



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

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Prishtina, 18 July 2012.  
No. ref.: RK/283/12

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI117/11**

Applicant

**Ridvan Hoxha**

**Constitutional review of the decision of the Municipal Assembly of Prizren  
No. 01/011-4539, of 18 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 Čukalović, Judge

#### **Applicant**

1. The Applicant is Ridvan Hoxha, alderman of the Municipal Assembly of Prizren (hereinafter: MA Prizren) from Prizren.

## Challenged decision

2. The Applicant challenges the decision of the MA of Prizren No. 01/011-4539, of 18 June 2009, by which is allowed “...allocation to use without compensation of agricultural land in a surface of 5-6 hectares, located along the local road to Nashec Village, registered as socially-owned property of MA Prizren, for construction of a school facility, including all infrastructure, to the Educational Centre “Gulistan”.

## Subject matter

3. Subject matter is the decision of the MA of Prizren No. 01/011-4539, of 18 June 2009, by which the municipal land was allocated to use without compensation, and which according to the Applicant’s allegations violated Art. 3, 24, 46 and 52 of the Constitution of the Republic of Kosovo.

## Legal basis

4. The Referral is based on Art. 113.7 of the Constitution, Art. 20, 22.7 and 22.8 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, of 16 December 2008 (hereinafter: Law), and Rule 56, paragraph 2 of the Rules of Procedure.

## Proceedings before the Constitutional Court

5. On 18 August 2011, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. By President’s Decision (No. GJR. 117/11, of 23 August 2011) Judge Iliriana Islami was appointed as Judge Rapporteur. On the same day, the President, by Decision No. KSH. 117/11, appointed the Review Panel composed of judges: Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović.
7. By President’s Decision (No. GJR. 117/11, of 2 July 2012) Judge Altay Suroy was appointed as Judge Rapporteur instead of Judge Iliriana Islami, whose mandate as a Judge of the Constitutional Court ended on 26 June 2012.
8. On 11 July 2012, after reviewing the report of Judge Rapporteur Altay Suroy, the Review panel, composed of judges: Robert Carolan (presiding), Almiro Rodrigues and Ivan Čukalović, proposed to the full Court inadmissibility of the Referral.

## Summary of facts

9. The MA of Prizren, after reviewing the request for allocation of the municipal property to use, filed by the educational center “Gulistan”, in the session held on 18 June 2009, took the DECISION No.01/011-4539, of 18 June 2009, to allocate the municipal property for permanent use, by which:

**I. ALLOWS** allocation to use without compensation of agricultural land of surface area of 5-6 hectares, located along the local road to Nashec Village, recorded as socially-owned property of MA Prizren, for construction of a school facility, including all infrastructure, to the Educational Centre “Gulistan”.

**II. AUTHORIZES** the Mayor of Prizren to make a decision, through Municipal bodies (Directorate of Administration – Property Section, and Public Municipal Attorney), in a special procedure, following talks with the institution as per Item I

of the enacting clause of this Decision, in compliance with applicable law in terms of duration, (manner of use and other conditions), on the transfer of use-rights without compensation of an immovable property from MA Prizren to the Educational Centre "Gulistan", for a timeline allowed by applicable law providing upon this matter, with a view of constructing a school facility, with all necessary infrastructure.

10. In order to enforce the decision of the Municipal Assembly of Prizren 01/011-4539, of 18 June 2009, to give the municipal property to a permanent use, the mayor, according to his official duties in procedures of taking the land for construction, nationalized by the actual user, pursuant to the Art. 17 and 25 of the Law on land for construction ("Official Gazette of the Republic of Kosovo" No. 44/80), section 128.2 (d) and Article 82 of the Law on Administrative Procedure, issued a RESOLUTION No.01-370 of 24 November 2010, on:

**"1. RELIEVING FROM POSSESSION** the Forestry working Organization "Sharri"- Forest Economy, and transferring such rights to the Municipality of Prizren, rights on a surface of immovable property of **50300 m<sup>2</sup>**, registered as cadastral parcel **No. 800**, in the place called "Boka-Boka", total surface of **474434 m<sup>2</sup>**, registered with the certificate on immovable property rights **No. 553**, CZ Korishe."

11. On 9 February 2011, in Prizren was concluded an agreement between the Mayor of the Municipality of Prizren, Mr. Ramadan Muja, and the user EC "GULISTAN", Article 1 of which agreement states the following:

*"The parcel's surface of 50300 m<sup>2</sup>, No. 800/2 CZ Korishe, property of MA Prizren, is hereby allocated to use to the EC "GULISTAN", pursuant to the Decision of MA Prizren No. 01/011-4539, of 18.06.2009, for a period of 40 years, pursuant to the Law on Allocation to Use and Exchange of Municipal Immoveable Property, No. 03/L226, of 28.10.2010, while the MA Prizren retains ownership rights until eventual amendment to the laws and other legal acts of the Republic of Kosovo that determine this field."*

12. In addition to the above-mentioned agreement, the Department for Urbanism and Spatial Planning – MA Prizren, as (renter) and TPE "Kamila"-LLC - (Fiscal No. - 600108741) - as (tenant) for 10 years (10+10, with possibility of extension)" on 15 April 2011, in Prizren, signed a contract No. 04-353 on use of the municipal land and determination of the lease for construction of the building – chocolate factory.
13. The Applicant tried to put on the daily agenda, of XIII session of the MA of Prizren, held on 16 June 2011, the issue of the legality of the above-mentioned decision, resolutions and agreements, but, the chairman of the MA of Prizren did not allow that, due to the fact that the daily agenda of the XIII session of the MA of Prizren, had been confirmed prior to that.
14. On 1 July 2011, the Applicant filed a claim to the Ministry of Administration and local Government, indicating the ministry as the responsible body to supervise the work of the local government on irregularities in making the above-mentioned decision, resolutions and agreements.
15. The Ministry of Administration and Local Government in its reply to the Applicant's claim No.463-576, of 13 July 2011, based on the Article 81.4 of the Law on Local Government No. 03/L-040, the Law on Allocation for Use and exchange of Immoveable

Municipal property No. 03/L-226 and after reviewing the allegations and the submitted evidence, established the following:

*“The allocation of municipal property to use by TPE “Kamila” SHPK, and EC “Gulistan” was rendered in contradiction to provisions of Article 5, items 2 and 3 of the Law No. 03/L-226 on Allocation to Use and Exchange of Municipal Immoveable Property, which provides that the Municipal Assembly may allocate municipal immoveable property to use for a period of ten (10) years, in compliance with criteria set forth in the Law on Public Procurement, and for a period of more than ten (10) years, but not more than forty (40) years, if it meets criteria provided by the Law on Procurement, and after a consent of the Ministry of Finance, and preliminary consent of the Ministry of Environment and Spatial Planning, and the Ministry of Trade and Industry.”*

*“Based on the above, and with a view of implementing the Law on Local Self-Government, the Ministry of Local Government Administration hereby demands from the Municipal Authorities, respectively the Mayor and the Municipal Assembly of Prizren, to undertake concrete action for the allocation of municipal property to use to be decided by the Municipal Assembly, thereby observing provisions of the Law no. 03/L-226 on Allocation to Use and Exchange of Municipal Immoveable Property.”*

### **Applicant’s allegations**

16. The Applicant considers that the Municipal Assembly of Prizren, rendering the above-mentioned decisions, resolutions and contracts violated Article 3 (Equality before the law), 24 (Equality before the law), 46 (Protection of property) and 52 (Responsibility for the Environment) of the Constitution of the Republic of Kosovo.
17. The Applicant requests from the Constitutional Court to:

*„Confirm the violation of legal provisions by arbitrary decision of the Mayor of Prizren Ramadan Muja, as the main responsible person, at the Municipal Assembly in Prizren and its chairman Nijazi Kryeziu, and QUASH the unlawful decision, and contracts signed pursuant to such a decision, by which the main objective would be achieved, that the activities of the Municipal Assembly of Prizren are in compliance with the Constitution and applicable laws of the Republic of Kosovo“.*

### **Assessment of admissibility of the Referral**

18. The Applicant claims that Article 3 (Equality before the law), 24 (Equality before the law), 46 (Protection of property) and 52 (Responsibility for the Environment) of the Constitution of the Republic of Kosovo, are the basis for his Referral.
19. Admissibility requirements are provided by the Constitution, reasoned in details by the Law on the Constitutional Court and the Rules of Procedure.
20. Art. 113.1 and 113.7 of the Constitution provide the legal frame of the admissibility requirements for individual Referrals, stating:

*„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 exhaustion of all legal remedies provided by law."*

21. In this instant case, the Applicant requested constitutional review of the *„Decision of the Municipal Assembly of Prizren No. 01/011-4539, of 18 June 2009, which allows“... the allocation to use the municipal property – without compensating the agricultural land , in a surface of 5 – 6 hectares located along the local road to Nashec Village, recorded as socially-owned property of MA Prizren, for construction of a school facility, to the Educational Centre “Gulistan”*. As well as the constitutional review of the contracts that derived from this decision, requesting from the Constitutional Court to; *“QUASH this unlawful decision and contracts signed based on this decision“*
22. Such a request to quash the decision of the Municipal Assembly of Prizren No. 01/011-4539, of 18 June 2009, and signed contracts based on this decision, in order to protect the interest of all citizens of the Prizren Municipality, shows that the Applicant challenges in abstract the mentioned decision and contracts. If that is the objective of the Applicant, as an individual, he cannot be considered as an authorized party.
23. In fact, the Applicant refers to the Article 113.7 of the Constitution as legal basis for his Referral. Furthermore, the Applicant did not present any arguments by which he would prove that he is the direct victim of this decision and the contracts signed based on this decision.
24. Only individuals, as it is explicitly provided by Art. 113.2 to 113.6 of the Constitution, are the authorized party to refer to the Court regarding the constitutional review of abstract issues.
25. Moreover, Kosovo’s constitutional-legal system does not provide *„actio popularis“*, what is the modality of individual complaints that provides any individual, who wants to protect the public interest and constitutional order, the possibility to address to the Constitutional Court regarding such violation, even when he/she does not have the status of the victim.
26. Therefore, the Court considers that the Applicant is not the authorized party to challenge, in abstract, the constitutionality of the decision of the Municipal Assembly and the contracts signed based on this decision, and thus, this Referral should be announced as inadmissible.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo pursuant to Article 113.1 and 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 36 (1a) and 36 (3c) of the Rules of Procedure, in its session held on 11 July 2012, 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; and
- III. This Decision is effective immediately.

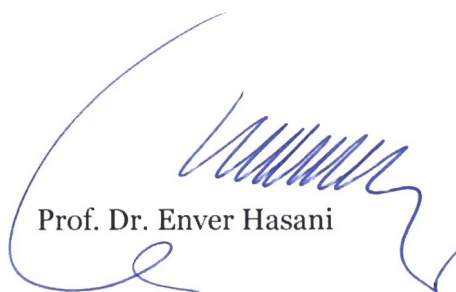
**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Prof. Dr. Enver Hasani