



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

Prishtina, on 19 July 2021
Ref.No:RK 1816/21

This translation is unofficial and serves for informational purposes only

RESOLUTION ON INADMISSIBILITY

in

Case No. KI48/21

Applicant

Xhavit R. Sadrija

Constitutional review of Judgment AC-I-19-0194 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 1 October 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Xhavit R. Sadrija from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment AC-I-19-0194 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 1 October 2020.
3. The challenged Judgment of the Appellate Panel was served on the Applicant on 7 October 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged judgment, 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], Article 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 No. 1 [Protection of property], of the European Convention on Human Rights (hereinafter: the 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 on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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 24 February 2021, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 March 2021, the Court received and registered the Applicant's Referral.
8. On the same date, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (presiding), Bajram Ljatifi and Safet Hoxha (members).
9. On 11 March 2021, the Court notified the Applicant about the registration of the Referral and requested from him to: i) complete the official form of the Referral; and, ii) to submit all court decisions relevant to his case.
10. The Applicant did not respond to the Court's request of 11 March 2021, despite the fact that he had received the Court's letter on 16 March 2021, which the Court has confirmed on the basis of the acknowledgment of receipt.
11. On 28 April 2021, the Court notified the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber of the Supreme Court) about the registration of the Referral,

and requested from it to send to the Court the acknowledgment of receipt as evidence indicating the time/date when the challenged judgment of the Appellate Panel was served on the Applicant.

12. On 6 May 2021, the Court received a letter sent by the Special Chamber of the Supreme Court, along with the acknowledgment of receipt.
13. On 20 May 2021, the Court again sent a letter to the Applicant requesting from him to complete the official form of the Referral, as well as to submit all court decisions relevant to his case.
14. On 25 May 2021, pursuant to point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned from the position of a judge at the Constitutional Court.
15. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision no. KI48/21 appointed Judge Radomir Laban as Judge Rapporteur instead of Judge Bekim Sejdiu following the resignation of the latter.
16. On 8 June 2021, the Applicant submitted to the Court the completed Referral Form, but not also the other documents as requested in the letter of 20 May 2021.
17. On 26 June 2021, on the basis of paragraph (4) of Rule 12 of the Rules of Procedure and the decision of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, whilst pursuant to point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
18. On 30 June 2021, 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

19. Based on the case file, it results that the Applicant has had an established employment relationship for an indefinite period of time with the Socially-Owned Enterprise "Erenik" (hereinafter: the SOE "Erenik") in Gjakova.
20. On 23 June 2014, the SOE "Erenik" in Gjakova was privatized.
21. The Privatization Agency published a preliminary list of employees of SOE "Erenik" entitled to distribution of 20% of proceeds generated from the privatization process; the Applicant was not included in the preliminary list of eligible employees of SOE "Erenik" who were entitled to participate in the 20% of proceeds.

22. The Applicant submitted a complaint against the preliminary list of employees of SOE "Erenik" eligible for the distribution of 20%, which was rejected by the Privatization Agency.
23. On 9 January 2019, the Privatization Agency published the final list of legitimate employees who gained the right to a share of 20% of proceeds from the privatization, along with the remark, *"that all individuals who are not included in the list and consider that they are entitled to the distribution of 20% from the privatization process, have a deadline to submit an appeal to the Special Chamber"*.
24. On 14 March 2019, the Applicant submitted a complaint by mail to the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber), wherein which he challenged the final list of employees, stating that he is also entitled to a part of the 20% of proceeds, because *"he had established an employment relationship with the SOE since 1981, whilst in the SOE "Erenik"-Trade he has worked continuously from 1987 until 2002, and afterwards as per the request and needs of the management staff until 2012, he has worked free of charge as a consultant in the accounting service."*
25. The Privatization Agency responded to the Applicant's appeal allegations by stating that: *"the documents submitted by him are not sufficient grounds for his inclusion in the final list of employees entitled to 20% of proceeds. The complainant did not provide any evidence to suggest that there was a direct or indirect discrimination, moreover, at the time of the privatization of the SOE he was not registered as an employee of the SOE, therefore it proposed that his complaint be rejected as unfounded"*.
26. On 29 October 2019, the single judge with delegated powers of the Specialized Panel of the SCSC, by Judgment C-II-19-0018, dismissed the Applicant's appeal as unfounded, stating that the Applicant *"... even after the Court Order to attach the copy of employment booklet and other required documents, he has presented only a certified copy of his ID card. Therefore, it considered that he failed to meet the requirements of Section 10.4 of UNMIK Regulation 2003/13, and accordingly dismissed the complaint as unfounded."*
27. The Applicant filed an appeal with the Appellate Panel against the Judgment C-II-19-0018 of the Specialized Panel of the SCSC, alleging that the challenged Judgment was rendered due to *"... erroneous and incomplete determination of the factual situation, the challenged Judgment was unlawful, that he was denied his legal and constitutional right without grounds. In addition, the Applicant submitted a certified copy of the agenda of the SOE 01-37, of 19 April 2001, order of SCSC C-II-0018-C9 of 23.09.2019, the response of PAK of 15.04.2019, claim sent to SCSC of 11.03.2019, response to the Order of 4.10.2019, proof of attendance at work that bears no stamp and is not signed, certificate on work experience, an extract certified by the SOE"*.
28. On 1 October 2020, the Appellate Panel, by Judgment AC-I-19-0194, dismissed the Applicant's appeal as unfounded, stating *"The Appellate Panel finds that the single judge with delegated powers of the Specialized Panel of the SCSC"*

has decided correctly when rejecting the appellant's appeal because the appellant by his appeal filed with the Appellate Panel, except for the declaratory aspect that he would submit a copy of the employment booklet and other documents in the case file failed to attach the employment booklet, and on the basis of the certificate issued by the Ministry of Labour and Social Welfare, certificate on attendance at work from the director, based on which it is proved that he has been an employee of the SOE from July 1999 to December 2002, which was submitted by the appellant himself, it is evident that the appellant's work experience dates from 1987 to 1994. With no other evidence did he prove that he has been an employee of the SOE until the moment of privatization."

Applicant's allegations

29. The Applicant alleges that the regular courts by their decisions have violated the Applicant's rights and freedoms guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution, and Article 6 (Right to a fair trial), and Article 1 of Protocol No. 1 [Protection of property] of the ECHR.
30. First of all, as regards the violation of Article 24 [Equality before the Law] of the Constitution, the Applicant states: *"In this case, we are speaking about violations of the constitutional right, the right to equality before the law from Article 24 of the Constitution of the Republic of Kosovo, namely the constitutional guarantee that we are all equal before the law and that everyone enjoys the right to equal legal protection, without discrimination; and that is because the employees who are selected, both the ones in the PAK list, and those whose first instance judgment was modified by the Appellate Panel or who were removed from the list by 20% are equal."*
31. In addition, the Applicant adds, *"that he was not treated equally before the courts in relation to other citizens of the Republic of Kosovo, who were granted the right to 20%, which violated his fundamental rights, guaranteed by Article 24 (Equality before the law) of the Constitution"*.
32. Moreover, the Applicant alleges violations of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial), stating that *"the Appellate Panel has applied the Anti-Discrimination Law in a biased and arbitrary manner, hence the judgment in question was not fair or reasoned, as guaranteed by Article 31 (Right to a Fair and Impartial Trial) of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the European Convention. In addition, the Applicant adds that the proceedings in his case have lasted for a very long time, so due to that the right to a fair trial was violated, both because of the length of the court proceedings and because of the unreasoned judgment of the Appellate Panel"*.
33. Finally, the Applicant links his allegations for a violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol No. 1 to the ECHR [Protection of property], to the violations of previous Articles as follows: *"the alleged violations of Articles 24 and 31 of the*

Constitution as well as violations of Article 6 of the ECHR, have led to the violation of his right guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR”.

34. The Applicant requests from the Court to *declare the Referral admissible, to confirm that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, Article 24 of the Constitution, and Article 46 in conjunction with Article 1 of Protocol No. 1 of the ECHR, as well as to annul the decisions of the Appellate and Specialized Panel and remand the case for retrial in accordance with the judgment of the Constitutional Court.*

Assessment of the admissibility of Referral

35. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified by the Law and the Rules of Procedure.
36. 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.”

37. The Court also examines whether the Applicant has fulfilled the admissibility criteria, as provided by 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...”

38. Initially, the Court refers to the date of service 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.
39. In this respect, the Court recalls that the last decision in the Applicant's case was the Judgment [AC-I-19-0194] of the Appellate Panel, of 1 October 2020.
40. On the basis of the acknowledgment of the receipt submitted by the Special Chamber of the Supreme Court to the Court in its response of 6 May 2021, the Court notes that the Applicant has received the challenged Judgment on 7 October 2020.
41. The Court recalls that a period of 4 (four) months 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 ECtHR Decision: *Koç and Tosun v. Turkey*, no. 23852/04 of 13 November 2008; see, inter alia, the cases of Court: KI12/20, Applicant: *Hamijete Dinarama-Daija*, Resolution of 6 November 2020, paragraph 38; KI45/21, Applicant *Samedin Bytyqi*, Resolution on Inadmissibility of 20 May 2021, paragraph 32).
42. Further, the Court notes that the delivery of the final decision of the regular courts, which was served on the Applicant, serves the best when calculating the four-month period which starts to run from the date of the service of the copy of the decision (see, the ECtHR Judgment *Worm v. Austria*, no. (83/1996/702/894) of 29 August 1997, paragraph 33; see, also the cases of Court: KI12/20, cited above, paragraph 39; and KI45/21, cited above, paragraph 33).
43. Consequently, the Court considers that the Applicant has received the challenged decision on 7 October 2020, whereas he has submitted the Referral to the Court by mail on 24 February 2021, which means that the Applicant's Referral was submitted out of the prescribed legal deadline.
44. 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, see also the cases of Court: KI53/18, Applicant: *Hajri Ramadani*, Resolution on Inadmissibility of 6 December 2018, paragraph 43, KI45/21, cited above, paragraph 35).

45. 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 of 29 June 2012, paragraph 39; see also the cases of Court KI12/20, cited above, paragraph 42, and KI45/21, cited above, paragraph 36).
46. 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, see also the cases of Court: KI53/18, cited above, paragraph 45, KI45/21, cited above, paragraph 37).
47. 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 113.1 and 113.7 of the Constitution, Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, on 30 June 2021, 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

Gresa Caka-Nimani



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