



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 11 June 2018
Ref.No: RK 1266/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI153/17

Applicant

Kadri Rexhepi

**Constitutional review of
Judgment AC-I.-14-0003 of the Appellate Panel of the Special Chamber of
the Supreme Court of Kosovo on Privatization Agency of Kosovo Related
Matters of 28 September 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Review Panel is composed of judges:

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 Kadri Rexhepi residing in the village Dumnica e Poshtme, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Judgment AC-I-14-0003 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 28 September 2017, which was served on the Applicant on the same date.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment. The Applicant did not specifically state what right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) has been violated.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on 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 15 December 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 December 2017, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Bekim Sejdiu.
7. On 26 December 2017, the Court notified the Applicant about the registration of the Referral and requested him to submit additional documents. A copy of the Referral was also sent to the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC) and the Privatization Agency of Kosovo (hereinafter: PAK).
8. On 12 January 2018, the Applicant submitted the requested documents to the Court.
9. 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

10. On 27 June 2008, the Socially Owned Enterprise “28 Nëntori” in Podujeva (hereinafter: the Socially Owned Enterprise) was privatized.
11. On 9 June 2011, the PAK published the final list of employees who met the criteria for benefiting a part of the 20% proceeds from the privatization and

liquidation of the Socially Owned Enterprise. The deadline for submitting the complaint was 2 July 2011.

12. On 18 September 2013, the Applicant, in a capacity of the former employee of the Socially Owned Enterprise filed a complaint with the Specialized Panel of the SCSC, requesting to be included in the list of employees with legitimate rights in the distribution of proceeds from the privatization and liquidation.
13. On 12 December 2013, the Specialized Panel of the SCSC by Judgment C-II-13, -0333 dismissed the Applicant's appeal as out of time.
14. On 4 January 2014, the Applicant filed an appeal with the Appellate Panel claiming that the PAK was obliged to notify employees in person and not through newspapers or television. In his appeal, the Applicant also alleged that in the meantime, when the official list of beneficiaries of 20% was published, he was ill.
15. On 28 September 2017, the Appellate Panel by Judgment AC-I.-14.0003 rejected the Applicant's appeal as ungrounded.
16. Regarding the Applicant's allegation of being notified regarding the publication of the official list of beneficiaries of 20%, the Appellate Panel reasoned that the final list and notification of the right of appeal in accordance with the provisions of the legislation in force *"are published on two consecutive working days as well in the following weekend in main newspapers in Albanian language, which are printed in the largest number of copies. Therefore [...] if the Agency fails to notify the employee by personal letter it does not imply that the deadline for filing the appeal has been maintained"*. Whereas, regarding the Applicant's allegation that at the time of publication of the official list of beneficiaries of 20% the Applicant was ill, the Appellate Panel found that *"[...] the appellant's illness mentioned in the appeal remains unconfirmed, as the appellant has not submitted any evidence [...]"*.

Applicant's allegations

17. The Applicant did not specifically mention any rights foreseen by the Constitution, which he claims to have been violated by the challenged Judgment.
18. The Applicant alleges that he *"his fundamental right was violated [because] he was employed over 18 years with the respondent and now this right was denied to him, as he [the Applicant] allegedly was not in the list and did not comply with the legal deadlines"*.
19. The Applicant further alleges that he did not receive in writing anything at the time when the official list of employees with legitimate rights was published and he alleges that he was in medical treatment at the time of the announcement of this list.
20. The Applicant finally requests the Court to be included *"[...] in the final list of employees for compensation of 20% from the privatization due to the work"*

contribution over 18 years with the respondent and the material compensation”.

Assessment of the admissibility of Referral

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

22. In this respect, the Court first 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 examines whether the Applicant has met the requirement for submitting his Referral in accordance with the deadlines established in Article 49 [Deadlines] of the Law, which stipulates:

“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. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges the act of a public authority after exhausting all legal remedies and has submitted the Referral in accordance with the deadlines provided in Article 49 of the Law.

25. However, the Court further examines whether the Applicant has fulfilled the requirements provided by Article 48 [Accuracy of the Referral] of the Law, and Rule 36 [Admissibility Criteria] of the Rules of Procedure which provide:

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.”

Rule 36 [Admissibility Criteria]

(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:

[...]

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

26. The Court recalls that the Applicant in his Referral does not specify what right guaranteed by the Constitution has been violated by the challenged decision, but he merely repeats his allegations filed before the regular courts, claiming that he did not receive anything in writing at the time the list was published and that he was in medical treatment at the time of the publication of the final list.
27. In this respect, the Court recalls that the Appellate Panel addressed the Applicant's allegations, reasoning that, pursuant to Article 10, paragraphs 3 and 6 of UNMIK Regulation 2003/13, the final list together with the notice of the right of the appeal is published on two consecutive days and on the following weekend in the main newspapers. In addition, the Appellate Panel also found that "[...] the applicant's illness, which he mentioned in the appeal remains unconfirmed as the applicant has not submitted any evidence [...]".
28. The Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or the law, allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and insofar as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See: *mutatis mutandis*, ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain* No. 30544/96, paragraph 28).
29. The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case, cannot of itself raise an arguable claim of a breach of the Constitution (See ECtHR Judgment of 26 July 2005 *Mezotur - Tiszazugi Tarsulat v. Hungary*, application No. 5503/02).
30. The Constitutional Court can only consider whether the evidence was presented in a correct manner and whether the proceedings before the regular courts viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See, European Commission of Human Rights, 10 July 1991, *Edwards v. United Kingdom*, No. 13071/87).
31. In conclusion, the Court finds that the Applicant has not specified at all what rights and fundamental freedoms protected by the Constitution have been violated as a result of the Judgment of the Appellate Panel, as it is provided by Article 48 of the Law, and, moreover, did not substantiate the allegations of how the proceedings before the Specialized Panel and Appellate Panel were unfair or arbitrary.

32. Therefore, in accordance with Article 48 of the Law and Rule 36 (1) (d) and (2) (d), the Applicant's Referral is manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

Pursuant to Article 113(7) of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (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

