



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 25 October 2016
Ref. no.: RK981/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KO94/16

Applicant

**Slavko Simić and 10 other deputies of the Assembly of the Republic of
Kosovo**

**Constitutional review of Law No. 05/L-010 on Kosovo Property
Comparison and Verification Agency**

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 Applicants are: Mr. Slavko Simić, Ms. Jelena Bontić, Mr. Saša Milosavljević, Ms. Milka Vuletić, Ms. Jasmina Živković, Mr. Slobodan Petrović, Mr. Bojan Mitić, Ms. Milena Milićević, Mr. Srđan Popović, Mr. Nenad Rašić and Mr. Adem Hodža (hereinafter: the Applicants).

Challenged law

2. The Applicants challenge the constitutionality of Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency (hereinafter: Law on KPCVA), as regards the procedure followed for its adoption, on 9 June 2016, in the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

Subject matter

3. The subject matter of this Referral is the constitutional review of the Law on KPCVA, which allegedly was adopted in violation of Article 81 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The Applicants also request the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure to suspend the implementation of the law in question, until the Court finally decides on the Referral.

Legal basis

5. The Referral is based on Article 113, paragraph 5, of the Constitution, Articles 27, 42 and 43 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Court

6. On 17 June 2016 the Applicants submitted the Referral to the Court.
7. On 17 June 2016 the President of the Court by Decision no. GJR. KO94/16 appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Selvete Gërxhaliu-Krasniqi (member).
8. On 27 June 2016 the Court informed the Applicants about the registration of the Referral. On the same date, the President of the Republic of Kosovo, the Assembly of the Republic of Kosovo, the Government of the Republic of Kosovo and Ombudsperson were notified of the Referral, and a copy of the Referral was sent to them.
9. On 29 June 2016 the Assembly submitted to the Court relevant documents regarding the Law on KPCVA.
10. Between 27 June and 1 July 2016, there were communications between the Court and the Presidency of the Republic of Kosovo regarding the steps that had to be taken for the promulgation and entry into force of the Law.
11. On 6 July 2016, a deputy of the Assembly, Ms. Albulena Haxhiu, on behalf of the parliamentary group of Movement Vetëvendosje (hereinafter:

Parliamentary Group of MVV) submitted to the Court the comments of this group regarding the Applicants' allegations.

12. On 11 July 2016 the Applicants submitted to the Court additional documents related to the Referral. In addition, the Applicants requested to have access to *"all information and arguments submitted to the Court about the case, and to extend the time limit for deciding the case for 15 days, in order for the Applicants to have the possibility to analyze the additional information about the case"*.
13. On 12 July 2016 the President of the Court by Decision no. K.SH. KO94/16 appointed Judge Snezhana Botusharova as a member of the Review Panel replacing Judge Robert Carolan, who had resigned from the position of the Judge of the Court on 9 September 2016. Based on seniority the presiding judge of the Review Panel was appointed Judge Almiro Rodrigues.
14. On 15 July 2016 the Court notified the Applicants of the comments submitted by the Parliamentary Group of MVV, setting a deadline of one week for them to submit additional comments.
15. On 29 July 2016 the Applicants submitted additional comments on the arguments of the Parliamentary Group of MVV. However, the additional comments of the Applicants were submitted after the deadline set by the Court and in accordance with the Rules of Procedure of the Court, and the practice of the Court, they cannot be part of the case file (under the Rules of Procedure of the Court, the deadline of seven days expired on 22 July 2016).
16. On 13 September 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Applicants' Referral inadmissible as being manifestly ill-founded and to reject the request for an interim measure.

Summary of facts

17. On 5 February 2015, the Government (Decision no. 01/12) approved the Draft-Law on KPCVA.
18. On 24 March 2015, the Assembly Committee on Legislation reviewed the Draft-Law on KPCVA and decided to submit a recommendation to the Assembly for further review and adoption.
19. On 7 April 2015 the Assembly voted and adopted in principle the draft-law in question and the outcome of the voting was as follows: 50 deputies were for, 25 against, abstentions 3 votes. On this date, the Assembly adopted Decision No. 05-V-38 assigning the Committee on Legislation, as the functional and reporting committee, the Budget and Finance Committee, the Committee for Community Rights and Interests and for Return, and the Committee for European Integration to review the draft-law within two months of the first

review and then submit to the Assembly the final reports and recommendations.

20. On 19 April 2016 the Committee on Legislation submitted the report with the proposals and recommendations. On 26 April 2016, the Committee for European Integration submitted the report with recommendations, and on 27 April 2016, also the Budget and Finance Committee submitted its report with recommendations.
21. On 10 May 2016 the Committee on Legislation, as a functional committee, by majority of votes, approved Report No. 05/2045/L-010 on the Draft-Law on KPCVA with the proposed amendments. On 16 May 2016, this Committee submitted the final report to the deputies and the Presidency of the Assembly.
22. On 25 May 2016, the Assembly held its plenary session, in which it reviewed the Draft-Law on KPCVA and voted certain proposed amendments. However, in absence of quorum for final decision-making, an amendment and the text of the Draft-Law, in its entirety, were not approved. Further proceedings on the Draft-Law were postponed for the next session (See Transcript of the Assembly, plenary meeting of 25 May 2015, page 21).
23. On 8 June 2016, the Committee for Community Rights and Interests and for Return reviewed the Draft-Law on KPCVA and decided not to endorse the Draft-Law for further review and adoption, with the recommendation to the Assembly that the review of the Draft-Law be postponed or the Draft-Law be withdrawn from further procedure. According to the case-file it results that the Assembly was notified in writing of this fact on 28 June 2016.
24. On 9 June 2016 the Assembly held a plenary session, where among other things, in the agenda was scheduled the second review of the Draft-Law on KPCVA. According to the minutes of the Assembly, P-066, of 9 June 2016, the Draft-Law on KPCVA was adopted as follows: 51 deputies were for, 18 against and 7 abstentions.

Arguments presented by the Applicants

25. In their Referral, the Applicants allege that the Law on KPCVA is of vital importance for the interests of the Kosovo Serb community (and of displaced persons) and, accordingly, this law should have been adopted under the procedure provided by Article 81 of the Constitution.
26. According to Applicants:

“When adopting the Law the procedure provided by Article 81 of the Constitution of Kosovo was not respected, which stipulates that laws that are of vital interest to the community should be adopted by a majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting holding seats reserved or

guaranteed for representatives of communities that are not in the majority.

As the abovementioned law was adopted in a regular procedure (which requires only a simple majority vote of the present deputies of the Assembly), because of the violation of the listed provisions of Article 81 of the Constitution, the adopted Law is unconstitutional.”

Relief sought by the Applicants:

27. The Applicants request the Court to render a decision:

“TO HOLD that the Law on Kosovo Property Comparison and Verification Agency was not approved in accordance with Article 81 of the Constitution of Kosovo, therefore it is declared UNCONSTITUTIONAL and it is repealed.

At the same time, as the application of this law in this form potentially can cause irreparable damage to the Serb community in Kosovo, and its non-implementation until the final decision on the constitutionality of the law, we propose to the Constitutional Court to impose the following

INTERIM MEASURE

- 1. TO SUSPEND the validity of the Law on Kosovo Property Comparison and Verification Agency pending a final decision on the constitutionality of the Law. This decision shall be effective immediately upon its approval.”*

Comments of parliamentary group of MVV

28. On 6 July 2016, the Court received comments of the parliamentary group of MVV, who *inter alia* argue:

“The allegations of violation of Article 81 of the Constitution is ungrounded and has a tendency to establish a constitutional right with a character of the internal parliamentary control regarding the recognition of the double majority institute, without any ground of the constitutional norm.”

“Pursuant to Article 81 of the Constitution, “the laws that are qualified to be of a special character need a double of simple majority of deputies that make the quorum and simple majority of deputies holding seats guaranteed in the Kosovo Assembly. In order to find when the implementation of such a procedural key comes to expression in terms of the administrative parliamentary law, it should certainly be continued with the reading of provisions with the sub-paragraphs, which according to the principle of the expressive enumeration define the laws of certain areas, which amendment, supplement or repeal require special procedure

of approval of a legislative initiative, which affects the laws that are defined in this provision”.

29. In addition, in the comments it is argued that:

“... As the naming of the provision (Article 81 of the Constitution) includes the term legislation, it means that we are not dealing with the acts that are defined by specific naming. However, the term legislation means a group of several legal acts constituting a part of legislation that is in force.

Additional arguments submitted by the Applicants after the filing of the Referral

30. On 11 July 2016 the Applicants submitted additional comments, alleging violations of the Rules of Procedure of the Assembly because the functional committee did not comply with the time limits for the submission of the final report to the Assembly with respect to the Draft-Law on KPCVA.

31. In this regard, the Applicants state that:

“By item 1 of Article 57 of the Rules of Procedure of the Assembly of the Republic of Kosovo, the following is stipulated: “Functional Committee as lead committee and Committees: for Legislation and Judiciary; Budget and Finance; European Integrations; Human Rights; Gender Equality, Missing Persons and Petitions; and the Committee on Rights and Interests of Communities and Returns, as main committees”

By item 6 of the same Article, it has been stipulated that, “Functional Committee shall present to the Assembly a report with recommendations on the Draft-Law within two months from the first reading.”

Considering all the aforementioned, we inform you that the legal time limits for approving the law have been violated, because the law was approved, as a first draft, on 7 April 2015, while the second approval of the law was expected to be done until 9 June 2016, which is a period of one year and two months.”

32. Further, the Applicants have attached to the additional comments a letter dated 28 June 2016, addressed to the Director of the Directorate for Support to the Parliamentary Committees, informing him about the meeting of the Committee for Community Rights and Interests and for Return, held on 8 June 2016. On that date, the Committee had reviewed the report of the Functional Committee on the Draft-Law on KPCVA and it had assessed that the provisions of the Draft-Law violated the interests and rights of the communities and that the Draft-Law did not regulate the issue of the communities adequately. Item five of this letter reads: *“... the Committee on Rights, Interests of Communities and Returns did not process the report containing recommendations for Draft Law no. 05/L-10 on the Kosovo Agency for Comparison and Verification of*

Property, for second review in the plenary session (2 votes for and 7 against)."

Admissibility of the Referral

33. In order to be able to adjudicate the Applicants' Referral, the Court shall first examine whether the Referral has met the admissibility requirements laid down in the Constitution, and further specified in the Law and Rules of Procedure.
34. Firstly the Court refers to Article 113.1 of the Constitution, which establishes that *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*
35. Further, the Court notes that the Referral was filed in accordance with Article 113, paragraph 5, of the Constitution. This constitutional provision establishes:

"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."
36. In the present case, the Court notes that the Referral was submitted by 11 deputies of the Assembly and within the legal deadline of eight days from the day of the adoption of the Law on KPCVA. Therefore, the Referral meets the requirements of Article 113, paragraph 5, with respect to the authorized parties and the deadline for the filing of such referrals.
37. The Court also takes into account Article 42 of the Law that regulates the filing of a referral based on Article 113.5 of the Constitution, which provides as follows:

Article 42 Accuracy of the Referral

- "1. In a referral made pursuant to Article 113, Paragraph 5 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; and
1.3. presentation of evidence that supports the contest."*
38. The Court considers that the requirements of Article 42 of the Law have been met as regards the names and signatures of the deputies, specification of the contested law and relevant provisions of the Constitution related to the procedure followed during the voting and adoption of the law in the Assembly.

39. In addition, the Court refers to Rule 36 of the Rules of Procedure which stipulates that:

“(1) The Court may consider a referral if:

(...)

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(...)

(d) the Applicant does not sufficiently substantiate his claim”.

40. The Applicants allege that the adoption by the Assembly of the Law on KPCVA in a usual procedure (as regulated by Article 80) violates the rights and interests of the Serb community in the Republic of Kosovo and that the law in question was adopted contrary to Article 81 of the Constitution, because this law was of vital interest for this community.

41. In this respect, the Court first notes that the competencies of the Assembly are provided by Article 65 [Competencies of the Assembly] of the Constitution, of which, for the present case, only the first sentence of paragraph 1 of this Article is relevant. It establishes:

“The Assembly of the Republic of Kosovo:

(1) adopts laws, resolutions and other general acts.”

42. Further, Article 69 [Schedule of Sessions and Quorum] establishes:

“(3) The Assembly of Kosovo has its quorum when more than one half (1/2) of all Assembly deputies are present”.

43. As regards the adoption of the ordinary laws, the Constitution, in Article 80, establishes as follows:

Article 80 [Adoption of Laws]

“1. Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.

44. By this Article, the Constitution establishes the procedures to be followed from the time of voting and adoption of a law until the promulgation and entry into force. Adoption of laws within the meaning of paragraph 1 of Article 80 requires a majority vote of deputies present and voting, as it did happen in this case.

