



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

Pristina on 7 May 2020  
Ref. no.:RK 1558/20

*This translation is unofficial and serves for information purposes only*

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI236/19**

Applicant

**Hamdi Kuleta**

**Constitutional review of Decision No. AC-I-14-0339-A0001 of the  
Appellate Panel of the Special Chamber of the Supreme Court of Kosovo  
on Privatization Agency of Kosovo Related Matters,  
of 29 November 2019**

**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 is submitted by Hamdi Kuleta from Podujeva (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision [No. AC-I-14-0339-A0001] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel), of 29 November 2019.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. 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**

5. On 23 December 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 December 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 16 January 2020, the Court notified the Applicant about the registration of the Referral and requested him to submit to the Court all the decisions of the regular courts which the Applicant had mentioned in his Referral. On the same date, the Referral was sent to the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber).
8. On 22 January 2020, the Applicant submitted the requested documents to the Court.
9. On 14 February 2020, the Court requested the Special Chamber to submit to the Court "The objection of 20 November 2014, which the Special Chamber sent to the Applicant for the payment of the court fee".
10. On 19 February 2020, the Special Chamber submitted the requested document to the Court.

11. On 22 April 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

12. On 23 December, 2010, the Socially Owned Enterprise “Amortizatorët” (hereinafter: the SOE “Amortizatorët”) in Prishtina, by Decision [No. 379/1], made the distribution of funds collected from the rent of the SOE premises “Amortizatorët” for the employees of the enterprise. The Applicant was also a beneficiary from this distribution of funds.
13. The Applicant had the right to appeal against the abovementioned Decision within 15 days, while the case file states that the Applicant did not file such an appeal.
14. On an unspecified date, the Applicant submitted a request to the Liquidation Authority of the SOE “Amortizatorët” where he requested the annulment of the allocation of financial means collected from the payment of the rent of the premises of the SOE “Amortizatorët”, alleging that the funds were distributed in an unequal way.
15. On 8 October 2013, the Liquidation Authority of the SOE “Amortizatorët” of the Privatization Agency of Kosovo (hereinafter: the Liquidation Authority), by Decision [PRN047-0221], rejected as invalid the request on the grounds that part of these collected funds was distributed to the Tax Administration of Kosovo, while the rest to the employees of the SOE. “Amortizatorët”.
16. On 4 November 2013 the Applicant filed a complaint with the Special Chamber of the Supreme Court against the aforementioned decision of the Liquidation Authority, alleging that the allocation of such funds by the management of the SOE “Amortizatorët”, was made arbitrarily, unequally and without criteria.
17. On 7 November 2014, the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel) by the Judgment [C-IV-13-2814] I. rejected as ungrounded the Applicant’s appeal and upheld the Decision [PRN047-0221] of the Liquidation Authority of 8 October 2013, considering the latter as fair and lawful and II. obliged the Applicant to pay the court fee in the amount of 20 euro within 15 days.
18. On 19 November 2014, the Applicant filed an appeal with the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel) against the Judgment [C-IV-13-2814] of the Specialized Panel alleging the procedural violations and requested that the Judgment of the Specialized Panel be annulled and the case be remanded for reconsideration.
19. On 20 November 2014, the Special Chamber sent a written objection to the Applicant for the payment of a court fee of € 100 (one hundred), warning him

that if the court fee was not paid within 15 days, the appeal would be considered as withdrawn.

20. On 29 November 2019, the Appellate Panel by Decision No. [AC-I-14-0339-A001], found that the Applicant's appeal against the Judgment of the Specialized Panel [C-IV-13-2814] is considered as withdrawn as the Applicant did not pay the court fee. The Appellate Panel, among others, reasoned that:

*In accordance with Article 69.1 of Law No. 06/l-086 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (LSC), the Appellate Panel decided not to hold the oral part of the proceedings. Due to the fact that the complainant did not pay the court fee, the Appellate Panel waived the submission of the respondent's complaint.*

*According to Article 253.4 of the Law on Contested Procedure (LPC): "The plaintiff should attach the certificate of the paid court taxes to the claim". Article 253.5 states that: "If the plaintiff doesn't pay the court tax determined for the claim even after the notice is sent by the court, through there are no reason for freeing the plaintiff from paying the tax, the claim will be considered as withdrawn". Pursuant to Article 3.1 of Administrative Instruction No. 01/2017 of the Kosovo Judicial Council (KJC), the determination of the court fee to be paid at the time when the request is filed, is based on the value of the dispute, namely on the nature of the request.*

*[...]*

*As the complainant did not pay the court fee as requested from him with the notice (objection) of 20 [November] 2014, which was filed with the complainant's representative on 21 November 2014, and he did not file a request for exemption from court fees, the Appellate Panel considers that the appeal has been withdrawn".*

### **Applicant's allegations**

21. The Applicant alleges that the Appellate Panel, by the challenged Decision, violated his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution.
22. The Applicant alleges that "No legal provision on the SCSC instructs the application of the provisions of the LCP in this chamber and consequently there is no basis to consider the appeal withdrawn without being decided on merits, as no fee has been paid".
23. Finally, the Applicant requests the Court to annul and declare unconstitutional the Decision of the Appellate Panel [No. AC-I-14-0339-A001], of 29 November 2019.

