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

Prishtina,on 15 January 2021
Ref.No:RK 1694/21

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RESOLUTION ON INADMISSIBILITY

in

cases No. KI65/20 and KI66/20

Applicants

Jovica Stanisavljević
and
Stojmirka Stanisavljević

Constitutional review of Judgment AC-I-16-0101-A22 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters of 14 February 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referrals were submitted by Jovica Stanisavljević (the first Applicant) and Stojmirka Stanisavljević (the second Applicant) from the village of Vrbeshtica, Municipality of Shterpce (hereinafter: the Applicants).

Challenged decision

2. Both Applicants challenge the constitutionality of Judgment AC-I-16-0101-A22 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 the SCSC), of 14 February 2020.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Appellate Panel of the SCSC, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 49 [Right to Work and Exercise Profession], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 (Right to a fair trial), Article 14 (Prohibition of discrimination), and Article 1 of Protocol 12 (General Prohibition of Discrimination) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies], and 40.1 (Joinder and Severance of Referrals) of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 21 April 2020, both Applicants submitted their Referrals by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 19 May 2020, the Court registered the Referral of the first Applicant with the number KI 65/20.

7. On the same date, the Court registered the Referral of the second Applicant under the number KI 66/20.

8. On 19 May 2020, the President appointed Judge Remzije Istrefi-Peci as Judge Rapporteur in the first Referral, and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha (members).

9. On the same date, at the request of the second Applicant, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur, and the Review Panel composed of Judges: Arta Rama Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).

10. On 8 June 2020, the Court notified the first Applicant about the registration of the Referral, and at the same time requested him to fill in the official form of the Referral and to submit to the Court the decision of Appellate Panel of the SCSC which is the subject of the challenge.

11. On 12 June 2020, by the Decision of the President of the Court, and in accordance with Article 40.1 of the Rules of Procedure on joinder of Referrals, the Referral KI66/20 was joined with the Referral KI65/20. Accordingly, the Referrals will be considered before the Court as a joined case.

12. On 17 June 2020, the Court notified the first Applicant about the decision on joinder of the two Referrals.

13. On the same date, the Court also notified the second Applicant about the registration and joinder of the Referrals, and at the same time requested him to fill in the official form of the Referral.

14. On 25 June 2020, both Applicants submitted the completed official referrals to the Court. They also submitted to the Court the Judgment of the Appellate Panel of the SCSC, which they challenge before the Court.

15. On 6 October 2020, the Court notified the Appellate Panel of the SCSC about the registration of both Referrals.

16. On 10 December 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

17. Based on the allegations in the case file of both Applicants, the Court may note that they had established the employment relationship with the Socially Owned Enterprise „17 Nëntori" from Ferizaj (hereinafter: SOE 17 Nëntori). The first Applicant established his employment relationship with SOE 17 Nëntori on 8 February 1988, while the second Applicant established his employment relationship `with SOE 17 Nëntori on 7 July 1992. Both Applicants allegedly worked for the said company until June 1999.

18. On 17 April 2007, the SOE 17 Nëntori entered the privatization process.

19. On 27, 28 and 29 October 2007, the Privatization Agency of Kosovo (hereinafter: the PAK) published a list of employees of SOE "17 Nëntori", who were qualified for the distribution of 20% of the privatization of the company, stating that all persons who are not on the list, and who think that they have the right to qualify in the distribution of 20%, may, within 20 days from the date of publication of the list, file a complaint with the Special Chamber of the Supreme Court (hereinafter: the SCSC).

20. The Applicants were not on the list of employees who, pursuant to the decision of the PAK, were qualified for the share of 20% of the privatization of SOE "17 Nëntori".

21. On 20 March 2015, both Applicants filed complaints with the SCSC against the final list of the PAK stating, *inter alia*, *"that as employees of SOE 17 Nëntori they worked until June 1999, and that due to discrimination they were not included in the final list of employees who exercised the right to participate in the distribution of 20% from the privatization of SOE 17 Nëntori."*

22. On 14 April 2015, the PAK submitted responses to the SCSC to both Applicants' allegations, stating *„that in connection with the consideration and modification of the final lists of employees entitled to payment, pursuant to Section 10.6 of UNMIK Regulation 2003/13, a complaint may be filed with the Special Chamber within 20 days of the publication of the final lists in daily newspapers. The deadline for submitting complaints to the Special Chamber for the final list was 19 November 2011, while both applicants filed complaints on 20 March 2015. Consequently, the complaints are out of the legal deadline".*

23. On 18 April 2016, the Specialized Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel of the SCSC) rendered Judgment SCEL-11-0057, whereby the appeals of both Applicants were rejected as inadmissible because they were filed out of time.

