



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

Prishtina, on 21 March 2016
Rev. No.:RK908/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI120/15

Applicant

Refki Bytyqi

Request for constitutional review of Judgment AC-I-14-0220-A001-A0013 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 21 May 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
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Refki Bytyqi from village Randobrava, Municipality (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment AC-I-14-0220-A001-A0013 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber) of 21 May 2015, which was served on him on 8 June 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel of the Special Chamber, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of Republic of Kosovo no. 03/L-121 (hereinafter: the Law) and Rule 56 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 06 October 2015 the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 November 2015 the President of the Court by Decision no. GJR. KI120/15 appointed Judge Ivan Čukalović as a Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI120/15 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 23 November 2015 the Court notified the Applicant and the Appellate Panel of the registration of the Referral.
8. On 10 February 2016 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

Summary of facts

9. The Applicant was an employee of the Socially Owned Enterprise "Industria Ushqimore" (hereinafter: the SOE) until 1998, where due to injury in his working place went to the disability pension.
10. On 2 August 2011, the SOE was privatized.
11. On 3 May 2012 Privatization Agency of Kosovo (hereinafter: the Privatization Agency) published the final list of employees who were entitled to a share of the revenues collected from the privatization of the SOE, in which the Applicant was not included.

12. On 25 May 2012, the Applicant filed an appeal with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against the final list of the Privatization Agency.
13. On 22 June 2012, the Privatization Agency responded on the Applicant's appeal, stating that *"he does not meet requirements for exercising rights in accordance with Article 10.4 of UNMIK Regulation 2003/13, therefore, proposes to the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: Appellate Panel of the Special Chamber), to reject the Applicant's appeal as inadmissible."*
14. On 16 May 2014, the Specialized Panel of the Special Chamber rendered Judgment [C-U-120018], rejecting the Applicant's appeal as ungrounded, with the reasoning that: *"Based on the attached documents submitted by the Applicant and the Privatization Agency, it may be concluded that the Applicant has been in disability pension since 1998, and based on this he could not meet the requirement provided by Article 10.4 of UNMIK Regulation 2003/13"*.
15. On 25 July 2014, the Applicant filed an appeal with the Appellate Panel of the Special Chamber against Judgment of the Specialized Panel of the Special Chamber [C-U-120018].
16. In the appeal, the Applicant stated that the Specialized Panel of the Special Chamber has erroneously determined the factual situation and erroneously applied the substantive law, and that the Judgment is contradictory and confusing.
17. On 21 May 2015, the Appellate Panel of the Special Chamber rendered Judgment [AC-I-14-0220-A001-A0013] which rejected the Applicant's appeal as inadmissible, with a reasoning: *"The Specialized Panel of the Special Chamber correctly decided when rejected the Applicant's appeal as ungrounded, because he failed to meet the requirements provided by Article 10.4 of UNMIK Regulation no. 2003/13"*.

Applicant's allegations

18. The Applicant stated in the Referral that *"the Judgment of the Appellate Panel of the Special Chamber violated the rights to equality of trial, guaranteed by Article 31 the Constitution)."*
19. The Applicant is addressing the Court with the request: *"to annul the Judgment of the Specialized Panel of the Special Chamber and Judgment of the Appellate Panel of the Special Chamber as anti-constitutional and unlawful and to oblige the Privatization Agency to include him in the final list of employees entitled to 20% of privatization."*

Assessment of admissibility of the Referral

20. In order to adjudicate the Applicant's complaint, the Court first needs to examine whether the complaint meets the admissibility requirements, laid down in the Constitution, and further specified in the Law and the Rules of Procedure.

21. In this respect, Article 113 paragraph 7 of the Constitution provides:

“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.”

22. In addition, Article 48 of the Law prescribes:

“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”.

23. In this case, the Court refers to Rule 36 (1) d) and (2) b) of the Rules of Procedure which provides:

(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:*

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights“.

24. In analyzing the Applicant's allegations in terms of violation of the rights and freedoms guaranteed by the Constitution, the Court notes that the Applicant built his constitutional complaint on allegations of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, which in its content corresponds to Article 6 of the European Convention on Human Rights (hereinafter: ECHR)

25. In the present case, the Court finds that Specialized Panel of the Special Chamber, and later the Appellate Panel of the Special Chamber, have based their judgments on the provisions of Article 10.4 of UNMIK Regulation 2003/13, which reads:

“For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the SOE at the time of privatisation and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.

26. Therefore, the Court notes that the regular courts found that the Applicant failed to meet the procedural requirements provided by the law, and, therefore, he could not be included in the list of eligible employees who have acquired the right to 20 (twenty) percent from privatization.
27. As to the Applicant's allegations of a breach of Article 31 of the Constitution, the Court recalls that the principle of a fair and impartial trial requires that courts refer to certain legal norm, while the legal basis of the judgment should not be arbitrary, i.e. outside the concrete case, and in the Court's opinion, the regular courts have followed this during the regular procedure.
28. Moreover, the Court considers that the Appellate Panel of the Special Chamber gave clear and accurate conclusions in Judgment [CI-14-0220-A001-A0013], based on the interpretation that is acceptable under the Constitution and on the application of the relevant law based on the factual situation which was determined in the court proceedings.
29. The Court considers that the Applicant has not substantiated his claims nor has he submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution and ECHR (see: Case no. KI19/14 and KI21 14, Applicants *Tafil Qorri and Mehdi Sylja*, 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).
30. In sum, the Court considers that in the conducted proceedings, there are no facts or circumstances that would in any way indicate that in the proceedings that preceded the proceedings before the Court, the Applicant's human rights or freedoms guaranteed by the Constitution or the ECHR were violated. Therefore, the Court finds that the reference to a violation of Article 31 Constitution is ungrounded.
31. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) d) and 2 (b) of the Rules of Procedure.

FOR THESE REASONS

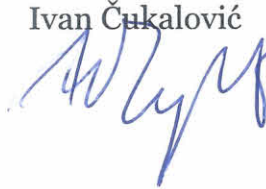
The Constitutional Court of Kosovo, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in its session held on 10 February 2015, unanimously

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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

