



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

Prishtina, 22 May 2017
Ref. No.:RK 1065/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI26/16

Applicant

Januz Fazliu

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
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 Januz Fazliu from Prishtina (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: the Appellate Panel) of 15 July 2015. The challenged decision was served on the Applicant on 17 October 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel whereby the Applicant's rights under Article 21 (General Principles), Article 22 (Direct Applicability of International Agreements and Instruments), Article 24 (Equality Before the Law) in conjunction with Article 3 (Equality Before the Law), Article 31 (Right to Fair and Impartial Trial), Article 53 (Interpretation of Human Rights Provisions) and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), have allegedly been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 49 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 (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 8 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 March 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërzhaliu-Krasniqi.
7. On 15 April 2016, the Court notified the Applicant and the Appellate Panel about the registration the Referral.
8. On 2 May 2017, 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 Socially Owned Enterprise „Voçar“ (hereinafter: the SOE „Voçar“) from 1 October 1984 until 1 January 1994.
10. On 1 January 1994, the management of the “SOE Voçar” by Decision [No. 31/94], sent the Applicant on unpaid leave for a period of 24 months.

11. In 2007, the Applicant filed a claim against the „SOE Voçar“ with the Municipal Court in Prishtina, requesting the annulment of the decision of the respondent [No. 31/94] of 1 January 1994 and compensation for the lost profit.
12. On 2 May. 2007, the Privatization Agency of Kosovo (hereinafter: PAK) started the process of privatization of the “SOE Voçar”.
13. On 22 March 2011, the Municipal Court in Prishtina by Decision [Cl. No. 464/07] terminated the proceedings on this matter, at the request of PAK and Article 277, item d) of the Law on Contested Procedure, because the respondent “SOE Voçar” went bankrupt and against it was initiated the liquidation procedure.
14. On 12 April 2011, the Applicant filed an appeal with the Court of Appeal against the Decision of the Municipal Court on termination of the proceedings.
15. On 4 July 2011, the Court of Appeal rendered Decision [Ac. No. 2880/2012] which rejected the Applicant's appeal as ungrounded and upheld the Decision of the Municipal Court on the grounds: *“The Court of Appeals fully accepts such a conclusion of the first instance court, due to the fact that the PAK has made a public notification, also with its latest submission dated 10 February 2011, it has notified that the respondent enterprise is under liquidation process, requesting the termination of all judicial procedures against this enterprise.”*
16. On 21 July 2011, PAK published the final list of employees who are entitled to 20% share of proceeds from the privatization of the “SOE Voçar”, in which the Applicant was not included.
17. On 11 August 2011, the Applicant filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) after the expiry of legal deadline, arguing that he is entitled to 20 % share from privatization.
18. On 20 September 2011, the PAK sent its comments to the Applicant's appeal in which it stated that the appellant (Applicant) does not meet the requirements under Article 10.4 of UNMIK Regulation, to be entitled to 20% share of proceeds from the privatization of the “SOE Voçar”, because it did not provide valid evidence to justify his claim.
19. On 29 September 2014, the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) rendered Judgment [SCEL-11-0045] which rejected the Applicant's appeal as ungrounded reasoning that:

“The court based on the case files established that the complainant provided no material evidence in support of the allegations asserted in the complaint. The complainant does not meet requirements under Article 10.4 of UNMIK Regulation 2003/13 (supplemented and amended). For the said reasons the complaint is rejected as inadmissible.”

20. On 27 October 2014, the Applicant filed an appeal with the Appellate Panel against the Judgment of the Specialized Panel stating *“that he lost his job because of the interim measures of the political system during 90-ies.”*
21. On 15 July 2015, the Appellate Panel rendered Judgment [AC-I-14-0311-A0001-A0023] which rejected the Applicant's appeal. The reasoning of the Judgment reads:

„The Applicant provided no material evidence to prove his employment relationship with this SOE. The Specialized Panel found that the complainant did not provide any material evidence to prove his appealing allegations so his complaint was rejected as ungrounded. The Appellate Panel found that the decision of the Specialized Panel related to this complainant is correct and based on law. The complainant has not provided any material evidence nor in the appealing procedure, to support his allegations. For these reasons, the appeal is rejected as ungrounded.“

Relevant law

Article 10.4 of UNMIK Regulation 2003/13 reads: *“For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-Owned Enterprise at the time of privatization and is established to have been on the payroll of the enterprise 3 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.”*

Applicant's allegations

22. The Applicants stated in the Referral that *„he considers the Judgment of the Appellate Panel as ungrounded because it excludes him from the final list of workers entitled to receive 20% from the privatization of the “SOE Voçar”.*
23. The Applicant further alleges *„ that Judgment AC-L-14-0311-A0001-A0023, of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, of 15 July 2015, in the part related to the Applicant, violated the provisions of Constitution of the Republic of Kosovo, specifically: Article 21, 22 in conjunction with Article 53 and Article 54; Article 24 in conjunction with Article 3 and Article 31, for which part it should be repealed.*
24. The Applicant addresses the Court with the request: *„to order PAK to include him in the final list of employees entitled to receive a 20 % share of proceeds from the SOE privatization.”*

Assessment of the admissibility of Referral

25. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

26. In this respect, Article 113. 7 of the Constitution, 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.”

27. 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.”

28. Regarding the foregoing, the Court finds that the Applicant submitted the Referral as an individual and in a capacity of an authorized party; that he pointed out at possible constitutional violations; the Referral was submitted in accordance with the deadlines established in Article 49 of the Law and after exhausting all legal remedies. Accordingly, the Court concludes that all formal admissibility requirements were fulfilled in order for the Referral to be reviewed.

29. In the present case, the Court refers to Rule 36 (1) (d) and 36 (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) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights “.

30. The Court having analyzed the Applicant’s allegations in respect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR noted that the Applicant has built his Referral on the allegations that the Judgment of the Appellate Panel violated his rights and freedoms guaranteed by Articles 3, 21, 22, 24 as well as 31, 53 and 54 of the Constitution.

31. The Court first of all notes that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*

32. In this regard, assessing the grounds of the Applicant's allegation of violation of Article 3 (Equality Before the Law) and Article 24 (Equality Before the Law)

of the Constitution, pertaining to discrimination, which is in accordance with Article 14 (Prohibition of discrimination) of the ECHR, the Court found it as ungrounded due to the fact that the Applicant stated in the Referral submitted to the Court that he was treated unequally in relation to other workers of the "SOE Vocar", but he did not indicate the grounds of that inequality.

33. In this regard, the Court recalls that a treatment is discriminatory if an individual is treated differently to others in similar positions or situations, and if that difference in treatment has no objective and reasonable justification. In order that it is justified, the treatment must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized (see case: ECHR Judgment, *Marckx v. Belgium*, of 13 June 1979 Application No. 6833/74).
34. Therefore, it is necessary in each specific case to determine whether the Applicant was treated differently from others in the same or similar situations. Any different treatment shall be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim and if there is no reasonable relationship.
35. In the present case, the Court notes that, aside from his allegation of a violation of the abovementioned rights, the Applicant did not provide any argument which would indicate that in the proceedings of the case he was in any way discriminated against.
36. As regards the Applicant's allegation of a violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution, which is in conjunction with Article 6 (Right to a fair trial) of the ECHR, the Court also finds it as ungrounded for the reason that the grounds of the Applicant's appeal of alleged violations is based solely on the fact that he could not exercise his right to compensation before the regular courts, which he thinks is entitled to.
37. The Court notes that the courts during the regular proceedings took into account all the allegations of both parties to the proceedings, the Applicant as a claimant and PAK as a respondent in determining the grounds of the claim, placing them on an equal position, allowing them to present their arguments, documentation and evidence, which can be seen based on decisions of the regular courts.
38. The Court further notes that the Judgments of the Specialized Panel and of the Appellate Panel are based on Article 10.4 of UNMIK Regulation 2003/13, based on which they concluded that a) the Applicant at the time of privatization - the liquidation was not a worker of the "SOE Voçar" b) he was not on the payroll of the SOE Vocar" at least 3 years before the privatization and c) he failed to build a case that his disqualification was a consequence of discrimination.
39. Accordingly, from a given reasoning the Court does not see the arbitrariness; moreover, the Court notes that the Specialized Panel and the Appellate Panel reviewed all allegations which the Applicant pointed out during the regular

proceedings, and provided clear conclusions why these allegations are ungrounded.

40. The Court notes that the Applicant also claims that his right to judicial protection of rights under Article 54 [Judicial Protection of Rights] of the Constitution has been violated.
41. The Court recalls that from Article 54 of the Constitution stems a requirement for exercising the right to judicial protection of rights, and that it constitutes a violation or denial of the rights guaranteed by the Constitution. If such a violation exists, the person whose rights were violated or denied, consequently, has the right to an effective remedy.
42. The Court has just concluded that the Applicant's claim regarding the violation of the right to fair and impartial trial is ungrounded. Accordingly, there is no violation of the law that would lead to judicial protection. Accordingly, there is no subject for constitutional review.
43. Therefore, the Court finds that there are no grounds to assess the admissibility of the Applicant's claim of a violation of the right to judicial protection of rights under Article 54 of the Constitution.
44. 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 before the Appellate Panel, the human right or freedom guaranteed by the Constitution or ECHR have been violated to the Applicant.
45. The Court considers that the Applicant has not substantiated his allegations nor has 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).
46. The Court is of the opinion that the requirements according to which the Applicant's complaint would be considered from the aspect of violation of the rights and freedoms guaranteed by the Constitution and the ECHR have not been met.
47. 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

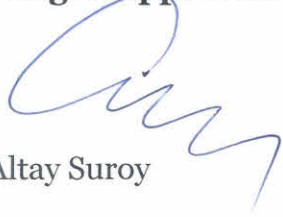
The Constitutional Court of Kosovo, in accordance Article 47 of the Law and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, on its session held on 2 May 2017, unanimously

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

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi

