

[AL] Legal disputes over a tender for digital networks of the public broadcaster

IRIS 2015-1:1/38

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On 13 October 2014 an order was published in the Bulletin of Public Procurement which proclaimed the company Rohde & Schwarz as the sole winner of a tender to build the digital networks of the public broadcaster RTSH.

The Ministry of Innovation and Information and Communication Technology published a request for proposals with the subject “For the Finance, Design, Supply, Installation, Training and Transfer of a DVB-T2 Network for the Republic of Albania” on 12 April 2013. The aim of the tender proclaimed by the Ministry was to select a company that would build the digital networks that would then enable the public broadcaster Radio Televizioni Shqiptar (RTSH) to transition its broadcasting from analogue to digital networks. The tender was carried out amid disputes of the opposition that it was not appropriate to undertake projects of such a scale immediately before the election period.

Four companies applied for the tender and the Ministry proclaimed two winners on 17 June 2013: Rohde & Schwarz and Ericsson AB. According to the Ministry both companies initially expressed their willingness to carry out the contract, but the company Rohde & Schwarz sent e-mails to the Ministry in July 2013 complaining about the procedure. The Ministry decided to exclude the company from the tender after the company's failure to clarify its position upon the Ministry's request. On 15 August 2013, following the exclusion, the company filed a lawsuit at the Court of Tirana which rejected the request four days later. The Minister, faced with this situation and with an imminent rotation of power after the general elections in June 2013, annulled the tendering procedure altogether. The Ministry then proclaimed two other bidders as the winners of the tender.

The company Rohde & Schwarz filed another lawsuit, challenging both the cancellation and the proclamation of the two winners of the tender, which the Court of Tirana accepted on 9 December 2013. The court ruled that the order the Ministry issued, proclaiming the two other bidders as winners of the tender was illegal and consequently also repealed the order that annulled the tender procedures in August 2013.

The Ministry, which by the end of 2013 had been transformed to the Ministry of Innovation and Public Administration appealed the court decision. On 18 June

2014 the Court of Appeals ruled that the matter had to be transferred to the Administrative Court of Appeals as it fell under its jurisdiction. At this point the Ministry decided to withdraw its appeal. On 15 September 2014 the Administrative Court of Appeals issued its decision which ruled that the case was closed, and one month later the order which proclaimed the company Rhode & Schwarz as the sole winner of the tender was published in the Bulletin of Public Procurement.

After these procedures, the final decision of the Ministry was challenged by the other bidder of the tender, the company Ericsson AB, as incompatible with the Constitution of the Republic of Albania. On 5 December 2014 the Constitutional Court decided to reject the lawsuit. The decision stated that the company Ericsson AB was seeking to repeal the court decision that resulted from a process the company had not been part of and therefore cannot appeal the decision. The court stated that the company also had not exhausted all other court instances and hence it should not file its request with the Constitutional Court.

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<http://www.gjykatatirana.gov.al>

The Court Ruling of First Instance, Decision no.12316

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<http://www.gjykataeapelittirane.al/>

The Ruling of Court of Appeals, Decision no.2712

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<http://www.gjykataadministrativeapelit.al/>

The Ruling of Administrative Court of Appeals, Decision no.3407

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http://www.gjk.gov.al/web/Lista_e_Vendimeve_92_1.php

The Decision no.195 of Constitutional Court

