



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

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Prishtina, 27 July 2020  
Ref. No.:RK 1590/20

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

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI60/19

Applicant

**Srđan Stolić**

**Constitutional Review of the Decision AC-I.-18-0366-A0001 of the  
Appellate Panel of the Supreme Court on Privatization Agency of Kosovo  
Related Matters, of 24 January 2019**

### 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 Srđan Stolić (hereinafter: the Applicant) from Klokot.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Decision AC-I.-18-0366-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 24 January 2019, in conjunction with the Decision AC-I.-19-0020-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 28 February 2019 (hereinafter: the Appellate Panel).

## **Subject Matter**

3. The subject matter is the constitutional review of the above-mentioned decisions of the Appellate Panel, through which, according to the Applicant's allegations were violated his fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: Constitution).
4. The Applicant did not state exactly which fundamental rights and freedoms he alleges to have been violated by the challenged decisions, but in his allegations he only mentions that he has been denied the right to appeal, a right guaranteed by Article 32 [Right to Legal Remedies] of the Constitution.

## **Legal basis**

5. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, on Articles 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 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 11 April 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 16 April 2019, the President of the Court appointed Judge Bajram Ljatifi Judge Rapporteur and the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).
8. On 8 May 2019, the Court notified the Applicant about the registration of the Referral, through the same notification the Court also requested the Applicant to specify his Referral by completing the official Referral Form and submit the relevant decisions of the Specialized Panel and the Appellate Panel, which he challenges in his Referral.
9. On 24 May 2019, the Applicant submitted to the Court the completed Referral Form as well as the relevant decisions of the Specialized Panel and the Appellate Panel.

10. On 5 June 2020, the Court forwarded a copy of the Referral to the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: SCSC).
11. On 1 July 2020, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

12. On 7 June 2014, SO Enterprise "Agro Morava" Viti, had entered the liquidation process. As an employee of the mentioned SOE, on 26 August 2014, the Applicant filed a claim with the Liquidation Authority of the Privatization Agency of Kosovo (hereinafter: Liquidation Authority) for the payment of unpaid personal income for the period from July 1999 to November 2005.
13. On 28 January 2015, the Liquidation Authority, by Decision GJIO35-0215, rejected the Applicant's claim for payment of unpaid personal income, clarifying that based on the Law on Associated Labour applicable in the case of the Applicant's claim, the claim for payment of unpaid salaries prescribes after 3 years.
14. On 5 August 2016, the Applicant filed a claim with the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel), against decision GJIO35-0215, of 30 May 2015 of the Liquidation Authority.
15. On 14 May 2018, the Specialized Panel, through Judgment C-II-15-0077-C0001, rejected the Applicant's claim as unfounded and fully upheld the decisions of the Liquidation Authority.
16. On 14 June 2018, the Applicant filed an appeal with the Appellate Panel against the Judgment of the Specialized Panel, alleging that the Judgment was rendered with a serious violation of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law.
17. On 19 October 2018, the Appellate Panel sent to the Applicant a notice (warning) for the payment of the court fee in the amount of 30 euros, warning him that if the court fee is not paid in the appeal procedure within 15 days, his appeal will be considered withdrawn, in accordance with Article 253 paragraphs 4 and 5 of the Law on Contested Procedure (hereinafter: LCP) and Article 5.5.1 and Article 5.5.2 of Administrative Instruction no. 01/2017 on the Unification of Court Fees. In this warning, the applicant was told that there was a possibility of filing a request for exemption from court fees due to lack of financial resources.
18. The Applicant did not pay the court fee even after the above-mentioned warning, although, based on the case file, it derives that the warning was received by the Applicant on 26 October 2018.
19. On 24 January 2019, the Appellate Panel issued Decision AC-I.-18-0366-A0001, by which the Applicant's appeal is considered withdrawn because: (i) the

Applicant did not pay the court fee as required in the notice (warning) of 19 October 2018 and (ii) had not filed for exemption from court fees. The Appellate Panel based its decision on Article 253, paragraphs 4 and 5 of the LCP and Articles 2.4 and 3.1 of the Administrative Instruction of the Kosovo Judicial Council no. 01/2017 on the Unification of Court Fees.

20. In this decision, the Appellate Panel reasoned, inter alia, that: *“Pursuant to Article 3.1 of Administrative Instruction no. 01/2017 (KJC) of the Kosovo Judicial Council (KJC), the determination of the amount of court fee to be paid at the time of filing a claim is made on the basis of the value of the dispute, namely the type of claim. Article 2.4. of the Administrative Instruction stipulates that the term “submission” is used for claims, counterclaims, appeals, objections, requests, revisions, proposals for enforcement, proposals for injunction, etc.”*
21. On 8 February 2019, the Applicant filed a submission with the Appellate Panel requesting a review of the Decision AC-I.-18-0366-A0001, of 24 January 2019. In this submission, the Applicant stated, inter alia, that he had not personally received the notice for the payment of the court fee and, therefore, had not been able to clarify and justify his inability to pay the contested court fee.
22. On 28 February 2019, the Appellate Panel, by the Decision AC-I.-19-0020-A0001, rejected as inadmissible the Applicant’s request for review of Decision AC-I.-18-0366-A0001, of 24 January. 2019, on the grounds that this request was not submitted within the statutory prescribed deadline.

### **Applicant’s allegations**

23. The Applicant states that, *“The Special Chamber of the Supreme Court with or without intent in its decisions has not included the instruction on the legal remedy that the party has or has no right to appeal or to objection and within which deadline”*.
24. The Applicant further alleges that, *“Due to the erroneous and incomplete determination of the factual situation and the erroneous application of the substantive law, the Applicant submits this Referral to the Constitutional Court for protection of the Constitutionality”*.
25. The Applicant states that, *“The Special Chamber of the Supreme Court has erroneously found that the claim for compensation of personal income has prescribed because he has been able to exercise this right for three years, not admitting the fact that in the circumstances of the state of war there was a hold on statutory prescription and not only until the end of the state of war, but in the territory of Kosovo such a situation has lasted much longer, which is a generally known circumstance (there was no freedom of movement, there were kidnappings, etc.), thus due to such circumstances, the claimant had not been able to request an injunction”*.
26. The Applicant also states that, *“The Special Chamber of the Supreme Court of Kosovo in terms of statute of limitations had to prove that from the legal basis of unjust enrichment, the claimant’s right had not prescribed, because the same*

*is prescribed in a longer period than the compensation for damages, thus the Law gives the claimant the right that based on the factual situation described in the contested relations realize his claims on the basis of unfounded enrichment, then the claimant's claim is unfoundedly rejected".*

## **Relevant Legal Provisions**

### **LAW No. 03/L-006 ON CONTESTED PROCEDURE**

#### *Article 253 [Content of the claim]*

*[...]*

*253.4 The plaintiff should attach the certificate of the paid court taxes to the claim.*

*253.5 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.*

*[...]*

#### *Article 468 [Exemption from paying court expenses]*

*[...]*

*468.3 The court can only exempt a party from court taxes, if those will drastically affect person's close family in food.*

### **ADMINISTRATIVE INSTRUCTION NO. 01/2017 ON THE UNIFICATION OF COURT FEES**

#### *Article 2 [Definitions]*

*[...]*

*2.4 "Submission" shall mean a claim, counterclaim, appeal, objection, request, revision, proposal for enforcement, proposal for injunction, etc.*

#### *Article 3 [Determination of fees relating to civil claims submissions]*

*The determination of the amounts of court fees to be paid at the time of filing a claim is made on the basis of the value of the dispute, namely the type of submission, based on the court fee tariff (CFT) of this Instruction.*

*[...]*

#### *Article 5 [Tax collection and consequences of non-payment]*

*[...]*

*5.5 The party has to pay the fee within the deadline set by the judge, respectively the presiding judge, which cannot be shorter than 15 days. If*

*this tax is not paid in due time, the court shall apply the following procedures:*

*5.5.1 If the filing fee is not paid by the due date according to this Article and when there are no conditions for exemption from payment, the court shall dismiss the submission with the exception of submissions relating to remedy of challenge.*

*Article 8  
[Exemption from tax payment]*

*8.1 1 The following categories of persons are exempt from tax payment:*

*8.1.1 A person filing the employment related claim, except monetary Claims.*

*8.1.2 A person in difficult economic situation, if the payment of tax directly affects the endangerment of his/her existence, namely, his/her family members or other dependents.*

*[...]*

*8.3 The categories of persons referred to in Article 8.1, to be exempt from taxes, must provide the following evidence:*

*8.3.1 Proof that he/she is a beneficiary of social assistance from the Ministry of Labour and Social Welfare.*

*8.3.2 Proof that he/she is receiving legal assistance from the Office for Free Legal Aid.*

**Admissibility of the Referral**

27. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.

28. 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”.*

29. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47 [Individual Requests], 48 [Accuracy of the Referral, and 49 [Deadlines] of the Law which provide:

*Article 47  
[Individual Requests]*

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

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”.*

Article 49  
[Deadlines]

*“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...”.*

30. As to the fulfilment of these criteria, the Court concludes that the Applicant is an authorized party, challenging an act of a public authority, after having exhausted all legal remedies, and has submitted the Referral in accordance with the deadline of 4 (four) months, as set forth in Article 49 of the Law.

31. However, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure, including the criterion that the referral is not manifestly ill-founded. Specifically, rule 39 (2) stipulates that:

*“(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”.*

32. The Court recalls that, despite the fact that the Applicant was required to specify his Referral, the Applicant did not reason how the alleged violation occurred and did not state what specifically the Court requested regarding the challenged decisions.

33. However, the Court recalls that the Applicant, in essence, alleges that the decisions of the regular courts (respectively the decisions of the Appellate Panel) violated his right to a legal remedy, guaranteed by Article 32 of the Constitution.

***Regarding the Decision of the Appellate Panel AC-I.-19-0020-A0001 of 28 February 2019***

34. The Court notes that, although the Applicant has clearly challenged the Decision AC-I.-19-0020-A0001, of 28 February 2019, the last decision in the case of the Applicant is the Decision of the Appellate Panel AC-I.-18-0366-A0001, of 24 January 2019.

35. In this regard, the Court recalls that by the Decision of the Appellate Panel, AC-I.-19-0020-A0001, of 28 February 2019, the Applicant was rejected the request for review, filed against the Decision of 27 January 2019, with reasoning that it had been submitted out of statutory limitation deadline for submitting the request for renewal of the procedure.
36. Therefore, the Court notes that the Appellate Panel rejected, as inadmissible, the request for review filed against the Decision of the Appellate Panel (of 24 January 2019), reasoning that:

*“[...] with the appeal against the decision of the Appellate Panel of SCSC-AC-I-18-0366-A0001, of 24 January 2019, which considers that the appeal has been withdrawn, the Applicant has requested a return to the previous situation. In accordance with Article 130, paragraph 2 of the LCP, the proposal to return to the previous situation must be submitted within seven days from the day the cause of failure to act has ceased. However, it is clear that the Applicant had received the decision which he personally challenged on 26 January 2019 and that he had filed an “appeal” on 8 February 2019 by mail. This means that he submitted this request on the 13th (thirteenth) day after he personally received the challenged decision.*

*After the Applicant has submitted this request for return to the previous situation, after the legal deadline provided for such an action, his submission, in accordance with Article 133, paragraph 1 of the LCP is rejected as inadmissible”.*

37. In light of this, the Court will not get into further assessment of the constitutionality of the Decision of the Appellate Panel, AC-I.-19-0020-A0001, of 28 February 2019. Consequently, the Court considers that the “last decision” (the last effective legal remedy), in accordance with Rule 39 (1) (c) and the case law of the Court, in the case of the Applicant was the Decision of the Appellate Panel, AC-I.-18.-0366-A0001, of 24 January 2019.

***Regarding the Decision of the Appellate Panel AC-I.-18-0366-A0001 of 24 January 2019***

38. The Court recalls that the Applicant’s main allegation regarding the violation of Article 32 of the Constitution relates to the Decision of the Appellate Panel, AC-I.-18-0366-A0001, of 24 January 2019, for which the Applicant states that there is no instruction for the legal remedy and for this reason he has been denied the right to a legal remedy.
39. Therefore, the Court recalls that pursuant to Article 10 of Law no. 04/L-033 of the SCSC, it is defined that:

*[...]*

*“14. All Judgments and Decisions of the appellate panel are final and not subject to any further appeal.*

*15. Nothing in the present law shall be interpreted or applied as limiting or attempting to limit the constitutional right of any person to petition the*

*Constitutional Court of Kosovo, in accordance with the law and procedural rules governing such a petition, to review the constitutionality of any Decision or Judgment issued by the Special Chamber or another court”.*  
[...].

40. In light of the above, the Court finds that, apart from the Referral to the Constitutional Court, the Law on the SCSC does not provide any other effective legal remedy for appealing the final decisions of the Appellate Panel. This finding was also confirmed in the case law of the Court: KI02/15, Applicant *Social, Cultural, Sports and Economic Centre “Youth Palace”*, Resolution on Inadmissibility of 18 May 2015, paragraph 29; KI120/17, Applicant *Haviz Rizahu* Resolution on Inadmissibility of 7 December 2017, paragraph 34, KI18/17 Applicant *Isuf Bajrami* Resolution on Inadmissibility of 19 April 2018, paragraph 33, KI93/18, Applicant: *DPZ “Elektron”*, Resolution on Inadmissibility of 30 January 2019, paragraph 31). In all these cases, the Court noted that:

*“[...] It is quite clear that the decisions of the SCSC cannot be the subject of any further proceedings, even judicial ones, except as subject of treatment in the Constitutional Court”.*

41. Consequently, the Court considers that the Applicant’s allegation regarding the violation of the right to a legal remedy is only declarative. The Court notes that pursuant to Article 10 paragraph 14 of Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters *“All judgments and decisions of the appellate panel are final and are not subject to any other appeal.”* Therefore, the Court considers that this allegation of the Applicant is clearly unfounded.
42. In addition to the above, the Applicant also complains that in the process of determining the statutory limitation of the appeal for compensation of unpaid personal income, as well as the basis for initiating the same, the SCSC erroneously established the factual situation and made erroneous application of the substantive law.
43. In examining these allegations of the Applicant, the Court notes that the Appellate Panel, in the Decision AC-I.-18-0366-A0001, considered that the Applicant’s appeal was withdrawn because: (i) the Applicant did not pay the court fee as required in the notice (warning) of 19 October 2018 and (ii) had not filed for exemption from court fee. The Appellate Panel based its reasoning on Article 253, paragraphs 4 and 5 of the LCP, as well as Articles 2.4 and 3.1 of Administrative Instruction no. 01/2017 on the Unification of Court Fees.
44. The Appellate Panel explained to the Applicant what is meant by the word “submission” and that the determination of court fees to be paid at the time of filing the submission is based on the value of the dispute. Furthermore, the Appellate Panel clarified to the Applicant that, under the LCP, the claimant is obliged to attach to the claim a certificate of paid court fee, and that if the fee has not been paid, then the claim is considered withdrawn, respectively will not be reviewed.

45. The Court recalls that although the SCSC had sent a notice to the Applicant regarding the payment of a court fee of 30 euros, through which it wanted to notify the Applicant that if the court fee for the appeal procedure was not paid, his appeal would be considered withdrawn, he did not pay it. Furthermore, the Applicant was instructed of the possibility to request exemption from court fees, due to lack of financial resources, within a period of 15 days. However, he did not file such a request.
46. The Court considers that the conclusions of the Appellate Panel were reached after careful consideration of all relevant provisions regarding the court fees and the fact that the Applicant did not pay the court fee nor did he file a request to be exempted from the payment of the same (see, *mutatis mutandis*, a similar case of the Court KI62/18, Applicant *Nadlije Gojani*, cited above, paragraph 41).
47. The Court finds that all the matters which were important to be decided in regard to the non-payment of the court fee by the Applicant had been duly examined by the Appellate Panel. All material and legal reasons regarding the challenged decision were sufficiently analysed. Therefore, the Court concludes that the Appellate Panel did not deal with the content of the Applicant's claim because the conditions for its review were not met, as stated in the reasoning.
48. The Court notes that the Applicant does not agree with the outcome of the proceedings in the regular courts. However, the Court reiterates its general position that, in principle, the Applicant's dissatisfaction with the outcome of the proceedings pursued by the regular courts cannot in itself raise an argumentative claim for the violation of the rights guaranteed by the Constitution (see, the case of the ECtHR *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21, see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).
49. In summary, the Court concludes that the Referral is manifestly ill-founded on constitutional grounds and, pursuant to Rule 39 (2) of the Rules of Procedure, it must be declared inadmissible.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, Articles 20 of the Law and Rule 39 (2) of the Rules of Procedure, on 1 July 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;
- IV. This decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Arta Rama-Hajrizi

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