



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

Pristina, 10 March 2011
Ref. No.: RK 83/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 33/10

Applicant

Aziz Sefedini

**Constitutional Review of the Decision No. 03.V-165 dated 17.09.2009 of the
Assembly 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 Mr. Aziz Sefedini, residing in Pristina.

Challenged decision

2. The decision challenged by the Applicant is Decision No. 03.V-165, taken by the Assembly of the Republic of Kosovo (hereinafter: the "Assembly") on 17 September 2009, which was made public on the web page of the Assembly of the same day.

Subject matter

3. The Applicant requests an assessment of the constitutionality of Decision No. 03.V-165 of the Assembly on the appointment of two members of the Board of the Telecommunications Regulatory Authority (hereinafter: the "TRA"), in the light of Article 80 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").
4. Furthermore, the Applicant complains that the Albanian, English and Serbian version of Article 80 of the Constitution are not identical and allow for an ambiguous interpretation regarding the wording "...and voting". In his opinion, the same ambiguity exists regarding Article 31 of the Rules of Procedure of the Assembly.
5. Article 80 (1) of the Constitution provides that: "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."

Legal basis

6. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. On 2 April 2010, the Applicant submitted the referral form to the Court.
8. On 24 August 2010, the Referral was communicated to the Assembly, which, so far, has not submitted any comments.
9. On 21 January 2011, the Review Panel, consisting of Judges Kadri Kryeziu (Presiding), Enver Hasani and Iliriana Islami, considered the Report of the Judge Rapporteur Gjyljeta Mushkolaj and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 17 September 2009, the Assembly voted, in plenary session, on the appointment of two members of the TRA Board. Out of 68 Assembly Members present, 32 voted in favour, 28 voted against and 8 abstained.

Applicant's allegations

11. The Applicant alleges that Article 6 (5) of Law (2002/7) on Telecommunications was not respected regarding the term of office of two members of the previous TRA Board.
12. In the Applicant's opinion, the number of 32 Assembly Members who voted in favour is less than half of the total number of 68 members of the Assembly present at the moment of voting in the plenary session, as required by Article 80 of the Constitution.

13. Hence, the Applicant requests the Court for a constitutional interpretation of Decision No. 03.V-165 of the Assembly, pursuant to Chapter IV, Article 80 of the Constitution.
14. Furthermore, the Applicant complains that the Albanian, English and Serbian version of Article 80 of the Constitution are not identical and allow for an ambiguous interpretation regarding the wording "...and voting". In his opinion, the Constitution, drafted and adopted in accordance with the Ahtisaari package, does not recognize an ambiguous interpretation of the text in the official languages of Kosovo. Accordingly, the Constitution prohibits the formalization of violations of the applicable laws and uncertainty and ambiguity in decision-making and during the execution of laws.
15. The Applicant alleges that the same ambiguity exists regarding Article 31 of the Rules of Procedure of the Assembly.

Assessment of the admissibility of the Referral

16. In order for the Referral to be admissible, the Court has first to be assessing whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure of the Court.
17. In this connection, the Court refers to Article 113.7 of the Constitution, providing that "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".
18. It is true that decisions of the Assembly concerning appointments and dismissals of individuals are decisions of public authorities. They concern one or more specific addressees, and must be considered as decisions affecting the individual rights and freedoms of individuals guaranteed by the Constitution. As a consequence, they are subject to constitutional review, i.e. appealable to the Constitutional Court.
19. However, the Applicant has not submitted any evidence, or substantiated his claim that his individual rights and freedoms have been violated by the decision of the Assembly (see Constitutional Court, Resolution on Inadmissibility of 18 October 2010, KI 62/09, Sadik Sheme Bislimi).
20. However, even assuming that the Applicant has been the subject of the Assembly decision concerned, the Court notes that Article 49 of the Law provides that the Referral should have been submitted within a period of four (4) month after the final decision in the case.
21. Article 49 stipulates as follows :

"The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."
22. The challenged decision of the Assembly was voted in the Plenary Session of the Assembly on 17 September 2009 and made public on the same day. Consequently, the deadline for the submission of the Referral with the Court expired on 18 January 2010, while the Applicant submitted the Referral on 2 April 2010. Hence, the Referral is out of time, pursuant to the above Article of the Law.

23. In respect to the Applicant's complaint that the different language versions of Article 80 are not identical, the Court reiterates that the Constitution does not provide for an "*actio popularis*", i.e. individuals cannot complain in the abstract about legislation or governmental acts which have not been applied to them personally through a measure of implementation (Dudgeon v. the United Kingdom, no. 7525/76, of 22 October 1981).

24. The Referral must, therefore, be considered as inadmissible.

FOR THIS REASON

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, unanimously

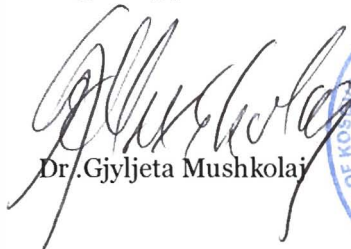
DECIDES

I. TO REJECT the Referral as Inadmissible.

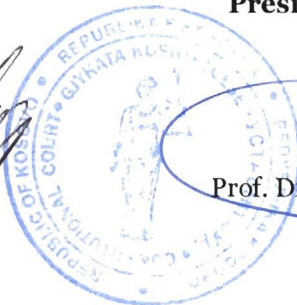
This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court.

This Decision is effective immediately.

Judge Rapporteur


Dr. Gjyljeta Mushkolaj

President of the Constitutional Court




Prof. Dr. Enver Hasani