



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

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Prishtina, 12 July 2012  
No. ref.: RK/272/12

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI22/12**

Applicant

**Brahim Krasniqi**

**Constitutional review of the Judgment of the Supreme Court of Kosovo  
Rev. I. no. 58/2008 of 27 December 2011**

### 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 and  
Ivan Čukalović, Judge

#### **The Applicant**

1. The Applicant is Brahim Krasniqi, who is represented by lawyers Fikri Shishko and Shaip Ramadani from Prizren.

#### **Applicant's Referral**

2. It is challenged the Judgment of the Supreme Court of Kosovo rev. I. no. 58/2008 of 27 December 2011, by which the Supreme Court approved the revision of the respondents and modified the Judgment of the Municipal Court in Malisheva/Mališevo C. no. 185 /2006 of 29 January 2007 and the Judgment of the District Court in Prizren Ac. no. 170/2007 of 6 December 2007 and rejected Applicant's claim as unfounded.

## **Subject matter**

3. The subject matter property legal dispute arose as a result of a claim for confirmation of the ownership over an immovable property between the Applicant and third parties which was resolved by the final Judgment of the Supreme Court of Kosovo rev. I. no. 58/2008 of 27 December 2011 and by which according to Applicant's allegations:

*Brahim Krasniqi from Prizren, was deprived of his property by an unfair and biased judgment. By the said Judgment his constitutional right to a fair and impartial trial-Article 31 and 46 of the Constitution of Kosovo- has also been violated.*

*The Judgment of the Supreme Court Re. I. no. 58/2008 is unfair and biased and it has violated claimant's human rights that are foreseen by the European Convention for Protection of Fundamental Human Rights and Freedoms, with additional protocols No. 1, 4, 6, 7, 12 and 13, Article 6 in conjunction with Article 1 of the Protocol no. 1 of the European Convention for Protection of Fundamental Human Rights and Freedoms of 1952.*

## **Legal basis**

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the Law) and Rule 56 paragraph 2 of the Rules.

## **Proceedings before the Court**

5. On 2 March 2012, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 May 2012, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that a proceeding of constitutional review of a Judgment in case no. KI 22/12 has been initiated.
7. On 21 May 2012, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the proceedings on constitutional review of the challenged judgment in case KI-22-12.

## **Summary of the facts**

8. On 3 May 2002, the Applicant filed a lawsuit with the Municipal Court in Malisheva/Mališevo against H. K. and others from village Drenovc/Drenovac, MA (Municipal Assembly) Malisheva/Mališevo. The subject matter of the lawsuit – confirmation of the right of ownership over an immovable property. The lawsuit was registered with that court under no C. no. 24 /2002.
9. By the Judgment of the Municipal Court in Malisheva/Mališevo C. no. 24 /2002 of 7 August 2003 the claim of the plaintiff Brahim Krasniqi was rejected as unfounded. The Applicant announced an appeal against this Judgment.
10. The District Court in Prizren, deciding upon Applicant's appeal against the Judgment of the Municipal Court in Malisheva/ Mališevo C. no. 24 /2002 of 7 August 2003, by its Resolution Ac. no. 367 /2003 of 9 December 2004 approved Applicant's appeal as

grounded and annulled the Judgment of the Municipal Court in Malisheva/Mališevo C. no. 24 /2002 of 7 August 2003 and remanded the case to the said court for retrial.

11. Deciding in the repeated proceeding, Municipal Court in Malisheva/Mališevo rendered Judgment C. no. 45 /2005 of 27 June 2005, again rejecting Applicant's claim as unfounded.
12. The Applicant again filed an appeal against the Judgment of the Municipal Court in Malisheva/Mališevo, C. no. /45 /2005 of 27 June 2005.
13. The District Court in Prizren, deciding upon the Applicant's appeal, for the second time regarding the same legal matter, by Resolution Ac. no. 406 /2005 of 5 June 2006 approved the Applicant's appeal as grounded and annulled the Judgment of the Municipal Court in Malisheva/Mališevo, C. no. /45 /2005 of 27 June 2005.
14. Deciding for the third time on the claim of the Applicant, the Municipal Court in Malisheva/Mališevo, by Judgment C. no. 185 /2006 of 29 January 2007 approved the plaintiff's claim as follows:

*"It is **CONFIRMED** that the claimant Brahim Krasniqi is the owner of the cadastral plot no. 2410 and 2411 also for the surface 0.10.89 ha, which surface was unjustly appropriated by the respondents, at the place called "Rrahishte" with culture arable land of 6 class at a surface of 0.59,18 ha and the other part with culture arable land of 5 class at a surface of 0.48,28 ha, so that the overall surface is 1.08,08 ha, the possession list no. 258 CO Drenoc, with the dimensions of the contested part, according to the Copy of the plan from the point A at a length of 88.66m up to the point B1, from point B1 up to the point C1 with length of 51,93 m, width 4m, from the point C1 up to the point D1, with the length of 20,78m, with width of 8 m, from point D1 till the point E1, with the length of 32,67m, width of 6m, from point E1 up to the point F1 with the length of 47,42m, width of 5m, and from the point F1 till the point H with the length of 38 m and width of 4m, so that the contested surface of 0.10,89 ha is a part of the cadastral plots no. 2410 and 2411 with the dimensions mentioned above and for this are **OBLIGED** the respondents H., X., M., H. and B. to accept this fact, while the respondents H. and B. are obliged to accept the right of the claimant in the contested surface of 0.10,89 ha, by waiving the property claim over this contested area, all this within the time limit of 15 days from the day of omnipotence of this judgment, while the Directorate for Cadastre and Ownership of MA Malisheva to transfer the real estate in all cadastral books to the property of claimant, otherwise the execution will be done by force."*

15. The District Court in Prizren by Judgment Ac. no. 170/2007 of 6 December 2007, deciding on the appeal of the respondents H. K. and others filed against the Judgment of the Municipal Court in Malisheva/Mališevo C. no. 185 /2006 of 29 January 2007, rejected the appeal of the respondents H. K. and others as unfounded and upheld the Judgment of the Municipal Court in Malisheva/Mališevo C. no. 185 /2006 of 29 January 2007.
16. After the Judgment of the District Court in Prizren Ac. no. 170/2007 of 6 December 2007 became final, the Applicant through his authorized representative submitted a proposal for execution of the Judgment on 25 January 2008 which was registered with the Court as case E. no. 78/2008. The execution of the Judgment of the District Court in Prizren Ac. no. 170/2007 of 6 December 2007 was allowed on 31 January 2008.

17. On 1 February 2008, the respondents H. and B. K. filed a request for revision as an extraordinary legal remedy against the Judgment of the District Court in Prizren Ac. no. 170/2007 of 6 December 2007, whereas on 21 February 2008 the authorized representative of the respondents filed an objection against the allowed execution of the final Judgment of the District Court in Prizren Ac. no. 170/2007 of 6 December 2007, requesting the delay of execution until a decision is made by the Supreme Court upon the request for revision.
18. Deciding upon the request for revision the Supreme Court of Kosovo by Judgment rev. I. no. 58 /2008 of 27 December 2011 approved the revision of the respondents H. and B. K. and MODIFIED the Judgment of the District Court in Prizren Ac. no. 170/2007 of 6 December 2007, as well as the Judgment of the Municipal Court in Malisheva/Mališevo C. no. 185/2006 of 29 January 2007. At the same time Applicant's claim is rejected as unfounded with the reasoning:

*"...The Supreme Court of Kosovo, starting from such determined factual situation found that such legal stance of lower instance courts cannot be accepted as fair and legal, because according to the evaluation of this Court on such a determined factual situation the substantive law was wrongly applied, when both courts of the lowest instance found that statement of claim of the claimant is grounded.*

*Having into consideration undisputed facts that the contested area has been cultivated and used from 1954 by the former owner now the intervener in procedure A. K. without obstruction by the claimant until 1981 when the same has sold cadastral plot no. 2408 and 2409 together with entire contested area to the predecessors of the respondents H. and B. K., to whom he also handed over in possession and use according to the factual situation until the old borders which have existed with the plots of claimants which they have worked with no obstruction from the claimant until 2000, that the claimant after the separation from his brothers from 1954 is not in possession and use of the contested area for which he claims to have ownership right based on possession list no. 258 CO Drenoc, because according to the expertise of the court expert of the geodesy Hysen Thaqi dated 05.01.2007 it has been ascertained that the contested area is recorded based on the cadastral plot no. 2410 and 2411 in the name of claimant based on aero recording which after decoding entered into force on 01.01.1967.*

*Pursuant to the Article 20 paragraph 1 and 2 on the Law on Basic Property Relations it is foreseen that: The property right can be acquired by the law itself, based on legal action and by inheritance or on the basis of a decision of government authorities in a way and under conditions determined by law.*

*In the particular case the claimant in contested part has not acquired the ownership right on legal basis foreseen by the abovementioned provision because there is no evidence in case file as to the legal basis whereas the possession list does not present evidence for acquiring the ownership having into consideration also the confirmed fact that the claimant is not in possession and use of the contested area since 1954.*

*From the abovementioned reasons and the data which are in case file, this Court found that the courts of the lowest instance have wrongly applied the substantive law, therefore both judgments of the courts had to be changed and the statement of claim as such to be rejected..."*

### **Applicant's allegations**

19. The Applicant considers that: *“The Judgment of the Supreme Court of Kosovo, accompanied with violation of the provisions of CCK Article 225 and 224/2. Since in the Court practice it happens rarely that by deciding on the revision, the Court changes the final judgment and to decide on the case by itself, without justifying the rendered judgment. Therefore, in the particular case, by taking into account the course of the procedure and the decisions of the first and second court upon the claim of claimant, is created the grounded conviction that the Judgment of Supreme Court Re. I. no. 58/2008 is unfair and biased, and it violates claimant’s human rights that are provided by the European Convention for Protection of Fundamental Human Rights and Freedoms, with additional protocols No. 1, 4, 6, 7, 12 and 13, Article 6 in conjunction with Article 1 of the Protocol no. 1 of the European Convention for Protection of Fundamental Human Rights and Freedoms of 1952, since Brahim Krasniqi from Prizren, by the unfair and biased judgment was deprived of his property. At the same time, his constitutional right to a fair and impartial trial - Article 31 and 46 of the Constitution of Kosovo - has been violated.”*
20. According to Applicant’s allegations *„... The right to fair and impartial trial has been violated also to the applicant of this Referral, starting from the fact that at the second half of 2009 he filed a proposal to the Municipal Court in Malisheva for the execution of the final judgment, the case registered under –E. no. 78/2008, but the court has not decided on this request, most likely awaiting a decision of the court upon the extraordinary remedy.”*
21. The Applicant addresses the Constitutional Court requesting:
 

*“The annulment of the Judgment of Supreme Court of Kosovo Rev. 1 no. 58/2008 dated 27.12.2011, by which the Applicant’s right to property and right to fair and impartial trial -Article 31 and 46 of the Constitution of Kosovo - have been violated. Applicant’s human rights provided by the European Convention for Protection of Fundamental Human Rights and Freedoms, with additional protocols No. 1, 4, 6, 7, 12 and 13, Article 6 in conjunction with Article 1 of the Protocol no. 1 of the European Convention for Protection of Fundamental Human Rights and Freedoms of 1952 were also violated.”*

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

22. The Applicant claims that Articles 31 and 46 of the Constitution of the Republic of Kosovo and Protocols no. 1, 4, 6, 7, 12 and 13 of ECHR, and Article 6 (Right to Fair Trial) Protocol 1 ECHR are the basis for his Referral.
23. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:
 

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*
24. Under the Constitution, the Constitutional Court is not a court of appeal, in respect of the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHRJ1999-1]).
25. The Applicant has not provided any *prima facie* evidence which would point to a violation of their constitutional rights (see, Vanek vs. Slovak Republic, ECHR decision on admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not

state in what manner Articles 31 and 46 of the Constitution of the Republic of Kosovo and Article 6 [Right to Fair Trial] Protocol 1 of ECHR support his Referral, as it is stipulated in Article 113.7 of the Constitution and Article 48 of the Law.

26. The Applicants allege that their rights (Right to Fair Trial) and (Protection of Property) have been violated due to erroneous application of the law by regular courts, without clearly stating how the Judgment has violated their constitutional rights.
27. In the present case, the Applicant has been provided numerous opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the Municipal Court in Malisheva/Mališevo, the District Court in Prizren and the Supreme Court. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
28. Finally, the admissibility requirements have not been met in this Referral. The Applicants have failed to point out and support with evidence the allegation of a violation of his constitutional rights and freedoms by the challenged Judgment.
29. It therefore results that the Referral is manifestly ill-founded pursuant to 36 (2b) Rules of Procedure which provides: „*The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights.*“

#### **FOR THESE REASONS**

Pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2b) of the Rules of Procedure, the Constitutional Court in its session held on 3 July 2012 unanimously:

#### **DECIDES**

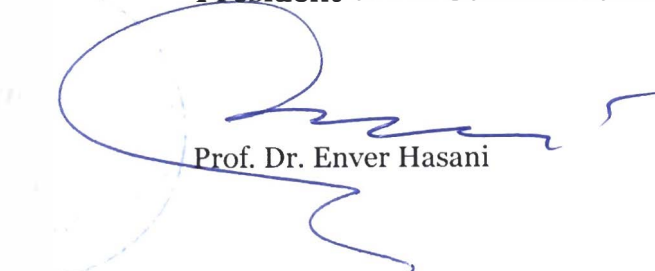
- I. TO DECLARE the Referral inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Kadri Kryeziu

**President of the Constitutional Court**



Prof. Dr. Enver Hasani