



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 29 February 2016
Ref. No.:RK896/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI135/15

Applicant

Boban Marinković

Request for 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
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Boban Marinković from Gračanica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges 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 (hereinafter: Appellate Panel of the Special Chamber), of 15 July 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 discriminated against the Applicant under Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. Article 113.7 of the Constitution and Article 49 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure.

Proceedings before the Constitutional Court

5. On 6 November 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 December 2015, the President of the Court by Decision GJR. KI135/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision KSH. KI135/15, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Artë Rama-Hajrizi and Bekim Sejdiu.
7. On 16 December 2015, the Court informed the Applicant and the Appellate Panel of the Special Chamber about the registration of the Referral.
8. On 28 January 2016 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. The Applicant was an employee of the SOE Voćar (hereinafter: „SOE Voćar“) until 1999.
10. On 2 May 2007, the „SOE Voćar“ was privatized.
11. On 21 July 2011, the Privatization Agency of Kosovo published the provisional list of employees who are entitled to a share of proceeds from the privatization of the „SOE Voćar“, in which the Applicant was not included.

12. On 10 August 2011, the Applicant filed an appeal with the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber).
13. In the appeal, in addition to the allegation that he is a victim of discrimination, the Applicant submitted to the Special Chamber the decision on the establishment of the employment relationship with „SOE Voćar“no. 48 of 1998.
14. On an unspecified date in 2014, the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel of Special Chamber) rendered Judgment [SCEL-11-0045], which approved the Applicant's appeal as grounded and obliged the Privatization Agency to include the Applicant in the final list of employees who exercise their right to a share of proceeds from the privatization of „SOE Voćar“.
15. On an unspecified date, the Privatization Agency appealed to the Appellate Panel of the Special Chamber against the Judgment of the Specialized Panel of the Special Chamber [SCEL- 11-0045], in which it stated: *„The claimant (the Applicant) did not submit his work booklet, he did not prove that he was discriminated against in any way, thus, he did not confirm that he was registered as an employee of the enterprise at the time of its privatization“,* which is in accordance with Article 10.4 of UNMIK Regulation 2003/13 (see paragraph 16 of the report).
16. On 15 July 2015, the Appellate Panel of the Special Chamber rendered Judgment [AC-I-14-0311-A0001-A0023], which approved the appeal of the Privatization Agency and annulled Judgment [SCEL-11-0045] of the Specialized Panel of the Special Chamber.

Relevant Law

17. Article 10.4 of UNMIK Regulation 2003/13 provides, *“For the purpose of this section an employee shall be considered as eligible (to 20%), if such employee is registered as an employee with the Socially-owned Enterprise 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 (and eligible to 20%), had they not been subjected to discrimination.”*

Applicant's allegations

18. The Applicant alleges in his Referral that *„based on complete documentation which he submitted to the Privatization Agency and the Special Chamber, and based on which his previous appeal was characterized as grounded, he is entitled to the proceeds from the privatization of SOE Voćar“.*
19. The Applicant addresses the Court with the request: *„that, as a regular employee of „SOE Voćar“, he be included on the final list of employees of „SOE Voćar“entitled to the proceeds from privatization“.*

Admissibility of the Referral

20. In order to be able to adjudicate the Applicant's complaint, the Court needs to first examine whether the complaint has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
21. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

"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. Article 48 of the Law also 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".
23. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of the 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. The Court, in analyzing the arguments of the Applicant in terms of violation of the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: the ECHR), notes that the Applicant has built his referral on allegations of discrimination, which is within the scope of Article 24 of the Constitution [Equality Before the Law) and Article 14 of the ECHR.
25. Assessing the reasons for the constitutional complaint with respect of Article 24 of the Constitution, the Court emphasizes that discrimination exists only where there is a difference in treatment of the individual and if the treatment has no objective and reasonable justification.
26. Moreover, in order to find discrimination, it is not sufficient that the Applicant generally claims that he has been treated in an unequal manner, but he must also indicate the grounds for this inequality.
27. The Court further refers to the legal position of the European Court of Human Rights that *"discrimination that is "treating differently, without an objective and reasonable justification, persons in relevantly similar situations"*

(Judgment: *Willis v. the United Kingdom*, no. 36042/97, paragraph 48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, paragraph 63, *D.H. and others v. Czech Republic*, paragraph 44).”

28. The Constitutional Court is of the view that in the conducted proceedings, there are no facts or circumstances that would in any way indicate that in the proceedings before the Appellate Panel of the Special Chamber the Applicant's human rights or freedoms guaranteed by the Constitution or the ECHR have been violated. Therefore, the Constitutional Court finds a reference to a violation of Article 24 of the Constitution regarding the prohibition of discrimination, as ungrounded.
29. Therefore, the Court considers that the Applicant has not substantiated his claims, nor he has 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 Sylja*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision of the Court of Appeal of Kosovo, CA. no. 2129/2013, of 5 December 2013 and Decision of the Court of Appeal of Kosovo, CA. no. 1947/2013, of 5 December 2013).
30. In sum, the Court holds that the requirements according to which the Applicant's Referral is considered from the aspect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR are not met.
31. Accordingly, 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 Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, on 26 January 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi