



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristina, 30 January 2012
Ref. No.: RK/195/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 03/11

Applicant

**Organization for Democracy, Anti-Corruption and Dignity “Çohu”, Represented
by Mr. Arton Demhasaj, authorized by the organization**

**Constitutional Review of the Agreement of Cooperation, between the Office of
the State Prosecutor and the Kosovo Anti-Corruption Agency,**

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 of the Referral is the Organization for Democracy, Anti-Corruption and Dignity “ÇOHU”, which is represented by Mr. Arton Demhasaj.

Subject matter

2. The main issue of the filed case with the Constitutional Court of the Republic of Kosovo on 11 January 2011, as stressed in the Referral is: “ the Assessment of the Conflict” that contains the Agreement of Cooperation, between the Office of the State Prosecutor and the Kosovo Anti-Corruption Agency, with the Code on Criminal Procedures of Kosovo.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereafter: the ”Constitution”), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo dated 16 December 2009 (hereafter: the ”Law”), and the Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereafter: “Rules of Procedure”).

Proceedings before the Court

4. On 11 January 2011, the applicant submitted a referral to the Constitutional Court
5. On 04. March 2011 Constitutional Court informed State Prosecutor and the Kosovo Anti-Corruption Agency of the filing of the Referral and requested if they had any comments deemed interesting to be reviewed by the Court regarding the issue.
6. On 23 March 2011 the Kosovo Anti-Corruption Agency sent their written response to the Constitutional Court explaining their attitude concerning the referral.
7. On 19 May 2011, after having considered the Report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of judges Kadri Kryeziu (presiding), Enver Hasani and Gjyljeta Mushkolaj, members made a recommendation to the full Court on the inadmissibility of the Referral

Summary of the facts

8. On 4 June 2010 the Kosovo Anti-Corruption Agency and the Office of Kosovo State Prosecutor have signed an Agreement of Cooperation through which they established partnership relations on fighting corruption through:
 - a. Exchange of information regarding corruption;
 - b. Cooperation on investigation of cases that result with criminal acts of corruption;
 - c. Mutual help and technical assistance in investigations process; and
 - d. Providing mutual advice on solving different problems regarding anti-corruption.
9. On 5 October 2010, the Supreme Court of Kosovo by letter Agj.No.646/2010 notified the Kosovo Anti-Corruption Agency that is not within this Court’s competence to give its opinion on the agreement assigned between these two institutions and that regarding this matter the organization ” ÇOHU” may eventually address to the Constitutional Court of Kosovo.
10. On 11 January 2011, Organization for Democracy, Anti-Corruption and Dignity “ÇOHU” through Applicant filed complaint with the Constitutional Court challenged this agreement as unconstitutional and in contrary to the Code on Criminal Procedures in Kosovo.

Alleged violations of rights guaranteed by the Constitution

11. The Applicant alleges that the decision challenged with the Constitutional Court violates the Article 109 scope 2 and 3 of the Constitution of the Republic of Kosovo.
12. The Applicant states also that the Office of the State Prosecutor and the Kosovo Anti-Corruption Agency on 4 June 2010 signed the “**agreement of cooperation**” and that the scopes 5 and 6 of this agreement are in direct conflict with Articles 220, 221, 256 and 258 of the Code on Criminal Procedures of Kosovo.

Comments of the Kosovo Anti-Corruption Agency

13. The Kosovo Anti-Corruption Agency in their written reply states that none of these scopes of the agreement between the Office of the State Prosecutor questions constitutional dispositions of the independent institutions and are within the legal framework of the Law on Kosovo Anti-Corruption Agency.

Assessment of admissibility of the referral

14. In order to adjudicate on the Applicant’s Referral, the Court initially assesses whether the requesting party has fulfilled the admissibility criteria, regarding what it refers to the Article 113.1 of the Constitution which states:

” The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”

And Article 113.7 in connection with Article 21.4 of the Constitution which provides:”

“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”.

Respectively:

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

15. Reviewing this Referral the Court also refers to the Article 46 of the Law on the Constitutional Court of the Republic of Kosovo, regarding individual requests providing :

“*The* Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitutional, if it determines that all legal requirements have been met”.

16. Analyzing the submitted documentation on the case by the Applicant, it is obvious that **it did not meet** the main requirements of the Article 113.1 of the Constitution regarding the filed request by the “**authorized party**” because
17. As mentioned on paragraph 10 of this report, individuals in accordance to the Article 113.7 of the Constitution are authorized to file against public authorities when these violate their individual rights and freedoms guaranteed by the Constitution, but they are not authorized to file complaints against eventual violations by any act of any public authority on behalf of other persons as well as they are not authorized to ask from the Constitutional Court reviews on constitutionality of laws, because the

Constitution of Kosovo gives such Applicant right only to the authorized persons and does not recognize the legal institution of **Actio Popularis**.

18. Consequently the Applicant lacks the active legitimacy to file a case with Constitutional Court, respectively there was a lack of locus standi, due to which the court would have to declare as inadmissible (*see mutatis mutandis Convention (Municipal Section of Antilly v. France (dec.), no. 45129/98, ECHR 1999-VIII)*);
19. Furthermore, the Court notes that even if the Applicant's request would be treated as "individual" according to the Article 113.7 in connection with Article 21.4 of the Constitution, the Applicant was not able to prove the "**status of the victim caused by the act of the public authority**" as defined by Article 34 of European Convention on Human Rights (see mutatis mutandis *Lindsay v. the United Kingdom*, no. 31699/96, Commission decision of 17 January 1997, 23 E.H.R.R. *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, pp. 22-26, §§ 59-72; *Terem Ltd, Chechetkin and Olius v. Ukraine*, no. 70297/01, § 28, 18 October 2005; *Veselá and Loyka v. Slovakia* (dec.), no. 54811/00, 13 December 2005);
20. Even if assuming the fact that the referral has been submitted by an authorized party, having in mind that the Applicant specifically stresses the inconsistency of the memorandum of understanding between the two parties, with the Code on Criminal Procedures in Kosovo, thus requests assessment of compliance of a legal act with the Law and not with the Constitution, and taking into account the Article 112 .1 of the Constitution which provides: "*The Constitutional Court id the final authority for interpretation of the Constitution and the compliance of laws with the Constitution.*" It is clear that the request of organization "Çohu" as submitted does not make a constitutional issue suitable to be reviewed by this Court, therefore and again based on this it should be rejected.
21. The same argumentation Constitutional Court has used in the case 44/10, (Gafurr Podvorica against Ministry of Labour And Social Welfare, Resolution on Inadmissibility date 18 March 2001)
22. Based on the above-mentioned facts, court considers that the this referral is filed by an non authorized party and did not meet the necessary criteria, therefore :

FOR THIS REASON

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 paragraph 3(c) of the Rules of Procedure, in the session held on 19 May 2011 unanimously

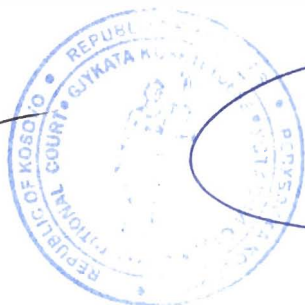
DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. 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; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Robert Carolan




Prof. Dr. Enver Hasani