



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 16 December 2010
Ref. No.: RK72/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 61/09

Applicant

“Adler Com” Sh.p.k. from Gjakova

**Constitutional Review of Order
of the President of the Municipality of Gjakova,
dated 22 January 2008,**

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 company "Adler Com", Sh.p.k. from Gjakova, represented by the owner Mr. Brahim Gutaj, residing in Gjakova.

Challenged decision

2. The Applicant challenges the Order of the President of the Municipality of Gjakova, dated 22 January 2008.

Subject matter

3. The subject of the Referral is the assessment of the constitutionality of the order of the President of the Municipality of Gjakova, arguing that rights and freedoms protected by the Constitution were violated. In particular, the Applicant supports its claim based on Articles 3.1 [Equality before the law], 24 [Equality before the law], 49.1 [Right to work and exercise profession] and Article 119.1.2.3 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Articles 20 and 22.7 and 22.8 of the Law (No. 03/L-121) on the Constitutional Court of the Republic of Kosovo of 16 December 2009, (hereinafter: "the Law") and Section 54 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

5. On 27 October 2009, the Applicant submitted a letter to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court"), requesting the Court to consider the constitutionality and legality of the Order of the President of the Municipality Gjakova, dated 22 January 2008.
6. On 10 December 2009, the Court informed the Applicant that he had to use the Application Form of the Court for the submission of his Referral. On 15 March 2010, the Court once again reminded the Applicant that it had still not received the Application Form.
7. On 31 March 2010, the Applicant submitted the Referral to the Court.
8. On 6 April 2010, the Court sent a request to the Applicant to provide additional documents.
9. On 7 July 2010, the Referral was communicated, in accordance with Article 22 of the Law, to the President of the Municipality of Gjakova, which, so far, has not submitted any comments.
10. On 15 December 2010, the Review Panel, consisting of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Gjyljeta, considered the Report of the Judge Rapporteur Ivan Čukalović and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. It appears from the submissions of the Applicant that, on 22 January 2008, the President of the Municipality of Gjakova ordered the Manager of the Procurement Office of the Municipality not to award any tender to the Applicant during the year 2008, due to a conflict with the municipal institutions. The conflict apparently concerns court proceedings, initiated by the President of the Municipality before the Minor Offences Court of the Municipality of Gjakova, regarding an alleged violation of Articles 61 and 62(2) and (3) of the Municipality Regulation No. 4/2002 on Regulation of City and Municipal Services done by the Applicant.
12. The Minor Offences Court (Registered No. 04-771/07, dated 18 February 2009) suspended the proceedings on the ground that there are no substantiating evidence that the Applicant had committed the concerned violation. Hence, it ruled that the allegations by the President of the Municipality of Gjakova were unfounded.

Applicant's allegations

13. The Applicant alleges that the Order of the President of the Municipality of Gjakova (hereinafter: "the President"), dated 22 January 2008, violates Articles 3 (1) [Equality Before the Law], 24 [Equality Before the Law], 49 (1) [Right to Work and Exercise Profession] and 119 (1), (2), (3) [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").
14. Furthermore, the Applicant alleges a violation of Article 58 of Law No. 03/L-040 on Local Self-Government, which stipulates that the president of a municipality does not have the authority to involve himself in procurement issues. Therefore, in the Applicant's opinion, the President of Gjakova Municipality was not allowed to issue the Order of 22 January 2008.
15. He also claims that the President has violated Article 81 (1) (b) of the Law on Local Self-Government, for the reason that the Order should have been forwarded to the supervisory authority for regular review of legality, in accordance with Article 80 (1) of that Law, before sending it to the Applicant.
16. According to the Applicant, the underlying reason for the exclusion from being able to participate in any municipal tenders during 2008 were the proceedings initiated in the Minor Offences Court in Gjakova and that he had a conflict with the municipal institutions.
17. Allegedly, the exclusion from participation in any tenders had caused the Applicant material and moral damages.

Assessment of the admissibility of the Referral

18. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements

laid down in the Constitution as further specified in the Law and the Rules of Procedure.

19. In this connection, reference is made to Articles 113.7 of the Constitution and 47.2 of the Law, according to which individuals, who submit a referral to the Court, must show that they have exhausted all legal remedies provided by the law.
20. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights.
21. However, as to the present Referral, it appears that the Applicant has not requested the Procurement Review Body, in accordance with Article 95 (2) of Law No. 2003/17 on Public Procurement in Kosovo, to review the Order issued by the President of the Municipality of Gjakova.
22. Furthermore, it is noted that decisions of the Procurement Review Body, issued under Article 95 (2) of the Law on Public Procurement, can be reviewed by a court of competent jurisdiction in accordance with the applicable law on judicial review of administrative matters (Law No. 02/L-28 on the Administrative Procedure of 22 July 2005), which, in this case, is the Supreme Court of Kosovo, pursuant to Article 31 (5) of the Law on Ordinary Courts (Official Gazette of the Autonomous Socialist Province of Kosovo, no. 46/76).
23. Moreover, the Applicant has failed to submit any *prima facie* evidence that he is the victim of a violation of the rights and freedoms guaranteed by the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005), because he did not state in the Referral, whether he has competed for any relevant tender and has not been awarded it, due to the Order of the President of the Municipality of Gjakova.
24. Additionally, the Constitutional Court notes that the Applicant complains of the Order of the President of the Municipality of Gjakova, dated 22 January 2008. This means that the Referral relates to events prior to 15 June 2008 that is the date of the entry into force of the Constitution of the Republic of Kosovo. It follows that the application is out of time and, therefore, incompatible "*ratione temporis*" with the provisions of the Constitution and the Law (see mutatis mutandis Jasioniene v. Lithuania, Application no. 41510198, ECHR Judgments of 6 March and 6 June 2003).
25. It follows that the Referral is Inadmissible

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, 20 of the Law, and Section 54 (b) of the Rules of Procedure, 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

Prof.Dr.Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

