



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

Prishtina, 5 May 2017
Ref. No.: RK 1059/17

RESOLUTION ON INADMISSIBILITY

in

Case no. KI23/16

Applicants

Qazim Bytyqi and others

**Constitutional assessment of the duration of the proceedings before the
Special Chamber of the Supreme Court on Privatization Agency of
Kosovo Related Matters**

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: Qazim Bytyqi, Musa Muharremi, Lutfi Hyseni, Hysen Ahmeti, Ejup Behluli, Ramadan Goliqi, Selatin Dudaki, Fadil Amiqi, Avdulla Hasani, Brahim Kerak, Sali Xhema, Ymer Kodroli, Hajriz Haziri, Gani Haziri, Idriz Kopili, Sahit Sahiti, Eshref Curolli, Mefail Kryeziu, Kemajl Shabani and Mustaf Mustafa, all from Ferizaj (hereinafter: the Applicants), who are represented by the law firm Interlex Associates LLC from Prishtina.

Challenged decision

2. The Applicants challenge the reasonableness of the duration of the proceedings before the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel).

Subject matter

3. The subject matter of the Referral is the determination of the merits of the Applicants' Referral that the rights, guaranteed by Article 31.2 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6.1 of the European Convention on Human Rights (hereinafter: the ECHR) have allegedly been violated as a result of the duration of the court proceedings.

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 1 February 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court). At the time of filing the referral, the Applicant's case was still pending before the Appellate Panel.
6. On 14 March 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 7 April 2016, the Court notified the Applicants about the registration of the Referral. The Court requested the Applicants to respond by 25 April 2016 to the following specific questions:
 - A) What was the conduct of the Applicants was during the four (4) years and five (5) months that you alleged to have waited for a decision to be rendered from the Special Chamber? Have the Applicants filed their urgencies with the Special Chamber, before the latter rendered its Judgment (SCEL-06-0016 of 23 September 2009) or after?
 - B) Has the Special Chamber responded to the urgencies filed by the Applicants? If yes, you are kindly asked to submit copies such responses. If no, you are kindly asked to comment on that respect.
 - C) With respect to a legal remedy to challenge the length of proceedings as such, do you consider that the legal system in the Republic of Kosovo provides for such a remedy? Please elaborate your position on this.

- D) What is your opinion as to why the proceedings were allegedly lengthy? Who, how and what do you think has contributed to that?
8. On the same date, the Referral was sent to the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber). The Court requested the Special Chamber to respond by 25 April 2016 to the following specific questions:
- A) Have the Applicants complied with all of the admissibility criteria necessary to file a Referral with the Court? More specifically, have the Applicants exhausted all available legal remedies in respect of their allegations?
 - B) Do you consider that the proceedings with respect to Applicants' claims have exceeded the "reasonable time" for the Special Chamber to render a decision? If the answer is no, please explain why do you consider that this constitutional guarantee was respected.
 - C) Do you consider that there was a violation of the Applicants' right to a decision within a reasonable time as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR? If the answer is no, please explain your position.
 - D) Did the Applicants have any legal remedy that they could use in addressing their allegations about "length of proceedings" before the Special Chamber? If yes, which remedy was that and have they made use of it?
 - E) Have the Applicants filed urgencies with the Special Chamber requesting to speed up the proceedings in their case? If yes, what was the response of the Special Chamber to such requests?
 - F) What was the conduct of the Applicants during the proceedings and have they contributed in any way to such alleged length?
9. On the same date, the referral was sent to to the Kosovo Judicial Council. The Court requested the Kosovo Judicial Council to respond by 25 April 2016 to the following specific questions:
- A) Have the Applicants complied with all of the admissibility criteria necessary to file a Referral with the Court? More specifically, have the Applicants exhausted all available legal remedies in respect of their allegations?
 - B) Did the Applicants have any legal remedy that they could use in addressing their allegations about "length of proceedings" before the Special Chamber? If yes, which remedy was that?
 - C) Do you consider that filing urgencies, as the Applicants claim to have done, should or does amount to an effective legal remedy to challenge length of proceedings? Please elaborate your position on this point.
 - D) Do you consider that the Kosovo legal system provides a legal remedy with respect to length of proceedings? Is there any remedy that the Applicants can use when they consider that they were deprived of their right to a decision within a reasonable time, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR?

10. On 19 April 2016, the Applicants submitted a response to the questions posed by the Court, and included copies of the five (5) letters of urgency that they had submitted to the Special Chamber.
11. On 25 April 2016, the Court received the response and comments from the Special Chamber.
12. On 11 May 2016, the Court sent to the Applicants the response and the comments which it received from the Special Chamber and invited the Applicants to submit their additional comments, if any, within 14 days.
13. On the same date, the Court sent to the Special Chamber the comments received from the Applicants on 19 April 2016, and invited the Special Chamber to submit its additional comments, if any, within 14 days.
14. On 16 May 2016, the Applicants submitted their additional comments on the submissions of the Special Chamber.
15. On 22 May 2016, the Kosovo Judicial Council submitted its response to the Court. The Kosovo Judicial Council stated that it does not comment on decisions of the courts, *"because the courts are independent in carrying out their judicial function."*
16. On 24 May 2016, the Special Chamber submitted its additional comments on the Applicant's submissions to the Court of 19 April 2016.
17. On 2 November 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur, replacing Judge Robert Carolan, who resigned on 9 September 2016. The composition of the Review Panel remained unchanged.
18. On 30 March 2017 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referrals.

Summary of facts

19. From the case file it follows that all the Applicants are all former employees of the Socially Owned Enterprise SOE "Mustafa Gega" from Ferizaj.
20. In 2009, the Privatization Agency of Kosovo (hereinafter: PAK) published the list of employees, who, under the applicable law, were eligible to participate in the 20% share of the proceeds from the privatization and liquidation of the enterprise SOE "Mustafa Gega". The Applicants were not included in this list.
21. In June and July 2009, the Applicants submitted complaints to the Special Chamber, challenging the list of employees entitled to the 20% share of proceeds.

22. On 23 September 2013, the Specialized Panel of the Special Chamber (hereinafter: the Specialized Panel) rendered Judgment SCEL-09-0016, in which it decided that all of the [Applicants] are to be included in the final list of employees entitled to the 20% share of the proceeds.
23. The PAK filed an appeal with the Appellate Panel against the Judgment of the Specialized Panel of 23 September 2013. The PAK provided new documentary material in support of its appeal.
24. On 16 March 2016, the Appellate Panel rendered Judgment AC-I-13-0191, rejecting the appeal of PAK, and confirming the Judgment SCEL-09-0016 of the Specialized Panel in respect of the Applicants. By this Judgment, the Applicants' claims were decided in final instance.

Applicant's allegations

25. The Applicants consider that the regular courts violated their right to trial within a reasonable time, as guaranteed by Article 31.2 of the Constitution, and Article 6.1 of the ECHR.
26. The Applicants state that, *"the Court should take into consideration that this referral is not submitted specifically to challenge Judgments SCEL-090-0016 of the Specialized Panel and AC-I-13-0191 of the Appellate Panel, in its essence, but is sought that the Court finds that the delayed procedure in its entirety is not in accordance with the constitutional guarantees."*
27. The Applicants allege that, *"the privatization of public enterprises left a considerable number of the employees of these public enterprises in Kosovo unemployed, the applicable legislation envisages that the requests of this nature should be solved in the summary procedure, because the employees are in extremely difficult economic situation. In this particular case, the specific legislation on privatization specifies what is considered a reasonable time."*

Response of the Special Chamber

28. In its submissions of 25 April 2016, the Special Chamber pointed out that the case was very complex, because the same case included 98 complainants with a total of 48 complaints against the final list published by PAK of recipients of the 20% share in the proceeds of the privatization of SOE "Mustafa Gega". The Special Chamber stated that, *"These complaints had to be assessed individually, separately and carefully due to their sensitive nature."*
29. In addition, the Special Chamber claimed that, *"[...] taking into account the appealing allegations of the Privatization Agency, the Appellate Panel needed more time to render its decision taking into account all the applicants individually because of the sensitivity of the case. Moreover, the Special Chamber is generally overloaded - more than 21,974 unresolved cases of all*

kinds, containing to its jurisdiction, but the court takes all necessary actions to resolve all cases taking into account the urgency and priorities.”

30. Furthermore, the Special Chamber indicated that, *“The big number of documents that are related to the proceedings contributes a lot to the length of the procedure, especially since the obligation for securing translations has been transferred to the Special Chamber by law (Article 25.8 of the Annex of LSC, amended). In SCEL complaints matters and all the submissions of the complainants as in the matter in question have always been translated by the Special Chamber.”*
31. Moreover, the Special Chamber indicated that, *“[The] Special Chamber is highly overcharged in general - more than 21,974 cases of all kinds that are within its jurisdiction are pending. The activity of Special Chamber is obstructed by the lack and large fluctuations of the personnel, mainly judges, while the number of SCEL cases and of all the claims and appeals is increasing continuously and considerably due to the exclusive jurisdiction of the Special Chamber on privatization matters (Article 4 of the LSCSC). Even though the Special Chamber closed 13,389 cases during the period from 1 January 2009 until 31 March 2016, actually there are 21,974 cases pending. Due to the high and continuous flow, the number of pending cases is increasing.”*
32. The Special Chamber indicated that the Applicants had available to them a legal remedy against unreasonable delays in the proceedings. Article 10.12 of the Law No. 04/L-033 on the Special Chamber provides that,
“If a court, specialized panel, sub-panel or single judge fails to issue a Decision or Judgment within the time period established by law or, if no such time period has been established by law, within a reasonable time, the appellate panel shall, upon the application of any party, order the concerned court, specialized panel, sub-panel or single judge to issue the concerned Judgment or Decision within ten (10) business days.”
33. Furthermore, the Specialized Chamber claimed that the Applicants could have filed informal “letters of urgency” requesting that the procedure be speeded up. To the extent that the Special Chamber acknowledged that the Applicants had indeed filed at least one such “letter of urgency”, the Special Chamber indicated that it had not responded to it. The Special Chamber accepted that any delays in the proceedings before the Specialized Panel or the Appellate Panel were not caused by the actions of the Applicants.

Response of the Applicants

34. In response to the submissions of the Special Chamber, the Applicants state that the legal remedy contained in Article 10.12 of the Law on the Special Chamber only applies to those situations where a Judge or a Panel of the Special Chamber has reached a decision but has failed to deliver the written Judgment within legal deadlines. The Applicants point out that this does not apply to their case, where there had still not been any decision.

35. Furthermore, the Applicants refute the statement that they had not submitted any “letters of urgency” to request a speeding up of the proceedings. The Applicants claim that they had visited the Special Chamber on numerous occasions to verbally request a speeding up of the proceedings, and had also submitted two “letters of urgency” to the Specialized Panel and three “letters of urgency” to the Appellate Panel who were dealing with the case. The Applicants claim that they never received any response to their “letters of urgency”.
36. The Applicants also reject the Special Chamber’s arguments relating to the complexity of the case and the case-load of the Special Chamber. The Applicants quote from the case-law of the European Court of Human Rights (hereinafter ECtHR) to point out that it is the duty of the state to organize its legal and judicial system in such a way as to guarantee the right of every person to obtain a court decision within a reasonable time limit, and the argument of an excessive caseload cannot be taken as an excuse (see Judgments of the ECtHR in *Scordino vs. Italy* (no. 1) [GC], § 183, *Sürmeli v. Germany* [GC], § 129; *Vocaturo v. Italy*, § 17; and *Cappello v. Italy*, § 17).
37. Finally, regarding the importance of the case, the Applicants state that the Special Chamber was fully aware that all the Applicants are mainly old and a special care should be paid in dealing with this case. The Applicants state that two of the Applicants have died since the beginning of these proceedings, and can no longer benefit personally from their claims.

Assessment of the admissibility of the Referral

38. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
39. In this respect, the Court refers to Article 113.1 and 113.7 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.”*
40. The Court notes that the Special Chamber claims that the Applicants had available to them a legal remedy in order to speed up the proceedings, which they have not used. The Special Chamber quotes Article 10.12 of the Law No. 04/L-033 on the Special Chamber.
41. The Court notes that the Applicants contest this remedy, stating that it only applies after a decision has been reached by a court in order to compel that court to issue a written copy of its decision. The Applicants point out that their allegation concerns the speeding up of proceedings when no decision has been

taken, as yet. As such, they allege that the legal remedy proposed by the Special Chamber did not apply to their case, because at the time of submitting their Referral they were still waiting for a decision by the Appellate Panel on their claims.

