



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 14 March 2016

Ref. No.:RK903/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI108/15**

Applicant

**Sylejman Meta**

**Constitutional review of Decision Ac. no. 1328/2015 of the Court of Appeals of Kosovo, of 27 April 2015**

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

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
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 Mr. Sylejman Meta, the owner of legal entity N.P.M. „Metaj“, with its main office in Drenas (hereinafter: the Applicant).

## **Challenged Decision**

2. The Applicant challenges Decision (Ac. no. 1328/2015) of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) of 27 April 2015, which was served on the Applicant on 19 May 2015.

## **Subject Matter**

3. The subject matter is the constitutional review of the abovementioned Decision of the Court of Appeals, which allegedly violated Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6.1 of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).
4. The Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, halting the execution of the Judgment (Ac. no. 1328/2015) of the Court of Appeals.

## **Legal Basis**

5. The Referral is based on Article 113.7 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 54, 55 and 56 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 17 August 2015 the Applicant submitted the Referral to the Court.
7. On 14 September 2015 the President of the Court by Decision no. GJR. KI108/15 appointed Judge Ivan Čukalović, as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI108/15 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 1 October 2015 the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
9. On 27 October 2015 the Applicant submitted to the Court a request for an interim measure.
10. On 23 November 2015 the Court informed the Ministry of Trade and Industry, Kosovo Investment and Enterprise Support Agency in a capacity of a party to the procedure, of the registration of the Referral and the request for an interim measure filed by the Applicant.



11. On 25 November 2015 the Ministry of Trade and Industry submitted some documents to the Court.
12. On 9 February 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral and rejection of the request to impose an interim measure.

### **Summary of facts**

13. On an unspecified date, N.N.T. "Eko" from Gjakova sent the Applicant an invoice (no. 09/10) related to a debt for the works performed in the premises "Agrollapi" in Fushë-Kosovë, thereby setting a deadline of seven (7) days for it to be paid.
14. On an unspecified date, N.N.T. "Eko" filed with a private enforcement agent a proposal for allowing the enforcement against the Applicant, due to expiry of the deadline for payment of the debt deriving from the abovementioned invoice.
15. On 30 October 2014 the private enforcement agent by Order (P. no. 503/14) approved N.N.T. "Eko"'s proposal for enforcement and reasoned that the Applicant did not pay the debt deriving from the abovementioned invoice.
16. On 15 December 2014 the Applicant filed an objection with the Basic Court in Gjakova against the private enforcement agent's Order (P. no. 503/14) allowing the enforcement, emphasizing that the invoice (No. 09/10) – an authentic document - was not signed and stamped by the Applicant and it was not based on any legal transaction.
17. On 24 March 2015 the Basic Court in Gjakova by Decision (PPP. No. 24/15) rejected as ungrounded the Applicant's objection.
18. In its Decision, the Basic Court in Gjakova reasoned that,

*"[...] Regarding the claim that the bill is falsified, it did not attach any reliable evidence that would make this allegations of the objection credible.*

*In response to the objection, the creditor (N.N.T. "Eko") emphasized that the debtor's (Applicant's) claim that the bill is false is not grounded because the bill no. 09/10 of 09.10.2014 is registered as such in page three of book of sales of N.N.T. "Eko" for 2014, which shows the supplies and VAT as well as the reporting document at the Tax Administration of Kosovo for the tax period 10/2014 [...]*

19. On 2 May 2015 the Applicant filed an appeal with the Court of Appeals against Decision (PPP. No. 24/15) of the Basic Court due to essential violations of the enforcement procedure provisions.

20. On 27 April 2015 the Court of Appeals by Decision (Ac. no. 1328/2015) rejected the Applicant's appeal as ungrounded and upheld Decision (PPP. No. 24/15) of the Basic Court.
21. In its decision, the Court of Appeals reasoned that *"[...] this conclusion of the court is grounded and is based on the legal provisions and the case file. In the meantime, justifiable reasons have been provided which are accepted by this court as well [...]"*.

### **Applicant's allegations**

22. The Applicant alleges that the Decision (Ac. no. 1328/2015) of the Court of Appeals has violated the guaranteed rights, as referred to in paragraph 3 of this document.
23. The Applicant requests the Court *"[...] to find the violation of the rights pursuant to Chapter II of the Constitution while proceeding the case before the Court of Appeal of the Republic of Kosovo with Decision Ac. no. 1328/2015 of 27.04.2015 [...]"*.
24. The Applicant in his request for an interim measure alleges that

*"[...]"*

#### *Unrecoverable damage and Violation of Public Interest*

*Now that I am writing this Proposal for Interim Measure, the second stage of the enforcement proceedings has already started, namely, the execution proceedings, and the assessment and marking of items that will be sold has begun, with a purpose to realize the loan of the creditor, in this case the private enforcement agent Gj. R. aims that on behalf of "debt" of the creditor to sell the public property where the debtor is as a tenant, namely, in his request the private enforcement agent Gj. R. informs the Ministry of Trade and Industry that the plot no.27113, at the place called "Krivova" CZ Korretica e Epërme, with surface area of 0.61. 17 ha, is under the ownership of the Municipality of Drenas, with rent of 99 years by N.P.M. "Metaj", will serve as assets for execution of the creditor's claim [...]"*.

### **Admissibility of the Referral**

25. The Court first examines whether the Applicant's Referral has met the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
26. The Court refers to Article 113.7 of the Constitution, which stipulates:

*"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 also refers to Article 48 of the Law, which provides:

*“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”.*

28. In addition, the Court refers to Rule 36 of the Rules of Procedure, which provides:

*“(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:*

*[...]*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;*

*[...]*

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

29. As it was stated above, the Applicant alleges that the Decision (Ac. no. 1328/2015) of the Court of Appeals has violated his rights guaranteed by Article 24 [Equality Before the Law]; Article 31 [Right to Fair and Impartial Trial], and Article 46 [Protection of Property] of the Constitution and Article 6.1 of the ECHR.

30. The Court notes that the Applicant repeats the same allegations he raised also in the proceedings upon the appeal before the Court of Appeals, which by Decision (Ac. no. 1328/2015) of 27 April 2015 gave a reasoned response to all Applicant's allegations regarding the reasons of the application of the respective rules of the procedural and substantive law.

31. In this respect, the Court also notes that the Court of Appeals reasoned its Decision with regard to Applicant's allegations, stating that *“[...] they do not fall under the reasons stipulated pursuant to Article 71 of the LEP, and which if they would exist would hinder the permitted enforcement, especially when considering that pertaining to the objection's claims the Applicant did not provide any written evidence which would support his claims, as stipulated by Article 69, paragraph 4 of the LEP. Pursuant to the specified provision it is provided that the objection's evidence should be submitted in writing, or the objection shall be rejected. [...]”.*

32. The Court also notes that the Court of Appeals rejected the Applicant's appeal as ungrounded, and endorsed, in its entirety, the reasoning of the Basic Court in Gjakova.

33. Furthermore, the Court notes that the Court of Appeals considered each Applicant's allegation, explaining in detailed manner why the Applicant's appeal had to be rejected as ungrounded, and the Decision of the lower instance court be upheld.

34. The Court, based on the case file, considers that the Decision of the Court of Appeals has not violated the rights guaranteed by the Constitution and the ECHR, as alleged by the Applicant.
35. Regarding other allegations pertaining to the factual situation and the interpretation of the provisions of law, the Court emphasizes that it is not its task to deal with errors of fact or errors of law (legality) allegedly committed by courts or the public authorities, unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality).
36. The Court further reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. The role of the regular courts or of other public authorities is to interpret and apply the pertinent rules of both procedural and substantive law (See *mutatis mutandis Garcia Ruiz vs. Spain*, No. 30544/96, para. 28, ECHR Judgment of 21 January 1999).
37. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991 and, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR Decision of 30 June 2009).
38. The Court further considers that in the proceedings before the regular courts, including those before the Court of Appeals were fair and reasoned (See: *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR Decision of 30 June 2009).
39. The Court notes that the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECHR, Decision of 31 May 2005) and has not specified how the referred articles of the Constitution support its claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
40. In sum, the Court concludes that the Applicant's allegations of violation of his rights and freedoms are unsubstantiated and ungrounded, therefore, his Referral is to be declared inadmissible as manifestly ill-founded.
41. Therefore, in accordance with Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, the Referral is to be declared as manifestly ill-founded.

#### **The request for an interim measure**

42. As stated above, the Applicant also requests the Court to halt the execution of the Decision (Ac. no. 1328/2015) of the Court of Appeals for the reasons under paragraph 22 of this document.
43. In order for the Court to decide on an interim measure, pursuant to Rule 55 (4 and 5) of the Rules of Procedure, it is necessary that:



*“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and  
(...)*

*If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”*

44. As emphasized above, the Applicant's Referral is inadmissible. For this reason, there is no *prima facie* case for the imposition of an interim measure. Therefore, the request for an interim measure is to be rejected.

### **FOR THESE REASONS**

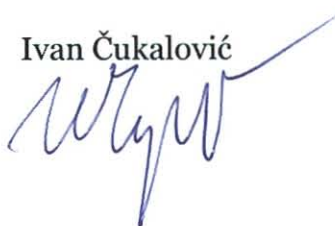
The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 48 of the Law and Rules 36 (1) (d) and (2) (b) (d) and 55 (4) of the Rules of Procedure, on 9 February 2016, unanimously

### **DECIDES**

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

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Arta Rama-Hajrizi

