



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

Prishtina, on 6 March 2017
Ref. no.:RK 1046/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI106/16

Applicant

Shaban Hasani

**Constitutional review of Judgment AC-I-13-0148-A0001 of the Appellate
Panel of the Special Chamber of the Supreme Court of Kosovo on
Privatization Agency of Kosovo Related Matters,
of 31 March 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 was submitted by Shaban Hasani (hereinafter: the Applicant), who is represented by Kemajl Ademaj, a lawyer from Ferizaj.

Challenged decision

2. The Applicant challenges Judgment AC-I-13-0148-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 31 March 2016 (hereinafter: the Appellate Panel), which was served on the Applicant on 13 April 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights, guaranteed by Article 24 [Equality Before the Law], and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

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 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

5. On 12 August 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 September 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 7 November 2016, the Court notified the Applicant about the registration of the Referral, and sent a copy of it to the Appellate Panel and to the Privatization Agency of Kosovo (hereinafter: PAK).
8. On 18 January 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

9. On 18 May 2005, the SOE "Plantacioni" from Ferizaj was privatized.
10. On 18 August 2007, PAK published the final list of employees who are entitled to 20% share of proceeds generated from the privatization of the SOE "Plantacioni" from Ferizaj.
11. On 30 July 2009, the Applicant filed a complaint against the final list with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the

Specialized Panel), requesting to be included in the list of employees eligible to participate in 20% share of proceeds generated from the privatization of the SOE "Plantacioni" from Ferizaj.

12. On an unspecified date, PAK filed objection against the complaint requesting that the complaint be rejected and emphasized that *"the complainant failed to present any material evidence to have been employee of the SOE or to have been in the payroll at the time of privatization."*
13. On 28 June 2012, the Specialized Panel (Judgment SCEL-09-0022) rejected the Applicant's request as ungrounded. The Judgment further reads: *"Shaban Hasani (C.12.2) was not employee at the time of SOE privatization. [...] He presented no evidence to prove that has reported to work or that he returned to work, on what he is based, nor that has he been employee of this SOE. [...] He does not fulfill criteria to have the legitimate rights"*.
14. On 14 August 2013, the Applicant filed an appeal with the Appellate Panel, claiming that the Specialized Panel has unfairly decided to reject the appeal.
15. On 31 March 2016, the Appellate Panel (Judgment AC-I-13-0148-A0001) rejected the appeal as ungrounded, with a reasoning *"The appealing allegations of this appellant are not grounded. Apart from his allegation for discrimination, he presented no evidence to prove that has been employee of this SOE. No information is introduced on commencement of his employment with the SOE or on his dismissal. For the given reason, the Appellate Panel rejected appeal of this appellant as ungrounded and upheld the appealed judgment pertaining to this appellant."*

Applicant's allegations

16. The Applicant alleges that the Judgment of the Appellate Panel violated his constitutional rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 6 [Right to a fair trial] of the ECHR.
17. The Applicant alleges that *"the employee was discriminated against by management of the SOE and PAK, he was also discriminated against by the above mentioned Decisions of the Special Chamber [...] he was not included in the list for 20% even though his position in factual aspect as well as in legal aspect was absolutely the same with his colleagues from work."*
18. The Applicant also requests:

"Whether it is in accordance with the provisions of the Constitution of Kosovo and provisions of ECHR for a public authority, in this case the management of SOE "Plantacioni", PAK and Special Chamber, not to treat a person equally with the other persons if the factual and legal situation between parties are completely the same or identical?"

Has the right to fair and impartial trial been guaranteed to Shaban Hasani by the Special Chamber which rejected the right of appellant Shaban Hasani whereas it recognized this right to his colleagues even though they were in absolutely same situations [...]?”

Admissibility of Referral

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.

20. In this respect, the Court refers to Article 113 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.”

21. The Court also refers to Article 48 [Accuracy of the 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.”

22. The Court also takes into account Rule 36 [Admissibility Criteria] (1) d) and (2) (d) of the Rules of Procedure, which foresees:

“(1) “The Court may only deal with Referrals 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.”

23. In this case, the Court notes that the Applicant has fulfilled the procedural requirements of Article 113.7 of the Constitution. However, to examine the admissibility of the Referral, the Court should further assess whether the Applicant has fulfilled the requirements provided by Article 48 of the Law and the admissibility requirements foreseen by Rule 36 of the Rules of Procedure.
24. In the present case, the Court notes that the regular courts rejected the Applicant's request to be included in the list of employees entitled to 20% share of proceeds from the sale of SOE “Plantacioni”.

25. Regarding the Applicant's allegation of violation of Article 31 [Right to Fair and Impartial Trial] and Article 6 [Right to a fair trial] of the ECHR, the Applicant claims that "*he was not included in the list for 20% even though his position in factual aspect as well as in legal aspect was absolutely the same with his colleagues [...].*"
26. The Court considers that the Appellate Panel specifically addressed and elaborated the main Applicant's allegations related to erroneous determination of factual situation and erroneous application of the substantive law.
27. In this respect, the Court refers to Judgment AC-I-13-0148-A0001 of the Appellate Panel of 31 March 2016, which emphasizes "*A general rule is that employee shall be in payroll of enterprise at the date of its privatization having a minimum of three years of experience. Thus, an employee who was not in the enterprise payroll at the privatization date cannot be put in the list of eligible employees [...].*"
28. The Judgment further reads "*apart from his allegation for discrimination, he presented no evidence to prove that has been employee of this SOE. No information is introduced on commencement of his employment with the SOE, or on his dismissal. For the given reason, the Appellate Panel rejected appeal of this appellant as ungrounded and upheld the appealed judgment pertaining to this appellant.*"
29. The Court reiterates that the dissatisfaction of the Applicant with the outcome of the proceedings cannot of itself raise an arguable claim of a constitutional violation of the right to fair and impartial trial. When alleging constitutional violations, the Applicant must present a justified allegation and convincing argument to support his allegations in order that the Referral is grounded (See Resolution on Inadmissibility, KI198/13, Applicant *Privatization Agency of Kosovo*, of 30 June 2014).
30. Accordingly, the Court considers that the Applicant did not provide sufficient evidence for violation of Article 24 [Equality Before the Law] of the Constitution, where the Applicant alleges that he was discriminated against in relation to his colleagues in the same positions.
31. Accordingly, the Court considers that the Applicant has not substantiated his allegations, nor has he submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (See, case No. KI19/14 and KI21/14 Applicants *Tafil Qorri and Mehdi Syl*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013, of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013, of the Court of Appeal of Kosovo, of 5 December 2013).
32. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS,

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (1) (d) and (2) (d) of the Rules of Procedure, on 18 January 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

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi

For J. Dukuri