



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

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Pristina, 3 March 2014  
Ref. No.: RK 565/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI42/12**

Applicant

**Rizah Ismajli**

**Request to issue an Opinion**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President  
Ivan Cukalovic, Deputy President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Svezhana Botusharowa, Judge  
Kadri Kryeziu, Judge  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Applicant is Mr. Riza Ismajli from the Village of Zhiti, Municipality of Podujeva, employee of STE "Germia" in Pristina. He is allegedly acting under a Power of Attorney issued by the Presidency of the Trade Union of the STE "Germia" to represent its 473 employees in proceedings before the Special Chamber of the Supreme Court of Kosovo in order to obtain "compensation of personal incomes."

## **Challenged decision**

2. No court judgment or administrative decision is challenged by the Applicant.

## **Subject Matter**

3. The Applicant submits that the employees of STE "Germia" request the Court to issue an opinion on the question whether they are entitled to request from the current users the payment of rent for the use of their business premises of 11.500 m2 in the New Shopping Mall "Germia" in Pristina.

## **Legal basis**

4. The Referral is apparently not based on Articles 113.7 and 21.4 of the Constitution, Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") or Rule 56(3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules Procedure").

## **Proceedings before the Constitutional Court**

5. On 18 April 2012, the Applicant filed a referral with the Court. However, the Power of Attorney of 20 August 2009 which he submitted to the Court together with the Referral apparently concerns the authorization to represent the employees of STE "Germia" in proceedings before the Special Chamber of the Supreme Court regarding the compensation of personal incomes.
6. On 23 May 2012, by Decision KHS KI. 42/12, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel consisting of Judges Ivan Čukalović (Presiding), Gjyljeta Mushkolaj and Iliriana Islami. When their mandate as members of the Constitutional Court expired on June 2012, Judges Gjyljeta Mushkolaj and Iliriana Islami were replaced by Judges Enver Hasani and Robert Carolan by Decision Nr.K.SH.KI. 42/212 of the President.

## **Summary of the facts**

7. By letter of 26 January 2009 addressed to the Ministry of Public Services, the Independent Trade Union of employees STE "Germia" informed the Minister that the employees possessed valid documentation that they had over 62 shops throughout Kosovo, for which they did not receive any rent and that the Ministry of Public Services took their most valuable property. They appealed to all institutions of the Republic of Kosovo, the Government and all Ministries to take the necessary measures to stop once and forever the corrupt people and prosecute them. If rent would be paid, the letter continued, they would manage to secure a living for themselves and their families.
8. On 4 November 2009, the Trade Union was registered at the Ministry of Labour and Social Welfare.

9. A further letter, dated 24 March 2010, was sent to the Board of the Privatization Agency of Kosovo (PAK), requesting it to incite the institutions, public bodies and private persons occupying the premises of "Germia" to pay rent since they moved in there. The letter further stated that from the rent, which could be collected from these institutions, the salaries of around 400 employees of STE "Germia" who are without financial means could be paid.
10. On 22 March 2011, the President and Vice President of the Trade Union sent a further letter to the Ministry of Public Administration with the intension to initiate an administrative procdure in the Ministry. They informed the Ministry that the employees of STE "Germia" requested from it to use its authority for the payment of rent for the Shopping Mall Germia, where five ministries were established since 2000 which had not paid rent for 12 years now. The letter continued that PAK managed the socially and publicly owned enterprises for the employess who had constructed the premises in 1970 as proven by valid documents.
11. No further facts have been submitted.

### **Applicant's allegations and claims**

12. The Applicant alleges that the representatives of STE "Germia" are convinced that the premise of the new Shopping Mall is their property and that they may legally use it until its privatization, pursuant to Article 46 [Protection of Property] of the Constitution, providing that "No one shall be arbitrarily deprived of property."
13. The employees of STE "Germia" organized in trade unions, through their authorized representative, request the Court to issue an opinion on the following questions:
  - 1) Do the employees of STE "Germia" have the right to use the premises;
  - 2) If they do, do they have the right to request the payment of rent from the current users;
  - 3) Would the Court recognize their legal capacity as a party, pursuant to Article 73 of the Law on Contested Procedure;
  - 4) Does the representative of the Trade Union Council, according to the authorization, have procedural capacity;
  - 5) If he does not, who could represent them to exercise their rights;
  - 6) Do they have the right to ask from the institutions to empty the premises from the current users who use them without any legal title?

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

14. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.
15. The Court needs to determine first whether the Applicant is an authorized party within the meaning of Article 113.7 of the Constitution, stating 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.”* In this respect, the Referral was submitted with the Court by Mr. Riza Ismajli, employee of STE “Germia” and President of its Trade Union, acting under a power of attorney by the Presidency of the Trade Union “*to represent the employees of STE “Germia” in Prishtina in the Special Chamber of the Supreme Court of Kosovo, regarding the compensation of personal incomes.*”

16. As to the power of attorney cited above, the Court observes that it apparently does not cover the proceedings before this Court, but only those before the Special Chamber of the Supreme Court of Kosovo. It follows that the Applicant cannot be considered as an authorized party under Article 113.7 of the Constitution.
17. However, even assuming that the Presidency of the Trade Union meant to authorize Mr. Riza Ismajli to represent the employees of STE “Germia” in the proceedings before the Constitutional Court, the Referral must be declared inadmissible for the following reason:
18. As mentioned above, an Applicant is also under the obligation, by virtue of Article 113.7 of the Constitution and Article 47.2 of the Law, to exhaust all legal remedies available under Kosovo law.
19. The Court emphasizes that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (hereinafter: ECtHR) is to afford the public authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of fundamental rights guaranteed by the Constitution and/or international instruments directly applicable in Kosovo. The rule is based on the assumption that the Kosovo legal order will provide for an effective remedy to deal with an alleged violation of such fundamental rights. This is an important aspect of the subsidiary character of the proceedings before the Constitutional Court (see, *mutatis mutandis*, Selmouni v. France, ECtHR, no 25803/94, Judgment of 28 July 1999).
20. However, the exhaustion rule does not only require an applicant, before submitting a referral to the Court, to exhaust all legal remedies available under Kosovo law, including the highest instance court, but also to have raised the alleged violations of fundamental rights in the proceedings before these instances.
21. As to the present case, the Court notes that it appears from the documents submitted by the Applicant that he has not filed the claims, which he is now making before this Court, with the competent courts in Kosovo. The Applicant has, therefore, not shown that he has exhausted all legal remedies available to him under Kosovo law as he was required to do pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law.
22. Moreover, the Court is not competent, by virtue of Article 113.1 of the Constitution, to give an opinion on the above questions submitted by the Applicant.

23. The Court, therefore, considers that the Referral must be rejected as inadmissible.

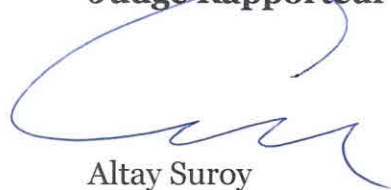
### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47 (2) of the Law, and Rule 36 (1) c) and Rule 56 (2) of the Rules of Procedure, on 9 September 2013,

### **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**



Altay Suroy



**President of the Constitutional Court**



Prof. Dr. Enver Hasani