42. The Court notes that Article 10.12 of the Law No. 04/L-033 on the Special Chamber clearly indicates that it concerns those situations where a court, specialized panel, sub-panel or single judge, *“fails to issue a Decision or Judgment.”* Furthermore, this Article provides to the Appellate Panel the power to order such court, panel or judge, *“to issue the concerned Judgment or Decision within ten (10) business days.”*
43. As such, the Court considers that this article refers specifically to the question of the *“issuing”* of a decision which has already been taken, and not to the taking of a decision by a court, panel or judge.
44. The Court recalls that the Applicants submitted their Referral before the final decision was taken on their case by the Appellate Panel. Subsequently, the Appellate Panel reached its final Judgment in the Applicants’ case.
45. In these circumstances, the Court concludes that this remedy provided by Article 10.12 of the Law No. 04/L-033 on the Special Chamber did not apply to the situation of the Applicants, and would not have been an adequate and effective legal remedy to speed up the decision-making on their case.
46. The Special Chamber also claims that the Applicants could have submitted so-called “letters of urgency” to the Specialized Panel and to the Appellate Panel to ask for their case to be handled with urgency. The Applicants point out that they addressed both Panels and submitted at least five (5) such letters of urgency, but without any result.
47. The Court notes that the Special Chamber refers to “letters of urgency” as an “informal” remedy. The Special Chamber does not indicate what legal provisions regulate the use of “letters of urgency”. The Court also notes that the Special Chamber accepted that the Applicants had submitted at least one letter of urgency, but that this had not received any response.
48. The Court recalls that, under Article 113.7 of the Constitution, individuals are authorized to refer violations of their constitutional rights, *“only after exhaustion of all legal remedies provided by law.”*
49. The Court considers that a “letter of urgency” does not qualify as a *“legal remedy provided by law”*, because it is merely an informal practice that is not provided by any law, and is neither adequate nor effective to redress the Applicants’ complaints.
50. Therefore, the Court finds that the Applicants have exhausted all legal remedies provided by law.

51. The Court should further assess whether the Applicants have adequately specified their Referral, as foreseen by 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.”

52. In addition, the Court takes into account paragraphs (1) (d) and (2) (b) of Rule 36 [Admissibility Criteria] of the Rules of Procedure which provide:

“(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.”

53. As for the Applicants' allegations of violations of the constitutional rights and freedoms, the Court notes that the Applicants indicate that the length of the procedure in question violated their legal rights to fair and impartial trial under Article 31.2 (Right to Fair and Impartial Trial) of the Constitution and Article 6.1 (Right to a fair trial) of the ECHR.

Article 31.2 [Right to Fair and Impartial Trial] of the Constitution

“[...]

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law...”

Article 6.1 (Right to a fair trial) of ECHR

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...”

54. In order to examine the merits of the Applicants' allegations about violations of the constitutional rights and freedoms related to rendering decisions within a reasonable time, the Court will deal with: (i) determining the period of the entire proceedings before the competent institutions; (ii) the relevant principles; and (iii) analyzing the reasonableness of the duration of the proceedings.

i) Period to be taken into account

55. In the present case, the Court notes that in June and July 2009, the Applicants filed complaints with the Special Chamber against the final list of workers compiled by PAK in which they were not included as eligible workers who are entitled to a share of 20% of the proceeds from the privatization of SOE “Mustafa Gega”.
56. When determining the period of time to be taken into account, the Court shall take as the beginning of the procedure the month of June 2009. As the date for the end of the procedure, the Court will take 16 March 2016, as the date when the Appellate Panel rendered a final Judgment, which resolved the subject of the dispute of the Applicants.
57. Therefore, the Court notes that the period to be taken into consideration in relation to the Applicants’ allegations for violation of Article 31.2 of the Constitution, in conjunction with Article 6.1 of the ECHR, is 6 (six) years and 9 (nine) months.

ii) Relevant principles

58. The Court further notes that in accordance with the consistent case law of the European Court of Human Rights (hereinafter: the ECtHR), the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case having regard to the criteria laid down in the ECtHR case-law, in particular, (a) the complexity of the case, (b) the conduct of the parties to the proceedings, (c) the conduct of the competent court or other relevant authorities, and (d) the importance of what is at stake for the applicant in the litigation (see ECtHR Judgment of 7 February 2002, *Mikulić v. Croatia*, no. 53176/99, of 7 February 2002, paragraph 38).

iii) Reasonableness of the length of the proceedings

59. The Court notes that the present case concerns a procedure in which the Applicants challenged their non-inclusion in the list of beneficiaries of the 20% share of the proceeds from the privatization of SOE “Mustafa Gega”, which they considered they were entitled to.
60. Regarding the complexity of the case, the Court notes that the Special Chamber declares that the case concerned 98 complainants covering 48 different complaints. The Special Chamber claimed that each complaint required an individual, separate and careful assessment due to the sensitive nature of the complaints. Furthermore, the Special Chamber claimed that there were a very large number of documents involved that all required translation, which also required additional time.
61. The Court notes that the Applicant disputed that the case was particularly complex, because most of the complaints were substantially the same.

62. In the circumstances, the Court considers that the case was reasonably complex.
63. Regarding the conduct of the parties to the case, the Court notes that the Special Chamber accepted that the Applicants had not done anything to delay the proceedings. Furthermore, the Applicants indicated that they had visited the Special Chamber on various occasions, and had submitted at least five “letters of urgency” to the panels of the Special Chamber which were seized of the case.
64. In the circumstances, the Court considers that any delays in the proceedings cannot be attributed to the Applicants.
65. As to the conduct of the relevant court and other public authorities, the Court notes that the Special Chamber alleges that it is overloaded with work and is required to take many administrative actions, such as translation of documents, as well as verification and comparison of documents at each stage of the proceedings, in order to process cases.
66. The Court notes that the Applicants contest the validity of the workload as an argument to justify an unreasonable delay in court proceedings.
67. The Court recalls that, in accordance with the ECtHR case law, the delays which are sometimes caused by an excessive workload of the courts, may be acceptable as long they are not too long and if the authorities take reasonable steps to establish the order of priorities of cases based on their urgency and importance (see, *mutatis mutandis*, ECtHR Judgment of 13 July 1983, *Zimmerman and Steiner v. Switzerland*, application No. 8737/79, paras. 27-32).
68. Within the context of the complexity of the case, as well as the obligation to fulfill all procedural requirements, the Court notes that the Specialized Panel concluded its proceedings with a Judgment on the merits after a period of 4 (four) years and three (3) months.
69. The Court further notes that an appeal was filed by PAK against the first instance Judgment of the Specialized Panel. This appeal was filed within the legal deadline and provided new facts and evidence which the Appellate Panel had to compare and verify with the relevant institutions.
70. The Court notes that the Appellate Panel rendered its Judgment on the appeal on 16 March 2016, and thereby resolved the Applicants’ dispute by a final judgment. The proceedings before the Appellate Panel lasted for two (2) years and five (5) months.
71. The Court notes that within a total period of 6 (six) years and 9 (nine) months the Special Chamber delivered two judgments on the merits of a case including 98 complainants and covering 48 complaints. The number of procedural steps included translation and verification of large numbers of documents, and the case needed to be individualized and specific to each of the 98 complainants.

72. In these circumstances, the Court considers that the two instances of jurisdiction of the Special Chamber conducted their proceedings with reasonable diligence.
73. Regarding what was at stake for the Applicants in the dispute, the Court notes that the Applicants claim relates to a share in the proceeds of the privatization of the enterprise where they had worked, and which, under the system of Social Ownership, was partly owned by them.
74. As such, the Court considers that the expectation of receiving a sum of money was of significant relevance to their lives, but was not of such a compelling nature as to require particularly urgency on the part of the courts.
75. In conclusion, the Court finds that the overall duration of the proceedings before the Specialized Panel and the Appellate Panel of the Special Chamber of 6 (six) years and 9 (nine) months cannot be considered unreasonable, given the complexity of the case, the conduct of the parties and what was at stake for the Applicants (See, *mutatis mutandis*, ECtHR Judgment of 27 June 2000, *Frydlender v. France*, No. 30979/96, paras. 43-46; and ECtHR Judgment of 8 June 2006, *Sürmeli v. Germany*, No. 75529/01, paras. 128-134).
76. Therefore, the Court concludes that the Applicants have not substantiated their claim that their right to a determination of their rights and obligations within a reasonable time, as guaranteed by Article 31 (2) of the Constitution and Article 6 (1) of the ECHR, has been violated.
77. Therefore, the Referral is manifestly ill-founded on a constitutional basis 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, in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and (2) (b) Rules of Procedure, on its session held on 30 March 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;
- IV. This Decision is effective immediately;

Judge Rapporteur


Selvete Gërxhaliu-Krasniqi



President of the Constitutional Court


Arta Rama-Hajrizi