



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

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Prishtina, on 13 June 2016  
Ref. No.:950/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI20/16**

Applicant

**Shefki Vokrri**

**Request for 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 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. Shefki Vokrri from village Svegël, Municipality of Podujeva (hereinafter: the Applicant), who is represented by Mr. Musli Abazi, lawyer from Prishtina.

## **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 16 October 2015.

## **Subject Matter**

3. The subject matter of the Referral is the constitutional review of the Judgment of the Appellate Panel, which allegedly violated the Applicant's rights under Article 3 [Equality Before the Law] of Chapter I of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 24 of Chapter II of the Constitution [Equality Before the Law] and Article 49 [Right to Work and Exercise Profession] of the Constitution.

## **Legal Basis**

4. Article 113.7 of the Constitution, Article 49 of Law No. 03/L-121 on the 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 1 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 March 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Altay Suroy and Gresa Caka-Nimani.
7. On 30 March 2016, the Court informed the Applicant and the Appellate Panel about the registration of the Referral.
8. On 14 April 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. The Applicant was an employee of the Socially Owned Enterprise SOE Voćar (hereinafter: SOE Voćar) until 1 September 1993.
10. On 2 May 2007, the SOE Voćar was privatized.
11. On an unspecified date, the Privatization Agency of Kosovo (hereinafter: the PAK) published the temporary list of employees entitled to a 20% share of the proceeds from the sale of the privatization of the SOE Voćar (hereinafter: the 20% share), in which the Applicant was not included. The PAK set the legal

deadline for 3 October 2009, within which the dissatisfied parties would have the right to appeal the temporary list.

12. On 21 July 2011, the PAK published the final list of employees entitled to the 20% share, in which the Applicant was not included.
13. On 25 July 2011, the Applicant filed a complaint with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency Related Matters (hereinafter: the Specialized Panel) after the expiry of the legal deadline, alleging that he was entitled to the 20% share, because he had 14 (fourteen) years, eight (8) months and five (5) days of work experience in the company.
14. On 25 August 2011, the PAK sent its response to the Applicant's complaint to the Specialized Panel, stating that the Applicant had not fulfilled the requirements of 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). While the deadline for filing an appeal against the temporary list was 3 October 2009, the Applicant did not file an appeal against the provisional list in time. The PAK proposed that the appeal to be rejected as inadmissible.
15. On 29 September 2014, the Specialized Panel rendered Judgment SCEL-11-0045 and approved the Applicant's appeal as grounded, ordering the PAK to include the Applicant in the list of eligible workers entitled to the 20% share.
16. Based on Article 10 [Judgments, Statements and Appeals], paragraph 4, of UNMIK Regulation 2003/13, the PAK filed an appeal with the Appellate Panel of the Special Chamber against Judgment SCEL-11-0045, stating that: *"The appellant [the Applicant] did not prove in any way that he was discriminated against, and also failed to prove that he was registered as an employee of the enterprise at the time of privatization."*
17. On 15 July 2015, the Appellate Panel rendered Judgment AC-I-14-0311-A0001-A0023 approving the appeal of the Agency and annulling Judgment SCEL- 11-0045 of the Specialized Panel. In the reasoning of the Judgment it is stated:

*„...the appellant did not submit any evidence which would prove his employment relationship with this SOE, except his workbook which was closed in 1993. In his appeal, the appellant did not mention discrimination as a reason for his dismissal from work. [...] For this reason, the Appellate Panel concludes that this appellant does not meet the legal requirements to be included in the final list of employees. “*

## **Relevant law**

18. Article 10.4 of UNMIK Regulation 2003/13 reads: *"For the purpose of this section 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 emphasized in his Referral that *„he considers the Judgment of the Appellate Panel as ungrounded, because it excludes him from the final list of participation to a 20% share of the privatization proceeds of “SOE Voćar”, although this right was recognized by the first instance Judgment of the Specialized Panel.”*
20. The Applicant addresses the Court with the request that: *„as a regular employee to be included in the final list of employees of SOE Voćar, who are entitled to the proceeds from privatization“.*

### **Admissibility of the Referral**

21. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Referral met the admissibility requirements laid down in the Constitution and as further specified in the Law and Rules of Procedure.

22. In this regard, Article 113.7 of the Constitution, 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.”*

23. Article 48 of the Law also stipulates:

*“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”.*

24. In the present case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which provides:

*“(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”.*

25. Having analyzed the Applicant’s allegations regarding a violation of the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR), the Court

notes that the Applicant has built his Referral on the allegations that the Judgment of the Appellate Panel violated his rights and freedoms guaranteed by Articles 3 [Equality before the Law], 24 [Equality before the Law] and 49 Right to Work and Exercise Profession] of the Constitution.

26. In assessing the Applicant's allegations regarding a violation of Articles 3 and 24 of the Constitution and Article 14 of the ECHR, the Court observes that, although the Applicant stated that he was unequally treated in comparison with the other workers of SOE Voćar, he did not in any way indicate the basis of this inequality.
27. Moreover, the Court notes that the Appellate Panel in the challenged judgment dealt precisely with the issue of discrimination. In this context, the Appellate Panel found that the Applicant could have built his appeal on the basis of discrimination, pursuant to Article 10.4 of UNMIK Regulation 2003/13 which states among other that the: „[...] employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination.” (See paragraph 18 of the Report).
28. The Court further refers to the relevant case law of the European Court of Human Rights where it is held that “*discrimination that 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).”
29. As to the Applicant's allegation of a violation of Article 49 of the Constitution, the Court finds that, in its judgment, the Appellate Panel rejected the Applicant's appeal against the judgment of the Specialized Panel for the reason that, by that judgment, it was merely determined that his employment relationship was terminated in 1993, based on the evidence submitted by him. The challenged judgment did not directly or indirectly terminate the Applicant's employment relationship, nor did the judgment, in any way, deny or restrict his rights and freedoms, as provided by Article 49 of the Constitution.
30. In sum, the Court is of the opinion that, in the proceedings before the Appellate Panel, there are no facts or circumstances that would indicate that the Applicant's human rights or freedoms guaranteed by the Constitution or ECHR have been violated.
31. 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 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).

32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 14 April 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; and
- IV. This Decision is effective immediately;

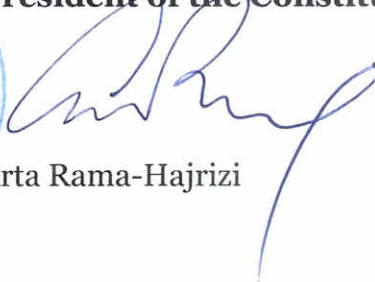
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi