



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

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Prishtina, on 29 November 2013  
Ref.no.:RK508/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI183/13**

Applicant

**Privatization Agency of Kosovo**

**Constitutional Review of the Decision of the Appellate Panel of the  
Special Chamber of the Supreme Court of the Republic of Kosovo  
DHPGJS. No. AC-II-12-0212 of 7 March 2013  
and  
request for imposing interim measure**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is the Privatization Agency of Kosovo (hereinafter: Applicant), represented by Mr. Agron Kajtazi, lawyer.

## **Challenged decision**

2. The Applicant challenges the Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo no. AC-II-12-0008, of 23 May 2013 (hereinafter: SCSC Appellate Panel), and the Judgment of the Municipal Court in Prishtina C.no.503/2005 of 5 November 2007. The Applicant was served the Judgment of the APSCSC on 17 June 2013.

## **Subject matter**

3. The subject matter of the Referral is constitutional review of the Decision of the Appellate Panel of the SCSC no. AC-II-12-0008, of 23 May 2013, related to alleged violations of Article 102.3 [General Principles] of the Constitution, and Article 6 [Right to due process] of the ECHR.
4. Amongst others, the Applicant requests from the Court to impose an Interim Measure.

## **Legal basis**

5. Article 113.7, in conjunction with Article 21 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2008, entered into force on 15 January 2009 (hereinafter: Law), and Rules 55 and 56, paragraphs 2 and 3 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Court**

6. On 24 October 2013, the Applicant submitted the Referral to the Kosovo Post Office.
7. On 28 October 2013, the Referral of the Applicant was delivered to the Court, through the Kosovo Post courier.
8. On 31 October 2013, the President of the Court, by Decision No. GJR.183/13, appointed Judge Robert Carolan as Judge Rapporteur, and by Decision No. KSH.183/13, appointed the Review Panel composed of members: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
9. On 2 October 2013, the Court informed the representative of the Applicant and the SCSC on the registration of Referral.
10. On 14 October 2013, 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**

11. On 8 April 2005, the claimants Mrs. B. and Mr. B. M. filed a claim with the Municipal Court in Prishtina, related to annulment of immovable property sale

contracts (no. 96/62 of 13 January 1962, no. 3243163 of 28 December 1963, no. 3022/63 of 5 February 1963), entered into by the predecessor of claimants and respondents.

12. On 5 November 2007, the Municipal Court in Prishtina rendered Judgment C. no. 503/2005), thereby approving as grounded the claim of claimants, and ordering the respondent, the enterprise SOE KBI "Kosova Export", from Fushë Kosova, to restore the ownership over the property claimed to the claimants.
13. The Judgment was served on the respondent on 12 November 2007, and the respondent did not file any complaint.
14. On 2 April 2008, the Kosovo Cadastral Agency, by Decision no. 952/4, refused the request of the claimants to transfer the claimed parcels. The claimants had requested transfer of such parcels to their ownership, based on the case won by Judgment of the Municipal Court in Prishtina, C. no. 503/2005 of 5 November 2007. The request of the claimants was refused by the Kosovo Cadastral Agency, due to the allegation of the Agency that "the request lacked relevant evidence which would justify the legal basis of the plaintiffs' request".
15. On 8 June 2008, the claimants filed a complaint with the SCSC, challenging the decision on refusing the transfer of parcels into the ownership to the claimants.
16. On 9 June 2010, the SCSC Trial Panel rendered the Decision SCC-08-0168, thereby rejecting the claim of claimants as inadmissible, due to the fact that the subject of such claim was already adjudicated by the Judgment of the Municipal Court in Prishtina. The decision was served upon the representative of the claimants and the respondent on 18 June 2010.
17. On 1 February 2012, the Applicant, as a representative of the SOE KBI "Kosova Export" from Fushë Kosova, against the final Judgment of the Municipal Court in Prishtina, C.no.503/2005 of 5 November 2007, filed a complaint with the Appellate Panel of the SCSC, thereby requesting annulment of the Judgment, due to lack of primary jurisdiction of that court to decide upon the case.
18. On 31 June 2013, the SCSC Appellate Panel rendered a Decision AC-II-12-0008, thereby rejecting as inadmissible the complaint of the Applicant, filed against the Judgment of the Municipal Court in Prishtina, C.no.503/2005 of 5 November 2007, due to filing the appeal out of the legal time limit.
19. The following is a conclusion of the SCSC Appellate Panel related to reasoning of the decision: *"Therefore, the PAK complaint is inadmissible, since the judgment challenged had already been final, and was under execution proceeding, and therefore, such challenging was possible only by extraordinary remedies, and only within the set legal deadlines."*

### **Applicant's allegations**

20. The Applicant alleges that the SCSC Appellate Panel Decision no. AC-II-12-0008 of 23 May 2013, rejecting the PAK complaint as inadmissible, and the

Judgment of the Municipal Court in Prishtina C.no.503/2005 of 5 November 2007 contains the following violations:

*i) Violation of constitutionality and legality, as provided upon by Chapter VII, Article 102, paragraph 3, of the Constitution of the Republic of Kosovo, thereby providing that the courts shall adjudicate upon Constitution and law.*

*ii) Violation of the European Convention on Human Rights (ECHR), Article 6, providing on fair and impartial trial; and*

*the PAK expresses its view that the SCSC Appellate Panel has rendered its Decision no. AC-II-12-0008 in violation of Article 102, paragraph 3, based on the fact that the legal reasoning is not based on legal arguments, and reasoning is not sufficient and convincing. This fact can be proven by relevant evidence, which prove to the contrary of what was stated by the Appellate Panel, that the PAK complaint was filed after the set deadline, and as such, it must be rejected as inadmissible”.*

21. Furthermore, the Applicant requires the Constitutional Court to render a judgment finding the referral admissible, and annul the Decision AC-11-12-0008 of 23 May 2013, rendered by the SCSC Appellate Panel, and the Judgment of the Municipal Court in Prishtina, C. no. 503/2005 of 5 November 2007.

### **Assessment of admissibility of the Referral**

22. In order to be able to adjudicate the Referral of the Applicant, the Court needs first to examine whether the applicant has met all requirements as provided by the Constitution, and further specified by the Law and the Rules of Procedure of the Court.

23. The Referral of the Applicant is grounded upon Article 113. paragraph 7, which provides:

*113.7 “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.*

And Article 21, paragraph 4 of the Constitution which provides:

*21.4 “Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”*

24. In terms of admissibility in this case, the Court refers to Article 49 [Deadlines] of the Law, which provides that:

*“The referral should be submitted within a period of four (4) months...”*

25. Furthermore, Rule 36 (1) item b) [Admissibility Criteria] of the Rules of Procedure provides that:

*b) "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. From the case files, it is clearly shown that the last decision on the Applicant's matter is the Decision of the SCSC Appellate Panel AC-U-12-0008, of 23 May 2013, which the Applicant claims to have received on 17 June 2013.

27. The Applicant submitted the Referral on 24 October 2013, in one of the branches of the Post of Kosovo, and the Court received the same on 28 October 2013. In this case, the date of submission of the Referral shall be deemed to be 24 October 2013, the date when the Referral was submitted to the Branch office of Post of Kosovo.

28. With a view of calculating deadlines, the Court refers to Rule 27. (3) and (6) [Calculation of time periods] of the Rules of Procedure, which provide:

Rule 27

*"A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows:*

*[...]*

*3) When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred;*

*[...]*

*(6) Otherwise "when a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day".*

29. In this context, the Court notes that the Applicant has not filed his Referral within the deadline of four (4) months, since the Referral had to be filed ultimately on Thursday, 17 October 2013, to be in compliance with the four month deadline of the law.

### **In relation to the request for imposing interim measure**

30. The Court notes that the Applicant also requests from the Court to impose an Interim Measure.

31. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which provides: *"While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages".*

32. Also, the Court takes into consideration Article 27 of the Law, which provides:

*“The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest”.*

33. Furthermore, Rule 54(1) of the Rules of Procedure provides:

*“At any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures”.*

34. Finally, Rule 55 (1) of the Rules of Procedure provides:

*“A request for interim measures shall be given expedited consideration by the Court and shall have priority over all other referrals”.*

35. For the Court to impose an interim measure, it must find, in compliance with Rule 55 (4) of the Rules of Procedure, that:

*“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*

*(c) the interim measures are in the public interest.*

*If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application”.*

36. The Court concludes that since the Applicant’s Referral is rejected as inadmissible, then the request for Interim Measure can no longer be subject of review and, therefore, the request for interim measure must be rejected.

37. The Referral does not meet procedural criteria for admissibility, due to submitting the same out of the time limit provided for by the Law and the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, in accordance with Articles 27 and 49 of the Law and Rule 36 (1) b), Rule 55, and Rule 56 (2) and (3) of the Rules of Procedure, on 14 November 2013, unanimously

## DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the request for Interim Measure;
- III. TO NOTIFY the Parties of this Decision;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan



**President of the Constitutional Court**



Prof. Dr. Enver Hasani