



REPUBLIKA E KOSOVËS  
Republika Kosova-Republic of Kosovo  
**Gjykata Kushtetuese / Ustavni sud / Constitutional Court**  
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Prishtina, date: 25 January 2010  
Ref.: Nr. RK-02/10

## DECISION

### Case No. KI 02/09

The Constitutional Court of the Republic of Kosovo, acting through the Review Panel composed of

Mr. Enver Hasani, Presiding, and  
Mr. Kadri Kryeziu, Judge and  
Mrs. Iliriana Islami, Judge,

With the minute taker, Mr. Naser Hasani, head of the registration, statistics and archives within the Secretariat of the Court and Mr. Robert Carolan, judge rapporteur, in the meeting held 24 November 2009 took into consideration Application No. 02/09, where the

#### **Applicant is**

Mr. Kole Krasniqi  
Village Meqe, Gjakova  
Tel.: 044 409 903

#### **And the OPPOSING PARTIES are**

Ministry of Agriculture and Directorate of Legal and Property Issues and Land Consolidation of Gjakova Municipality.

#### **I. Subject Matter**

Decision of the Ministry of Agriculture, Forestry and Rural Development of the Republic of Kosovo, No. 2324 of 22 September 2008, Ref. S.P. 418/08, addressed to the Directorate of Legal and Property Issues of the Municipality of Gjakova relating to the restitution of real estate that was taken for the establishment of an agricultural land fund in Gjakova by decision dated 9 October 1953. This decision took from his legal predecessor land plots, part of cadastral plot No. 3/2, agricultural field of class III, in a surface of 2.50 hectares, 3/2 meadow in a surface of 0.55 hectares and plot no. 92 agricultural field in a surface of 1.2552 hectares totaling 4.52 hectares.

The Law on Expropriation of the Socialist Federal Republic of Yugoslavia (Official Gazette of SFRY No. 22/53) was applicable to an application for restitution of socially owned properties at the time that the applicant, Kole Krasniqi, commenced

his application for restitution of the real estate. Pursuant to Article 1 of UNMIK Regulation No. 2000/59, amending UNMIK Regulation No. 1999/24, the applicable law in Kosovo until Kosovo became a sovereign republic was the law in force in Kosovo on 22 March 1989.

Applicant, Kole Krasniqi, initially directed his request for restitution on 15 January 1992 to the Directorate of Legal and Property Issues and Land Consolidation of Gjakova Municipality. His request was never completed. Kole Krasniqi alleges that there were various reasons why his request was never finalized: (1) some municipal leaders wanted him to pay money as a bribe; and, (2) other municipal leaders prolonged and obstructed his attempts to complete the application because the applicable law at the time was Serbian law. Kole Krasniqi did not finish his application until the NATO bombing campaign began on 24 March 1999.

On 20 November 2008, in Decision No. 19-463-8/91-08, the Directorate denied his request for restitution of the real estate concluding that there were no legal grounds for restitution of the real estate because the Republic of Kosovo, as an independent and sovereign state, does not have any law authorizing land restitution to former owners of socially owned property.

On 9 February 2009, applicant, Kole Krasniqi, filed this appeal to the Constitutional Court of the Republic of Kosovo complaining that the Constitution was violated by the decision of the Ministry of Agriculture, Forestry and Rural Development.

## **II. Allegations of the Applicant**

Applicant alleges that the decision of the Ministry of Agriculture, Forestry and Rural Development No. 2324 of 22 September 2008 violates the Constitution of the Republic of Kosovo because:

- (1) The Ministry has the legal authority to enforce the applicable law of the former Socialist Federal Republic of Yugoslavia;
- (2) Failure to enforce this law is now discriminatory against him in violation of the Constitution.

## **III. Response of Opposing Party or Other Interested Parties**

Neither the Ministry of Agriculture nor the Directorate of Legal and Property Issues and Land Consolidation of Gjakova Municipality filed a formal response.

### **Assessment of the Admissibility of the Referral**

*Article 46* of the **Constitution** provides:

1. "The right to own property is guaranteed."  
.....
3. "No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated."

4. "Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court."

Article 143 of the **Constitution** provides:

"Notwithstanding any provision of this Constitution:

1. "All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007. They shall take necessary actions for their implementation."
2. "The provisions of the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo."
3. "The Constitution, laws and other legal acts of the Republic of Kosovo shall be interpreted in compliance with the **Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007**. If there are inconsistencies between the provisions of this Constitution, laws or other legal acts of the Republic of Kosovo and the provisions of the said Settlement, the latter shall prevail."

Article 2 of Annex VII of the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007 states that the trusteeship for socially owned enterprises and their assets (SOE s) shall be exercised by the Kosovo Trust Agency (KTA) as set forth in UNMIK Regulation 2001/12 as amended.

Article 3 of Annex VII of the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007 states that the final determination of ownership and the adjudication of claims shall continue to be handled by the Special Chamber within the Supreme Court established for this purpose under UNMIK Regulation 2002/13.

Article 4 of Annex VII of the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007 suggests that all immovable property claims should be adjudicated by 31 December 2008.

Article 5 of Annex VII of the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007 states that illegal possession of private immovable property shall not confer ownership rights. It also states that if a claimant can establish that he or she had no access to the relevant institutions for timely submission of a claim for adjudication within statutory time limits, such a claim shall not be considered as not receivable by a competent court or by another judicial or quasi judicial organ. This article also states that Kosovo shall implement additional measures, in consultation with the ICR, to ensure that the adjudication process on restitution or compensation of property claims is efficient and decisions are effectively enforced.

Article 6 of Annex VII of the **Comprehensive Proposal for the Kosovo Status Settlement** dated 26 March 2007 states that Kosovo shall also address property restitution issues as a matter of priority and mandates that Kosovo establish an independent mechanism to formulate the policy, legislative and institutional framework for addressing property restitution issues.

*Article 24* of the **Constitution** provides:

1. "All are equal before the law. Everyone enjoys the right to equal legal protection with discrimination."
2. "No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status."
3. "Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled."

The Applicant, Kole Krasniqi, appears to rely upon the above-referenced provisions of the **Constitution** in support of his claim although he does not specifically state what provisions of the **Constitution** support his claim.

The government authorities appear to believe that they do not have any legal authority to act upon Applicant's claim.

*Section 7 of Article 113* of the **Constitution** provides:

"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."

**Section 2 of Article 47 of The Law on the Constitutional Court of the Republic of Kosovo** provides:

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

**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."

In this case it does not appear that the Applicant has exhausted all of the legal remedies provided by law. It appears that he must present his claim first to the Special Chamber Tribunal established by the Supreme Court or another appropriately designated competent tribunal that is required to adjudicate claims for restitution of immovable property as required by The Comprehensive Proposal for the Kosovo Status Settlement.

In this case the Applicant has not proven that he has the legal authority to make a claim for restitution of the immovable property in question. He asserts that the property in dispute was expropriated from another person than him by the governmental authority in power before the Republic of Kosovo declared independence and became the sovereign power. He has not established what immovable property rights, if any, he acquired from this person. He has not established what authority he has to assert any claim on behalf of that person who he claims had his immovable property illegally expropriated.

Therefore, at this time the Applicant's claim is not admissible. His claim may subsequently become admissible if: (1) he establishes that he has the same legal rights to this property as the person who actually had it expropriated from him by the governmental authority at the time it was expropriated; and, (2) he establishes that he has exhausted all of his legal remedies through the appropriate court in Kosovo or the appropriate special tribunal for adjudicating such claims as referenced in the Comprehensive Proposal for the Kosovo Status Settlement.

### **Assessment of the Substantive Legal Aspects of the Referral**

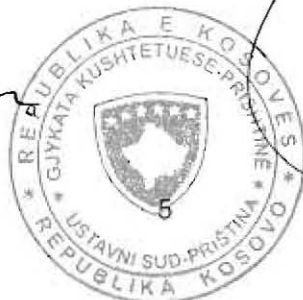
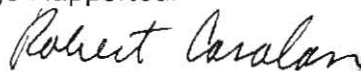
If the Applicant establishes that he has a lawful claim to restitution of the property or adequate compensation for the immovable property he alleges was illegally expropriated, and if he establishes that he has exhausted all legal remedies for redress of his claim, then his claim may be admissible in the future. But this Court will not speculate upon admissibility of any future claims.

If the Applicant's claim is never heard by an appropriate legal tribunal in Kosovo, then his rights pursuant to *Articles 46 and 143 of the Constitution* may have been violated because he may then have been arbitrarily deprived of his property without immediate and adequate compensation, and then his right to own property may have been denied by the public authority. But this Court will not speculate upon the admissibility of any future claims in this case because the Applicant has not established that he has a lawful claim to the immovable property in dispute and has not exhausted his remedies as required by Article 113, Section 7 of the Constitution and Article 47 of the Law on The Constitutional Court.

### **FOR THESE REASONS IT IS RESOLVED THAT:**

- I. The Application for restitution of certain immovable land described in the referral is declared inadmissible.
- II. The Applicant, Mr. Kole Krasniqi, the Opposing Parties, The Ministry of Agriculture and the Directorate of Legal and Property Issues and Land Consolidation of Gjakova Municipality, shall be notified of this decision. For informational purposes, the Special Chamber of the Supreme Court of Kosovo shall also be notified.
- III. This decision shall enter into force immediately.

Robert Carolan  
Judge Rapporteur



Enver Hasani  
President of the Court

