



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

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Prishtinë, 17 December 2010  
Ref. Nr.:76/10 /

**Decision on Rejecting a Request for Interim Measures**

**Case No. KI118-10**

**The Insurance Association of Kosovo**

**vs.**

**Law No.03/L –179 on the Red Cross of the  
Republic of Kosovo**

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

Composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy President  
Robert Carolan, Judge  
Altay Suroy, Judge,  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Cukalovic, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

Adopts the following Decision rejecting the granting of Interim Measures

**Applicant**

1. The Applicant is the Insurance Association of Kosovo having an address at 95, Enver Maloku Street, Pristina, through Fatos Zamji, Fatbardh Makolli and Rrushtem Qehaja the representatives of, Illyria, Siguria and Sigkos Insurance Companies, respectively.

**Challenged Law**

2. The Applicant seeks the annulling of Article 14.1.7 of the Law No.03/L –179 on the Red Cross of the Republic of Kosovo. The Applicant also seeks an interim measure prohibiting the implementation of Article 14.1.7 of the Law from the date of the submission of the Referral until a merit based decision is given by the Court.

### **Subject Matter**

3. The matter concerns Article 14.1.7 of the challenged Law which provides that the Red Cross of Kosovo shall be financed, partly, by the imposition of 1% of the gross premium for compulsory motor insurance in Kosovo.

### **Legal Basis**

4. Articles 113.7 and 116.2 and of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Articles 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law) and Sections 52.1 and 54 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: the Rules).

### **Proceedings before the Court**

5. On 26 November 2010 the Applicant filed the Referral with the Secretariat of the Constitutional Court.
6. The President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and he appointed a Review Panel comprising Judges Robert Carolan, presiding and Judges Altay Suroy and Almiro Rodrigues.
7. The Court deliberated on the request for Interim Measures in private session on 13 December 2010.

### **Summary of the facts**

8. Article 14.1.7 of the challenged Law provides as follows:

*“1. For the purpose of fulfilling its tasks and objectives stipulated by this Law, the Red Cross of Kosovo shall acquire means from the following sources: ...  
1. 7 obligatory insurance of the vehicles 1% (one percent) from gross prim of the value of vehicle insurance; ...”*

9. The Applicant maintains that the Law contravenes the following Articles of the Constitution:

Article 3	Equality before the law
Article 10	Economy
Article 24	Equality before the law
Article 49	Right to labour and exercise of profession
Article 119.2	Economic Relations – General Principles

### **The Request for Interim Measures**

10. The Applicant requests the Court to annul only Article 14.1.7 of the challenged Law on that basis that it is unconstitutional and seeks an interim measure prohibiting the implementation of the 1% pending the final decision of the Court. The Applicant

states, referring to official records of the Central Bank of Kosovo, that the value of the motor insurance premiums paid in Kosovo amounts to Euro 49,000,000.00 (forty nine million Euro) *per annum* and that the cost to the insurance industry would amount to Euro 490,000.00 (four hundred and ninety thousand Euro) *per annum* and that this would have to be paid to the Red Cross every year.

11. Article 116.2 of the Constitution provides –

***Article 116 [Legal Effect of Decisions]***

*2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.*

12. Article 27 of the Law on the Constitutional Court provides –

***Article 27 Interim Measures***

*1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

*2. The duration of the interim measures shall be reasonable and proportionate.*

13. One of the tests for the granting of interim measures is whether unrecoverable damages will be suffered. If the Constitutional Court ultimately finds that Article 14.1.7 is unconstitutional then any damage suffered by either the Applicant or individual insurance companies can be calculated and if necessary a refund can be ordered to be made by the appropriate Court. There is nothing unrecoverable about the damage that is suffered. The Applicant does not make the case that it, Illyria, Siguria and Sigkos Insurance Companies or any other insurance company will go out of business by virtue of the imposition of the 1% charge. There are therefore no grounds, on that basis, to grant the Interim Measure requested.

14. The Constitutional Court therefore, without prejudice to any further decision to be made by the Court on admissibility or on the merits, unanimously

**DECIDES**

- I. To reject the request for an Interim Measure;
- II. This Decision shall be notified to the parties;
- III. This Decision shall be published in accordance with Article 20.4 of the Law on the Constitution of Kosovo and is effective immediately.

Judge Rapporteur

  
Snezhana Botusharova



President of the Constitutional Court

  
Prof. Dr. Enver Hasani