



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 23 January 2018  
Ref. No.: RK 1185/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI60/17**

Applicant

**KRU “Radoniqi” Gjakova**

**Request for constitutional review of Article 4 of Law No. 05/L-118 on  
Amending and Supplementing the Law No. 04/L-139 on Enforcement  
Procedure**

**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 and  
Gresa Caka-Nimani, Judge

### **Applicant**

1. The Referral was submitted by KRU “Radoniqi” Gjakova (hereinafter: the Applicant), represented by Vjollca Kadriqeli, Manager of Administrative Department.

## **Challenged act**

2. The Applicant challenges the constitutionality of Article 4 of Law no. 05/L-118 on Amending and Supplementing the Law no. 04/L-139 on Enforcement Procedure.

## **Subject matter**

3. The subject matter of the referral is the request for constitutional review of Article 4 of Law no. 05/L-118 on Amending and Supplementing the Basic Law no. 04/L-139 on the Enforcement Procedure, alleging that the amendment and supplement of the basic law is unconstitutional and violates the Applicant's rights, guaranteed by Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution.

## **Legal basis**

4. The Referral is based on Article 113 (7) and 21 (4) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 03/L-121, on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 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 25 May 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 26 May 2017, the President of the Court appointed Judge Ivan Ćukalović as Judge Rapporteur and the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërzhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 26 May 2016, the Court notified the Applicant about the registration of the Referral and requested it that the Referral be completed with relevant documentation.
8. On 5 June 2017, the Applicant submitted the completed referral form and requested the Court to impose an interim measure and suspend the implementation of the alleged norm as unconstitutional until the final constitutional review of the referral.
9. On 24 October 2017, after having considered the preliminary report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of Referral.

## **Summary of facts**

10. The Applicant claims that by Law No. 04/L-139 on Enforcement Procedure, the Institution of Private Enforcement has been established with public



authorizations to lead the execution procedure at the first instance by excluding the family branch and right to work. Pursuant to Article 5 of the applicable Law on Enforcement Procedure, the enforcement body is the Court and the Private Enforcement Agents who leads the execution procedure at the first instance. Law No. 04/L-139 defines that the proceedings costs shall be paid beforehand by the creditor and after the success of the procedure they would be regressed to the debtor which is a fundamental principle of justice deriving from the Roman law, which is learned by every lawyer in the first year of studies”.

11. On an unspecified date, the Ministry of Justice, proposed amendment and supplement of Law No. 04/L-134 on the Enforcement Procedure. According to the Applicant with this amendment is defined that the initial costs shall be paid beforehand by the creditor and then it would be regressed to the debtor, while fee of efficiency is paid from the creditor, which is not a fixed fee but it is negotiable among the Private Enforcement Agent and the creditor, except for paragraph 1, 2, 3 and 4 of this Article, the body which announces sanctions by fee to minor offenses, the efficiency fee is defined as fixed fee and is charged to the debtor.”
12. On 18 April 2017, Law No. 04/L-118 on amending and supplementing the Law No. 04/L-139 on Enforcement Procedure was approved by the Assembly of the Republic of Kosovo. This law, on 11 May 2017, was published in the Official Gazette of the Republic of Kosovo and entered into force 15 days after its promulgation.

### **Applicant’s allegations**

13. The Applicant alleges that Article 4 of the Law No. 05/L-118 on Amending and Supplementing the Basic Law No. 04/L-139 of the Enforcement Procedure violates her constitutional rights protected by Articles 3, 22, 31, 54 and 102.2 of the Constitution.
14. Regarding violation of Article 3 [Equality Before the Law] of the Constitution, the Applicant alleges that, “*...The enforcement body (Private Enforcement Agent) shall be impartial, principle which is questioned at the moment when the fees are negotiated by the appointed person which exercises public authorizations and based on Law No. 04/L-139, Article 3, decides upon allowing or rejecting the proposal for execution*”.
15. Regarding violation of Article 31 [Right to Fair and Impartial Trial] ] of the Constitution, the Applicant alleges that “*the fact itself that the negotiating the fee with one party in the procedure and the principle of equal treatment of citizens raises suspicions regarding the misuses and manipulations and gives the judicial process the character of business rather than the one of making justice based on the principle of impartiality and equal treatment of parties*”.
16. Regarding violation of Article 54 [Judicial Protection of Rights] of the Constitution, the Applicant alleges that “*By imposing the efficiency fee by agreement between the enforcement body and the creditor and payment of the efficiency fee by the debtor, it follows the denial of the right guaranteed*



by the Constitution because the creditor is obliged to realize his right that was unjustly denied to him/her and in many cases there were costs and damages and again, pursuant to the amendment of Law, it shall lose a part of his right with the purpose of paying the efficiency fee if the procedure is successful, which was caused without his fault. According to the provisions in force, which are in harmony with the Constitution, namely Law no. 03/L-006 on Contested Procedure, Article 452, paragraph 1, of which defines “The party that losses the court process has to entirely cover all costs of the winning party, as well as intermediaries costs if he/she joined the process”, and Law No. 04/L-077 on Obligational Relationships, wherein Article 279 defines that: “The costs of performance shall be borne by the debtor, unless caused by the creditor”.

