



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 17 March 2011
Ref. No.: RK 99/11

RESOLUTION ON INADMISSIBILITY

In Cases

KI 29/09, KI 32/09 and KI 47/09

Applicants

Teki Bokshi, Avdi Rizvanolli and Qaush Smajlaj

**Constitutional Review of UNMIK Administrative Direction No. 2003/13, as
amended and replaced**

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

Applicants

1. The Applicants are Mr. Teki Bokshi, Mr. Avdi Rizvanolli, lawyers from Gjakova and Mr. Qaush Smajlaj from Dujak villige who is represented by Mr. Teki Bokshi, a lawyer from Gjakova.

Administrative Direction Challenged

2. The Applicants challenge the United Nations Mission in Kosovo (UNMIK) Administrative Direction No. 2003/13, as amended and replaced by UNMIK Administrative Direction No. 2008/6, which entered into force on 11 June 2003.

Subject Matter

3. The Applicants allege that the operation of Articles 22.7 and 64.7 of UNMIK Administrative Direction No. 2003/13 and Articles 22 (7) and 25 (1) (b) of UNMIK Administrative Direction No. 2006/17, which replaced UNMIK Administrative Direction 2003/13 on 6 December 2006, are in violation of fundamental rights and freedoms protected by the Constitution of the Republic of Kosovo. The Applicants further maintain the Article 6 and Article 14 of the European Convention on Human Rights have been violated. Article 6 of the Conventions refers to the entitlement to the Right to a Fair Trial and Article 14 refers to the Prohibition of Discrimination.

Legal Basis

4. Article 113.1. and 7 of the Constitution of Kosovo (hereinafter: "the Constitution"); Articles 46 and 47 of the Law on the Constitutional Court of the Republic of Kosovo of 16 December 2009, (No. 03/L-121), (hereinafter: "the Law"); and Section 69 and Section 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. Between April and October 2010 the Applicants submitted their Referrals to the Court, contesting the constitutionality of the UNMIK Administrative Direction No. 2003/13.
6. On 17 March 2010 the President issued decision Nr. Ur. 47-09-bk/10 to join Referrals KI 19/10, KI 29/09, KI 32/09 and KI 47/09.
7. On 17 December 2010, after having considered the Report of the Judge Rapporteur Kadri Kryeziu, the Review Panel, composed of Almiro Rodrigues (Presiding), Gjyljeta Mushkolaj and Iliriana Islami made a recommendation to the full Court with regard to the admissibility of the Referrals Nos. KI 29/09, KI 32/09 and KI 47/09 only.
8. On the same date the Court decided that Referral KI 19/10 would be decided separately.

Summary of the facts

9. The Applicants allege that Article 22 (7) and 64 (7) of the UNMIK Administrative Direction No. 2003/13, as amended and replaced, are "in contradiction with Articles 5, 23, 24, 31 of the Constitution of the Republic of Kosovo" and "in contradiction to determined policy with Article 6 – the right to a fair trial, and especially by Article 14 on prohibition of discrimination of the European Convention on Human Rights."
10. The Applicants support their Referrals solely by reference to the documents referred to in the Referral made to the Court.

Applicants' allegations

11. The Applicants allege that Articles 22.7 and 64.7 of UNMIK Administrative Direction No. 2003/13, as amended and replaced, are in violation of fundamental rights and freedoms protected by the Constitution of the Republic of Kosovo (hereinafter: "the Constitution"). In particular, the Applicants specify that Article 5 (Languages), Article 23 (Human Dignity), Article 24 (Equality Before the Law), and Article 31 (Right to Fair and Impartial Trial) are the violated provisions of the Constitution.
12. Article 22.7 of UNMIK Administrative Direction No. 2003/13 was amended and replaced originally by UNMIK Administrative Direction No. 2006/17 and finally by UNMIK Administrative Direction No. 2008/6.
13. The challenged Article of the Administrative Direction is now Article 25.7; it provides for the language in which cases submitted to the Special Chamber of the Supreme Court of Kosovo must be furnished to the Chamber in the following terms:

25.7 Pleadings and supporting documents may be submitted in Albanian, Serbian or English. However, if submitted in Albanian or Serbian, an English translation of all pleadings and supporting documents shall be provided together with the pleadings. Such translation shall be performed at the party's expense.

14. Article 64.7 of the original UNMIK Administrative Direction is now replaced by Article 67.11 of UNMIK Administrative Direction No 2008/6; it provides for the translation of documents in relation to claims made against the Kosovo Trust Agency in the following terms:

67.11 The Special Chamber shall arrange, where necessary, for the translation into English of the complaint, any subsequent submissions and any supporting documents. Such translations shall be supplied to the complainant(s) and the Agency as soon as they are available, which shall be not later than 7 days before the oral hearing.

15. The Applicants thereby maintain that under the Administrative Direction, in certain claims made against the Kosovo Trust Agency, the Special Chamber shall translate submissions that are made by the Kosovo Trust Agency into English and that this therefore amounts to discrimination.
16. Furthermore, the Applicants allege that Articles 6 and 14 of the European Convention on Human Rights are violated.

Preliminary Assessment of the admissibility of the Referral

17. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
18. Article 113.7 of the Constitution specifies that "*Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution.*" The Applicants however, do not demonstrate that they themselves are a victim of any violation by a public authority.
19. Furthermore, Article 47.1 of the Law specifies that "every individual is entitled to request from the Constitutional Court legal protection when he/she considers that

his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.”

20. The Applicants yet again, does not demonstrate that the rights and freedoms were or are directly violated by a public authority. As section 69 of the Rules of Procedure clarifies, “when filing a referral pursuant to Article 113, Paragraph 7 of the Constitution, the authorized party shall convincingly present that he/she has been directly and currently violated by a public authority in his/her rights and freedoms guaranteed by the Constitution.”
21. Finally, according to Article 53 of the Constitution, “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”.
22. According to the Strasbourg case-law the system of individual petition...excludes applications by way of *actio popularis*. Complaints must therefore be brought by or on behalf of persons who claim to be victims of a violation of one or more of the provisions of the Convention. Such persons must be able to show that they were ‘directly affected’ by the measure complained of” (see e.g. *Judgment in the case İlhan v. Turkey*, No. 22277/93, 27 June 2000, paragraph 52.).
23. Since the referring parties, as individual Applicants, have not demonstrated that they are an authorised party, the Referrals must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, unanimously,

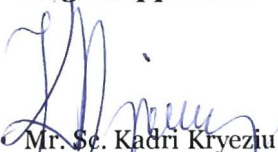
DECIDES

- I. TO REJECT the Referral as Inadmissible.

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.

This Decision is effective immediately.

Judge Rapporteur


Mr. Sc. Kadri Kryeziu

President of the Constitutional Court


Prof. Dr. Enver Hasani

