



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 17 August 2011

Ref.No.:RK131/11

RESOLUTION ON INADMISSIBILITY

for

Referral No. KI 12/11

The Applicant

Amrush Rexhepi

**Constitutional review of the Judgment of the Supreme Court of Kosovo,
Rev. No. 256/08, dated 15. November 2010**

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

The Applicant

1. The Applicant is Mr. Amrush Rexhepi from the village of Zabel i Epërm, Municipality of Glllogoc.

Challenged Decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, Rev. No. 256/08, dated 15. November 2010, by which revision of the Judgment of the District Court of Prishtina, Ac. No. 512/2006 dated 25. February 2008 was rejected.

Subject Matter

3. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev. No. 256/08 dated 15 November 2010, without naming particular articles of the Constitution, but he stresses that the right to property is guaranteed by the Constitution of Kosovo and international Conventions everywhere around the world and that court decisions caused injustice to him.

Legal Basis

4. Article 113.7 and Article 21.4 of the Constitution; Article 20, Article 22.7 and Article 22.8 of the Law (No. 03/L-121) on the Constitutional Court of the Republic of Kosovo dated 16 December 2008 (hereinafter referred to as: the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Rules of Procedure").

Proceedings at the Constitutional Court

5. The Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Court") on 2 February 2011.
6. On 23 March 2011 the Constitutional Court informed Mr. Amrush Rexhepi, the Supreme Court of Kosovo, the District Court of Prishtina and the Municipal Court of Glllogoc that proceedings for constitutional review have been initiated at this Court.
7. On 2 march 2011, the President, by Order No. GJR. 12/11, appointed Judge Ivan Čukalović as Judge Rapporteur.
8. On the same date, the President, by Order No. KSH. 12/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Prof. Dr. Gjyljeta Mushkolaj and Prof. Dr. Iliriana Islami.
9. On 31 March 2011 the Supreme Court of Kosovo, in its answer to the Constitutional Court of Kosovo stated that they do not have anything new to add and that their opinion on the subject matter is presented in the Judgment of the Supreme Court of Kosovo.
10. On 8 April 2011 the District Court of Prishtina, in its answer to the Constitutional Court of Kosovo, delivered as additional documents copies of all 3 judgments rendered by the aforementioned courts.

Summary of Facts

11. On 8 May 1987 the Comasation Commission [**interpreters note: comasation - redistribution of land/land management**] of the Glllogoc Municipality by

Resolution 01. No. 461-29 executed land distribution in the Cadastral Municipality of “Zabel i Epërm”.

12. The Applicant entered into the comasation process with the land area of 2.39.35 ha, which the Comasation Commission evaluated at 13,900.89 points.
13. Considering the fact that reduction in the amount of 0.025 was valid for all participants in the comasation (to ensure roads and irrigation channels). The Applicant received land at the cadastral chart 427, plot of land No. 35, type plough land class III and IV with the area of 0.75.20 ha and cadastral chart 427, plot of land No. 42, type plough land class IV, V and VI with the area of 1.12.26 ha, which in total is 1.87.46 ha, and which after converting it into points summed up to 13,623.08.
14. From this statement of facts it can be established that the area allocated to the Applicant is smaller compared to the area with which the Applicant entered in the comasation process, because the value of the land with which he entered into the comasation process is lower than the value of the land he received during the comasation process, while the value of the points is approximately the same compared to the points he had when he entered the comasation process.
15. Paragraph II of the holding of the Resolution of the Comasation Commission of the Glllogoc Municipality, 01. No. 461-29 dated 8 May 1987, states that handover of the land was executed with Minutes No. 461-29 dated 17 November 1986 and after this decision would become final, the handover of the land was to be considered permanent.
16. The Applicant didn't file an appeal with the Directorate for judicial property relations of the Province on this Resolution.
17. The Applicant claims that the Resolution of the Comasation Commission of the Glllogoc Municipality, 01. No. 461-29 dated 8 May 1987, was not entirely executed in the field and that he is using only 1.54.95 ha.
18. Due to such factual situation and following Applicant's request to determine the exact factual situation, the court rendered a decision to carry out a site inspection.
19. Namely, after conducting control of the site on 11 August 2004 and following the written opinion and conclusion of the geodesy expert, Mr. Xhafer Rama, dated 18 July 2005 with changes and clarifications dated 18 October 2005, the following was concluded:
 - a) That Amrush Rexhepi took the possession and is using the land that was allocated to him as per the Decision on comasation at the cadastral chart 427, plot No. 35 with the area of 0.78.28 ha.
 - b) That Amrush Rexhepi did not take the possession and is not using the land that was allocated to him as per the Decision on comasation at the cadastral chart 427, plot No. 42; and that this plot is in the possession of Nexhat Avdullahu with an area of 0.12.19 ha, Banush Avdullahu with an area of 0.28.13 ha, Shefqet Avdullahu with an area of 0.60.95 ha and Sami Avdullahu with an area of 0.08.50 ha, which according to the expert's opinion are holding these plots without any legal rights to posses.
 - c) The expert determined that Amrush Rexhepi took the possession and is using the land from the cadastral chart 425, plot No. 30 with an area of 0.58.97 ha;

cadastral chart 424, plot No. 31/1 with an area of 0.29.70 ha; cadastral chart 423, plot No. 15 with an area of 0.75.10 ha, and that update was not executed as per Resolution of the Comasation Commission of the Glllogoc Municipality.

- d) Finally, the geodesy expert's opinion is that according to the sketches, the area which was allocated to Amrush Rexhepi is smaller for 0.20.51 ha from the one he is using now, but the area that was allocated to him by the resolution, compared to the area with which he entered into comasation, is the same when considering it with value points.
20. Based on such opinion of the expert, Amrush Rexhepi filed a claim suit by which he requested compensation from the Municipality of Glllogoc for lost profits due to the inability to use the land with the area of 0.20.51 for sowing crops during the years 2001, 2002, 2003, 2004, 2005 and 2006 in total amount of 1,133.34 Euros, with 3.5% interest since 2001.
21. At the main hearing on 9 March 2006 the Municipal Court of Glllogoc, through Judgment C. No. 09/04, rejected the claim suit of Mr. Amrush Rexhepi as ungrounded, by which he claimed compensation from the Municipality of Glllogoc for lost profits due to the inability to use the land with the area of 0.20.51 ha.
22. In the reasoning of the Judgment, the Municipal Court of Glllogoc stated that it accepted the expert's opinion in its entirety, which was harmonized with other material evidence in the case file, stressing that with Resolution of the Comasation Commission of the Glllogoc Municipality, 01. No. 461-29 dated 8 May 1987, Mr. Amrush Rexhepi was allocated land from the cadastral chart 427, plot No's 35 and 42 and that Amrush Rexhepi **was obliged to insist to be given into possession and use the plots which were allocated to him by the Comasation Commission and not to take possession of other plots.**
23. The Municipal Court of Glllogoc concluded that in the present case the Municipality of Glllogoc did not cause damage to Mr. Amrush Rexhepi in any way, as he claimed in the claim suit, and therefore the claim was rejected as ungrounded.
24. Unsatisfied with such decision, Mr. Amrush Rexhepi filed an appeal with the District Court of Prishtina.
25. The District Court of Prishtina through Judgment Ac. No. 512/2006, dated 25 February 2008, rejects the appeal as unfounded and confirmed the Judgment of the Municipal Court of Glllogoc C. No. 09/04, dated 9 March 2006.
26. Mr. Amrush Rexhepi filed a request for Revision of the Judgment of the District Court of Prishtina Ac. No. 512/2006, dated 25 February 2008, to the Supreme Court of Kosovo.
27. The Supreme Court of Kosovo by Judgment Rev. No. 256/2008 dated 15 November 2010 rejected the request for revision of the Judgment of the District Court of Prishtina Ac. No. 512/2006, dated 25 February 2008, as unfounded.

Applicant's allegations

28. The Applicant claims that Judgments of court authorities in Kosovo, through which the claim suit of Mr. Amrush Rexhepi was **rejected as ungrounded**, in which he requested compensation from the Municipality of Glllogoc for lost profits due to the inability to use the land with the area of 0.20.51 for sowing crops during the years

2001, 2002, 2003, 2004, 2005 and 2006, caused injustice to him, although he did not name concrete articles of the Constitution.

29. Therefore, requests from the Constitutional Court to correct this injustice, for the Municipality of Glogoc to correct this deficiency and transfer to him other land that remained unallocated after the comasation.

Preliminary assessment of admissibility of the Referral

30. In order for the Referral to be admissible, the Court first needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, Law and the Rules of Procedure of the Constitutional Court
31. The Applicant's Referral was filed with the Constitutional Court on 7 February 2011, whilst the last Decision on this case was delivered by the Supreme Court of Kosovo on 15 November 2010. Therefore, the Court concludes that the Referral is filed pursuant to Article 49 of the Law.
32. Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts (see, *Resolution on Inadmissibility, Case KI 13/09, Sevdail Avdyli*, dated 17 June 2010).
33. In the present case, the Applicant has not shown any *prima facie* evidence that the Judgment of the Supreme Court violated his rights and freedoms guaranteed in Chapter II of the Constitution (Fundamental Rights and Freedoms, Articles 21 – 56 of the Constitution) or that the Supreme Court rendered an arbitrary decision when rejecting the applicants claim as unfounded (see, *Vanek vs. The Republic of Slovakia*, ECtHR Decision on admissibility of the Application No. 53363/99 dated 31 May 2005).
34. In the present case, considering that regular courts established that the Applicant received compensation for the expropriated property, even in a higher number of value points, with a condition that he insisted on using plots of land that were assigned to him by the Comasation Commission and not other plots, the Constitutional Court considers that actions of public authorities have not violated any of his rights guaranteed by the Constitution.
35. From this, it results that the Referral is manifestly ill-founded pursuant to Rule 36.2(b) of the Rules of Procedure, which in its pertinent part reads: "*The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: when the presented facts do not in any way justify the allegation of a violation of the constitutional rights,..*".

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.2(b) of the Rules of Procedure, at the session held on 7 July 2011, unanimously

DECIDED

- 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 on the Constitutional Court;
- III. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

