



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

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Prishtina, 01 November 2011  
Ref. No.: RK149/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 01/11**

Applicant

**Private Enterprise Građevinar**

**Constitutional review of the Judgment of the Supreme Court of Kosovo  
Ae - Pž No. 21/2008 dated 15 July 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 a Private Enterprise "Građevinar" from Kraljevo, represented by lawyer Miro Delević from Mitrovica.

## **Challenged Decision**

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Ae - Pž No. 21/2008 dated 15 July 2010 rejecting as ungrounded the appeal on the Judgment of the Commercial District Court of Prishtina IV P-No. 11/2005 dated 11 July 2007, regarding the Applicant's claim for compensation for the damage sustained due to destruction of property during and immediately after the war activities in 1999.

## **Subject Matter**

3. The Applicant challenges the Judgment of the Supreme Court of Kosovo Ae - Pž No. 21/2008 dated 15 July 2010 without specifying a particular article of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"). The Applicant claims that the violation of the rights consisted in the fact: *"That at any time and under any circumstances, the Law has to be in place and has to exist, and that the existence of the Law provides the protection to both natural and legal persons at all times, and it establishes the issue of liability"*.

## **Legal Basis**

4. The Referral is filed 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, dated 16 December 2008 (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure.

## **Proceedings before the Constitutional Court**

5. The Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 5 January 2011.
6. On 23 March 2011 the Constitutional Court informed Mr. Miro Delević, the Supreme Court of Kosovo and the Commercial District Court of Prishtina that a procedure has been initiated for review of constitutionality in case KI 01/11.
7. On 28 March 2011, in its response to the Constitutional Court of Kosovo, the Commercial District Court of Prishtina stressed that they have nothing new to add and that their opinion on the subject matter is given in the Judgment of the Commercial District Court of Prishtina.
8. On 29 March 2011, in its response to the Constitutional Court of Kosovo, the Supreme Court of Kosovo stressed that they have nothing new to add and that their opinion on the subject matter is given in the Judgment of the Supreme Court of Kosovo.
9. On 5 April 2011 the Constitutional Court asked from the lawyer, Mr. Miro Delević, to submit evidence on the date of receipt of the Judgment of the Supreme Court of Kosovo Ae - Pž No. 21/2008 dated 15 July 2010.
10. On 26 April 2001, in its written response, the lawyer, Mr. Miro Delević informed the Constitutional Court of Kosovo that the delivery receipt note for the Judgment is with the Supreme Court of Kosovo.

11. On 28 June 2011 the Commercial District Court of Prishtina delivered the receipt note by fax, which shows that the lawyer, Mr. Miro Delević, received the Judgment of the Supreme Court on 2 September 2010.
12. On 4 October 2011 after having considered the report of the judge Rapporteur Altay Suroy, the Review Panel composed by judges: Snezhana Botusharova (Presiding), Ivan Cukalovic and Iliriana Islami made a recommendation the full Court on the Inadmissibility of the referral.

### Summary of Facts

13. Private Enterprise "Građevinar", from the village of Ratina, Municipality of Kraljevo, and which during 1999 operated in the territory of the Municipality of Obiliq, has filed a claim suit to the Commercial District Court of Prishtina, in which it asked from the Municipality of Prishtina, as the first respondent, Provisional Institutions of Kosovo as the second respondent, and the Government of Kosovo, as the third respondent, compensation for the Private Enterprise "Građevinar" for the damage sustained during the second part of 1999.
14. Namely, Private Enterprise "Građevinar" during the second part of 1999 sustained damage, which the Applicant estimated at 255,000.00 Euros, and the issue is about the destroyed property which was under possession of the Private Enterprise "Građevinar" and which was consisted of: facilities, orchards, crops, lost profit due to inability to cultivate the land, and movable items that were present in the mentioned facilities.
15. In its claim suit to the Commercial District Court of Prishtina the Applicant referred that the responsibility of the respondents is based upon Article 180 of the Law on Contracts and Torts, the European Convention on Human Rights and Freedoms and the Protocol to the Convention which regulates the right for the undisturbed use and protection of property.
16. On 11 July 2007 the Commercial District Court of Prishtina by Judgment IV. P. No. 11/2005 rejected the claim suit as **unfounded** in the part regarding responsibilities of the Municipality, the first respondent, stating that: *"The Article 180 of the Law of Obligations does not provide for liability of a municipality where the case involves destruction of property due to war or military actions, as the bodies of a Municipality are certainly not capable of preventing a war, i.e. aggression against an entire country, the way it happened in Kosovo in year 1999"*.
17. In the same Judgment and in regard to the Provisional Institutions of Kosovo, as the second respondent, and the Government of Kosovo, as the third respondent, the Commercial District Court of Prishtina **rejected** the claim suit with the following reasoning: *"According to the UNMIK Regulation No. 2000/47 dated 18 august 2000, UNMIK staff enjoys immunity;"* and that the Government of Kosovo, as the third respondent, *"...cannot be a party in court proceedings because pursuant to Article 77 of the Code of Civil Procedure, it does not have the status of physical person."*
18. On 2 January 2008, the Private Enterprise "Građevinar", through its representative Mr. Miro Delević, lodged an appeal to the Supreme Court of Kosovo, about which, he, in its pertinent part, states: *Tthat the damage was caused after 9 June 1999, after seizing of war activities and that there was an erroneous application of the substantive law in regard to the passive legitimacy of the second and third respondent"*.

