



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

Pristine, 14.Novembe 2011
Ref. No.:RK160 /11

RESOLUTION ON INADMISSIBILITY

In

Case No. KI118-10

Applicant

The Insurance Association of Kosovo

**Constitutional Review of Article 14.1.7 of
Law No.03/L –179 on the Red Cross of the Republic of Kosovo**

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 is the Insurance Association of Kosovo having an address at 95, Enver Maloku Street, Pristina, through Fatos Zajmi, Fatbardh Makolli and Rustem Qehaja the representatives of, Illyria, Siguria and Sigkos Insurance Companies, respectively.

Challenged Law

2. The Applicant seeks the annulling of Article 14.1.7 of the Law No.03/L –179 on the Red Cross of the Republic of Kosovo. The Applicant also sought an interim measure prohibiting the implementation of Article 14.1.7 of the Law from the date of the submission of the Referral until a merit based decision is given by the Court.

Subject Matter

3. The matter concerns Article 14.1.7 of the challenged Law which provides that the Red Cross of Kosovo shall be financed, partly, by the imposition of 1% of the gross premium for compulsory motor insurance in Kosovo.

4. Article 14.1.7 of the challenged Law provides as follows:

“1. For the purpose of fulfilling its tasks and objectives stipulated by this Law, the Red Cross of Kosovo shall acquire means from the following sources: ...

1. 7 obligatory insurance of the vehicles 1% (one percent) from gross prim of the value of vehicle insurance; ...”

Legal Basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law) and Section 54 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: the Rules).

Proceedings before the Court

6. On 26 November 2010 the Applicant filed the Referral with the Secretariat of the Constitutional Court.
7. The President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and he appointed a Review Panel comprising Judges Robert Carolan, presiding, and Judges Altay Suroy and Almiro Rodrigues.
8. The Court deliberated on the preliminary Report of the Judge Rapporteur dealing with the request for Interim Measures in private session on 13 December 2010 and declined to grant Interim Measures and a Decision was issued to the parties to that effect on 17 December 2010.
9. On 27 January 2011 the Referral was submitted to the Assembly of Kosovo for a response. No response was received from the Assembly.
10. A letter was received from the Insurance Association of Kosovo notifying the Constitutional Court of a change of address for the Association.
11. The Court deliberated in private session on the admissibility of the Referral on 23 May 2011.

Allegations of the Applicant

12. The Applicant maintains that the imposition of a charge on insurance companies of 1% of the value of all obligatory insurance premiums contained in the Law will result in an unjust and unconstitutional deprivation. The amount alleged to be at stake, according

to the Applicant based on recent values of insurance premiums in the Republic of Kosovo, amounts to a charge of €490.232,21 in each calendar year.

13. The Applicant maintains that the challenged Article of the Law contravenes the following Articles of the Constitution:

Article 3	Equality before the law
Article 10	Economy
Article 24	Equality before the law
Article 49	Right to labour and exercise of profession
Article 119.2	Economic Relations – General Principles

Admissibility of the Referral

14. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

15. In this respect, article 113.7 of the Constitution states:

“Individual persons 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.”

16. Furthermore, article 48 of the Law states:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”

17. In this Referral the Insurance Association of Kosovo wishes to challenge a particular Article of the Law on the Red Cross of Kosovo. In order for the Applicant to do that they must be a natural or legal person (see case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41 /09) whose constitutional rights are personally or directly affected by a measure or act of a Public Authority. The Constitution does not provide for the bringing of an *actio popularis*. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court.
18. In the present case, the Applicant is an association representing a sectional interest i.e. insurance companies who conduct business in the Republic of Kosovo. It cannot be that this Applicant can show that it has been directly and currently violated by a public authority in its rights and freedoms guaranteed by the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to Admissibility of Application no. 53363/99 of 31 May 2005).
19. The challenged Article of the Law on Law No.03/L –179 on the Red Cross of the Republic of Kosovo does not affect the Applicant as it refers to levies or taxes on Insurance Companies and to no other legal body or association. It follows that the Applicant is not an authorized party and the Referral must be rejected as inadmissible.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 of the Rules of Procedure, unanimously

DECIDES

- I. TO REJECT this Referral as Inadmissible;
- II. The 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


Snezhana Botusharova

President of the Constitutional Court


Prof. Dr. Enver Hasani