24. The Specialized Panel of the SCSC stated in the judgment, *inter alia*: *„...The court found that the final list of employees entitled to payment was published on 27, 28 and 29 October 2011, and that the applicants filed complaints with the SCSC on 20 March 2015, on the basis of which it can be concluded that the complaints were filed out of the legal deadline. Moreover, in the relevant documentation attached to the complaint, they did not submit evidence as to why they did not file complaints within the deadline".*

25. On 20 May 2016, both Applicants filed appeals with the Appellate Panel of the SCSC, against Judgment SCEL-11-0057 of the Specialized Panel of the SCSC, stating that *„that they filed complaints against the final list out of the time limit, because PAK did not provide them with the final list for examination".* In addition, both applicants stated, *"that in the place where they live, there is no daily press in Albanian and Serbian, that they do not have access to the Internet and therefore not in the Official Gazette".*

26. On 14 February 2020, the Appellate Panel of the SCSC rendered Judgment AC-I-16-0101-A22, rejecting the appeals of both Applicants as ungrounded, stating; *"The Appellate Panel finds that the conclusion of the Specialized Panel regarding these appeals is correct and lawful. The case file, namely the receipt stamp of the court, confirms the fact that the appeals were filed on 20 March 2015, while based on the publication of the final list of employees with legitimate rights by PAK, the deadline for appeals in the Special Chamber of the Supreme Court was 19 November 2011, and in the present case, the*

appellants did not comply with the deadline for filing an appeal, therefore the appeals were filed with more than three years of delay. The reasons given by the appellants for non-compliance with the deadline, the Appellate Panel considers as ungrounded and without influence on any other decision".

Applicant's allegations

27. The Applicants allege that the judgments of the Specialized Panel of the SCSC and of the Appellate Panel of the SCSC violated their rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], and Article 49 [Right to Work and Exercise Profession], of the Constitution as well as Article 6 (Right to a fair trial), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 12 (General prohibition of discrimination) of the ECHR.

28. In this context, the Applicants provided separate reasoning for each allegation of violation of Articles of the Constitution and the ECHR.

29. As to the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicants allege that the violation occurred because the courts did not reason their decisions, more specifically, they did not provide a clear explanation of their complaints regarding the missed deadline for appealing the final list of employees. In support of this allegation, the Applicants also cited the case of the ECtHR, *Hadjianastasiu v. Greece*, which states that *"the judgment must indicate with sufficient clarity the reasons on which they base their decisions".*

30. As to the violation of Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 1 of Protocol No. 12 to the ECHR, the Applicants allege *"that in the procedures for determining the right to a share of 20% of the revenues generated from the privatization of SOE "17 Nëntori", in relation to them, there has been a violation of this provision of the Constitution, which guarantees equality before the law. They emphasize in particular that the right to equality before the law has been violated in the procedure before the PAK, procedure, in which the PAK, despite the insight into the registry of employees in which they clearly worked without interruption in continuity, although the length of service is not closed, did not include them in the final list of employees, namely did not inform them about the privatization process".*

31. As to the violation of Article 49 of the Constitution, the Applicants allege *"that the obligations of SOEs, as employers, and them as employees were regulated by the provisions of the Law on Associated Labor and that Article 219 of this Law stipulates that in case of termination of employment it is necessary to submit a written decision on termination of employment, stating the reasons for termination and the legal remedy. Such a written decision was never served on them, and since the day of taking over the control of SOE "17 Nëntori", neither the SOE, nor the management of this SOE after June 1999, have taken any action to reinstate the applicants to work or inform them about the liquidation process, despite the fact that their address was known".*

32. The Applicants request the Court to hold that there has been a violation of Article 31 of the Constitution and Article 6 of the ECHR, violation of Article 24 of the Constitution and Article 14 of the ECHR, as well as a violation of Article 49 of the Constitution. Therefore, to order the Appellate Panel of the SCSC to modify its Judgment AC-I-16-01014-A22 of 4 February 2020, and order it to recognize the right to a share of 20% of the privatization, or to order the PAK to include the Applicants on the final list of employees entitled to 20% of the privatization of SOE "17 Nëntori" from Ferizaj.

Admissibility of the Referral

33. The Court first examines whether the Applicants have fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.

34. 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".*

35. In addition, the Court also examined whether the Applicant has fulfilled the admissibility requirements 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 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...".

36. With regard to the fulfillment of these criteria, the Court finds that the Applicants have submitted referrals in the capacity of authorized parties, challenging an act of a public authority, namely Judgment AC-I-16-0101-A22 of the Appellate Panel of the SCSC of 14 February 2019 after having exhausted all legal remedies. The Applicants also stated the rights and freedoms, they claim to have been violated, in accordance with the requirements of Article 48 of the Law, and also submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

37. In addition, the Court takes into account Rule 39 [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".

38. In the present case, the Court finds that the Applicants bring the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in connection with the fact that the Specialized Panel of the SCSC and the Appellate Panel of the SCSC did not provide a detailed reasoning in their judgments for all appealing allegations, which they consider relevant to the outcome of the case, thus violating their rights to a reasoned court decision. Such views of the Specialized Panel of the SCSC and of the Appellate Panel of the SCSC in their judgments violate Article 24 of the Constitution in conjunction with Article 14 of the ECHR, as well as Article 49 of the Constitution.

Applicants' allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR regarding unreasoned court decisions

39. The Court notes that the Applicants' allegation of violation of Article 31 of the Constitution and Article 6 of the ECHR is essentially based on their dissatisfaction with the decisions taken in the proceedings in which they sought to exercise the right to 20% share of the privatization of SOE 17 Nëntori. In this regard, the Court finds that the Applicants, in essence, consider that they have presented sufficient reasons for appeal for which they were unable to file appeals within the legal deadline and challenge the final list compiled by the PAK, but that the courts have not taken them into consideration, and therefore did not even provide a reasoning in their judgments.

40. The Court notes that according to the established case law of the ECtHR and the case law of the Constitutional Court, Article 6, paragraph 1 of the ECHR, obliges the courts to, *inter alia*, reason their judgments. This obligation, cannot, however, be understood as an obligation to state all the details in the judgment and to answer all the questions raised and arguments presented. The

extent to which this obligation exists depends on the nature of the decision (see ECtHR Judgment, *Ruiz Torija v. Spain*, of 9 December 1994, Series A, No. 303-A, paragraph 29). The ECtHR and the Constitutional Court in numerous decisions noted that, even though domestic courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case, at the same time they are obliged to reason their decisions, by giving clear and comprehensible reasons on which they base their decisions (see ECtHR judgment, *Suominen v. Finland*, of 1 July 2003, see also Judgment of the Court in case KI87/18 Applicant *IF Skadeforsikring*, of 15 April 2019).

41. However, even though the ECtHR states that Article 6 of the ECHR obliges the courts to provide reasons for their decisions, this obligation cannot be understood as requiring a detailed answer to each allegation. (See: ECtHR cases, *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994, paragraph 61; *Higgins and others v. France*, application no. 134/1996/753/952, Judgment of 19 February 1998, paragraph 42, see also Judgment in case KI 87/18 Applicant *IF Skadeforsikring*, of 15 April 2019).

42. The extent to which the obligation to provide reasons is applied may vary depending on the nature of the decision and must be determined in the light of the circumstances of the case (See: ECtHR cases *Garcia Ruiz v. Spain*, application no. 30544/96, judgment of 21 January 1999, paragraph 29; *Hiro Balani v. Spain*, judgment of 9 December 1994, paragraph 27 and *Higgins and Others v. France*, Ibidem, paragraph 42).

43. The Court notes that although the courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case in support of the parties' allegations, a domestic court is obliged to reason its activities by explaining the reasons for its decisions (Case of the ECtHR *Suominen v. Finland*, application no. 37801/97, of 1 July 2003, paragraph 36, see also the judgment of the court in case KI87/18 Applicant *IF Skadeforsikring*, of 15 April 2019).

44. Referring to the present case, as well as to the Applicants' allegations of unreasoned judgments, the Court, despite their allegations, considers that the Specialized Panel of the SCSC and the Appellate Panel of the SCSC, in reaching the challenged judgments, reasoned their decisions in a clear manner, both in terms of determining the factual situation, in relation to the reasons they cited as reasons for missing the legal deadlines, as well as in terms of the application of positive legal rules.

45. More specifically, the Court notes that the Specialized Panel of the SCSC agreed to deal with the Applicants' appealing allegations, despite the fact that their appeals against the final list of the PAK employees were filed after the expiry of the legal time limit, as required by Article 10.6 of the UNMIK Regulation. 2003/13.

„Article 10.4 UNMIK Regulation 2003/13

Upon application by an aggrieved individual or aggrieved individuals. a complaint regarding the list of eligible employees as determined by the Agency and 6 the distribution of funds from the escrow account provided for in subsection 10.5 shall be subject to review by the Special Chamber, pursuant to section 4.1 (g) of Regulation 2002/13.

(a) The complaint must be filed with the Special Chamber within 20 days aftr' the final publication in the media pursuant to subsection 10.3 of the list of eligible employees by the Agency. The Special Chamber shall consider any complaints on a priority basis and decide on such complaints within 40 days of the date of their submission:
(b) Any complaint filed with the Special Chamber on the grounds of discrimination as reason for being excluded from the list of eligible employees has to be accompanied by documentary evidence of the alleged discrimination".

46. Moreover, the Court cannot but note that the Special Panel of the SCSC, when reviewing the Applicants' complaints and appealing allegations, paid special attention not only to their appealing allegations, but also to the evidence which as such must be adduced in order the allegations mentioned are justified, which is one of the main requirements prescribed by paragraph (b) of Article 10.4 of UNMIK Regulation 2003/13.

47. Based on the reasoning of the Judgment of the Specialized Panel of the SCSC, the Court may conclude that the Applicants' allegations that the Specialized Panel of the SCSC did not consider their appealing allegations regarding the reasons for non-filing the appeals within the prescribed legal deadline are ungrounded, but that the assessment of the Specialized Panel of the SCSC, was *„that in the relevant documentation they attached to the complaint, they did not submit evidence as to why they did not file a complaint within the deadline*".

48. Furthermore, as regards the proceedings before the Appellate Panel of the SCSC, the Court finds that despite the finding of the Appellate Panel of the SCSC that the appeals were filed with "*more than three years of delay*", it considered and assessed all other Applicants' allegations in order to determine the validity and the reasons that would enable the approval of their appealing allegations. However, the position of the Appellate Panel of the SCSC was that "*The reasons given by the Applicants regarding the failure to meet the deadline, it considers ungrounded and without prejudice to any other decision...".*

49. Based on the above, the Court wishes to add that in addition to the case law of the ECtHR in which it was established "*that it is not necessary for the regular courts to deal with every point raised in the Applicant's argument*" (see case: ECtHR *Van de Hurk v. The Netherlands*, Ibidem, paragraph 61) it is of the, opinion, that the regular courts in this case took into account all the main arguments of the applicants regarding the reasons for missing the deadlines,

but that as such, according to their conclusions, they were not sufficiently accompanied by the attached "*evidence to reason these appealing allegations*".

50. Therefore, the Constitutional Court considers that the challenged judgments do not violate the Applicants' rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in relation to unreasoned court decisions as one of the elements of the right to fair and impartial trial.

Applicants' allegations of violation of Article 24 of the Constitution, Article 14 and Article 1 of Protocol No. 12 to the ECHR, regarding unequal treatment

51. As regards the allegation of violation of Article 24 of the Constitution in conjunction with Article 14 and Article 1 of Protocol No. 12 to the ECHR, the Applicants cite as main arguments the fact that their right to equality before the law was violated in the proceedings before the PAK, in which the PAK despite the examination of the register of employees and their addresses did not inform them about the privatization process. In addition, the Applicants add that they could not be informed due to the fact that in the place where they live there is no distribution of print media in Albanian and Serbian, and they also do not have access to the Internet.

52. In addition, the Applicants allege that the SCSC, in its practice, has taken its position on the issue of discrimination, stating that *"the persons who presume to have been discriminated against are the employees who are not included in the final list of employees to acquire a share of 20% of the proceeds generated by privatization due to their ethnicity, political and religious background. Depending on the time period ... the Serb entities who did not report for work after June 1999"*.

53. Having regard to the Applicants' allegations, the Court emphasizes, that discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, paragraph 48, ECtHR 2002- IV). *The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (Timishev v. Russia,* nos. 55762/00 and 55974/00, § 56, ECHR 2005).

54. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment, it is for the authorities to show that it was justified (see, among other authorities, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999 III; and *Timishev*, cited above, paragraph 57).

55. As to the Applicants' allegations of discrimination on ethnic and language grounds, the Court notes that PAK has indeed discharged its legal duty, by publishing the list of employees eligible for 20% of the privatization of the SOE

17 Nëntori, thus, in accordance with UNMIK Regulation on 27, 28 and 29 October 2011, it published a list of employees who acquired the right to a share of 20% of the privatization of SOE 17 Nentori, in both constitutional languages namely, the Albanian and Serbian languages. The Court also notes that the Albanian version of the list was published in Albanian daily newspapers whereas the Serbian was published in Serbian daily newspapers.

56. The Court also notes that the Applicants allege that they were discriminated against on ethnic and language grounds mainly because the list of employees in Serbian language was published in newspapers which are not distributed in the area where they live. Furthermore, they allege that precisely because of that fact they were unable to file complaints in time.

57. In this respect, the Court notes that the Applicants should have shown "*due diligence*" in order to protect their constitutional rights in compliance with legal requirements. In the present time, where access to information is greatly facilitated by electronic means, the Court considers that the Applicants cannot complain that just because newspapers do not arrive in the area of their residence can give rise to valid allegations of discrimination on ethnic and language grounds (see Resolution on Inadmissibility of the Court in joined cases KI61/16, KI 65/16, KI 66/16, Applicants *Omer Duraki, Ismet Pačka, Ismailj Ajdari*, of 8 November 2016).

58. With regard to the proceedings before the Specialized and Appellate Panels of the SCSC regarding unequal treatment, the Court notes that the Applicants benefited from the court proceedings, because they were able to submit arguments they considered relevant to their cases despite the fact that they have missed the legal time limit for filing the appeals. However, from the reasoning of the Specialized Panel and Appellate Panel of the SCSC, the Court notes that their appealing allegations were not sufficiently substantiated, and therefore the Applicants failed to justify their allegations of unequal treatment in relation to other employees before PAK.

59. Accordingly, the Court finds that the Applicants did not accurately explain any grounds and build a case in a valid manner on unequal treatment or discrimination before PAK in the process of compiling and publishing the list, nor before the Specialized Panel and Appellate Panel of the SCSC in the review procedure of their complaints.

60. Therefore, the Court finds this Applicants' allegation of violation of Article 24 of the Constitution as well as Article 14 and Article 1 of Protocol No. 12 to the ECHR as ungrounded.

Applicants' allegations of violation of Article 49 of the Constitution

61. As to the Applicant's allegation that Article 49 of the Constitution has been violated because the Applicants have not received a decision on termination of employment relationship in accordance with the law in force.

62. The Court wishes to state that the present proceedings did not concern the Applicants' legal/employment status, which would address the issue of whether or not their employment status had been terminated in accordance with applicable law, but only with the Applicants' right to exercise their rights to 20% from the privatization of SOE 17 Nëntori, therefore, the courts made decisions exclusively on this issue.

63. Moreover, the Court does not find that the judgments of the Specialized Panel and Appellate Panel of the SCSC do not prohibit the Applicants in any way from exercising or freely choosing their profession.

64. Therefore, the Court finds this Applicants' allegation of violation of Article 49 of the Constitution as ungrounded.

65. Having regard to all the findings, the Court may conclude that the Applicants have not substantiated their allegations of violation of Articles 24, 31 and 49 of the Constitution, in conjunction with Articles 6, 14 and 1 of Protocol No. 12 to the ECHR.

66. The Court reiterates that it is the Applicant's obligation to substantiate his constitutional allegations and to submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see case of the Constitutional Court No. KI19/14 and KI21/14, Applicants: *Tafil Qorri and Mehdi Syla*, Resolution on Inadmissibility of 5 December 2013).

67. Therefore, the Applicants' Referrals are manifestly ill-founded on constitutional basis and, are to be declared inadmissible in accordance with Rule 39 (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 20 of the Law, and Rule 39 (2) of the Rules of Procedure, in the session held on 10 December 2020, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

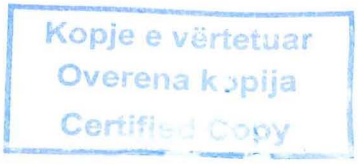
II. TO NOTIFY this Decision to the Parties;

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**

Remzije Istrefi-Peci | Arta Rama-Hajrizi



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