



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

**Pristine, 01 February 2012
Ref. No.: RK.197/12**

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 43/09

Applicant

Lëvizja FOL

Constitutional Review of Protocol on Police Cooperation between the European Mission for Justice and Rule of Law and Ministry of Internal Affairs of the Republic of Serbia of 11 September 2009

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 Lëvizja Fol (Speak up Movement), an independent NGO based in Pristina and represented by Ramadan Ilazi (Executive Director).

Challenged Act

2. The Applicant challenges the constitutionality of Protocol on Police Cooperation signed between the European Mission for Justice and Rule of Law (hereinafter: EULEX) and the Ministry of Internal Affairs of the Republic of Serbia on 11 September 2009.

Subject Matter

3. The Applicant requests the Constitutional Court to interpret Article 63 of the Constitution of the Republic of Kosovo that provides that “the Assembly is the legislative institution of the Republic of Kosovo...” *vis-a-vis* the unilateral signing of the above mentioned Protocol by EULEX.
4. The Applicant considers that the unilateral signing of the above mentioned Protocol by EULEX constitutes a breach of Articles 18(1), 65 (12) and Article 93(1) of the Constitution.

Legal Basis

5. Art. 113.7 of the Constitution of the Republic of Kosovo; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

6. On 25 September 2009 the Applicant filed the complaint with the Constitutional Court.
7. On 2 October 2009 the Court submitted to the Applicant a notification letter and suggested to the Applicant to file the referral form.
8. Consequently the Secretariat registered the Applicant’s referral under no KI 43/09.
9. On 31 May 2010 the Applicant submitted its reply to the letter of 2 October 2009 emphasizing that their referral does not mean that “Speak UP Movement will become a party and that it will meet the administrative procedures so that the referral would be reviewed as a regular case.” In the same time the Applicant re-express its interest that the Constitutional Court gives its opinion regarding the signing of the abovementioned Protocol.
10. The President of the Court appointed Judge Cukalovic as Judge Rapporteur and he appointed a Review Panel composed by Judges Robert Carolan (Presiding), and Judges Kadri Kryeziu and Iliriana Islami.
11. On 16 May 2011 after having considered the Report of the Judge Rapporteur the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

12. On 11 September 2009 was signed the Protocol on Police Cooperation between EULEX and Serbian Ministry of Internal Affairs.

Applicant's allegation

13. The applicant deems that the Protocol on Police Cooperation is in violation of Articles 18 (1), 63, 65 (12) and 93 (1) of the Constitution.
14. The Applicant in his referral raised some concerns regarding the respect and exercise of the state sovereignty by the institutions of the Republic of Kosovo and deems that an interpretation by the Constitutional Court would be necessary, with regard to the Protocol on Police Cooperation.
15. The Applicant notes that the implementation of the Protocol on Police Cooperation is impossible without the inclusion of Kosovo Institutions.

Assessment of the Admissibility of the Referral

16. 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.
17. In their referral the Applicant refer to Article 113.7 of the Constitution and Article 32 of the Constitution.
Article 113.7 of the Constitution reads as follows:
"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. Furthermore, Article 32 of the Constitution, reads:
"Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law."
19. From the Applicant's submission it appears that while they does not consider themselves as a party in the proceedings before the Constitutional in time the they reiterated their interest that the Constitutional Court gives its opinion regarding the signing the abovementioned Protocol.
20. In this respect it should be recalled that 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."
21. For the purposes of the Constitution, a victim is 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.
22. A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for *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.
23. In the present case, the Applicant have not presented 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).

24. Consequently, 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, and Rule 36 of the Rules of Procedure,

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;
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. Dr. Ivan Čukalović



Prof. Dr. Enver Hasani

