



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

Prishtina, on 11 June 2018
Ref.No.: RK 1265/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI139/17

Applicant

Hazir Makolli

**Constitutional review of
Judgment AC-I-15-0062-A0033 of the Appellate Panel of the Special
Chamber of the Supreme Court of Kosovo on Privatization Agency of
Kosovo Related Matters,
of 27 July 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 Hazir Makolli, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Judgment [AC-I-15-0062-A0033] 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 27 July 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties], of the Constitution, Article 22 [Processing Referrals] and 47 [Individual Requests] 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 23 November 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 1 December 2017, the President of the Court appointed Judge Selvete Gërxhaliu- Krasniqi as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 11 December 2017, the Court notified the Applicant about the registration of the Referral and requested him to clarify and specify what decision of the public authority he is challenging before the Court.
8. On 11 December 2017, a copy of the Referral was also sent to the Appellate Panel, which was requested to submit additional documents to the Court. The Court notified the Privatization Agency of Kosovo (hereinafter: the PAK) about the registration of the Referral.
9. On 18 December 2017, the Applicant submitted the completed Referral, whereas on 20 December 2017 the Appellate Panel submitted the requested documents to the Court.

10. On 25 May 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

11. In the period from 15 to 17 December 2011, the final list of employees was published to receive 20% of the proceeds from the privatization of the Socially Owned Enterprise (SOE) "Gërmia", which was privatized on 5 July 2007.
12. On 28 February 2012, the Applicant filed a complaint with the SCSC against the PAK requesting to be included in the final list of beneficiaries of 20%.
13. On 31 March 2015, the Specialized Panel of the SCSC rendered Judgment SCEL-11-0070 which rejected the Applicant's complaint as inadmissible because it was filed after the deadline. The Specialized Panel of the SCSC reasoned that the deadline for filing the complaint was 9 January 2012, while the Applicant did not give any explanation before this Panel as to why his complaint was filed after the deadline.
14. On 28 April 2015, the Applicant filed an appeal with the Appellate Panel, where, among the other, stated that he filed a complaint after the deadline due to his health condition and that during that time he was abroad for treatment.
15. On 27 July 2017, the Appellate Panel, by Judgment AC-I-15-0062-A0033, rejected the Applicant's appeal as ungrounded. The Appellate Panel reasoned that the Applicant before the Specialized Panel did not justify his delay and also found that under the conditions provided for in Article 65 of Law No. 04/L-033 on the SCSC, new evidence of appeal cannot be taken into consideration because the Applicant did not file evidence before the trial panel and did not submit a request that this evidence be accepted before the Appellate Panel.

Relevant law

Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Article 65 Submission of New Evidence

In exceptional circumstances and for good cause shown, the Appellate panel may permit a party to present to the Appellate Panel new evidence that was not available to the party during the evidentiary portion of the first instance proceedings. A written application for such permission must first be submitted to the Appellate Panel and served on the other parties not less than fifteen (15) days before the date of the hearing where such evidence is proposed to be presented.

The Appellate Panel may authorize the presentation of such new evidence if it considers it to be in the interests of justice.

Applicant's allegations

16. The Applicant alleges that the challenged judgment violated his rights guaranteed by Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies], and Article 54 [Judicial Protection of Rights] of the Constitution.
17. The Applicant alleges that he is discriminated against because in the Judgment of the Specialized Panel of the SCSC, for some complainants the date when they filed the complaint and whether they filed it before or after the deadline was not indicated.
18. The Applicant alleges that *"the appellant V.T. submitted the appeal after the expiration of the time limit, she submitted a confirmation issued by the Medical Center [...] whereby she noted that she was hospitalized and requested to consider her appeal "force majeure". Despite the fact that the appeal was submitted after the expiration of the legal time limit and due to her inability because she was hospitalized, the Court decided upon it as "restitution in termini".*
19. With regard to the abovementioned allegation, the Applicant further claims *"[...] the question is raised why my request - appeal was not taken into consideration because I also was hospitalized and under treatment and I was unable to submit an appeal [...]"*.
20. The Applicant in the end requests the Court: *"[...] to register my appeal as request for return to the previous situation at the relevant Specialized Panel or to register my appeal at the relevant Specialized Panel no. IV of the Special Chamber of the Supreme Court [...]"*.

Assessment of the admissibility of Referral

21. The Court first examines whether the admissibility requirements, established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure have been met.
22. 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."
23. 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.

24. The Court considers that the Applicant is an authorized party, has exhausted available legal remedies and filed the Referral on time.

25. However, the Court refers to Article 48 [Accuracy of the Referral] 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.

26. In addition, the Court also recalls paragraphs (1) (d), (2) (b) and (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresees:

(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, [...]

(d) the Applicant does not sufficiently substantiate his claim”.

27. The Court recalls that the Applicant alleges that the challenged judgment violated his rights to equality before the law, legal remedies and judicial protection of rights guaranteed by the Constitution.

28. Regarding his right to equality before the law, the Court recalls that the Applicant has two main allegations:

(i) regarding the deadline for filing the complaint, the Applicant alleges that the regular courts had discriminated him against in relation to some other complainants, because according to him, for those complainants the date when they filed the complaint with the Specialized Panel of the SCSC is not indicated in the Judgment; and

(ii) to another complainant (V.T.) the certificate of the hospital was recognized as an evidence by the Specialized Panel of the SCSC. Whereas, in his case, the Applicant alleges that the regular courts did not take into account the fact that he was in the hospital and had no opportunity to file the complaint on time.

29. In addressing the Applicant's allegations, the Court first refers 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*”.
30. The Court refers to the case law of the European Court of Human Rights (hereinafter: the ECtHR), which stated that “*discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*” (see: ECtHR Judgment of 11 July 2002, *Willis v. United Kingdom*, No. 36042/97, paragraph 48 and see ECtHR Judgment of 13 December 2005, *Bekos and Koutropoulos v. Greece*, no. 15250/02, paragraph 63).
31. The Court also reiterates that the different treatment must pursue a legitimate aim to be justified and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. (see: the ECtHR Judgment of 13 June 1979, *Marckx v. Belgium*, No. 6833/74, paragraph 33).
32. In the present case, the Court first notes that in the proceedings before the Specialized Panel of the SCSC and the Appellate Panel there were also other complainants who individually filed complaints.
33. As stated above, regarding the first allegation of the Applicant, alleging that he is discriminated against in relation to some other complainants, the Court based on the Judgment of the Specialized Panel of the SCSC, notes that the Specialized Panel rejected the complaints of some complainants, as out of time.
34. With regard to the second allegation of the Applicant, the Court notes that the complainant V.T. filed a complaint with the Specialized Panel of the SCSC out of time limit, but she justified the delay with evidence and, as a consequence, her complaint was approved as submitted within the time-limit.
35. In the Applicant's case, the Court recalls that the Appellate Panel reasoned as follows:

“After reviewing the case file, the Appellate Panel notes that the appellant did not reason by appeal why the hospital discharge list [...] was not filed with the Specialized Panel. He in the appeal before the Specialized Panel did not justify his delay.

[...] The Appellate Panel finds that the new evidence proposed during the appeal proceedings cannot be taken into consideration under the requirements of Article 65 of Law No. 04/L-033 on the SCSC as the appellant did not prove why he did not file such evidence before the Trial Panel while before the Appellate Panel he did not submit a request, seeking that such an evidence be acceptable”.

36. In this regard, the Court notes that the regular courts in the Applicant's case found that he failed to comply with the procedural requirements prescribed in the law, namely by not reasoning his delay at the Specialized Panel of the SCSC and by not filing a request for admissibility of the evidence in the appeal procedure before the Appellate Panel, as required by respective article of the relevant law.
37. Therefore, the Court, based on the aforementioned facts, considers that the Applicant's allegations of a violation of his right to equality before the law are ungrounded.
38. In addition, the Court considers that the explanation provided by the Appellate Panel in the judgment is clear and legally grounded and that the proceedings before the Appellate Panel were not unfair and arbitrary (see, *mutatis mutandis*, the ECtHR decision of 30 June 2009, *Shub v. Lithuania*, No. 17064/06).
39. The Court further recalls that the Applicant alleges violation of his rights guaranteed by Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution, but does not justify this allegation.
40. The Court notes that the Applicant only enumerates and generally describes the content of constitutional provisions, without accurately substantiating how those provisions were violated in his case as it is required by Article 48 of the Law.
41. Accordingly, the Court considers that the Applicant did not substantiate his allegation, and did not submit any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see: case of the Constitutional Court No. K119/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylá*, Resolution on Inadmissibility of 5 December 2013).
42. From the foregoing, the Court concludes that the facts presented by the Applicant do not justify his allegation of a violation of his right to equality before the law, or the allegation of a violation of his rights to legal remedies and judicial protection. In fact, the Applicant has not substantiated, nor proved that the proceedings before the Appellate Panel were unfair or arbitrary.
43. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, pursuant to Rule 36 (1) (d) and (2) (b) (d) of the Rules of Procedure.

FOR THESE REASONS

In accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d), (2) (b) and (d) of the Rules of Procedure, in the session held on 25 May 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

Selvete Gërxhaliu-Krasniqi

President of the Constitutional Court

Arta Rama-Hajrizi

