



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

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Prishtina, on 23 October 2017  
Ref. no.: RK 1144/17

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI135/16

Applicant

**Tomislav Janković and others**

**Constitutional review of Decision AC-I-0095 of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters, of 6 October 2016**

### 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 Tomislav Janković, Živomirka Cvetković, Drenka Popović, Verica Djurdjević, Stojka Janković, Ljiljana Garić and Jovica Janković, all from Prizren, now residing outside the Republic of Kosovo and are represented by a lawyer Mas-har Pirana from Prizren (hereinafter: the Applicants).

## **Challenged decision**

2. The Applicants challenge Decision AC-I-0095 of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters, of 6 October 2016, (hereinafter: Appellate Panel of the SCSC) which rejected as inadmissible the Applicants' appeal against Decision AC-II-12-0192 of the APSCSC of 17 March 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicants' rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments] and Article 31 [Right to Fair and Impartial Trial] 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 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**

5. On 24 November 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 4 December 2016, the President of the Court appointed Judge Selvete Gërzhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 13 December 2016, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatization Agency of Kosovo Related Matters.
8. On 2 June 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

## **Summary of facts**

9. On 9 June 1961 B. J. signed a contract on gift by which she donated an immovable property to the agricultural cooperative in Prizren, which was later transferred to the ownership of AIC "Progres" from Prizren.
10. On 26 October 2006, the Applicants, as heirs of B. J., filed a claim with the Municipal Court in Prizren for annulment of the contract on gift of the immovable property and for return of possession.

11. From the moment of filing the claim until 2016, court proceedings in the regular courts have been conducted and resulted in many court decisions.
12. On 17 March 2016, the Appellate Panel of SCSC (Judgment AC-II-12-0192) approved the appeal of PAK and annulled Judgment No. C. 811/06 of the Municipal Court in Prizren, which recognized the right of the Applicants regarding their property claims.
13. On 6 May 2016, the Applicants filed with the Appellate Panel of the SCSC an appeal against Judgment AC-II-12-0192.
14. On 6 October 2016, the Appellate Panel of the SCSC by Decision AC-I-16-0095 rejected the Applicants' appeal as inadmissible on the grounds that the decisions of the Appellate Panel of the SCSC cannot be subject to appeal.

### **Applicant's allegations**

15. The Applicants allege that *"By Decision AC-I-16-0095 of the Appellate Panel of the Special Chamber of 06.10.2016 were violated the claimants' fundamental rights of citizens guaranteed by the Constitution under Article 31 item 1 and 2 of the Constitution of the Republic of Kosovo, because by the appealed Judgment AC-II-12-0192 of the Special Chamber of 17.03.2016 it was decided to not hold the oral hearings in accordance with Article 64.1 of the Annex to the Law on Special Chamber, by which the claimants were deprived the fundamental rights to declare directly and to reason their statement of claim before the Appellate Panel."*
16. The Applicants also allege that *"In the reasoning of the challenged Judgment AC-II-0192 of 17 March 2016, in page 2 and 3, it is stated that the imaginary allegations in the PAK appeal of 05.05.2010 that the Judgment of the first instance court allegedly contains essential violations of the provisions of Article 181, para. 1 a, b, and c, as well as of Article 183 and Article 184 of the Law on Contested Procedure, which is not true."*
17. Finally, the Applicants propose to the Constitutional Court to declare Decision AC-I-16-0095 and Judgment AC-II-12-0912 unconstitutional and to remand the case for retrial.

### **Admissibility of Referral**

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and in the Rules of Procedure.
19. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes that:

*“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.”*

20. In addition, the Court assesses whether the Applicants filed the Referral within the prescribed time limit, and in this case, it refers to Article 49 of the Law, which provides that *“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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”*
21. In order to verify whether the Applicants have submitted the Referral within the prescribed four (4) month deadline, the Court refers to the date of receipt of the final decision by the Applicants and the date when the Referral was submitted to the Constitutional Court.
22. The “final decision” for the purposes of Article 49 of the Law will normally be the final decision rejecting the Applicant’s claim (See *Paul and Audrey Edwards v. UK*, No. 46477/99, ECtHR, Decision of 14 March 2002).
23. The time limit starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of (See *Norkin v. Russia*, App. 21056/ 11, ECtHR, Decision of 5 February 2013 and see also *Moya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).
24. Regarding the appeal filed against Judgment AC-II-12-0192 of 17 March 2016, the Court notes that in accordance with Article 10, paragraph 14 of Law No. 04/L-033 on the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters *“All Judgments and Decisions of the appellate panel are final and not subject to any further appeal.”*
25. In the circumstances of the present case, it is clear that the appeal against Judgment AC-II-12-0192, of 17 March 2016, was not an effective legal remedy and that there could be no legitimate expectation to the success of that remedy, because it was explicitly provided by the law that such legal remedy was not allowed to be filed.
26. For the foregoing reasons, the Court considers that the final decision in the present case is Judgment AC-II-12-0192 of the Appellate Panel of the SCSC and the time-limit begins to run from the date of receipt of the aforementioned decision by the Applicants’ representative (See *mutatis mutandis Bayram and Yildirim v. Turkey*, App. No. 38587/97, ECtHR, Decision of 29 January 2002).
27. Thus, from the examination of the case file it results that the Applicants were served with Judgment AC-II-12-0192 on 18 April 2016, whereas they submitted the Referral to the Court on 24 November 2016 (see, *inter alia*, Resolution on

Inadmissibility of the Constitutional Court KI105/15, Applicants *Mehmet Bajraktari and others*, of 19 December 2016).

28. In the circumstances when the referral is manifestly out of time, the Court cannot consider the allegations raised regarding the alleged violations of the right to fair trial in all its elements.
29. Based on the foregoing, it results that the Referral has not been submitted within the legal deadline stipulated by Article 49 of the Law, and it is to be declared inadmissible, because it is out of time.

### FOR THESE REASONS

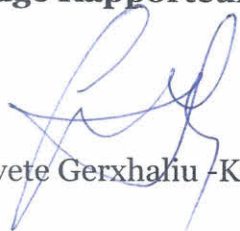
The Constitutional Court of Kosovo, pursuant to Article 49 of the Law and Rules 36 (1) (c) and 55 (4) of the Rules of Procedure, in the session held on 2 June 2017, unanimously

### 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. This Decision is effective immediately.

**Judge Rapporteur**

Selvete Gerxhalij - Krasniqi



**President of the Constitutional Court**

Arta Rama-Hajrizi

