



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

Pristine, 20 September 2012
Ref. No.: RK296/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI93/11

Applicant

N.T. AKUSTIKA

**Constitutional Review of the Judgment of the Supreme Court of Kosovo
PPA 9/2008 dated 29 April 2011**

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.

The Applicant

1. The Applicant is a Private Enterprise named N.T AKUSTIKA from Peja, represented by Mustafe Kastrati, a lawyer from Peja.

Challenged decision

2. The challenged decision is the judgment of the Supreme Court of Kosovo PPA 9/2008 dated 29 April 2011.

Subject Matter

3. The subject matter of the Referral concerns a challenge to an assessment of tax on the Applicant.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo date 16 December 2008 (hereinafter, the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

5. On 7 July 2011, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").
6. The President of the Constitutional Court appointed Iliriana Islami as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (presiding), Enver Hasani and Kadri Kryeziu.
7. The Judge Rapporteur reported to the Review Panel on 29 November 2011 and the Review Panel made a recommendation on inadmissibility to the Court.

Summary of the facts

8. On 13 May 2004, the Applicant appealed a decision of the Tax Administration of Kosovo (hereafter, the "TAK") in relation to the tax assessed as payable by the Applicant. The appeal was based on the following grounds:
 - i. major violations of tax procedures;
 - ii. an erroneous determination of the factual situation;
 - iii. wrongful application of material law; and
 - iv. exorbitantly high levels of the Value Added Tax (hereafter the "VAT") assessed as payable by the Applicant.
9. On 2 July 2004, the TAK informed the Applicant that his appeal had been accepted for review however the Applicant remained liable for tax payment. The TAK decided that additional tax was calculated from the irregularities on the Applicant's records.
10. On 12 July 2004, the Applicant filed an appeal to the Independent Review Board in relation to the TAK decisions contained in the letter dated 2 July 2004.
11. On 30 April 2005, the Independent Review Board (A.nr.130/2005) rejected the Applicant's appeal as ungrounded.

12. The Applicant subsequently filed a claim with the Supreme Court of Kosovo to have the decision of the Independent Review Board annulled.
13. On 29 October 2007, the Supreme Court (A.nr.429/2005) rejected the Applicant's claim.
14. On 24 April 2011, the Supreme Court rejected (PPA.nr.9/2008) the Applicant's petition for repetition of procedure.
15. The Applicant then filed a motion with the Public Prosecutor for a petition for the protection of legality on the basis that there had been a wrongful determination of material law.
16. On 22 June 2011, the State Prosecutor rejected the Applicant's motion for protection of legality due to the absence of a legal basis to file such a petition.

The Applicant's allegations

17. The Applicant alleged there were violations of Paragraph 9 of Article 119 of the Constitution by virtue of the process of determining the Applicant's tax assessment by comparing it to three other similar businesses as opposed to determinations based on the law, financial documentation and business books.

Assessment of the admissibility of the Referral

18. The Court first examines whether the Applicant has fulfilled all the admissibility requirements laid down in the Constitution.
19. Article 48 of the Law stipulates that:

"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."
20. The Constitutional Court does not function as a court of appeal when it reviews decisions made by lower courts. The role of lower courts is to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis*, *Garcia Ruiz vs. Spain* [GC], No. 30544/96, paragraph 28, European Court for Human Rights [ECHR] 1999-I).
21. The Applicant alleges that his constitutional rights were violated by major breaches of tax procedures, erroneous determination of the factual situation and wrongful application of material law by the administrative bodies and the lower courts without specifically stating how any particular decision violated his constitutional rights.
22. However, the Applicant did not provide to the Court any prima facie evidence supporting the claim that there had been a violation of his constitutional rights (see *Vanek vs. Republic of Slovakia*, Decision ECHR on admissibility of request, No 53363/99 of May 2005). Furthermore, the Applicant does not state in what manner Paragraph 9 of Article 119 supports his Referral, as prescribed by Article 113.7 of the Constitution and Article 48 of the Law.
23. The Applicant had numerous opportunities to present his case and to challenge the interpretation of the law (which the Applicant alleges to be incorrect) before the TAK, the Independent Review Board, Supreme Court and the Public Prosecutor.

24. The Constitutional Court did not find that the decisions from previous proceedings were in any way incorrect or arbitrary (see *mutatis mutandis*, *Shub vs Lithuania*, Decision of ECHR on admissibility of request, No. 17064/06 of 30 June 2009).
25. Thus, the admissibility requirements have not been met. The Applicant has failed to substantiate the allegation that the challenged decision violated the Applicant's constitutional rights and freedoms.
26. For these reasons, the Referral is manifestly ill-founded pursuant to Rule 36(2b) of the Rules which provides that: "*The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights*".

FOR THESE REASONS

The Court, following deliberations on 29 November 2011, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible,
- II. This Decision is to be notified to the Applicant, and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Presiding Judge



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani