



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 4 July 2016
Ref. no.: RK963/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI42/15

Applicant

Ljubiša Šipić

Constitutional review of “Judgment of the Special Chamber of the Supreme Court related to final list of employees entitled to 20% share of the proceeds from the sale of SOE „Mekanizimi“ of 25 November 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
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Ljubiša Šipić from village Sredska, Municipality of Prizren, with permanent residence in Nish, Republic of Serbia (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges *“Judgment of the Special Chamber of the Supreme Court related to final list of employees entitled to a share of 20% of proceeds from the sale of SOE „Mekanizimi“ of 25 November 2014.”*
3. The Applicant does not specify the number of the decision in order that it can be closer identified.

Subject matter

4. Subject matter is the request for constitutional review of the abovementioned decision which, as the Applicant alleges, violated Articles 3 [Equality Before the Law], 21 [General Principles], 24 [Equality Before the Law], 29 [Right to Liberty and Security], 32 [Right to Legal Remedies] and 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. In addition, the Applicant requests the Constitutional Court not to disclose his identity *“due to personal reasons of subjective nature”*.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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

7. On 31 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 22 April 2015, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Bekim Sejdiu.
9. On 28 October 2015, the Applicant submitted additional documents to the Court clarifying the Referral.
10. On 14 March 2016, the Court requested the Applicant to fill out the Referral form and submit the challenged decision to the Court.
11. On 29 March 2016, the Applicant submitted to the Court the completed Referral form and an extract of the legal practice of the Special Chamber of the Supreme Court.
12. On 6 April 2016 the Applicant submitted to the Court a decision of the Privatization Agency of Kosovo (hereinafter: PAK) Committee for Review of Complaints against the Lists of Employees, dated 28 March 2013.

13. On 20 May 2016, after having considered the case, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

14. On an unspecified date, PAK by public notice announced a provisional list of eligible employees to exercise their right to a share of 20% of proceeds from the sale of the SOE "Mekanizimi".
15. By the same public notice all those who considered that they had the right to be included in the list of workers were invited to submit within 20 days a complaint, the last date being 28 July 2012.
16. On 24 July 2012, the Applicant filed (complaint No. 001572) with the PAK against the provisional list of eligible employees to exercise their right to a share of 20% of proceeds from the sale of the SOE „Mekanizimi“.
17. On 28 March 2013, PAK announced the final list of eligible employees to participate in a share of 20% of proceeds from the sale in the process of privatization/liquidation of the SOE „Mekanizimi“.
18. On 28 March 2013, PAK Committee for Review of Complaints against the Lists of Employees (hereinafter: CRC) publicly announced the decision, which rejected the Applicant's claim as ungrounded with the reasoning that *„the Applicant has established a new employment relationship with the new employer“*.
19. The decision on the appeals PAK- CRC stated that *„the dissatisfied party is entitled to appeal this decision to the Special Chamber of the Supreme Court of Kosovo on PAK related matters in Prishtina within the time limit of twenty (20) days from the date of publication of the final list of workers, namely this decision, ended on 20 April 2013.“*
20. The Applicant did not file an appeal to the Special Chamber of the Supreme Court against the decision on CRC claims.
21. On 25 November 2014, the Special Chamber of the Supreme Court (hereinafter: SCSC) by final Judgment decided on the final list of employees who fulfilled the requirements to participate in a share of 20% of the sale proceeds generated from the process of privatization/liquidation of the SOE „Mekanizimi“.
22. On 19 February 2015, the Applicant submitted a request for information to the PAK about the outcome of the Applicant's appeal.
23. On 23 February 2015, PAK in its letter informed the Applicant of all the procedures that were conducted by PAK and SCSC regarding the determination of the final list of employees of the SOE “Mekanizimi”, with the notice that the procedure was finalized by a final judgment of SCSC of 25 November 2014.

Applicant's allegations

24. The Applicant alleges that PAK has not notified him in writing of the outcome of the appeal under number 001572 filed on 24 July 2012, whereby according to the Applicant's allegations a number of Articles of the Constitution (see paragraph 4 of this document) were violated as well as :

"... the Law on the Administrative Procedure has been violated, ... Due to these reasons I could not address the Special Chamber because I did not receive any notification regarding the outcome of my appeal, and consequently I missed the deadline. I consider this to be discriminatory and unequal treatment, because written responses and notifications were served to certain individuals, and I have evidence to prove that, but not in my case...."

25. The Applicant claims that *"a number of workers on the same basis and with the same appeal allegations, were included in the final list of workers for a share of 20% of proceeds from the sale of the SOE "Mekanizimi".*
26. The Applicant attached as proof the copies of written notifications by which PAK notified third parties of the outcome of their claims (complaints) as well as the practice of SCSC with respect to the employees who have established *"new employment relationship with a new employer"*
27. Therefore, the Applicant *"proposes that the Court approves my appeal and renders a DECISION to quash the harmful Decision of the Special Chamber of the Supreme Court of Kosovo related to the final list of employees pertaining to my exclusion from the list of employees who are entitled to 20% of the sale proceeds of the SOE "Mekanizimi" [...] which [...] decided in authoritative manner with final judgment on 25.11.2014".*

Admissibility of the Referral

28. The Court shall examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

29. The Court refers to Article 113.7 of the Constitution, which provides:

"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."

30. In addition, the Court refers to Article 47.2 of the Law, which provides that:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

31. Furthermore, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which provides:

“The Court may consider a referral if all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.”

32. The Court reiterates that rule of the exhaustion of legal remedies under Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure obliges those who wish to bring their case before the Court to use the effective legal remedies available under the law against the challenged judgment or decision.
33. The regular courts are thus afforded the opportunity to correct their errors through a regular judicial proceeding before the case comes to the Court. This rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR that under the domestic legislation there are legal remedies before the regular courts available in respect of the alleged breach regardless whether or not the provisions of the ECHR are incorporated in national law (See, *inter alia* *Aksoy v. Turkey* paragraph 51 ECtHR Judgment of 18 December 1996).
34. The principle is that the machinery of protection established by the Court is subsidiary to the regular system of judiciary safeguarding human rights (See *inter alia*, *Handyside v. United Kingdom* paragraph 48 ECtHR Judgment of 7 December 1976).
35. Under Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violations. The existence of such remedies must be sufficiently certain not only in theory but also in practice, and if this is not so, those remedies will lack the requisite accessibility and effectiveness (See, *inter alia*, *Vernillo v. France* paragraph 27 ECtHR Judgment of 20 February 1991, and *Dalia v. France*, paragraph 38 ECtHR Judgment of 19 February 1998).
36. It falls to the Court to examine whether the legal remedies have been exhausted, effective, available in theory and practice at the relevant time, that is, that the remedy was available, and that it could redress the violations in relation to the objections of the Applicant and that it enables reasonable prospect for success (See, *inter alia*, *Civet v. France* paragraphs 42-44 of ECtHR Judgment of 28 September 1999).
37. In the present case, the Court notes that the Applicant based his Referral on the allegation that PAK has not notified the Applicant in writing of the outcome of the appeal under number 001572 which was filed on 24 July 2012, which as the Applicant alleges violated the Law on Administrative Procedure and several Articles of the Constitution.
38. The Court further examines the Applicant's allegations that the workers had *“unequal treatment, because written responses and notifications were served to certain individuals.”*
39. Regarding the abovementioned allegations of the Applicant, the Court finds that in the present case the Law on Administrative Procedure is not applied, as

the Applicant alleges, but UNMIK Regulation no. 2003/13, and Articles 68.2 and 68.6 of the Law no. 04/L-033 on SCSC on Privatization Agency of Kosovo Related Matters which provide for public notice as a manner of informing the parties.

“68.2 Upon receiving a list of eligible employees pursuant to Section 10 UNMIK Regulation 2003/13, or any successor legislation governing the establishment of such a list, the Agency shall publish such list together with a notice to the public of the right of any person to file a complaint with the Agency within twenty (20) days after the date of publication requesting inclusion in such list and/or challenging the inclusion of one or more other persons in such list.”

40. From the documentation that the Applicant submitted to the Court, it follows that the PAK and the SCSC after each decision published public notices of the decisions taken in the procedure, as required by law, whereby all unsatisfied parties were informed about the legal remedies against this decision and the deadline for submitting them.
41. The evidence submitted by the Applicant that some employees were notified in writing of the outcome of their appeals, are additional information which does not affect the rights of third parties, according to which the public notice was done in accordance with applicable law.
42. The Court notes that the Applicant had the possibility to file an appeal with SCSC against Decision KAP-KRŽLR of 28 March 2013, pursuant to Article 68 paragraph 6 of Law no. 04/L-033 on SCSC on Privatization Agency of Kosovo Related Matters, as it is indicated by the instruction on legal remedy on the decision itself:

“...the dissatisfied party is entitled to file an appeal against this decision with the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters in Prishtina, within the time limit of 20 (twenty) days, from the date when the final list of workers, namely this decision, is published.”, that is, by 20 April 2013.

43. Further, the Court reminds that also against the decision of the Specialized Panel of SCSC there is a possibility to file an appeal with the Appellate Panel of the SCSC pursuant to Article 10 paragraph 6 of the Law no. 04/L-033 on SCSC on Privatization Agency of Kosovo Related Matters, which provides:

“10.6 A party shall have the right to appeal any Judgment [...] of a specialized panel [...] to the appellate panel by submitting to the appellate panel and serving on the other parties its appeal within twenty one (21) days [...]”

44. In the present case, the Court concludes that the Applicant had at his disposal two legal remedies before the regular courts which were effective and available to the Applicant and which could put right the violations with respect to the Applicant's objections, but the Applicant has not exhausted these effective legal remedies.

45. Before all the foregoing, the Court will not enter into considering other alleged violations of the Constitution invoked by the Applicant, because the Applicant should have raised these violations before the regular courts first.
46. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law in order to be able to submit a referral to the Constitutional Court, and the referral should be declared inadmissible, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) b) of the Rule of Procedure.

The request not to disclose identity

47. As to the request for non-disclosure of identity, the Applicant requested the granting of such request "*due to personal reasons of subjective nature*" without providing reasons or grounds for this request.
48. Nonetheless, in accordance with Rule 29 paragraph 6 of the Rules of Procedure, the Court rejects the request as ungrounded, because the Applicant has neither explained nor has he substantiated with supporting documentation the grounds of the request for his identity not to be disclosed.

FOR THESE REASONS

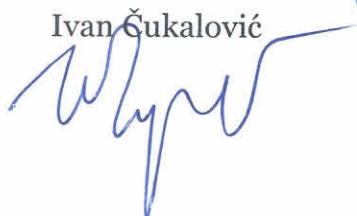
The Constitutional Court, in accordance with Article 113 paragraph 7 of the Constitution, Articles 20 and 47.2 of the Law, and Rules 29 (6) and 36 (1) (b) of the Rules of Procedure, on 20 May 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request not to disclose his identity;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 paragraph 4 of the Law; and
- V. This Decision is effective immediately;

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi