



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 24 July 2017

Ref. No.:RK 1108/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI107/16

Applicant

Safet Muhaxheri and others

**Constitutional review of
Judgment SCEL-09-0022-C13 of the
Specialized Panel of the Special Chamber of the Supreme Court of
Kosovo on Privatization Agency of Kosovo Related Matters,
of 28 June 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, judge
Almiro Rodrigues, judge
Snezhana Botusharova, judge
Bekim Sejdiu, judge
Selvete Gërxhaliu-Krasniqi, judge and
Gresa Caka-Nimani, judge.

Applicant

1. The Referral was submitted by Safet Muhaxheri, Safet Rrustemi and Sinan Jashari, all from the Municipality of Ferizaj (hereinafter, the Applicants).

Challenged decision

2. The Applicants challenge Judgment SCEL09-0022-C13 of the Specialized Panel of Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter, the Specialized Panel) of 28 June 2013, which *“did not include in the main hearing the requests of these employees which were presented orally”*.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly is *“contradictory to Article 24, paragraph 1, of the Constitution of Kosovo which guarantees equality before the law for all citizens”*.

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court (hereinafter, the Law) and Rule 29 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 8 August 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 9 September 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 23 September 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Privatization Agency of Kosovo (hereinafter, the PAK) and to the Specialized Panel.
8. On 2 June 2017, the Review Panel considered the report of Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 9 July 2009, the PAK publicly announced the final list of the employees entitled to compensation of 20% from the privatization of the SOE “Plantacioni” in Ferizaj (hereinafter, Plantacioni).
10. That public announcement informed that all persons claiming any rights in the process of privatization of Plantacioni could file a complaint to the Specialized Panel, until 1 August 2009.

11. On 28 June 2013, the Specialized Panel delivered its Judgment SCELo9-0022-C13 dealing with the complaints of 34 other complainants, but without referring at all the situation of the Applicants.
12. The Applicants state that they *"made their appearance at the Court on the occasion of deciding regarding the appeals of their colleagues"*. On that occasion, they *"requested their inclusion in the list of 20%"*. However, they also say that their requests *"were not registered in the minutes of the main hearing due to oral reasoning that they are not part of this process because they did not file any appeal against the final list"*.
13. The case file does not show either that the Applicants have applied for inclusion in the final list or have they filed with the Appellate Panel an appeal against the Judgment of the Specialized Panel.

Applicant's allegations

14. The Applicants claim that they were employed in the now privatized Plantacioni and thus they were *"eligible to a share of 20% of the proceeds from the privatization of SOE 'Plantacioni'"*
15. The Applicants allege that the Judgment of Specialized Panel, and the PAK Decision on the final list, did not treat them same as other employees, they were not informed about the privatization process; thus they were unjustly deprived of the right to compensation from the privatization process and, consequently, paragraph 1 of Article 24 [Equality Before the Law] of the Constitution has been violated.
16. The Applicants request the Court to hold that *"there has been violation of Article 24 para. 1 of the Constitution of Kosovo by Judgment of SCSC"*.

Admissibility of the Referral

17. The Court first examines whether the Applicants have met the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
18. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

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.

19. The Court also refers to Article 47 (2) of the Law, which provides:

[...]

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

20. In addition, the Court takes into account Rule 36 (1) b) of the Rules of Procedure which foresees:

The Court may consider a referral if: (...) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.

21. In that respect, the Court recalls that the exhaustion of legal remedies, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rule 36 (1) b) of the Rules of Procedure, obliges those who want to bring their case before the Court to first use all legal remedies provided by law.
22. Thus the regular courts will have an opportunity to put matters right through their own legal decisions. In fact, the rule of exhaustion is based on the assumption that there is an effective remedy available in respect of the alleged breach in the regular courts. In this way, the machinery of constitutional protection established by the Constitution is subsidiary to the regular courts safeguarding human rights. See, *mutatis mutandis*, ECtHR cases *Akdivar and Others v. Turkey*, 16 September 1996, paragraph 51; *Handyside v. United Kingdom*, 7 December 1976, paragraph 48; see also Constitutional Court case KI42/15, 4 July 2016, paragraph 34 and 35.
23. The Court recalls that the Applicants argued that PAK has not informed them at all about the privatization process and about the possibility of application or filing an appeal against its decisions, thus putting them in an unequal position in relation to other colleagues who have enjoyed these rights.
24. The Court considers that the Applicants were able, like all other colleagues, to submit an appeal to the Appellate Panel against the decision of the Specialized Panel, of 28 June 2013, within 21 days from the day when they received or became aware of it; in that appeal they could submit their allegations prior to addressing the Constitutional Court. However, the Applicants have not done so.
25. The Court concludes that the Applicants had at their disposal two legal remedies before the regular courts which were available to the Applicants and which could remedy the violations in relation to the objections of the Applicants; but the Applicants have not used these effective legal remedies.
26. Thus, the Court considers that the Applicants have waived their right to further complain and thus have not exhausted all legal remedies provided by law. See

Constitutional Court Case No. KI07/09, *Demë and Besnik Kurbogaj*, 19 May 2010, paragraphs 28-29).

27. That consideration is in conformity with the jurisprudence of the ECtHR, which upheld that *"the applicant has never raised this complaint (...). Thus this complaint needs to be rejected for non exhaustion of domestic remedies (...)"*. See ECtHR *Erzebet PAP v. Serbia*, Application No, 44694, 21 June 2011, chapter the Law, para. 3.
28. Therefore, the Court finds that the Applicants have not exhausted all legal remedies provided by law and that the Referral is inadmissible, in accordance with Article 113 (7) of the Constitution, Article 47 (2) of the Law and Rule 36 (1) (b) of the Rules of Procedure.
29. Accordingly, for the reasons above, the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law, and Rules 36 (1) (b) and 56 (b) of the Rules of Procedure, on its session held on 2 June 2017, 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. TO DECLARE this Decision effective immediately.

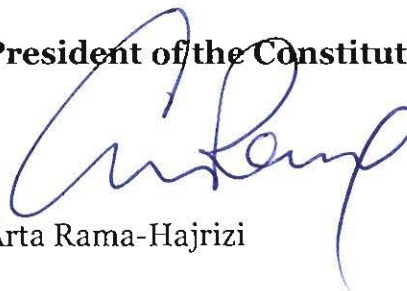
Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi