



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

---

Pristina, 03 November 2011  
Ref. No.: RK 150/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI77/10**

Applicant

**Prenk Shllaku**

**Constitutional Review of the Decision of the Government of the Republic of  
Kosovo No. 9/128, dated 11 June 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

#### **Applicant**

1. The Applicant is Prenk Shllaku of Shpendi Village - Prizren

## **Challenged Decision**

2. The Applicant challenges the Final Decision of the Government of Kosovo No. 9/128 dated 11 June 2010 (hereinafter: "Decision of the Government") as he claims that it is in contradiction to Articles 15 and 36 of the Law on Expropriation No. 3/L 139 and in violation of Article 46 of the Constitution of the republic of Kosovo (hereinafter referred to as: the "Constitution"). The Applicant also seeks an interim measure prohibiting the implementation of the Decision of the Government from the date of the submission of the Referral until a merit based decision is given by the Constitutional Court of Kosovo (hereinafter: the "Court").

## **Legal Basis**

3. Articles 113.7 and 116.2 of the Constitution, Articles 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the "Law") and Rules 55 and 56 of the Rules of Procedure of the Constitutional Court (hereinafter referred to as: the "Rules").

## **Subject Matter**

4. The matter concerns the Decision of the Government of Kosovo on the expropriation of private immovable property being part of parcels No.328 and No.329 of the cadastral zone of Shpendi - Prizren.
5. The Applicant also requests the Court to suspend the Decision of the Government approving the expropriation of the private immovable property parcels No.328 and No.329 of the cadastral zone of Shpendi - Prizren, in order to avoid the risk of irreparable damage and in the public interest. The Applicant claims also that the interim measures are necessary in order to ensure his constitutional right to property under Article 46 of the Constitution and articles 8, 17 and 30 of the [Universal] Declaration on Human Rights.

## **Proceedings before the Court**

6. On 16 August 2010 the Applicant filed a Referral with the Secretariat of the Constitutional Court. The Applicant requests the Court to suspend the Decision of the Government on expropriation of the private immovable property parcels No.328 and No.329 of the cadastral zone of Shpendi - Prizren, in order to avoid the risk of irreparable damage and in the public interest.
7. The Applicant claims that the interim measures are necessary in order to protect the constitutional right to property under Article 46 of the Constitution and articles 8, 17 and 30 of the Universal Declaration on Human Rights.
8. The President of the Court appointed Judge Altay Suroy as Judge Rapporteur and he appointed a Review Panel comprising Judges Almiro Rodrigues, presiding and Judges Kadri Kryeziu and Gjyljeta Mushkolaj.
9. On 21 February 2011 the Court deliberated on the matter.

## **Summary of the facts**

10. The Applicant is the owner of the immovable property No.328 and No.329 of the cadastral zone of Shpendi – Prizren.

11. On date 11 June 2010 a Decision of the Government, No. 9/128, approved the expropriation of part of the immovable property contained in parcels No.328 and No.329 of the cadastral zone of Shpendi in order to build the Vermicë – Merdare Motorway.
12. On date 27 July 2010 the Applicant submitted an appeal to the Supreme Court of the Republic of Kosovo (hereinafter: Supreme Court) challenging the Decision of the Government. The case is still pending before the Supreme Court.

### **Applicant's allegation**

13. The Applicant complains that this right to property (Article 46 of the Constitution) has been violated and he was subjected to an arbitrary deprivation of his property without being given adequate compensation.

### **Interim Measures**

14. Article 116.2 of the Constitution provides:

#### *Article 116 [Legal Effect of Decisions]*

*2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.*

15. Article 27 of the Law on the Constitutional Court provides:

#### *Article 27 Interim Measures*

*1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

*2. The duration of the interim measures shall be reasonable and proportionate.*

16. One of the tests for the granting of interim measures is whether unrecoverable damages will be suffered. If the Court were to find that the challenged Decision of the Government was unconstitutional then any damage suffered by the Applicant could be calculated and be ordered to be paid to the Applicant. There would therefore be no loss to the Applicant.
17. The Applicant has not put forward any convincing arguments that the Court should suspend the Decision of the Government regarding the expropriation of the private immovable property parcels No.328 and No.329 of the cadastral zone of Shpendi - Prizren.
18. The applicant has, therefore, not substantiated the irreparable damage he would allegedly suffer or that the interim measures would be in the public interest. The Court therefore refuses the request for interim measures.

## Assessment of the Admissibility of the Referral

19. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

20. As to the Applicant's Referral, the Court refers to Article 113.7 of the Constitution, which provides as follows:

*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. The Court also refers to article 47.2 of the Law, stipulating that:

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

The Court concludes that from the submitted documents by the Applicant himself that the appeal is still pending before the Supreme Court.

22. As indicated in case No. KI.41/09 AAB-RIINVEST University vs. the Government of the Republic of Kosovo (Resolution Nr. RK-04/10 of the Constitutional Court of the Republic of Kosovo, dated 27 January 2010), the Court wishes to emphasise that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (hereinafter: ECHR) (see Article 53 of the Constitution), 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 Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see, mutatis mutandis, ECHR, Selmouni vs. France, No. 25803/94, decision of 28 July 1999).
23. However in his submission, the Applicant has not substantiated why he considers that legal remedies are not be available to him, and if they were available, how they would not be effective and, therefore, not need to be exhausted. On the contrary the Applicant has clearly not exhausted all available remedies in view of the fact that he has not awaited the Appeal that is pending before the Supreme Court. The Court therefore finds that the Referral is inadmissible pursuant to the non fulfilment of the requirements of Article 113.7 of the Constitution and Article 47.2 of the Law.

## FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 27 of the Law, and Rules 55 and 56 of the Rules, unanimously held in its session on 21 February 2010,

## DECIDES

- I. To REJECT the request for interim measures.
- II. To REJECT this Referral as inadmissible.
- III. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law.
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Prof. Dr. Enver Hasani