



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

Prishtina, on 25 October 2011  
No. ref.:145/11

## RESOLUTION ON INADMISSIBILITY

in

Case No. KO 43/10

Applicant

**LDK-AAK-LDD, Prizren MA**

**Constitutional review of the legal acts issued by the Mayor of Prizren**

### CONSTITUTIONAL COURT OF 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  
Iliriana Islami, Judge

by majority of votes approves the Resolution on Inadmissibility regarding this Referral.

#### **Applicants**

1. The Applicants are groups of Prizren Municipal Assembly members from LDK, AAK and LDD, duly represented by Mr. Ridvan Hoxha, chairperson of the LDK group in Prizren MA.

## Challenged Acts

2. The challenged acts before the Constitutional Court are:
  - Decision on the appointment of two Deputy Mayors, Mr. Arsim Shpejti and Mr. Ruzhdi Rexha, from the majority community;
  - Decision on the appointment of primary and secondary school directors in Prizren;
  - Vacancy announcement published in daily newspapers, dated 9 February 2010; and
  - Resolution of 1 March 2010 terminating the employment relationship of Mr. Isa Osmankaj-Procurement Manager at Prizren Municipality.

All of them were issued by the Mayor of Prizren.

## Subject Matter

3. The subject matter of the Referral filed with the Constitutional Court of the Republic of Kosovo on 18 June 2010, supplemented with additional Referrals of 19 August 2010 and 1 September 2010, is the constitutional review of acts of the Mayor of Prizren, Mr. Ramadan Muja, on the appointment of two Deputy Mayors from the majority community in Prizren, of the decision on the appointment of primary and secondary school directors in Prizren, of resolutions terminating the employment relationship of civil servants in the municipality, as well as for the obstruction of the work of the Municipal Assembly, by disregarding applicable laws and the Constitution of the Republic.
4. The applicant claims that the Mayor of Prizren has committed the following violations of the Constitution of the Republic:

**Article 123 1.** *The right to local self-government is guaranteed and is regulated by law.*  
**Article 124 6.** *Municipalities are bound to respect the Constitution and laws and to apply court decisions.*

## Legal Basis

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as: the Law), and Article 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

## Summary of the proceedings before the Court

6. The Applicant submitted the Referral with the Constitutional Court on 18 June 2010, supplemented with additional referrals of 19 August 2010 and 1 September 2010.
7. The Ministry of Local Government Administration (hereinafter referred to as: MLGA) was notified of the Referral on 3 August 2010, which replied to the Constitutional Court on 27 August 2010. MLGA stressed in its letter that it had reviewed and replied to the complaints submitted by the groups of deputies of political entities represented in the Municipal Assembly of Prizren, and by the clarification note I02-138, of 24 February 2010, it had explained to all mayors of the Republic of Kosovo the legal way of increasing the number of municipal directorates, because the MLGA monitors had noticed that in some municipalities the Law on Local Self-Government and municipal statutes had not been respected., Through Act I. no. 02-312, of 23 April 2010, signed by the Minister of MLGA, Mr. Sadri Ferati, the MLGA requested from Mr. Ramadan Muja, Mayor of

Prizren, to review the decision on the appointment of Deputy Mayors. A copy of this act was sent to Mr. Nijazi Kryeziu, Chairperson of the Municipal Assembly in Prizren, whereas regarding the request for MLGA to clarify the regularity of the voting in “the vote of confidence for the Chairperson of the Municipal Assembly”, MLGA had clarified that in the meeting of the Municipal Assembly, held on 19 May 2010, 40 out of 41 Municipal Assembly members took part in the Assembly meeting and that the proposal for the vote of confidence (discharge) of the Chairperson of the Municipal Assembly received 20 votes, while 21 votes were required. The Ministry of Local Government also attached the correspondence between MLGA and the Applicant to the letter sent to the Court.

8. On 14 September 2010, the Constitutional Court of Kosovo received a reply from the Mayor of Prizren regarding the Referral of the group of Prizren Municipal Assembly members, whereby the Mayor challenged the referral both in terms of its admissibility and grounds. Mayor Muja has stressed he cannot be a party to the proceedings, because pursuant to the Law on Self-Government, the municipality has the status of the legal person and it is the municipality that “can sue and be sued” and not the Mayor. Furthermore, Mr. Muja has disputed also the legitimacy of the applicants stating that their individual rights and freedoms have not been violated, as provided in Article 113.7 of the Constitution of Kosovo, and stressed that the parties had not respected the legal time limit of 4 months for submitting a Referral with the Constitutional Court.
9. On 22 February, after reviewing the report of Judge Rapporteur Kadri Kryeziu, the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Kadri Kryeziu, members of the Panel, on the same day presented its recommendations to the full Court to reject the Referral as inadmissible.

### **Applicant’s Complaint**

10. The Applicants have stated that Mr. Ramadan Muja, in the capacity of the Mayor of Prizren, performing his official duties has committed continuous violations of the Constitution of Kosovo and of the Law on Local Self-Government, from the very beginning of his term of the office. These violations, alleged by the Applicants, are described as follows:
  - The Mayor of Prizren has obstructed the work of the Municipal Assembly acting in contradiction with the Statute of Prizren Municipality, failing “to ensure the implementation of the Law on Self-Government and other legal provisions that are in the responsibility of municipalities”;
  - He has violated Article 60.1 of the Law on Self-Government by appointing one Deputy Mayor more from the majority community;
  - He has made arbitrary and unlawful decisions for the establishment of the municipal executive, respectively directorates, without having this issue regulated with a special regulation;
  - He has violated applicable legal provisions on the appointment of the school directors;
  - He has made a political decision to discharge the Head of the Procurement Office without prior procedure as provided by the Law on Civil Service of Kosovo;
  - Together with the Chairperson of (the Municipal Assembly), Mr. Nijazi Kryeziu, they have made it impossible for the Municipal Assembly to function, and that the Assembly, since its first constitutive meeting, held on 15 February 2010, has held only two extraordinary meetings requested by the opposition of the Municipal Assembly; and
  - He has committed other violations of the applicable legislation in Kosovo.

## Summary of the facts

11. Through the request of 18 June 2010, the Applicant requested the Constitutional Court “to undertake punitive legal measures against the Minister of MLGA and the Prime Minister of Kosovo, because of inaction and silence over arbitrary actions of Mr. Ramadan Muja, Mayor of Prizren”. At the same time, the Applicant requested from the Constitutional Court to order the Ministry of Local Government Administration to initiate the procedure to discharge the Mayor of Prizren claiming that Mr. Ramadan Muja, Mayor of Prizren, has violated the Constitution of Kosovo.
12. Representatives of political parties LDK, AAK and LDD, Municipal Assembly members, sent a copy of the Referral with the same data to the International Civilian Representative in Prishtina.
13. The Applicant has also stated that the group of members of LDK, AAK and LDD in Prizren Municipal Assembly because of abovementioned violations has initiated the procedure to discharge the Mayor pursuant to Article 64, paragraphs 1, 2 and 3 of the Law on Local Self-Government, and pursuant to Article 36 of the Statute of the Municipality of Prizren, but that their initiative was ignored by the MLGA and the Government of Kosovo.
14. The Applicant has also attached to the Referral the allegations for the violation of the applicable legislation by the Mayor of Prizren during his two-year governance, but also during his previous term on the office in the period 2007 – 2009, together with the supporting documentation, claiming that MLGA and Government of Kosovo have been regularly informed.
15. On 28 July 2010, the Constitutional Court received an additional Referral from the Applicant, presenting additional allegations concerning the violations of the Constitution and the applicable legislation in the Republic of Kosovo by the Mayor of Prizren, and he requests from the Constitutional Court to force MLGA and the Prime Minister to initiate the procedure to discharge the Mayor of Prizren based on the Law on Local Self-Government. The additional allegations are the following:
  - The Mayor of Prizren “in an unconstitutional and illegal manner has signed and forwarded for approval to the Assembly of Kosovo the revised budget for the Municipality of Prizren, without having it go through the procedure provided by the applicable legislation;
  - The Mayor of Prizren, together with the Chairperson of the Municipal Assembly, who according to the Applicant has lost the vote of confidence on 19 May 2010, has unlawfully organized the session of the Municipal Assembly of Prizren.
16. On 19 August 2010, the Constitutional Court received the second additional Referral from the same Applicant. By the second Referral, the Applicant informed the Court that the Mayor of Prizren had organized a press conference confirming the holding of the session of the Municipal Assembly of Prizren, which the Applicant claims to have been illegal. The Applicant attached to the Referral copies of articles from two dailies on Mayor’s press conference.
17. On 1 September 2010, the Constitutional Court received the third additional Referral from the same Applicant which is registered under the same number. By the third additional Referral, the Applicant alleges that the Mayor committed three other violations of the applicable legislation, such as:

- The Mayor of Prizren, together with the Chairperson of the Municipal Assembly of Prizren, organized the second session of the Municipal Assembly on 30 August 2010, in violation of Article 50 of the Law on Local Self-Government. The Municipal Assembly has not held regular sessions for six months and, as such, it is inexistent;
- Due to not holding regular sessions, the status of Prizren Municipal Assembly members, according to Article 36 (e) of Law on Local Self-Government; and
- The Mayor of Prizren has committed a legal violation by dismissing the civil servant without respecting the legal procedure. To support this allegation, the Applicant attached as evidence Decision No. 1709 of the Independent Oversight Board of Kosovo, dated 27 March 2010, confirming the legal violation.

### **Assessment of the admissibility**

18. 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. The fulfillment of the requirements in a cumulative manner is essential for referring an issue with the Constitutional Court in a legal manner, and in this regard the Court refers to Article 113.1 of the Constitution which reads:

"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".

19. The authorized parties to refer matters to the Constitutional Court are set forth in Article 113, paragraphs 2-9 of the Constitution of Republic of Kosovo, and in fact none of the paragraphs provides the right of the deputies (members) of any municipal assembly of Kosovo as a group to file a Referral with the Constitutional Court.

20. In fact, the Constitution of Kosovo with regard to the right to refer matters to the Constitutional Court, refers to the legal definition "deputy" only in paragraph 5 and 6 of Article 113, and in that case the right to refer a matter to the Constitutional Court is attributed to the "deputies of the Assembly of Kosovo", and precisely 10 or more deputies of the Assembly of Kosovo have the right to request the assessment of the compatibility of laws and decisions of the Assembly of Kosovo with the Constitution, and at least 30 deputies, of the Assembly of Kosovo, may request an interpretation by the Court whether the President of the Republic has violated the Constitution of the country, but not the deputies (members) of municipal assemblies.

21. In this relation, the Court refers to Article 113.7 of the Constitution, which states that "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." So, members of municipal assemblies who claim that public authorities, including the municipality, have violated their individual rights or freedoms guaranteed by the Constitution have the right to sue the public authority.

22. In such a case, the parties should prove that they are "an authorized party" and that the Municipal Assembly member – the applicant has been subject to "violations by public authorities of their individual rights and freedoms guaranteed by the Constitution". The Applicant should prove before the Court "the status of the victim caused by a public authority" as it is provided under Article 34 of the European Convention for the Protection of Human Rights (see *mutatis mutandis* *Lindsay v. the United Kingdom*, no. 31699/96, Commission decision of 17 January 1997, 23 E.H.R.R. *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330-A, pp. 22-26, §§ 59-72; *Terem*

Ltd, Chechetkin and Olius v. Ukraine, no. 70297/01, § 28, 18 October 2005; Veselá and Loyka v. Slovakia (dec.), no. 54811/00, 13 December 2005).

23. Therefore, the Court clearly concludes that the Applicants lack active legitimacy to refer this matter to the Constitutional Court, respectively they lack locus standi, and consequently the Court should declare the Referral as inadmissible (see mutatis mutandis Convention (Municipal Section of Antilly v. France (dec.), no. 45129/98, ECHR 1999-VIII).
24. Under these circumstances, the Referral is inadmissible and the Applicant has not met the criteria for the admissibility of the Referral,

**FOR THESE REASONS, IT**

**DECIDES**

- I. TO REJECT Referral as inadmissible.
- II. This Decision shall be delivered to the Parties and it shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on Constitutional Court.
- III. The Decision is effective immediately.

**Judge Rapporteur**

  
Dr. Gjyljeta Mushkolaj

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani