



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

Prishtina, on 30 June 2016  
Ref. No.:RK958/16

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI136/15

Applicant

**Feride Rexhepi**

**Request for constitutional review of Judgment AC-I.-14-0311-A001 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 Gërzhaliu-Krasniqi, Judge, and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Ms. Feride Rexhepi, from Prishtina (hereinafter, the Applicant), who is represented by Mr. Musli Abazi, lawyer from Prishtina.

### **Challenged decision**

2. The Applicant challenges the Judgment AC-I.-14-0311-A001 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 15 July 2015.
3. The challenged decision was served on the Applicant on 13 October 2015.

### **Subject matter**

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Articles 3 [Equality Before the Law], 22 [Direct Applicability of International Agreements and Instruments] and 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

### **Legal basis**

5. The Referral is based on Article 113. 7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court (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 9 November 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 8 December 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 18 January 2016, the Court informed the Applicant and the Special Chamber of the Supreme Court about the registration the Referral.
9. On 17 May 2016, after having considered the case, the Review Panel unanimously recommended to the full Court the inadmissibility of the Referral.

### **Summary of facts**

10. The Applicant's spouse had an established employment relationship with SOE "URATA/VOČAR" (hereinafter, the SOE) until his death on 13 September 2006.
11. On 2 May 2007, the SOE was privatized.
12. On 21 July 2011, the Privatization Agency of Kosovo (hereinafter, PAK) published the final list of employees entitled to 20% share of proceeds from privatization of the SOE. The name of the Applicant was not on that list, in the capacity of a legal inheritor of her deceased spouse.

13. On 8 December 2011, the Applicant filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter, Specialized Panel).
14. On 10 September 2014, the Specialized Panel (Judgment SCEL-11-0045-C54) rejected as inadmissible the Applicant's appeal.
15. The Applicant filed an appeal with the Appellate Panel.
16. On 15 July 2015, the Appellate Panel (Judgment AC-I.-14-0311-A001) rejected as ungrounded the Applicant's appeal, "because the deceased spouse had died before the privatization of SOE and therefore was not part of the list of employees at the time of privatization, namely was not on the payroll of the SOE at the time of privatization."

### **Applicant's allegations**

17. The Applicant claims a "violation of her essential rights (...), guaranteed by Articles 3 [Equality Before the Law], 22 [Direct Applicability of International Agreements and Instruments] and Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo, and the international conventions on human rights".
18. The Applicant alleges that, as inheritor in the rights deriving from the employment relationship of her deceased spouse, she is "*entitled to participation in 20 % share from the privatization of the enterprise where they worked a total of 30 years without interruptions*".

### **Admissibility of the Referral**

19. The Court first examines whether the Referral has met the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
20. In this regard, the Court refers to Article 113 paragraph 7 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."*

21. The Court also refers to Article 48 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 (1) (d) and (2) (b) of the Rules of Procedure, which foresees:

“(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

23. The Court recalls that the Applicant claims a violation of her right to equality before the law.
24. However, the Court notes that the Applicant has not provided any procedural or substantive argument in her Referral; she only refers to the constitutional provisions on the right to equality before the law and direct applicability of international agreements and instruments, without any further explanation on how and why the alleged violation occurred.
25. The Court notes that the Applicant does not agree with the outcome of her case; but the disagreement cannot of itself raise an arguable claim of a violation of the Constitution. (See case: *Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR Judgment of 26 July 2005). The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts.
26. In that respect, the Court notes that the Appellate Panel rejected as ungrounded the Applicant’s appeal because the deceased spouse had died before the privatization of SOE and was not on the payroll of the SOE at the time of privatization. Consequently, the deceased spouse was not a part of the employees at the time of privatization. Therefore, she cannot be on the list of eligible employees.
27. In fact, the Court notes that the Appellate Panel gave clear justification and precise conclusions based on the factual situation determined in the court proceedings. On the other hand, the Applicant has not explained how and why her rights have been violated by the Appellate Panel decision when it concluded that her deceased spouse could not be on the list of eligible employees.
28. The Court considers that the Applicant has not substantiated her allegations nor she has submitted any *prima facie* evidence indicating a violation of her rights guaranteed by the Constitution. (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).
29. Moreover, the Court considers that nothing in the proceedings indicates that the proceedings before the regular courts were unfair or tainted by arbitrariness, or that the Applicant’s rights or freedoms guaranteed by the

Constitution have been violated. Therefore, the Court finds ungrounded the reference to the violation of the Constitution.

30. Therefore, the Referral is manifestly ill-founded and is inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session on 17 May 2016, 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 paragraph 4 of the Law; and
- IV. This Decision is effective immediately;


**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi