



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

Pristine, 14.November 2011
Ref. No.:RK159/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 16-11

Applicant

Shemsedin Ademi

**Constitutional Review of Administrative Instruction No.14/2009 on Vehicle
Registration dated 14 September 2009**

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
Gjylieta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is Ademi Shemsedin, having an address in the Village of Pozharan in the Municipality of Vitia.

Challenged Decision

2. The Applicant challenges the constitutionality of Administrative Instruction No.14/2009 on Vehicle Registration issued by the Ministry of Internal Affairs (MIA). The Applicant states that the MIA, by obliging citizens to fees without proper legal grounds, is acting in contradiction to Article 21.1 of the Constitution of the Republic of Kosovo.

Legal Basis

3. The Referral is based on Articles 113.7 and 116.2 of the Constitution of the Republic of Kosovo; Articles 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rules 55 and 56 (2) of the Rules of Procedure of the Constitutional Court (hereinafter referred to as the Rules of Procedure).

Proceedings before the Constitutional Court

4. On 11 February 2011, the Applicant filed a Referral with the Constitutional Court.
5. The President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Kadri Kryeziu and Gjyljeta Mushkolaj.
6. The Constitutional Court deliberated on the Referral on 7 July 2011.

Summary of Facts

7. On 28 January 2011 the Applicant was using on his car license plate number 316-KS-264. He went to the Municipal Vehicle Registration Centre in Vitia to renew his vehicle registration. There, the Applicant was asked by a centre employee to hand over license plate 316-KS-264.
8. The Applicant handed over license plate 316-KS-264 and he was charged with a new fee of €20 (twenty) for the new license plates.
9. The Applicant submitted with his referral a Payment Order Receipt No.1320000204, dated of 12 January 2011.
10. The Applicant alleges he requested an explanation for the charge for new license plates as he handed over his license plate 316-KS-264 without any damage, and was told by the staff that they were supposed to do so.

Legal arguments presented by the Applicant

11. The applicant alleges his license plate was not damaged and he was charged €20 in error and not in accordance with Article 11, Section 3 of the Administrative Instruction No.14/2009 on Vehicle Registration. Article 11, Section 3 provides:

“In the case of damage of DVR or plates the party should present the damaged DVR or plates to the CVR and afterwards he receives a new DRV or plates, which he pays according to the Decision on Tariffs, archived.”

12. The Applicant claims that the described facts represent a reality of violation of human rights by the MIA. Moreover, he states that obliging citizens to pay fees without a legal

basis is in contradiction to Article 21.1 of Constitution of the Republic of Kosovo. Article 21.1 provides:

“Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order in the Republic of Kosovo.”

13. The Applicant requests the Constitutional Court:

- To grant “an immediate enforcement of a temporary measure until the main trial against the MIA for termination of application of the administrative fee of €20 for the new license plates on the occasion of vehicle registration, and
- To decide in favour of the citizens and protect their rights by suspending the Administrative Instruction 14/2009 requiring the payment of €20 for new vehicle license plates until a decision is issued based on the merits of the case.

Assessment of the admissibility of the referral

14. The admissibility requirements are laid down in the Constitution and further specified in the Law and the Rules of Procedure.

15. Article 113.1 and 113.7 of the Constitution establish the general legal frame required for admissibility. It provides:

“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.”

16. Based on the documents submitted by the Applicant, despite the advice of the District Court in Prishtina, dated 12 December 2008, that he can address the Supreme Court of Kosovo with an appeal against its Judgment, he has not used this legal right.

17. The Court also notes that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from his obligations to appeal before the competent bodies (see *Whiteside v the United Kingdom*, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).

18. Previously the Court emphasized that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803194, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no. 56679100, decision of 28 April 2004).

19. The Court applied this same reasoning when it issued a Resolution on Inadmissibility on 27 January 2010 on the grounds of non exhaustion of remedies in Case No. KI41/09, AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo, and in its Decision of 23 March 2010 in Case No. KI. 73/09, Mimoza Kusari Lila vs. The Central Election Commission.

Interim Measures

20. Article 116.2 of the Constitution provides:

Article 116 [Legal Effect of Decisions]

2. 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.

21. Article 27 of the Law on the Constitutional Court provides:

Article 27 Interim Measures

1. 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.

2. The duration of the interim measures shall be reasonable and proportionate.

22. One of the tests for the granting of interim measures is whether unrecoverable damages will be suffered. If the Court were to find that the challenged Decision was unconstitutional then any damage suffered by the Applicant could be calculated and be ordered to be paid to the Applicant. There would therefore be no loss to the Applicant.

23. The Applicant has not put forward any convincing arguments that the Court should suspend Administrative Instruction No.14/2009 on Vehicle Registration issued by the MIA.

24. The applicant has, therefore, not substantiated the irreparable damage he would allegedly suffer or that the interim measures would be in the public interest. The Court therefore refuses the request for interim measures.

25. The Court also finds that the Applicant has not exhausted all legal remedies available to him provided by law.

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. To REJECT the request for Interim Measures;
- III. 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
- IV. This Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

