



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

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Prishtina, 20 June 2014  
Ref.no.:RK649/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Cases No. KI93/12**

Applicant

**Imer Ibriqaj**

**Constitutional Review of the Decision no. 03V-115 of the Assembly of the  
Republic of Kosovo of 4 June 2009**

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

composed of:

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

### **Applicant**

1. The Referral was submitted by Imer Ibriqaj (hereinafter, the Applicant), residing in Glogovc.

## **Challenged decision**

2. The Applicant in the referral specifically challenges Decision no. 03V-115 of the Assembly of the Republic of Kosovo (hereinafter: the Assembly of Kosovo) of 4 June 2009.
3. However, the final decision in this case is the decision A. no. 594/09 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) dated 23 February 2011 received by the Applicant on 13 September 2012.

## **Subject matter**

4. The subject matter is the constitutional review of the above mentioned Decision of the Supreme Court of Kosovo.
5. Notwithstanding this, the Applicants in the referral challenges Decision no. 03V-115 of the Assembly of Kosovo of 4 June 2009.

## **Legal basis**

6. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

7. The Applicant submitted the referral on 20 September 2012.
8. On 31 October 2012, the President of the Constitutional Court, with Decision No. GJR. KI93/12, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI93/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.
9. On 26 November 2013, the Supreme Court was notified of the referral.
10. On 11 March 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

## **The Applicant's earlier case before the Court**

11. On 18 March 2011, the Constitutional Court, in the Applicant's previous Case No. KI34/09, declared his referral for the constitutional review of the Decision of the Assembly of Kosovo, Decision no. 03V-115, dated 4 June 2009, inadmissible.
12. In that case, the Applicant alleged that the appointment of the current Ombudsperson was "*unlawful and unfair*". In that respect, the Court found

that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47(2) of the Law, because the case was pending before the Supreme Court. The proceedings at issue were finalized by adoption of Decision A. no. 549/09, of the Supreme Court of Kosovo that the Applicant challenges in the present case.

### **Summary of facts**

13. On 13 March 2010, the Applicant had submitted his application to the Assembly of the Republic of Kosovo following its announcement for the vacancy of the Ombudsperson.
14. On 18 May 2010, the Selection Panel presented its report to the Assembly of Kosovo, recommending three (3) potential candidates for the position of the Ombudsperson. In addition to the report the Selection Panel has also enclosed a list containing the points of the twenty three (23) candidates that were interviewed.
15. The Applicant was not amongst the twenty three (23) candidates who were invited for an interview.
16. On 4 June 2010, an Assembly meeting was held for the purpose of the selection of the Ombudsperson. On the same day the President of the Assembly issued Decision no. 03V-115, appointing the Ombudsperson of the Republic of Kosovo.
17. The Applicant, with regards to the selection process, has made a complaint to the Assembly of Kosovo and to the International Civilian Office.
18. On 29 July 2009 the Applicant initiated the administrative proceedings before the Supreme Court.
19. On 23 February 2011, the Supreme Court (Decision A.nr. 594/09) rejected the applicant's law suit stating that the appointment of the Ombudsperson is a competence of the Assembly of the Republic of Kosovo.
20. In the abovementioned decision, the Supreme Court further argued: *"In compliance with provision of article 9 paragraph 3 of the Law on Administrative Disputes (Official Gazette of the SFRJ nr.4/77) the applicable law in compliance with article 145 paragraph 2 of the Constitution of the Republic of Kosovo, on issues on which directly, based on constitutional authorization, are decided by the Assembly of Kosovo, an administrative dispute cannot be processed"*.

### **Applicants' allegations**

21. The Applicant alleges that his application was *"unlawfully"* rejected by the Assembly of Kosovo and the appointment of the Ombudsperson was *"done in an unlawful and unfair manner"*.
22. In addition, The Applicant requests from the court to return to previous situation case KI34/09, stating that the Resolution on Inadmissibility in Case

KI34/09 “was served on the applicant on 11 September 2012 and that because of this the Applicant has missed his right to appeal this decision before the Constitutional Court”.

### **Assessment of the admissibility**

23. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

24. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

*“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”.*

25. Furthermore, the Court refers to Article 49 of the Law, which provides:

*“The referral should be submitted within a period of four (4) months. 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”.*

26. In the concrete case, the Court considers that the Applicant is an authorized person, he has exhausted all legal remedies as prescribed by Article 113.7 of the Constitution, and the referral is filed within the four months legal deadline in compliance with Article 49 of the Law.

27. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if*

*...*

*(c) the Referral is not manifestly ill-founded”.*

28. The Court recalls that it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).

29. Moreover, the Referral does not indicate that the regular court acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as

a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way in which evidence were taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).

30. In the case at issue, the Court notes that procedural guarantees of the right to a fair trial as prescribed by the Constitution and the Convention were met; there is no trace of arbitrariness on the part of the Supreme Court. Furthermore, the Court considers that the decision of the Supreme Court is sufficiently reasoned and coherent because it explains to the Applicant the competences of the Assembly regarding the process for the election of the Ombudsperson
31. The fact that the Applicant disagrees with the outcome of the case cannot of itself raise an arguable claim of a breach of Articles 31 [Right to Fair and Impartial Trial], of the Constitution (See case *Mezotur-Tiszazugi Tarsulat us. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
32. In these circumstances, the Applicant has not substantiated his allegation for violation of Articles 31 [Right to Fair and Impartial Trial], of the Constitution because the facts presented by him do not show in any way that the regular courts had denied him the rights guaranteed by the Constitution.
33. Consequently, the Referral is manifestly ill-founded and should be rejected as inadmissible pursuant to Rule 36 (1) c) of the Rules of Procedure.
34. Moreover, in relation to the Applicant's request to return to previous situation in Case KI34/09 the court takes into account Article 50 of the law which provides: *"If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within 15 days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired"*.
35. In this relation, the Court notes that "Resolution on Inadmissibility in Case KI34/09" has been rejected as the Applicant's referral was premature and thus could not be considered to have fulfilled the requirements under Article 113.7 of the Constitution and further specified in Article 47.2 of the law; thus Article 50 of the Law cannot be applied in this case. It follows that the Applicant has not provided supporting grounds and evidence substantiating the request to return to previous situation.
36. Furthermore the court wishes to emphasize that the decisions of the Constitutional Court are final and binding and are not subject for review; thus the Court considers that in the case at issue, there was no deadline at stake, as alleged by the applicant.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (2) b) and 56 (2) of the Rules of Procedure, on 11 March 2014, 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**

**President of the Constitutional Court**

  
Kadri Kryeziu

  
Prof. Dr. Enver Hasani

