



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

Pristine, 12 December 2011
Ref. No.: RK164/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 39/10

Applicant

Bujar Luzha

vs.

**Directorate for Urbanism, Cadastre and Environmental Protection of Kaçanik
Municipal Assembly**

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. Bujar Luzha, residing in Kaçanik.

Challenged decision

2. The Applicant challenges the Resolution 06 nr. 6924/2009, of 26 August 2009, of the Directorate for Urbanism, Cadastre and Environmental Protection.

Subject matter

3. Applicant's Referral relates to an alleged violation of Article 46, paragraphs 1 and 2 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 31 May 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Court").
6. On 2 June 2010, the President, by Decision Nr. GJR. 39/11, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision Nr. KSH. 39/10, appointed the Review Panel composed of judges: 1. Robert Carolan (Presiding), 2. Mr. sc. Kadri Kryeziu and 3. Dr. Iliriana Islami.
7. On 24 August 2010, a copy of Applicant's Referral was sent to Kaçanik Municipal Assembly (hereinafter referred to as "Kaçanik MA") respectively to the Directorate for Urbanism, Cadastre and Environmental Protection (hereinafter referred to as "DUCEP").
8. On 4 October 2011, the Applicant submitted additional documents to the Court.
9. On 6 June 2011, Kaçanik MA submitted a reply to the Referral.
10. On 22 November 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts of administrative proceedings

11. On 7 July 2009, Kaçanik MA, through Notification nr. 06. nr. 5146/2009, requested the Applicant to vacate the location that was rented to him by Kaçanik MA, respectively by DUCEP, by 7 August 2009.
12. On 27 July 2009, the Applicant submitted an appeal with Kaçanik MA and objected Notification nr. 06. nr. 5146/2009 to vacate the location that was rented to him by the former Kaçanik MA, through Decision 05. nr 463-70/86, of 8 July 1987.
13. On 3 August 2009, Kaçanik MA, respectively DUCEP, through Resolution Nr. 6035/2009, rejected Applicant's request and decided that Notification nr. 06. nr. 5146/2009, of 7 July 2009, should still remain in force, reasoning that the main entrance to the town of Kaçanik from M2 Highway was planned to be built at the location where provisional business premises were located, and based on Decision 05. nr 463-70/86, of 8 July 1987, the Applicant is a provisional user.

14. On 7 August 2009, the Applicant submitted an appeal with the Ministry of Spatial Planning (hereinafter referred to as "MSP") within the determined time limit, against Resolution nr. 6035/2009, of 3 August 2009, of Kaçanik MA. The Applicant stressed in his appeal that the location in question is not property of Kaçanik MA, but of the Ministry of Transport, Post and Telecommunications, respectively of the Directorate for Roads.
15. On 26 August 2009, DUCEP, through Resolution Nr. 6924/2009, again rejected Applicant's appeal, leaving in force Notification nr. 06. nr. 5146/2009, of 7 July 2009, and Resolution Nr. 6035/2009, of 3 August 2009, for the removal of the provisional building, stressing that the provisional building the Applicant was allowed to use in 1987, is located in the cadastral plot, known as uncategorized Public Roads, administered by the municipality of Kaçanik.
16. On 5 October 2009, the Applicant requested Kaçanik MA to submit to him the process concerning the forcible execution of the demolition of the building.
17. On 6 June 2011, Kaçanik municipality submitted its reply to the Referral defending the execution of its decision for the demolition of Applicant's building, reasoning it with the fact that the Applicant has been duly notified to remove his building. It also claims that the Applicant filed an appeal and referred to cadastral plot 1849, which is property of the Directorate for Roads in Prishtina. It also stress that resolution of The District Court in Prishtina for imposing interim measures concerns to the cadastral plot 1849, and not to cadastral plot 1850, which is registered in the possession list no. 1159 as social property – uncategorized Roads – of Kaçanik municipality.

