



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

Prishtina, on 15 August 2016
Ref. No.:RK974/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI11/16

Applicant

Aziz Rexhepi

**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 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
Bekim Sejdiu, Judge
Selvete Gerxhaliu, Judge
Gresa Caka Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Aziz Rexhepi 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 Related Matters (hereinafter: the Appellate Panel) of 15 July 2015, which was served on him on 2 October 2015.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Appellate Panel, which allegedly violated the Applicant's rights under Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 41 [Right of Access to Public Documents] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 49 of 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

5. On 15 January 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 February 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 27 April 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of it to the Appellate Panel.
8. On 13 June 2016, 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 states that he was an employee of the Socially Owned Enterprise "Urata/Voćar" (hereinafter, the Urata/Voćar), where *"he has worked since 1974 until 1992 and "since 1992 until 1999 he was in a contractual relationship with the enterprise, from which he has had a business premise in his usage"*.
10. On 20 May. 2007, Urata/Voćar was privatized.

11. On an unspecified date, the Privatization Agency of Kosovo (hereinafter, PAK) published the provisional list of employees entitled to a 20% share of the proceeds from the privatization of Urata/Voćar (hereinafter: the 20% share). The Applicant was not included in the list.
12. On 21 July 2011, PAK published the final list of employees entitled to the 20% share. The Applicant was not included in that list either.
13. On 8 August 2011, the Applicant filed an appeal with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (hereinafter: the Specialized Panel), alleging that *"the PAK decision was unfair because it is based on erroneous determination of factual situation, erroneous application of the substantive law, and that is the reason why he was denied the right to 20%"*. The Applicant also alleges that *"he is the victim of discrimination"*.
14. On 14 September 2011, PAK responded to the Applicant's appeal, arguing that *"the provisional list was published with a note that the employees have the right within 20 days to file a complaint against the provisional list. The claimant did not do it, and, therefore, PAK proposed that the Applicant's complaint be rejected as inadmissible, because he does not meet the legal requirements for obtaining 20% under Article 10.4 of UNMIK Regulation 2003/13"*.
15. On 29 September 2014, the Specialized Panel, in its Judgment SCEL- 11-0045, approved as grounded the Applicant's appeal, explaining that *"the Appellant refers to discrimination, and he presented the facts from which it may be presumed direct or indirect discrimination. The Court considers that the appeal is grounded"*.
16. On 28 October 2014, PAK filed an appeal with the Appellate Panel.
17. On 15 July 2015, the Appellate Panel, in its Judgment AC-I-14-0311-A0001-A0023, annulled the Judgment of the Specialized Panel. In the reasoning of the Judgment it is stated:

"Since the Applicant claims that his removal from office was on the ground of ethnic discrimination by the Serbian authorities in this SOE, the Applicant did not submit any evidence that would prove his employment relationship with this SOE. He did not prove by anything until when he worked in the SOE. For this reason, the Appellate Panel concludes that the Appellant does not meet the legal requirements to be included on the final list of employees".

Relevant law

18. Article 10.4 of UNMIK Regulation 2003/13 on the Transformation of the Right of Use of Socially-Owned Immovable Property (hereinafter: UNMIK Regulation 2003/13) foresees:

“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 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, from submitting a complaint to the Special Chamber pursuant to subsection 10.6”.

Applicant’s allegations

19. The Applicant claims that the Judgment of the Appellate Panel violated his rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 41 [Right of Access to Public Documents] and 53 [Interpretation of Human Rights Provisions] of the Constitution.
20. The Applicant alleged before the Specialized Panel that he was *“the victim of discrimination”*.
21. The Applicant requests the Court that *“the PAK decision and the decision of the Appellate Panel be well considered and their compliance with the Constitution be assessed, as well as the constitutionality of the provisions mentioned above, including discrimination, namely unequal treatment by PAK when publishing the final list to 20% and compensation from the privatization of the SOE in Prishtina”*.
22. The Applicant also requests the Court that *“the Judgment of the Appellate Panel be annulled and to order the competent authorities to include him on the list of eligible employees who are entitled to 20% share from privatization”*.

Admissibility of the Referral

23. The Court first examines whether the Referral meets 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 paragraph 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. “

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 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) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”
27. The Court recalls that the Applicant alleges a violation of his rights to equality before the law, to fair and impartial trial and to access to public documents.
28. In respect of the alleged violation of the right to equality before the law, the Court notes that the Applicant argued that he was discriminated against “*because he was unequally treated by PAK in relation to other employees*”. However, he has not explained why and how he was treated unequally by PAK or other competent authorities in relation to other workers. Therefore, the Court finds that the allegation is ungrounded.
29. In fact, the Court considers that the proceedings, and the decisions of PAK and of the Appellate Panel were not a result of discrimination on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status as it is provided by Article 24.2 of the Constitution. The Applicant had equal access to PAK and equal protection of his rights before the Appellate Panel.
30. Moreover, the Court notes that the Applicant did not prove before the Appellate Panel the employment status he had with the SOE. Therefore the Appellate Panel could not deal with the issue of discrimination, as the Applicant was not an employee “*considered as eligible to 20% share of proceeds,*” pursuant to Article 10.4 of UNMIK Regulation 2003/13.
31. The Court further refers to the case law of the European Court of Human Rights (hereinafter: the ECtHR) which states that discrimination “*is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*” (See Judgment *Willis v. the United Kingdom*, no. 36042/97, paragraph 48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, paragraph 63, *D.H. and others v. Czech Republic*, paragraph 44).
32. In respect of the alleged violation of the Applicant’s right to fair and impartial trial, the Court notes that PAK and the regular courts dealt with the Applicant’s allegations, as well as with the merits of his request for exercising the rights deriving from UNMIK Regulation 2003/13. The Appellate Panel found that “*the Applicant did not submit any evidence that would prove his employment*

relationship with this SOE". Hence it concluded that "*the Appellant does not meet the legal requirements to be included on the final list of employees*".

33. The Court considers that the Judgment of the Appellate Panel took into due account the Applicant's grounds of appeal and clearly and concisely explained why he could not be included on the list of employees eligible to 20% share of proceeds from the privatization of Urata/Voćar.
34. Accordingly, the Court finds that the Appellate Panel respected the Applicant's right to a fair trial under Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
35. That finding is in accordance with the case law of the ECtHR, which held that the courts "*are obliged to give reasons for their decisions so as to provide clear and understandable reasons on which those decisions were based*". (See ECHR, *Suominen v. Finland*, no. 37801, Judgment of 1 July 2003).
36. The Court further recalls that the Applicant claims that the Judgment of the Appellate Panel violated his right to access to public documents. However, the Applicant has not stated which public documents he could not have access to public documents and which authority arbitrarily denied him the access. Therefore, the Court cannot find any violation of the Applicant's right to access to public documents guaranteed by Article 41 of the Constitution.
37. In sum, the Court considers that there are no facts nor circumstances in the conducted proceedings before the Appellate Panel that would in any way indicate that the Applicant's constitutional right to equality before the law, to fair and impartial trial and to access to public documents have been violated.
38. The Court further 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 the European Convention on Human Rights (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).
39. The Court finds that the Applicant's Referral does not meet the admissibility requirements as established by the Constitution, provided by the Law and foreseen by the Rules of Procedure.
40. 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, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, on 13 June 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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

Almiro Rodrigues

President of the Constitutional Court

Arta Rama-Hajrizi

