



REPUBLIKA E KOSOVËS  
Republika Kosova - Republic of Kosovo  
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

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Prishtina, date: 16 Tetor 2009  
Akti Nr. MP-01/09

**DECISION**

**(Interim Measures / IM/ : Case KI. 11/09, Tomë Krasniqi vs RTK et Al)**

**CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO,**  
composed as follows:

- Enver Hasani, President
- Kadri Kryeziu, member
- Gjyljeta Mushkolaj, member
- Iliriana Islami, member
- Ivan Čukalović, member
- Altay Surroi, member
- Snezhana Botusharova, member , and
- Almiro Rodriguez, member

With Mrs. Njomza Uka, Official for Registration of cases, as a minute taker of the meeting held for deliberation and voting on 13 October 2009 regarding the Referral KI 11/09 initiated by

***The Applicant:*** Mr. Tomë Krasniqi, represented by himself

***The Opposing Parties:*** Radio and Television of Kosovo (hereinafter referred to as: RTK) and the Kosovo Energy Corporation (hereinafter referred to as: KEK) , represented by authorised representatives Mrs. Merita Lumezi and Bilall Fetahu respectively.

***Subject Matter:*** request of 2 September 2009 on imposing the interim measures for the referral KI 11/09, filed by Mr. Tomë Krasniqi against RTK et Al.

***Legal Basis:*** Art. 116 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Art. 27 of the Law No. 03/L-121 on the Constitutional Court of Kosovo of 16 December 2009 (hereinafter referred to as: the Law), Art 52 in connection with Art 59 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as : the Rules of Procedure).

***The Applicant***, filed with the Court on 2 September 2009 a request asking the Court to impose an interim measure for the referral KI 11/09, which has to deal with the payment of 3.5 on behalf of RTK in the name of a prepaid service. This amount of 3.5 euro is extracted from him and all consumers of the electricity energy in Kosovo since 2003.

The applicant sees the violation of public interest as foreseen in Art. 27 para 1 of the Law and the same Article is put forward as a legal basis for the imposition of the interim measure as requested.

Main arguments presented during the hearing of 6 October 2009, which the Court organised for that matter, consist in the illegality of the Contract between RTK and KEK No. 2531 of 19 December 2008, serving as a legal basis for collecting the 3.5 euro from the Kosovo consumers of the electric energy. This method of extracting 3.5 euro violates public interest and the legal provisions regulating it, having in mind first and foremost the Art. 2.1 of the Administrative Direction No. 2003/12 on the Implementation of the UNMIK Regulation No. 2001/13 on Radio and Television of Kosovo.

Legal and factual basis which is contested by the applicant, as stated by him, is superseded in the meantime by the promulgation of the Law No. 02/L-47 on the Radio and Television of Kosovo of January 20, 2006 (hereinafter referred to as: the Law on RTK), while the old practices still continue to be applied by the opposing parties of this case. The applicant has as well stated that 3.5 euro represent 10 per cent of his 40 euro income per month (as a pensioner of Kosovo). This fact further means that the payment of 3.5 euro is causing him an irreparable damage and suffering since it does not protect him and other consumers of the Kosovo electricity, energy in the way it is supposed to according to Art. 20 of the Law on RTK and as such it is discriminatory because it uses the counters of the electricity as a reference point and not the households.

### **The Opposing Parties:**

Opposing parties, RTK and KEK respectively, presented their claims and arguments regarding the request of the applicant for the imposition of an interim measure for the Referral KI 11/09 filed by. Mr. Tom Krasniqi, and stated that

#### ***a) Radio and Television of Kosovo (RTK)***

RTK said that the Law on RTK, approved by the Assembly of Kosovo in 2006, is constitutional and defines the RTK as a public institution having national and cultural importance. As such, RTK offers public services in the field of both radio and television. It is for these reasons that the RTK should be still financed by the public in the way it is being now financed.

#### ***b) Kosovo Energy Corporation (KEK)***

KEK in an obvious and open manner stated that it has been suffering material loss and damage as a result of its collection of 3.5 euro from Kosovo consumers of the electric energy. This 3.5 euro is paid by them alongside with the electricity bills of

the consumers of the Kosovo electric energy. The losses suffered and the damages caused to KEK are around 400 million euro so far. As such they are reimbursed to KEK by other financial resources. For these reasons KEK made it clear that it is no more willing to extend the application of the Contract No. 2531 of 19 December 2008, concluded between RTK and the KEK. This contract serves as a basis for collecting this amount of 3.5 euro by Kosovo consumers of the electric energy since 2003 on behalf of the RTK. KEK representatives reminded the Court that the mentioned Contract expires on 30 November 2009 . The very reason for this, according to KEK, is that it is unjustly damaged and suffers serious problems and difficulties while collecting its own revenues as a result of its bills having to collect the 3.5 euro on behalf of the RTK. The merger of two bills in one is seen by KEK as the main obstacle for it not being an effective and efficient provider of public good, e.g. the electricity energy, to Kosovo customers.

## CONSTITUTIONAL COURT

after having heard the judge rapporteur, Mrs. Iliriana Islami, the views of the parties as expressed in the hearing on the request for an interim measure held on 6 October 2009, discussed the matter in its entirety in the deliberations held in 12 and 13 of October 2009, and therefore

## NOTES

The Court considers that this individual application does not concern only the personal interest of the applicant, but also the public interest and that for this reason it deems opportune to grant the requested interim measure, consisting of the suspension of further application of the provisions of Art. 20.1 of the Law on RTK , which provisions serve at this moment as the legal basis for the collection of 3.5 euro from the Kosovo consumers of the electric energy. The amount of the fee of 3.5 euro envisaged in the same provision of Art. 20.1 of the Law on RTK is as well part of the public concern. The measure granted by this Court shall remain in force until the Court decided the merits of the referral KI 11/09, initiated by Mr. Tome Krasniqi.

The Court recognizes the importance of the public broadcasting and its role in a democratic society. However, the Court considers that the methodology used for financing public broadcasting in Kosovo should be alongside the best practices of Europe and its legal standards.

The application of Mr. Tome Krasniqi instituting proceeding before this Court, filed with it on March 16, 2009, KI 11/09, deals with the national laws and administrative practices based on them. In his application, Mr. Tome Krasniqi requests *in abstracto* control of the constitutionality of some provisions regulating the work of the RTK.

However, the Court notes that the request for an interim measure by Mr. Tome Krasniqi is not an *actio popularis*, as it might look at first instance. It is not that due to the fact that there is an abundant case law of the European Court on Human

Rights, which based on Art. 53 of the Constitution of the Republic of Kosovo should serve as our very basis while interpreting all our decisions. In line with this, the case law of the European Court on Human Rights says that the party may ask for such a measure and be granted as such if "... the party bring *prima facie* evidence of such a practice and of his being a victim of it" (Cf. Biriuk v. Lithuania, No. 23373/0325, §27, 25 February 2009, *mutatis mutandis*, Cf. Dudgeon v. the United Kingdom, 22 October 1981, §§ 40-41, Series A No. 45). For this reason, the procedure instituted by the applicant as an individual in its nature as said in Art 113 Para 7 of the Constitution and Art. 47 of the Law take an objective character afterwards. The Court considers therefore that here we are not dealing with an *actio popularis* , although we have to do not only with an individual interest but as well as will a public one. All the more, the Court considers that the case "involves consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ widely" (Cf. James and Others v. the United Kingdom, Series A No 98, par. 46, 22 February 1986).

### **FOR THESE REASONS**

This Court, after thorough examination of all papers and arguments of the referral, based on Art. 116 of the Constitution and Art. 27 of the Law, as well as Art. 52 in connection with Art. 59 of the Rule of Procedure, by majority vote

### **DECIDED**

**I.** It is GRANTED an interim measure on further application of the provisions of Art. 20.1 of the Law on RTK, pending the decision on merits of the Referral KI 11/09

**II.** It is RECOMENDED to the Assembly of the Republic of Kosovo that it reviews until December 2009 the nature of Art. 20.1 of the Law on RTK and practices based on those provisions

**IV.** Following December 1, 2009 and thereafter, the Court decides the merits of the Referral

**V.** This decision is to be notified to the applicant, the opposing parties, the Assembly of the Republic of Kosovo, and shall be duly published. .

**VI.** This decision is in power from this moment on

Judge Rapporteur

President of the Court

Prof. Ass. Iliriana Islami

Prof. Dr. Enver HASANI