



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

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Pristina, 18 January 2013  
Ref. No.: RK348/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 44/11**

Applicant  
**Rufki Suma**

**Constitutional Review of the decision of the Kosovo Privatization Agency to sell  
the Socially Owned Enterprise “Sharr Cem”, dated 14 December 2010.**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

Composed of

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge  
Arta Rama-Hajrizi, Judge

## **Applicant**

1. The applicant is Mr. Rufki Suma, president of the Municipality of Hani i Elezit, represented by Mr. Bajrush Laçi, chief of the Legal Department of the Municipality of Hani i Elezit.

## **Challenged decision**

2. The Applicant challenges the decision of the Kosovo Privatization Agency (hereinafter: "PAK"), whereby the Socially Owned Enterprise "Sharr Cem" was privatized on 14 December 2010.

## **Subject matter**

3. The Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 30 March 2011 claiming that its rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity] and 119 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

## **Legal basis**

4. Article 113.4 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rule 56 (2) 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 30 March 2011, the Applicant submitted a Referral with the Court.
6. On 19 April 2011, the President, by Order No. GJR. 44/11, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date the President, by Order, No. KSH. 44/11, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
7. On 25 May 2011, the Court requested additional clarification and additional documents in respect to:
  - a. what the legal basis for the Referral is;
  - b. which is the challenged decision;
  - c. evidence on exhaustion of legal remedies and on the privatization of Sharr Cem; and
  - d. a power of attorney.
8. On 2 June 2011, the Applicant submitted the clarification and the additional documents:

- a. the Referral is made under Article 113.4 of the Constitution;
  - b. the challenged decision is the decision of PAK to privatize Sharr Cem
  - c. the Applicant has on 8 April 2011 filed a complaint with the Special Chamber of the Supreme Court on the privatization of Sharr Cem;
  - d. a power of attorney was also submitted.
9. On 15 June 2011, the Court communicated the Referral to the Special Chamber of the Supreme Court and PAK.
  10. On 2 July 2012, the President, by Decision, No. KSH. 44/11, replaced the review panel members Judges Gjyljeta Mushkolaj and Iliriana Islami with Judges Almiro Rodrigues (Presiding) and Enver Hasani since the mandate of Judges Gjyljeta Mushkolaj and Iliriana Islami as Judges of the Constitutional Court expired on 26 June 2012.
  11. On 5 December 2012, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of the facts**

12. On 14 December 2010, "Shar Cem" was privatized by PAK.
13. On 15 December 2010, the Applicant submitted a request to PAK to suspend the privatization of Sharr Cem. The Applicant has not received any reply in this matter.
14. On 27 January 2011, the Municipal Assembly of Hani i Elezit took the decision to file a claim against PAK because of the privatization of Sharr Cem without complying with legal procedures and without advertising at all a privatization tender (Decision no.01/15-2011).
15. On 8 April 2011, the Applicant filed a complaint with the Special Chamber of the Supreme Court of Kosovo claiming that the privatization of Sharr Cem was done without publicly announcing the privatization.

### **Applicant's allegations**

16. The Applicant claims that the privatization of Sharr Cem was done in contradiction with the PAK directions on Generic rules of tender for privatization (Ordinary spin-off) and Generic rules of tender for liquidation, Law (No. 03/L-067) on the Privatization Agency of Kosovo, Law on Protection of Competition and Article 119 [General Principles] of the Constitution, since the privatization occurred without PAK publicly announcing it. Hence, allegedly, this action undertaken by PAK limited the right to free competition by excluding other bidders and selling this enterprise by a "symbolic price" of Euro 30.1 million.

## Assessment of admissibility of the Referral

17. The Applicant complains that the privatization of Sharr Cem was done without publicly announcing the privatization and thus its rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity] and 119 [General Principles] of the Constitution have been violated.
18. However, in order for a Referral to be admissible, the Applicant must first show that he/she has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
19. The Court notes that the Applicant submitted the Referral under Article 113.4 of the Constitution, which provides:

*“A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.”*

20. In this respect, the Applicant's allegation that a violation has occurred under Article 113.4, in the instant case, is incompatible with the Constitution because the competences of the Municipality under abovementioned article in order to submit a Referral to this Court are limited to the following: the laws or acts of the government infringing upon the responsibilities or diminishing the revenues of the municipality that otherwise is provided by Law on Local Self-Government and the European Charter on Local Self-Government.
21. In these circumstances, the Applicant lacks *locus standi* to refer this case to the Court. Therefore, the Court declares the referral inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.4 of the Constitution, Article 20 of the Law and Rule 56 (2) of the Rules of Procedure, on 5 December 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;
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Ivan Čukalović



Prof. Dr. Enver Hasani