19. On 15 July 2010 the Supreme Court of Kosovo, by Judgment Ae - Pž No. 21/2008 rejected the appeal of the lawyer Mr. Miro Delević as **unfounded** and **confirmed** the Judgment of the Commercial District Court of Prishtina IV. P. No. 11/2005 dated 11 July 2007.

### **Applicant's Allegations**

20. The Applicant alleges that the Judgment of the Supreme Court of Kosovo Ae - Pž No. 21/2008 dated 15 July 2010 rejecting the claim suit of the Private Enterprise "Gradevinar" for compensation of the damage sustained due to destruction of property of the Private Enterprise "Gradevinar" during 1999 violates Enterprise's rights guaranteed by the Constitution of the Republic of Kosovo, without specifying any particular articles of the Constitution that were violated.
21. The Applicant considers that the: *"...violation of the Law is in the fact that, at any time and under any circumstances, the Law has to be in place and has to exist, and that the existence of the Law provides the protection to both natural and legal persons at all times, and it establishes the issue of liability"*.
22. The Applicant further considers that the Judgments of the District and Supreme Court advocate legal vacuum in the dispute in regard to passive legitimacy of KFOR, UNMIK and the Government of Kosovo.

### **Relevant provisions of the Law and the Constitution in regard to property disputes**

23. Article 180.1 of the Law on Contracts and Torts prescribes the following:

*"A State whose agencies, in conformity to existing regulations, were bound to prevent injury or loss, shall be liable for loss due to death, bodily injury or damaging or destroying property of an individual due to acts of violence or terror, as well as in the course of street demonstrations and public events."*

### **Relevant provisions of the Law and the Constitution in regard to responsibilities of Government bodies**

24. UNMIK Regulation No. 1999/1 dated 25 July 1999, which sets out the authority of the Interim Administration in Kosovo in Articles 1.1 and 7 provides for the following:

*"1.1 All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General."*

*7.1 The present regulation shall be deemed to have entered into force as of 10 June 1999, the date of adoption by the United Nations Security Council of Resolution 1244 (1999)."*

### **Relevant provisions of the Law and the Constitution in regard to immunity**

25. Article 146 of the Constitution of the Republic of Kosovo [**International Civilian Representative**] stipulates the following:

Notwithstanding any provision of this Constitution:

1. The International Civilian Representative and other international organizations and actors mandated under the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 have the mandate and powers set forth under the said Comprehensive Proposal, including the legal capacity and privileges and immunities set forth therein.
26. UNMIK Regulation No. 2000/47 dated 18 August 2000 on the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo, in Articles 2.1 and 3.1 sets forth the following:
  - “2.1 KFOR, its property, funds and assets shall be immune from any legal process.
  - 3.1 UNMIK, its property, funds and assets shall be immune from any legal process.”

### **Preliminary Assessment of Admissibility**

27. Admissibility requirements are laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.
28. The request by the applicant is in accordance with the period prescribed by the Constitution, the Law or the Rules of Procedures, the way of calculating the period is stipulated in the Rule 27 paragraph 3 and 6 of the Rules of Procedures which provides the following:
  3. When a period is expressed in months, the period shall end at the close of the same day of the month as the day during which the event or action from which the period to be calculated occurred or when appropriate the first day of the following month.
  6. When a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day.
29. Article 48 of the Law on Constitutional Court of the Republic of Kosovo stipulates:

*“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.”*
30. Under the Constitution, the Constitutional Court is not a court of appeal, when considering decisions rendered by lower courts. It is the role of the lower courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).
31. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005). The Applicant does not specify which Articles of the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
32. The Applicant claims that its rights were violated by the lower courts’ erroneous finding of fact and application of law, the Applicant claims that lower courts advocate “*legal vacuum*”.

33. From the above cited legal provisions in Articles 1.1 and 7.1 of the UNMIK Regulation 1999/1 dated 25 July 1999 it is clear that this legal vacuum does not exist because the Regulation sets retroactive effect as of 10 June 1999 and sets UNMIK Administration as the sole responsible authority. Whilst, UNMIK Regulation No. 2000/47 on the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo, in Articles 2.1 and 3.1 prescribes immunity from any legal processes for KFOR and UNMIK, and their property, funds and assets.
34. In the present case the Applicant had multiple opportunities to build its case and challenge the interpretation of the law, which it considers is inaccurate, at the Commercial District Court and the Supreme Court. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no\_17064/06 of 30 June 2009).
35. In conclusion, the Admissibility requirements are not met by this Referral. The Applicant has failed to state and support with evidence the constitutional rights and freedoms that were allegedly violated by the challenged decision.
36. It follows that the Referral is manifestly ill-founded pursuant to Rule 36.2(b) of the Rules of Procedure which stipulates: *“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

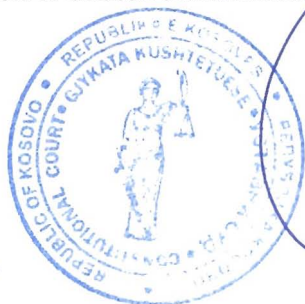
The Constitutional Court of Kosovo pursuant to article 113, 7 of the Constitution, Article 20 of the Law, and the Rule 56 par. 2 and Rule 36(b) of the Rules of Procedure, in its session held on 4 October 2011 unanimously:

### DECIDE

- 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 the Article 20 paragraph 4 of the Law of the Constitutional Court; and,
- III. This decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Prof.Dr.Enver Hasani