



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

Prishtina, on 4 December 2017
Ref. No.: RK 1162/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI66/17

Applicant

Ramadan Shishani and others

**Constitutional review of several individual decisions of
the Privatization Agency of Kosovo**

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

Applicants

1. The Referral was submitted by (a) Ramadan Shishani, (b) Halil Fetahu, (c) Jakup Ibriqi, (d) Maliqe Mjeku, (e) Rrustem Berisha, (f) Nexhat Lahu, (g) Afrim Beka, (h) Besim Sylejmani, (i) Sami Shehu, and (j) Zeqir Behrami, all former employees of the Socially Owned Enterprise (hereinafter: SOE) “Forestry Economy” (hereinafter: the Applicants), who are represented by Gani Asllani, a lawyer from Prishtina.

Challenged decisions

2. The Applicants challenge several individual decisions of the Privatization Agency of Kosovo (hereinafter: PAK) as they affect each Applicant: Applicant (a) challenges two decisions [No. 10876 of 14 October 2013 and No. 12/74 of 05 November 2013]; Applicant (b) challenges one decision [No.748 of 24 January 2014]; Applicant (c) challenges two decisions [No. 6518 of 16 August 2013 and No. 6521 of 16 August 2013]; Applicant (d) challenges two decisions, [No. 6515 of 16 August 2013, and No. 6520 of 16 August 2013]; Applicant (e) challenges one decision [No. 6526 of 16 August 2013]; Applicant (f) two decisions [No. 0517 of 16 August 2013 and No. 6523 of 16 August 2013]; Applicant (g) two decisions [No. 10878 of 14 October 2013 and No. 6512 of 16. August 2013]; Applicant (h) challenges two decisions [No. 6513 of 16 August 2013 and No. 6524 of 16 August 2013]; Applicant (i) challenges two decisions [No. 6525 of 16 August 2013 and No. 10877 of 14 October 2013]; and Applicant (j) challenges two decisions [No. 6514 of 16 August 2013 and No. 6522 of 16 August 2013].

Subject matter

3. The subject matter is the constitutional review of the aforementioned decisions of PAK, which have allegedly violated the Applicants' rights and freedoms guaranteed by Article 46 [Protection of Property] and Article 49 [Right to Work and Exercise Profession] 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, Articles 22 and 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 5 June 2017, the Applicants submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 June 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 4 July 2017, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to PAK.
8. On 23 October 2017, after having considered the report of the Judge Rapporteur, the Review Panel by majority made a recommendation to the full Court on the inadmissibility of Referral.
9. Judge Altay Suroy voted against the proposal of the Judge Rapporteur.

Summary of facts

10. The Applicants were all employees of the SOE "Forestry Economy Prishtina".
11. On 20 January 2011, the Board of PAK rendered the decision on liquidation of the SOE "Forestry Economy Prishtina."
12. In 2011, all Applicants individually submitted claims to PAK requesting the payment of their unpaid personal income for the period from January 2003 to December 2010.
13. During 2013 and 2014, PAK made individual decisions regarding each of the Applicants' claims. By these decisions, PAK individually recognized the right of each of the Applicants to the payment of unpaid personal income, and determined the specific amounts of money due to each Applicant according to the financial evidence from the documentation and their individual work experience.
14. In these decisions, PAK also recognized the right to each Applicant individually to be paid an amount in compensation. This amount was equivalent to their personal income for 3 months due to the termination of the employment relationship. Each of the decisions of PAK state that,

"When deciding on your claim, the liquidation authority has found that you enjoy the right to unpaid salaries because your salaries have remained unpaid during your employment with the SOE "Forestry Economy Prishtina" for the period from January 2003 until December 2010, and such a conclusion is supported by the financial evidence in the SOE archive."
15. The Decisions of PAK included an explanation on the distribution of the awarded amounts to the Applicants, which specified that,

"Claims will be satisfied according to the category priority determined by Article 40. Payment for satisfaction of claims shall be carried out pursuant to paragraphs 2 and 3 of Article 41 of the Annex to the PAK Law and follow the proceedings of the Liquidation authority in compliance with financial policies of the Agency issued in accordance with the Article 19 of the PAK Law."
16. On 2 November 2016, the Applicants addressed PAK with a request for an explanation of the delays in payment of their entitlements. They also required the immediate payment of their unpaid personal income to which they had achieved the right in accordance with the decisions of PAK.
17. On 7 November 2016, PAK responded to the requests of the Applicants. Each of PAK's responses was based on the Law No. 04/L-34 on Privatization Agency of Kosovo and stated that,

"Regarding your request for the delay of further distribution of means, we inform you that until now, the Liquidation Authority (LA) has concluded

the processing and issuance of the decisions on all submitted claims for the SOE “Forestry Economy Prishtina” (in liquidation).

The Claimants who were dissatisfied with the LA decisions (in cases when the decisions were partly approved or rejected) had an opportunity to appeal the decision of LA with the Special Chamber of the Supreme Court of Kosovo (hereinafter: the SCSC) within 30 days after being served with the decision by the LA.

From the foregoing, for the appeals submitted to the SCSC by the dissatisfied parties with the decisions of the Liquidation Authority should be taken the final decision from SCSC, in order to proceed with the distribution of payments also for the creditors of the Socially Owned Enterprise. Until today, the SCSC has not yet fully confirmed to the Liquidation Authority the full list of appeals submitted to the SCSC on the issued decisions.

The Liquidation Authority of the Socially Owned Enterprise “Forestry Economy Prishtina” (in liquidation), with a purpose of the preparation of the distribution report, should assess (i) the situation after the sale of the assets, from which will be generated the proceeds, as well as (ii) receipt of confirmation of the list with full information of the appeals from the SCSC.

Therefore, from the above, currently it cannot be determined the accurate time of the distribution, due to the dependence of the matter on the factors mentioned above, but [PAK] wishes to assure [you] that PAK is treating this matter with dedication.”

18. On 12 April 2017, the Applicants again addressed PAK as the Liquidation Authority with a request that they be paid their personal income, in accordance with the decisions of PAK.
19. The Applicants claim that, up to the date of submission of their Referral to the Court, they have not received any response from PAK regarding their request of 12 April 2017.

Applicant’s allegations

20. The Applicants allege that their *right to property as guaranteed by Article 46 of the Constitution has been violated by PAK, because PAK is delaying the payment of the amounts awarded to the Applicants out of the proceeds of the liquidation of the SOE where they were previously employed.*
21. The Applicants in relation to that argue that, *“The salaries which they earned as former employees of the SOE “Forestry Economy Prishtina” ... with their commitment are their property, their families even survive by those salaries, while the Liquidation Authority [PAK] acts like a master of this property by not responding to the employees and without any reason it possesses and uses the property of others.”*

22. The Applicants complaint relates exclusively to the failure of PAK to pay out the amounts which have been awarded them. The Applicants indicate that the Decisions of PAK regarding their unpaid salaries and compensation for early termination of their employment were in their favor. As such, the Applicants were not dissatisfied and had no reason to submit further appeals before the SCSC regarding this issue. This situation has been ongoing since those Decisions were taken in 2013-2014.
23. The Applicants also allege that, *“Article 49 of the Constitution has been violated, which guarantees the right to work, and from this automatically derives that even the fruits of the work shall be guaranteed as in the present case - the salaries of employees.”*
24. The Applicants request the Court *“to order PAK (Liquidation Authority) to pay the unpaid salaries to each of [the Applicants] pursuant to the decisions of PAK, whereby the claims for the unpaid salaries have been approved for each individually in the amount as in the decisions, including the three (3) salaries approved by the decisions in compensation for premature termination of the employment relationship.”*

Admissibility of Referral

25. The Court first will examine whether the Referral has met the admissibility requirements established in the Constitution, as further specified in the Law and foreseen in the Rules of Procedure.
26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that,
“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 considers that the Applicants are individuals alleging a violation of their fundamental rights by a public authority and, therefore, the Applicants are authorized parties to bring a referral under Article 113 (7) of the Constitution.
28. As regards the exhaustion of legal remedies, the Court notes that the Applicants’ complaint only concerns the delays in the execution of the decisions of PAK awarding them each rights to unpaid salaries and compensation. The Applicants twice sent letters to PAK requesting the implementation of their rights.
29. The Court notes that PAK accepts the responsibility to implement the Applicants’ rights, but claims that the implementation must be delayed by the

procedures before the SCSC when adjudicating on claims of other parties. The Court notes that PAK bases its position on the provisions of Law No. 04/L-34 on Privatization Agency of Kosovo.

30. The Court considers that the implementation of the payment of the Applicants' claims to unpaid salaries is the result of an ongoing situation.
31. Neither the Applicants nor PAK have referred to any legal remedies which may be available to the Applicants to enforce the immediate execution by PAK of the decisions awarding the Applicants rights to unpaid salaries and compensation.
32. In these circumstances, the Court finds that the delays in the implementation of the Applicants' rights are a result of legal proceedings based on law against which no remedy is available.
33. Consequently, the Court finds that the Applicants have exhausted all legal remedies provided by law.
34. The Court also refers to Article 49 [Deadlines] 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.”
35. The Court recalls that the requirement for the submission of the Referral within the time limit of four (4) months does not apply in cases of an alleged continuous violation of fundamental human rights and freedoms (see European Court of Human Rights (hereinafter ECtHR) Judgment of 19 March 1997, *Hornsby v. Greece*, No. 18357/91, paras 34-37; and Constitutional Court of the Republic of Kosovo: Case No. KI50/12 Applicant, *Agush Lolluni*, Judgment of 20 July 2012).
36. In the present case, the Court notes that the decisions awarding the Applicants rights to unpaid salaries and compensation all date from 2013-2014. However, the payment to the Applicants of these awards is still pending further action by PAK, due to ongoing legal proceedings before the SCSC.
37. In these circumstances, the Court considers that the delay in implementation of the Applicants' rights is a result of an ongoing situation
38. Therefore, the Court finds that the Applicants do not need to comply with the time limit of four months when submitting their referral, as foreseen by Article 49 of the Law.
39. In conclusion, the Court finds that the Applicants are authorized parties, have exhausted all legal remedies and have submitted their Referral within the legal deadline.

40. Further, the Court also refers to Article 48 [Accuracy of Referral] of the Law, which provides 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.”

41. The Court recalls that the Applicants allege a violation of their rights to property and their right to work, as protected by Articles 46 and 49 of the Constitution. The Applicants claim that this violation of their rights is a result of the delays in the payment of the amounts in unpaid salaries and compensation awarded to them. The Applicants allege that this delay in the implementation of their rights is caused by PAK, which is a public authority established by Law.

42. Therefore, the Court finds that the Applicants have accurately clarified what rights they claim have been violated and what act of a public authority they challenge.

43. However, the Court refers to Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, which stipulates that,

“(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:

[...]

(d) the Applicant does not sufficiently substantiate his claim.”

44. The Court recalls that the Applicants allege that, by delaying the implementation of the Decisions awarding them payment of unpaid salaries and compensation for early termination of their employment, PAK has violated their right to the protection of property as guaranteed by Article 46 of the Constitution.

45. The Court recalls that Article 46 [Protection of Property] of the Constitution provides, *inter alia*, that,

“1. The right to own property is guaranteed.”

46. The Court considers that the Applicants’ right to payment of the amounts awarded to them by the decisions of PAK come within the scope of the concept of property as protected by Article 46 of the Constitution.

47. The Court notes that the Applicants' rights to the awarded amounts are not in dispute between the Applicants and PAK.
48. The Court notes further that PAK has explained that the payment of the amounts awarded is waiting on the conclusion of judicial decisions by the SCSC regarding other claims on the assets of the SOE under liquidation. The Court notes that PAK based its position on the Law No. 04/L-34 on Privatization Agency of Kosovo.
49. Furthermore, the Court notes that the decisions awarding the amounts to the Applicants contained a clarification regarding the distribution of the awards. This clarification states that,

"Claims will be satisfied according to the category priority determined by Article 40. Payment for satisfaction of claims shall be carried out pursuant to paragraphs 2 and 3 of Article 41 of the Annex to the PAK Law and follow the proceedings of the Liquidation authority in compliance with financial policies of the Agency issued in accordance with the Article 19 of the PAK Law."

50. Based upon this clarification on distribution, the Court notes that the implementation of the Applicants' rights is conditioned upon the circumstances mentioned in the Decisions awarding the amounts, namely that distribution shall follow the conclusion of proceedings by the liquidation authority. The Court notes that these liquidation proceedings are still ongoing.
51. Therefore, the Court finds that the Applicants' demand for payment of their unpaid salaries is premature. The Court considers that the Applicants have a right to property which has been recognized by PAK. The implementation of this right, in accordance with PAK decisions, will be realized once the legal requirements mentioned in the decisions are fulfilled.
52. As such, the Court notes that PAK's delay in implementing the Applicants rights is based on law.
53. The Court recalls the case law of the European Commission on Human Rights, which has found that a right to property is not lost when a condition is not fulfilled, if that condition was an integral part of the right (see European Commission on Human Rights Decision on Admissibility of 5 October 1978, *Mario de Napoles Pacheco v. Belgium*, no. 7775/77).
54. Applying this reasoning to the present case, the Court considers that implementation of the Applicants' rights was conditioned by law on the conclusion of all judicial proceedings before the SCSC regarding the distribution of the assets of the SOE in liquidation. In contrast with the abovementioned case law, in the Applicants' case their right to property has not been lost, but is still pending the resolution of the legal conditions.
55. Therefore, the Court considers that the Applicants' rights to property have not been violated as a result of the delay in implementation of their rights, because this delay is a consequence of the legal condition that all legal proceedings

before the SCSC must be concluded before PAK may make any payments to the Applicants. This condition was an integral part of the award of payment and compensation, as required by law.

56. In sum, the Court finds that the Applicants' have not substantiated their claim that their right to property has been violated by PAK because of the delay in implementation of the payment of the amounts awarded to them.
57. The Court recalls that the Applicants also allege that the delay in the payment of the amounts awarded to them constitutes a violation of their right to work as protected by Article 49 of the Constitution, because the payment of compensation for labour is an integral part of the right to work.
58. The Court recalls that Article 49 [Right to Work and Exercise Profession] of the Constitution provides, *inter alia*, that,

"1.The right to work is guaranteed."
59. The Court notes that the Applicants' rights to payment of certain amounts are based upon the Applicants' previous working relationship with the SOE.
60. As such, the Court considers that the decision of PAK awarding the Applicants rights to unpaid salaries and compensation for early termination of employment fully addresses the Applicants' rights in employment.
61. Furthermore, the Court recalls its previous case law with respect to the right to work and exercise a profession. The Court considers that the challenged decisions of PAK do not in any way prevent the Applicants from working or exercising a profession. As such, there is nothing in the Applicants claim that justifies a conclusion that their constitutional right to work has been violated (see, *mutatis mutandis*, Resolution of 10 February 2015, *Abdullah Bajqinca*, KI 136/14, paragraph 34).
62. In conclusion, the Court finds that the Applicants have not submitted any *prima facie* evidence nor have they substantiated their allegations indicating how and why PAK has violated their rights to the protection of property and the right to work as guaranteed by Article 46 and Article 49 of the Constitution
63. Consequently, the Referral is manifestly ill-founded on a constitutional basis and it should be declared inadmissible pursuant to Rule 36, paragraphs (1) (d) and (2) (d), 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) (d) of the Rules of Procedure, in the session held on 23 October 2017, by majority

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;
- IV. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional



Arta Rama-Hajrizi