



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

Pristine, 24 November 2011  
Ref. No.: RK125/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI 31/11**

Applicant

**Kosovo Chamber of Advocates, Prishtina – Regional Branch Gjakova**

**Constitutional Review of the Decision of the Board of Directors of the Municipality of Gjakova, dated 18 January 2011, and the Decision of the Director of the Directorate for Economic Development in the Municipality of Gjakova, dated 19 January 2011.**

### **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 Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicant**

1. The Applicant is the Kosovo Chamber of Advocates, Prishtina – Regional Branch Gjakova, from Gjakova, represented by the President of the Regional Branch of Gjakova, Mr. Teki Bokshi.

#### **Challenged decision**

2. The Applicant challenges the Decision of the Board of Directors of the Municipality of Gjakova, dated 18 January 2011, and the Decision of the Director of the Directorate for Economic Development in the Municipality of Gjakova, dated 19 January 2011.

### **Subject matter**

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of (1) the Decision of the Board of Directors of the Municipality of Gjakova, dated 18 January 2011, according to which one cannot register a vehicle if one cannot confirm to have paid the heating bill and the company tax, and (2) the Decision of the Director of the Directorate for Economic Development in the Municipality of Gjakova, of 19 January 2011, implementing that decision.
4. The Applicant claims that the abovementioned decisions violate Articles 7 [Values], 46 [Protection of Property], 49 [Right to Work and Exercise Profession] and 119 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").
5. Furthermore, the Applicant also requests the Court to impose an interim measure to suspend the implementation of the challenged decisions, until the Court takes a final decision.

### **Legal basis**

6. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

### **Proceedings before the Court**

7. On 2 March 2011, the Applicant submitted the Referral to the Court.
8. On 19 April 2011, the President, by Order No. GJR. 31/11, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Order No. KSH. 31/11, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Kadri Kryeziu and Iliriana Islami.
9. On 11 May 2011, the Court communicated the Referral to the Board of Directors of the Municipality of Gjakova and the Director of the Directorate for Economic Development in the Municipality of Gjakova.
10. On 8 June 2011, the Court requested additional clarification from the Applicant as to who the Applicant is. No reply has been received so far.

11. On 4 October 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

12. On 18 January 2011, the Board of Directors of the Municipality of Gjakova adopted the decision that legal and natural persons cannot register their vehicles if they do not provide a confirmation from the City Central Heating Company that they have paid their heating bill and, in case of legal persons, a verification from the Municipal Assembly of Gjakova that they have paid their company tax.
13. On 19 January 2011, the decision of 18 January 2011 was implemented through a decision by the Director of the Directorate for Economic Development of the Municipality of Gjakova.

### **Applicant's allegations**

14. The Applicant states that the City Central Heating Company does not issue a confirmation if one has not paid the heating bill and the Municipal Assembly of Gjakova does not issue a verification if one has not paid the company tax.
15. The decision of 18 January 2011 is allegedly unconstitutional, since it limits/ or makes the registration of a vehicle impossible. It, therefore, violates Article 49 [Right to Work and Exercise Profession] of the Constitution, since the vehicle is an important means of transportation for an attorney to conduct activities pertinent to his profession. It further violates Articles 7 [Values], 46 [Protection of Property] and 119 [General Principles] of the Constitution.
16. Furthermore, the Applicant alleges that attorneys do not need to pay company tax, since they are registered with the Kosovo Chamber of Advocates and not with the Municipality, nor the Kosovo Business Registration Agency. By being registered with the Kosovo Chamber of Advocates, attorneys obtain the license and authorization to work.

### **Assessment of the admissibility of the Referral**

17. The Applicant alleges that the Decision taken by the Board of Directors of the Municipality of Gjakova on 18 January 2011, as implemented by the Municipality's Director for Economic Development on the following day, violates its rights guaranteed by Articles 7 [Values], 46 [Protection of Property], 49 [Right to Work and Exercise Profession] and 119 [General Principles] of the Constitution.
18. The Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

19. In this respect, the Applicant must first show that its constitutionally guaranteed rights and freedoms have been personally or directly affected by the act of the public authority. If the Applicant is unable to do so, it has no standing before the Court as a victim.
20. In this respect, the Court notes that the Applicant has neither shown that it was itself personally or directly affected by the contested Decisions, nor has it submitted any evidence that it is, in fact, authorized by those, who, in the Applicant's submissions, are direct victims of the challenged Decision, to represent their interests before this Court.
21. It follows, that the Referral is Inadmissible pursuant to Article 113.7 of the Constitution.

### **Assessment of the request for interim measure**

22. As to the Applicant's request to the Court for interim measures, the Court refers to Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 56 (2) of the Rules of Procedure, on 23 November 2011,

### **DECIDES**

- I. TO REJECT the Referral as inadmissible;
- II. TO REJECT the Request for Interim Measures;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Dr. Gjyljeta Mushkolaj

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

