



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

Prishtina, 18 September 2017
Ref. No.:RK 1125/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI03/17

Applicant

Ahmet Buçaj

Constitutional review of Decision AC-I.-16-0125-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters (SCSC), of 20 December 2016

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 is submitted by Ahmet Buçaj (hereinafter: the Applicant) from village of Nabërgjan, Municipality of Pejë.

Challenged decisions

2. The Applicant challenges Decision AC-I.-16-0125-A0001 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 20 December 2016.

Subject matter

3. The subject matter is the constitutional review of the above-stated Decision of the Appellate Panel.
4. The Applicant requests the Court to enable him to benefit from the share of proceeds of privatization of the SOE "Grand Hotel", however, he does not refer to any constitutional provision in particular.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 22, 47 and 48 of Law No. 03/L-121 on the 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 10 January 2017, the Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 27 February 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Ivan Čukalović and Gresa Caka-Nimani.
8. On 2 May 2017, the Court notified the Applicant about the registration of the referral and asked him to fill in the referral form in addition to providing all relevant documents as required by Article 22.4 of the Law and Rule 29 of the Rules of Procedure.
9. On 18 May 2017, the Applicant submitted the relevant documents as required by Article 22.4 of the Law and Rule 29 of the Rules of Procedure.
10. On 25 May 2017, a copy of the Referral was sent to the Special Chamber of the Supreme Court of Kosovo.
11. On 3 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 an unspecified date, the Applicant filed an appeal with the Special Chamber against the Kosovo Privatization Agency (hereinafter, the PAK), requesting inclusion in its final list to benefit 20 per cent of proceeds from privatization of “Grand” Hotel in Prishtina. The Applicant stated that he has worked at this SOE for 28 years and that his employment relationship was terminated by “*Serbian interim measures*”.
13. On 20 January 2016, the Specialized Panel of the Supreme Court (hereinafter, the Specialized Panel) by Decision C-II.-13-0447, rejected the appeal of the applicant as inadmissible.
14. On 9 March 2016, the Applicant, for the same matter, filed a fresh appeal with the Specialized Panel, registered under no. C-II-16-0033. The Applicant had filed an appeal against that decision which was registered for the Appellate Panel under no. AC-I-16-0011.
15. On 24 May 2016, the Specialized Panel of the Supreme Court rendered Decision C-II.-0033-C0001, whereby the appeal was rejected as inadmissible on the grounds of two legal basis “*res iudicata*” and “*lis pendens*”.
16. The reasoning of the above-stated decision may be summarized as follows: “*In the reasoning of the challenged decision, it is stated that the Specialized Panel, through Decision C-II.-13-0447, dated 20 January 2016, had rejected the appeal of the Appellant as inadmissible. The Appellant had filed an appeal against that decision and this appeal was registered for the Appellate Panel under no. AC-I.-16-0011. The Appellant, for the same matter, filed an appeal on 09.03.2016 and the case was registered under no. C-II.-16-0033. Since case file C-II.-13-0447 is older than case C-II.-16-0033, the second one should be rejected as inadmissible because the case is considered lis pendens. Since case C-II-13-0447 (older) is already decided, the appeal in case C-II.-16-0033 is rejected as inadmissible, as it is considered res iudicata*”.
17. The Applicant filed a “Motion” against that decision, which was registered as appeal no. AC-I.-16-0125-A0001. In that submission, the Applicant requested from the Appellate Panel to recognize his right to 20 per cent of proceeds from the sale of the SOE, in which he claimed to have worked for more than 28 years.
18. On 20 December 2016, the Appellate Panel rendered Decision AC-I.-16-0125-A0001:
 1. *The appeal of the Appellant is rejected as ungrounded.*
 2. *Decision C-II.-16-0033-C0001 of the Specialized Panel of the SCSCK, dated 24 May 2016, is upheld.*
19. The above-stated Decision of the Appellate Panel may be summarized as follows: “*The Specialized Panel had rejected the appeal of the Appellant as inadmissible on the grounds of two legal basis – res iudicata and lis pendens.*”

The Appellate Panel completely agrees with this decision of the Specialized Panel, too, by rejecting the submission (appeal) of the Appellant as ungrounded. By Decision C-II-13-0447, dated 20 January 2016, the Specialized Panel had rejected the appeal of the Appellant as inadmissible, because this matter was adjudicated by the Specialized Panel, while it is pending as regards appeal AC-I.-16-0011 submitted to the Appellate Panel. The Specialized Panel has rightly decided in this way, because case file C-II.-13-0447 is older than case C-II.-16-0033, which is pending in the Appellate Panel. For these reasons, the Appellate Panel rejects the submission of the Appellant as ungrounded and upholds the challenged decision as fair and grounded”.

Applicant’s allegations

20. The Applicant does not refer to a violation of any constitutional provision in particular, however, he, inter alia, states that: *“In 1999, when the war ended, Director of the Hotel and Tourism Company “Grand Hotel” - now “Iliria” Hotel, ZÇ, reinstated all the employees to work. Although I requested, he did not accept me. I was left without anything, therefore I have verbally and officially requested to be paid in respect of 20% of proceeds and the sale of facilities, but he refused to pay me. I have contributed for 28 years. He has paid all the employees except me, therefore, I was obliged to address the KTA, PAK, the Special Chamber, the Supreme Court and now I address you – the Constitutional Court of Kosovo - in order to win my rights like all my colleagues”.*

Assessment of admissibility

21. The Court will examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
22. In this respect, the Court refers to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

“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.”

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

Article 48

“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”.

24. The Court further takes into account Rule 36 (2) (a) of the Rules of Procedure which specify:

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

(a) the referral is not prima facie justified, or

[...]”.

25. In the present case, the Court notes that the Applicant is an authorized party to submit the Referral, has exhausted all legal remedies in accordance with Article 113.7 of the Constitution and the Referral was submitted within the deadline of 4 (four) months as established in Article 49 of the Law.
26. The Court should also determine whether the Applicant has specified and substantiated the allegations filed in accordance with Article 48 of the Law.
27. The Court notes that the gist of the Applicant’s complaint is that this Court should enable him: *“to benefit from 20% of proceeds from the privatization of the SOE “Grand Hotel now “Iliria”.*
28. The Court reiterates that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
29. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See *mutatis mutandis Garcia Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-1). The Constitutional Court recalls that it is not a fact-finding Court and thus the correct and complete determination of the factual situation is within the full jurisdiction of regular courts. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
30. The Constitutional Court recalls that it is not a fact-finding Court and thus the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts. The role of the Constitutional Court is to ensure compliance with the constitutional standards during the court proceedings before the regular courts and cannot, therefore, act as a “fourth instance court” (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment 6 of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012 and case No. KI86/16, Applicant *“BENI” Trade Company*, Resolution on Inadmissibility, of 11 November 2016).
31. The Court reiterates that its role is to assess whether the proceedings before the regular courts were fair in entirety, including the way the evidence was

taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission on Human Rights, of 10 July 1991).

32. In the light of the foregoing considerations, the Court notes that the Applicant had the benefit of adversarial proceedings; that he was able, at various stages of those proceedings, to adduce the arguments and evidence he considered relevant to his case; that he had the opportunity of challenging effectively the arguments and evidence adduced by the opposing party; that all his arguments which, viewed objectively, were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decisions were set out at length; and that, accordingly, the proceedings taken as a whole were fair. (See the Case of *Garcia Ruiz v. Spain*, application no. 30544/96, [GC], Judgment of 21 January 1999, paragraph 29).
33. It should be borne in mind - since this is a very common source of misunderstandings on the part of applicants - that the "fairness" required by Article 31 of the Constitution and Article 6 of the Convention is not "substantive" fairness (a concept which is part-legal, part-ethical and can only be applied by the trial judge), but "procedural" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (See the case of *Star Cate - Epilekta Gevmata and Others v. Greece*, application no. 54111/07, ECtHR, Decision of 6 July 2010).
34. The fact that the Applicant disagrees with the outcome of the case it cannot serve him as a right to raise an arguable claim on the violation of rights and freedoms guaranteed by the Constitution and the Convention (See Case No. KI125/11, *Shaban Gojnovci*, Resolution on Inadmissibility of 28 May 2012, paragraph 28).
35. In this respect, the Court notes that the Applicant's request to enable him to benefit from a share of proceeds deriving from privatization of the SOE "Grand Hotel" is not an allegation that raises constitutional issues.
36. Therefore, the Court considers that the Applicant only enumerates and generally describes the content of constitutional provisions without substantiating exactly how those provisions were violated in his case as is required by Article 48 of the Law.
37. Therefore, the Referral upon global assessment of all allegations, on a constitutional basis, is to be declared inadmissible as manifestly ill-founded, as established by Article 113 (7) of the Constitution, provided for in Article 48 of the Law and as further specified in Rule 36 (2) (a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (2) (a) of the Rules of Procedure, on 3 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi