



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

Prishtina, on 18 December 2017
Ref. No.: RK1172/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI108/17

Applicant

Elektromotorri SH.A

**Constitutional review of the Decision, Ac. no. 1275/2016 of the Court of
Appeal of the Republic of Kosovo, of 7 April 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant is Elektromotorri SH.A with seat in Gjakova (hereinafter: the Applicant), represented by Mr. Idriz Daci, a practicing lawyer from Gjakova.

Challenged Decision

2. The Applicant challenges the Decision (Ac. no. 1275/2016, of 7 April 2017) of the Court of Appeal of the Republic of Kosovo (hereinafter, the Court of Appeal).
3. The challenged Decision was served on the Applicant on 28 April 2017.

Subject Matter

4. The subject matter of the Referral is the constitutional review of the challenged Decision which rejected the Applicant's appeal related to its request for annulment of enforcement proceedings against his company.
5. The Applicant alleges that through the challenged Decision, the Court of Appeal has violated his "*right to protection of property.*"

Legal basis

6. The Referral is based on Article 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 (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 8 September 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 11 September 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
9. On 18 September 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal.
10. On 23 October 2017, 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

11. Following the conclusion of regular court proceedings on the merits of the case, the Applicant was obliged to pay a certain amount of money to a creditor. An enforcement order was issued which was subsequently challenged by the Applicant before the Basic Court in Gjakova.
12. On 13 January 2016, the Basic Court in Gjakova (Decision PPP. no. 176/15) rejected the Applicant's objection to enforcement because it was filled out of time.

13. The Applicant appealed the aforementioned Decision before the Court of Appeal.
14. On 7 April 2017, the Court of Appeal (Decision Ac. no. 1275/2016, of 7 April 2017) rejected the Applicant's appeal filed against the Decision of the Basic Court in Gjakova with the following reasoning:

"The Court of Appeal observes that [...] the objection [by the Applicant] was filed 7 days beyond the prescribed time-limit and that the court of first instance [Basic Court in Gjakova] has rightfully dismissed the objection as out of time [...]"

Applicant's allegations

15. The Applicant alleges that the Court of Appeal has violated his right guaranteed by Article 46 [Protection of Property] of the Constitution by not approving his appeal filed against the Decision of the Basic Court in Gjakova.
16. Consequently, the Applicant requests the Court to annul the challenged Decision and return the matter to the Basic Court of Gjakova for retrial.

Admissibility of the Referral

17. The Court first examines whether the Applicant has met the admissibility requirements set by the Constitution and as further provided by the Law and the Rules of Procedure.
18. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. 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."

19. In addition, the Court refers to Article 49 of the Law which provides:

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. [...]"

20. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure:

"(1) The Court may consider a Referral if:

[...]

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...].”

21. Based on the case file, the Court notes that the Applicant filed his Referral on 8 September 2017 whilst the challenged Decision (Ac. no. 1275/2016, of 7 April 2017) of the Court of Appeal was served on the Applicant on 28 April 2017.
22. These facts demonstrate that the Applicant submitted his Referral to the Court after the expiry of legal deadline of four months, as requested by the admissibility requirements stipulated in Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
23. The Court recalls that the objective of the four months legal deadline is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See cases of the European Court of Human Rights: *Sabri Güneş v. Turkey*, No. 27396/06, ECtHR, Judgment of 29 June 2012; *Idalov v. Russia*, No. 5826/03, ECtHR, Judgment of 22 May 2012; *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECtHR, Decision of 25 August 2005; see also cases of the Constitutional Court: Case No. KI175/14, *Sylejman Daut Dibra*, Resolution on Inadmissibility of 25 March 2015; Case No. KI102/14, *Arben Ademi*, Resolution on Inadmissibility of 22 January 2015).
24. For the foregoing reasons, the Court concludes that the Referral is out of time and should be declared as inadmissible pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

Pursuant to Articles 113.1 and 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 23 October 2017, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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;
- IV. TO DECLARE this Decision effective immediately

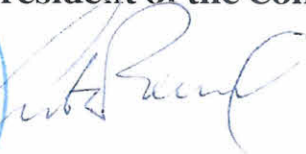
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi