



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

Pristine, on 14 May 2012
Nr.Ref:RK233/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 129/10

Applicant

Agron Xhaferi

Request for Constitutional review of the Judgment of Supreme Court of Kosovo
A. no. 15/ 2003 of 30 June 2004

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Agron Xhaferi resident of Prishtina, represented by Mr. Ferki Xhaferi, an attorney from Podujeva.

Challenged decision

2. The challenged decision of the public authority allegedly violating the rights guaranteed by the Constitution is the Judgment of the Supreme Court of the Republic of Kosovo, A. no. 15/2003 of 30 June 2004, which was served on the Applicant on 5 July 2004.

Subject matter

3. The subject matter of the Referral submitted with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is the constitutional review of the Judgment of the Supreme Court of Kosovo A. no. 15/2003 of 30 June 2004, where the Applicant claims that that by this Judgment are violated his rights guaranteed by the Constitution, due to the rejection of the appeal as ungrounded, by the same, related to the challenged decisions of the Custom Service of Kosovo, respectively the valuation procedures of the goods in the customs point of Peja.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedures).

Proceedings before the Court

5. On 2 December 2010, the applicant submitted the referral with the Constitutional Court.
6. On 14 February 2011, the President by decision GJR. KI 129/10, appointed judge Iliriana Islami as Judge Rapporteur. On the same day, the President, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu (member) and Enver Hasani (member).
7. On 27 January 2011, the Court notified the applicant and the Supreme Court of Kosovo.
8. On 4 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 18 June 2002, the applicant has signed a contract with the enterprise "Tobacco Factory Sarajeva" for the purpose of purchasing tobacco cigarettes type "Aura" for import and retail in the Kosovo market.
10. On 27 September 2002, in the Custom Branch in Peja had arrived an amount of tobacco based on the invoice no.22 dated 23 September 2002, therefore the applicant claims that his goods have been overvalued/overrated at his expense, and based on the valuation of the goods has been assigned the amount of customs payment to which the applicant has not been agreed.
11. The applicant claims that on 11 September 2002, on the basis of presentation of Single /Unique Custom Document no. 17419 resulting that at the same custom point

a company "Gradina" from Zvecan, has passed the costumes procedures with the same kind of goods, and the goods of this company has been valued much lower compared to the estimation of the applicant goods.

12. On 15 November 2002, after submission of request for repetition of the procedure by the applicant, the Costume Service of UNMIK rendered the decision 07/no. 2391, therefore rejecting the applicant's request for repetition of the procedure concerning the valuation of custom's value of the goods (tobacco), since the Article 129 paragraph 2 of the Applicable Customs Law states that the objection can not be filed after the good leave the customs supervision and the case file indicates that the customs value is determined correctly and in accordance with Article 35 of the Costumes Law.
13. On 26 November 2002, the Director of the Custom Service appointed by UNMIK administration deciding in second instance on the basis of the complaint filed by the applicant against the Decision no.2391, therefore, rejects the applicant's complaints as unfounded. Further the reasoning states that the first –instance body acted right and in conformity with the prescribed method in Article 35 of the Applicable Customs Law.
14. After the claim was filed by the applicant, the Supreme Court on 30 June 2004 issued the Judgment A. no. 15/2003 and rejects the claim of the applicant through which requested to annul the Decision of the Custom Service 07 no. 2392 of 16 December 2002? The reasoning of this court states that the claimant (plaintiff) has not filed an objection within the deadline as stipulated in Article 129 of the Applicable Customs Law in Kosovo.

Applicant's allegations

15. The applicant alleges that the Judgment of the Supreme Court A. no. 15/2003 of 30 June 2004, violated his rights guaranteed by the Constitution of the Republic of Kosovo and European Convention on Human Rights, as follows:
 - Article 24 [Equality before the Law] of the Constitution;
 - Article 31 [Right to Fair and Impartial Trial] of the Constitution;
 - Article 46 [Protection of Property] of the Constitution;
 - Article 6 of European Convention of Human Rights; and
 - Article 1 of Protocol 1 of European Convention of Human Rights.

Assessment of Admissibility of the Referral

16. In order to be able to adjudicate the Referral of the Applicant, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, specified further by the Constitution, the Law and the Rules of Procedures.
17. In relation to this referral, the Constitutional Court finds that the applicant challenges the Judgments of the Supreme Court A. no. 15/2003 of 30 June 2004. This means that the request relates to events prior to 15 June 2008, respectively before the entry onto force of the Constitution of the Republic of Kosovo. Therefore, according to this the application is submitted after the prescribed deadline and therefore is not "*ratione temporis*" in compliance with the provisions of the Constitution and the Law (see mutatis mutandis *Jasiūnienė against Lithuania, Referral no. 41510/98, judgment of ECHR of 6 March and 6 June 2003*).

18. Subsequently, the application is inadmissible pursuant to the Rule 36.3 (h) of the Rules of Procedures which provides:
Rule 36.3(h) „A Referral may also be deemed inadmissible in any of the following cases:

h) the Referral is incompatible ratione temporis with the Constitution”.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36.3 (4) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur


Dr. Iliriana Islami

President of the Constitutional Court


Prof. Dr. Enver Hasani