



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

Prishtina, 3 September 2015  
Ref. No.:835/15

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI15/15

Applicant

**Hysni Hoxha,**  
**President of the Procurement Review Body**

**Request for legal interpretation of Article 100 of the Law on Public  
Procurement in the Republic of Kosovo**

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

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge

### **Applicant**

1. The Applicant is Mr. Hysni Hoxha, President of the Procurement Review Body (hereinafter the "PRB"). The Applicant did not clarify whether he files the Referral as an individual or on behalf of the PRB, however, in the Referral he emphasized his official function and stamped the Referral with the official stamp of the PRB.

### **Challenged Decision**

2. The Applicant does not challenge any decision of public authorities.

### **Subject Matter**

3. The subject matter is the request for interpretation of Article 100 of the Law on Public Procurement in the Republic of Kosovo (Law No. 04/L-042), which provides the requirements and professional qualifications for the candidates to be appointed as PRB members.

### **Legal Basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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 Constitutional Court**

5. On 13 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter "Court").
6. On 12 March 2015 the President of the Court, by Decision no. GJR. KI15/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 1 July 2015 the President of the Court appointed Judge Ivan Cukalovic as a member of the review panel replacing Judge Kadri Kryeziu, whose mandate as a judge of the Constitutional Court expired on 26 June 2015.
8. On 1 April, 2015 the Constitutional Court informed the Applicant about the registration of the Referral, and requested him to fill in the referral form of the Court in the manner prescribed by Rule 29 of the Rules of Procedure of the Court.
9. On 16 April 2015, the Court received from the Applicant the completed referral form.
10. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court that the Referral should be resolved to be inadmissible.

### **Summary of Facts**

11. On 19 March 2014, the Assembly of Kosovo appointed the Applicant and 4 (four) other members to the PRB for a term of 5 (five) years. The Assembly also appointed the Applicant as President of the PRB.

12. The appointment of the President and the members of the PRB was made in accordance with the procedures set out in Article 100.4 of the Law on Public Procurement in Kosovo.
13. Article 100.5 subparagraph 5.4 of the same Law provides that one of crucial requirements for the candidates to be appointed as a member of the PRB is as follows:

*“5.4. meet eligibility requirements for appointment as a judge;”*

14. The Applicant asks this Court to interpret requirements referred to in this Law, and to decide whether the immunity of members appointed to the PRB is of the same level as that guaranteed to the judges in the judicial system of Kosovo.

### **Applicant's Allegations**

15. The Applicant does not specify any article of the Constitution that may be violated or to be interpreted, but he requests from the Constitutional Court to interpret the legal issue he has raised and as set forth in paragraph 14.

### **Admissibility of the Referral**

16. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. 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.”*

18. The Court also refers to article 48 of the Law on the Constitutional Court, which provides:

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”*

19. The Court takes into account also the Rule 36 (3) (e) of the Rules of Procedure, which provides:

*“A referral may also be deemed inadmissible in any of the following cases:*

*e) the Referral is incompatible ratione materiae with the Constitution;”*

20. Regarding this request, the Court notes that by Article 4.6 of the Constitution of Kosovo provides that *“The Constitutional Court is an independent organ in protecting the constitutionality and is the final interpreter of the Constitution”*,

whereas Article 112.1 of the Constitution provides that "*The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.*"

21. As stated above, the Constitutional Court interprets the Constitution, and assesses the compliance of laws with the Constitution, but it is not authorized by any constitutional provision, and in any circumstances, to make the interpretation of specific provisions of the law as a unique legal act.
22. Moreover, the Court points out that in any of the items of Article 113 (Jurisdiction and Authorized Parties) of the Constitution, no authorized party has the right to raise the issues referred to in this case, simply because those issues are outside of the jurisdiction of the Court.
23. It is evident that in order to decide on a Referral filed before it, the Court should have material jurisdiction and it is its duty to take care regarding this jurisdiction during the review process of the Referral. In the same way the European Court of Human Rights, in the case *X v. Germany* reasoned:

*"under Article 25, § 1 of the Convention, it is only the alleged violation of one of the rights and freedoms set out in the Convention that can be the subject of an application presented by a person, non-governmental organization or group of individuals ."* (See, *X v. Germany* application no. 7462/76).

24. In the present case, the Court does not have material jurisdiction to make a decision on the question asked of it, and the Referral is incompatible *ratione materie* with the Constitution (See, Resolution on Inadmissibility of the Court in Case KI115/12, the Applicant *Fadil Salihu*, of 25 January 2013), Therefore, it is inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles.47 and 48 of the Law and Rule 36 (3) (e) of the Rules of Procedure, on 7 July 2015, unanimously:

### DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Robert Carolan



**President of the Constitutional Court**

  
Vjosa Rama-Hajrizi