Summary of the facts of court proceedings

18. On 22 July 2009, the Applicant filed a lawsuit under number C. nr. 133/2009 with the Municipal Court in Kaçanik requesting the imposition of interim measures and confirmation of ownership, but the court did not approve Applicant's request for the imposition of interim measures.
19. On 7 August 2009, the Applicant filed an appeal with the District Court in Prishtina against Resolution C. nr. 133/2009, of 22 July 2009, and asked for the approval of the request for interim measures.
20. On 22 September 2009, the District Court in Prishtina issued Resolution Ac. nr. 923/2009 approving Applicant's request for interim measures, whereby it prevented the respondent, the Directorate for Roads in Prishtina, and the third parties to undertake any action that would damage the building erected in the cadastral plot 1849, at the place called "Dushkaja", with a culture of roads of first category, registered in the possession list nr. 1159 CO, while the issue of demolition and pulling down of the building is to be settled in an administrative proceeding.
21. On 29 September 2009, despite the fact that the District Court in Prishtina approved Applicant's request for the imposition of interim measures, Kaçanik MA did not implement the decision of the court to stop the pulling down of the building, but it violently ordered its demolition, although Decision Ac. nr. 923/2009 had been placed on the building to suspend all actions concerning the building.
22. On 15 January 2010, the Applicant submitted a request with Ombudsperson's Institution (hereinafter referred to as "OI"). This Institution considered the execution of Resolution Nr. 5156/09, of 29 September 2009, as unconstitutional, while Kaçanik MA, respectively DUCEP, was informed that the District Court in Prishtina has

approved Applicant's request for the imposition of interim measures, so the action taken by Kaçanik municipal authorities is in contradiction to Article 124, paragraph 6, of the Constitution of the Republic of Kosovo. OI requested information from Kaçanik MA regarding the non-execution of interim measures issued by the District Court in Prishtina on 22 September 2009, in a reasonable time no later than 26 February 2010, in order to proceed further with Applicant's request.

Applicant's allegations

23. The Applicant claims that Kaçanik municipal authorities, through Resolution 06 nr. 6924/2009, of 26 August 2009, decided unlawfully because the authority that issued the decision, according to the Applicant, was incompetent and it decided despite the fact that the District Court in Prishtina has approved his request for the imposition of interim measures. These violations have been confirmed by OI, as mentioned in paragraph 18 of this Report.

The assessment of the admissibility of the Referral

24. The Applicant claims that his right guaranteed by Article 46, paragraphs 1 and 2 [Protection of Property] of the Constitution has been violated. 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, the Law and the Rules of Procedure of the Court, in particular, it should prove whether he has exhausted all legal remedies provided by law.
25. After having examined all relevant facts and evidence, the Courts notes that the Applicant had filed a lawsuit with the Municipal Court in Kaçanik and he had requested the confirmation of ownership over the disputed property, as well as the application of interim measures on the same issue, but Applicant's statement of claim had been rejected as ungrounded by the latter. The Applicant thus filed an appeal with the District Court in Prishtina requesting the application of interim measures and the prohibition of the demolition of the building in the cadastral plot 1849, since the latter had determined the real factual situation as reasonable and Applicant's request for the application of interim measures as grounded pursuant to Article 297.1(b) of LCP, from the fact that the Municipal Court had erroneously determined the substantive law, because Kaçanik municipality did not correctly and accurately specify to the Applicant what actions he should undertake to vacate the location, since two cadastral plots were in question. Subsequently, despite the fact that the District Court in Prishtina had approved Applicant's request for the application of interim measures, Kaçanik MA ordered the demolition of the building.
26. However, the Court finds that even if alleged violations of constitutionally guaranteed rights existed, the Applicant was to have realized his right through regular court proceedings, by filing a lawsuit with the competent court requesting the compensation of the damage caused by Kaçanik MA authorities.
27. From the abovementioned facts, it results that Applicant's Referral is premature because he has not proven he has exhausted all effective legal remedies available under the law, which clearly stipulates:

Article 47.2 [Law on the Constitutional Court]

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

28. 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 will provide an effective remedy for the violation of constitutional rights (see Resolution on Inadmissibility: AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo, KI-41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).
29. Therefore, it results that Applicant's Referral is inadmissible pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law.

FOR THESE REASONS

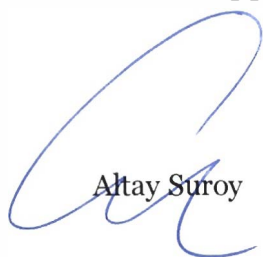
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, on 22 November 2011, unanimously:

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

Judge Rapporteur

President of the Constitutional Court



Altay Suroy



Prof. dr. Enver Hasani