



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

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Pristina, 30 May 2011  
Ref. No.: VHL112/11

## **DECISION TO STRIKE OUT THE REFERRAL**

in

**Case No. KI11-09**

Applicant

**Tomë Krasniqi**

**Constitutional review of Section 2.1 of the United Nations Mission in Kosovo (UNMIK) Administrative Direction No.2003/12 and Article 20.1 of the Law on Radio Television of Kosovo, Law No. 02/L-47**

**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 Tomë Krasniqi of Pristina, Kosovo.

## **Subject Matter**

2. The Applicant alleges that the imposition on him of a monthly fee of €3.5 collected by the Kosovo Energy Corporation (hereinafter KEK) for services from Radio Television of Kosovo (hereinafter RTK) is unconstitutional. He maintains that his circumstances, as a pensioner on a very limited income, makes the imposition of the fee an overly excessive burden on him and breaches his fundamental rights as guaranteed by the Constitution. The Applicant also maintains that imposing a fee on him through the terms of a contract between KEK and consumers of electricity breaches his fundamental rights as guaranteed by the Constitution.
3. The Applicant maintains that the scheme devised under UNMIK Administrative Instruction in conjunction with a contract entered into between KEK and RTK violated his constitutional rights. This scheme and the form of the contract are dealt with in the Judgment below.

## **Legal Basis**

4. Articles 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Articles 20 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law) and Rules 32 (4) and 56 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: the Rules).

## **Proceedings before the Court**

5. On the 16 of March 2009, the Applicant filed a Referral with the Constitutional Court concerning the constitutionality of the operation of Article 2.1 of UNMIK Administrative Instruction No. 2003/12, concerning the implementation of UNMIK Regulation No.2001/13 on the establishment of RTK.
6. The President appointed Judge Iliriana Islami as Judge Rapporteur and a Review Panel comprising of Judges Snezhana Botusharova, presiding, Enver Hasani and Ivan Čukalović.
7. Subsequently, on 2 September 2009, the Applicant requested interim measures prohibiting the implementation of the fee pending the final determination on the merits of the original Referral.
8. A hearing was held by the Court on 6 October 2009 at which the Applicant and representatives of RTK and KEK attended and participated.
9. Pursuant to Article 116(2) of the Constitution, Article 27 of the Law and Section 52 in conjunction with Section 59 of the Rules, which were in operation at that time, the Court issued a Decision dated 16 October 2009 granting an interim measure on further application of the provisions of Article 20.1 of the Law on RTK pending the decision on the merits of the Referral. The Court recommended to the Assembly of Kosovo that it reviews the nature of Article 20.1 of the Law on RTK and the practices based on its provisions.
10. On 14 June 2010, the Court renewed the said interim measure until 1 January 2011 and requested the Assembly of Kosovo to inform the Court in a timely manner on progress in relation to compliance with the Court's previous recommendation.
11. The Court deliberated further on the matter on 17 May 2011.

## **Facts**

12. On 2 March 2006, the Applicant wrote to KEK requesting that his personal rights not be violated on the basis of his personal circumstances and the infringement of his integrity and personality as a pensioner to have to pay €3.5 per month for RTK.
13. Because the Division of Distribution, Sales Section of KEK did not reply to his written request the Applicant filed a complaint on 13 April 2006 with the Consumer Protection Department (hereinafter CDP) of the Energy Regulatory Office (hereinafter ERO) arising the inaction of the administration of KEK.
14. On 27 April 2006, the CPD of the ERO rejected his complaint. On 28 April 2006, not being satisfied with that decision, the Applicant filed a request to review the decision of the CPD with the Board of ERO.
15. On 27 May 2006, the Board of ERO rejected the complaint against the decision of CPD, indicating that the Applicant could pursue a legal remedy against this decision in the Municipal Court of Pristina.
16. On 07 June 2006, the Applicant initiated proceedings before the Municipal Court of Pristina seeking, among other things, to have the payment of € 3.5 “declared invalid”.
17. On 22 January 2007, because more than six months had passed from the day the case was filed, the Applicant asked the Court “to convoke a court session for this matter”.
18. On 12 June 2007, he requested “an urgent convocation of court session”. The Applicant stated that “the Court continued to remain silent what practically and realistically impeded the realization of Applicant’s right to an effective legal remedy”. The Constitutional Court has not been made aware of any decision made by the Municipal Court in the matter.

## **Responses of Radio Television of Kosovo**

19. On 07 September 2009, RTK replied to the referral stating, in general, that the payment, in accordance with article 20 of the Law of RTK, was an appropriate financial provision for RTK enacted by the Assembly of Kosovo.
20. RTK made the points that follow.
  - The Assembly of Kosovo adopted the Law No.02/L-47 on Radio and Television of Kosovo which entered into force on January 20, 2006.
  - According to this Law, the Assembly of Kosovo is the establishing authority of the public institution RTK.
  - RTK offers a public service in the field of radio and television, with one television channel and two radio channels, through its services. its programmes are transmitted via satellite for the diaspora and for Kosovo minority communities in other countries.
  - The Assembly of Kosovo is the only institution authorised to determine the amount due to be paid by citizens for RTK services. This was done through Article 20.1 of the Law. All natural and legal persons in the territory of Kosovo are obliged to pay for the public transmitting of RTK services.

- The Contract for Services No. 2532/08, date 1 December 2008, between KEK and RTK, was due to expire on December 1, 2009, and serves as the basis for the collection of € 3.5 by KEK on behalf of the RTK.
  - RTK in its response considered that its operation as the public broadcaster is lawfully based. RTK regards the Law as the legal basis for its operation in Kosovo society.
21. At the public hearing on 6 October 2009, RTK made the additional points that follow.
- Since the Law on RTK entered into force the earlier UNMIK Administrative Instruction No. 2003/12 and UNMIK Regulation 2003/13 do not apply.
  - The Applicant did not specify in his Referral what provisions of the Constitutions were alleged to have been violated or what was the concrete act of a public authority challenged by him.
  - The Law on RTK defines the status of RTK as the body which offers public service in the field of radio and television and that it was the Assembly of Kosovo that established RTK and that the Assembly is responsible for guaranteeing the autonomy and the editorial and financial independence of RTK.
  - That RTK was subject to monitoring by the Independent Media commission and that advertising by it was for regulated and limited amounts of time.
  - That RTK was not a “state broadcaster” but that its mission was to provide public broadcasting to serve the needs and interests of the public and to be funded through the public.
  - That following recommendations of the Council of Europe on public broadcasting that funding should be secure and transparent to ensure editorial independence and institutional autonomy.
  - That paragraph 20.9 of the Law of RTK provided that *“Households included on the Ministry of Labour and Social Welfare Social Assistance Scheme roster, and any other categories of Kosovo residents so defined in law, shall be exempt from payment of the fee.”* Therefore, that the Applicant did not make use of the remedies guaranteed to him by the Law on RTK.
  - That the references in the Referral to the Law on Obligations are not relevant as the Law passed by the Assembly gives the basis for the contract between RTK and KEK.
  - That the legal provisions authorisation of the collection of the monthly fee of €3.5 did not cause any risk or irreparable damage endangering the public interest, on the contrary, it provided for the long-term funding of public broadcasting in Kosovo.

### **Response of Kosovo Energy Corporation**

22. The other interested party, KEK, did not respond in writing to the Constitutional Court’s request but appeared at the public hearing on 6 October 2009 and it made the points that follow.
- The collection of fees by KEK on behalf of RTK was entered into by virtue of a contract between them, which was lawfully authorised, and that KEK complied with the contract because of its legal obligations to do so.

- The contract for the collection of the monthly fee was due to expire by 30 November 2009.
- In many regions which were not covered by the RTK signal KEK proceeded with the collection of the fee despite objections and non-payment of the electricity bills. That debts amounting to approximately € 400 million were outstanding.
- Some religious authorities, based on rules of religion, did not pay for electricity and that this was one of several objections that KEK faced in the field in regard to collection of electricity charges.
- KEK was not interested in acting as the collecting agent for RTK beyond the 30 November 2009, the date of the expiry of the contractual arrangement between them and RTK.
- No sums were received from the Kosovo budget for providing the service of collecting the monthly fee.

#### **Events since the granting of Interim Measures**

23. On 16 October 2009, the Court granted Interim Measures at the request of the Applicant on 16 October 2009 in the following terms:

*I. It is GRANTED an interim measure on further application of the provisions of Art. 20.1 of the Law on RTK, pending the decision on merits of the Referral KI11/09*

*II. It is RECOMMENDED to the Assembly of the Republic of Kosovo that it reviews until December 2009 the nature of Art. 20.1 of the Law on RTK and practices based on those provisions.*

*IV. Following December 1, 2009 and thereafter, the Court decides the merits of the Referral*

*V. This decision is to be notified to the applicant, the opposing parties, the Assembly of the Republic of Kosovo, and shall be duly published.*

*VI. This decision is in power from this moment on.*

24. On 30 November 2009, the contractual arrangement entered into between KEK and RTK for the collection of the monthly fee terminated and has not been renewed since.
25. Following the service of the Decision on Interim Measures, the Court considered the matter further on 14 June 2010 and issued an extension to the Interim Measure.
26. The Assembly of Kosovo was served with the Decision on Interim Measures immediately it was made. In response to the recommendation of the Court to review Art. 20.1 of the Law on RTK and the practices based on those provisions, the Assembly wrote to the Court by letter, dated 29 April 2009.
27. In its letter of 29 April 2009 to the Court the Assembly pointed out that certain steps had previously been taken by the Assembly dealing with the Law on RTK, prior to the Referral being made by the Applicant to the Court. The Assembly pointed out that, on 16 September 2008 the Committee on Public Administration, Local Government and Media

recommended to the Assembly Presidency to approve the initiative on amendments to the Law on RTK. On 29 September 2009, the Assembly Presidency approved the recommendation of the Committee. On 27 January 2009 the Committee held a public hearing. Subsequently the Committee held a two-day workshop at which representatives of many interested institutions participated.

28. A working group held its first meeting on 8 September 2009 and involved experts assisting in drafting proposed amendments to the Law. Further amendments were considered by the working group held at a meeting on 7 April 2010. RTK addressed proposals for its future financing to the Committee on 20 April 2010.
29. It is for the Assembly of Kosovo to devise a scheme that is transparent, fair, sustainable, that contains effective and appropriate safeguards for the exemption of indigent persons and that ensures that the laudable aims of the provision of an adequately funded public broadcasting service.
30. Importantly, the Assembly of Kosovo, in a plenary session held on 28 January 2010 approved a Decision No. 03'237 for the provisional financing of RTK for the period from 1 January 2010 to 30 June 2010.
31. Since then the Annual Report of RTK for 2010 states that in the year 2010 €10,464,000 of its total revenue of €12,305,162 were derived from the Kosovo State Budget. The greater part of the rest of its income derived from advertising. This compares to a figure of €7,080,276 received from public subscriptions out of total revenues of €9,785,042 in 2009. In 2009 no revenue was received from the Kosovo State Budget.
32. The Court notes that, at present, no fees are charged or collected directly from individual or households for the provision of the services of RTK.

### **Allegations of the Applicant**

33. The Applicant alleges that Administrative Direction No. 2000/12 infringes the Constitution of the Republic of Kosovo by the setting up, from 1 March 2003, of a contractual arrangement whereby the RTK monthly fee of € 3.5 was imposed and collected through monthly electricity invoices.
34. Administrative Direction No. 2003/12 was promulgated by the Special Representative of the General Secretary of the United Nations on the 03 June 2003. Articles 2.1 and 4.1 of the Direction provide as follows:

#### *Section 2*

##### *Collection and Remittance of the Fee*

*2.1 Every household, business or other establishment in Kosovo shall be legally obliged to pay the fee. For purposes of the present Administrative Direction, a household shall be considered a cohabitating family group that manages its economic affairs as a single entity. Evidence of such management shall include a single bill for electricity or telephone services.*

#### *Section 4*

##### *Establishing the Level of the Fee*

*4.1 The level of the fee shall be set initially at three and one-half (3.5) euro (€) per month, and shall be effective as of the effective date of the present Administrative Direction. The fee shall remain in effect until and unless a new level is established by the Assembly, pursuant to section 4.2 below. The fee shall be exempt of all taxes and charges.*

35. The Applicant maintains that the KEK arrangement, by which the consumer becomes bound to make payments against their will and without their permission and without having signed a contract to do so, constitutes a violation of the jus cogens in relation to articles 26 and 28 of the Law of Obligations.
36. According to the Applicant, based on Articles 103 and 51 of the Law of Obligations, contractual obligations may be enforced only if they are lawfully imposed. He maintains that the contract is completely non-enforceable on the basis that a consumer becomes a contractually obligated party without his consent, by becoming an “unauthorised” contracting party
37. The Applicant considers that the consumer is an “unauthorised” party to the collection arrangement and is deceived. KEK, without the consumer’s consent, authority, agreement or signature, has taken measures without taking into consideration proper lawful authority. He says that the implementation of the contract in favour of RTK was done by force and that, according to the Applicant, KEK acts related to the contract are not valid for the purposes of enforcing it. The contract can only be made valid for the benefit of RTK by the free will of the two contracting parties.
38. The Applicant maintains that, the making of a decision to enforce Article 2.1 of Administrative Direction No. 2003/12 regarding the prepayment of the monthly fee of € 3.5 imposed on every consumer who has a contract with KEK is not in compliance with the Constitution of Kosovo.
39. The Applicant maintains that the failure to vindicate his rights through judicial means amounts to a violation of his personal rights, particularly those rights contemplated by Articles 6, 13, 22 and 32 of the Constitution of the Republic of Kosovo all these rights being guaranteed by the European Convention on Human Rights (hereinafter referred to as ECHR).

#### **Victim Status**

40. Before an individual Applicant can be successful in a claim to the Constitutional Court based on Article 113.7 of the Constitution it is necessary that he or she is able to establish that they hold the status of a victim of a violation of a public authority. This concept was expressed by this Court in the following terms when it issued the decision to grant interim measures on 16 October 2009, *“In line with this, the case law of the European Court of Human Rights says that the party may ask for such a measure and be granted as such if “... the party bring prima facie evidence of such a practice and of his being a victim of it” (Cf. Biriuk v. Lithuania, No. 23373/0325, §27, 25 February 2009, mutatis mutandis, Cf. Dudgeon v. the United Kingdom, 22 October 1981, §§ 40-41, Series A No. 45).”*
41. Whatever status was held by the Applicant at the time of the making of the Referral or at the time of the granting of the interim measures events have moved on since then which indicate that the Applicant’s position has changed significantly. The current position is that neither the Applicant nor any household in the Republic of Kosovo is charged with the monthly license fee for the provision of RTK services. In light of this the Court must consider whether there is merit in pursuing the matter further and whether the Applicant has the status or standing to justify his status as a victim any further.
42. The Court has the power and the duty to address this question particularly in view of the Court’s own Rules of Procedure.

43. Rule 32 (4) of the Rules of Procedure of the Constitutional Court states that the Court may dismiss a Referral when it determines that a claim is moot or when it does not otherwise present a case or a controversy. The Rule, to the extent relevant, provides as follows:

*Rule 32*

*Withdrawal of Referrals and Replies*

*...(4) The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*

*(5) The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision.*

44. The Constitutional Court of Kosovo is not alone in having such a Rule. The Rule reflects universal practice in legal jurisdictions around the world. Indeed the European Convention on Human Rights provides, to the extent relevant, the following:

**Article 37 . Striking out applications**

*1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that*

*a the applicant does not intend to pursue his application; or*

*b the matter has been resolved; or*

*c for any other reason established by the Court, it is no longer justified to continue the examination of the application.*

*However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.*

*2 The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.*

45. Courts should not, as a general rule, make decisions on cases where the issue is no longer a live one. This is a generally accepted principle of behaviour of courts and it analogous to the principle of judicial restraint. The Assembly, following the recommendation of the Court in the original Decision on Interim Measures wrote to the Court informing of the steps being taken by the Assembly to address the question of the funding of the public broadcasting service in Kosovo.
46. The concept of mootness is well recognised legal concept. It can arise where a case in an abstract or hypothetical issue, presents itself for decision by a Court. There are good grounds for a Court not dealing with hypothetical situations. Without a real, immediate or concrete issue to be decided upon the Court might stray into making decisions that will bind itself and the public without there being good cause to do so. Any decision that the Court would now make in relation to this Referral will have no practical effect, particularly in view of the events that have transpired since the granting of the Interim Measures on 16 October 2009. Furthermore, the scarce resources of the Court should be utilised to deal with issues and Referrals that are pending and that affect the parties directly and not those where the issue is now hypothetical or academic.

47. The last effective date for the operation of the KEK – RTK contract for collecting the monthly fee was the 30 November 2009. After that point in time there was no mechanism in place that obliged KEK to collect that fee and the reality is that today electricity bills in Kosovo are issued without the fee. At the time of the granting of the interim measures there was not a sufficient degree of certainty surrounding the issue and it was felt that it was necessary to protect the interests of the Applicant by the granting of the interim measures in the manner described above. There is therefore now no further necessity to grant further, interim or permanent measures.
48. Taking into account the events that have occurred and all the other matters referred to above, the Court concludes that the Applicant now has no case or controversy pending in relation to the collection of the RTK monthly fee. He no longer has the status of a victim in relation to the scheme for the collection of the monthly fee. The issue is effectively moot. On that basis it is not appropriate to make any further order on interim measures or to continue to examine the Referral.

**FOR THESE REASONS:**

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law, and Rule 32(4) of the Rules of Procedure, unanimously

**DECIDES**

- I. TO STRIKE OUT the Referral pursuant to Rule 32.4 of the Rules of Procedure of the Constitutional Court of Kosovo.
- 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.
- III. This Decision is effective immediately.

**Judge-Rapporteur**

Iliriana Islami

**President of the Constitutional Court**

Prof. Dr. Enver Hasani

