



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

Prishtina, 23 January 2015
Ref. no.:RK756/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI96/14

Applicant

Istref Veliçi

**Request for interpretation of certain provisions of the Law No. 04/L-080
on Games of Chance, of 6 April 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Istref Veliçi, President of the Association of Gambling providers with seat in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant does not challenge any specific decision of any public authority.

Subject matter

3. The subject matter is the request of the Applicant for interpretation of Article 66, paragraph 2, subparagraphs 2.4 and 2.6; Article 70, paragraph 2, subparagraphs 2.7 and 2.8; and Article 81, paragraph 3 of the Law No. 04/Lo80 on Games of Chance (hereinafter: the Law on Games of Chance).
4. The Applicant claims that the Ministry of Finance of the Government of the Republic of Kosovo (hereinafter: the Ministry) by applying this law, has violated his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in respect to *“equality before the law, values, general principles, right to a fair and impartial trial, interpretation of human rights provisions and judicial protection of rights.”*

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 2 June 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 4 July 2014 the President by Decision, no. GJR. KI96/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision, no. KSH. KI96/14 appointed the Review Panel composed of judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama Hajrizi.
8. On 7 April 2014 the Applicant submitted additional documents to the Court.
9. On 15 July 2014 the Court notified the Applicant of the registration of the Referral.
10. On 8 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

11. On 6 April 2012 the Law on Games of Chance was adopted and it entered into force fifteen (15) days after the publication on the Official Gazette.

12. According to Applicant's allegations, following the entry into force of the Law on Games of Chance, the Ministry had unjustly closed some business premises which exercised economic activities regulated by the provisions of this law.
13. According to the Applicant, the abovementioned business premises were closed because the Ministry considered that the criteria in respect to the distance between these business premises and the educational, historical and religious premises and municipality property were not met.

Applicant's allegations

14. The Applicant claims that the Ministry, by applying the Law on Games of Chance, has violated his rights guaranteed by the Constitution, namely, Article 3 [Equality Before the Law] paragraph 1, Article 7 [Values] paragraph 1.1, Article 21 [General Principles], Article 24 [Equality Before the Law] paragraph 1, Article 31 [Right to Fair and Impartial Trial] paragraph 1, Article 53 [Interpretation of Human Rights Provisions] paragraph 1, and Article 54 [Judicial Protection of Rights].
15. The Applicant justifies his request for interpretation of the provisions of the Law on Games of Chance by stating that: *"Members of the Association through no fault of their own have come to an unfavorable and denigrating position, both in economic and moral respect, as a consequence of the erroneous interpretation of the provisions of Law No. 04/L-080 on Games of Chance."*
16. The Applicant addressed to the Court, requesting:

"[...] to provide an authentic interpretation of the: provisions of Article 66, paragraph 2, subparagraphs 2.4 and 2.6, Article 70, paragraph 2, subparagraphs 2.7 and 2.8 [...] provisions of Article 66, paragraph 2, subparagraphs 2.4 and 2.6, Article 70, paragraph 2, subparagraphs 2.7 and 2.8 of Law No.04/L-080 on Games of Chance, by specifying whether these provisions are applicable upon the licensing of new entities for games of chance, or the renewal of the time limit of the existing licenses; or whether these provisions are automatically applicable from the day the mentioned law entered into force, despite the fact that the time limit of the licenses issued pursuant to the previous Law No.2004/35 on Games of Chance.

Furthermore, the provisions of Article 81, paragraph 3 of Law No.04/L-080 on Games of Chance of date 06 April 2012, by specifying-rendering a concrete conclusion whether the Licenses issued for exercising games of chance, pursuant to the previous Law No.2004/35 on Games of Chance, are considered to be invalid upon the entering into force of Law No.04/L-080 on Games of Chance, despite that their time limit has not expired; or whether all the licenses for exercising games of chance issued pursuant to the previous Law No.2004/35 on Games of Chance are valid until their expiration date."

Admissibility of the Referral

17. The Court examines whether the Applicant has fulfilled the admissibility requirements provided by the Constitution and further specified in the Law and the Rules of Procedures.
18. In this regard, the Court refers to Article 113 (1) and 113 (7) of the Constitution, which provide:

*“(1) The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]*

(7) Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law”.
19. Furthermore, the Court refers to Article 47 (1) of the Law, which foresees that:

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority”.
20. Finally, the Court also refers to Rule 36 (1) (a) of the Rules of Procedure, which provides:

*“(1) The Court may consider a referral if:
[...]
(a) the referral is filed by an authorized party”.*
21. As stated above, the Applicant requests the interpretation of certain provisions of the Law on Games of Chance by claiming that the Ministry has violated his constitutional rights through the alleged erroneous interpretation of such provisions.
22. The Court notes that the Applicant did not raise any allegation for any violation committed by the public authorities, as foreseen by Article 113 (7) and Article 47 (1) of the Law.
23. The Court also notes that the Applicant did not submit any information in relation to any proceeding or legal action that he has initiated with the aim of addressing his complaints on erroneous application of those provisions of the Law on Games of Chance.
24. With regard to the Applicant’s right to submit a Referral pursuant to Article 113 (7) of the Constitution and Article 47 (1) of the Law, the Court observes that the Applicant does not refer to any concrete action or decision of a public authority which might have violated his rights constitutional rights. What the Applicant requests is an “*authentic interpretation*” of certain provisions of the Law on Games since, according to him, as a result of an erroneous interpretation given

by the Ministry, the Applicant and other members of the Association of the Gambling providers were put in an “*unfavorable and denigrating position, both in economic and moral respect.*”

25. The Court recalls that only the authorities explicitly referred to in Articles 113 (2) to 113 (6) of the Constitution are authorized parties to raise with the Court matters of abstract review of the constitutionality of a law.
26. In this respect, the Court also wishes to emphasize that the case of the Applicant is similar to the Case no. KI 230/13 (see Case KI230/13, Applicant *Tefik Ibrahim*, Constitutional Court, Resolution on Inadmissibility, of 19 May 2014). In that case, the Applicant had challenged, *in abstracto*, the constitutionality of Article 7 (5) of the Law 03/L-072 on Local Elections, considering that this Article is unfair and discriminatory towards him. The Court had rejected the Referral of the Applicant because he was considered as an unauthorized party to challenge the constitutionality of the law *in abstracto*.
27. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality of the law *in abstracto* nor to request interpretation of a law, and, consequently, his Referral should be declared inadmissible.
28. In conclusion, due to the reasons mentioned above, the Court concludes that the Applicant is not an authorized party and pursuant to Article 113 (1) and (7) of the Constitution, Article 47 (1) of the Law and Rule 36 (1) (a), the Referral should be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, Article 113 (1) and (7) of the Constitution, Article 47 (1) of the Law and Rule 36 (1) (a) of the Rules of Procedure, on 8 December 2014, unanimously

DECIDES

- I. TO REJECT the Referral as 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

