



**Republika e Kosovës
Republika Kosova - Republic of Kosovo**

Gjykata Kushtetuese - Ustavni sud - Constitutional Court

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Prishtina, date: 19 November 2009
Ref.: RK – 02/09

RESOLUTION

(Inadmissibility of the Application /IA/ as to the Referral KI 09/09 "*Haxhi Thaqi versus Kosovo Judicial Council*")

Constitutional Court of the Republic of Kosovo, acting through the Review Panel consisting of

- Judge Snezhana Botusharova, Chair
- Judge Ivan Čukalović, Member
- Judge Altay Suroy, Member

with the minute-taker, Mr. Naser Hasani, Director of the Department for the Registration of Cases, Statistics and Archive, and Judge Kadri Kryeziu, as Judge Rapporteur, in a deliberation held on 27 October 2009, took into consideration Referral No. 09/09 "*Haxhi Thaqi versus Kosovo Judicial Council*," filed on 5 March 2009, with the following details:

Petitioner: Haxhi Thaqi from the village of Damjan, Gjakova, Kosovo, acting on his own behalf.

Respondent: Kosovo Judicial Council, Prishtina, Kosovo, represented by Mr. Isa Hasani, Acting Head of the Legal Office, Kosovo Judicial Council.

Subject: Assessment of the constitutionality of the legal basis upon which Administrative Instruction No. 2008/2 of the Kosovo Judicial Council, dated 27 November 2009, has been enacted.

Legal Basis: Article 113.7 of the Constitution of the Republic of Kosovo; Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo; and

On 5 March 2009, the Petitioner submitted a referral seeking the assessment of constitutionality of the legal basis upon which Administrative Instruction No. 2008/2 of the Kosovo Judicial Council (hereinafter referred to as the "Council") on "On the Unification of Court Fees", dated 27 November 2009, has been enacted.

The sought relief was the repeal of the aforesaid Administrative Instruction.

The Petitioner also requested the imposition a Provisional Measure suspending the application of the Administrative Instruction No. 2008/2 and the Information Circular No. 09/031-15558, issued by the Director of the Secretariat of the Council, until the present referral is decided on its merits.

On 11 August 2009, the Provisional Secretariat of the Constitutional Court (hereinafter referred to as the "Court") processed the case by informing the Respondent about the referral and inviting it to reply pursuant to Article 22.2 of the Law on Constitutional Court.

The Respondent submitted its reply, No. Ref/ 09/031-934, on 14 August 2009.

On 28 August 2009, the President of the Court, through Decision No. GJRap. 02/09, appointed the Judge Rapporteur and the Review Panel for this referral, in accordance with the Court's Random Case Assignment System.

On 9 September 2009, Judge Rapporteur delivered the report to the Review Panel, which deliberated the referral in private on 25 September 2009.

The Petitioner claims that the enactment of Administrative Instruction No. 2008/2 "On the Unification of Court Fees" by the Council is in contradiction with Article 119.8 of the Constitution of Kosovo (hereinafter referred to as the "Constitution"), which provides that "[e]very person is required to pay taxes and other contributions provided by law."

The Petitioner argues that taxes can only be introduced by law, passed by the Assembly of Kosovo. Consequently, the Petitioner maintains that the Council lacks the mandate to enact legal instruments introducing taxes. Furthermore, according to the Petitioner, the Assembly of Kosovo, as the highest law-making institution in Kosovo, retains the exclusive authority for passing laws that include a provision on the introduction and collection of taxes.

The Petitioner has not presented any claims on the violations of his human rights and freedoms as a result of the enactment or application of the aforementioned Administrative Instruction nor has he provided any other evidence supporting his legal standing to file a referral of such nature.

Furthermore, the Petitioner has not specified the legal grounds on the basis of which he seeks the imposition of the Provisional Measures, as required by Article 27 of the Law on Constitutional Court and Article 51.2 of the Rules of Procedure.

In its reply, the Respondent stated that Administrative Instruction No. 2008/2 is in compliance with the Constitution as it is enacted on the basis of Administrative Directive 2008/4 of United Nations Interim Administration in Kosovo (hereinafter referred to as "UNMIK"), dated 30 April 2008 implementing UNMIK Regulation 2005/52 "On the Establishment of the Kosovo Judicial Council", dated 20 December 2005.

The Respondent claims that the Council is fully authorized by the aforementioned UNMIK legal instruments to "develop a uniform schedule of court fees and other judicial procedural expenditures levied by the courts in Kosovo."

Consequently, according to the Respondent, Administrative Instruction No. 2008/2 is enacted by the competent authority and pursuant to applicable law.

CONSTITUTIONAL COURT

in accordance with Article 22, paragraphs 3 and 6 of the Law on Constitutional Court and Articles 34 and 35 of the Rules of Procedure issued Decision No. GJRap. 02/09, dated 28 August 2009, appointing Judge Kadri Kryeziu as Judge Rapporteur and Decision No. KShqyr. 01/09, dated 28 August 2009, appointing the Review Panel consisting of Judge Snezhana Botusharova, Chair, Judge Ivan Čukalović, Member, and Judge Altay Surroy, Member.

After having heard the Report of the Judge Rapporteur and having deliberating on it in private on 25 September 2009, the Constitutional Court

CONSIDERS

that there are two primary issues that needed to be addressed in order to make a determination as to the admissibility of Petitioner's referral. Namely, the Court must determine whether the Petitioner has *locus standi* to file the referral of this nature and whether the referral has been filed after the exhaustion of regular legal remedies by the Petitioner.

With respect to the Petitioner's *locus standi* to file a case of this nature, the Court notes that although the Petitioner has invoked Article 113.7 of the Constitution as the legal basis for filing the present referral to the Court, the Petitioner has failed to present any evidence demonstrating that the enactment or the application of the contested legal instrument has resulted in the violation his human rights and freedoms.

According to Article 113.7 of the Constitution, the right of individuals to initiate a claim in the Constitutional Court is contingent upon the demonstration of the violation of human rights and freedoms by the acts of public authorities. This perquisite is in accordance with the requirement of Article 34 of the European Convention on Human Rights, which states that

[t]he Court may receive applications from any person, non-governmental organization or group of individuals *claiming to be the victim of a violation* by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right [Emphasis added].

In absence of this element, the review of the constitutionality of the acts of public authorities falls into the realm of the so-called abstract control of constitutionality, a right, which according to the Constitution of Kosovo, is limited to only those entities and groups explicitly enumerated under Article 113, paragraphs 2, 3, 4, 5, 6, 8 and 9.

In light of this, the Court considers that the present referral should be declared as *inadmissible* as the Petitioner lacks legal standing to initiate a matter of this nature before the Court.

Notwithstanding the fact that the Court considers that the referral should be declared inadmissible due to the fact that the Petitioner lacks *locus standi* as far as the abstract control of constitutionality is concerned, the examination of the exhaustion of regular legal remedies element is important as it corroborates the Court's conclusion that the Petitioner is

seeking an abstract control of constitutionality of Administrative Instruction No. 2008/2, a constitutional remedy that is not legally available to him.

Unlike cases that include violation of individual's human rights and freedoms, cases of abstract control of constitutionality do not require the element of exhaustion of regular legal remedies. Instead, as provided for under Article 113, paragraphs 2, 3, 4, 5, 6, 8 and 9 of the Constitution, the entities that are authorized to seek abstract control of constitutionality can do so directly. Indeed, in these cases the Court serves as the exclusive and final forum for the adjudication of disputes of this nature. This is not only due to the fact that the Constitution expressly limits the entities that can file referrals for abstract control of constitutionality but also because issues that can be subject to abstract control of constitutionality are limited to the matters of an immense social importance.

FOR THESE REASONS

the Court, pursuant to Article 113.7 of the Constitution, Article 22, paragraphs 7 and 8 and Article 47 of the Law on Court, as well as Articles 34 and 35 of the Rules of Procedure unanimously

DECIDED

I. *TO DECLARE AS INADMISSIBLE* the application for the review of constitutionality of the Administrative Instruction No. 2008/2 on the Unification of Court Taxes , enacted by the KJGJ on 27 November 2008.

II. This draft-resolution is to be delivered to the parties, Mr. Haxhi Thaqi and the KJC respectively and to the Assembly of the Republic of Kosovo and shall be duly published.

III. This draft-resolution enters into force immediately


Kadri Kryeziu
Judge Rapporteur




Enver Hasani
President