



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

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Prishtina, 4 September 2015  
Ref. no.: RK 839/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI33/15**

Applicant

**Mihane Ismajli**

**Constitutional Review of the Judgment, SCEL-11-0065-C0068 of the  
Specialized Panel of the Special Chamber of the Supreme Court on  
Privatization Agency Related Matters, dated 13 May 2014**

**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

### **Applicant**

1. The Referral was submitted by Ms. Mihane Ismajli residing in Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment SCEL-11-0065-C0068 of the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters (hereinafter, the Specialized Panel of the SCSC) of 13 May 2014.
3. The challenged decision was served on the Applicant on 27 October 2014.

## **Subject matter**

4. The subject matter is the request for constitutional review of the challenged decision which has allegedly violated the Applicant's right guaranteed by Article 24 [Equality Before the Law] paragraph 1 of the Constitution of the Republic of Kosovo (hereafter: 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 of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 13 March 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 21 April 2015 the President of the Court by Decision, GJR. KI33/15 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI33/15 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Enver Hasani and Arta Rama-Hajrizi.
8. On 28 April 2015 the Court notified the Applicant of the registration of the Referral and requested that she provides some additional information, namely to clarify under which name the Referral was filed; which is the challenged decision and which is the last decision.
9. On 7 May 2015 the Applicant submitted the requested information to the Court.
10. On 14 May 2015 the Court notified the Specialized Panel of the SCSC of the registration of the Referral and sent a copy of it to them. In addition, the Court requested that they file a copy of receipt indicating the date when the challenged decision was served on the Applicant.
11. On 25 May 2015 the Specialized Panel of the SCSC submitted the requested information to the Court.
12. On 1 July 2015 the President of the Court, by Decision, GJR. KI33/15, replaced Judge Enver Hasani as a member of the Review Panel, and in his place appointed Judge Ivan Čukalović.

13. On 3 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of Facts**

14. The Applicant was employed as Legal Clerk at the Socially Owned Enterprise “Integji”, latter known as “Textile Industry Integji”, in Gjilan (hereinafter: SOE Integji).
15. On 2 March 2006, the Kosovo Privatization Agency (hereinafter: KPA) which had authority over the SOE Integji, decided to sell it.
16. The KPA then established who is eligible to benefit from the 20% of the proceeds of the sale of the enterprise by publishing a final list of employees who are entitled to such benefits. The Applicant was not included in that final list.
17. On 2 December 2011, the Applicant filed a complaint against KPA with the Specialized Panel of the SCSC claiming that she should have been included in the final list as she was employed by the SOE Integji at the time of the privatization.
18. On 13 May 2014 the Specialized Panel of the SCSC (Judgment, SCEL-11-0065-C0068) dismissed the complaint of the Applicant by holding that:

*“[...] The claim is admissible, but not grounded.*

*[...] The complainant [Applicant], who was not on the payroll of the company at the time of privatization, alleged that she returned to an employment with the SOE as an employee after the war until she was not assigned work anymore, all staff having been sent on “unpaid leave”.*

*[...] the inclusion of former employees does not extend to those who had actually – regardless of a formal termination of the labour contract – not been employees in the relevant point in time, which was the moment of the privatization. [...] Therefore the fact that the Complainant was not employed by the SOE in the relevant moment of privatization was not alleged, let alone proven, to have been based on discriminatory reasons [...] Hence, the Complainant is not eligible to the list of those persons entitled to the 20% share of the spin-off of the SOE [...].”*

19. The Applicant has presented to the Court a copy of a text intended to appeal the challenged decision with the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters (hereinafter: the Appellate Panel of the SCSC).

### **Applicant’s allegations**

20. The Applicant alleges that the KPA and the Specialized Panel of the SCSC violated her right to equality before the law as guaranteed by Article 24 of the Constitution.

21. In regards to this allegation, the Applicant claims that “[...] *the employees who had the same employment status have been treated differently when it came to the distribution of the 20%. For some employees the principle of legality was taken into account whereas for others not [...].*”
22. Furthermore, the Applicant states that “[...] *when the final list of the employees that were entitled to benefit from the 20% was published [...], I was not part of that list, whereas part of it were even some employees who have not showed up at work since June 1999 [...].*”
23. The Applicant concludes by requesting the following from the Court:

*“[...] to approve my request and to oblige the respondent party, respectively the Kosovo Agency of Privatization to acknowledge my right to benefit from the distribution of the 20% following the privatization of the enterprise [...].”*

### **Admissibility of the Referral**

24. The Court examines whether the Applicant has met the admissibility requirements which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
25. In this respect, the Court refers to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure which provide:

Article 49 [Deadlines] of the Law

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. [...].”*

Rule 36 (1) (c) of the Rules of Procedure

*“(1) The Court may consider a referral if:*

*[...]*

*(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...].”*

26. The Court notes that the Applicant challenges the Judgment (SCEL-11-0065-Coo68, of 13 May 2015) of the Specialized Panel of the SCSC by claiming that this is the final decision in her case. The Applicant had further confirmed the latter statement when she provided additional information in respect to clarifications requested by the Court on which is the last decision and which is challenged decision.

27. In this respect, the Court notes that the Applicant filed the Referral on 13 March 2015. She claimed that she was served with the challenged decision on 10 January 2015.
28. However, the Court observes that the Applicant was served with the challenged decision on 27 October 2014. This evidence was submitted by the Specialized Panel of the SCSC following the request of the Court for a copy of the receipt indicating the date when the Applicant was served with the challenged decision. The Court had asked for such evidence following the Applicant's statement that she could not provide it.
29. Considering the above mentioned facts, it results that the Applicant submitted the Referral to the Court after the expiry of legal deadline of four months, as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
30. The Court recalls that the objective of the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECtHR, Decision of 25 August 2005).
31. Nevertheless, as stated above, the Court also notes that the Applicant has presented a copy of a text intended to appeal the challenged decision. The copy does not have any registration number nor any attribute to prove that it has been submitted.
32. In this regard, assuming that the Applicant has submitted the appeal with the Appellate Panel of the SCSC, the Referral would be premature as it is still pending.
33. The Court cannot take into account the allegations of the Applicant that her right to equality before the law as guaranteed by the Constitution has been violated by the challenged decision without the Applicant first exhausting all effective legal remedies and without fulfilling other procedural requirements for filing a Referral.
34. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of fundamental rights.
35. The rationale for such exhaustion rule is to afford the concerned authorities, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no.25803/94, Decision of 28 July 1999).



36. Therefore, the Court considers that in case the Applicant has filed an appeal with the Appellate Panel of the SCSC, the Referral would be premature as the Applicant's proceedings following her appeal have not been concluded.
37. For the foregoing reasons, it results that the Referral is out of time and must be declared inadmissible pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 4 September 2015, unanimously

### **DECIDES**

- I. TO REJECT the Referral as 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. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Snezhana Botusharova



**President of the Constitutional Court**

Arta Rama-Hajrizi