



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 9 September 2013
Ref.No. MK467/13

Case No. KO 95/13

Applicants

Visar Ymeri and 11 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of the Law, No. 04/L-199, on Ratification of the First International Agreement of Principles Governing the Normalization of Relations between the Republic of Kosovo and the Republic of Serbia

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
Arta Rama-Hajrizi, Judge.

CONCURRING OPINION OF JUDGE ROBERT CAROLAN

I agree with the effect of the Judgment of the majority of the Court that this law is in compliance with the Constitution.

But I disagree with the reasoning of the majority that concludes that the Constitutional Court only has the authority to decide whether the procedures followed by the Assembly in adopting this law complied with the Constitution but does not have the authority to review whether the substantive provisions of this law comply with the Constitution.

Article 65(4) of the Constitution merely authorizes the Assembly to ratify international treaties. It does not prohibit the Constitutional Court from reviewing whether those treaties comply with the Constitution. Indeed, Article 113.5 of the Constitution clearly authorizes the Constitutional Court to review the substantive provisions of a treaty whether they be adopted by enactment of a law or decision of the Assembly of the Republic of Kosovo. It specifically provides:

Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.

(Emphasis added.)

This Agreement is a law adopted by a decision of the Assembly of the Republic of Kosovo. The Constitution specifically provides that even a treaty can have the effect of being an adopted law:

Article 19 [Applicability of International Law]

1. International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.

Indeed, Chapter II of the Constitution requires the Court to make a substantive Constitutional review of a treaty that may be adopted.

Article 21 [General Principles]

1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.

2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.


3. Everyone must respect the human rights and fundamental freedoms of others.

4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

For example, if the Assembly were to adopt a treaty that violated human rights of citizens or members of certain communities, then the Constitution would be meaningless if the Constitutional Court could not review and enforce the human rights that are protected by the Constitution. Therefore, the Court does have the authority to review the substantive provisions of this law and the decision of the Assembly in enacting this law.

The substantive provisions of this law and decision do not violate the Constitution.

Respectfully submitted,


Robert Carolan
Judge

