*, No. 46477/99, ECtHR, Decision of 14 March 2002; see also the Constitutional Court, Case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 36, also Resolution on Inadmissibility in case KI18/17, Applicant *Isuf Bajrami*, of 19 April 2018, paragraph 33, and recently case KI41/18 Applicant *Gordana Dončić*, Resolution on Inadmissibility of 26 September 2018, paragraph 40).
34. The Court also notes that such a position is in accordance with the case law of the European Court on Human Rights (hereinafter: the ECtHR), in harmony with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court interprets the fundamental rights and freedoms guaranteed by this Constitution. As it is applicable to this case, the ECtHR case law has established that the actions of the applicants cannot be justified if they tried to exercise legal remedies with the institutions or courts, which, according to the law, are not competent to provide protection of rights for the alleged violation that they complain of (See, *mutatis mutandis*, ECtHR case, *Fernie v. United Kingdom*, No. 14881/ 04, Decision of 5 January 2006).
35. The Court also recalls that the applicants must exhaust all legal remedies which, *inter alia*, are expected to be effective. Only effective legal remedies can be taken into account by the Court, since the applicants, cannot extend the strict deadlines provided by the Law and the Rules of Procedure, through

efforts to use legal remedies before the institutions, which are not competent to provide protection for the rights of which the applicants complain (see, *mutatis mutandis*, ECtHR case, *Fernie v. United Kingdom*, No. 14881/04, Decision of 5 January 2006; see also the Constitutional Court, Case KI120/17, Applicant *Hafiz Rizahu* Resolution on Inadmissibility of 7 December 2017, paragraph 31, Case KI18/17 Applicant *Isuf Bajrami*, Resolution on Inadmissibility of 19 April 2018, paragraph 37, and recently case KI41/18 Applicant *Gordana Dončić*, Resolution on Inadmissibility of 26 September 2018, paragraph 42).

36. In addition, the Court notes that upon the receipt of Judgment AC-I-15-0203, of the Appellate Panel of the SCSC of 6 June 2017, nothing prevented the Applicant from addressing the Court with a request for constitutional review of the Judgment in question. However, the Applicant did not do so, and by using a legal remedy, which is not permitted by law and therefore ineffective, it missed the deadline of four (4) months to address the Court with a referral (see, the Constitutional Court, case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility, of 7 December 2017, paragraph 35, Case KI18/17, Applicant *Isuf Bajrami*, Resolution on Inadmissibility of 19 April 2018, paragraph 38, and recently case KI41/18 Applicant *Gordana Dončić*, Resolution on Inadmissibility of 26 September 2018, paragraph 43).
37. The deadline starts to run from the final decision, resulting from the exhaustion of remedies which are adequate and effective in providing redress in respect of the matter which is the subject of complaint (*See Norkin v. Russia*, App. 21056/11, ECtHR, Decision of 5 February 2013, and see also *Maya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).
38. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt with within a reasonable time and that past decisions are not continually open to constitutional review (See, case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECtHR, Decision of 25 August 2005, see also: the Constitutional Court Case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24, and Case KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39, Case KI18/17 Applicant *Isuf Bajrami*, Resolution on Inadmissibility of 19 April 2018, paragraph 40, and recently case KI41/18 Applicant *Gordana Dončić*, Resolution on Inadmissibility of 26 September 2018, paragraph 45).
39. In conclusion, based on the foregoing considerations, the Court concludes that the Referral was not filed within the legal deadline established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and, consequently, the Court cannot consider the merits of the case, namely, the Applicant's allegations of constitutional violations.
40. Therefore, the Referral is to be declared inadmissible as out of time.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 21.4 and 113.7 of the Constitution, Article 20 of the Law and Rules 39.1 (c) and 59 (b) of the Rules of Procedure, on 30 January 2019, unanimously

## DECIDES

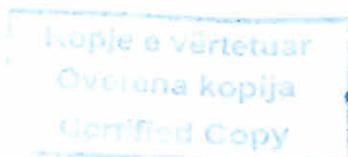
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Remzije Istrefi-Peci

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*