



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

Prishtina, on 26 April 2016  
Ref. No.: RK929/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Joined Cases  
Nos. KI48/14 and KI49/14**

Applicant

**Municipality of Vushtrri**

**Constitutional Review of the Decisions of the Basic Court in Mitrovica-  
Branch in Vushtrri:**

- (1) CP No. 46/14, of 6 March 2014,**
- (2) CP No 49/14, of 6 March 2014,**
- (3) CP 53/14, of 6 March 2014,**
- (4) CP No. 52/14, of 11 March 2014,**
- (5) CP No. 54/14, of 11 March 2014**

**and**

**Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo,  
of 27 June 2014**

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

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

## **Applicant**

1. The Referral is submitted by the Municipality of Vushtrri (hereinafter: the Applicant), represented by the legal representative Mr. Idriz Muzaqi.

## **Challenged Decisions**

2. In the joined Referral, the Applicant challenges these decisions rendered in the executive proceedings by the Basic Court in Mitrovica-Branch in Vushtrri hereinafter: the Basic Court), Decision CP. No. 46/14, Decision CP. No. 53/14, Decision CP. No. 49/14, of 6 March 2014, Decision CP. No. 52/14, and Decision CP No. 54/14, of the same court, of 11 March 2014. By the submission for extension of Referral, the Applicant also challenged Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014, which upheld the challenged Decision CP. No. 53/14, and which he received in the meantime.

## **Subject Matter**

3. The subject matter of the Referrals is the constitutional review of 5 (five) abovementioned Decisions rendered in the executive proceedings by the Basic Court in Mitrovica, and the Decision of the Court of Appeal of Kosovo, which allegedly violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), under Article 31 (Right to Fair and Impartial Trial) and Article 102.5 (General Principles of Judicial System-Right to Appeal).
4. The Applicant claims, *inter alia*, that each decision was rendered in breach of "... Article 102 paragraph 5 of the Constitution of the Republic of Kosovo, because the Municipality was denied the right to appeal in out contentious procedure".
5. The Applicant has requested the Constitutional Court to impose interim measure in that part of the Referral where the decisions in the executive proceedings were final, requesting suspension of execution of Decision Ac. No. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014.

## **Legal Basis**

6. The Referral is based on Article 113.7 and 21.4 of the Constitution, Articles 22, 27 and 47 of the Law No. 03/L-121, on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law), and Rules 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

7. On 14 March 2014, the Applicant submitted two Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which were registered under the following numbers: KI48/14 and KI49/14.

8. On 24 April 2014, the Court informed the Applicant about the registration of the Referrals KI48/14 and KI49/14 and sent the copies of the Referrals to the Basic Court in Mitrovica.
9. On 16 May 2014, the President of the Court ordered the joinder of the Referral KI48/14 to the Referral KI49/14. By this order, it was decided that the Judge Rapporteur and composition of the Review Panel be the same as it was decided by Decision No. KSH. KI49/14.
10. On 22 May 2014, the Court informed the Applicant and the Basic Court in Mitrovica-Branch in Vushtrri about the joinder of the Referrals.
11. On 25 June 2014, the Court requested the Applicant for additional information regarding the Referrals KI48/14 and KI49/14. In the letter, the Court, *inter alia*, asked the Applicant "*Whether the Municipality of Vushtrri has appealed against the challenged decisions.*"
12. On 3 July 2014, the Court received the copies of the appeals against the five challenged decisions submitted by the Applicant to the Court of Appeal of Kosovo.
13. On 29 July 2014, the Applicant extended the part of the referral KI48/14, by Decision Ac. no. 1369/14, of the Court of Appeal of Kosovo, of 27 June 2014.
14. On 3 October 2014, the Court informed the Court of Appeal of Kosovo about the extension of the part of the Referral KI48/14, and sent a copy of the Referral to this court.
15. On 20 October 2014, the President of the Court, by Decision appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova.
16. On 21 October 2014, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur.
17. On 15 April 2015, the Court approved by majority of votes the request of Judge Arta Rama-Hajrizi for recusal from deciding regarding this Referral, as the requirements under Article 18 of the Law on the Constitutional Court, have been met.
18. On 26 June 2015, the mandate in the Court ended to judges Enver Hasani and Kadri Kryeziu and considering the decision on withdrawal of a judge from the case, the Court could not proceed further with the Referral due to lack of quorum provided for in Article 19.2, of the Law.
19. On 30 December 2015, the President of Kosovo decreed the judges: Gresa Caka-Nimani and Selvete Gërxhaliu-Krasniqi, therefore the legal requirements for the continuation of the process of reviewing the request were met.
20. On 21 January 2016, the Court requested the Municipal Court of Vushtrri to notify the Court of any possible changes regarding the status of the Referrals,

as well as to send to the Court the additional documents, if it possesses such documents.

21. On 5 February 2016, the Court received a written response from the Municipality and also the copies of new court decisions regarding the cases.
22. On 15 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

23. On 10 October 1986, the Municipal Assembly of Vushtrri rendered the Decision on the declaration of general interest for the expropriation of three cadastral parcels (i.e. parcels No. 2238/2, 2239/2 and 2240/2 located in the Cadastral Municipality Vushtrri) for the construction of a new bus station for the needs of BOAL "Kosovatrans".
24. In 1987 (unspecified date) BOAL "Kosovatrans" informed the Municipal Directorate for Property Matters that they had ensured the financial means for monetary compensation to the previous owners of the expropriated land. Based on that, the Municipal Directorate issued a Decision concerning the amount of compensation.
25. Dissatisfied with the amount of compensation, the previous five owners (i.e. SH. P., F. P., T. P., A. P. and B. ZH.), initiated the non-contentious proceedings before the Municipal Court in Vushtrri, with a request to determine the amount of compensation, in accordance with the applicable Law on Non-Contentious Procedure.
26. While the case was pending before the Municipal Court in Vushtrri, the war in Kosovo broke out. The premises of the Municipal Directorate for Property Matters in Vushtrri were set on fire and the Municipal Court's case file was, according to the Applicant, transferred to Kraljevo, Republic of Serbia.
27. Following the request of the previous owners, on 14 September 2005, the Municipal Court in Vushtrri rendered the Decision No. 344/2005 and ordered the restoration of the case file to the Municipal Court in Vushtrri (Case No. 579/1989).
28. On 13 January 2006, the Municipal Court in Vushtrri rendered Decision No. 344/2005 with regard to the request for compensation for expropriated property of the five previous owners, granting the requests to three of the owners (i.e. F.P., T.P. and A.P.), in relation to the counter proposer, TE "Kosovatrans", whereas for two of them, SH.P and B. ZH., the Court decided that pursuant to Article 333, paragraph 2 of the Law on Contested Procedure, to reject their request because their case has already been decided by the Decision of the Supreme Court of Serbia, because these two Applicants continued with the court procedures also in the then courts. However, these two Applicants are instructed to request compensation for the expropriated land in the enforcement procedure.

29. By the abovementioned decision it was determined that TE "Kosovatrans" was responsible for compensating these three previous owners of immovable property (F. P., T. P. and A. P.), and in the decision, the Court determined the real monetary amount that should be compensated to the former owners.
30. By the same decision, the request of the three previous owners (F. P., T. P. and A. P.) with regard to the Applicant (the Municipality) was rejected. It was stated that *"as to the counter proposer, the Municipality of Vushtrri... the proposal of F. P., T. P. and A. P. is rejected as ungrounded, since it [i.e. the Municipality] lacks passive legitimacy"*.
31. The counter proposers, TE "Kosovatrans" and Kosovo Trust Agency (that administered this company at the time), filed an appeal against Decision No. 344/2005, of 13 January 2006.
32. The Municipality of Vushtrri did not appeal, since it was stated that the Municipality did not have the status of a party in the proceedings.
33. On 5 December 2013, the Court of Appeal of Kosovo rendered Decision Ac. No. 490/2012 and *"rejected as out of time (belated) the appeal of the counter proposer TE 'Kosovatrans' in Vushtrri and Kosovo Trust Agency, against the Decision of the Municipal Court in Vushtrri, No. 344/2005, of 13 January 2006."*
34. Following this decision, the five previous owners initiated executive proceedings before the Basic Court. They all requested execution against the Applicant, the Municipality of Vushtrri, and not against TE "Kosovatrans".
35. The Municipal Court in Vushtrri, by Decisions CP. no. 46/14, CP. no. 49/14, CP. No. 52/14, CP. no. 53/14 and CP. no. 54/14, allowed execution of all proposers.
36. Against all decisions the Applicant filed individually the objection with the Basic Court.
37. On 6 March 2014, namely on 11 March 2014, the Basic Court rejected as ungrounded the Applicant's objections.
38. On 17 March 2014, the Applicant filed appeals with same appealed allegations with the Court of Appeal against five decisions, by which its objections were rejected due to violation of provisions of material acts and procedural provisions.
39. The Court of Appeal, based on the Applicant's appeals, on identical legal issues rendered different decisions: in case CP. no. 53/14 and CP. no. 54/14 rejected the Applicant's appeals and upheld the decisions of the of first instance court, in cases CP. no. 46/14, CP. no. 49/14 and CP. no. 52/14, quashed the decisions of the first instance and remanded the case for retrial.



40. Against Decisions Ac. no. 1365/14 and Ac. no. 1369/14, of the Court of Appeal, which rejected the appeals of the Municipality and the decisions of first instance court (CP. No. 53/14 and CP. No. 54/14) were upheld, the Applicant submitted a proposal for protection of legality to the State Prosecutor's Office.
41. On 22 December 2014, the Supreme Court of Kosovo by Decision CML. no. 3/14 in the proceedings initiated for the protection of legality has decided to modify Decision Ac. no. 1369/14, of the Court of Appeal, and Decision CP. no. 53/14, of the Basic Court in Mitrovica, by rejecting as ungrounded the creditor's claims.
42. On 22 December 2014, the Supreme Court of Kosovo by Decision CML. no. 4/14 decided to modify Decision Ac. no. 1365/14, of the Court of Appeal, and Decision CP. no. 54/14, of the Basic Court, by rejecting as ungrounded the creditor's claims.
43. The Supreme Court, in its decisions, referring to the decisions of the first and second instance courts, in the execution procedure stated *inter alia*: "*Setting from such a state of the case, the Supreme Court cannot accept such a legal conclusion of the courts of lower instance as fair and lawful, since according to the assessment of this court, the courts of lower instance have erroneously applied the provisions of procedural and substantive law and the challenged decisions had to be modified.*"
44. On 5 February 2016, the Applicant officially informed the Court that the case regarding the Decision CP. no. 52/14 is pending before the Court of Appeal upon the appeal of the creditor, the case CP. no. 46/14 is for the second time before the Court of Appeal, upon the Applicant's appeal, and the case regarding the decision CP. no. 49/14, is in reconsideration before the first instance court.

### **Applicant's Allegations**

45. With regard to all the challenged decisions, the Applicant alleges that "*upon deciding matter in the executive procedure, the Court committed essential violations of the material provisions and that 1) violation of Article 102.5 of the Constitution of the Republic of Kosovo because the Municipality was denied the right to appeal in non contentious procedure*".
46. The Applicant further alleges that with regard to all challenged decisions there have been violations of provisions of the Law on Expropriation, the Law No. 03/L-087 on Publicly Owned Enterprises, UNMIK Regulation no. 2000/45 on Local Self-Government of Municipalities in Kosovo, the Law on Executive Procedure and the Law on Contested Procedure.
47. However, the Applicant alleges that there was inconsistency in decision-making, as the courts in identical cases and with the same subject matter, had decided differently, once approving and once rejecting the appeals.

## Admissibility of the Referrals

48. In order to adjudicate the Applicant's Referral, the Court first examines whether the party has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

49. In this respect, the Court refers to Article 113.7 of the Constitution, which provides 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."*

and

Article 21.4 of the Constitution which provides that

*"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".*

50. The Court also refers to Article 47.2 of the Law, which provides:

*"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

51. The Court also takes into account Rule 32 of the Rules of Procedure, which provides:

*"The Court may dismiss a referral when the Court determines a claim to be ... does not otherwise present a case or controversy and there is no special circumstance in respect to human rights and or public interest for the Court to review the case."*

52. The Court considers that the Applicant challenged the decisions of the Basic Court such as Decision CP. no. 46/14, Decision CP. no. 53/14, and Decision CP. no. 49/14, of 6 March 2014, and Decisions CP. no. 52/14 and CP. no. 54/14, of the same Court, of 11 March 2014, and Decision Ac. no. 1369 of the Court of Appeal.

53. The Court finds that the complexity of the case, continuous additional documents, which the Court received after the submission of the Referral, the ongoing conduct of other court proceedings at a time when the Referral was in this Court, and which necessarily have implications in the constitutional adjudication of this case and the issues of objective nature related to the Court, have an direct impact on the time limit of rendering final decision. In this regard, the Court notes that twice in a row on 14 and 15 April 2015, the Court reviewed the Referral without being able to render a final decision for the reasons mentioned above.

54. The documentation submitted to the Court after the Referral was registered, but still before the Court rendered a final decision and the use of extraordinary

legal remedies (in this case defined as effective remedies) while the Referral was pending, which significantly changed the legal nature of the cases compared to the initial stage and the Court must consider and examine these decisions as an integral part of the Referral.

55. The Court notes that, as regards the questions raised regarding the cases CP. 53/14 and CP. 54/14, in the proceedings initiated by the State Prosecutor for protection of legality, the Supreme Court, by decisions CML. no. 3/14 and CML. no. 4/14, of 22 December, 2014, concluded that they were decided by a final decision in favor of the Applicant and therefore, there is no reason for which the request was filed and, consequently, nor the merits of the case to be reviewed.
56. In this regard, the Court notes that the European Convention on Human Rights, which in Article 22, paragraph 1, item 2, of the Constitution of Kosovo is directly applicable in the Republic of Kosovo, in the relevant applicable part in this case provides as following:

**Article 37**  
**Striking out applications**

1. *"The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that*

...  
*b. the matter has been resolved..."*

57. As a general procedural principle, the Court should not render decisions in cases where the case does not exist and the case remains moot. The Court does not deal with hypothetical or academic cases. This is universally recognized principle of the conduct of courts and is analogous to the principle of judicial self-restraint.
58. In addition, the Court has already found (in Case KI11/09, Decision of 30 May 2011, paragraph 46, and cases KI58/66 and KI94/12, Constitutional review of decisions of the Municipality of Mitrovica, Gjilani and Vitia on conditioning of municipal services to citizens) that *"The concept of mootness is well recognised legal concept. It can arise where a case in an abstract or hypothetical issue, presents itself for decision by a Court. There are good grounds for a Court not to dealing with hypothetical situations. Without a real, immediate or concrete issue to be decided upon the Court"* Any decision that the Court would now render in relation to this Referral will have no practical effect.
59. Considering the decisions of the Supreme Court related to the challenged decisions, CP. no. 53 and CP. no. 54/14, and modification of these decisions, the Court concludes that the Applicants do not have case any more for this part of the Referral or unresolved matter and, in relation to this part of the Referral, all the requirements are met that in accordance with Rule 32 of the Rules of procedure, it is dismissed.



60. By further consideration of the Referral, the Court notes that the proceedings regarding the three cases are still pending before the regular courts:

case CP. no. 46/14, before the Court of Appeal  
case CP. no. 49/14, before the Court of Appeal and  
case CP. no. 52/14, , before the Basic Court  
and there is still no final decision on these cases.

61. The Court also recalls that in accordance with the principle of subsidiarity, the Applicant is under the obligation to exhaust all legal remedies provided by the law, as stipulated by Article 113.7 and the other legal provisions, mentioned above.
62. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see, among other, Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, Case KI24/11, Constitutional review of Judgment Ac. no. 593/2010, of District Court in Prizren, of 20 January 2011 and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).
63. Therefore, with regard to the three above-mentioned decisions the Applicant has failed to exhaust all legal remedies available, as the proceedings before the Municipal Court and/or Court of Appeal are still pending.
64. It follows that, a part of the Referrals related to these cases (CP. no. 46/14, CP. no. 49/14 and CP. nr. 52/14) is premature and is to be declared inadmissible.
65. In such circumstances of the case, when a part of the Referral should be rejected because it is moot and the other part is premature, the Court finds no reason to assess the alleged violations of the Constitution, because for the first two challenged decisions, even if there were such violations, they have been corrected by the final decisions of the Supreme Court and, for other three decisions, while the procedures are pending, the Court cannot assess the possible existence of the alleged violations because it assesses the process as a whole.

### **Interim measures**

66. As mentioned above, the Applicant requests the Court to impose interim measure for the Referral KI48/14, related to the suspension of the challenged Decision Ac. no. 1369/14, of the Court of Appeal, of 27 June 2014, because "*the enforcement of Decisions of the Basic Court in Mitrovica-Branch in Vushtrri and of the Court of Appeal of Kosovo respectively could cause unrecoverable damage and also jeopardize the public interest*".

67. Regarding this request, the Court notes that the part for which the Applicant has requested the imposition of the interim measure, has already been adjudicated by the abovementioned decisions of the Supreme Court and the merits of the case no longer exist and, therefore nor the reason for interim measure. Therefore, as such, the request must be rejected.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 47.2 of the Law and Rule 32 of the Rules of Procedure, on 15 March 2016, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the Referral KI48-49/14 (regarding Decisions: CP. No. 53/14);
- III. TO DECLARE the Referral KI48-49/14 (regarding Decisions: CP. No. 46/14, CP. no. 49/14 and CP. No. 52/14) as premature;
- IV. TO REJECT the request for Interim measure;
- V. TO NOTIFY this Decision to the Parties;
- VI. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- VII. This Decision effective immediately.

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Arta Rama-Hajrizi

