



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

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Pristine, 25 January 2013  
Ref. No.: RK373/13

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI82/12**

Applicant

**Milorad Rajović**

**Request for review of constitutionality and legality of implementation of  
UNMIK Regulation no.2000/4 and of the Law of Republic of Kosovo no.  
2008/03 – L033**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President  
Ivan Cukalovic, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge.

#### **Applicant**

1. The Applicant is Mr. Milorad Rajović, the owner of “P.E. Udarnik Komerc” in Mitrovica, who is represented by the lawyer Avni Q Vula from Prishtina (hereinafter: the Applicant).

### **Challenged decision**

2. The constitutionality of the implementation of UNMIK Regulation no.2000/4 “on status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo”(hereinafter: UNMIK Regulation no.2000/4) is challenged as well as the Law no. 2008/03 – L033 “on Status, Immunities, and Privileges of Diplomatic and Consular Missions and Personnel in Kosovo and of the International Military Presence and its Personnel” (hereinafter: Law no. 2008/03 – L033).

### **Subject matter**

3. The Applicant challenges the way the Organization for Security and Cooperation in Europe (hereinafter: the OSCE) interprets and implements UNMIK Regulation No. 2000/4 as well as the Law no. 2008/03 – L033. He alleges that those laws violated his property rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo, as well as the rights and freedoms provided by Article 1 (Protection of Property) of the Protocol 1 of European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

### **Legal basis**

4. The Referral is based on Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo , dated 15 January 2009 (hereinafter: „the Law“) and the Rule 56 paragraph 2 of Rules of Procedure (hereinafter: the Rules).

### **Proceedings before the Court**

5. The Applicant submitted Referral to the Constitutional Court (hereinafter, “Court”) on 07 September 2012.
6. By the decision of the President (no. GJR. KI-82/12 dated 5 October 2012), Judge Robert Carolan was appointed as Judge Rapporteur. On the same day, by decision No. KSH KI-82/12, the President appointed the Review Panel composed of judges: Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama Hajziri.
7. On 25 January 2013 after having considered the report of Judge Robert Carolan the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama – Hajziri made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of the facts**

8. Mr. Milorad Rajović, the owner of P.E. Udamik Komerc, now with the office in Mitrovica, claims that he is the indisputable owner of the business premises located in Peja, at the address: „Residential Building „Tarolit II“ with total area of 1.078 m<sup>2</sup>.
9. This enterprise gained property rights over the above-mentioned business premises based on the sale-purchase agreement, certified in the Municipal Court in Peja C. no. 224 / 94 dated 13 March 1994, which was confirmed by the Judgment of the Municipal Court in Peja, as C. no. 224 / 94 dated 13 April 1994.
10. In the mid-1999s, this business premises was occupied by the OSCE Mission without previous agreement or knowledge of the owner of business premises.

11. After he realized that the Regional Center of the OSCE Mission in Kosovo was settled in his premises, Mr. Milorad Rajović addressed in 1999 the OSCE Mission, requesting to conclude the contract for the use of his premises and for payment of the appropriate rent. But his requests were not considered or accepted.
12. Between 1999 – 2007 the Applicant sent to the OSCE Mission many letters, requesting that his property rights be respected, and to reach a rental agreement on lease of the above-mentioned premises. However, apart from the written response to the Applicant, the OSCE Mission did not take any specific actions in solving this problem.
13. On 28 December 2007 the Applicant appealed to the Ombudsperson Institution.
14. On 3 March 2008, the Ombudsperson issued decision no. 2355/07, declaring the appeal of the Applicant inadmissible, since it was not in compliance with *ratione personae* based on the Rules of Procedure.
15. On 15 January 2008, there was a meeting between the Applicant and the representative of the OSCE Mission. In that meeting, the Applicant received for the first time the specific offer for payment of rent from the OSCE Mission. The offer made by the representative of the OSCE Mission, covered only the period after 1 July 2007, with the duration of one year with an option for extension.
16. The Applicant stated that after several hours of negotiations "under pressure and blackmail" by representatives of the OSCE Mission, he accepted the offer and concluded the lease agreement with the verbal agreement that the resolution of the debt on lease for the period 1999 - 01 November 2007, would continue after the signing of the offered contract.
17. The Applicant, on 20 February 2008, sent the first letter to the representative of the OSCE Mission Mr. John Fennessy, with a request to start with the resolution of the outstanding debt for the period 1999 - 01 November 2007.
18. On 25 February 2008, the Department of Administration of the OSCE Mission (John Fennessy) informed the Applicant that his request for payment of rent for the period 1999 - 01 November 2007 was forwarded to the headquarters of the OSCE Mission in Vienna, that the Mission headquarters discussed this issue and that it is waited for their stance on this issue.
19. The Applicant sent three (3) other letters to the OSCE Mission in the period from 2009 until 2011.
20. The OSCE Mission sent responses with similar content to all the letters of the Applicant, "that the case of the Applicant is in the OSCE headquarters in Vienna and that the OSCE mission will inform the Applicant on the decision and position of the headquarters, as soon as their position is known."

### **Applicant's allegations**

21. The Applicant alleges that the OSCE Mission deliberately avoided its obligation towards him, being aware of its position as provided by UNMIK Regulation no. 2000 /47.
22. In support of his allegation, the Applicant cites the case of the Credit Bank of Prishtina against the OSCE Mission in 2011, where the Municipal Court in Prishtina by ruling

- EDA. no. 2553/2011 dated 30 December 2011, allowed the execution against the OSCE Mission, for unpaid rent for the use of the business premises of the Bank.
23. On 30 April 2012, by its submission HOM / 54/12, the OSCE Mission challenged the execution, by referring to its immunity provided under UNMIK Regulation no. 2000/47.
  24. Based on the submission of the OSCE Mission HOM / 54/ 12, the Municipal Court in Prishtina then annulled the resolution EDA. no. 2553 / 2011.
  25. The Municipal Court stated that a creditor can resolve this issue by addressing the Claims Commission which was established by KFOR and UNMIK, pursuant to Article 7 of UNMIK / REG 2000/47 dated 18 August 2000.
  26. The Applicant states that by the letter of 10 September 2009, he addressed "the Human Rights Advisory Panel," respectively, to the Claims Commission and that from this Commission he received only one letter, which was registered under no. 308/09, by which they informed him that his request was received and that the person who will take the case was appointed.
  27. In addition, the Applicant states that, *"for several years he has not received any letter from the Human Rights Advisory Panel."*
  28. The Applicant in his Referral claims that he was denied the right to a legal remedy, to protect his property rights. The ground for the allegation of the Applicant is UNMIK Regulation no. 2000/47 and the Law 2008 / 03-033. Article 2.1 of this Law provides that: "UNMIK (in this case the OSCE), its property, funds and assets, are exempted from any legal process."
  29. The Applicant addressed the Constitutional Court with the following requests:

*"That this Court initiates and conducts respective court procedure pursuant to provisions of Article 46 of the Law no. 03/L-121 "on Constitutional Court of Republic of Kosovo" and during this procedure makes legal evaluation of presented facts and arguments, to make examination of evidences and in accordance with the constitutional provisions and respective legal provisions, local and international, to make review of legality and constitutionality of abovementioned provisions of UNMIK Regulation 2000/47 "On status, privileges, and immunity of KFOR, UNMIK and their personnel" and of the Law no. from the aspect of protection of inviolable rights and fundamental freedoms of Kosovo citizens and later, according to respective constitutional provisions, legal acts, local and international, especially stated by Article 22/31 in conjunction with Article 46 of this Constitution, Article 6.1 of the European Convention on human rights and fundamental freedoms."*

*"To declare as wrong, ungrounded, unfair, unconstitutional and illegal the interpretations of provisions on immunity determined by UNMIK Regulation 2000/47 "On status, privileges, and immunity of KFOR, UNMIK and their personnel" and the Law no. 2008/03-L-033 "on the status, immunities, and privileges of diplomatic and consular missions and personnel in Kosovo and of the international military presence and its personnel" for cases of infringement and violations of property rights of Kosovo citizens as inviolable, inalienable and fundamental human rights, respectively of Kosovo citizens and for cases of material-financial claims of Kosovo citizens, debts and civil indemnities regarding*

*the use of services and of private property of Kosovo citizens or of their indemnity.”*

*“To appoint as competent Commercial Court in Prishtina or Supreme Court of Kosovo-Special Chamber in Prishtina to decide about the Requests of the Private Enterprise “UDARNIK KOMERC” in the name of unpaid rent for the use of its business premises by the OSCE Mission-Regional Centre in Peja in the period July 1999-01.11.2007.”*

### **Assessment of the admissibility of the Referral**

30. In order to be able to adjudicate the Applicant’s Referral, the Court has to assess whether the Applicant has met the admissibility requirements , which are laid down in the Constitution, the Law and the Rules of Procedure.
31. In this respect, the Court refers to Article 113 paragraphs 1 and 7 of the Constitution:

*“ 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.”*
32. In the present case, the Applicant requests „constitutional review of UNMIK Regulation no. 2000 /47 “On status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo“, as well as the Law 2008 / 03-033 of the Republic of Kosovo „ LO33 “On Status, Immunities, and Privileges of Diplomatic and Consular Missions and Personnel in Kosovo and of the International Military Presence and its Personnel, “ thereby the Constitution clearly defines in Article 113, who may request the review of constitutionality of the law.
33. Such a request „for constitutional review of UNMIK Regulation no. 2000 /47, and the Law 2008 / 03-033 “, is an abstract challenge to the abovementioned Regulation and the Law. If this is the intention of the Applicant as an individual, he cannot be considered as an authorized party.
34. The Articles 113.2, 113.6 and 113.8 of the Constitution explicitly provide which are the authorized parties to address the Court about the issue of the abstract review of the constitutionality of the law.
35. The Court notes that in this case the Applicant lacks “standing” or authority in the Court, because the Applicant did not meet the procedural requirements of Article 113.1 of the Constitution. Moreover, Kosovo’s constitutional-legal system does not provide “*actio popularis*”, what is the modality of individual complaints that provides any individual, who wants to protect the public interest and constitutional order, the possibility to address the Constitutional Court regarding such violation, even when he/she does not have the status of the victim.
36. Therefore, the Court considers that the Applicant is not an authorized party to request the interpretation of UNMIK Regulation no. 2000 /47 and the Law 2008 / 03-033. Therefore, this Referral should be declared inadmissible because it was made by an unauthorized party.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Articles 46, 47 and 48 of the Law and the Rules 36(1a) and 36(3c) of the Rules of Procedure, in the session held on 25 January 2013, unanimously

### DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. 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;
- III. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan



**President of the Constitutional Court**



Prof. Dr. Enver Hasani