



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

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Pristine, on 26 June 2012  
Ref. No. :RK256/12

## **RESOLUTION ON INADMISSIBILITY**

**Case No. KI 08/12**

Applicant

**Nexhat Shala**

**Constitutional Review of the Judgment of the District Court in Prishtina, Ac. nr.  
1107/2010, of 28 June 2011**

### **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 Referral was filed by Nexhat Shala (the Applicant) residing in Barileva, municipality of Prishtina, represented by Hasan Rexha, a lawyer from Prishtina.

### **Challenged decision**

2. The Applicant challenges the Judgment of the District Court in Prishtina, Ac. nr. 1107/2010, of 28 June 2011, which was served on the Applicant on 5 July 2011, and by which it was decided to reject his request for the repetition of the procedure in the first instance court.

### **Subject matter**

3. The subject matter of the Referral concerns alleged violations of the rights to property as guaranteed by the Constitution and the European Convention on Human Rights, and regarding a disputed real estate (flat).

### **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter referred to as the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

### **Proceedings before the Court**

5. On 9 November 2011, the Applicant submitted the Referral with the Constitutional Court (hereinafter, the "Court").
6. On 11 November 2011, the Court notified the Applicant of the enregistrement of the Referral and requested additional information on exhaustion of legal remedies.
7. On 13 January 2012, the Court again requested the Applicant to supplement his Referral and submit the final decision on his issue.
8. On 30 January 2012, the Applicant submitted the supplemented Referral together with the documents requested by the Court.
9. On 1 March 2012, the President, by Decision Nr. GJR. 08/12 appointed Judge Almiro Rodrigues as Judge Rapporteur and Decision Nr. KSH 08/12, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Mr. sc Kadri Kryeziu (member) and Prof. dr. Enver Hasani (member).
10. On 20 June 2012, 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 facts**

11. In June 2005, the Applicant concluded a contract with Ali Gashi for purchase of flat, located in Lipjan. The sales contract has been certified by the Municipal Court in Lipjan on 9 September 2005. On 14 June 2005, Ali Gashi (the seller) sold the same real estate to Rasim Shabani (the buyer). Since the subject matter in both contacts was about the same real estate it resulted in a legal dispute. As a consequence different civil and criminal proceedings were developed in order to the interested parties to ensure their alleged rights.
12. In fact, on 6 September 2006, the Municipal Court in Lipjan recognized (Judgment C. nr. 248/06) to Rasim Shabani the right of ownership to the flat. The applicant filed an appeal against this resolution with the District Court in Prishtina. On 12 February 2007, the District Court in Prishtina (Judgment Ac. nr. 971/2006) confirmed the Judgment of the Municipal Court in Lipjan.
13. On 13 February 2007, the Applicant submitted a request with the Municipal Court in Lipjan for the repetition of the procedure in case C. nr. 248/2006, of 6 August 2006 asking for the disqualification of the judge who had decided in the first instance. On 28 October 2010, the Municipal Court in Lipjan rejected (Resolution C. nr. 216/2010) the Applicant's request as inadmissible, because the Judgment C. nr. 248/2006, of 6 August 2006, became final and was not based on false evidence. The Applicant filed an appeal against this resolution with the District Court in Prishtina.
14. On 28 June 2011, the District Court in Prishtina rejected (Resolution Ac. nr. 1107/2010) the Applicant's appeal as ungrounded, because the appealed Resolution (C. nr. 216/2010) did not contain essential violations that would impact on the lawfulness of the appealed decision.
15. On 26 August 2011, the Applicant submitted a proposal for the protection of legality with the Office of the State Prosecutor in Prishtina against the final Resolution of the Municipal Court in Lipjan, C. nr. 216/2010. On 9 September 2011, the Office of the State Prosecutor notified the Applicant that his request had been rejected because no legal basis for the submission of the request for the protection of legality was found.

### **Applicant's allegations**

16. The Applicant claims that his rights, mainly to Fair and Impartial Trial and to Legal Remedies, have been violated.
17. The Applicant alleges that the District Court in Prishtina, by rejecting his request for the repetition of the procedure, has violated his rights, as foreseen in the following Constitutional provisions: Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Right to Judicial Protection], and as well Article 6 of the European Convention on Human Rights.
18. The Applicant requests the Constitutional Court, inter alia, to annul the Municipal Court in Lipjan Resolution C. nr. 216/2010, of 28 October 2010, and the District Court in Prishtina Resolution Ac. nr. 1107/2010, of 28 June 2010.

### **Preliminary assessment of the Referral**

19. First of all, the Court examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and further specified in the Law and the Rules of Procedure. The Court considers that the Applicant justified the referral with a clear reference to the alleged violations; expressly challenges the Decision of the District Court as being the concrete act of public authority subject to the review; clearly points out the relief sought; and attaches the different decisions and other supporting information and documents.
20. However, in examining the substantiation of the Referral requirement, the Court notes that Article 48 establishes that “the claimant should accurately clarify what rights and freedoms he/she claims to have been violated”.
21. On the other side, Rule 36 of the Rules foresees that “the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights or d) the Applicant does not sufficiently substantiate his claim.
22. Finally, Art 48 of the Law establishes that “the Constitutional Court receives and processes a referral (...) if it determines that all legal requirements have been met”.
23. The Court notes that the parties dispute the validity and legality of the abovementioned contract. The assessment of the legality of contracts is under the jurisdiction of regular courts. A case must be built on constitutionality grounds for the Constitutional Court to intervene.
24. In this respect, the Applicant does not show why and how the District Court committed a violation of his rights guaranteed by the Constitution and European Convention nor provides evidence on the alleged violation.
25. The Court reiterates that it is not the task of the Constitutional Court to deal with errors of fact or errors of law (legality) allegedly committed by the District Court in Prishtina, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court cannot act as a court of third instance in the instant case. It is the task and obligation of regular courts to interpret and apply pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).
26. The Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the European Commission on Human Rights in the case *Edwards v. United Kingdom*, App. No 13071/87 adopted on 10 July 1991).

27. In fact, the Applicant has not substantiated his claims on constitutional grounds, showing why and how the District Court committed a violation of his rights guaranteed by the Constitution and European Convention, and he did not provide evidence that his rights and freedoms have been violated by the District Court. So, the Constitutional Court cannot find why and how the relevant proceedings in the District Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

28. Having said that, the Court finds that the Referral does not fulfill the requirements of Article 46 of the Law and Rule 36.2 b) and d), as such it is manifestly ill-founded and, in accordance with Art 48 of the Law, it cannot be received and processed.

29. Consequently, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 46 of the Law, Rules 36.2 (b) and (d), Rule 56.2 of the Rules of Procedure, on 20 June 2012, unanimously

### DECIDES

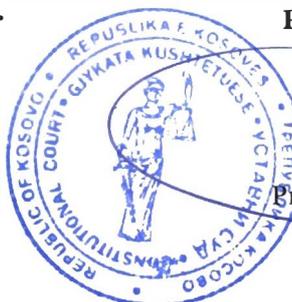
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Almiro Rodriguez

**President of the Constitutional Court**



Prof. Dr. Enver Hasani