



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 30 November 2010
Ref. No.: RK 65/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 45/09

Applicant

Teki Bokshi

Constitutional Review of UNMIK Administrative Direction No. 2003/13, as amended and replaced.

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 Mr. Teki Bokshi, a lawyer, residing in Gjakova, Kosovo.

Administrative Direction Challenged

2. The Applicant challenges the United Nations Mission in Kosovo (UNMIK) Administrative Direction No. 2003/13, as amended and replaced by UNMIK Administrative Direction No. 2008/6, which entered into force on 11 June 2003.

Subject Matter

3. The Applicant alleges that the operation of Articles 22.7 and 64.7 of UNMIK Administrative Direction No. 2003/13 and Articles 22 (7) and 25 (1) (b) of UNMIK Administrative Direction No. 2006/17, which replaced UNMIK Administrative Direction 2003/13 on 6 December 2006, are in violation of fundamental rights and freedoms protected by the Constitution of the Republic of Kosovo. The Applicant further maintains the Article 6 and Article 14 of the European Convention on Human Rights have been violated. Article 6 of the Conventions refers to the entitlement to the Right to a Fair Trial and Article 14 refers to the Prohibition of Discrimination.

Legal Basis

4. Article 113.1. and 7 of the Constitution of Kosovo (hereinafter: "the Constitution"); Articles 46 and 47 of the Law on the Constitutional Court of the Republic of Kosovo of 16 December 2009, (No. 03/L-121), (hereinafter: "the Law"); and Section 69 and Section 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. On 29 September 2009, the Applicant submitted his Referral to the Court, contesting the constitutionality of the UNMIK Administrative Direction No. 2003/13.
6. On 15 June 2010, the Review Panel, consisting of Judge Robert Carolan (Presiding), Judge Ivan Čukalović and Judge Snezhana Botusharova, considered the Report of Judge Rapporteur Almiro Rodrigues and made a recommendation on inadmissibility to the full Court.

Summary of the facts

7. On 28 September 2009, Mr. Teki Bokshi, a lawyer residing in Gjakova, filed the Referral referred to in paragraph 3 above.
8. The Applicant alleges that Article 22 (7) and 64 (7) of the UNMIK Administrative Direction No. 2003/13, as amended and replaced, are "in contradiction with Articles 5, 23, 24, 31 of the Constitution of the Republic of Kosovo" and "in contradiction to determined policy with Article 6 – the right to a fair trial, and especially by Article 14 on prohibition of discrimination of the European Convention on Human Rights."
9. The Applicant supports his Referral solely by reference to the documents referred to in the Referral made to the Court.

Applicant's allegations

10. The Applicant alleges that Articles 22.7 and 64.7 of UNMIK Administrative Direction No. 2003/13, as amended and replaced, are in violation of fundamental rights and freedoms protected by the Constitution of the Republic of Kosovo (hereinafter: "the Constitution"). In particular, the Applicant specifies that Article 5 (Languages), Article 23

(Human Dignity), Article 24 (Equality Before the Law), and Article 31 (Right to Fair and Impartial Trial) are the violated provisions of the Constitution.

11. Article 22.7 of UNMIK Administrative Direction No. 2003/13 was amended and replaced originally by UNMIK Administrative Direction No. 2006/17 and finally by UNMIK Administrative Direction No. 2008/6. The challenged Article of the Administrative Direction is now Article 25.7, it provides for the language in which cases submitted to the Special Chamber of the Supreme Court of Kosovo must be furnished to the Chamber in the following terms:

25.7 Pleadings and supporting documents may be submitted in Albanian, Serbian or English. However, if submitted in Albanian or Serbian, an English translation of all pleadings and supporting documents shall be provided together with the pleadings. Such translation shall be performed at the party's expense.

12. Article 64.7 of the original UNMIK Administrative Direction is now replaced by Article 67.11 of UNMIK Administrative Direction No 2008/6, it provides for the translation of documents in relation to claims made against the Kosovo Trust Agency in the following terms:

67.11 The Special Chamber shall arrange, where necessary, for the translation into English of the complaint, any subsequent submissions and any supporting documents. Such translations shall be supplied to the complainant(s) and the Agency as soon as they are available, which shall be not later than 7 days before the oral hearing.

13. The Applicant thereby maintains that under the Administrative Direction, in certain claims made against the Kosovo Trust Agency, the Special Chamber shall translate submissions that are made by the Kosovo Trust Agency into English and that this therefore amounts to discrimination.
14. Furthermore, the Applicant alleges that Articles 6 and 14 of the European Convention on Human Rights were violated.

Assessment of the admissibility of the Referral

15. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
16. Article 113.7 of the Constitution specifies that "*Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution.*" The Applicant however, does not demonstrate that he himself is a victim of any violation by a public authority.
17. Furthermore, Article 47.1 of the Law specifies that "[e]very individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority." The Applicant yet again, does not demonstrate that the rights and freedoms of *he himself* were or are directly violated by a public authority. As section 69 of the Rules of Procedure clarifies, "[w]hen filing a referral pursuant to Article 113, Paragraph 7 of the Constitution, the authorized party shall convincingly present that he/she has been

directly and currently violated by a public authority in his/her rights and freedoms guaranteed by the Constitution.”

18. Finally, according to Article 53 of the Constitution “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”. According to the Strasbourg case-law “[t]he system of individual petition...excludes applications by way of *actio popularis*. Complaints must therefore be brought by or on behalf of persons who claim to be victims of a violation of one or more of the provisions of the Convention. Such persons must be able to show that they were ‘directly affected’ by the measure complained of” (see e.g. *Judgment in the case İlhan v. Turkey*, No. 22277/93, 27 June 2000, paragraph 52.). Since the referring party, as an individual Applicant, has not demonstrated that he is an authorised party, the Court concludes that the Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.1 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;

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 on the Constitutional Court.

This Decision is effective immediately.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Prof. Dr. Enver Hasani