



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

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Prishtina, on 5 December 2016  
Ref. No.: RK1010/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case KO89/16**

Applicant

**Municipality of Prishtina**

**Constitutional review of the  
Administrative Instruction No. 02/2015 of the Ministry of Health  
of 15 May 2015**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge.

### **Applicant**

1. The Referral was submitted by the Municipality of Prishtina, which is represented by the President of the Municipality, Mr. Shpend Ahmeti.

## **Challenged act**

2. The Applicant challenges the Administrative Instruction No. 02/2015 of the Ministry of Health, of 15 May 2015, on Organizing, determining the services and activities of Primary Health Care (PHC).

## **Subject matter**

3. The subject matter of the referral is the constitutional assessment of the challenged Administrative Instruction, which allegedly is in violation of Article 123, paragraphs 2 and 3 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), in conjunction with Article 3 of the European Charter of Local Self-Government, as well as Article 124, paragraphs 3 and 5, of the Constitution, in conjunction with provisions of Article 17, paragraph 1, item (m) of Law No. 03/L-040 on Local Self-Government (hereinafter, the LSG) and the provision of Article 18, paragraph 2 of Law No. 04/L-125 on Health (hereinafter, the Law on Health).

## **Legal basis**

4. The Referral is based on Article 113.4 of the Constitution and Article 41 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

## **Proceedings before the Constitutional Court**

5. On 7 June 2016, the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 17 June 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 23 June 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Government and the Ministry of Health.
8. On 8 July 2016, the Ministry of Health submitted to the Court its comments regarding the Applicant's allegations.
9. On 12 July 2016, the Court forwarded to the Applicant the comments submitted by the Ministry of Health.
10. On 16 September 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur replacing Judge Robert Carolan who left the Court on 9 September 2016 and Judge Altay Suroy replacing Judge Almiro Rodrigues as Presiding Judge of the Review Panel.

11. On 16 November 2016, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral inadmissible as out of time.

### **Summary of facts**

12. On 15 May 2015, Minister of Health adopted and signed the Administrative Instruction AI no. 02/2015 on Organizing, determining the services and activities of Primary Health Care (PHC).
13. On 22 May 2015, that Administrative Instruction was published in the Official Gazette of the Republic of Kosovo.
14. On 29 May 2015, the Administrative Instruction entered into force.

### **Applicant's allegations**

15. The Applicant claims that the challenged Administrative Instruction violates the municipal responsibilities and powers of the municipalities of the Republic of Kosovo and reduce the revenues of the municipalities at the level of the Republic of Kosovo.
16. The Applicant concludes requesting the Court *"To ANNUL the sub-legal act of the Government of Kosovo"*

### **Response of Ministry of Health**

17. On 8 July 2016, the Ministry of Health responded that *"In accordance with Article 18 of Law no. 04/L-125 on Health, Minister of Health is obliged to issue the sub-legal act for primary healthcare in order to determine the organization, activity and health services in public primary healthcare"*

### **Admissibility of the Referral**

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and provided by the Law.
19. Initially, the Court refers to Article 113 [Jurisdiction and Authorizes Parties] of the Constitution, which establishes:
  1. *The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
  - (...)
  4. *A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.*



20. The Court further refers to Article 41 [Deadlines] of the Law, which provides:

*The referral should be submitted within one (1) year following the entry into force of the provision of the law or act of the government being contested by the municipality.*

21. In that respect, the Court recalls that the challenged Administrative Instruction was adopted and signed by the Minister of Health on 15 May 2015 and it was published in the Official Gazette of the Republic of Kosovo on 22 May 2015. Article 29 of that Administrative Instruction states:

*This Directive shall enter into force seven (7) days after the signature of the Minister.*

22. However, the Court refers to Article 80 [Adoption of Laws] of the Constitution, which establishes:

*A law enters into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo, except when otherwise specified by the law itself.*

23. The Court considers that the Referral is inadmissible as out of time for the reasons that follow.
24. In fact, the Court considers that no legal act can enter into force before publication, which is the last legislative step and a necessary condition for a law to be effective. In fact, Article 80 of the Constitution establishes the rule of “fifteen (15) days after its publication in the Official Gazette” for a law to enter into force. “Except when otherwise specified by the law itself” necessarily means other specified date after the publication, including on the date of publication.
25. Thus, the Court further considers that the Administrative Instruction could not enter into force before the publication and thus the referred seven (7) days deadline is to be understood as seven (7) days after the publication; not seven (7) days after the signature of the Minister.
26. Before the foregoing, the Court also considers that the challenged Administrative Instruction entered into force on 29 May 2015, meaning seven (7) days after its publication.
27. The Court notes that the Referral was submitted to the Court on 7 June 2016, which means more than one year after having entered into force on 29 May 2015. In fact, the deadline of one year expired on 29 May 2016. Therefore, the Court finds that the Referral is out of time.
28. Moreover, the Court considers that, even if the Administrative Instruction had entered into force seven (7) days after the signature of the Minister, meaning on 22 May 2015, the Referral would also be out of time.

29. In this regard, the Court reiterates that the legal deadline under Article 41 of the Law is of preclusive nature and is established to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time. (See *mutatis mutandis* Case *O'Loughlin and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).
30. Thus, the Court considers that the Applicant's Referral does not meet the procedural admissibility requirements established by the Constitution and provided by the Law.
31. Therefore, the Referral is to be declared inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.4 of the Constitution, Articles 20, and 41 of the Law and Rule 56 (2) of the Rules of Procedure, on 5 December 2016, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi