



REPUBLIKA E KOSOVES - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
**GJYKATA KUSHTETUESE**  
**УСТАВНИ СУД**  
**CONSTITUTIONAL COURT**  
**SEKRETARIA / SEKRETARIJAT / SECRETARIAT**

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Pristine, 27 June 2012  
Ref. No.: RK261/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI130/10**

Applicant

Cyma Agović

**Constitutional review of the Judgment of the Special Chamber of the Supreme Court of Kosovo, ASC-09-0045, of 8 March 2010**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicant**

1. The Applicant is Mrs. Cyma Agović, residing in Peja.

### **Challenged decision**

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo (hereinafter referred to as the "Appellate Panel"), ASC-09-0045, of 8 March 2010, which was served on her on 22 March 2010.

### **Subject matter**

3. The subject matter of the Referral submitted with the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Constitutional Court") on 28 December 2010 is the constitutional review of the Judgment of Appellate Panel, ASC-09-0045, of 8 March 2010.
4. The Applicant claims that the challenged decision violates her rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), in particular Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 49 [Right to Work and Exercise Profession], Article 51 [Health and Social Protection], Article 54 [Judicial Protection of Property], and Article 22 [Direct Applicability of International Agreements and Instruments].

### **Legal basis**

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, (No. 03/L-121), (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

### **Proceedings before the Court**

6. On 28 December 2010, the Applicant submitted the Referral to the Court.
7. On 14 February 2011, the President, by Decision No. GJR. 130/10, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 130/10, appointed the Review Panel composed of judges Snezhana Botusharova (Presiding), Ivan Čukalović and Iliriana Islami.
8. On 27 January 2011, the Court notified the Special Chamber of the Supreme Court of Kosovo and the Privatization Agency of Kosovo.
9. On 18 June 2012, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

10. The Applicant has been working in the laundry of Rugova Hotel in Peja from 1978 to 1999.
11. On 3 September 2003, the management of Rugova Hotel in Peja compiled the list of qualified employees eligible for the 20% of the proceeds from the privatization of public enterprises and sent it to the Kosovo Trust Agency (hereinafter referred to as the "KTA") for further processing. The Applicant was included in that list.
12. On 7, 8, 10 and 11 May 2008, the KTA published the final list of qualified employees eligible for the 20% of the proceeds from the privatization of the said enterprise and

stressed that the deadline for the submission of appeals was 2 June 2008. The Applicant was not in this list.

13. Since the Applicant was included in that list drafted by the KTA, on 6 May 2009, she filed an appeal with the Trial Panel of the Special Chamber of the Supreme Court (hereinafter referred to as the "Trial Panel").
14. On 9 July 2009, the Trial Panel rejected Applicant's appeal pursuant to Section 10.6 (a) of UNMIK Regulation No. 2003/03 on the Transformation of the Right of Use to Socially-Owned Immovable Property (hereinafter referred to as "UNMIK Regulation No. 2003/03") because the deadline for the submission of appeals had expired, that is to say on 2 June 2008 (Resolution SCEL-08-003-0102).
15. On 12 August 2009, the Applicant submitted an appeal with the Appellate Panel, whereby she requested the rejection of the Trial Panel Resolution SCEL-08-003-0102, and demanded the return to the previous situation because the Applicant was hospitalized from 4 to 14 April 2008, from 28 to 28 May 2009, and on 29 May, when the appeal against KTA's final list was supposed to have been submitted.
16. On 8 March 2010, the Appellate Panel rejected Applicant's appeal and upheld the Trial Panel Resolution (Judgment SCEL-08-003-0102). The Appellate Panel stressed that the Trial Panel Resolution, SCEL-08-003-0102, was just since the Applicant had submitted the appeal against KTA's final list with the Special Chamber of the Supreme Court, after the expiration of the deadline for the submission of appeals. Applicant's request for return to the previous situation was also rejected because the proposal for return to previous situation according to Article 118 of the Law on contentious procedure ("Official Gazette of SFRY", No. 4/77-1478, 36/80-1182, 69/82-1596) was supposed to have been submitted within fifteen days of the day when the reason for the omission ceased to exist, respectively until 3 September 2008.
17. On 12 August 2010, the Applicant sent a letter to the Head of EULEX Mission, whereby she requested the revision of Judgment ASC-09-0045 of the Appellate Panel, which, according to her, was not just.
18. On 30 September 2010, the Head of EULEX Mission replied to the letter stressing that EULEX has neither the mandate nor the authority to review decisions of judicial authorities. But since the Applicant had put into question the correctness and justice of EULEX staff, the Head of EULEX Mission addressed the appeal of 30 September 2010 to the Human Rights Review Panel.
19. On 8 December 2010, the Human Rights Review Panel declared Applicant's appeal as ungrounded because under Rule 25, paragraph 1, of the Rules of Procedure of the Human Rights Review Panel, it has no jurisdiction to review judicial proceedings conducted by the courts in Kosovo.

### **Applicant's allegations**

20. The Applicant claims that the Judgment ASC-09-0045 of the Appellate Panel, of 16 March 2010, violated her rights guaranteed by the Constitution, because she has been denied the right to receive 20% of the proceeds from the privatization of the enterprise she had been working for more than 20 years and because the Review Panel, while adjudicating the case, had not taken into account her health situation when the appeal against the KTA's final list was supposed to have been submitted.

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

21. The Court notes that in order to be able to adjudicate the Applicant's Referral, it needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law and the Rules of Procedure.
22. In this respect, the Court refers to Article 49 of the Law which provides:

*"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced".*
23. From the documents submitted by the Applicant, it appears that the Referral was not submitted within the time limit pursuant to Article 49 of the Law, because the Applicant received Judgment ASC-09-0045 of the Appellate Panel, of 8 March 2010, on 22 March 2010. The Court also notes that the Applicant submitted the Referral with the Court on 28 December 2010.
24. Furthermore, the Applicant sent a letter to the Head of EULEX Mission on 30 September 2010, and on 8 December 2010, the Human Rights Review Panel declared Applicant's appeal as ungrounded. In this respect, the Court reiterates its findings in Case No. KI 64/11, of 14 February 2012, whereby it determined that: "The letter addressed to the Head of EULEX Mission is not a legal remedy provided by law and it cannot impact on the judgment of the Supreme Court" (see Case No. KI 64/11, Feti Gashi, Constitutional Review of Judgment Rev. No. 184/2008, dated 27 January 2009, of the Supreme Court of the Republic of Kosovo, Resolution on Inadmissibility, of 3 March 2011).
25. Furthermore, in accordance with the European Court jurisprudence, applicants are only obliged to exhaust domestic remedies that are available in theory and in practice at the relevant time, that is to say, that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (Judgment of the European Court of Human Rights Grand Chamber in the Case *Sejdović v. Italy*, Application No. 56581/00, of 1 March 2006, para. 46).
26. The Court therefore concludes that the Referral was not submitted within the legal time limit pursuant to Article 49 of the Law.
27. The Court also refers to Rule 36 of the Rules of Procedure of the Court, which provides:

*"(1) The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*
28. As a matter of fact, the Applicant did not submit an appeal with the Trial Panel within the time limit.
29. In fact, the Appellate Panel concluded that the Applicant did not submit her request within the time limit provided under Section 10.6 (a) of UNMIK Regulation No 2003/13 and Article 118 of the Law on contentious procedure ("Official Gazette of SFRY", No. 4/77-1478, 36/80-1182, 69/82-1596).
30. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right. Thus, the

Applicant actually failing to take some procedural step in the regular courts in accordance with the established deadline is liable to have her case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation.

31. The Court also notes that a mere suspicion on the perspective of the matter is not sufficient to exclude the Applicant from her obligations to duly appeal before the competent bodies (see *Whiteside v the United Kingdom*, Decision of 7 March 1994, Application no. 20357/92, DR 76, p. 80).
32. Further, the Court stresses that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Special Chamber of the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court should not act as a court of fourth instance when considering decisions taken by regular courts. It is the task of regular courts to interpret and apply pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], No. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).
33. As a conclusion, the Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the European Commission on Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
34. Furthermore, the Applicant merely challenges if the Special Chamber of the Supreme Court has fully implemented the applicable law and does not agree to the factual findings of courts regarding her case.
35. In fact, the Applicant has not substantiated her claims on constitutional grounds and did not provide evidence that her rights and freedoms have been violated by public authorities. So, the Constitutional Court cannot conclude that relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06, of 30 June 2009).
36. In fact, in addition to expressing her dissatisfaction against the Judgment ASC-09-0045 of the Appellate Panel, of 8 March 2010, the Applicant has not convincingly proved why the judgment “was not fair and impartial”, in what manner she has been treated unequally, or what phase of the proceedings was anti-constitutional.
37. It follows that the Referral is inadmissible because it was submitted outside the time limit and even if the Referral were submitted within the time limit, it would be manifestly ill-founded pursuant to Rule 36.1 (c) of the Rules of Procedure.

**FOR THESE REASONS**

The Constitutional Court, pursuant to the Article 49 of the Law and Rule 36 (1.c) and 56 (2) of the Rules of Procedure, on 18 June 2012, unanimously;

**DECIDES**

- I. TO REJECT the Referral as inadmissible,
- II. This Decision is to be notified to the Applicant, and shall be published in the Official Gazette, in accordance with Article 20(4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

  
Mr. sc. Kadri Kryeziu

  
Prof. dr. Enver Hasani