



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

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Prishtina, on 1 February 2016  
Ref. no.:RK882/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI98/15**

Applicant

**Shpendim Bokshi**

**Constitutional review of Decision Ac. no. 4223/2014, of the Court of  
Appeal of Kosovo, of 25 March 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, and  
Bekim Sejdiu, Judge.

### **Applicant**

1. The Referral was submitted by Mr. Shpendim Bokshi, the owner of the legal entity "Bokshi" L.L.C. from Gjakova (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision (Ac. no. 4223/14), of the Court of Appeal of Kosovo, of 25 March 2015.

## **Subject matter**

3. The subject matter is the constitutional review of the Decision of the Court of Appeal, which has allegedly violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial]; Article 32 [Right to Legal Remedies] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy] of the European Convention on Human Rights (hereinafter: ECHR).

## **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 15 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 August 2015, the President of the Court, by Decision No. GJR. KI98/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI 98/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 7 September 2015, the Court informed the Applicant about the registration of the Referral and requested the Applicant to fill in the referral form. At the same time, the Court requested the Applicant to submit to the Court the challenged decisions and attach the relevant documents indicating that he is the owner of the legal entity L.L.C. "Bokshi".
8. On 14 September 2015, the Applicant submitted to the Court only the decisions challenged by him.
9. On 17 September 2015, the Court requested again the Applicant to fill in the referral form and to submit the relevant documents, indicating that he is the owner of the legal entity L.L.C. "Bokshi".
10. On 6 October 2015, the Applicant submitted to the Court the completed referral form and the certificate of registration of the legal entity L.L.C. "Bokshi".

11. On 26 October 2015, the Court requested that the Applicant declares whether he has simultaneously filed a request for protection of legality with the State Prosecutor of Kosovo.
12. On 16 November 2015 the Applicant submitted to the Court the request for protection of legality, which he filed with the State Prosecutor on 6 May 2015.
13. On 22 December 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts in administrative procedure**

14. On 14 May 2012, the Independent Commission for Mines and Minerals (hereinafter: ICMM) by Decision (KA. no. 189/12) imposed an administrative fine on the Applicant in the amount of € 5,000, for performing separation activities of mining resources without possession of the required license to perform such an activity.
15. On 3 July 2012, the ICMM by Decision (KA. no. 219/2012) imposed another (new) administrative fine on the Applicant in the amount of € 5,000, because the Applicant allegedly continued to perform activities of separation of mining resources without a license.
16. Both of the above referenced decisions rendered by ICMM, contain the following legal remedy:

*“Against this decision is allowed the initiation of administrative proceedings in accordance with the Law on Administrative Procedure. The claim for initiation of administrative proceedings shall be submitted before the Supreme Court within 30 days from the submission of the decision of the ICMM”.*

### **Summary of facts in executive procedure**

17. On 2 May 2013, the ICMM submitted a proposal to the Municipal Court in Gjakova for execution of Decision (KA. no. 189/12 of 14 May 2012) and of Decision (KA. no. 219/2012 of 3 July 2012), which imposed an administrative fine on the Applicant in the total amount of € 10,000.
18. On 14 May 2013, the Basic Court in Gjakova, by Decision (E. No. 378/13), allowed the execution of Decision (AC. No. 189/12, of 14 May 2012) and of Decision (AC. No. 219/2012, of 3 July 2012).
19. On 27 May 2013, the Applicant filed an objection against Decision (E. No. 378/13), of the Basic Court in Gjakova on granting execution, arguing that this enforcement case lacked the required execution title, and proposed that the execution be declared inadmissible.
20. On 24 May 2014, the Basic Court in Gjakova, by Decision (E. No. 378/13), rejected the Applicant’s objection as ungrounded.

21. On an unspecified date, the Applicant filed the appeal with the Court of Appeal against Decision (E. No. 378/13, of 24 May 2014) due to violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law, and proposed that his appeal be approved as grounded.
22. On 25 March 2015, the Court of Appeal by Decision (AC. No. 4223/2014), rejected the Applicant's appeal and upheld Decision (E. No. 378/13, of 24 May 2014), of the Basic Court in Gjakova.
23. In its decision, the Court of Appeal held that *"[...] The challenged decision is fair and the first instance court acted correctly when rejected the Applicant's objection as ungrounded. This is because the Applicant was caught while conducting illegally special activity -separation, therefore, the ICMM imposed fines under Decision (AC. No. 189/12 of 14 May 2012) and Decision (AC. No. 219/2012, of 3 July 2012) [...]"*.
24. In addition, the Court of Appeal held that, although *"[...] The ICMM decisions can be challenged in the administrative procedure by initiating the administrative conflict, this does not present legal obstacle for the execution, because pursuant to the Law on Administrative Conflicts, the filing of lawsuit against administrative decisions does not stay their execution [...]"*.
25. On 6 May 2015, the Applicant submitted the request for protection of legality to the State Prosecutor of Kosovo.

### **Applicant's Allegations**

26. The Applicant alleges that Decision (E. No. 378/2013) of the Basic Court in Gjakova and Decision (Ac. No. 4223/14), of the Court of Appeal have violated the guaranteed rights as referred to in paragraph 3 of this document.
27. The Applicant also alleges that the challenged decisions are entirely ungrounded and unlawful for the procedural and substantive reasons.
28. Furthermore, the Applicant alleges that *"[...] The Basic Court in Gjakova, namely the judiciary, has neither the subject matter jurisdiction, nor territorial jurisdiction for execution of the administrative fine imposed by the Independent Commission for Mines and Minerals, Prishtina. The court does not execute fines, fees and taxes, namely the public fiscal obligations in civil execution procedure. Tax liabilities, fees and public obligations are executed same as the taxes, by the authority which has imposed it, if they are lawful"*.
29. The Applicant requests *"the State Prosecutor of Kosovo files a request for protection of legality with the Supreme Court of Kosovo, so that this ordinary injustice done to me is eliminated [...]" and the Constitutional Court to annul and declare unconstitutional the decisions of the regular courts"*.

## Admissibility of the Referral

30. The Court first examines whether the Applicant meets the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

31. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

*“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.”*

32. In addition, Article 47.2 of the Law, provides:

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

33. Furthermore, Rule 36 (1) (b) of the Rules of Procedure provides:

*“The Court may consider a referral if: all effective remedies that are available under the law against the judgment or decision challenged have been exhausted...”*

34. The Court notes that the Applicant bases his allegation on erroneous application of the law by the regular courts, emphasizing in particular that *“the judiciary has neither the subject nor territorial jurisdiction for the enforcement of the administrative fine imposed by the Independent Commission...”*

35. In addition, the Applicant has not exhausted the effective legal remedies, by which he had the opportunity to challenge the legality of the Decision of the ICMM (KA. no. 189/12 of 14 May 2012) and of the Decision of the ICMM (KA. No. 219/2012 of 3 July 2012), in the administrative proceedings before the Supreme Court, in accordance with the legal remedy.

36. The Court also refers to Law no. 03/L-202 on Administrative Conflicts, which in Article 23 paragraph 1 and 2 provides as follows:

*“1. For the indictments against administrative acts of all bodies shall decide the competent court for administrative matters in first instance, unless otherwise provided by other legal provisions.*

*2. Against the issued decision on administrative conflict, complain shall be submitted to the competent court for administrative matters of second instance”.*

37. The Court notes that the issues raised by the Applicant before the Constitutional Court could have been initiated before the Supreme Court, in accordance with Law No. 03/L-202 on Administrative Conflicts.

38. The Court further notes that the Applicant simultaneously with the request for the constitutional review, filed also the request for protection of legality with the



State Prosecutor on 6 May 2015, and that the proceedings upon the request for protection of legality has not been completed.

39. In these circumstances, on the basis of the documents submitted by the Applicant to the Court, it follows that the Applicant has not exhausted all effective remedies which he had at his disposal.
40. Therefore, the Referral is premature because the Applicant's case, pertaining to the proposal for rejection of execution of the ICMM decision due to lack of jurisdiction of the regular courts, is still pending the notification by the State Prosecutor before the Supreme Court of Kosovo.
41. In this regard, the Court reiterates that the regular courts are independent in exercising legal powers and it is their constitutional obligation and prerogative to interpret the issues of fact and law which are relevant to the cases filed before them.
42. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see case K141/09, Applicant *AAB-RIINVEST University L.L.C., Prishtina*, Resolution on Inadmissibility of 21 January 2010, and *mutatis mutandis*, ECHR, *Selmouni vs. France*, No. 25803/94, ECHR, Decision of 28 July 1999).
43. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, administrative or court proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right (See case K107/09, the Applicants. *Demë Kurbogaj and Besnik Kurbogaj*, Resolution on Inadmissibility of 19 May 2010).
44. Accordingly, the Constitutional Court should not assess the alleged constitutional violations, without previously providing the opportunity to regular courts to finalize the proceedings filed before them, in order to correct and eliminate violations of the Constitution.
45. Therefore, the Court finds that the Applicant has not exhausted all legal remedies provided by law to be able to submit the Referral to the Constitutional Court, and the Referral should be rejected as inadmissible, in accordance with Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 22 December 2015, with majority of votes

## DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

  
Robert Carolan



**President of the Constitutional Court**

  
Arta Rama-Hajrizi