



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

Prishtina, on 20 November 2017
Ref. No.: RK1151/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI92/17

Applicant

Shemsi Peshku

Constitutional review of Decision AC-I-16-0221 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 26 October 2016

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Shemsi Peshku, residing in Barileva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision AC-I-16-0221 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 26 October 2016, which was served on the Applicant on 13 November 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which, allegedly, has violated the Applicant's rights guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter Constitution).

Legal basis

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution, Article 47 [Individual Requests] 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 14 August 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 August 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 16 August 2017, the Court notified the Applicant about the registration of the Referral, requesting him to attach the acknowledgment of receipt indicating the date when he was served with Decision AC-I-16-0221 of the Appellate Panel of 26 October 2016. On the same date, the Court notified the Appellate Panel about the registration of the Referral.
8. On 28 August 2017, the Applicant notified the Court that he does not know when he was served with the above-mentioned Decision.
9. On 30 August 2017, the Court requested the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel) to inform the Court when the Applicant was served with Decision AC-I- 16-0221 of the Appellate Panel of 26 October 2016.
10. On 5 September 2017, the Appellate Panel submitted to the Court the acknowledgment of receipt indicating that the Applicant received the aforementioned decision on 13 November 2016.

11. On 24 October 2017, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of Referral.

Summary of facts

12. From the case file it results that the Applicant was an employee of the Socially-Owned Enterprise “Kosova Export-Bujqësia” (hereinafter: SOE) which was privatized on an unspecified date.
13. On 12 April 2010, the Privatization Agency of Kosovo (hereinafter: the PAK) published the final list of employees who acquired the legitimate right to a share of the proceeds generated by the privatization of the SOE. The deadline for filing a complaint against the final list with the SCSC was 3 May 2010.
14. On 18 January 2016, the Applicant filed appeal with the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) against the final list of the PAK, requesting to be included in this list.
15. On 10 February 2016, the PAK responded to the Applicant's complaint stating that the Applicant submitted his complaint after the legal deadline.
16. On 13 September 2016, the Specialized Panel [Decision C-II-16-0011-C0001], rejected the Applicant's appeal as out of time.
17. On 10 October 2016, the Applicant filed an appeal with the Appellate Panel of the Specialized Panel against Decision C-II-16-0011-C0001 of 13 September 2016, claiming that he missed the legal deadline because he is old and he has not been in good health.
18. On 26 October 2016, the Appellate Panel (Decision AC-I-16-0221) rejected the Applicant's appeal as ungrounded and upheld Decision C-II-16-0011 of the Specialized Panel of 13 September 2016. The Appellate Panel in its Decision gave a detailed answer to all Applicant's allegations.

Applicant's allegations

19. The Applicant alleges that Decision AC-I-16-0221 of the Appellate Panel of 26 October 2016 violated the rights guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution.
20. The Applicant alleges that the violation of the rights protected by the Constitution has resulted from the rejection of the request because he missed the deadline, and the Applicant claims that he was old, in poor health and not informed.
21. The Applicant requests the Court to annul the decisions of the Special Chamber of the Supreme Court and to be recognized the right to participate in 20% of the Privatization of the SOE.

Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution and as further specified in the Law and the Rules of Procedure.
23. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7, 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”.
24. The Court also refers to Articles 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”.
25. In addition, the Court takes into account Rule 36 [Admissibility Criteria] of the Rules of Procedure, which emphasizes that:

“(1) The Court may consider a referral if:

[...] (c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant; or [...].”
26. In the present case, the Court notes that the challenged Judgment was served on the Applicant on 13 November 2016, while the Referral was submitted to the Court on 14 August 2017. Accordingly, the Referral was submitted to the Court out of the legal 4 (four) month time limit.
27. The Court recalls that the purpose of the four-month legal time limit under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging. (see: case *O’ Loughlin and Others v. the United Kingdom*, No. 23274/04, ECtHR Decision of 25 August 2005 and see also case No. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24).
28. In addition, the Court notes that the 4 (four) month legal limit is calculated from the date when the Applicant was served, after exhaustion of legal remedies, with the challenged decision (See, for example, *Case Hatip Celik v. Turkey*, ECtHR, Application No. 52991/99, Judgment of 23 September 2004).

29. The Court notes that it is the duty of the applicants or of their representatives to act with *due diligence*, in order to ensure that their requests for protection of rights and fundamental freedoms are filed within the legal time limit of four (4) months provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure (See Case *Mocanu and Others v. Romania* [GC], Application No. 10865/09, 45886/07 and 32431/08, Decision of 17 September 2014, paragraphs 263-267).
30. Therefore, the Referral is declared inadmissible because it is out of time, as it is established by Article 113.7 of the Constitution, as provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 24 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 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional

Arta Rama-Hajrizi