



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

Prishtina, 22 January 2019  
Ref. no.: RK 1317/19

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI32/18**

Applicant

**J.S.C. „Kosvik“**

**Constitutional review of Judgment AC-I.-17-0469 of the Appellate Panel  
of the Special Chamber of the Supreme Court on Privatization Agency of  
Kosovo Related Matters of 26 October 2017**

### **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 company J.S.C. “Kosvik” from Zubin Potok, (hereinafter: the Applicant), represented by Habib Hashani, a lawyer from Prishtina.

### **Challenged decision**

2. The Applicant challenges Judgment AC-I-17-0469 of 26 October 2017 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel). The Applicant was served with the challenged decision on 8 November 2017.

### **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 1 of Protocol No. 1 [Protection of Property] of the European Convention on Human Rights (hereinafter: the ECHR).

### **Legal basis**

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Article 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
5. On 31 May 2018, the Court adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

### **Proceedings before the Constitutional Court**

6. On 7 March 2018, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 9 March 2018, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Arta Rama-Hajrizi and Selvete Gërxhaliu-Krasniqi.
8. On 19 March 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 16 June 2018, the mandate of judges: Snezhana Botusharova and Almiro Rodrigues, ended. On 26 June 2018, the mandate of judges: Altay Suroy and Ivan Čukalović ended.
10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi, with a 9 (nine) year mandate.

11. On 17 August 2018, the President of the Court appointed Judge Safet Hoxha, instead of Judge Ivan Čukalović.
12. On 22 October 2018, the President of the Court rendered a decision to replace Judge Rapporteur Almiro Rodrigues as Presiding Judge of the Review Panel and in his place as Presiding Judge of the Review Panel appointed Arta Rama-Hajrizi.
13. On 22 October 2018, the President of the Court rendered a decision on the appointment of Judge Radomir Laban as a new member of the Review Panel.
14. On 11 December 2018, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

15. The Applicant is a company established in April 1992 as a limited liability company in the socially owned company „Kosvik“, with its seat in Zubin Potok.
16. In 1993, the Applicant's status was changed to a joint stock company, which was registered at the Commercial District Court in Prishtina (Fi. 11338/93, 30.12.1993).
17. On 21 May 2008, the Assembly of the Republic of Kosovo (hereinafter: the Assembly) adopted the Law No. 03/L-067 on Privatization Agency of Kosovo (hereinafter: the Law on PAK). Article 1 of the Law on PAK states that “the Agency is established as an independent public body ...” and “... is established as the successor of the Kosovo Trust Agency (KTA) regulated by UNMIK Regulation 2002/12 on the Establishment of the Kosovo Trust Agency.
18. On 14 February 2014, the Privatization Agency of Kosovo (hereinafter: the PAK) initiated the process of liquidation of the Applicant.
19. On 18 May 2017, the Applicant filed a statement of claim with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel), requesting confirmation of his status as a private company, which is not under the administration of the PAK, annulment of the decision on liquidation, and the imposition of an interim measure.
20. On 11 July 2017, the Specialized Panel [Decision C-I.-17-0012] approved the request for the imposition of interim measure and interrupted the further liquidation process of the Applicant before the PAK.
21. On 3 August 2017, the PAK filed an appeal against the decision of the Specialized Panel with the Specialized Sub-Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Sub-Panel), alleging violation of the contested

procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.

22. On 18 August 2017, the Specialized Sub-Panel deciding on the merits of the claim [Judgment C-I-17-0012] rejected the Applicant's claim as ungrounded, concluding that *„the evaluation of the SOE and the payment of the shares are crucial elements of the privatization, none of them were proven as objectively correct, therefore the court concludes that the claimant failed to prove that the transformation from SOE to J.S.C. (private joint stock company) was carried out in line with the basic legal provisions. [...] as the status of the SOE, whereas the transformation of the SOE into J.S.C. through registration is indisputable in accordance with Article 5 of the Law on Privatization Agency of Kosovo does not prevent the respondent from taking control of the enterprise, the Applicant's request to annul the final decision and confirm the status of the enterprise into J.S.C., is ungrounded.“*
23. On 11 September 2017, the Applicant filed an appeal with the Appellate Panel against the Judgment of the Specialized Sub-Panel.
24. On 26 October 2017, the Appellate Panel [Judgment AC-I-17-0469] rejected the Applicant's appeal as ungrounded, cancelled the interim measure and upheld the judgment of the Specialized Panel.

### **Applicant's allegations**

25. The Applicant alleges that the challenged decision: *“violated his right to property under Article 46 item 1 of the Constitution of the Republic of Kosovo with regard to the right to a fair trial under Article 31 item 1 of the Constitution, which are also protected by the provision of Article 6 (and other provisions) of the Convention, in conjunction with Article 1, Protocol No. 1 of this Convention.”*
26. Furthermore, the Applicant alleges that the status of a *private company* throughout the judicial process was proved by the *presentation and the indication* of a number of evidence which he stated could be found in the state authorities of Serbia. *“But the Court all the evidence proposed, either has not taken into consideration - without any relevant legal reasoning, or has not attempted to treat the evidence in question, as foreseen by law.”*
27. In fact, the Applicant alleges that *“the acts of the court, as its judgments (both of second instance and first instance), as well as the challenged decisions, entirely deny all acquired property rights and other material rights, while also violating the right to a fair trial.”*
28. The Applicant requests the Court to annul the three decisions of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, that is:
  1. Judgment of the second instance AC-I-17-0469 of 26.10.2017.
  2. Judgment of the first instance, C-I-17-0012 of 18.08.2017 and

3. Decision AC-I-17-0690-A0001 of 28.12.2017.

### **Admissibility of the Referral**

29. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, as further specified by the Law and the Rules of Procedure.
30. In this respect, the Court refers to Articles 21.4 and 113.7 of the Constitution, which provide:

#### *Article 21*

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

#### *Article 113*

*„(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.“*

31. The Court also refers to Article 49 [Deadlines] of the Law, which foresees:  
  
*„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.“*
32. In this regard, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies and has submitted the Referral within the prescribed time limit.
33. However, the Court further refers to Article 48 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.”*
34. In addition, the Court takes into account Rule 39 (2) [Admissibility Criteria] of the Rules of Procedure, which establishes:  
  
*„(2) The Court may consider a referral as inadmissible if the referral is*  
*manifestly ill founded because the Applicant has not sufficiently proved*  
*and substantiated the claim.“*
35. The Court notes, first of all, that the Applicant brings the alleged violation of Article 31 para. 1 of the Constitution and Article 6 of the ECHR in connection



with the fact that the regular courts did not accept his evidence, which he presented and indicated.

36. In this respect, the Court notes that Article 31 paragraph 1 [Right to Fair and Impartial Trial] of the Constitution, foresees:

*“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.  
[...].”*

37. Furthermore, the Court notes that the Applicant also referred to Article 6, para. 1 of the ECHR, but from his allegations it essentially follows that he considers that he did not have a fair trial because the guarantees within the meaning of Article 6, para. 1 of the ECHR were not respected, and accordingly, the Court will also examine the allegations of the Applicant together (see the judgment of the European Court of Human Rights (hereinafter: the ECtHR) *Popov v. Russia*, application No. 26853/04 of 13 July 2006, para 175).

38. In this regard, the Court notes that Article 6.1 (Right to a fair trial) of the ECHR states:

*1. “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.  
[...].”*

39. With regard to the Applicant's allegations indicating that his right to a fair trial has been violated due to refusal of his proposal of evidence, the Court emphasizes that Article 6 of the ECHR does not guarantee the right that all evidence proposed to the panel to have to be accepted. Also, the right to a fair trial does not require that any specific rules in the assessment of evidence before the court be followed (see, *inter alia*, the ECtHR judgment, *Barbera, Messeque and Jabardo v. Spain*, of 6 December 1988, series A, number 146, item 68).

40. The Court further recalls the ECHR case law, according to which Article 6, para. 1 of the ECHR only requires the court to state the reasons why it has decided not to adduce the proposed evidence, requested in an explicit way by the Applicant (see ECtHR Judgment, *Vidal v. Belgium*, of 22 April 1992, series A, number 235, item 34).

41. Bringing the above-mentioned paragraphs in relation to the facts of the present case, the Court notes that the Sub-Specialized Panel regarding the examination of its proposed evidence, clearly and reasonably stated that: *“The claimant did not introduce concrete evidence, based on which it could be determined that the new shareholders have been paid their shares. The document determining the amount of money, which should be paid does not present evidence that the money was actually paid. The receipt has not been submitted. The payment*

*was contested (reply to the claim, 19 June 2017, p. 174 [Alb] / 211 [Eng]) and in this case the burden of proof to substantiate the allegations and to present evidence falls on the claimant. The question whether or not the alleged shareholders qualify as witnesses for their payment of shares remains still open, as they were neither presented in the hearing nor the claimant sought from the court within time limit and duly as provided for in Article 36 paragraph 1.2 of the Annex to the Law on the SCSC, requested the court to summon them prior to the hearing by providing their full names and address.”*

42. Furthermore, the Court notes that the Appellate Panel also dealt with this question in the appeal proceedings, concluding that: *“New evidence, pursuant to Article 65 of the Annex to the Law on SCSC at this stage of the procedure cannot be accepted, because this evidence could be provided during the first instance proceeding, but the claimant did not provide them. But even if the Appellate Panel would accept new evidence, this would not help the claimant. The payment slips in the Social Accounting Service attached to the complaint, as noted by the complainant in the complaint, are not sufficient to establish that the total value of the social capital of SOE was covered by the shareholder payments”*, giving a full legal reasoning for such a position, which this Court does not find as incorrect, arbitrary or discriminatory, which would be to the detriment of the Applicant.
43. Therefore, the Court considers that the regular courts have fulfilled their obligation under Article 31 para. 1 of the Constitution and Article 6 paragraph 1 of the ECHR, and therefore the Applicant's allegations that the challenged decisions violated the right to a fair trial are ungrounded in that segment.
44. The Court considers that nothing in the case presented by the Applicant indicates that the proceedings before the regular courts were unfair or arbitrary so that the Constitutional Court would be satisfied that the Applicant was denied any procedural safeguards, which would result in violation of the right to fair and impartial trial, guaranteed by Article 31 of the Constitution, namely Article 6 of the ECHR.
45. The Court recalls that the Applicant also alleges that the challenged decision was rendered in violation of the freedom guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 [Protection of Property] of the ECHR. However, the Applicant does not justify the claim that his constitutional right to property has been violated.
46. The Court recalls that Article 1 of Protocol No. 1 of ECHR and Article 46 of the Constitution do not guarantee the right to acquisition of property (see, *Van der Mussele v. Belgium*, paragraph 48, ECtHR Judgment of 23 November 1983, *Slivenko and others v. Lithuania*, paragraph 121, ECtHR Judgment of 9 October 2003).
47. The Applicant may further allege a violation of Article 1 of Protocol No. 1 of the ECHR and Article 46 of the Constitution only in so far as the challenged decisions relate to his “possessions”; within the meaning of this provision

“possessions” can be “existing possessions”, including claims, in respect of which the applicants can argue a “*legitimate expectation*” that they will acquire an effective enjoyment of any property right.

48. No “*legitimate expectation*” can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and where the applicant’s submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia*, paragraph 50 of the Judgment of the ECtHR, of 28 September 2004).
49. Consequently, the Court finds that the Applicant has not submitted any *prima facie* evidence, nor has he substantiated the allegations as to how and why the challenged decision violated his right to property guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR.
50. In conclusion, the Court considers that the Applicant has not presented any evidence indicating that the decisions of the regular courts have in any way caused a constitutional violation of his rights guaranteed by the Constitution.
51. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Rule 39 paragraph (2) of the Rules of Procedure.



## **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 11 December 2018, unanimously

## **DECIDES**

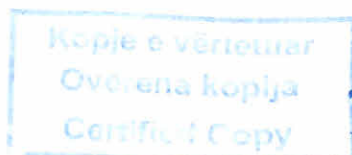
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Safet Hoxha

Arta Rama-Hajrizi



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