



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 19 March 2012

Ref. No.: RK 208/12

## **RESOLUTION ON INADMISSIBILITY**

In

**Case No. KO 05/12**

Applicants

**Visar Ymeri and twelve other deputies of the  
Assembly of the Republic of Kosovo**

**Concerning the constitutionality of the Decision of the Assembly of the Republic  
of Kosovo, No. 04-V-279, dated 20 January 2012.**

### **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 Applicants are Visar Ymeri, Rexhep Selimi, Liburn Aliu, Albin Kurti, Albana Fetoshi, Glauk Konjufca, Albana Gashi, Florin Krasniqi, Alma Lama, Albulena Haxhiu, Afrim Kasolli, Emin Gërbeshi and Afrim Hoti, all of them deputies of the Assembly of the Republic of Kosovo.

## **Subject Matter**

2. The Applicants challenge the constitutionality of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-279, dated 20 January 2012. This Decision was published on the web site of the Assembly on the same date.

## **Legal Basis**

3. Article 113.5 of the Constitution of Kosovo (hereinafter referred to as the "Constitution"); Article 38 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law"); and, Rule 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

## **Proceedings before the Court**

4. On 26 January 2012 the Applicants submitted their Referral to the Constitutional Court (hereinafter referred to as the "Court").
5. On 31 January 2012 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.
6. On 31 January 2012 the Constitutional Court notified the President of the Assembly and the Government of the submitting of the Referral by the Applicants to the Court.
7. On 7 February 2012 the Court wrote to the Applicants seeking clarification of the Referral.
8. A copy of the Court's letter was furnished to the President of the Assembly and to the Government.
9. By letter dated 20 February 2012 received on 21 February 2012 the Applicants replied to the Court's letter. The Applicants' reply is set out more fully in paragraphs 18 to 22 below.
10. A copy of this reply was given to the President of the Assembly and the Government on 27 February 2012 and they were invited to respond within the period of one week if they so wished. No response was received within that time.
11. A report prepared by the Judge Rapporteur was considered by the Review Panel on 15 March 2012 which made a recommendation on inadmissibility of the Referral to the full Court. The full Court considered the Referral on the same date.

## **Summary of the Facts**

12. On 20 January 2012 the Assembly considered a motion introduced by the Parliamentary Group of the Democratic Party of Kosovo (PDK) and it issued a Decision on that date. This Decision, *inter alia*, "welcomed the agreements" reached through the dialogue between the Government of the Republic of Kosovo and the Republic of Serbia and that the Assembly "supported their full implementation".
13. Of the Deputies present 59 voted in favour of the Motion, 41 were against the motion and 1 deputy abstained.

## Arguments presented by the Applicant

14. In their Referral the Applicants state that the Decision of the Assembly refers to the agreements reached between the Government of the Republic of Kosovo and the Republic of Serbia, which, they maintain, are two states with legal subjectivity in international law.
15. They point out that the Law on International Agreements, No. 04/L-052, In Article 3.1.5 defines an international agreement as “- *an International Agreement respectively treaty concluded between the Republic of Kosovo and foreign states or international organizations in written form and governed by the International Law, whatever its particular designation and regardless of whether it is embodied in a single, two or more related instruments.*” Consequently, they argue, that because the agreements mentioned in Paragraph 1 of the Decision of the Assembly of 20 January 2012, are concluded between two states pursuant to that law they are therefore international agreements.
16. The Applicants quote Article 18 of the Constitution, concerning the ratification of international agreements, in its entirety. They stated that “In this way, through ‘the welcoming of the agreements reached’ and through ‘the supporting of their full implementation’, the Assembly of the Republic of Kosovo has recognised and ratified these agreements as well it has undertaken the obligations that derive from these agreements”.
17. They maintain that this “ratifying of the international agreements” was contrary to Article 18 of the Constitution.
18. On 7 February 2012 the Court wrote to the Applicants in the following terms:
  - 1) *What is the substance of the constitutional issue of the complaint, or of the alleged violation, that you maintain requires the Constitutional Court to review its substance or procedure.*
  - 2) *Please state the basis, and furnish evidence to support the basis, on which you maintain that the subject matter of the Referral is subject to the ratification processes set out in Article 18 of the Constitution of Kosovo.*
19. In their reply the Applicants repeated the position that they took in the Referral and again referred to “welcoming the reaching of agreements” and “supporting the full implementation” of these agreements. They stated that the taking of the Decision of the Assembly “ratified” the international agreements. They took the view that the ratification implies the procedure contemplated by Article 18 of the Constitution should be applied.
20. They pointed out the different requirements of ratification under Article 18.1 and Article 18.2; one requiring a two thirds majority of the Deputies of the Assembly and the other requiring ratification by the President of the Republic of Kosovo, depending on the subject matter of the agreement.
21. Further, they elaborated on and analysed the character of the international agreements based on the Law on International Agreements, No 04. L-052 and the Vienna Convention on the Law of Treaties of 1969
22. The Applicants also repeated that the Republic of Kosovo and the Republic of Serbia are two countries with legal subjectivity in International Law. Therefore, they

maintained that the agreements referred to in the Decision of the Assembly had the character of international agreements as foreseen by the Law on International Agreements and the Vienna Convention on Treaties of 1969.

23. In their response the Applicants requested that “[T]he President, the Assembly and the Prime Minister should be instructed about their constitutional obligations, regarding the signing of international agreements (...).”

### **Assessment of the Admissibility of the Referral**

24. In order to determine whether a Referral is appropriate for consideration by the Constitutional Court an assessment must be made as to whether it is admissible or not.
25. The Applicants made their Referral pursuant to Article 113.5 of the Constitution which provides as follows:

*“Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.” \**

26. The Referral was made by 13 Deputies of the Assembly of Kosovo, as set out in paragraph 1 above, which is more than the minimum required by Article 113.5 of the Constitution and therefore the requirement for an authorised party is satisfied.
27. The Decision of the Assembly which is contested by the Applicants was taken on 20 January 2012 and the Referral was made to the Court on 26 January 2012, within the constitutionally prescribed period of eight days. Therefore the Referral was made in a timely manner.
28. However, there are other matters that the Court will take into consideration in determining whether the Referral is admissible or not. In this regard attention should be paid to the wording of Article 113.5 which provides that it is the “*constitutionality of a law or decision adopted by the Assembly as regards its substance and the procedure followed*”, that are to be examined by the Court.
29. It is important also to point out the relevant provisions of the Law which govern the submitting of a Referral under Article 113.5 of the Constitution. In this regard Article 42 of the Law provides as follows:

#### **Article 42** **Accuracy of the Referral**

*1. In a referral made pursuant to Article 113, Paragraph 5<sup>†</sup> of the Constitution the following information shall, inter alia, be submitted:*

*1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;*

*1.2. provisions of the Constitution or other act or legislation relevant to this referral<sup>‡</sup>; and*

*1.3. presentation of evidence that supports the contest.*

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\* The Serbian version differs from the Albanian and English versions.

† The Serbian and Albanian versions differ from the English version.

‡ The Serbian version differs from the Albanian and English versions.

30. The Court, it is recalled, specifically asked the Applicants to identify the substance of the constitutional issue that required the Court to examine either as to its substance or procedure. It also specifically requested the Applicants to furnish evidence to support the basis, on which they maintained that the subject matter of the Referral was subject to the ratification processes set out in Article 18 of the Constitution. This request to the Applicants was justified in particular by Article 42.1.3 of the Law.
31. The Court recalls that the Assembly of Kosovo in its Decision of 20 January 2012 *"welcome[d] the agreements reached through the dialogue between the Government of the Republic of Kosovo and the Republic of Serbia and support[ed] their full implementation."* The Decision also stated that *"the Government of Kosovo should decide on the respective reciprocal measures for the progress of the process of dialogue and the implementation of the reached conclusions."* and that *"the Government is obliged to report to the Assembly regarding the progress of the process of dialogue and reciprocity."*
32. The Assembly of Kosovo under Article 65 (1) of the Constitution [Competencies of the Assembly] adopts laws, resolutions and other general acts taken within its competence and adopted by the required quorum and majority as required under Article 69(3) and Article 80(1) of the Constitution.
33. The Court notes that the Assembly of the Republic of Kosovo is entitled to decide the form of the acts that it adopts. In this case a Decision was adopted by the Assembly following a Motion proposed by members of one parliamentary group. The Applicants do not contest that the Decision was adopted without the required quorum under Article 69.3 or without a majority required under Article 80.1 of the Constitution. From their submissions it seems that the Applicants attack not the substance or procedure of the Decision of the Assembly but more its nature. They seem to imply that the Court, in this case, ought to alter the nature of the Decision, but they do not offer arguments, evidence or justification as to how the Court may do this. The Applicants maintain that the Decision of the Assembly contains international agreements and that therefore this was a ratification that required the application of Article 18 of the Constitution. At the Assembly it was not proposed or discussed that the motion before it contained international agreements nor that the Decision passed required ratification under Article 18.
34. There is no argumentation or evidence that what was at stake in the Decision taken by the Assembly comes under the ambit of Article 18. All the more, the Applicants have not elaborated on the differences between Article 18.1 and 18.2 and which should be applied. The mere mentioning of Article 18 in its entirety does not amount to a conclusion that it was required to be applied to the Decision of the Assembly.
35. The Court reiterates that its constitutional competence is to review the constitutionality of the contested Decision as to its substance and as to the procedure followed. The Applicants do not contest either the substance or procedure of the Decision taken. They contend that it should have adopted a ratification procedure under Article 18 of the Constitution.
36. The Court has to analyse the entirety of the Referral submitted by the Applicants and this entails taking into account the presentation of the original Referral and the reply submitted by the Applicants to the Court on 21 February 2012. In essence, the Applicants appear to wish the Court to construe the Decision of the Assembly, dated 20 January 2012, as an international agreement requiring ratification under Article 18 of the Constitution. The Court is mindful of the doctrine of the separation of powers, as

provided for in Article 4 of the Constitution and of the competences of the Assembly. The Court, therefore, considers that it is up to the Assembly to take such decisions as it considers appropriate or necessary. Consequently, the request of the Applicants that the Court consider the Decision of the Assembly as an international agreement requiring ratification is outside the scope of the jurisdiction of the Court under Article 113.5 of the Constitution.

37. Bearing all these matters in mind the Court concludes that the Referral, therefore, is inadmissible because it is incompatible *ratione materiae* with the Constitution.

### FOR THESE REASONS

The Constitutional Court therefore, pursuant to Article 113.5 of the Constitution, Articles 20 of the Law and Rule 36 of the Rules

### DECIDES

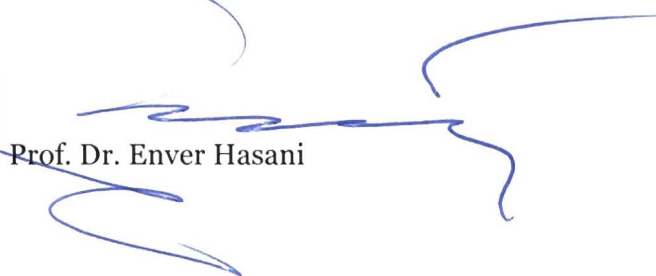
- I. Unanimously, to reject the Referral as inadmissible;
- II. By majority, to reject the Referral as inadmissible because it is incompatible *ratione materiae* with the Constitution;
- III. This Decision is to be notified to the Applicants, the President of the Assembly of Kosovo and the Government of Kosovo;
- IV. This Decision shall be published in the Official Gazette in accordance with Article 20(4) of the Law; and
- V. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova

**President of the Constitutional Court**



Prof. Dr. Enver Hasani

