



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

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Prishtina, on 26 October 2020  
Ref.No.: RK1633/20

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI74/20**

Applicant

**Gazmend Boshnjaku**

**Constitutional review of Decision NRB 70157617, of the Tax Agency of  
Kosovo, Regional Office in Gjakova, of 10 May 2011**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

### **Applicant**

1. The Referral was submitted by Gazmend Boshnjaku from Gjakova (hereinafter: the Applicant), represented by lawyer Yll Xhiha from Gjakova.

## **Challenged decision**

2. The Applicant challenges the decision NRB 70157617, of the Tax Agency of Kosovo, Regional Office in Gjakova (hereinafter: Tax Agency) of 10 May 2011.

## **Subject matter**

3. The subject matter is the constitutional review of the decision of the Tax Agency, which as alleged by the Applicant, violates his rights and freedoms guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).
4. The Applicant has requested from the court;
  - a) *„to impose an interim measure in order to repeal the decision of the Tax Agency, because the tax charge prevents him from re-registering the private vehicle.”*
  - b) *to interpret Articles 3 and 24 Equality before the Law of the Constitution of the Republic of Kosovo, as well as Article 6 Right to a fair trial of the European Convention.”*

## **Legal basis**

5. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 13 May 2020, the Applicant sent the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 28 May 2020, the President of the Court appointed Judge Remzija Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and Safet Hoxha.
8. On 28 May 2020, the Court notified the Applicant about the registration of the Referral.
9. On 1 September 2020, the Court sent an additional letter to the Applicant's lawyer requesting additional information regarding: i) the decision challenged before the Court, and ii) as well as to specify and clarify the Applicant's claims in the request of 13 May 2020, which concern the interim measures as well as the interpretation of the mentioned articles of the Constitution and the ECHR. More specifically, the Court requested from the Applicant to clarify *“in respect of which*

*decision the Applicant is requesting the imposition of an interim measure, as well as in respect of which Decision the Applicant is seeking the interpretation of the said Articles of the Constitution and the ECHR“.*

10. On 17 September 2020, the Court received a letter with additional information, in which the Applicant tried by several sentences to explain the meaning of the request for an interim measure as well as of the interpretation of the aforementioned articles of the Constitution and the ECHR.
11. On 14 October 2020, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

12. Based on the Referral, the Court may note that the Applicant was the owner of the company DPT „Euroland“ in Gjakova, which he had closed down on 11 May 2011 due to non-profitability.
13. On an unspecified date, the Applicant submitted the documents to the Municipal Service of the Municipality of Gjakova for the extension and registration of the passenger car. However, it results that the registration was not extended due to the fact that the Applicant failed to submit also the certificate of the Tax Agency on his tax status along with the documentation.
14. The Applicant submitted a request to the Tax Agency in which he requested from the Tax Agency to issue a certificate confirming that he had completed all tax obligations which he had towards the Tax Agency.
15. On 10 May 2011, the Tax Agency issued Decision NRB 70157617, on the basis of which it can be noted that the Applicant has not performed all tax obligations he had prior to the closure of the company.
16. On 6 August 2019, the Applicant submitted a “Request for Information” to the Mayor of Gjakova (Business Sector) requesting that he be issued a “*Certificate by the relevant tax authority confriming that he has paid all remaining tax debts*”, .... *because otherwise he will not be able to register his car.*“
17. Based on the Applicant's allegations in the Referral, the Court notes that the Municipal Authority to which the Applicant had submitted the “ Request for Information“ did not respond to the Applicant.
18. On 31 January 2020, the Applicant submitted a request to the Ministry of Trade and Industry with the same content, stating, inter alia:

*„The Business Registration Agency operates within the Ministry of Trade and Industry and is the only business registration institution in Kosovo, therefore, the company tax, collected for my business, first of all, I consider it to be a tax not provided by law, and it is in my interest to be informed in respect of it, which is the legal basis for claiming this debt, for which I am entitled to have an interpretation before the Constitutional Court, adding*

*that we are dealing with an erroneously determined factual situation, because the evidence confirms that DPT "Euroland" was successfully deleted from the register."*

19. On the basis of the Applicant's allegations and the list of cases in the Referral, the Court may note that the competent authority, the Ministry of Trade and Industry, did not provide any response to the Applicant.

### **Applicant's allegations**

20. The Applicant alleges that the decision of the *"Tax Agency violates his rights and freedoms guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights"*.
21. In support of this allegation, the Applicant adds that *"The company tax, which was collected during the company's operations, is in fact a tax not provided by law... [...] the Municipality of Gjakova thereby has created a new precedent that is unusual, but also unconstitutional in Kosovo"*.
22. As to the merits of the allegations concerning the imposition of an interim measure, the Applicant alleges *"that he had addressed the Municipality and MTI regarding the legality of his debt, but did not receive a response, and as the situation became worse, he was prevented from registering the vehicle, although there is a "principle of individuality" and the vehicle is registered in the name of his wife, hence he requests that this process be blocked, in order to be enabled free institutional movement..."*
23. The Applicant requests that the decision NRB 70157617, referring to the unlawful debt, be repealed, and that he be enabled to take all other actions before the institutions, without any tax charge.

### **Assessment of the admissibility of the Referral**

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
25. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution 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."*

26. The Court also refers to Article 47.2 of the Law, which prescribes:

„[...]

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.“*

27. In addition, the Court takes into account Rule 39 (1) (b) of the Rules of Procedure, which provides:

“[...]

*(b) The Court may consider a referral as admissible if all effective remedies that are available under the law against the judgment or decision challenges have been exhausted.“*

28. Taking into account the Applicant's allegations, the Court notes that the Applicant considers that his rights guaranteed by the Constitution under Articles 3 and 24, as well as the rights guaranteed by Article 6 of the ECHR, have been violated by the Municipal Tax Authority of the Gjakova Regional Office for the reason of having issued a decision on the basis of which it can be concluded that he has unpaid tax obligations that arose during the business operations of his company, and that such an unlawful decision prevents him from registering a private car.

29. In fact, the Court notes that the essential problem in the Applicant's case arose when he submitted a request to the Tax Agency, Regional Office in Gjakova seeking to be issued a certificate confirming that he had no pending tax obligations, in order to extend the registration and register the car.

30. On this occasion, the Court finds that the Tax Agency issued decision NRB 70157617, on the basis of which it can be concluded that he has certain tax debts in a certain amount of money, which arose during the business operations of his company, and which he did not pay prior to its closure. Such a decision of the Tax Agency creates a situation that he does not meet all the conditions for car registration before the competent Municipal authority of Gjakova.

31. The Court further finds that the Applicant, dissatisfied with such a decision, sent two requests to higher instances, whereby he requested the annulment of the decision of the Tax Agency NRB 70157617, because, in his view, it is unlawful and unconstitutional, because such a debt cannot be attributed to him.

32. The Court finds that the Applicant sent the first request to the Mayor of Gjakova (Business Sector) on 6 August 2019, but the said authority did not respond to his request.

33. The Court also finds that the Applicant sent a request with the same content to the Ministry of Trade and Industry on 31 January 2020, challenging the legality of the decision of the Tax Agency NRB 70157617 of 10 May 2011, but that the competent ministry did not respond to the Applicant until the day of submission of the Referral to the Court.

34. Therefore, taking into account the essence of the challenged decision in the Referral, the body that issued that decision, the procedural path followed by the Applicant, as well as the legal regulation norms of Law No.02/L-28 on the Administrative Procedure, a question can be made, whether the Applicant in the procedure of challenging the decision NRB 70157617 of the Tax Administration of 10 May 2011, has come to the final decision regarding its legality.
35. The Court recalls that the rule of exhaustion of remedies pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) of the Rules of Procedure obliges those who wish to bring their cases before the Constitutional Court to primarily use effective remedies, which are available in accordance with the law, against a challenged judgment or decision.
36. In this way, regular courts are given the opportunity to remedy their errors through regular court proceedings prior to the case being brought before the Constitutional Court. This rule is based on the presumption set out in Article 32 of the Constitution and Article 13 of the ECHR that there are remedies in domestic legislation available to be exercised before the regular courts in respect to an alleged violation, regardless whether the provisions of ECHR are incorporated into domestic law or not (see, inter alia, *Aksoy v. Turkey*, paragraph 51 of the ECtHR judgment, of 18 December 1996).
37. This principle implies that the machinery of protection established by the Constitutional Court is subsidiary to the system of regular judiciary safeguarding human rights (see, inter alia, *Handyside v. The United Kingdom*, paragraph 48, ECtHR judgment of 7 December 1976).
38. Referring to the said legal provision in relation to the essence of the Applicant's Referral, the Court notes that, the fact that the competent body of the Ministry of Trade and Industry did not respond to the Applicant's request of 31 January 2020, does not lead to the conclusion that he has thereby exhausted all legal remedies, and that as the next legal remedy in procedural terms he could submit the referral to the Constitutional Court which would deal with such a referral.
39. The Court recalls that the provisions of Article 131 of the Law No.02/ L-28 on the Administrative Procedure provides for deadlines for filing appeals, as well as deadlines within which the competent body to which the appeal is filed should respond. Also, in the mentioned article, the lawmaker provided for a protective mechanism in the form of a legal remedy by which an Applicant can protect his rights if the body to which he has filed the appeal does not respond within the prescribed time limit.
40. The Court recalls that Article 131 of the Law No.02/L-28 on the Administrative Procedure provides:

*“Article 131. Deadline for reaching a decision in an appeal procedure*

*131.1 The competent administrative body shall review the administrative appeal and shall issue a decision in the course of 30 days upon submission of appeal.*



*131.2. If, upon the expiry of the deadline specified in paragraph 1 of the present article, no decision on the appeal has been issued by the competent administrative body, the interested party shall be given the right to address the court in conformity with the applicable law on civil procedure.”*

41. Accordingly, it is evident that the Applicant did not receive within the prescribed deadline a response from the Ministry to the appeal submitted by him on 31 January 2020, however, it is also evident that after the prescribed deadline within which the competent ministry should have responded, what in fact it did not do, the Applicant had the right to continue the court proceedings before the competent court in order to exercise his rights, in accordance with the legal provision prescribed in Article 131.2 of the cited law.
42. Accordingly, the Court finds that in fact the Applicant has brought himself to a procedural situation that his appeal claim cannot be considered based on the merits by the regular courts, due to the fact that he did not act in accordance with the legal possibility of Article 131.2 of the Law No.02/L-28 on the Administrative Procedure, which enables the initiation of proceedings before the competent courts.
43. Based on all what is stated above, the Court concludes that the Applicant has not exhausted all legal remedies provided for by law to challenge the legality of the decision in question, (see, inter alia, the cases of the Constitutional Court, KI64/17, *Selatin Ahmeti*, Resolution on Inadmissibility of 13 October 2017, KI 38/17, *Meleq Ymeri*, Resolution on Inadmissibility of 10 July 2017).
44. Therefore, the Applicant's Referral is inadmissible for consideration in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 39 (1) (b) of the Rules of Procedure.
45. In addition, as regards the other allegations concerning the interpretation of Articles 3 and 24 of the Constitution and Article 6 of the ECHR, the Court adds that it will not deal with the interpretation of the said Articles of the Constitution and the ECHR, as there is no final decision in relation to which it would consider and interpret the said violations. More specifically, not all procedural requirements regarding the admissibility of the Referral that enable a detailed analysis and interpretation of the mentioned articles, were met.

### **Request for Interim Measures**

46. The Court recalls that the Applicant also requests from the Court the imposition of interim measures, *“in order to repeal the decision of the Tax Agency, as the tax charge prevents him from re-registering the private vehicle.”*
47. However, the Court has just concluded that the Applicant's Referral must be declared inadmissible on constitutional basis.
48. Therefore, pursuant to Article 27.1 of the Law, and in accordance with Rule 57 (4) (a) of the Rules of Procedure, the Applicant's request for interim measures must be rejected, as it cannot be considered since the Referral has been declared inadmissible.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113, paragraphs 1 and 7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) and 57 (1) of the Rules of Procedure, on 14 October 2020, unanimously

## **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measures;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Remzije Istrefi-Peci

Arta Rama-Hajrizi



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