



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

Pristine, 21 May 2012
Ref. No.: RK 239/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KO 123/10

Applicant

Municipality of Gjakova

**Constitutional Review of the Judgement Nr.C.nr. 183/2009 of the District
Commercial Court in Prishtina dated 17 June 2009**

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 Ćukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The referral was submitted by the Municipality of Gjakova. In the proceedings before the Constitutional Court, the Municipality is represented by Mr. Afrim Radoniqi, legal representative of the Municipality of Gjakova.

Challenged Decision

2. The Applicant challenges the Judgement Nr.C.nr. 183/2009 of the District Commercial Court in Prishtina dated 17 June 2009, served on the Applicant on 18 July 2009.

Subject Matter

3. The subject matter of the this Referral concerns the lawsuit submitted by the Institute for the Protection of Monuments – Tirana against the Directorate of Culture, Youth and Sports of the municipality of Gjakova, for the compensation of the debt in the amount of 16,206.00 Euros.

Legal Basis

4. Article 113.4 and Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Articles 20 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: Rules of Procedure).

Proceeding before the Court

5. On 9 December 2010 the Applicant submitted the Referral to the Court.
6. On 27 January 2011 the Constitutional Court notified the District Commercial Court in Prishtina, regarding the submission of the above referral. On 4 February 2011, the District Commercial Court in Prishtina has submitted to the Court the Applicant's case file.
7. On 13 May 2011 after having considered the Report of the Judge Rapporteur, Gjyljeta Mushkolaj, the Review Panel, composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Kadri Kryeziu made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts and allegations as presented by the Applicant

8. The Institute for the Protection of Monuments – Tirana submitted a complaint against the Directorate of Culture, Youth and Sports of the municipality of Gjakova, for the compensation of the debt in the amount of 16,206.00 Euros.
9. The District Commercial Court in Prishtina thorough Judgment C. No. 183/2009, found that the Institute for the Protection of Monuments – Tirana and the Directorate of Culture, Youth and Sports of the municipality of Gjakova have had contractual relations, for the preparation of the technical-investment documentation No. 18, by which the plaintiff has been obliged to draft the project for the conservation of “Taliqi's Bridge” in Gjakova on account of the respondent, and Contract on the preparation of the technical-investment documentation No. 19, by which the plaintiff has been obliged to draft the project for the conservation of “Tabaku's Bridge” in Gjakova. The plaintiff has fulfilled its contractual obligations to the respondent, whereas the respondent has not fulfilled the obligation concerning the payment of the contracted price, even though the Board of Directors of the municipality of Gjakova decided by Decision of 10 May 2004 to pay the plaintiff for the work that had been carried out.

10. On 21 May 2009 Judgment II.C.nr.183/2009 the District Commercial Court has obliged the Directorate of Culture, Youth and Sports of the Municipality of Gjakova to submit an answer to the lawsuit and according the documents submitted, no reply was submitted.
11. On the same day, the District Commercial Court issued a summons for appearance in the preparatory session to be held on 17 June 2009. However, Judgment C.nr.183/2009 does not mention whether the respondent was present in this session.
12. On 6 August 2009, the respondent submitted an appeal against Judgment C. nr. 183/2009, dated 17 June 2009, not respecting the determined legal time limit for the submission of the appeal. Through Judgment of 12 August 2009, the District Commercial Court in Prishtina rejected the appeal as out of time.
13. The Applicant claims that Judgment C.nr.183/2009, dated 17 June 2009, of the District Commercial Court in Prishtina, contains grave violations of the Law on Public Financial Management and Accountability No. 03/L-048, respectively Article 68 (1, 2, 3 and 4).
14. Consequently, the Municipality of Gjakova claims that the District Commercial Court in Prishtina has not implemented the said provisions of Article 68 and by not taking into account the request of the Municipality, dated 26 May 2009, to suspend this issue for a period of 180 days.

Assessment of the admissibility of the Referral

15. 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, the Law and the Rules of Procedure.
16. The fulfilment of all requirements cumulatively is essential to submit an issue with the Constitutional Court in a legal manner.
17. The Court refers to Article 113.1 of the Constitution, which stipulates:
18. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."
19. Article 113.4 of the Constitution, stipulates that:

"A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act."
20. The Court notes that referral submitted by the Municipality of Gjakova does not "*contest the constitutionality of laws or acts of the Government*", but the Judgment of a Regular Court, and as such is inadmissible.
21. The Court also notes that in accordance with *Article 21 of the Constitution* :
22. "*Fundamental rights and freedoms guaranteed by the Constitution are also valid for legal persons to the extent applicable*".

And Article 5 of the Law No. 03/L-040 on Local Self-Government that prescribes that:

23. *“A Municipality shall be legal person. As a legal person, each municipality shall have the legal capacity to, inter alia: sue and be sued in the courts”.*

24. In this connection, 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”;

25. Even assuming that Municipality is entitled to submit this Referral before the Constitutional Court, other admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure have to be fulfilled.

26. In that respect the Court refers to Article 49 of the Law, which stipulates:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...”

27. The Court notes that the Judgement of the District Commercial Court was taken on 17 June 2009 and was served on the Applicant on 18 July 2009 whereas the Applicant submitted the Referral with the Constitutional Court on 9 December 2010.

28. Consequently, the Referral was submitted out of time limit prescribed by Article 49 of the Law on Constitutional Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.4 and 113.7 of the Constitution as well as Article 49 of the Law, unanimously,

DECIDES

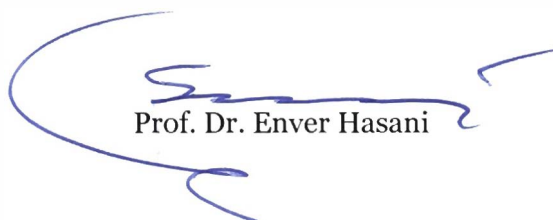
- I. TO REJECT the Referral as Inadmissible.
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur



Dr. Gjyljeta Mushkolaj

President of the Constitutional Court



Prof. Dr. Enver Hasani