



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 27 February 2017
Ref. no.:RK 1041/17

RESOLUTION ON INADMISSIBILITY

in

Case no. KI96/16

Applicant

Shaha Salihu-Fetahu

**Constitutional review of Decision AC-I-0293 of the Appellate Panel of the
Special Chamber of the Supreme Court of Kosovo, of 6 April 2016**

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 Shaha Salihu-Fetahu (hereinafter: the Applicant), residing in village of Kaqybeg, Municipality of Podujeva.

Challenged decision

2. The Applicant challenges Decision [AC-I-0293] of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel) on the Privatization Agency of Kosovo (hereinafter: PAK) related matters, of 6 April 2016.
3. The challenged decision was served to the Applicant on 5 May 2016.

Subject matter

4. The subject matter of this Referral is the constitutional review of the Decision [AC-I-0293] of the Appellate Panel, of 6 April 2016, which allegedly violated the Applicant's rights to benefit from the 20% share of proceeds from the privatization of the socially-owned enterprise "Ramiz Sadiku". The Applicant has not specified the fundamental rights and freedoms provided by the Constitution, that she alleges were violated.

Legal basis

5. 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

6. On 21 June 2016 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 12 July 2016 the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
8. On 21 July 2016 the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Special Chamber of the Supreme Court.
9. On 7 November 2016 the President of the Court appointed Judge Altay Suroy as Presiding of the Review Panel, instead of Judge Robert Carolan, who resigned from the position of a judge of the Court on 9 September 2016.
10. On 15 November 2016 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court to declare the Referral inadmissible as being manifestly ill-founded on a constitutional basis.

Summary of facts

11. The Applicant was an employee of the Socially Owned Enterprise “Ramiz Sadiku” from 1981 to 1990. In 1990, she was dismissed from work.
12. On 27 June 2006, the Socially Owned Enterprise “Ramiz Sadiku” was privatized.
13. According to a notice published by the Kosovo Trust Agency (hereinafter: KTA), all complaints regarding the privatization of the Socially Owned Enterprise “Ramiz Sadiku” had to be submitted by 31 August 2007.
14. On 6 December 2007, the Applicant filed a complaint with the KTA, to which she claims to have attached all the evidence proving that she was an employee of the Enterprise “Ramiz Sadiku”. According to the Applicant, she never received a response on her complaint.
15. On 7 March 2009, KTA published the final list of employees eligible for the 20% share of proceeds from the privatization of the enterprise “Ramiz Sadiku”. Pursuant to Regulation no. 2003/13, the final list of KTA could be challenged within twenty (20) days from the day of its publication, and therefore the deadline was scheduled to end on 27 March 2009.
16. On 19 June 2013, the Applicant challenged the final list of PAK with the Special Chamber of the Supreme Court, alleging that she was entitled to participate in the 20% share of the privatization of the said enterprise.
17. On 10 December 2015, the Specialized Panel of the Special Chamber of the Supreme Court, by Decision [SCEL-09-0001-C1237-C1274], dismissed the Applicant's complaint as out of time.
18. On 25 January 2016, the Applicant filed an appeal with the Appellate Panel requesting reconsideration of the complaint that had been dismissed by the Specialized Panel of the Special Chamber of the Supreme Court.
19. On 6 April 2016, the Appellate Panel [Decision AC-I-0293] upheld the Decision [SCEL-09-0001-C1237-C1274] of the Specialized Panel of the Special Chamber of the Supreme Court.
20. The Decision of the Appellate Panel [Decision AC-I-0293] regarding the Applicant's complaint, among others, reasons as follows:

“The complainant C1268 Shaha Fetahu Salihu on 25 January 2016 submitted a complaint against the Decision of the Specialized Panel and requested to be included in the final list regarding her legitimate right to 20% share. In addition, in the complaint she states that she has sufficient evidence that she worked in the SOE “Ramiz Sadiku” from 1981 to 1990, and that it is not fair that her right to 20% is denied to her. She did not provide any explanation as to why she missed the legal deadline to challenge the final list.

(...)

In the case of these complainants, with any untimely appeal Article 130.3 of LCP, to allow the return to previous situation could not be applied, if the complaints of the complainants could be treated for the return to previous situations, because based on this legal provision, only within the deadline of 60 days could be requested the return to previous situation, and in these cases, several years have passed since the deadline to challenge the final list has expired.”

Applicant’s allegations

21. The Applicant alleges that the Decision [AC-I-0293] of the Appellate Panel, of 6 April 2016, violated her rights guaranteed by the Constitution, because she was denied the right to the 20% share from the privatization of SOE “Ramiz Sadiku.” With respect to the allegation of the violation of her rights, the Applicant has not specified any article of the Constitution.
22. Furthermore, the Applicant requests from the Court, *“to be included in the final list of the 20% from the privatization of the Enterprise “Ramiz Sadiku.”*

Admissibility of Referral

23. The Court examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
24. In this respect, the Court refers to Article 113, paragraphs 1 and 7, of the Constitution [Jurisdiction and Authorized Parties] which establishes:

*“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.”*
25. In addition, the Court 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.”
26. The Court also refers to Rule 36 [Admissibility Criteria] (1) (d) and (2) (b) of the Rules of Procedure, which provides:

(1) *“The Court may only deal with Referrals 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,

(...)

27. Firstly, the Court recalls that the Applicant challenges the Decision [AC-I-0293] of the Appellate Panel on PAK related matters, of 6 April 2016, alleging that it violates her right to benefit from the 20% share of proceeds from the privatization of the Socially Owned Enterprise “Ramiz Sadiku”.
28. The Court recalls that the Applicant did not specifically mention any Article of the Constitution or of the European Convention on Human Rights (ECHR) regarding the alleged violation of her rights. However, the Court notes that in substance the Applicant’s allegations are related to the alleged violation of the right to a fair trial.
29. The Court notes that the Applicant’s allegations are specifically related only to the interpretation and the application of the provisions of the procedural law, regarding the legal deadlines that provide for the right to file an appeal under Regulation 2003/13 and the Law on Contested Procedure. The Applicant’s allegations, as such, in fact raise issues of legality and fall within the scope of the regular courts.
30. In this regard, the Constitutional Court reiterates that it is not a fact-finding court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts, while the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution. Therefore, the Constitutional Court cannot act as a fourth instance court (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
31. Furthermore, it is not the role of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court can only consider whether the regular courts’ proceedings in general have been conducted in such a way that the Applicant had a fair trial (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
32. The Court considers that the Applicant’s Referral fails to prove that the respective panels of the Special Chamber of the Supreme Court acted in an arbitrary or unfair manner. Furthermore, the Court considers that based on the facts of the case as presented by the submitted documents and the Applicant’s allegations, the Specialized Panel and the Appellate Panel of the Special Chamber of the Supreme Court provided detailed and clear reasons for their decisions on the matter, including the reasons based on which they dismissed the Applicant’s complaints as out of time.

33. The Court recalls in particular the fact that in her Referral, the Applicant did not provide relevant arguments to justify her allegations that in any way, there has been a violation of her constitutional rights.
34. The fact that the Applicant does not agree with the outcome of the case cannot of itself raise an arguable claim of a breach of the right to fair and impartial trial (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECtHR, Judgment of 26 July 2005).
35. In these circumstances, the Court considers that the Applicant has not substantiated nor has she sufficiently justified her allegation for violation of human rights and fundamental freedoms guaranteed by the Constitution and ECHR, because the facts presented by her do not show in any way that the regular courts have denied her these rights.
36. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Article 48 of the Law and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (1) (d) and 36 (2) (b) and 56 (2) of the Rules of Procedure, on 27 February 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court

Gresa Caka-Nimani



Arta Rama-Hajrizi