45. As to the adoption of the laws of vital interest, the Constitution in its Article 81 has provided as follows::

Article 81* [Legislation of Vital Interest]

"1. The following laws shall require for their adoption, amendment or repeal both the majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting holding seats reserved or guaranteed for representatives of Communities that are not in the majority:

- (1) Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in inter- municipal and cross-border relations;*
- (2) Laws implementing the rights of Communities and their members, other than those set forth in the Constitution;*
- (3) Laws on the use of language;*
- (4) Laws on local elections;*
- (5) Laws on protection of cultural heritage;**
- (6) Laws on religious freedom or on agreements with religious communities;*
- (7) Laws on education;*
- (8) Laws on the use of symbols, including Community symbols and on public holidays.*

2. None of the laws of vital interest may be submitted to a referendum."

46. As it is noted above, Article 81 of the Constitution explicitly enumerates the laws of vital interest for the Republic of Kosovo, adoption of which requires the majority vote of deputies present and voting, and the votes of the majority of deputies holding seats reserved for non-majority community.
47. The Applicants argue that the Law on KPCVA is of vital interest for the Serb community, emphasizing, among other things, that: the law is a result of the agreements reached in the dialogue organized in Brussels between the Republic of Kosovo and the Republic of Serbia; the vast majority of property claims filed before the Kosovo Property Agency (KPA), which is the predecessor of KPCVA, were filed by displaced persons in Serbia and Montenegro, namely by Serbs and non-Albanians and that *"there is a fear that there will be mass falsifications if cadastral documents under the Cadastre Agreement, shall be transferred to Kosovo."*
48. With respect to these allegations, the Court considers that the above arguments and interpretations do not present sufficient ground to substantiate the Applicants' claim that the Law on KPCVA is of vital interest to a particular ethnic community in Kosovo, and not of the same interest for all citizens of the Republic of Kosovo.
49. In this respect, the Court considers that the Applicants fail to sufficiently substantiate their claim that the Assembly, when adopting the Law on KPCVA, has acted in violation of the provisions of Article 81 of the Constitution.

50. The Court notes that as a supplementing argument the Applicants refer to the fact that the Committee for Community Rights and Interests and for Return, has not endorsed, in principle, the adoption of the Draft-Law on KPCVA.
51. With regard to this allegation, the Court considers that the Applicants do not elaborate the allegation that non-recommendation by the Committee for Community Rights and Interests and for Return of the adoption of the Law on KPCVA has resulted with a constitutional violation when the Law on KPCVA was adopted. Furthermore, the Court notes that with regard to this allegation, the Applicants have submitted as a piece of evidence a letter dated 28 June 2016, by which they informed the Assembly, specifically the Director of the Directorate for Support to the Parliamentary Committees, that the said Committee had not endorsed the Draft-Law on KPCVA. This means that the letter in question that the Applicants refer to was sent after the Law on KPCVA was debated in the Assembly by all parliamentary groups and adopted, and even after the Applicants had filed the Referral with the Court.
52. Further, the Court notes that in their additional arguments submitted on 11 July 2016, the Applicants raise an additional allegation that the Legislation Committee, as a functional committee, has not respected the legal time limit for the submission of the report to the Assembly, which is two (2) months from the moment of the first review.
53. In this regard, the Court considers that the Applicants do not substantiate how this allegation, which is related to the Rules of Procedure of the Assembly, presents a constitutional violation, which the Court would have competence to review.
54. In conclusion, the Court considers that the Applicants have not sufficiently substantiated their claim for a constitutional violation during the adoption of the Law on KPCVA in the Assembly.
55. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Rule 36 (2) (d) of the Rules of Procedure.

Request for an interim measure

56. Regarding the request for imposition of an interim measure, the Court notes that the Applicants request from the Court to suspend the implementation of the law in question, until the Court finally decides on the Referral.
57. Regarding that request, the Court refers to Article 43, paragraph 2, of the Law which provides:

"2. In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5, of the Constitution, such a law or decision shall be sent to the President of the Republic of Kosovo for promulgation in accordance with modalities

determined in the final decision of the Constitutional Court on this contest”.

58. The Court reiterates that the contested law does not enter into force and shall not be implemented, and shall be sent to the President of the Republic of Kosovo for promulgation after the final decision of the Constitutional Court. Consequently, the request for interim measures is not applicable.
59. Therefore, the Court rejects the request for an interim measure as not applicable and thus as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.5 of the Constitution, Articles 20, 42 and 43 of the Law and Rules 36 (1) (d), 36 (2) (d), and 56 (2) of the Rules of Procedure, on 25 October 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the Applicants' request for an interim measure as inapplicable based on Article 43.2 of the Law;
- III. TO DECLARE that the Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency is to be sent to the President of the Republic of Kosovo for promulgation;
- IV. TO NOTIFY this Decision to the Applicants, the President of the Republic of Kosovo, the President of the Assembly and the Government of Kosovo;
- V. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- VI. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi