



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

Prishtina, 31 October 2016
Ref. no.: RK989/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI146/15

Applicant

Azem Brajshori

**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
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicants

1. Referral was submitted by Azem Brajshori from municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) [AC-I-14-0311- A0001-A0023] of 15 July 2015, that was delivered to the Applicant of 7 October 2015.

Subject matter

3. The subject matter is the request for constitutional review of the challenged Judgment. The Applicant did not specify what constitutional provision may have been violated.

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) is the legal basis for this referral.

Proceedings before the Constitutional Court

5. On 10 December 2015, Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 January 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur. On the same day, the President of the Court appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 22 February 2016, the Court informed the Applicant and the Appellate Panel about the registration of the Referral.
8. On 11 July 2016 the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur instead of Judge Robert Carolan.
9. On 12 July 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. The Applicant was an employee of the Socially Owned Trade Enterprise "Urata-Voqar" (hereinafter: "Urata-Voqar") until 1 January 1996.
11. On 2 May 2007, the "Urata-Voqar" was privatized.

12. On an unspecified date, the Privatization Agency of Kosovo (hereinafter: PAK) published the temporary list of employees who were entitled to a 20% share of the proceeds as a result of the privatization action. The Applicant was not included in this list. Also, PAK set the legal deadline until 3 October 2009, where the unsatisfied parties had the right for to appeal against the temporary list.
13. On 21 July 2011, PAK published the final list of the employees who were entitled to a share of the proceeds from the privatization of "Urata-Voqar" in which the Applicant was not included.
14. On 30 September 2011, the Applicant filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) after expiry of the legal deadline claiming that he was entitled to a 20% share of the proceeds from the privatization, because he had 11 (eleven) years, 7 (seven) months and 3 (three) days of work experience in this enterprise.
15. On 14 November 2011, KPA submitted its response to the Applicant's appeal in the Specialized Panel, emphasizing that *"complaint in the final list was made after the legal deadline provided by law"*. KPA proposed that the appeal be rejected as inadmissible.
16. On 29 September 2014, the Specialized Panel rendered Judgment [SCEL-11-0045] by which, the Applicant's appeal was rejected as out of time.
17. Furthermore, the Judgment reasoned that *"[...] After reviewing the case files, the Court has concluded that the Appellant has filed the Appeal before the SC on 30 September 2011, whereas the final List was announced on 21 July 2011. The last time limit for filing an Appeal before the SC was 13 August 2011, which means that it was done after the legal time limit had passed.[...]"*.
18. On 24 October 2015, the Applicant filed an appeal with the Appellate Panel against the Judgment SCEL-11-0045, 29 September 2014, of the Specialized Panel.
19. On 15 July 2015, the Appellate Panel Judgment (AC-I-14-0311-A0001-A0023) rejected the appeal and upheld Judgment of the Specialized Panel. The Judgment also stated:

"[...] At the phase of the Appeal, the Appellant has not provided any evidence by which he would have justified the issuance of the time limit for filing the Appeal, and for this reason, the Appellate Panel rejects the Appeal as ungrounded, and upholds the challenged Judgment in relation to this Appellant".

Applicants' allegations

20. The Applicant emphasized that he was treated unjustly because he was not included in the list of beneficiaries of a 20% share of the proceeds from the sale

of the enterprise “Urata-Voqar”, because according to him, he fulfilled the requirement to be included in that list.

21. The Applicant addressed the Court with a request that: *“to recognize my right that I have worked in this company from 28.05-1984 until 01.01.1996 [...] some employees who have the same status like me, are included in the final register 20%”*.

Assessment of the admissibility of the Referrals

22. The Court examines whether the Applicants met the admissibility requirements established by the Constitution and as further provided in the Law and foreseen by Rules of Procedure.

23. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] 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.”

24. The Court also refers to 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.”

25. In addition, the Court recalls Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which foreseen:

“(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”.

26. The Court notes that the Applicant in his Referral did not specify what rights and freedoms guaranteed by the Constitution are violated by the Decision of the Appellate Panel or by the decisions of the courts of lower instances as it is defined by Article 48 of the Law.

27. Applicant alleges "*my rights have been violated because I have worked in this enterprise for 12 years*". The Applicant stated he was not treated equally compared to other employees of "Urata-Voqar."
28. This allegation is ungrounded because he did not show the basis of this inequality.
29. The Court considers that in the conducted proceedings there are no facts or circumstances that in any way would show that in the proceedings before the Appellate Panel, Applicant's human rights and freedoms guaranteed by the Constitution were violated
30. The Court considers that the Applicant has not substantiated his allegations nor has he 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 dhe Mehdi Syla*, Constitutional Court of the Republic of Kosovo, Constitutional review of the Decision of the Court of the Appeal of Kosovo, CA no. 2129/2013, 5 December 2013 and Decision of the Court of Appeal of Kosovo, CA no. 1947/2013 of 5 December 2013).
31. The Court considers 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.
32. Therefore, the Referral is manifestly ill-founded on a constitutional basis and is to be declared inadmissible, in accordance with Article 113 7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 12 July 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 20.4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

A large, stylized blue ink signature of Arta Rama-Hajrizi, the President of the Constitutional Court, is written over the right side of the seal.