



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

Prishtina, on 14 June 2016  
Ref. no.: VHK953/16

## **DECISION TO DISMISS THE REFERRAL**

in

**Cases Nos. KI155/15 and KI157/15**

Applicants

**Snežana Zdravković and Milorotka Nikolić**

**Constitutional review of Judgment AC-I-14-0311- A0001-A0023,  
of the Appellate Panel of the Special Chamber of the Supreme Court of  
Kosovo on Privatization Agency of Kosovo Related Matters,  
of 15 July 2015**

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

Composed of

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

### **Applicants**

1. Referral No. KI155/15 was submitted by Mrs. Snežana Zdravković and referral No. KI157/15 was submitted by Mrs. Milorotka Nikolić, both from Gračanica (hereinafter: the Applicants).

## **Challenged decision**

2. The Applicants challenge Judgment AC-I-14-0311- A0001-A0023 of 15 July 2015 of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) .

## **Subject matter**

3. The subject matter is the request for constitutional review of the challenged Judgment. The Applicants allege that the Judgement did not decide on the subject of the dispute, therefore the legal status of the Applicants remained unresolved in relation to their right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the Social Enterprise „Urata-Voćar“ in Prishtina (hereinafter: SOE "Urata-Voćar").
4. The Applicants do not mention any specific article of the Constitution that were violated, but consider that *there was “a technical error in typing or dictation of the text of the judgment as their names were omitted from the list.”*

## **Legal basis**

5. The Referral is based on Article 113. 7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (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**

6. On 24 December 2015, Applicant Snežana Zdravković submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which was registered under number KI155/15.
7. On 28 December 2015, Applicant Milorotka Nikolić submitted the Referral to the Court, which was registered under number KI157/15.
8. On 22 January 2016, the President of the Court by Decision GJR. KI155/15 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KI155/15, the President appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
9. On 19 February 2016, the Court informed Applicant Snežana Zdravković and the Supreme Court of the Republic of Kosovo (hereafter: the Supreme Court) about the registration of her Referral, and sent a copy of the Referral to the Supreme Court.
10. On 23 February 2015, the Court informed the Privatization Agency of Kosovo (hereinafter: PAK) about the registration of Referral No KI155/15 and requested from it information whether the Applicant, Snežana Zdravković, was

included on the list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE „Urata-Voćar“.

11. On 1 March 2016, PAK responded to the request of the Court stating that the legal status of Applicant Snežana Zdravković has not been determined and that PAK requested the Appellate Panel to render a supplemental judgment, which to decide on the legal status of this Applicant.
12. On 7 March 2016, in accordance with Rule 37.1 of the Rules of Procedure the President of the Court ordered the joinder of Referral KI157/15 to Referral KI155/15. According to the order the Judge Rapporteur and the composition of the Review Panel in both cases (KI155/15 and KI157/15) remained the same, as decided by Decision no. KSH. KI155/15.
13. On 14 March 2016, the Court informed Applicant Milorotka Nikolić and the Supreme Court about the registration of Referral No. KI157/15 and sent a copy of the Applicant's Referral to the Supreme Court.
14. On 14 March 2016, the Court informed PAK about the registration of Referral No. KI157/15 and requested PAK to submit information to the Court whether the Applicant, Milorotka Nikolić, was included on the list of eligible workers who were entitled to 20% share of the proceeds from the privatization of the SOE „Urata-Voćar“.
15. On 23 March 2016, PAK responded to the request of the Court stating that the legal status of Applicant Milorotka Nikolić was granted by supplemental Judgment AC-I -14-0311-A1 of the Appellate Panel of 17 December 2015. According to it the Applicant was included in the list of eligible employees, entitled to 20% share of the proceeds from the privatization of the SOE „Urata-Voćar“.
16. On 5 April 2016, the Court requested the Supreme Court to submit information about the legal status of Applicant Snežana Zdravković.
17. On 15 April 2016, the Supreme Court responded to the request of the Court stating that the legal status of Applicant Snežana Zdravković was solved by supplemental Judgment AC-I -14-0311-A0001 of the Appellate Panel of 6 April 2016, by which the Applicant was included in the list of eligible employees, entitled to 20% share of the proceeds from the privatization of the SOE „Urata-Voćar“.
18. On 19 April 2016, the Court informed the Applicants and the Supreme Court about the joinder of the cases.
19. On 17 May 2016, the Court deliberated on the case and decided to dismiss the Referral.

### **Summary of facts**

20. On 2 May 2007, the privatization process of the SOE “Urata-Voćar” began.

21. On 21 July 2011, PAK published the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
22. On an unspecified date, the Applicants filed each separate claims with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel). They challenged the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
23. On 29 September 2014, the Specialized Panel with Judgment SCEL- 11-0045 approved the Applicants' claim, and ordered PAK to include both Applicants in the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
24. PAK filed an appeal with the Appellate Panel against the Judgment. PAK challenged the right of a large number of persons, including the Applicants to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
25. On 15 July 2015, the Appellate Panel with Judgment AC-I-14-0311-A0001-A0023 annulled Judgment SCEL-11-0045 of the Specialized Panel.
26. However, Judgment AC-I-14-0311-A0001-A-0023 of the Appellate Panel didn't decide on the appeal filed by PAK against the Applicants, namely on the legal status of the Applicants.
27. On 17 December 2015, the Appellate Panel by supplemental Judgment AC-I-14-0311-A1 rejected as ungrounded the appeal submitted by PAK against Applicant Miloratka Nikolić, and ordered PAK to include the Applicant in the final list of eligible employees entitled to 20% share of the proceeds generated by the privatization of the SOE "Urata-Voćar".
28. On 6 April 2016, the Appellate Panel by supplemental Judgment AC-I-14-0311-A001 rejected as ungrounded the appeal submitted by PAK against Applicant Snežana Zdravković, and ordered PAK to include the Applicant in the final list of eligible employees who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".

### **Applicants' allegations**

29. The Applicants allege that Judgment AC-I-14-0311-A0001-A0023 of the Appellate Panel did not decide on the subject of dispute, and consequently, their legal status remained pending in relation to the right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
30. The Applicants consider that from the reasoning of the Judgment it can be concluded *"that PAK appeal was rejected"* regarding both Applicants, but *"this conclusion was not presented in the enacting clause of the judgment."*

31. The Applicants consider that *"it is possible"* that it was a *"technical error"* in the Judgment itself, but if it was not a technical error then they were *"discriminated against on national basis, and the right to work and the right to income were violated."*
32. The Applicants address the Constitutional Court with a request to correct the *"technical error in typing or dictation of the text of the judgment"* and the Applicants *"to be included on the final list of eligible workers who are entitled to 20% share of the proceeds from the privatization of the SOE "Voćar."*

### **Admissibility of the Referrals**

33. The Court recalls that the Applicants challenge the Judgment AC-I-14-0311-A0001-A0023, of the Appellate Panel.
34. The Court finds that the challenged Judgment of the Appellate Panel was modified by supplemental Judgment AC-I-14-0311-A1 of the Appellate Panel regarding the right of Applicant Milorotka Nikolić. It rejected as ungrounded the PAK appeal and ordered that the Applicant be included in the final list of eligible workers who were entitled to 20% share of the proceeds from privatization of the SOE "Urata-Voćar".
35. The Court further notes that the challenged Judgment of the Appellate Panel was modified by supplemental Judgment AC-I-14-0311-A001 of the Appellate Panel regarding the rights of Applicant Snežana Zdravković. It rejected as ungrounded the appeal submitted by PAK and ordered the Applicant to be included in the final list of eligible workers who were entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
36. The Court notes that the Applicants do not challenge before the Court the respective supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel.
37. The Court further notes that the supplemental Judgments of the Appellate Panel addressed the Applicants complaints.
38. Thus, the supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel are the final decisions in relation to Applicants right to be included in the final list of eligible employees entitled to 20% share of the proceeds from the privatization of the SOE "Urata-Voćar".
39. Therefore, the challenged Judgment AC-I-14-0311-A0001-A0023 of the Appellate Panel is no more the final decision of the public authority, which was the reason why the Applicants submitted the Referrals to the Court.
40. In this regard, the Court refers to Article 48 of the Law which provides:

*"In his/her referral, the claimant should accurately clarify (...) what concrete act of public authority is subject to challenge".*



41. The Court also takes into account Rule 32 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules of Procedure, which provides:

*(4) The Court may dismiss a referral when the Court determines (...) does not otherwise present a case or controversy (...).*

42. The Court considers that the Applicants' referrals are moot, given that the respective supplemental Judgments (AC-I-14-0311-A1 and AC-I-14-0311-A001) of the Appellate Panel decided on the legal status of the Applicants, and PAK was ordered to include both Applicants in the final list of eligible employees who were entitled to 20% of share of the proceeds from the privatization of the SOE „Urata-Voćar“.
43. The Court concludes that what was at stake for the Applicants was decided in their favor and there is no more controversy pending.
44. Therefore, the Court finds that the subject matter of the Referrals does no longer present a case or controversy before the Court (see: *A.Y. vs. Slovakia*, ECHR decision, paragraph 49, No. 37146/12 of 24 March 2016, see also, Case: KI143/15, the Applicant: *Donika Kadaj-Bujupi*, the Constitutional Court, the decision to dismiss the Referral of 26 February 2016).
45. In sum, the Court considers that the Applicants' allegations are moot and the Referrals are to be dismissed, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law and Rule 32 (4) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law, and Rule 32 (4) of the Rules of Procedure, in the session held on 17 May 2016, unanimously

## DECIDES

- I. TO DISMISS 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. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi