



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

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Prishtina, 21 December 2015  
Ref. no.: RK872/15

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI83/15**

Applicant

**Shefqet Mehmetukaj**

**Constitutional review of Decision (E. Rev. no. 49/2014) of the Supreme Court of Kosovo, of 23 December 2014**

### 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, and  
Bekim Sejdiu, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Shefqet Mehmetukaj, owner of the company MTE „Sinorg-Pharmaceuticals“ (hereinafter: the Applicant) Gračanica, who is represented by lawyers Mr. Blerim Prestreshi and Mr. Hekuran Haxhimusa, both based in Prishtina.

## **Challenged Decision**

2. The Applicant challenges Decision (E. Rev. no. 49/2014) of the Supreme Court of Kosovo, of 23 December 2014, which was served on the Applicant on 18 February 2015.

## **Subject Matter**

3. The subject matter is the request for constitutional review of the abovementioned Decision of the Supreme Court. The Applicant alleges that in the proceedings before the regular courts Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) were violated.

## **Legal Basis**

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 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**

5. On 18 June 2015, the Applicant submitted via mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 August 2015, by Decision GJR. KI83/15, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision KSH. KI83/15, the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
7. On 15 September 2015, the Court informed the Applicant about the registration of the Referral.
8. On 16 September 2015 the Court requested from the Supreme Court of Kosovo to submit evidence showing when the Supreme Court's decision (E. Rev. no. 49/2014) was served on the Applicant.
9. On 23 September 2015, the Supreme Court of Kosovo submitted the requested documentation.
10. On 11 November 2015, 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**

11. On 9 January 2009, the Applicant presented a shipment of goods for export at the Vërmica Customs terminal. On the same date, the Kosovo Customs -

Customs Offenses Commission, by Decision no. 08/701, decided that the Applicant was liable for a customs offense and was fined the amount of 7,000.00 euro, because he had not properly presented the country of origin of the goods declared for export.

12. The Applicant states that since the goods, which were loaded onto the transport vehicle, could not be exported to the end-destination without paying the administrative penalty and without declaring those as originating from a different country of origin, the goods and the transport vehicle “*were left in the Vërmica Customs terminal*”.
13. On 14 January 2009, the Applicant filed an appeal with Kosovo Customs - Decisions Review Sector at the Customs Service against Decision (no. 08/701) of the Customs Offenses Commission.
14. On 30 January 2009, the Kosovo Customs - Decisions Review Sector, by Decision (06.1.4. no. 34), rejected the appeal in its entirety and upheld Decision (no. 08/701) of the Customs Offenses Commission.
15. On 28 February 2009, the Applicant filed an appeal with the Independent Review Board (hereinafter: IRB) against Decision 06.1.4. no. 34 of the Kosovo Customs - Decisions Review Sector.
16. On 26 March 2012 the IRB, by Decision (A. no 76/2009- SHD) approved the appeal of the Applicant in its entirety and exempted him from paying the administrative fine in the amount of 7,000 euro. The IRB considered further that,

*“The IRB cannot render a decision for the matter which was not the subject of the contest, since in the present case the appellant had to complete the export procedure or, on the contrary, to request the return of the goods which were expired, and in case if it would not be allowed, then the appellant would have been entitled to request an explanation from the Customs for the legal basis and the reason of the goods confiscation in the terminal.*

[...]

*Regarding the appealed allegation for the goods confiscated in Vërmica Customs terminal, the IRB ascertained that there is no decision for temporary ban or confiscation of the goods in question in the case files.”*

17. The IRB concluded with the following “*legal advice*”:

*“This Decision is final in the administrative proceedings, whereas the dissatisfied party has a right to appeal against this Decision with the Supreme Court of Kosovo within 30 days from the day of service, under the Law No. 03/L-109 of the Customs and Excise Code of Kosovo. The claim against this decision does not stay the execution of the decision, which is binding for the parties until it is modified or annulled by the court“.*

18. On 8 November 2012, the Applicant filed a claim for compensation of damages with the District Commercial Court in Prishtina. By this claim, the Applicant requested the court to oblige the *“Kosovo Customs to pay the damage compensation to the claimant at the amount of 38,764.80 € (the equivalent value of the goods which expired due to the fault of the Customs) and to compensate the damage in the name of the blockage of transport vehicle from 25.12.2008 until the day when the claim was filed, according to the financial expertise.”*
19. On 19 November 2012, the District Commercial Court in Prishtina, by Decision (I. C. no. 258/2012) *“declared [itself] absolutely incompetent to decide on this contested matter”* and rejected the Applicant’s claim.
20. On 21 January 2013, the Applicant filed an appeal with the Court of Appeal of Kosovo against Decision (I.C. No. 258/2012) of the District Commercial Court in Prishtina.
21. On 10 July 2014, the Court of Appeal of Kosovo by Decision (Ae. no. 30/2013) rejected the appeal as ungrounded and upheld Decision (I.C. No. 258/2012) of the District Commercial Court in Prishtina, of 19 November 2012.
22. On 1 October 2014 the Applicant filed a request for revision with the Supreme Court of Kosovo against Decision (Ae. no. 30/2013) of the Court of Appeal in Prishtina, of 10 July 2014.
23. On 23 December 2014, the Supreme Court of Kosovo, by Decision (E. Rev. no. 49/2014) rejected as ungrounded the Applicant’s request for revision, with the following reasoning:

*“... The matter between the litigating parties was decided pursuant to the Law on Kosovo Customs and Excise Code No. 03/L-109, as a special law, which foresees the obligations of the Customs when a case is ultimately resolved in the last instance, for goods and obligations in the amount equivalent to the one of the market for the contested goods at the moment when it is caused, therefore according to the assessment of the Supreme Court, the lower instance courts have correctly applied the legal provisions when deciding as per the enacting clause of the challenged decision, on the basis of which it was considered that the allegations mentioned in the Revision for the erroneous application of the contested procedure provisions are ungrounded.*

*The Court reviewed the allegation according to which the administrative matter was ultimately decided in the favor of the claimant and he had no interest to challenge the decision of the administrative body, however, it had no influence in rendering a different decision, because the mentioned Law provided the obligation of the parties for payment, caused by the actions of the parties in the proceedings. “*

## **Applicant's allegations**

24. The Applicant first alleges that the regular court proceedings violated the rights guaranteed by Articles 31 (Right to Fair and Impartial Trial) and 32 (Right to Legal Remedies) of the Constitution.
25. The Applicant considers that by Decision (A. no. 76/2009-SHD) of the Independent Review Board, of 26 March 2012, the administrative dispute was completed by final decision and that the Applicant won the case because *"it was confirmed that the fine was imposed based on no grounds and, at the same time, the imposed fine was annulled."*
26. The Applicant further alleges that he is the party that has won the dispute and that there was no need to act based on the legal advice provided in the decision of the Independent Review Board to further continue proceedings before the Supreme Court in the administrative dispute.
27. The Applicant alleges that he could not request compensation of damage because he did not know what will be the outcome of the dispute until the last instance when it was determined that he had properly declared the goods.
28. The Applicant considers that he could claim the damage caused by unlawful actions of Kosovo Customs only in contested proceedings under Article 136 of Law no. 04/L-077 on Obligational Relationships.
29. The Applicant further considers that the Decision by which the District Commercial Court in Prishtina was declared incompetent and then by upholding this decision by the Court of Appeal and the Supreme Court, the Applicant was prevented to request the protection of his right through the court, and that he was also denied the right to legal remedy.
30. The Applicant request the Court that: *"after holding the violation of the constitutional provisions, to remand the case to the Supreme Court of Kosovo for retrial so that the party is granted with the realization and exercise of the rights guaranteed by item 1 of Article 31, Right to Fair and Impartial Trial and Article 32 Right to Legal Remedies, of the Constitution of the Republic of Kosovo"*.

## **Admissibility of the Referral**

31. The Court shall examine whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and further specified in the Law and the Rules of Procedure.
32. The Court 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."*

33. In addition, the Court recalls Rule 36 (2) (b) of the Rules of Procedure, which provides:

*“(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.”*

34. The Applicant alleges that by the challenged judgment his right to equality before the law and his right to a legal remedy have been violated, since the regular courts have erroneously considered that the Customs and Excise Code of Kosovo applied to his claim for compensation instead of the Law on Obligational relationships.
35. The Court notes that the Applicant repeats the same allegations as those stated in the proceedings of the request for revision before the Supreme Court of Kosovo, which by decision (E. Rev. no. 49/2014) of 23 December 2014, gave a reasoned answer to all of the Applicant’s allegations, related to the reasons for applying respective rules of the procedural and substantive law.
36. The issue of the applicable law was clearly indicated to the Applicant even in decision (A. no. 76/2009- SHD) of the Independent Review Board of 26 March 2012, which in its legal advice stated that:
- “The dissatisfied party is entitled to file a claim with the Supreme Court of Kosovo against this Decision, within 30 days from the day of receipt, according to the Law No. 03/L-109, Customs and Excise Code of Kosovo.”*
37. The Court notes that the Applicant is not, mainly, satisfied with the legal qualification of the facts and the law applied by the regular courts. Legal qualification of the facts and applicable law are matters which fall under the domain of legality.
38. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case: *Garcia Ruiz vs. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999; see also case: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
39. The Applicant has not submitted any *prima facie* evidence of violation of his constitutional rights (see: *Vanek vs. Slovak Republic*, no. 53363/99, ECHR Decision as to admissibility of application, of 31 May 2005).
40. Even though, the Applicant claims that his rights have been violated due to the erroneous qualification of the facts and the law applied by the regular courts, he did not prove that the above-mentioned decisions have violated his constitutional rights.

41. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case, cannot of itself raise an arguable claim for breach of the Constitution (see: *mutatis mutandis*, ECHR Judgment NO. 5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).
42. The Applicant was afforded the opportunity to present his case and to challenge the interpretation of the law, which he considers is wrong, before the District Commercial Court in Prishtina, the Court of Appeal in Prishtina and the Supreme Court of Kosovo, in the regular court proceedings.
43. After the review of the proceedings in its entirety, the Court has not found that the respective proceedings were in any way unfair or arbitrary (see: *mutatis mutandis*, *Shub against Lithuania*, ECHR Decision on admissibility of application No. 17064/06, of 30 June 2009).
44. The Court considers that the admissibility requirements were not met. The Applicant has failed to show and substantiate the allegation that his constitutional rights and freedoms have been violated by the challenged decision.
45. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113 paragraph 7, Articles 20 and 48 of the Law, and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 11 November 2015, 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Snezhana Botusharova

**President of the Constitutional Court**

Arta Rama-Hajrizi