## Admissibility of the Referral

24. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and as further specified by the Law and foreseen by 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:

*“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 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. [...]”*
27. In the present case, the Court notes that the Applicant filed the Referral as an individual and as an authorized party, he filed the Referral within the time limits established in Article 49 of the Law and after the exhaustion of all legal remedies provided by law.
28. However, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which stipulates:

*“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. The Court also refers to paragraph (2) of Rule 39 [Admissibility Criteria] of the Rules of Procedure, which foresees:

*“(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”.*
30. The Court recalls that the Applicant alleges that the Appellate Panel by the Judgment [No. AC-I-14-0339-A001] violated the right of the Applicant to fair and impartial trial. In this regard, he alleges that the Appellate Panel, in violation of the legal provisions, considered the appeal of the Applicant withdrawn and thus violated his right to legal remedies.
31. The Court reiterates that it is not the role of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts, when assessing evidence or applying the law (legality), unless and in so far as they

may have infringed the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis*, Judgment of the European Court of Human Rights (hereinafter: the ECtHR) of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraph 28).

32. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a “fourth instance court” (See, the ECtHR Judgment, of 5 February 2015, *Bochan v. Ukraine*, No. 22251/08, paragraph 61).
33. In the Applicant’s case, the Court recalls that the Appellate Panel considered the Applicant’s appeal against the Judgment of the Specialized Panel withdrawn, as, despite of the objection sent by the Appellate Panel he did not pay the court fee foreseen by the Administrative Instruction No. 01/2017 of the Kosovo Judicial Council, which stipulates that the Applicant should pay fee when filing appeal.
34. The Court notes that the Appellate Panel assessed and interpreted the legal provisions relating to the court fee and reasoned its decision on the basis of the Law on Contested Procedure, and pursuant to Article 3.1 of Administrative Instruction No. 01/2017 of the Kosovo Judicial Council (KJC), which stipulates that “*the determination of the court fee to be paid at the time the submission was presented/filed is based on the value of the dispute, namely the nature of the submission*”. The Appellate Panel, in its reasoning specifies that “*KJC Decision no. 01/2017, applicable from 01 May 2017, for the approval of the SCSC court fee, stipulates that the complainant must pay a fixed amount of 20 euro for filing a complaint*”.
35. The Court notes that the Appellate Panel also reasoned that the Applicant “*did not pay the court fee as requested from him, by notice (objection) of 20 [November]2014, which was served on the complainant's representative on 21 November 2014*” and, furthermore, “*did not file a request to be exempted from the court fee*”.
36. The Court considers that the conclusions of the Appellate Panel were reached after a detailed examination of the relevant provisions regarding the court fees and the fact that the Applicant did not pay the court fee and did not file a request for exemption from this payment.
37. All issues, which were relevant to the decision regarding the non-payment of the court fee by the Applicant were properly reviewed by the Appellate Panel. All material and legal reasons related to the challenged decision were analyzed and as a result, the Court concludes that the proceedings before the regular courts, viewed in their entirety, were fair ( See case of the Court, KI 57/19, Applicant, *Slavica Miric*, Resolution on Inadmissibility, of 12 December 2019, paragraph 52, KI 62/18, Applicant, *Nadlije Gojani*, Resolution on Inadmissibility, of 27 September 2018, paragraph 42; See also, *mutatis mutandis*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraphs 29 and 30).

38. As to the Applicant's allegation of a violation of his right to legal remedies as a result of the request of the Appellate Panel for payment of the court fee, the Court recalls that, according to the ECtHR case law, the requirement to pay fees to civil courts in connection with claims, or appeals, on which the courts are asked to decide cannot be regarded as a restriction on the right of access to a court that is incompatible, *per se*, with the right to fair and impartial trial (See, *mutatis mutandis*, ECtHR Judgment of 30 November 2005, *Podbielski and PPU Polpure v. Poland*, no. 39199/98, paragraph 64).
39. However, the amount of the court fees assessed in the light of the particular circumstances of a given case, including the Applicant's ability to pay them, and the phase of the proceedings at which that court fee has been imposed, are factors which are material in determining whether or not a person enjoyed his right of access to the court (see, *mutatis mutandis*, ECtHR Judgment of 30 November 2005, *Podbielski and PPU Polpure v. Poland*, no. 39199/98, paragraph 64, see also case of the Court, KI 62/18, Applicant, *Nadlije Gojani*, Resolution on Inadmissibility, of 27 September 2018, paragraph 44, KI 78/18, Applicant, *Pashk Malota*, Resolution on Inadmissibility, of 27 February 2019, paragraph 47).
40. In this regard, the Court considers that the Applicant did not provide evidence, facts and arguments indicating that the amount of the court fee for which the Applicant was liable, his possibilities to pay it and the circumstances of his case in general have affected his right of access to the court, as provided for by Article 31 of the Constitution and Article 6 of the ECHR. In addition, the Court from the case file notes that the Applicant, despite the objection filed by the Appellate Panel, did not even submit a request for exemption from the court fee, as foreseen in the applicable legal framework.
41. The Court recalls that the mere fact that the Applicant is not satisfied with the outcome of the decisions of the regular courts, or the mentioning of articles of the Constitution is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicant must present reasoned allegations and compelling arguments (see, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca* KI136/14, paragraph 33).
42. In sum, the Court considers that the Applicant failed to present evidence, facts and arguments indicating that the proceedings before the Appellate Panel have in any way constituted a constitutional violation of his rights guaranteed by the Constitution, namely the right to fair and impartial trial and the right to legal remedies.
43. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 39 (2) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 22 of the Law and Rule 39 (2) of the Rules of Procedure, on 22 April 2020, 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**

Bajram Ljatifi

Arta Rama-Hajrizi



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