



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

Prishtina, 8 May 2017  
Ref. no.: RK 1061/17

## DECISION TO REJECT THE REFERRAL

in

**Case No. KI119/16**

Applicant

**Xhemail Lani**

**Constitutional review of “*Decision SCL-11-0055 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 07 June 2016*”**

### CONSTITUTIONAL COURT OF THE REPUBLIC KOSOVO

composed of

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

#### **Applicant**

1. The Referral was submitted by Xhemail Lani from village of Llausha, Municipality of Skenderaj (hereinafter: the Applicant) who is represented by Rexhep S. Kačaniku, a lawyer from Mitrovica.

## **Challenged decision**

2. The Applicant allegedly challenges “*Decision SCL-11-0055 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 07 June 2016*” (hereinafter: the Appellate Panel). The Applicant did not submit to the Court the challenged decision.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly, “*violated the rights of claimant (Applicant) under employment relationship*“. The Applicant does not reason further what constitutional provisions and what constitutionally guaranteed rights have been violated.

## **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 17 October 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 November 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 13 December 2016, the Court notified the Applicant about the registration of the Referral and requested him to submit to the Court the challenged decisions and the power of attorney authorizing the lawyer to represent him before the Court.
8. On 27 December 2016, the Applicant submitted to the Court the power of attorney, authorizing the lawyer to represent him before the Court and other additional documents, but he did not submit the challenged decision.
9. On 24 January 2017, the Court sent a copy of the Referral to the Appellate Panel, and at the same time requested that the Appellate Panel submits to the Court the acknowledgment of receipt in order to determine when the Applicant received the challenged decision.
10. On 27 February 2016, the Court requested the Applicant and his representative to submit to the Court the challenged decision of the Appellate Panel.

11. The Court did not receive any response from the Applicant (or his representative) to the request for submission of the challenged decision.
12. On 4 April 2017, after considering the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

### **Summary of general facts**

13. On 30 April 2004, the Applicant established the employment relationship on the basis of the employment contract no. 367 with Socially Owned Enterprise Përparimi (hereinafter: SOE Përparimi).
14. On 3 December 2004, the temporary buyer in the privatization process of the SOE "Përparimi" addressed the Kosovo Privatization Agency of (hereinafter: KPA), by letter, requesting that *"he be allowed full access to the factory in order to maintain the factory, preserve the building and to begin the renovation of the factory."*
15. On 20 December 2004, the Applicant while performing the maintenance of the factory, as he walked through the carriages, fell and suffered bodily injuries.
16. On 13 January 2006, the Applicant submitted a request to the Liquidation Committee of SOE Përparimi, by which requested the compensation for injuries at workplace in the amount of 99.500.00 Euro.
17. On 24 May 2011, the Liquidation Committee of SOE Përparimi by (Decision No. MIT018-0018) rejected the Applicant's request.
18. On 22 July 2011, the Applicant filed an appeal with the Liquidation Review Committee (hereinafter: LRC) and the appeal was registered in the register of ORL number LRC/11/0063/MI.
19. On 4 October 2011, the Applicant received a notification from PAK, by which he was notified that with the entry into force of the Law on Privatization Agency of Kosovo No. 03/L-067, all review committees that are established in accordance with the previous laws will be dissolved.
20. At the same time, the Applicant was notified that he may file a claim within period of 60 (sixty) days of receipt of the abovementioned notification with the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: SCSC) against the decision of the Liquidation Committee of SOE Përparimi.
21. On 2 December 2011, the Applicant filed a claim with the SCSC, which was registered with the case number SCL-11-0055.
22. On 9 February 2016, the SCSC submitted the Applicant's claim to the Liquidation Committee for the SOE Përparimi as the responding party to the dispute.

23. On 29 February 2016, the Liquidation Committee for the SOE Përparimi, submitted to the SCSC a reply to the Applicant's complaint.
24. On 7 June 2016, the SCSC (delivery note No. SCL-11-0055) sent to the Applicant a reply to the claim of the Liquidation Committee for the SOE Përparimi which was served on the Applicant on 10 June 2016.

### **Applicant's allegations**

25. The Applicant alleges that *"...the right to protection of health at his workplace has been violated to the claimant, because the responding party did not provide tools for protection at work, such as helmets, work clothes, and adequate lighting."*
26. The Applicant further alleges that the Law on Obligational Relationship has been violated and alleges that *"according to the provisions of Article 154 of LOR, the injury was a result of the omissions of the responding party. This was confirmed when the Police of Kosovo sent the case file to the State Prosecution in Mitrovica, but because of the voluminous number of cases, it did not initiate the criminal proceedings and the case has not been yet archived."*
27. Finally, based on the above, the Applicant concludes *"...that all previous decisions rudely violated the claimant's rights from the employment relationship, because he did not injured himself on purpose, as the provisions of Article 154 of LOR and the obligations of the employer for protection of the employee at work are interpreted."*
28. The Applicant further proposes to the Court:

*"... that the claimant's (Applicant) claim is found as lawful, to hold violation of these rights as a violation of the constitutional rights and to remand the case file to the competent court for reconsideration and retrial."*

### **Admissibility of the Referral**

29. The Court examines 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.
30. In this respect, the Court 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."*

31. The Court also refers to Articles 22.4 and 48 of the Law, which provide:

*Article 22 [Processing Referrals]*

*4. If the referral or reply to the referral is not clear or is incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for clarifying or supplementing the respective referral or reply to the claim. The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim.*

*Article 48. [Accuracy of the Referral]*

*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*

32. In addition, the Court takes into account Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure, which foresees:

*"(2) The referral shall also include:*

*[. ..]*

*(f) a succinct description of the facts;*

*(g) a succinct description of the facts;*

*(h) the supporting documentation and information. "...*

33. The Court also takes into account Rule 32 (5) [Withdrawal Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:

*"[...] (5) The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral [...]."*

34. The Court firstly recalls that in the present case in accordance with Article 22 of the Law, it has requested two times the Applicant and his legal representative to submit to the Court the challenged "*Decision SCL-11-0055 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters of 07 June 2016*".
35. The Applicant and his legal representative have consistently submitted to the Court a reply to the claim (no.SCL-11-0055) filed with the Special Chamber by the Liquidation Committee for the SOE Përparimi of 7 June 2016.
36. The Court finds that the Applicant did not respond to the Court's request for submission of the challenged decision, but instead has submitted the reply to the claim of the Liquidation Commission, which he received through the SCSC.
37. The Court further notes that it is not a fact-finding court and the burden of proof lies with the Applicant who has not met the procedural requirements established by the Constitution, the Law and the Rules of Procedure (see for

example: case no. K103/15, *Applicant Hasan Beqiri*, Decision to Reject the Referral of the Constitutional Court of the Republic Kosovo, of 5 June 2015).

38. Therefore, the Court notes that the Applicant in addition to his general and abstract Referral, he i) did not submit the decision of the public authority challenged by him; ii) did not prove that any of his rights and freedoms guaranteed by the Constitution were violated by a public authority; iii) did not present any procedural or substantive reasons for his referral, and iv) did not submit supporting documents requested by the Court.
39. In accordance, the Court finds that the present Referral is incomplete, because the Applicant has not submitted the challenged decision of the public authority.
40. In sum the Court concludes that the Referral does not meet the procedural requirements for further consideration in accordance with Rule 29 of the Rules of Procedure. As the Applicant did not supplement the Referral and did not provide the necessary reasoning, the Referral must be summarily rejected, in accordance with Rule 32 (5) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law and Rule 32 (5) of the Rules of Procedure, in its session held on 4 April 2017, unanimously

### **DECIDES**

- I. TO SUMMARILY REJECT 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Bekim Sejdiu



**President of the Constitutional Court**

  
Arta Rama-Hajrizi