17. Regarding violation of Article 102.4 [General Principles of the Judicial System] of the Constitution, the Applicant alleges that “... based on the applicable Law no. 04/L-139 on Enforcement Procedure, Article 2, item 1.9 and 1.11 and Article 3, the Court and the Private Enforcement Agent are enforcement bodies and taking into consideration this legal ground, the principles of the Judge are mandatory even for the Private Enforcement Agent who leads the execution procedure at the first instance. If the amendment of the Law on determining the efficiency, then the enforcement body loses the character of independence and impartiality and consequently, if the Private Enforcement Agent can negotiate the fees then the Judges can negotiate too because it is the same Law and the same constitutional principles shall be valid.
18. Regarding violation of Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, the Applicant alleges that “Pursuant to Article 22 of the Constitution the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, International Covenant on Civil and Political Rights and its Protocols, which guarantee the equal and impartial treatment by the justice bodies, are directly applicable”.

#### *The relief sought in the Court*

19. In addition, the Applicant requests the Court “...to annul Article 4 of Law no. 05-L-118 on Amending and Supplementing the Law no. 04/L-139 on Enforcement Procedure and to leave in force Article 13 of Basic Law no. 041/L-139. The amendment to this article we consider to be contrary to the Constitution of the Republic of Kosovo and the principles of this highest state act as the Right to Fair and Impartial Trial, Equality Before the Law”.
20. Finally, the Applicant requests the Court, to impose an interim measure to prohibit the implementation of Article of the Law No. 05/L-118 on Amending and Supplementing the Law No. 04/L-139 on Enforcement Procedure, until the Court renders a final decision on the case.

## Admissibility of Referral

21. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution and as further specified in the Law and the Rules of Procedure.

22. In this respect, the Court refers to Article 113.1 and 113.7 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”.*

23. In this respect, the Court refers to Article 21 (4) [General Principles] of the Constitution, which provides that:

*„Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.*

24. The Court further refers to Article 47.1 of the Law, which provides:

*“1. Every 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”.*

25. Finally, the Court refers to Rule 36 (1) (a) of the Rules of Procedure, which stipulates:

*“(1) The Court may only deal with Referrals if:*

*[ ...]*

*(a) the referral is filed by an authorized party”.*

26. As mentioned above, the essence of the referral relates to the constitutional review of Article 4 of Law no. 05/L-188 on Amending and Supplementing Law no. 04/L-134 on the Enforcement Procedure, claiming that these supplements and amendments to the basic law violated its rights guaranteed by Articles 3, 22, 31, 54 and 102.4 of the Constitution.

27. The Court recalls that the Constitution in its Article 113 has established the jurisdiction and the authorized parties which have the right to request the Constitutional Court to assess the constitutionality of a legal norm or law, whether through abstract or concrete control, when it is claimed that the norm or law is inconsistent with any specific provision of the Constitution.

28. The Court emphasizes that this control under the Constitution can only be exercised by the authorized parties mentioned in paragraphs 2, 3, 4, 5, and 8 of Article 113 of the Constitution.



29. In this context, the Court notes that “individuals” (natural and legal persons), within the meaning of Article 113 (7) of the Constitution, have no right to address directly to the Constitutional Court and to request the latter to assess *in abstrakto* the constitutionality of a legal norm or law, allegedly contradicting any specific provisions of the Constitution.
30. Therefore, from the foregoing reasons, the Court finds that the Applicant is not an authorized party to request *in abstrakto* the Constitutional Court to assess the constitutional review of the legal norm or law (see, Resolution on Inadmissibility of the Constitutional Court in Joined cases KI20/17; KI21/17 and KI22/17 of 21 August 2017, paragraph 54, as well as Case KI92/12 of 6 December 2012, paragraph 15).

### **Request for interim measure**

31. The Court recalls that the Applicant requests the Court to impose an interim measure in order to prohibit the application of Article 4 of Law No. 05/L-188 on Amending and Supplementing the Law No. 04/L-134, until the Court renders a final decision on the case.
32. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which establishes:  
  
*“While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages”.*
33. The Court also takes into consideration Article 27 of the Law, which provides:  
  
*“The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest”.*
34. In addition, the Court refers to Rule 55 (4) (a) of the Rules of Procedure, which it requires:  
  
[...]  
*(4) (a) the party requesting interim measures has shown a prima facie case on the [...] the admissibility of the referral;*  
[...]
35. The Court considers that, as long as the Applicant’s Referral does not meet the admissibility requirements and is therefore inadmissible because the Applicant is not an authorized party, the request for interim measure can no longer be subject of review to the Court, so as such should it be rejected.

36. Accordingly, the Court concludes that the request, on constitutional basis, does not meet the admissibility procedural requirements, therefore the same it is to be declared inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 and 116 of the Constitution, Article 20, 27 and 47 of the Law and Rules 36 (1) (a), 55 (4) (a) and 56 (2) of the Rules of Procedure, on 23 January 2018, unanimously

### **DECIDES**

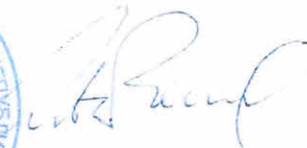
- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

  
Ivan Cukalovic



**President of the Constitutional**

  
Arta Rama-Hajrizi