



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

Prishtina, on 02 November 2020
Ref. No.:RK 1635/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI12/20

Applicant

Hamijete Dinarama-Daija

**Constitutional review of Judgment AC-I-13-0181 of the Appellate Panel of
the Special Chamber of the Supreme Court of Kosovo on Privatization
Agency of Kosovo Related Matters, of 29 August 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 was submitted by Hamijete Dinarama-Daija, residing in Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [AC-I-13-0181-A0008] 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 the SCSC), of 29 August 2019.
3. Judgment [AC-I-13-0181-A0008] of the Appellate Panel of the SCSC, of 29 August 2019, was received by the Applicant on 4 September 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision, which as alleged by the Applicant violated her rights guaranteed by Articles 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) and Article 1 of Protocol 1 (Protection of property) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Legal basis

5. 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 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 15 January 2020, the Applicant submitted her Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 27 January 2020, the President of the Court in Case KI11/20 appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Selvete Gërxhaliu-Krasniqi and Bajram Ljatifi (members).
8. On 27 January 2020, pursuant to Rule 40.1 (Joinder and Severance of Referrals) of the Rules of Procedure, the President of the Court ordered the joinder of Referral KI12/20 with Referral KI11/20.
9. On 5 February 2020, the Court notified the Applicants in cases KI11 / 20 and KI12/20, about the registration and joinder of the Referrals.
10. On the same day, the Court notified the SCSC about the registration of the Referrals and their joinder.

11. On 10 June 2020, the Court requested from the SCSC to submit to the Court the acknowledgments of receipt which prove the date when the Applicants have received the Judgment [AC-I-13-0181-A0008], of the Appellate Panel of SCSC, of 29 August 2019
12. On 12 June 2020, the SCSC submitted the requested documents to the Court.
13. On 8 September 2020, the Court pursuant to Rule 40(3) of the Rules of Procedure decided that referrals KI11/20 and KI12/20 are to be considered separately, in individual cases, with the same Judge Rapporteur and the same Review Panel.
14. On 9 September 2020, the Court notified the Applicants in cases KI11/20 and KI12/20 and the SCSC about the severance of the Referrals.
15. On 14 October 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

16. On 15 September 2010, the Privatization Agency of Kosovo (hereinafter: PAK) privatized the socially owned enterprise SOE "Agimi" in Gjakova, where the Applicant used to work for a certain period of time.
17. On 22 December 2011, through the public media was published the Final List of employees with legitimate rights to participate in the 20% of the proceeds from the privatization of SOE "Agimi", Gjakova (hereinafter: the Final List), whereas 14 January 2012 was set as the deadline for submitting complaints to the SCSC against the Final List.
18. On an unspecified date, the Applicant filed a complaint with the PAK, due to non-inclusion in the Final List.
19. On 13 December 2011, the PAK by a Decision rejected as unfounded the complaint filed by the Applicant.
20. On 13 January 2012, the Applicant filed a complaint with the Specialized Panel of the SCSC, due to non-inclusion in the Final List.
21. On 13 April 2012, the PAK filed a response to the complaint, alleging that the Applicant had not provided sufficient evidence to confirm the continuity of the employment relationship and stating that at the time of privatization, the Applicant was not registered as an employee with the SOE "Agimi".
22. On 4 September 2013, the Specialized Panel of the SCSC issued Judgment [SCEL-11-0075] whereby it decided to: "[...]; *III. reject as unfounded [...], the complaints of complainants*"[...] 5. *Hamijete Dinarama-Daija (C 0017)*".

23. The Specialized Panel in point III. of Judgment [SCEL-11-0075] rejected as unfounded the Applicant's complaint, by reasoning that the Applicant had not submitted any evidence for review and administration as provided by paragraph 4 of Article 10 (Employees' Rights) of UNMIK Regulation 2003/13, as amended by UNMIK Regulation 2004/45, which stipulates that employees who are considered eligible to participate in the 20% of the proceeds of the privatization of socially-owned enterprises must prove that: (i) they are registered employees with the respective socially-owned enterprise at the time of privatization; and that they (ii) have been on the payroll of the socially-owned enterprise for not less than three (3) years.
24. On 26 September 2013, the Specialized Panel of the SCSC issued the Decision [SCEL-11-0075] amending the English language version of Judgment [SCEL-11-0075] of 4 September 2013, since when forwarding a copy of the judgment in the English language version, instead of forwarding the final judgment, the parties were served with the preliminary judgment while the Albanian language version remained unchanged.
25. On 5 November 2013, the Applicant filed an appeal with the Appellate Panel against the Judgment [SCEL-11-0075] of the Specialized Panel of 4 September 2013, alleging substantial violations of the provisions of the contested procedure and erroneous and incomplete determination of the factual situation.
26. On 29 August 2019, the Appellate Panel of the SCSC issued the Judgment [AC-I-13-0181-A0008], whereby it decided that "[...] 2. *The appeals of appellants, [...], A0009 Hamijete Dinarama*", are rejected as unfounded.

Applicant's allegations

27. The Applicant alleges that the Judgment [AC-I-13-0181-A0008] of the Appellate Panel, of 29 August 2019, has violated her rights guaranteed by Article 24 [Equality before the Law], Article 31 [Right to a Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, as well as Article 6 (Right to a fair trial) and Article 1 of Protocol no. 1 (Property Protection) of the ECHR.
28. The Applicant builds her case mainly on the allegation of violation of her right to fair and impartial trial as the Judgment [AC-I-13-0181-A0008] of the Appellate Panel of the SCSC, of 29 August 2019, did not meet the criteria for a "*fair trial*" under Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to: (i) lack of reasoning in the court decision; (ii) failure to hold a public hearing to review their claims and (iii) violation of the right to a trial within a reasonable time.
29. The Applicant also states that the constitutional principle provided for in Article 24 of the Constitution - Equality before the Law has been violated, due to the interpretation of *discrimination* given by the Appellate Panel of the SCSC. As regards the allegation of discrimination, the Applicant states that the discrimination consists in the fact that the employees with legitimate rights

have been removed from the Final List of employees eligible to benefit from the sale of SOE “Agimi” Gjakova and not on ethnic basis as reasoned by the Appellate Panel of the Special Chamber. Consequently, according to her, the constitutional guarantee stipulated in Article 24 of the Constitution, according to which all are equal before the law and everyone enjoys the right to protection without discrimination, has been violated.

30. The Applicant in the end alleges that her rights under Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR have been violated, without providing any detailed elaboration.
31. Finally, the Applicant requests from the Court: *(i) to declare the Referrals admissible; (ii) find that there has been a violation of Articles 24, 31 and 46 of the Constitution in conjunction with Article 6 and Article 1 of Protocol no. 1 of the ECHR; (iii) declare invalid the Judgment [AC-I-13-0181-A0008] of 29 August 2019 of the Appellate Panel of the SCSC, and remand it for retrial in accordance with the Judgment of this Court.*

Admissibility of the Referral

32. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
33. 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”.

34. The Court also assesses whether the Applicant has met the admissibility criteria, as further specified in the Law. In this respect, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47 of the Law
[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 of the Law
[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 of the Law
[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...”

35. Initially, the Court refers to the date of submission of the final decision and the date of submission of the Referral to the Court in order to assess whether the Applicant has submitted the Referral within the prescribed deadline of 4 (four) months.
36. In this regard, the Court recalls that the last decision in the Applicant's case is the Judgment [AC-I-13-0181-A0008] of the Appellate Panel, of 29 August 2019.
37. Based on the acknowledgment of receipt, which the SCSC has submitted in its response of 10 June 2020 to the Court, the latter notes that the Applicant has received the challenged decision on 4 September 2019.
38. The Court recalls that the four-month period starts to be counted from the date upon which the Applicant and/or his or her representative have received the final decision or have been sufficiently aware of the final decision of the regular courts (see, the Decision of the ECHR *Koç and Tosun v. Turkey*, No. 23852/04, of 13 November 2008).
39. Further, the Court notes that the delivery of the final decision of the regular courts, which was served on the Applicant, serves the best during the calculation of the four-month period which starts to be counted from the date of the service of the copy of the decision (see the ECtHR Judgment *Worm v. Austria*, no. 83/1996/702/894), 29 August 1997, paragraph 33.).
40. Consequently, the Court considers that the Applicant has received the challenged decision on 4 September 2019, whereas she has submitted the Referral to the Court by mail on 15 January 2020, which means that the Applicant's Referral was submitted out of the prescribed legal deadline.
41. The Court reiterates that the objective of the 4 (four) month legal deadline, under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, is to promote legal certainty by ensuring that cases raising constitutional issues are dealt with within a reasonable time and to prevent the authorities and other interested parties from being kept in a state of uncertainty for a long period of time (see, the ECtHR Judgment *Mocanu and Others v. Romania*, applications

no. (10865)/09, 45886/07 and 32431/08), of 17 September 2014, paragraph 258, see also the ECtHR Judgment *Lopes de Sousa Fernandes v. Portugal*, no.56080/13, of 19 December 2017, paragraph 129).

42. This deadline also enables the potential applicant to consider whether he or she wishes to file a referral and, if he or she wishes to do so, to decide on the specific complaints and arguments to be raised, and at the same time facilitates the establishment of facts in this case, since with the passage of time, any fair examination of the issues raised is rendered problematic (see the ECtHR Judgment *Sabri Güneş v. Turkey*, Application No. 27396/06, 29 June 2012, paragraph 39).
43. This rule specifies the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities the period beyond which such supervision is no longer possible (see the ECtHR Judgment *Walker v. The United Kingdom*, no. 34979/97, of 25 January 2000, see also the ECtHR Judgment *Sabri Güneş v. Turkey*, cited above, paragraph 40).
44. Therefore, the Court finds that the Applicant's Referral has not been filed within the legal deadline provided by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure. Consequently, the Court finds that the Applicant's Referral is inadmissible because it was submitted out of the legal deadline.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 14 October 2020, unanimously

DECIDES

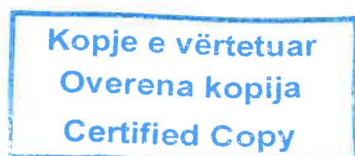
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Arta Rama-Hajrizi



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