



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

Prishtina, on 24 May 2021  
Ref. no.: RK1786/21

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI18/21**

Applicant

**Ruzhdi Latifi**

**Constitutional review of Decision AC-I-19-0090-A0001 of the Appellate  
Panel of the Special Chamber of the Supreme Court, of 10 December  
2020**

### **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 Ruzhdi Latifi, who is allegedly represented by Haki Pajaziti from the Municipality of Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision [AC-I-19-0090-A0001] of 10 December 2020 of the Appellate Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) in conjunction with the Decision [C-IV-14-0515] of 23 May 2019 of the Specialized Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel).

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment of the Appellate Panel, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 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 21 January 2021, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 25 January 2021, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 2 February 2021, the Court of (i) notified the Applicant about the registration of the Referral; and (ii) requested him to clarify whether he represents himself before the Court, or whether he is represented by lawyer Haki Pajaziti, and if that is the case, to submit a valid power of attorney for representation before the Court. The Applicant did not respond to the request of the Court.
8. On 5 May 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court to summarily reject the Referral.

## **Summary of facts**

9. On 27 May 2008, the Kosovo Trust Agency (hereinafter: KTA), *inter alia*, notified the Applicant that the sale of SOE "Kualiteti" Gjilan was approved by

the KTA Board and that the consequence of the sale of the respective assets, is the termination of his employment.

10. On 15 March 2011, the Applicant filed a claim with the Regional Office in Gjilan of the Privatization Agency of Kosovo (hereinafter: the PAK), by which he requested (i) the annulment of *“the decisions of the respondent NSHIMB “Kualiteti” Gjilan”*; (ii) compensation for unpaid salaries in the amount of 17,236 euro and pension contributions in the amount of 1,732.50 euro for the period 1991-2000; and (iii) compensation for unpaid salaries in the amount of 14,980.00 euro and pension contributions in the amount of 1,960.00 euro for the period 1999-2008, in the total amount of 35,994.50 euro, due to *“termination of employment relationship in an indefinite period of time”*.
11. On 24 December 2013, the Liquidation Authority of the PAK by the Decision [GJI005-0347], rejected as invalid the Applicant’s claim, and reasoned that based on point 1 of paragraph 2 of Article 36 (Invalid and Improper Claims) of Law No. 04/L-034 on the Privatization Agency of Kosovo (hereinafter: the Law on PAK) and Article 608 of the Law on Associated Labor of 1976, the claim is statute barred, as *“3 years have passed since the termination of employment relationship and the claimant does not have any evidence that he has submitted a claim to the court or any other competent body within three years”*.
12. On 28 January 2014, the Applicant filed a claim with the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: SCSC), requesting the annulment of the above-mentioned Decision of the PAK, among others, claiming that (i) it was not taken into account that the claimant *“is a victim and discriminated against by the interim Serbian body and was forcibly expelled from his working place”*; (ii) *“The Assembly of the R. of Serbia has unlawfully rendered decision on taking temporary measures to protect self-governing rights and socially-owned property against the Socially Owned Enterprise “Flour and Bread Industry”*; and (iii) *“The interim Serbian body... did not choose means and forcibly expelled the Albanian workers from their jobs and mainly rendered decisions without any conduct of disciplinary proceedings...”*. On 22 April 2016, PAK filed a response to the claim, proposing that it be rejected as ungrounded.
13. Based on the case file, on 28 January 2019, the SCSC, through the notice for the payment of court fees, notified the Applicant that (i) he is obliged to pay the court fee for the appeal provided by Articles 13.7 and 13.9 of the Administrative Instruction no. 01/2017 on the Unification of Court Fees (hereinafter: Administrative Instruction); (ii) if the relevant tax is not paid within the prescribed period, the claim shall be deemed to have been withdrawn; and (iii) pursuant to Article 8 (Exemption from tax payment) of the Administrative Instruction, the Applicant may request exemption from court fees due to lack of financial means.
14. On 23 May 2019, the Specialized Panel of the SCSC by Decision [C-IV-14-0515], rejected the Applicant’s claim. By this decision, the Specialized Panel of the SCSC stated that (i) the notice to pay the court fee was served on the

Applicant on 28 January 2019; and (ii) given that it was not paid, the complaint is deemed to have been withdrawn.

15. On 14 June 2019, the Applicant filed an appeal with the Appellate Panel of the SCSC against the above-mentioned Decision of the Specialized Panel of the SCSC, alleging that it is not true that he received the notice of payment of court fee on 28 January 2019.
16. On 10 December 2020, the Appellate Panel of the SCSC by Decision [AC-I-19-0090-A0001] rejected the Applicant's appeal as ungrounded and upheld Decision [C-IV-14-0515] of 23 May 2019 of the Specialized Panel of the SCSC. By this Decision, the Appellate Panel, *inter alia*, stated that (i) the SCSC issued a court notice for the payment of the court fee on 28 January 2019; (ii) based on the relevant receipt, the notice was served on the claimant on 11 March 2019; (iii) the latter had neither paid the court fee nor applied for tax exemption; and consequently (iv) based on paragraphs 4 and 5 of Article 253 (Content of the claim) of Law no. 03/L-006 on Contested Procedure (hereinafter: LCP), the relevant complaint, due to non-payment of the court fee, should be considered withdrawn.

### **Applicant's allegations**

17. The Applicant challenges the Decision [AC-I-19-0090-A0001] of 10 December 2020 of the Appellate Panel of the SCSC, alleging that it was rendered in violation of his fundamental rights and freedoms guaranteed by the Constitution, without specifying the constitutional provisions which he claims to have been violated, but in essence, he raises allegations related to Article 31 [Right to Fair and Impartial Trial] of the Constitution.
18. With regard to the alleged violations of Article 31 of the Constitution, the Applicant states, *inter alia*, that the challenged decision of the Appellate Panel of the SCSC was rendered in violation of paragraphs 1 and 2 of Article 182 [no title] and Article 184 [no title] of the LCP, because "*The Appellate Panel did not elaborate on the material evidence at all, nor did it analyze the appeal at all according to this legal issue*" and "*The Specialized Panel and the Appellate Panel of the SCSC, should and had the obligation to call us to the hearing, such an action they have not done at all*".
19. Finally, the Applicant requests the Court to (i) declare his Referral admissible; and (ii) annul the Decision [AC-I-19-0090-A0001] of 10 December 2020 of the Appellate Panel of the SCSC in conjunction with the Decision [C-IV-14-0515] of 23 May 2019 of the Specialized Panel of the SCSC, remanding his case to retrial.

### **Assessment of the admissibility of Referral**

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

21. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 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.”*

22. The Court also refers the admissibility requirements as defined by the Law. In this regard, the Court first refers to Articles 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which stipulate:

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.”*

*[...]*

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.”*

23. In the light of the abovementioned provisions, the Court notes that in accordance with paragraph 7 of Article 113 of the Constitution, paragraph 1 of Article 47 and Article 48 of the Law, in addition to specifying the concrete act of the public authority being challenged, the parties are also obliged to accurately and adequately present the facts and allegations of violation of constitutional rights or provisions. In addition, the Court also refers to paragraph (5) of Rule 35 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules of Procedure, which provides as follows::

Rule 35  
[Withdrawal, Dismissal and Rejection of Referrals]

*[...]*

*“(5) The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral”.*

*[...]*

24. This rule enables the Court to summarily reject the Referral if, *inter alia*, the Applicant's referral is incomplete and unclear, despite the Court's requests to supplement and clarify the relevant referral.

25. Considering that in the circumstances of the present case, the Applicant's Referral was incomplete and unclear, on 2 February 2021, in accordance with paragraph 4 of Article 22 (Processing Referrals) of the Law and points (f), (g) and (h) of paragraph (2) of Rule 32 of the Rules of Procedure, the Court requested the Applicant to clarify whether he is representing himself before the Court or whether he is represented by lawyer H.P., and if this is the case, to submit valid power of attorney for representation before the Court. As explained above, the Applicant did not respond to the request of the Court. Considering that the necessary clarifications have not been submitted to the Court, the latter should find that the Applicant's Referral does not meet the procedural criteria for further consideration, because it is incomplete and unclear, as established in paragraph (5) of Rule 35 of the Rules of Procedure.
26. Based on its case law, the Court also recalls that the burden of building, clarifying and supplementing the Referral falls on the Applicants, who have a direct interest to have their claims and allegations effectively addressed by the Court. In cases where the Applicants do not respond to the Court's requests for clarification and supplementation of the Referral, the Court summarily rejects these Referrals. (see, *inter alia*, the cases of Court KI 60/20, Applicant: *The Council of Islamic Community*, Decision to reject the Referral of 18 February 2021, paragraph 36; KI90/20, Applicant *Arben Boletini*, Decision to Reject the Referral, of 9 December 2020, paragraph 25; and cases no. KI78/20, KI79/20 and KI80/20, Applicant *Hilmi Aliu and others*, Decision to Reject the Referral, of 7 December 2020, paragraph 33 and the references used therein).
27. Therefore, the Court, in accordance with Rule 35 (5) of the Rules of Procedure, the Referral is to be summarily rejected.



## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22, 47 and 48 of the Law and in accordance with Rule 35 (5) of the Rules of Procedure, on 5 May 2021, unanimously:

### **DECIDES**

- I. TO REJECT the Referral;
- 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**

Gresa Caka-Nimani

Arta Rama-Hajrizi



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