



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

Prishtina, 17 July 2017
Ref. No.:RK 1104/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI40/17

Applicant

Muharrem Bytyqi and others

**Constitutional review of Judgment No. AC-I-13-0087 and AC-I-13-0091 of
the Appellate Panel of the Special Chamber of the Supreme Court of
Kosovo on Privatization Agency of Kosovo Related Matters,
of 16 March 2017**

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: Muharrem Bytyqi, Hasip Ajvazi, Adem Dragusha, Demir Ukaj, Alush Llumnica, Remzije Bytyqi, Gjylferije Selmani, Murtez Bytyqi, Shaban Hyseni, Naim Gjyrevci, Sabit Krasniqi, Shaip Gerbeshi, Sabit Kadriu, Aziz Shala, Milaim Gerbeshi, Shefki Berjani, Hilmi Kadriu, Shefqet Drenovci, Fazli Demiri, Musa Guxhufi, Tefik Dragusha, Fadil Selmani, Ragip Bislimi, Besim Reçica, Sali Bajrami, Gani Berjani, Qamil Bellagoshi,

Shaban Zogaj, Faton Gerbeshi, Nexhmedin Hyseni, Bujar Pacolli, Ujup Reçica, Emrush Gjyrevci, Sali Jashari, Idriz Ramadani, Ismet Raki, Bejtush Sahiti, Hysen Slivova, Ragip Berjani, Hysen Bislimi, Naser Bytyqi, Isuf Shala, Ajet Shala, Bahri Ajvazi, Bahtir Sahiti, Ramdan Gashi, Qamil Selmani (hereinafter: the Applicants), who are represented by Muharrem Bytyqi, from village Miradi e Epërme, Fushë Kosovë.

Challenged decision

2. The Applicants challenge Judgment No. AC-I-13-0087 and AC-I-13-0091 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 16 March 2017.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violated their constitutional rights.
4. The Applicants did not specifically state any rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), which they consider that has been violated.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03 / L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 [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 13 April 2017, the Applicants submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 13 April 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 25 April 2017, the Applicants submitted additional documents to the Court including the power of attorney for their representative before the Court.
9. On 27 April 2017, the Court notified the Applicant about the registration of the Referral. On the same date, the Referral was sent to the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) and to the Privatization Agency of Kosovo (hereinafter: the PAK).

10. On 29 June 2017, the Court received a letter from E.Sh, the Secretary of Socially Owned Enterprise SOE "Lavertari- Blegtori" Miradi e Epërme, Fushë Kosovë, requesting the Court to urgently review the Referral.
11. On 5 July 2017, 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

12. On 1 November 2006, the Socially-Owned Enterprise SOE "Lavertari-Blegtori" (hereinafter: the Socially Owned Enterprise), Miradi e Epërme, Fushë Kosove was privatized.
13. The Applicants, as former employees of the Socially Owned Enterprise, were included in the PAK list to benefit from 20% of the proceeds from the privatization and liquidation of the aforementioned enterprise.
14. On an unspecified date, the following persons filed a complaint against the PAK with the Specialized Panel of the Special Chamber (hereinafter: the Specialized Panel), requesting to be included in the final list of beneficiaries of 20% from the privatization and the liquidation of the Socially-Owned Enterprise: N.S, S.S, G.S, R.M, S.N,M.N, B.M, D.S, I.K, M.C, S.C, S.L.M, N.C, E.C, M.T, J.Z.B, M.S, M.S, T.C, D.B, F.B, S.K, Z.P, I.B, A.A, S.F, E.M, Z.P, R.M, F.D, R.T, M.K, M.C, Q.K and L.K (hereinafter: the Complainants) claiming that they were also the employees of the Socially Owned Enterprise.
15. On 10 May 2013, the Specialized Panel rendered Judgment (SCEL-11-0014), which ruled that the complaints of the complainants above were grounded and decided that they are included in the list of beneficiaries of 20%, except for the complainants Q.K. and L.K., whose complaints were rejected as ungrounded and who were not included in the final list of beneficiaries of 20%.
16. On 6 September 2013, the complainants Q.K. and L.K filed an appeal against the Judgment of the Specialized Panel (SCEL-11-0014) with the Appellate Panel, claiming that they met the requirements to be included in the final list of beneficiaries of 20%.
17. On 20 June 2013, the Applicants filed an appeal with the Appellate Panel, against the Judgment of the Specialized Panel (SCEL-11-0014), requesting that the complainants who were included in the list by the Specialized Panel be removed from the final beneficiary list of 20%, as they *"have not been regular employees of SOE "Lavërtari-Blegtori"*.
18. On 24 June 2013, an appeal against the inclusion of the complainants in the final list of beneficiaries of 20% was also submitted by the PAK.
19. On 16 March 2017, the Appellate Panel rendered Judgment (AC-I-13-0087 and AC-I-13-0091), rejecting as ungrounded the Applicants' appeal and the PAK

appeal against the complainants, included in the final list by the Specialized Panel, except for the complainants S.C., Z.P. and M.K., against whom the appeal was approved as grounded and removed from the list of beneficiaries of 20%.

20. The Appellate Panel, *inter alia*, reasoned that the complainants who were included in the final list of beneficiaries “based on evidence available in the first instance file, their complaints are referred to discrimination, by work booklets or other evidence they proved to have been employees of the SOE and their work booklets are not closed or even if they are closed they have been closed after June 1999, depending on the complainant during the period which by the constant jurisprudence of the Appellate Panel is considered to be a period of dismissal of employees of Serbian or Albanian ethnicity on discriminatory basis.”
21. The Appellate Panel also approved the complaint of the complainants Q.K. and L.K. as grounded and decided that these complainants be included in the final list of beneficiaries of 20%. As for Q.K., the Appellate Panel reasoned that “he attached to the complaint the work booklet, based on which it is apparent that he started to work in the SOE on 12.07.1980. The booklet is open. Also for L.K., the Appellate Panel argued that “she attached to the complaint a work booklet on the basis of which it is apparent that she started working in the SOE on 27.10.1980. The working booklet is open.”

Applicant’s allegations

22. The Applicants did not specifically state any right guaranteed by the Constitution, which has allegedly been violated by the challenged Judgment.
23. The Applicants emphasize that “we have sent to the court the list containing the names of those employees as well as with their signatures – full - time employees of this Enterprise who had Employment Contracts and whose total number was 47, who had been in employment relationship until the day of privatization of the Enterprise on 2 November 2006. As far as other employees whose names have been included on the same list – they were not in employment relationship with the SOE “LAVERTARI – BLEGTORI” and they had never expressed their willingness to work – they have never reported to work even though the Enterprise at that time offered good conditions and job opportunities without any racial, ethnic or other types of discrimination. ”
24. The Applicants allege that “the Special Chamber of the Supreme Court rendered [...] Judgment for including in this list also those employees who did not have employment contracts and who were not on the payroll list of employees [...] since they do not fulfill the requirements stipulated by UNMIK Regulation RREG/No: 2003/13, [on the Transformation of the Right of Use to Socially Owned Immovable Property] based on which the rights of workers were regulated [...]”.

25. The Applicants request *“the Constitutional Court to annul the aforementioned Judgment and to annul inclusion of [complainants] who the Special Chamber have included in the list of beneficiaries of 20 % proceeds without any legal ground.”*

Admissibility of the Referral

26. The Court first examines whether the Referral has met the admissibility requirements established in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.

27. In this respect, the Court initially 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”.

28. The Court also refers to Article 49 [Deadlines] 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. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

29. Regarding the foregoing, the Court finds that the Applicants have submitted the Referral as an authorized party; that they filed the Referral within the time limits foreseen in Article 49 of the Law and after exhaustion of all legal remedies provided by law.

30. However, the Court also refers to Article 48 [Accuracy of Referral] of the Law, which provides:

“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”.

31. In addition, the Court refers to paragraphs (1) (d) and (2) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which provide:

(1) “The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

[...]

(d) the Applicant does not sufficiently substantiate his claim”.

32. The Court recalls that the Applicants did not specifically state any of the articles of the Constitution or of the European Convention on Human Rights regarding the alleged violations of their rights. However, the Court notes that essentially the Applicants' allegations pertain to the violation of the right to a fair and impartial trial.
33. The Court notes that the Applicants state that in the final list of beneficiaries of 20% of the proceeds from the privatization of the Socially-owned Enterprise were included the workers who have no employment contracts and who have not been on the payroll of the employees and, therefore, do not meet the requirements pursuant to UNMIK Regulation No. 2003/13 on the Transformation of the Right of Use to Socially Owned Immovable Property to benefit from 20%.
34. The Court considers that the Applicants' allegations essentially pertain to the determination of factual situation and the legality of the complainants' inclusion in the list of 20% of proceeds from the privatization and liquidation of the abovementioned enterprise. The Applicants repeat before the Court the same arguments they had filed in the proceedings before the Specialized Panel and the Appellate Panel.
35. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when establishing facts or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, the ECtHR case *Garcia Ruiz v. Spain*, No. 30544/96, Judgment of 21 January 1999, para. 28).
36. The complete determination of factual situation and the correct application of the law is in the jurisdiction of the regular courts (matter of legality). Therefore, the Constitutional Court cannot act as “fourth instance court” (see: ECtHR case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65; see also, *mutatis mutandis*, Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
37. In the present case, the Court notes that the Appellate Panel in its Judgment addressed the essential issues related to the Applicants' allegations.
38. The Court considers that the conclusions of the Specialized Panel and the Appellate Panel were reached after a detailed examination of all the arguments submitted by the Applicants. In this way, the Applicants were given the

opportunity to present at all stages of the proceedings the arguments and evidence which they consider relevant to their case.

39. All the arguments of the Applicants, which were relevant to the resolution of the dispute, were heard and properly reviewed by the courts, that the material and legal reasons for the challenged decision by the Applicants were presented in detail and that the proceedings in the Specialized Panel and the Appellate Panel, viewed in its entirety were fair (See, *mutatis mutandis*, ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 29 and 30).
40. In sum, the Court finds that the facts presented by the Applicants do not provide *prima facie* evidence that their rights guaranteed by the Constitution have been infringed.
41. In these circumstances, the Court considers that the admissibility requirements have not been met and the Applicants failed to submit and substantiate the allegations that the challenged decisions violated their constitutional rights and freedoms.
42. Therefore, the Court concludes that the Referral is manifestly ill-founded on a constitutional basis and is to be declared inadmissible pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and 36 (2) (d) of the Rules of Procedure, on 5 July 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur

Berlin Sejdiu



President of the Constitutional Court

Arta Rama-Hajrizi