



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 28 May 2018  
Ref. No.: RK 1233/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI18/17**

Applicant

**Isuf Bajrami**

**Constitutional review of Decision AC-II-14-0135 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 20 October 2016**

### **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 Isuf Bajrami, residing in Velekince, Municipality of Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision [AC-I-15-0135] of 20 October 2016 of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the SCSC) on Privatization Agency of Kosovo Related Matters (hereinafter: PAK) which rejected the request for revision as inadmissible filed against Judgment [AC-II-12-0070] of 27 March 2014 of the Appellate Panel of the SCSC and Judgment [C. no. 589/05], which confirmed Judgment [C. No. 589/05] of 13 March 2007 of the Municipal Court in Gjilan.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law], paragraphs 1 and 3 of Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 1 of Protocol No. 1 of the European Convention of Human Rights (hereinafter: the ECHR), Article 53 [Interpretation of Human Rights Provisions], Article 54 [Judicial Protection of Rights], paragraph 4 of Article 102 [General Principles of the Judicial System] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution.

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 24 February 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 March 2017, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 11 April 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the SCSC on PAK related matters.
8. On 19 April 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. On 23 December 2004, the Applicant filed a claim with the SCSC on Kosovo Trust Agency Related Matters (hereinafter: the KTA) against the respondents Municipality of Gjilan, KBI "Agrokultura" in Gjilan and the Agricultural Cooperative in Zhegër, requesting the confirmation of the property rights over the contested immovable property, which according to Applicant's allegations was taken from his predecessors during the agrarian reform process between 1948-1995.
10. On 20 September 2005, through Decision [SCC-04-0209], the SCSC forwarded the claim to the Municipal Court in Gjilan to decide as a competent court. The respective decision of the SCSC instructed the Municipal Court in Gjilan that in the event of an appeal against the decision of this Court, competent would be the SCSC.
11. On 13 March 2007, the Municipal Court in Gjilan, through the Judgment [C. No. 589/05], rejected the statement of claim of the Applicant. The reasoning of the Judgment was based, *inter alia*, on the findings of the geodesy expert and on the fact that the Applicant "*did not submit compelling evidence that the contested immovable property was confiscated, expropriated or nationalized*".
12. The Municipal Court in Gjilan, however, in its Judgment, advised the parties contrary to the instructions provided by the SCSC in its Decision [SCC-04-0209] of 29 September 2007, advising that the appeals against the Judgment [C. No. 589/05] of 13 March 2007, should be filed with the District Court in Gjilan. Accordingly, the Applicant filed appeals with both, the District Court in Gjilan and the SCSC. The Applicant filed the first appeal on 23 August 2007, while the second on 11 October 2007.
13. On 26 October 2007, through the Decision [AC. No. 349/07], the District Court in Gjilan approved the Applicant's appeal, quashing the Judgment [C. No. 589/05] of the Municipal Court in Gjilan and remanded the case for retrial. The District Court in Gjilan reasoned its decision on essential violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and the erroneous application of the substantive law.
14. On 21 December 2007, the Applicant filed a claim with the SCSC for the issuance of the preliminary injunction (interim measure) in order to prevent the sale of the contested immovable property by the respondents until a final judgment on the case has been rendered.
15. On 31 July 2008, of the Appellate Panel of the SCSC through Decision [SCA-07-0057] temporarily suspended the proceedings. Whereas, on 24 September 2009, upon the request for the continuation of the proceedings filed by the Applicant, the SCSC changed the Decision [SCA-07-0057] of 31 July 2008 for the suspension of the case proceedings and provided the respondents a time period of 1 (one) month for submitting their responses to the appeal.

16. On 27 March 2014, through Judgment [AC-II-12-0070], the Appellate Panel of the SCSC: 1) declared invalid the Decision [AC. No. 349/07] of 26 October 2007 of the District Court in Gjilan; 2) declared as ungrounded the Applicant's appeal; and 3) upheld the Judgment [C. No. 589/05] of 13 March 2007 of the Municipal Court in Gjilan.
17. On 28 April 2014, the Applicant filed a request for revision with the SCSC against Judgment [AC-II-12-0070] of 27 March 2014 of the Appellate Panel, alleging essential violations of the contested procedure provisions and erroneous application of the substantive law.
18. On 20 October 2016, the Appellate Panel of the SCSC, through Decision [AC-II-14-0135], rejected as inadmissible the request for revision, reasoning that this legal remedy is not permitted by Law No. 04/L -033 on the SCSC.
19. Consequently, the Appellate Panel concluded that the case was finally rendered by Judgment [AC-II-12-0070] of 27 March 2014, and taking into account that Law on the SCSC does not provide any other legal remedy for the appeal against this Judgment, it is final and enforceable.

### **Applicant's allegations**

20. The Applicant alleges that by Decision [AC-I-14-0135] of 25 October 2016 of the Appellate Panel of the SCSC, by which his request for revision was declared inadmissible, his property rights guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR, were violated. The Applicant also alleges that this decision caused him irreparable damage in violation of Article 116.2 of the Constitution.
21. The Applicant also alleges a violation of Article 24 of the Constitution, a violation of the Anti-Discrimination Law No. 2004/3 of the Republic of Kosovo and violation of UNMIK Regulation No. 2005/18 as amended by UNMIK Regulation No. 2008/27.
22. In addition, the Applicant alleges that the Judgment [C. No. 589/05] of 13 March 2017 of the Municipal Court in Gjilan, violated his constitutional rights because it was rendered in violation of Articles 354, 355 and 356 of the Law on Contested Procedure.
23. Finally, the Applicant requests the Court to modify Judgment [AC-I-140135] of 20 October 2016, Judgment of the Appellate Panel of the SCSC [AC-II-12-0070] of the SCSC of 27 March 2014 and Judgment [P. No. 589/05] of the Municipal Court in Gjilan of 13 March 2007, and to remand his case for retrial.

### **Admissibility of Referral**

24. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.



25. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that:

*“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 examines whether the Applicant met the admissibility criteria as further specified in the Law. In this regard, the Court first refers to Article 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which stipulate:

Article 47 of the Law  
[Individual Requests]

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”*

Article 48 of the Law  
[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”.*

27. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Decision [AC-II-14-0135] of 20 October 2016 of the SCSC, after having exhausted all legal remedies provided by law. The Applicant also clarified the rights and freedoms that he claims to have been violated, in accordance with the requirements of Article 48 of the Law.
28. However, the Court must further examine whether the requirements established by Article 49 [Deadlines] of the Law and Rule 36 [Admissibility Criteria], namely paragraph 1 (c) of the Rules of Procedure, have been met. They stipulate as it follows:

Article 49 of the Law  
[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...”.*

Rule 36 of the Rules of Procedure  
[Admissibility Criteria]

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

*[...]*

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

*[...].”*

29. When assessing whether the requirements of Article 49 of the Law in conjunction with Rule 36 (1) (c) of the Rules of Procedure have been met, the Court needs to examine whether the requirement of the 4 (four) month period provided by the Law was respected in relation to the “final decision” rendered as a result of an “effective legal remedy”, as required by the admissibility criteria established in the Rules of Procedure
30. Therefore, when assessing whether the admissibility criteria have been met, the Court must assess whether the challenged decision, namely the Judgment [AC-II-14-0135] of 20 October 2016 of the Appellate Panel of the SCSC, was rendered as a result of an effective legal remedy, namely, whether the request for revision filed against the Judgment [AC-II-12-0070] of 27 March 2016 of the Appellate Panel of the SCSC, was a legal remedy permitted by law.
31. In this regard, the Court refers to Article 10 of Law No. 04/L-033 on the SCSC, which provides that:

*(...)*  
*“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.”*  
*(...)*
32. In this respect, the Court notes that the Appellate Panel of the SCSC rejected as inadmissible the Applicant's request for revision, specifically referring to the Law on the SCSC and concluded that:



“... based on Article 10, paragraph 14 of Law No. 04/L-033 on the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo related matters, all judgments and decisions of the Appellate Panel of the SCSC are final and not are subject to any other appeal.”

33. Consequently, the Court finds that, apart from this Court, the relevant law does not provide any other 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, among others, in cases Resolution on Inadmissibility in Case KI02/15 of 18 May 2015 with applicant: *Social, Sports, Cultural and Economic Centre, "Pallati i Rinise"*, paragraph 29, and Resolution on Inadmissibility in Case KI120/17 of 7 December 2017 with applicant *Hafiz Rizahu*, paragraph 34, where, among others, 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”.

34. By filing a request for revision against the Judgment [AC-II-12-0070] of 27 March 2016 of the Appellate Panel, the Applicant in fact used a legal remedy which was not prescribed by the Law on the SCSC. This was also clearly confirmed through the Judgment [AC-II-14-0135] of 20 October 2016 of the Appellate Panel of the SCSC, which the Applicant challenges before the Court. However, the latter is not a decision related to the “last effective remedy” as provided by Rule 36 (1) (c) of the Rules of Procedure in conjunction with the requirements of Article 49 [Deadlines] of the Law.
35. Therefore, the Court considers that the “final decision” (the last effective legal remedy), within the meaning of Rule 36 (1) (c) and the case law of the Court, in the Applicant's case is in fact the Judgment [AC-II- 12-0070] of 27 March 2014 of the Appellate Panel of the SCSC, from the publication of which, more than two years have passed. (see, *Paul and Audrey Edwards v. United Kingdom*, No. 46477/99, ECtHR, Decision of 14 March 2002; see also Resolution on Inadmissibility of the Constitutional Court in Case KI120/17, Applicant *Hafiz Rizahu*, of 7 December 2017, paragraph 36).
36. The Court also notes that such a position is in accordance with the case law of the European Court of Human Rights (hereinafter: 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 of which, they complain. (see, *mutatis mutandis*, ECtHR case, *Fernie v. United Kingdom*, No. 14881/04, Decision of 5 January 2006).
37. 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 Resolution on Inadmissibility of the Constitutional Court in Case KI120/17, Applicant *Hafiz Rizahu*, of 7 December 2017, paragraph 31).

38. In addition, the Court notes that upon the receipt of the Judgment [AC-II-12-0070] of 27 March 2016 of the Appellate Panel of SCSC, nothing prevented the Applicant from addressing the Court with a request for constitutional review of the Judgment in question. However, he did not do so, and by using a legal remedy, which is not permitted by law and therefore ineffective, he missed the deadline of 4 (four) months to address the Court with a referral. (See: Resolution on Inadmissibility of the Constitutional Court in Case KI120/17, Applicant *Hafiz Rizahu*, of 7 December 2017, paragraph 35).
39. 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 a subject of complain. (See *Norkin v. Russia*, App. 21056/11, ECtHR, Decision of 5 February 2013 and see also *Moya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).
40. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt 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, ECHR, Decision of 25 August 2005, and see also: Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24, and Resolution on Inadmissibility of the Constitutional Court in Case KI120/17, Applicant *Hafiz Rizahu*, of 7 December 2017, paragraph 36).
41. 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 36 (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.
42. Therefore, the Referral is to be declared inadmissible as out of time.



## FOR THESE REASONS

The Constitutional Court in accordance with Article 113.7 of the Constitution, Article 20 and 49 of the Law and Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, in the session held on 19 April 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**

  
Gresa Caka-Nimani



**President of the Constitutional Court**

  
Arta Rama-Hajrizi