



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

Prishtina, on 18 April 2018  
Ref. No.: RK 1218/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI158/17**

Applicant

**Privatization Agency of Kosovo**

**Request for constitutional review of Judgment No. AC-I-15-015 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 23 November 2017**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by the Privatization Agency of Kosovo (hereinafter: PAK), (hereinafter: the Applicant), which is represented by Rudi Metaj, a lawyer of the PAK main office in Prishtina.

## **Challenged decision**

2. The Applicant challenges Judgment No. AC-I-15-0151 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 23 November 2017.

## **Subject matter**

3. The subject matter is the constitutional review of the of the abovementioned Judgment of the Appellate Panel, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 (Right to a fair trial) of the European Convention on Human Rights (the ECHR).

## **Legal basis**

4. The Referral is based on Article 113.7 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 29 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

5. On 27 December 2017, the Applicant submitted the Referral to the Court.
6. On 29 December 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Ivan Čukalović (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 19 January 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Appellate Panel.
8. On 13 March 2018, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. A former employee R.O., of the Socially Owned Enterprise "Ekonomia Peshkatare" (hereinafter: the SOE), lost his employment relationship with the SOE.
10. In 2006, PAK privatized the SOE.
11. On 22 May 2006, the former employee (hereinafter: the claimant) filed a claim with PAK requesting compensation for unpaid salaries in the amount of 18,900.00 € for the period from 1997 until 15 March 2006.



12. On 4 July 2013, the Liquidation Authority of the Socially Owned Enterprise (hereinafter: LA) rendered Decision No. PEJ127-0078, rejecting the claimant's claim as ungrounded, stating, *inter alia*, that *"the claimant's claim for compensation was out of time"*.
13. On 2 August 2013, the claimant filed a claim with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against Decision No. PEJ127-0078, LA.
14. In the appeal, the claimant stated *"[...] that the rejection of his claim as out of time is unfair, as he repeatedly requested from the SOE management, as well as from the trade union, to exercise this right for payment of unpaid salaries, and, moreover, no legal advice was given to him to continue with the court proceedings before the competent court, for which the SOE and the trade union are to be blamed."*
15. On 28 February 2014, PAK replied to the claimant's claim, stating that *"the complaint is ungrounded, due to prescription and accordingly such request for unpaid wages for a period from 1997 until 15 March 2006 in the amount of 18.900.00 €, should have been filed within 3 years, after 1997."*
16. On 4 June 2015, the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) rendered Judgment C-IV-13-1453, which rejected the claimant's claim as ungrounded, with the reasoning that:

*"The [appellant] did not attach to the complaint any reliable evidence which would prove that he in due time addressed to the authority of the SOE requesting to realize his rights of employment. He also did not submit any evidence that he has ever addressed any competent court of that time filing any claims regarding this issue, and that should have done within three years after the SOE blocked paying his personal income."*
17. On 23 June 2015, the claimant filed an appeal with the Appellate Panel against Judgment C-IV-13-1453 of the Specialized Panel, claiming *"[...] serious violations of the provisions of the law on contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law."*
18. On 22 June 2016, PAK submitted a response with the Appellate Panel to the claimant's appeal. In its response to the appeal, PAK emphasized that *"the claim is time-barred and as such should be rejected as ungrounded."*
19. On 23 November 2017, the Appellate Panel rendered Judgment No. AC-I-15-0151, partially approving the claimant's claim for compensation of unpaid salaries for the period from 22 May 2003 to 13 March 2006, including legal interest, in the total amount of 6.334.20 €.
20. In the reasoning of Judgment AC-I-15-0151, the Appellate Panel *inter alia* states: *"[...] the fact is incontestable that the [claimant] was dismissed due to the*

*installation of interim measures, likewise it is incontestable that he worked for the SOE until 15 March 2006, at the period of time for which he claims salaries. As per LCP the non-contested facts shall be considered as proven.*

*[...]*

*The Appellate Panel does not deem as prescribed the claimant's claim for the period of time from 22 May 2003 until 22 May 2006. Given that the termination of payment of salaries occurred on 15/03/2006 the Panel considers that the period of time for which the unpaid salaries shall be compensated is from 22/05/2003 until 15/03/2006, namely 34 months in total”.*

### **Applicant's allegations**

21. The Applicant alleges that the Appellate Panel did not examine all of their submissions with due diligence and hence violated their right to access to the court, which is contrary to Article 6.1 (Right to a fair trial) of the ECHR.
22. The Applicant further states that the Appellate Panel was partial when rendering the judgment and thus violated the right to be tried by an impartial tribunal as defined in Article 6.1 (Right to a fair trial) of the ECHR.
23. The Applicant alleges that the Appellate Panel failed to provide a good and clear legal reasoning in relation to their financial obligations as defined in the challenged judgment and, in this way violated their right to have a reasoned judgment.
24. The Applicant requests the Court to reject the challenged Judgment based on the presented arguments, as the latter is not in compliance with Article 6.1 (Right to a fair trial) of the ECHR.

### **Admissibility of Referral**

25. The Court first examines whether the Referral meets the admissibility requirements, established in the Constitution, and further specified in the Law and the Rules of Procedure.
26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*“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”.*

27. The Court considers that, in accordance with Article 21. 4 of the Constitution, which provides that *“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”*, the Applicant has the right to file a constitutional complaint, referring to the



rights applicable to individuals and legal persons (see: *mutatis mutandis*, decision of 27 January 2010, Referral KI41/09, *AAB-RIINVEST University L.L.C., Prishtina v. Republic of Kosovo*).

28. The Court further examines whether the Applicant fulfilled the admissibility requirements as prescribed in the Law. In that regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 48 [Accuracy of the Referral]

*"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."*

Article 49 [Deadlines]

*„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..."*

29. As regards the fulfillment of these requirements, the Court finds that the Applicant filed the Referral in the capacity of an authorized party, challenging the act of a public authority, namely Judgment No. AC-I-15-0151 of 23 November 2017, after exhausting all legal remedies. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law and filed a Referral in accordance with the deadlines prescribed in Article 49 of the Law.
30. However, the Court must further assess whether the requirements established in Rule 36 of the Rules of Procedure are met. Rule 36 [Admissibility Criteria], paragraphs (1) (d) and (2) (b) of the Rules of Procedure, stipulates:

*"(1) The Court may consider a referral if:*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*[...]*

*b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights "*

31. In the present case, the Court recalls that the Applicant alleges violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR because;

*„i) the Applicant was denied the right of access to the court,*

ii) the decision was rendered by the court that was not independent and impartial,

iii) judgment of the Appellate Panel is not legally reasoned”.

32. First of all, the Court recalls that pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution „*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*”.
33. The Court reiterates that the complete determination of the factual situation and of the applicable law is within the full jurisdiction of the regular courts, and the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, it cannot act as a “*fourth instance court*” (see: ECtHR case, *Akdivar v. Turkey*, No. 21893/93, of 16 September 1996, paragraph 65, see also: *mutatis mutandis* Constitutional Court: case KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
34. The Court reiterates that it is not its task to deal with errors of fact or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

#### **i) Right of access to court**

35. Bearing in mind the Applicant's allegations regarding a violation of their right of access to court, the Court states that the ECHR does not explicitly mention the right of access to a court. However the European Court of Human Rights (hereinafter: the ECtHR) for the first time defined the right of access to court as a principle in the case *Golder v. United Kingdom*, in which it concluded, *inter alia*, that “[...] the right to a fair trial also includes the right of access to a court, which must not be conditioned or otherwise hampered” (see: ECtHR Judgment *Golder v. United Kingdom*, Application No. 4451/70, 1975).
36. The Court notes that, in the present case, all instances of the regular courts, according to the principle of „the right of access to a court” took into account the Applicants arguments. related to the right of access to a court. Based on that, they rendered decisions on the merits of the case, which leads to a conclusion that the Applicant's access to the court was not hampered or conditioned, and based on this, the existence of a violation of the Applicant's right of access to the court under Article 6.1 (Right to a fair trial) of the ECHR can be excluded.

#### **ii) Independent and impartial court**

37. As regards the Applicant's allegation of the existence of a violation in respect of the “independence of the court”, the Court notes that, according to ECtHR case law, the court must be independent of the executive and the parties (see ECtHR Judgment, *Ringeisen v. Austria*, of 16 July 1971, series A No. 13, paragraph 95). In addition, the doubts related the existence of a lack of independence



must be objectively justified. Namely, the appropriate arguments and evidence must be provided that there is a legitimate suspicion of a lack of independence of the court due to pressure and influence coming from the executive branch or the parties.

38. In the present case, the Court notes that the Applicant, apart from their general allegations, did not provide any evidence that would have demonstrated that in the proceedings before the Appellate Panel, there has been a violation of this principle, or that the challenged Judgment of the Appellate Panel is a result of any influence coming from the executive power or the parties to the proceedings.
39. As regards the Applicant's allegation of a breach of the principle of "impartiality of the court", the Court emphasizes that the impartiality of the court, within the meaning of Article 6, 1 (Right to a fair trial) , of the ECHR, is determined according to the aspect of *subjective and objective* impartiality of the court. Subjective or personal impartiality is presumed that the court is always impartial in relation to the parties, unless it is challenged by credible evidence. Therefore, the personal impartiality of a judge is presumed, until there is a proof to the contrary (see ECtHR Judgment *Wettstein v. Switzerland*, Judgment of 21 December 2000, Report of judgments and decisions 2000 - XII, paragraph 43).
40. The Court notes that the Applicant in the present case did not indicate the subjective partiality of the Supreme Court, nor did they provide any reasonable evidence of the existence of partiality of the judge towards a party to the proceedings, which would violate the principle of subjective impartiality.
41. On the other hand, the Court notes that objective impartiality is not presumed, but is determined based on the objective facts that are in the very case. It is determined on the evaluation whether there is objective evidence in the case file based on which it is reasonable to suspect that the court was not impartial.
42. In this regard, the Court, by examining the case file and the reasoning of the challenged Judgment of the Appellate Panel, found that Judgment AC-I-15-0151 leaves no impression that it has in any way led to a violation of the principle of objective impartiality.
43. In addition, the Court notes that the Applicant attempted to justify the alleged violations due to the lack of impartiality of the court by stating that "*the Appellate Panel has erroneously determined the factual situation in relation to the Applicant's employment status*". However, in the opinion of this Court, the determination of the factual situation in itself falls under the jurisdiction of the regular courts, which jurisdiction is precisely to deal with the determination of the facts (legality).

### **iii) Unreasoned decision**

44. As regards the Applicant's allegation of a violation of the right to a fair trial "... *because the Judgment of the Appellate Panel is not reasoned and legally founded*", the Court points out that, according to the established case law of the



ECtHR, Article 6, paragraph 1, of the ECHR it is obligatory for the courts to, *inter alia*, reason their judgments. This obligation cannot, however, be understood as an obligation to state all the details in the judgment and to answer all the questions raised and arguments presented (see ECtHR Judgment, *Ruiz Torija v. Spain*, of 9 December 1994, Series A, No. 303-A, paragraph 29, see Decision ECtHR, *Harutyunyan v. Armenia*, of 5 July 2005, application number 36549/03).

45. The Court also noted that, according to the stand of the European Commission on Human Rights, the final decisions of the appellate courts do not have to contain exhaustive reasoning, but the one that which the court deems relevant and well-founded (see: *Decision of the European Commission for Human Rights*, 8769/07 of 16 July 1981 , OI 25).
46. In essence, the Court notes that the main arguments of the Applicant in relation to the alleged violation are that “*the Appellate Panel did not sufficiently reason its decision regarding the financial obligations of the Applicant towards the claimant and that such a position of the Appellate Panel does not have a legal ground.*”
47. The Court finds that the Applicant’s allegations regarding an unreasoned decision are ungrounded and unsubstantiated. This is due to the reason that the Appellate Panel in Judgment No. AC-I-15-0151 stated that “*pursuant to Article 608 of the Law on Associated Labor (hereinafter LAL) the monetary claims such as salaries are prescribed in 3 years and the prescription starts to run on the date the SOE stopped paying the salaries. As per allegations of the appellant, payments of salaries stopped on 15/03/2006. The appellant as evidence introduced his claim dated 22 May 2006*”.
48. Bearing in mind the foregoing, the Court considers that the Appellate Panel in Judgment No. AC-I-15-0151 provided clear and accurate arguments to substantiate all its findings and conclusions. Therefore, the Court concludes that the proceedings were not arbitrary, unfair or without legal ground.
49. In these circumstances, the Court concludes that in the present case there are no indications or proves that the proceedings before the regular courts were unfair or arbitrary. Consequently the Constitutional Court comes to conclusion that the core of the right to fair and impartial trial has not been violated nor the Applicant was denied any procedural guarantees, which would lead to a violation of that right under Article 31 of the Constitution or Article 6 of the ECHR.
50. The Court emphasizes that it is the Applicant's obligation to substantiate his constitutional allegations, and to submit *prima facie* evidence indicating a violation of their rights guaranteed by the Constitution and the ECHR. That consideration is in conformity with the jurisdiction of the Court (see: case of the Constitutional Court No. K119/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylva*, 5 December 2013).



51. In sum, the Court considers that the Applicant did not substantiate its allegations nor did it submit any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR.
52. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 113, paragraphs 1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, in the session held on 13 March 2018, 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Snezhana Botusharova



**President of the Constitutional Court**

Arta Rama-Hajrizi

