



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

Pristine, 12. December. 2011
Ref. No.: RK171/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI-96/10

Applicant

Nikollë Qetta

Constitutional Review of Judgment of the Supreme Court of Kosovo Rev. No. 361/2010 dated 24 April 2010 and the Resolution of the District Court in Peja AC. No. 111/2010 dated 16 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

The Applicant

1. The Applicant is Nikollë Qetta from Gjakova, represented by attorney Franjo Pal Jankova from Prishtina.

Challenged decisions

2. Challenged decision is the Judgment of the Supreme Court of Kosovo rev.no.361/2010, dated 24 April 2010, served on the Applicant on 7 June 2010, rejecting the revision on this case and upholding previous decisions of the District and Municipal court authorities regarding subject matter. Challenged decision is also the Resolution of the District Court in Peja AC. No. 111/2010 dated 16 June 2010.

Subject Matter

3. The subject matter is the judgment of the Supreme Court of Kosovo rev.no.361/2010 dated 22 April 2010 and the Resolution of the District Court in Peja AC. No. 111/2010 dated 16 June 2010, by which according to the Applicant's allegations, his rights concerning property have been violated, rights guaranteed with Articles 31, 46, and 53 of the Constitution of the Republic of Kosovo and Articles 1 and 6 of the European Convention on Human Rights (Rights to Property and Rights to Fair and Impartial Trial).

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 Constitutional Court of the Republic of Kosovo, dated 16 December 2008 (hereinafter referred as: „Law“) and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 4 October 2010, the Applicant filed the Referral with the Constitutional Court of Republic of Kosovo.
6. On 15 November 2010, the Constitutional Court notified Mr. Franjo Pal Jankova and the Supreme Court on initiated proceedings for the constitutional review of their decision in Revision No. Rev. 361/2007, dated 22 April 2010.
7. On 4 April 2011, the Court requested additional documentation from the Municipality of Gjakova – Directorate for property and legal matters as well as from the lawyer Franjo Pal Jankova.
8. On 19 April 2011, replying to the Court, in its letter 11No.465-2528/11 the Municipality of Gjakova submitted to the Court their findings concerning the matter together with the additional documentation.
9. On 4 May 2011, at Court's request, lawyer Franjo Pal Jankova submitted the additional documentation.
10. On 17 June 2011, the Constitutional Court requested from the Municipal Court in Gjakova additional documentation and clarification as to the status of the case before this Court.
11. On 28 June 2011, the Municipal Court in Gjakova submitted the additional documentation and clarified the status of the proceedings of the case before that Court.

12. On 19 July 2011, the Constitutional Court requested from the District Court in Peja supplementing documentation and clarification as to the status of proceedings of this case before that Court.
13. On 5 August 2011, the District Court in Peja submitted the case file and answers regarding the status of the case proceedings before the District Court in Peja.
14. On 21 November 2011, after considering the report of the Judge Rapporteur Ivan Čukalović, the Review Panel composed of Judges: Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova made a recommendation to the full Court on the inadmissibility of the Referral.

**Summary of the facts with regard to the Resolution of the District Court in Peja
AC. No. 111/2010 of 16 June 2010**

15. By resolution of the Municipal Directorate for property and legal matters in Gjakova No. 19-465-7/ 1986, dated 28 July 1986, the Applicant was expropriated the property on cadastral parcel No.5133/34 which is a house with area of 79 m2 and the yard with area of 400 m2.
16. As per Public Attorney's suggestion the expropriation was carried out for the benefit of the Gjakova Municipality, for SMCI needs in the field of housing and public utilities for the purpose of constructing „Kosta Novaković“ road, and of the other road for building plots.
17. The Resolution of the Municipal Directorate for property and legal matters in Gjakova No. 19-465-7/ 1986, dated 28 July 1986, was forwarded to the parties in the proceedings, against which the parties did not use the legal remedies provided by the law, therefore, the Resolution became final and binding on 16 September 1986, and was forwarded to the competent authorities to change the ownership in the cadastral books.
18. Within the legal time frame the Public Attorney in Gjakova Municipality, after evaluating the value of the expropriated building and the land made an offer in order to reach an agreement on compensating the expropriated property.
19. On the session held on 6 October 1988 in the Directorate for property and legal matters in Gjakova, in presence of both parties no agreement was achieved regarding the compensation on the expropriated property.
20. Municipal authorities by act 19No. 465-7/1986, dated 11 October 1988, forwarded the case to the Municipal Court in Gjakova, in order to determine the compensation on the expropriated property in non-contentious proceedings.
21. On 3 November 1988, the Municipal Court in Gjakova by Resolution V. No. 520/88 determines the compensation on the expropriated property; the Resolution was handed to the in law of the Applicant, Valentina Jankopali, on 24 November 1988, who lives in the same household with the Applicant.
22. On 23 February 2010, the Applicant files a complaint on the Resolution of the Municipal Court in Gjakova V. No. 520/88, 3 November 1988, alleging that the Applicant never received the Resolution and his in-law Valentina Jankopali is half-literate person.

23. On 16 June 2010, the District Court in Peja by Resolution AC.No.111/2010 rejects the complaint ungrounded and upheld the Resolution of the Municipal Court in Gjakova V. No. 520/88, dated 3 November 1988.
24. On Resolution of the District Court in Peja AC.No.111/2010, dated 16 June 2010, the Applicant on 22 July 2010 filed for revision with the Supreme Court of the Republic Kosovo.
25. The case on revision is still pending and since 6 September 2010 is before the Supreme Court of Kosovo, which decides upon revision.

Summary of facts with regard to the Judgment of the Supreme Court of Kosovo Rev. No. 361/2010 of 22 April 2010

26. Proceedings on Judgment of the Municipal Court in Gjakova C.No.331/01, dated 11 December 2002, in which the Municipal Court in Gjakova received a claim of Musë Mirakaj and obliged the Applicant to hand over in possession the southern part of the cadastral parcel No. 5133/33 in total area of 0.02,36 ha, and at the same time binds the Applicant to compensate the procedural costs in amount of 1.176,17 Euro, what does not apply to the parcel 5133/34 but only to parcel 5133/33, for which the Applicant did not provide any evidence that the compensation has not been paid to him.
27. Also, the appellate proceedings on Judgment of the District Court in Peja Ac.No. 234/03, dated 16 February 2007, as well as the proceedings on revision with the Supreme Court of Kosovo Judgment rev. No. 361/2007, dated 22 April 2010, on what the Applicant based his request with the Constitutional Court of Kosovo do not apply to parcel 5133/34, regarding which the non-contentious proceedings to determine the procedural compensation are still pending with the Supreme Court of Kosovo, but only to parcel 5133/33, for which the Applicant did not provide any proof that the compensation has not been paid to him.

Applicants Allegations

28. The Applicant claims that, by Judgment of the Supreme Court of Kosovo rev.No.361/2010, dated 22 April 2010, rejecting the revision on this matter and upholding the previous decisions of the Municipal and Court authorities on the contested matter, were violated his rights on property matters, as rights guaranteed by Articles 31, 46, and 53 of the Constitution of the Republic of Kosovo.
29. Moreover, he alleges that with this judgment were violated rights to a fair and impartial trial and rights to property, provided by Articles 1 and 6 of the European Convention on Human Rights, which is an integral part of the Constitution of the Republic of Kosovo.

Assessment of the admissibility of Referral with regard to the Resolution of the District Court in Peja AC. No. 111/2010 of 16 June 2010

30. In order to be able to adjudicate the Applicants' request, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure. In this regard, the Court refers to Article 113.7 of the Constitution:

“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.”

31. From the documentation furnished upon request, it follows that the Applicant has not exhausted all legal remedies provided by law, since his request for revision was filed in non-contentious proceedings to determine the compensation on cadastral parcel 5133/34 against the Resolution of the District Court in Peja AC.No.111/2010, dated 16 June 2010, what is the essential request of the Applicant, is still pending with the Supreme Court in Prishtina, recorded under NDR.520/88, dated 23 August 2010.
32. The Court concludes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or remedy 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*, ECtHR, *Selmouni v. France*, no. 25803/94, decision of 28 July 1999).
33. It follows that the request for constitutional review of the Resolution of the District Court in Peja AC. No. 111/2010 of 16 June 2010 is inadmissible for consideration, pursuant to Rule 36 (1a) of the Rules of Procedure which provides: “The Court may only deal with Referrals if: a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted.”

Assessment of the admissibility of Referral with regard to the Judgment of the Supreme Court of Kosovo Rev. No. 361/2010 of 24 April 2010

34. The Applicant alleges that Article 31 (Right to a fair and impartial Trial), Article 46 (Protection of Property) and Article 53 (Interpretation of Human Rights Provisions) of the Constitution of Kosovo and Article 6 (Right to a fair trial) of the European Convention on Human Rights are basis for his Referral.
35. Article 48 of the Law on Constitutional Court provides that:

„In his/her referral, the Applicant 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.”
36. Regarding the request for constitutional review of the Judgment of the Supreme Court of Kosovo Rev. No. 361/2010 of 24 April 2010, the Constitutional Court, under the Constitution, is not a court of appeal, in respect of the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, Para. 28, European Court of Human Rights [ECtHR] 1999-I).
37. The Applicant has neither substantiated an allegation nor has he submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see *mutatis mutandis*, Vanek v. Slovak Republic, Application No. 53363/99, Decision of ECHR regarding the admissibility of the Referral, dated 31 May). The Applicant did not specify how do Articles 31, 46 and 53 substantiate his request, as provided by Article 113.7 of the Constitution and Article 48 of the Law.

38. The Applicant alleges that his rights have been violated due to erroneous establishment of facts and application of law, without clearly stating how these decisions infringed his constitutional rights.
39. In the present case, the Applicant was afforded numerous opportunities to present his case and to contest the interpretation of the law which he considered incorrect, before the Municipal, District and Supreme Court. After considering the proceedings as a whole, The Constitutional Court did not find that the relevant 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).
40. Finally, this Referral does not meet the admissibility requirements. The Applicant failed to point out and to provide evidence that the challenged decision allegedly violated his constitutional rights and freedoms.
41. It follows that the Referral for constitutional review of the Judgment of Supreme Court of Kosovo Rev. No. 361/2010 of 24 April 2010 is manifestly ill-founded, pursuant to Rule 36 (2b) of the Rules of Procedure which stipulates that "*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

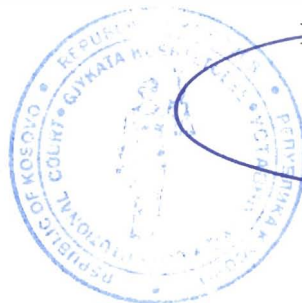
The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 (2) of the Law, and Rule 36 (1a) and 36 (2b) of the Rules of Procedure, in its session, held on 21 November 2011, unanimously

DECIDED

- I. **TO REJECT** the Referral as inadmissible in its entirety;
- 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;
- III. This Decision is effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

