



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

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Prishtina, on 15 December 2017  
Ref. No.: RK 1169/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI101/17**

Applicant

**Nesim Cena**

**Constitutional review of Judgment AC-I-14-0030 of the Appellate Panel  
of the Special Chamber of the Supreme Court of Kosovo on Privatization  
Agency of Kosovo Related Matters of 27 July 2017**

### **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 Nesim Cena from Rahovec (hereinafter: the Applicant), who is represented by Ismet Kërçagu, a lawyer from Rahovec.

## **Challenged decision**

2. The Applicant challenges Judgment AC-I-14-0030 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 27 July 2017.

## **Subject matter**

3. The Applicant did not specify in the Referral which constitutional rights and freedoms have been violated by the challenged Judgment of the Appellate Panel.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the 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 21 August 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 August 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Artë Rama-Hajrizi and Gresa Caka-Nimani.
7. On 28 August 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Appellate Panel.
8. On 23 October 2017, the Review Panel considered the report of the Judge Rapporteur, and made a recommendation to the Court on the inadmissibility of Referral.

## **Summary of facts**

9. The Applicant had established an employment relationship with the Socially Owned Enterprise "Silosi" (hereinafter: SOE "Silosi").
10. On 19 November 1991, the management of SOE "Silosi" rendered Decision No. 278, which terminated the Applicant's employment relationship.
11. On 16 November 2005, the Board of Directors of the Privatization Agency of Kosovo (hereinafter: PAK Board of Directors) rendered decision to start the liquidation process of SOE "Silosi" on 17 November 2005. The decision on liquidation states [...] *all interested parties have a deadline to submit their property claims to the Liquidation Commission of the SOE "Silosi" by 26 February 2006.*



12. On 25 January 2008 (after the expiry of the legal deadline), the Applicant filed his property claim with the Liquidation Commission of SOE "Silosi", with the reasoning: *"... that he was a little late with his complaint because he did not know that his claim should be submitted to the Liquidation Commission"*.
13. On 14 February 2013, the Liquidation Authority of the Privatization Agency of Kosovo (hereinafter: the Liquidation Authority of PAK), rendered Decision No. PRZ004-0397, which rejected the Applicant's property claim as ungrounded because *"it was filed out the time-limit in which the parties had the opportunity to file their property claims."*
14. On 7 March 2013, the Applicant filed a complaint with the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber), against Decision No. PRZ004-0397 of the Liquidation Authority of PAK.
15. The Applicant, among other things, stated in the appeal: *"that he was late with his claim due to the fact that he did not know that he had to address the authorities for the payment of unpaid salaries."*
16. On 31 July 2013, the Liquidation Authority of PAK responded to the Applicant's appeal and proposed to the court to reject the appeal as inadmissible and ungrounded with the reasoning *"that the appeal is ungrounded, that the claim was statute-barred because it was filed after the expiration of the prescribed deadline for filing claims."*
17. The Applicant's appeal and the PAK response were forwarded by the Special Chamber to the Specialized Panel No. IV of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) for rendering decision.
18. On 15 January 2014, the Special Chamber rendered Judgment C-IV-13-0102, rejecting the Applicant's appeal as ungrounded, with a reasoning:  
  
*"Neither in his complaint nor in his response to the respondent's defense filed later on, the complainant (the Applicant) has provided any credible evidence whereby would have been excused his very long delay in filing the claim with Liquidation Authority."*  
  
*Article 37, paragraph 4, item 4.1 of Annex to the Law no. 04/L-034 on Privatization Agency of Kosovo determines that claims that are barred by a limitation period established by the law applicable thereto and claims that have not been properly and timely brought in a court having jurisdiction with respect thereto, shall be rejected and shall not be eligible to participate in any distributions from the liquidation."*
19. On 7 March 2014, the Applicant filed an appeal with the Appellate Panel.
20. The Liquidation Authority of PAK sent also its responses to the Appellate Panel, which among other things stated *"that the deadline expired on 26 February 2006. Accordingly, his claim was out of time."*

21. On 27 July 2017, the Appellate Panel rendered Judgment AC-I-14-0030 rejecting the Applicant's appeal as ungrounded. The reasoning of the Judgment reads:

*"The panel found that the liquidation of SOE "Silosi" Xërxë started on 17 November 2005, based on the decision of the Board of Directors of PAK dated 16 November 2005. The deadline for submitting the claims to the Liquidation Commission expired on 26 February 2006. The complainant submitted his claim on 25 January 2008, as can be seen from the KTA stamp. [...] Based on all the above, the Appellate Panel considers that the appeal must be rejected as unfounded."*

### **Applicant's allegations**

22. The Applicant states that *"It is true that he had a small delay on submitting the request in question but as we provided an explanation initially he was not aware that he shall address the body regarding the request for the compensation of unpaid salaries, he does not read press; he is a driver, he does not deal with politics."*
23. The Applicant claims that the legislator regarding the delays in cases such as his, also provides the facilitations, so that Article 380, paragraph 2 and Article 193 of the Law on Obligational Relationships tolerate a delay of up to five years. His claim must be analogously linked with these Articles.
24. The Applicant requests the Court to *"...take into consideration the allegations in the Referral and to approve the referral as grounded, and to make the payment of 161 unpaid salaries which amount to 80.0498. Euros."*

### **Admissibility of the Referral**

25. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and as further specified in the Rules of Procedure.
26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], which establish:
- "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."*
27. The Court notes in the present case that the Applicant did not specify in his Referral what constitutionally guaranteed rights and freedoms have been violated by the decisions of the regular courts, although Article 48 of the Law [Accuracy of Referral] stipulates that:



*“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.”*

28. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”*

29. The Court notes that the Applicant is an authorized party; the Referral was filed in accordance with the time limits stipulated by Article 49 of the Law and the Applicant has exhausted all legal remedies.
30. The Court further refers to Rule 36 (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. ”*

31. The Court notes that, in essence, the Applicant complains of the fairness of the court proceedings relating to the rejection of his appeal regarding the property claim he has filed with the Liquidation Commission of the SOE “Silos”.
32. Therefore, the Court will deal with the examination of the Applicant's Referral based on the right to fair trial guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution.
33. As to Article 31 [Right to Fair and Impartial Trial] of the Constitution, the Court first recalls its case law, where it has established:

*“By the Constitution, it is not its duty to act as court of appeal, or a fourth instance court, in relation to decisions made by lower courts. The role of the lower courts is to interpret the law and apply the appropriate rules of procedure and substantive law (see, mutatis mutandis, Garcia Ruiz v. Spain [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-1).*

*The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, Constitutional Court Judgment of 23 June 2010, Kosovo Energy Corporation against 49 individual judgments of the Supreme Court of the Republic of Kosovo, paras 66 and 67).” (See Constitutional*

Court Resolution on Inadmissibility of 18 October 2010, *Karfeta v. Supreme Court*, KI 42/09, para. 18, 19)."

34. The Court also recalls that, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, *"human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*
35. In this respect, the Court reiterates that, according to the European Court of Human Rights (hereinafter: the ECtHR) *"the role of regular courts is to interpret and apply the pertinent rules of both procedural and substantive law"* (see: ECtHR, case Judgment of 21 January 1999, *Garcia Ruiz v. Spain* [GC], No. 30544/96, para. 28).
36. The Court notes in the present case that the Applicant mentions as main argument for alleged constitutional violations the fact that *"the courts should have applied the legal provisions of Article 380, paragraph 2, and Article 193 of the Law on Obligational Relationships, which regulate different time-limits for the statutory limitation."*
37. Precisely as far as these Applicant's allegations are concerned, the Court recalls the reasoning of the ECtHR in the case *Anđelković v. Serbia* (Judgment of 9 April 2013, No. 1401/08, paragraph 24):

*"The Court reiterates at the outset that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among many authorities, Brualla Gómez de la Torre v. Spain, 19 December 1997, § 31, Reports of Judgments and Decisions 1997-VIII). That being so, the Court will not question the interpretation of domestic law by the national courts, save in the event of evident arbitrariness (see, mutatis mutandis, Ādamsons v. Latvia, no. 3669/03, § 118, 24 June 2008), in other words, when it observes that the domestic courts have applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions and/or a denial of justice (see, mutatis mutandis, Farbers and Harlanova v. Latvia (dec.), no 57313/00, 6 September 2001, and, albeit in the context of Article 1 of Protocol No. 1, Beyeler v. Italy [GC], no. 33202/96, § 108, ECHR 2000-I)."*

38. Based on this, the Court finds that the Applicant's allegations of erroneous application and inconsistent interpretation of the relevant legal provisions, allegedly committed by the Specialized Panel and the Appellate Panel, raise questions that fall within the scope of the regular courts (legality), and not in the domain of the Constitutional Court (constitutionality).
39. In addition, the Court finds that the Specialized Panel and the Appellate Panel in their judgments applied the legal provisions of Article 37, paragraph 4, item 4.1 of the Annex to the Law No. 04/L-034 on the Privatization Agency of Kosovo, which regulate precisely the time limits for the statutory limitation of claims:



Article 37 paragraph 4 item 4.1

[...]

*4.1. Claims that are barred by a limitation period established by the law applicable thereto and claims that have not been properly and timely brought in a court having jurisdiction with respect thereto, shall be rejected and shall not be eligible to participate in any distributions from the liquidation.”*

40. The Court further notes that the Appellate Panel in its judgment AC-I-14-0030 also responded to the Applicant’s allegations concerning the application of Article 380 para. 2 and Article 193 of the Law on Obligational Relationship, and why that legal provision was not applied in the present case and this Court finds it as legally based and justified.

*“Article 35.3 of the Annex envisages that “if the alleged creditor or interest holder provides compelling justification for late filing, the Liquidation Authority may in its sole discretion accept a Proof of Claim or Interest submitted after the Claims Submission Deadline, if the proof of Claim or Interest is filed not later than thirty (30) days after the Claims Submission Deadline. In this specific case, the appellant has submitted his submission approximately 23 months after expiry of the deadline. Therefore, Article 35.3 of the Annex cannot be applied. As the Article 35.3 of the Annex is a more specific Law for the case subject to this review, the Article 380.2 of the Law on Obligations is not applicable.”*

41. In these circumstances, the Court considers that nothing in the case presented by the Applicant indicates that the regular court proceedings were unfair or arbitrary such that the Constitutional Court to reach the conclusion that the very essence of the right to a fair and impartial trial was violated, or that that the Applicant has been deprived of any procedural guarantees which could lead to a violation of that right under Article 31 of the Constitution or Article 6 of the ECHR.
42. Furthermore, as regards the violation of Article 46 [Protection of Property], based on the conclusions of the regular courts and also based on the Applicant’s allegations in the Referral, the Court finds that the Applicant failed to pursue his property rights, that is to say, to gain the right to unpaid earnings which he considers to be entitled to, because he submitted his property claim with the competent authorities out of time, and what the regular courts have concluded in their judgments.
43. Bearing in mind the above, the Court considers that the Specialized Panel and Appellate Panel gave clear and precise arguments to substantiate all their findings and conclusions. Accordingly, the Court cannot assess the proceedings before the regular courts as arbitrary.
44. The Court considers that it is the Applicant’s obligation to substantiate his constitutional allegations, and submit *prima facie* evidence indicating a

violation of the rights guaranteed by the Constitution and the ECHR. That consideration is in conformity with the jurisprudence of the Court (See Constitutional Court cases No. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylja*, 5 December 2013).

45. However, the Court finds that the Applicant has neither substantiated his allegation nor has he demonstrated that there was any violation of his constitutional rights.
46. In sum, the Court considers that the Applicant has not substantiated his allegations, nor has he submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR.
47. Therefore, the Referral is manifestly ill-founded on constitutional basis and it 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, pursuant to Article 113 paragraph 7 of the Constitution, Article 47 of the Law and Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 23 October 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 paragraph 4 of the Law; and
- IV. This Decision is effective immediately.

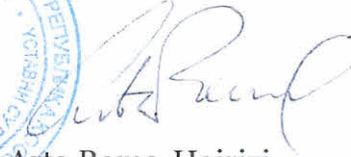
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional**



Arta Rama-Hajrizi