



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

Prishtina, on 4 February 2020
Ref.No:RK 1697/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI122/20

Applicant

Rijad Jusufi

Request for constitutional review of Administrative Instruction No. 01/2016 on implementation of Law No. 05/L-028 on Personal Income Tax

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërzhaliu-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 Rijad Jusufi from Dumnica village, Municipality of Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant requested from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to interpret Administrative Instruction No. 01/2016 on implementation of Law No. 05/L-028 on Personal Income Tax, of 15 March 2016.

Subject matter

3. The subject matter is the constitutional review of Administrative Instruction No. 01/2016 on implementation of Law No. 05/L-028 on Personal Income Tax.

Legal basis

4. The Referral is based on articles 113 (1) and (7) of the Constitution of the Republic of Kosovo (hereinafter: 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 Rule 32 [Filing of Referrals and Replies] 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 7 August 2020, the Applicant submitted the Referral to the Court.
6. On 26 August 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi Peci and Nexhmi Rexhepi (members).
7. On 2 September 2020, the Court notified the Applicant of the registration of the Referral.
8. On 16 September 2020, the Applicant submitted to the Court additional documents.
9. On 24 November 2020, the Court notified the Ministry of Finance about the Referral and requested from them to submit, if they had any comments regarding the case, to the Court within fifteen (15) days from the date of receipt of the letter.
10. On 9 December 2020, the Ministry of Finance submitted to the Court their comments regarding the case.
11. On 20 January 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 15 March 2016, the Ministry of Finance of the Republic of Kosovo (hereinafter: MoF) issued Administrative Instruction No. 01/2016 on implementation of Law No. 05/L-028 on Personal Income Tax (hereinafter: the Administrative Instruction).
13. On 16 March 2016, the Administrative Instruction was published in the Official Gazette.

Applicant's allegations

14. The Applicant, who is the owner of Tihovci 2 Company, requests from the Court the interpretation of the Administrative Instruction.
15. The Applicant requests clarification whether (i) the Administrative Instruction obliges parties, the lender and the borrower, to enter into a contract against their will, and to set interest, when they have neither given nor received interest; and (ii) from which date the Tax Administration of Kosovo (hereinafter: the TAK) has the right to implement this Administrative Instruction.
16. In this regard, the Applicant states that he borrowed money in cash from a person who does not have a bank account, and this money he had deposited in the bank *"from which I neither gave nor received interest, and for which the Tax Administration has charged me with taxes and penalties"*. According to him, this loan was taken three months before the entry into force of the Administrative Instruction.
17. The Applicant alleges that he took other loans as well, which he had repaid, but according to him *"the TAK inspector considered only the date when we received or gave the loans, and not the date when we repaid them, and that from the date we received the loans until today, the day of the audit, he has charged us with the tax on the value of the loan even though we have repaid the loans"*.
18. Finally, the Applicant addresses the Court with the following request:

"We want that Article 19, paragraph 1.1.3 and 1.2 of Administrative Instruction No. 01/2016, is it in accordance with the jurisdiction of Kosovo, and from which date does Administrative Instruction No. 01/2016 apply and do they have the right to apply it retroactively."

Admissibility of the Referral

19. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
20. In this respect, the Court refers to paragraphs 1, 7 and 8 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.

8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court’s decision on that case depends on the compatibility of the law at issue.”

21. The Court also refers to Articles 47 [Individual Requests] and 49 [Deadlines] of the Law, which establish:

Article 47
[Individual Requests]

1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

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

Article 48
[Accuracy of the Referral]

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.

Article 49
[Deadlines]

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.

22. The Court further examines whether the criteria set out in Rule 39 (1) (a) of the Rules of Procedure have been met, which stipulates that:

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

(a) *the referral is filed by an authorized party*”.

23. Initially, the Court notes that the Applicant challenges the constitutionality of the Administrative Instruction. In this regard, he requests from the Court to interpret the Administrative Instruction, requesting clarification whether (i) the Administrative Instruction obliges parties, the lender and the borrower, to enter into a contract against their will, and to set interest, when they have neither given nor received interest; and (ii) from which date the TAK has the right to implement this Administrative Instruction.
24. In this respect, the Court notes that Article 19 (Income on loan interest) of the Administrative Instruction provides that: *“For the purposes of Article 13, paragraph 1, sub-paragraph 1.1. Law, income from loan interest shall be considered any income generated from lending monetary funds or similar funds”*.
25. However, with regard to the Applicant's request for constitutional review of Article 19 of the Administrative Instruction, the Court emphasizes its consistent position that natural or legal persons are not authorized parties to seek an abstract assessment of the compatibility of the legislation with the Constitution, or requests of an *actio popularis* nature. Thus, in its case law, the Court has consistently emphasized that individuals cannot challenge *in abstracto* normative acts of a general nature.
26. In this regard, the Court refers specifically to its decision in case KI17/19, where the Applicants requested that the constitutionality of an Administrative Instruction of the Ministry of Labour and Social Welfare be reviewed. In that case, the Court reasoned that the Applicants *“did not prove in any way how that challenged act violated their fundamental rights and freedoms”* and *“that the constitutional text and the case law of this Court do not recognize the right of individuals to challenge in abstracto the acts of general character.”* Consequently, the Court declared inadmissible the Applicants' request for constitutional review of the Administrative Instruction of the MLSW, considering that the Referral was not submitted by an authorized party as provided by Article 113.7 of the Constitution (See, case of the Court No. KI17/19, Applicants Zymer Neziri, Rexhep Doçi, Daut Bislimi, Xheladin Shala, Adem Zejnnullahu, Exhlale Dobruna, Mehmet Ahmetaj “Constitutional review of Administrative Instruction No. 09/2015 on categorization of beneficiaries of the contribute paying pensions according to the qualification structure and duration of payment of contributions-pension experience of the Ministry of Labor and Social Welfare”, Resolution on Inadmissibility of 9 July 2020, paragraphs 30-34).
27. In the circumstances of the present case, the Court sees no circumstance or reason to decide otherwise than its case law in similar cases.
28. The Court reiterates the fact that the Constitution does not provide for the right of individuals to submit a request for abstract constitutional review, namely to challenge directly in the Constitutional Court the general normative acts of public authorities. The Constitution provides protection for individuals with respect to the actions or failure to act of public authorities, only within the

scope provided by Articles 113.1 and 113.7 of the Constitution. These constitutional provisions require Applicants to prove that: (1) they are authorized parties; (2) they are directly affected by a concrete act or failure to act by public authorities; and (3) that they have exhausted all legal remedies provided by law. (See, Court cases: KI21/19, Applicant *Pjetër Boçi*, Resolution on Inadmissibility of 27 May 2019 – where the interpretation of the relevant legislation regarding the definition of “official position” was requested, paragraphs 21-28 and references cited therein; KI92/12 Applicant *Sali Hajdari*, Resolution on Inadmissibility of 6 December 2012 – requesting the constitutional review of the Law on Pensions; KI62/12 Applicant *Liridon Aliu*; Resolution on Inadmissibility of 20 September 2012 – requesting interpretation of the Constitution; KI40/11 Applicant *Zef Prenaj*, Resolution on Inadmissibility of 23 September 2011 – requesting the constitutional review of the Administrative Instruction No. 11/2010 for the payment of the basic pension issued by MLSW in October 2010).

29. Therefore, according to the relevant provisions of the Constitution (Article 113.7) and the Law (Articles 47 and 49), the only way natural or legal persons can challenge the constitutionality of a law before the Constitutional Court is if they prove that their referral is not of an “*actio popularis*” nature – but that they have been directly or indirectly affected by a “*law*” in the absence of any act, decision or measure implementing that law. In the circumstances of the present case, as it was explained above, this was not the case.
30. Consequently, the Court notes that it cannot answer the questions and doubts of the applicability of the Administrative Instruction, which the Applicant has submitted, *in abstracto*, through his Referral.
31. In the light of the foregoing, the Referral of the Applicant is to be declared inadmissible because it was not filed by an authorized party, as established in paragraphs 1 and 7 of Article 113 of the Constitution, Article 47 of the Law, and Rule 39 (1) (a) of the Rules of Procedure of the Constitutional Court.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 39 (1) of the Rules of Procedure, in its session held on 20 January 2021, unanimously

DECIDES

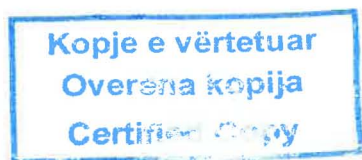
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bekim Sejdiu

Arta Rama-Hajrizi



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