



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Pristina, 18 March 2011  
Ref. No.: RK100/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 34/09**

Applicant

**Imer Ibriqaj**

**Constitutional Review of Decision no. 03V-115 of the Assembly of the  
Republic of Kosovo dated 4 June 2009**

### **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 Imer Ibriqaj from Komoran, Glogovac Municipality.

### **The Challenged Decision**

2. The Applicant challenges Decion no. 03V-115 of the Assembly of the Republic of Kosovo dated 4 June 2009.

### **Subject Matter**

3. The Applicant complains that the rejection of his application for the position of the Ombudsperson was unjust, thus violating his right guaranteed by Articles 31 and 45 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution).
4. The Applicant also requests the Court to decide on his request for Interim Measure.

### **Legal basis**

5. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"); Article 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law"); and Section 53 and 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

### **Proceedings before the Court**

6. On 27 July 2009 the Applicant filed a referral at the Constitutional Court challenging decision no. 03V-115 of the Assembly of the Republic of Kosovo dated 4 June 2009 on the appointment of the Ombudsperson, and submitted to the Court a request for Interim Measures.
7. On 18 March 2010 the President of the Court appointed Judge Robert Carolan as the Judge Rapporteur and the Review Panel composing of Judge Snezhana Botusharova, Judge Gjyljeta Mushkolaj and Judge Almiro Rodrigues.
8. On 27 May 2010, the Constitutional Court has notified the Assembly of Kosovo regarding the applicant's referral. On 3 June 2010 and on 6 June 2010 the Court received the responses from the Opposing party.
9. On 17 December 2010, after having considered the Report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of Almiro Rodrigues, Snezhana Botusharova and Gjyljeta Mushkolaj made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of the facts**

10. On 13 March 2010, the Applicant had submitted his application to the Assembly of the Republic of Kosovo following its announcement for the vacancy of the Ombudsperson.
11. On 18 May 2010, the Selection Panel presented its report to the Assembly of Kosovo, recommending three (3) potential candidates for the position of the Ombudsperson. In addition to the report the Selection Panel has also enclosed a list containing the points of the twenty three (23) candidates that were interviewed.
12. The Applicant Mr. Imer Ibriqaj was not amongst the twenty three (23) candidates who were invited for an interview.

13. On 4 June 2010, an Assembly meeting was held for the purpose of the selection of the Ombudsperson. On the same day the President of the Assembly issued Decision no. 03V-115, appointing Mr. Sami Kurteshi as the Ombudsperson of the Republic of Kosovo.
14. The Applicant, with regards to the selection process, has made a complaint to the Assembly of Kosovo and to the International Civilian Office.
15. On 29 July 2009 the Applicant initiated the Administrative proceedings before the Supreme Court. The case is still pending at the Supreme Court.

#### **The Applicant's allegations**

16. The Applicant alleges that his application was rejected by the Assembly of Kosovo and the appointment of the current Ombudsperson was done in an unlawful matter and thus claims that there has been a violation of Article 45 of the Constitution [Freedom of Election and Participation].
17. In addition, The Applicant also alleges that his cases at the Supreme Court that initiated on 29 July 2009 is being lengthened intentionally and thus claims that there has been a violation of Article 31 of the Constitution [The Right to a Fair Trial].
18. Furthermore, the Applicant requests a monetary compensation of 550.000 Euors for material and immaterial damages.

#### **Opposing Party's comment**

19. The Assembly of the Republic Kosovo replied on the 3 June 2010, stating that Mr. Ibriqaj was eliminated in the first stage "due to non fulfillment of the formal conditions".
20. Furthermore, on 6 June 2010, the legal representative of the Assembly of Kosovo, the Ministry of Justice submitted an additional letter asserting that the selection process was in accordance with the law, also enclosing the case file regarding the process for the selection of the Ombudsperson.

#### **Assessment of the request for Interim Measures**

21. According to Article 27 of the Law on the Constitutional Court, the facts provided by the Applicant, the Court finds that the Applicant has failed to establish that there exists a prima facie case for the Court to decide on his request for Interim Measure.
22. The Court concludes that the request for Interim Measure is unsubstantiated, the Applicant not having submitted any convincing arguments that he might face any risk or irreparable damage, if his request for Interim Measure would not be granted.

#### **Assessment of the admissibility of the Referral**

23. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution.
24. In this relation, the Court refers to Article 113.7 of the Constitution, which states that:

*"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";*

and to Article 47.2 of the Law, stipulating that:

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

25. The Applicant has filed the referral at the Constitutional Court while his case is still pending at the Supreme Court.
26. In these circumstances, the Applicant's complaint is premature and thus cannot be considered to have fulfilled the requirements under Article 113.7 of the Constitution.
27. Moreover, the Applicant had not submitted any prima facie evidence that his right to a fair and public hearing within a reasonable time guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the European Convention on Human Rights has been violated since his case is pending before Supreme Court from 29 July 2009 (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
28. Accordingly, the Referral must be rejected as inadmissible.

#### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 49 of the Law on the Constitutional Court, and Rule 56(2) of the Rules of Procedure, unanimously

#### **DECIDES**

- I. TO REJECT the Request for Interim Measure.
- II. 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**

  
Robert Carolan

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

