



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

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Prishtina, 27 February 2012  
Ref.No.:RK201/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 26/10**

Applicant

**Emin Behrami**

**CONSTITUTIONAL REVIEW**

of

**Decision C. nr. 14/2008 of the Municipal Court of Vushtrri  
dated 10.10.2008,**

and

**Decision C. nr. 260/2008 of the Municipal Court of Vushtrri  
dated 02.07.2008**

**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 Mr. Emin Behrami from the Municipality of Vushtrri.

## **Challenged decisions**

2. The Applicant challenges the Judgments of the Municipal Court of Vushtrri C. nr. 14/2008 dated 10 October 2008 and C. nr. 260/2008 dated 2 July 2008, served upon the Applicant on 4 July 2008.

## **Subject matter**

3. The Applicant claims a violation of his constitutional rights guaranteed by Article 24 [Equality Before the Law]; Article 46 [Protection of Property]; Article 54 [Judicial Protection of Rights] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution").

## **Legal basis**

4. Articles 113.7 and 21.4 of the Constitution, Articles 20, 22(7) and 22(8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (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 27 April 2010, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 27 April 2010, by Decision of the President, No. GJR. 26/10, Judge Almiro Rodrigues was appointed as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 26/10, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Gjyljeta Mushkolaj.
7. On 24 August 2010, the Referral was communicated to the Municipal Court in Vushtrri, who replied on 13 September 2010.
8. On 21 December 2010, the District Court in Mitrovica was requested by the Court to submit additional documents pertinent to the case and replied on 28 December 2010.
9. On 3 May 2011, a notification was sent to the Municipal Court in Vushtrri regarding the state of Case Ac.nr.14/2008.

## **Summary of the facts**

10. The Applicant claims a violation of his constitutional rights in connection to two interrelated matters: (1) a property right issue regarding the cadastral plot and the house built on it; and (2) a property rights issue regarding a water tap located in the contested cadastral plot.

## **Property issue regarding the cadastral plot and the house built on it**

11. On 22 December 1977, the Municipal Court in Vushtrri, by Judgment C.nr.357/1977,f decided to confer upon the Applicant the right to half of the cadastral plot no.3001/12, situated at a place called "Selishte" in Vushtrri.
12. On 31 March 1978, the Secretariat for Economy and Municipal Affairs in Vushtrri, by Decision 03-no.353-19 issued to the Applicant a building permission for that plot.

13. On 24 January 1979, the Applicant agreed with his father to separate the family property. The Applicant received cadastral plot no. 3001/14, which contained a house and a yard.
14. On 15 December 1980, the Chair of the Islamic Community in Pristina concluded a loan agreement of 50.000 (fifty thousand) dinars with the Applicant in order to finish the construction of his house in the above-mentioned cadastral plot.
15. On 5 December 1994, the Municipal Court in Vushtrri, by Judgment P.br.110/94, conferred upon the Applicant the right to use parts of the house owned by him to the Applicant's father and his family.
16. On 6 April 1995, the District Court in Mitrovica, by Judgment GZH.br.132/95, upheld Judgment P.br.110/94 of the Municipal Court in Vushtrri.
17. On 12 May 1995, the Applicant's father requested the Municipal Court in Vushtrri to grant him the joint property right to the house owned by the Applicant.
18. On 8 November 1995, the Municipal Court, by Decision P.br.35/95, granted the request, which was appealed by the Applicant before the District Court in Mitrovica.
19. On 17 May 1996, the District Court in Mitrovica, by Decision GZH.br.43/96, rejected the Applicant's appeal as unfounded.
20. On 28 May 1996, Applicant's father and his family submitted a request to the Municipal Court in Vushtrri to initiate execution proceedings regarding its Decision P.br.35/95 dated 8 November 1995, and Decision GZH. br.43/96 of the District Court in Mitrovica, which was granted on 5 June 1996.
21. On 7 October 1996, the Municipal Court in Vushtrri, by Decision I-164/96, rejected Applicant's objection against the execution order as unfounded.
22. On 23 February 1997, the Supreme Court of Serbia, by Decision Rev.3277/96, abrogated Decisions: P.br.110/94 of 5 December 1994; GZH-br.132/95 of 6 April 1995; P. br. 35/95 of 8 November 1995; GZH. br. 43/96 of 17 May 1996 and I.br.164/96 of 7 October 1996 and referred the said decisions back to the Municipal Court of Vushtrri for retrial.
23. On 17 April 1997, the Applicant requested the Municipal Court in Vushtrri, to suspend the execution procedure in Case P.br.164/96.
24. On 13 May 1997, the Municipal Court, by Decision I.br.142/97, annulled the execution proceedings against the Applicant.
25. As a result, the Applicant's father and his family occupied parts of the Applicant's house.
26. On 17 June 1997, the Applicant filed a complaint with the Municipal Court in Vushtrri, demanding the imposition of interim measures against the occupation of the house by his father and the latter's family. This complaint was allegedly not taken into account by the said court.

27. On 17 July 1997, the Applicant's father and his family filed a complaint with the Municipal Court in Vushtrri, demanding the imposition of interim measures against the Applicant.
28. On 29 July 1997, the Municipal Court in Vushtrri, by Decision P.br.138/97, imposed interim measures upon the Applicant allowing the Applicant's father and his family to be connected to the electricity and water supply network in the part of the house inhabited by them, under threat of forced execution.
29. On 20 August 1997, the Applicant filed a complaint with the same court, requesting it to review Decision P.br.138/97.
30. On 7 December 1998, the Municipal Court in Vushtrri, by Decision P.br.119/97, legalized the occupation by the Applicant's father and his family of 2/3 of the Applicant's house and imposed pecuniary measures or imprisonment against the Applicant and his sons.
31. Upon the law-suit brought by the Applicant's father on 17 December 1998, the Municipal Court in Vushtrri, by Decision P.br.220/97, ruled that the disputed cadastral plot was common property of the family and that the Applicant should recognize and allow the registration of the said cadastral plot in the Cadaster Office in Vushtrri. This decision was served upon the Applicant on 21 January 1999.
32. On 1 January 1999, the Applicant appealed against Decision P.br.119/97 of the Municipal Court in Vushtrri to the District Court in Mitrovica, but the procedure was halted because of the events happening in Kosovo at that time.
33. On 7 April 2000, the Applicant took legal action before the Municipal Court in Vushtrri against the Applicant's father and his family, asking for the return of the immovable property to him.
34. By Judgment K-nr. 20/2000 of 29 June 2000, the Municipal Court in Vushtrri approved the claim of the Applicant and ordered the Applicant's father and his family to free the space under the roof on the second floor of the house.
35. Upon the appeal of the Applicant's father, the District Court in Mitrovica, by Decision Ac. No. 26/2001 of 9 January 2001, annulled Judgment K-nr. 20/2000 of 29 June 2000 of the Municipal Court of Vushtrri and remanded the case to the same court for retrial.
36. On 4 September 2001, the Municipal Court in Vushtrri, by Judgment K.nr. 63/2001, approved the claim of the Applicant's father and his family, after having verified that the disputed cadastral plot together with the house built on it had been common property during the family union of the litigants, thus, rejecting the Applicant's claim that he was the sole owner of the contested cadastral plot and the house.
37. On 10 October 2002, the District Court of Mitrovica, by Judgment Ac. nr. 28/2002, upheld Judgment K. nr. 63/2001 and rejected the claim of the Applicant to be the sole owner of the contested cadastral plot and house.
38. On 24 April 2003, the Supreme Court, By Decision Rev. nr. 19/2003, accepted the revision of the Applicant and quashed Judgments Ac. nr. 28/2002 of the District Court of Mitrovica and C. nr. 63/2001 of the Municipal Court of Vushtrri and remanded the case to the first instance court for retrial.

39. On 16 December 2003, the Municipal Court of Vushtrri, by Judgment K. nr. 92/03, granted the law-suit of the Applicant's father and his family and confirmed that the disputed cadastral plot and house are common property of the family communion, and that the Applicant was obliged to accept this judgment and allow for the registration of the disputed property at the cadastral office in the name of the Applicant's father and his family as well.
40. On 4 January 2005, the District Court in Mitrovica, by Decision Ac. nr. 49/04, granted the appeal of the Applicant, annulled Judgment K. nr. 92/03 of the Municipal Court in Vushtrri and remanded the case to the same court for retrial.
41. On 22 December 2005, the Municipal Court in Vushtrri, by Judgment C. nr. 447/05, approved the claim of the Applicant's father and his family and confirmed that the contested cadastral plot and house was the common property of the family communion of the Applicant's father and the Applicant.
42. On 27 December 2007, the District Court in Mitrovica, by Decision Ac. nr. 61/2006, quashed Judgment C. nr. 447/05 of the Municipal Court in Vushtrri and remanded the case to the said court for retrial.
43. On 10 October 2008, the Municipal Court in Vushtrri summoned the Applicant's father to a hearing of the case, where he made a statement which was recorded in the court register under C.nr.14/2008 and sent to the District Court in Mitrovica, which processed the case under a new number Ac.nr.91/08.
44. On 7 April 2009, the Applicant submitted a complaint to the District Court in Mitrovica, stating that the Municipal Court in Vushtrri, in a public session of 10 October 2008 ending with Judgment C. nr. 14/2008 (N.B. the minutes of that public session only contain declarations of the Applicant's father), did not summon him nor his legal representative as a respondent party, and was not served with a copy of the said judgment.
45. On 8 June 2009, the Applicant submitted a complaint to the District Court in Mitrovica, requesting to be served with Decision Ac. nr. 91/08, and warned the said Court that he would wait to be served with that decision until 26 June 2009 at the latest.
46. On 31 January 2011, the Applicant was served with a note from the District Court in Mitrovica regarding case Ac. nr. 91/08, which was also sent to the Municipal Court in Vushtrri, stating the following:

*“By Decision Ac.nr.61/2006 of the District Court in Mitrovica of 27 December 2007, Judgment C.nr.447/05 of the Municipal Court in Vushtrri of 22 December 2005 is quashed and the case is remanded to the same court for retrial.*

*From the documents of the case it transpires that the Municipal Court in Vushtrri (Minutes of 10 October 2008), without a judicial session, has summoned only Halil Qerimi [the Applicant's father] and, without taking adequate actions in retrial in accordance with the recommendations by the above-mentioned decision of the District Court in Mitrovica, Ac.nr.61/2006; the case was once again sent back to the District Court in Mitrovica.*

*The Municipal Court in Vushtrri had a duty to summon litigating parties in the retrial session, so that they set forth their allegations and then take a due decision as a result of facts verified in a rightful and thorough manner in a regular judicial process. The*

*parties ought to have been served with decisions accompanied by legal counsel regarding complaints, and only if the parties set forth complaints in accordance with legal requirements, only then the case should be sent to the District Court to deliberate the case in the second instance”.*

*“Attached with this note we forward complete documents of the case Ac.nr.14/2008 for retrial”.*

### **Water tap issue**

47. On 16 of June 2008, the Applicant filed a law-suit with the Municipal Court in Vushtrri, against the respondent (Applicant’s father and his family) on the grounds that the respondent has committed inhibition of possession to the detriment of the Applicant by not allowing his sons to put to function the water-tap which is situated on the part of the plot that belongs to the respondent.
48. On 2 July 2008, the Municipal Court in Vushtrri, through decision C. nr. 260/2008, rejected the law-suit of the Applicant as unfounded. In the reasoning part, the Municipal Court in Vushtrri stated that the Applicant has lost the possession of the said water-tap, because since 2004 he has not exercised the factual power over the said object. The Municipal Court in Vushtrri reached its decision based on article 74 of the law on property relations, official gazette of ex- SFRY where it is stipulated that:

*“Possession is lost when the holder ceases to exercise factual possession of the object”.*

49. On 7 July 2008, , the Applicant lodged an appeal against the decision C. nr. 260/2008 with the District Court , whereby he complained that the Municipal Court in Vushtrri through the said decision has committed serious violation of the provisions of the Law on Contested Procedure, erroneous verification of the factual situation and wrongful application of the substantive law.

### **Applicant’s allegations**

#### **As to the cadastral plot and the house built on it**

50. The Applicant alleges that the Municipal Court in Vushtrri through judgment C. nr. 14/2008 dated 10 October 2008 violated his rights within the meaning of Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution, because he was not summoned by the said court even though he was a party to the proceedings.
51. The Applicant claims that the Municipal Court in Vushtrri has ignored all relevant legal proof that he is the sole owner of the contested cadastral plot and of the house built on it, because the said court has allegedly allowed forceful usurpation of 2/3 of the Applicant’s house.
52. Furthermore, the Applicant claims that the Municipal Court in Vushtrri has deliberately ignored binding instructions of the Supreme Court of Kosovo and District Court in Mitrovica, whereby the latter has dozens of times quashed the judgments of the Municipal Court in Vushtrri due to essential violations of the Law on Contested Procedure, and has remanded the case to the said court for retrial.
53. The Applicant claims that his case is pending before the ordinary courts since 1992, and it has not been settled yet due to deliberate delays by the Municipal Court in Vushtrri.

## Assessment of the Admissibility of the Referral

### Property right issue

54. In the instant case, the Applicant complains that his rights guaranteed by Articles 3 [Equality before the Law], 24 [Equality before the Law], 31 [Right to a Fair and Impartial Trial], 32 [Right to Legal Remedies], 36 [Right to Privacy], 46 [Protection of Property], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] of the Constitution have been violated. The Applicant complains, in particular, about the length of proceedings regarding the lawsuit involving him and members of his family, allegedly initiated on 4 August 1992.
55. However, the Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and the Law with respect to his complaints under the Constitution.
56. In this respect, the Court notes that the period to be taken into consideration for the adjudication of the Applicant's Referral did not begin to run on 4 August 1992, when the lawsuit involving the Applicant and his father was apparently filed, but rather on 15 June 2008, when the Constitution of the Republic of Kosovo entered into force and established the jurisdiction of this Court to adjudicate referrals under Article 113 [Authorized Parties] of the Constitution.
57. As to Article 113, the Court refers to its paragraph 7, providing 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". This means that, before applying to this Court, the Applicant must first have tried to obtain a decision on the subject matter of the complaint from the ordinary courts, including appealing to the highest court which has jurisdiction in the case.
58. The Court emphasizes that 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. This 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 v. France*, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies requirement is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no 56679/00, decision of 28 April 2004).
59. This Court applied the same reasoning, when it issued the Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case KI 41/09 of 27 January 2010, and the Resolution on Inadmissibility in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. 73/09 of 23 March 2010.
60. In this connection, the Court considers that applicants are only required to exhaust remedies that are available and effective. Discretionary or extraordinary remedies need not to be exhausted, for example, requesting a court to revise its decision (see, *mutatis mutandis*, ECtHR, *Cinar v. Turkey*, no. 28602/95, decision of 13 November 2003).

61. As to the present case, the Court needs, therefore, first to consider whether, since 15 June 2008 when the Court's jurisdiction to adjudicate referrals was established, the Applicant had raised the constitutional complaints, which he is now submitting to this Court, before the courts dealing with his case and, if not successful, before the Supreme Court in last instance or had made use of any other available remedy under applicable law.
62. In this respect, the Court notes that, on 20 June 2008, when the case was apparently pending before the Municipal Court in Vushtrri, the Applicant complained to the President of the District Court in Mitrovica about the conduct of the judges of the Municipal Court, in particular of its President, calling them corrupt and violators of the law.
63. On 1 August 2008, the Applicant wrote to the President of the Municipal Court, stating that it was not clear on the basis of which law suit the Court was acting and that the suit of the other party should be rejected as ungrounded and unsubstantiated.
64. On 10 October 2008, the Municipal Court summoned only the Applicant's father to the hearing, but not the Applicant. As a consequence, the latter appealed to the President of the District Court in Mitrovica complaining that, by doing so, the President of the Municipal Court had intentionally committed an essential and absolute violation of the Law on Contested Procedure, for which he should be punished, while the case should be quashed immediately.
65. On 14 April 2009, the District Court informed the Applicant that the appeal hearing would be held somewhere in May 2009.
66. On 8 June 2009, the Applicant submitted a further complaint to the District Court, requesting it to quash the illegal judgment of the Municipal Court as unlawful and unfounded on the basis of "any legal evidence for 17 years in a row". He added that, if you do not uphold my law suit as lawful and grounded on all necessary legal evidence for more than 30 years, which are in line with Decision Rev.nr. 19/03 of the Supreme Court, dated 24 April 2003, I will believe that you are helping the violators of the law from the first instance court in Vushtrri."
67. On 12 June 2009, the President of the District Court informed the Applicant that he would be summoned to participate in the main hearing before that Court. The date of the hearing and subsequent court decision have not been communicated to this Court.
68. On 31 January 2011, the Applicant received a communication from the District Court in Mitrovica, stating that it had returned the case to the Municipal Court in Vushtrri for retrial. In the District Court's opinion, "the Municipal Court had the duty to summon the litigating parties to the retrial session in order to enable them to set out their allegations and to take a decision after having verified the facts in a rightful and thorough manner in a regular judicial process".
69. In view of these facts, the Court emphasizes that the Applicant's appeal to the District Court against the manner the Municipal Court had handled the proceedings has indeed been successful.
70. As to the retrial proceedings before the Municipal Court in Vushtrri, the Court notes that, on 25 August 2011, it received a communication from that court stating that the court case had not been concluded yet due to a lack of judges, and that, during the third phase of appointment of judges, only the President had been appointed, who, on 27 May 2011, had requested the President of the District Court in Mitrovica to delegate a



judge in order to enable the Municipal Court to decide on the retrial case. In the absence of any further information from the Municipal Court or the Applicant, the Court assumes that the case is still pending before that court.

71. As to these proceedings pending before the Municipal Court in Vushtrri, the Court notes that the Applicant has, so far, not shown that he has raised the constitutional complaints, which he now raises before this Court, in these proceedings, let alone, if his claim would have been rejected by that Municipal Court, in appeal proceedings before the District Court, and, if again not successful, before the Supreme Court in last instance.
72. In these circumstances, the Court finds that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47 of the Law.
73. The Court concludes that the Applicant's complaint is premature and that this part of the Referral is, therefore, inadmissible.

### **Water tap issue**

74. As to this particular allegation, the Court notes that, on 7 July 2008, the Applicant filed an appeal with the District Court of Mitrovica against the decision C.nr. 260/2008 delivered by the Municipal Court in Vushtrri.
75. Meanwhile, on 3 May 2011, the District Court in Mitrovica, by Decision AC.nr. 21/11, refused the appeal as ungrounded. On 22 June 2011, the Applicant informed this Court that he would not appeal this decision.
76. Thus, the Court notes that the Applicant does not intend to raise before the Supreme Court, as the court of last instance, the alleged violations of his constitutional rights regarding the water tap issue, raised in his Referral.
77. In these circumstances, the Court must conclude that, regarding this part of the Referral, the Applicant has also not exhausted all available remedies available to him under applicable law.
78. Accordingly, the Referral is inadmissible.

**FOR THESE REASONS.**

The Court, pursuant to Article 113.7 of the Constitution, Articles 22 (7) and (8) and 47 of the Law as well as Rules 34 and 35 of the Rules of Procedure, by majority,

**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; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Almiro Rodrigues



Prof. Dr. Enver Hasani

