



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

Prishtina, 12 July 2019.
Ref. No.: RK 1393/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI156/18

Applicants

Verica (Aleksić) Vasić and Vojislav Čađenović

**Constitutional review of Judgment AC-I-16-0207-A0001- A0006 of the
Appellate Panel of the Special Chamber of the Supreme Court on
Privatization Agency of Kosovo Related Matters of 31 May 2018**

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 Applicants are Verica (Aleksić) Vasić and Vojislav Čađenović from Belgrade, Republic of Serbia (hereinafter: the Applicants), who are represented by Vlastimir Petrović, a lawyer from Gračanica.

Challenged decision

2. The Applicants challenge Judgment AC-I-16-0207-A0001-A0006 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel), of 31 May 2018. The Post Office in Belgrade received the challenged decision on 11 June 2018 and forwarded to the Applicants on 16 June 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which allegedly deprives the Applicants from the right to the 20% share from the privatization of the social enterprise the SOE “Metohija remont” from Peja (hereinafter: SOE “Metohija remont”).
4. The Applicants claim that the challenged decision violates their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), namely Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property], as well as Article 6 (Right to a fair trial) and Article 14 (Prohibition of Discrimination) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the Convention).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rule 32 [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

6. On 12 October 2018, the Court received the Applicants’ Referral.
7. On 16 October 2018, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzie Istrefi-Peci and Nexhmi Rexhepi.
8. On 22 October 2018, the Court notified the legal representative about the registration of the Referral and requested him to submit a power of attorney to the Court which proves that the Applicants authorized him to represent them before the Court.
9. On 22 October 2018, the Court sent a copy of the Referral to the Appellate Panel.
10. On 5 November 2018, the Applicant submitted the power of attorney, which the Court requested from him.

11. On 20 June 2019, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts of the case

12. On 14 July 2011, the SOE “Metohija remont” was privatized.
13. On 10 March 2012, the Privatization Agency of Kosovo (hereinafter: PAK) published the provisional list of employees who acquired the right to a share of 20% from the privatization of the SOE “Metohija remont” (hereinafter: share of 20%). The Applicants were not on that list.
14. On 3 May 2012, PAK published a final list of employees who acquired the right to a share of 20%. The Applicants were not on this list either.
15. On 23 May 2012, the Applicants filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel), by this appeal the Applicants requested the PAK to include them in the list of employees who acquired the right to a 20% share, alleging that they were discriminated against because they were placed in an unequal position by the PAK decision and were unable to exercise their rights guaranteed by applicable laws in Kosovo.
16. On 23 August 2016, the Specialized Panel by Judgment C-II-12-0017 rejected the Applicants’ appeal as ungrounded because of the lack of material evidence, specifically the labor booklet or the register of employees.
17. On an unspecified date, the Applicants filed an appeal with the Appellate Panel against the judgment of the Specialized Panel.
18. On 31 May 2018, the Appellate Panel by Judgment AC-I-16-0207-A0001-A0006 upheld Judgment [C-II-12-0017] of the Specialized Panel, and the part (A-0004 and A-0005) of the reasoning of the Judgment of the Appellate Panel concerning the Applicants reads:

„The Appellate Panel considers that the specialized panel has rightly decided when it rejected the objection as ungrounded because of the lack of material evidence such as a labor booklet or the register of employees that would confirm that the Applicant was an employee of the said SOE. The Appellate Panel considers that the Applicants of the objection failed to provide evidence confirming that they meet the criteria laid down in Article 10.4 of UNMIK Regulation 2003/13 in order to be included in the final list of employees eligible for the payment of 20% share.“

Applicant’s allegations

19. The Applicants state that the challenged decisions violated their rights guaranteed by Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of Discrimination) of the Convention,

Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the Convention, as well as Article 46 [Protection of Property] of the Constitution.

20. Regarding the alleged violation of Article 24 of the Constitution and in conjunction with Article 14 of the Convention, the Applicants for the first time before the Court allege, *“ the right to equality before the law violated in the proceedings before PAK, in which procedure, as a valid and relevant evidence of the existence of the employment relationship for many workers of the Albanian nationality was the claim that they worked with this SOE until 1990 or 1991, and that the labor booklet was destroyed. Even in the proceedings before the Appellate Panel of the SCSC on PAK-related matters, one of the material evidence “The certificate of the Ministry of Labor and Social Welfare” was sufficient to establish the existence of an employment relationship with the Albanians, and insufficient for the Applicants, even though the period covered by the certificate was the same, just as in the case of Applicants.”* In support of the abovementioned claims regarding the unequal treatment, the Applicants enclosed Judgment AC-I-16-0207 of 31 May 2018, stating the reasoning concerning the complainant A-0003 for F. M.
21. As regards the alleged violation of Article 31 of the Constitution, in conjunction with Article 6 of the Convention, the Applicants state, *“Although no rule stipulates that the labor booklet is exclusive evidence of the existence of the employment relationship, this circumstance is taken as the only valid and decisive. In the proceeding before the PAK, as well as before the SCSC, in relation to the issues related to PAK positive regulations, it is envisaged that the fact of existence of an employment relationship can be proved by witness statements, but the oral hearing has never been held in any of the conducted proceedings, in which way the Applicants were not provided the opportunity to prove their employment relationship. This should be appreciated especially in view of the lack of provisions of the Law on PAK, which regulated the rules of proceedings and that this Law excluded the application of the Law on the General Administrative Procedure”.*
22. Regarding the alleged violation of Article 46 of the Constitution, the Applicants allege, *“Applicants also point out that the obligations of the SOE, as an employer, and they as employees were regulated by the provisions of the Law on Associated Labor and that Article 219 of this Law stipulates that in the event of termination of employment relationship, an employee must be served with a written decision on termination of employment relationship, stating the reasons for the termination and instruction of the legal remedy. Such a written decision was never served on the applicants, and since the date of takeover of the control over the SOE “Metohija remont”, neither the PAK nor the management of this SOE after June 1999 have undertaken any action in order to reinstate the Applicants to work. These facts clearly indicate that their right to work has been violated. ”*
23. The Applicants further allege, *“The Applicants specifically highlight that by submitting the referral for the constitutional review of Judgment AC-I-16-0207 of 31.05.2018, they do not express their dissatisfaction with the outcome of the proceedings, but request the Constitutional Court to establish a violation*

of the Constitution in the proceedings conducted for the purpose of determining the right to a share of 20% of the proceeds realized through the privatization of the SOE "Metohija remont" from Peja. The Applicants emphasize that by continuous flaws on several instances, first of all by PAK, and then the SCSC, on PAK related matters, are ignored any right to a court and legal decision on the rights of applicants and the need to protect that right".

24. Finally, the Applicants request the Court to declare the Referral admissible and to declare invalid and remand for retrial Judgment [AC-I-16-0207-A0001-A0006] of the Appellate Panel of 31 May 2018, as well as to determine the Applicants' right to 20% share from the privatization of the "Metohija remont" from Peja, and to order PAK to include the Applicants in the final list of employees entitled to 20% share from the privatization of "Metohija remont".

Admissibility of the Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by 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 also refers to 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 [...]"

28. The Court further refers to Article 48 of the Law, which foresees:

"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."

29. Regarding the fulfillment of these requirements, the Court finds that the Applicants are authorized party challenging an act of a public authority, namely Judgment AC-I-16-0207-A0001-A0006 of the Appellate Panel, after exhaustion of all legal remedies provided by law. The Applicants have also specified the rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law and submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

30. In addition, the Court examines whether the Applicants meet the admissibility requirements foreseen in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure prescribes the criteria under which the Court may consider a referral, including the criterion that the referral is not manifestly ill-founded. Rule 39 (2), specifies in particular:

“(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.”

31. The Court considers that the allegations of the Applicants can be reduced to:

- (i) violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR;
- (ii) violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR and
- (iii) violation of Article 46 of the Constitution.

(i) As to alleged violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR

A. General principles regarding discrimination

32. The Court refers to the case law of ECtHR which states that “*the discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*” (See, *Willis v. the United Kingdom*, paragraph 48, ECtHR Judgment of 11 September 2002; *Bekos and Koutropoulos v. Greece*, paragraph 63, ECtHR Judgment of 13 March 2006).
33. In order that the Applicants’ allegations regarding discrimination are successful, they must prove *inter alia* that their position can be considered similar to the position of other persons who had a better treatment. (See *Fredin v. Sweden* (no. 1), paragraph 60, the ECtHR Judgment of 18 February 1991).

B. Application of the abovementioned principles to the present case

34. The Court notes that, in support of their allegations regarding discrimination and unequal treatment, the Applicants state the challenged judgment of the Appellate Panel in part A-0003 concerning F.M., in which part F.M. is recognized the right to payment of 20% share from the privatization of the SOE “Metohija remont”.
35. Furthermore, the Applicants allege that for the Appellate Panel “*Certificate of the Ministry of Labor and Social Welfare was sufficient to establish the existence of an employment relationship with the Albanians, and insufficient for the Applicants*”.

36. In this regard, the Court notes that the Applicants did not submit convincing arguments to substantiate their allegations that they were treated differently by the Appellate Panel in relation to the parties to the proceedings.
37. The Court analyzed in detail the aforementioned judgment of the Appellate Panel and found that the Appellate Panel did not *“act differently, without objective and rational justification, towards persons in relatively similar situations”*.
38. Accordingly, the Court notes that the key document as the basis for the recognition of rights in the A003 case (appeal of F.M.) was a document copy of the register of employees relating to case A003 (appeal of F.M.), while the Applicants submitted a copy of the *“extracts from established contributions”* of the pension administration, as well as some other documents, but not a labor booklet or an extract from the register of employees, which is relevant evidence for proving employment relationship in the "Metohija remont", as it was the case in the appeal A003 (appeal of F.M.).
39. Based on the abovementioned facts and explanations, the Court concludes that we have different circumstances and different situations of rights in comparison with the applicants and the abovementioned employee who has been recognized the right to payment of 20% share from the privatization of the SOE "Metohija remont".
40. Therefore, the Court notes that the Applicants' allegations of discrimination and unequal treatment by the Appellate Panel were ungrounded, as the Appellate Panel did not *“act differently, without objective and rational justification, towards persons in relatively similar situations”*.
- (ii) As to allegation of violation Article 31 of the Constitution in conjunction with Article 6 of ECHR**
41. The Court recalls that the Applicants consider that the PAK, as well as the Specialized and Appellate Panel, have erroneously interpreted the substantive law and that the *“oral hearing was never held in any of the proceedings conducted, in which way the applicants were not given the opportunity to prove their employment relationship.”*
42. For the reasons above, the Applicants consider that they were not provided an adequate legal and judicial defence which resulted in violation of *„Article 31 of the Constitution [...] u in conjunction with Article 6. 1 (Right to a fair trial) of the ECHR“*.
43. The Court reiterates that is not a function of the Constitutional Court to deal with the alleged errors of the application of relevant laws allegedly committed by the regular courts, if such an application does not violate the rights and freedoms protected by the Constitution and the ECHR (see *Garcia Ruiz v. Spain* paragraph 28, Judgment of the ECtHR, of 21 January 1999).

44. The Court considers that the Specialized and Appellate Panels gave a reasoned response to all allegations of the Applicants, regarding the reasons for the application of the relevant rules of the procedural and substantive law.
45. The Court notes that the main reason for rejecting the Applicants' claims before the Specialized and Appellate Panel was the inexistence of adequate evidence in order to prove their working experience with the SOE "Metohija remont", the fact which was reasoned in the challenged judgment.
46. Bringing the abovementioned paragraphs in relation to the facts of the present case, the Court notes that the Applicants at no stage of the proceedings requested that witnesses who will provide factual evidence or other evidence during the oral proceedings be summoned, stating their full names and surnames as provided for in Article 36, paragraph 1, item 2 of the annex to the Law on SCCS, the right which the applicants claim that they have been denied.
47. In addition, the Court notes, the Specialized Panel and Appellate Panel could not deal with this issue on the grounds that there was no official request for a public hearing and for giving the testimony of the witnesses. The Court does not find such a proceeding of the Specialized and Appellate Panel irregular or arbitrary, which would be to the detriment of the Applicants.
48. Accordingly, the Court considers that the Specialized and Appellate Panel have complied with their obligation under Article 31 paragraph 1 of the Constitution and Article 6 paragraph 1 of the ECHR, which is why the Applicants' allegations that the challenged decisions violated the right to fair trial in that segment are ungrounded.
49. The Court finds that nothing in the case presented by the Applicants shows that the proceedings before the Specialized and Appellate Panel were unfair or arbitrary for the Constitutional Court to be satisfied that the Applicants were denied any procedural guarantees, which would lead to a violation of the right to fair and impartial trial under Article 31 of the Constitution, namely Article 6 of the ECHR.

(iii) As for the allegations of violation of Article 46 of the Constitution

50. The Court recalls that the Applicants also allege that the challenged decision was rendered in violation of the freedom guaranteed by Article 46 [Protection of Property] of the Constitution. However, the Applicants justify this allegation by violation of the right to work and mentioning the legal norms governing the matter.
51. The Court recalls that Article 46 of the Constitution does 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).
52. The Applicants further allege violation of Article 46 of the Constitution only in so far as the challenged decisions relate to their "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.

53. 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).
54. Bringing the Applicants’ allegations in connection with the abovementioned principles, the Court notes that the Applicants did not specifically reason violation of the right to property and did not specifically refer to any of the principles contained in Article 46 of the Constitution, but they consider that this right was violated because the Specialized and the Appellate Panel have erroneously established the factual situation and have erroneously applied the substantive law, and accordingly they did not decide on their request for the recognition of the right to payment of the 20% share from the privatization of the SOE “Metohija remont”.
55. However, in reviewing these allegations within the meaning of Article 31 of the Constitution and Article 6 paragraph 1 of the ECHR, the Court has already concluded that these allegations are manifestly ill-founded. Therefore, the Court considers that there is nothing in the present case that indicates that the Applicants have a justified request regarding the violation of the right to property under Article 46 of the Constitution, nor is it obvious that the challenged judgments have denied the Applicants to exercise their right.
56. In conclusion, the Court considers that the Applicants have not presented any evidence indicating that the decisions of the regular courts have in any way caused a constitutional violation of their rights guaranteed by the Constitution.
57. 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, and Rule 39 (2) of the Rules of Procedure, in the session held on 20 June 2019, unanimously

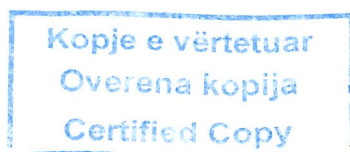
DECIDES

- 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

President of the Constitutional Court

Bajram Ljatifi



Arta Rama-Hajrizi

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