



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

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Pristina, 03. November 2011  
Ref. No.: RK 152/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 105/10**

Applicant

**Alomerovic Muris**

**Constitutional Review of Judgments A.no. 198/2009 of 17 July 2009 and Mia  
no. 7/2009 of 27 August 2010 of the Supreme Court of Kosovo**

### **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. Alomerovic Muris, residing in Mitrovica, represented by Mr. Shefkije Bunjaku, a lawyer practicing in Pristina, and acting under a certified power of attorney, dated 28 October 2010.

## **Challenged decision**

2. The Applicant challenges the Judgments of the Supreme Court no. 198/2009 of 17 July 2009 and Mia no. 7/2009 of 27 August 2010, the latter having been served on him on 10 September 2010.

## **Subject Matter**

3. The Applicant requests an assessment of the constitutionality of the Judgments of the Supreme Court, alleging that the Supreme Court wrongly found that the Applicant's representative was not to be considered as an authorized person, competent to file a request for parcelization and transfer of immovable property with the relevant instance of the Municipality of Mitrovica.
4. He alleges that, thereby, the Supreme Court infringed his rights under Article 24 [Equality before the Law] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").
5. Furthermore, the Applicant also requests the Court to impose an interim measure.

## **Legal Basis**

6. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Proceedings before the Court**

7. On 15 October 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
8. On 16 December 2010, the President, by Order Nr.GJR 105/10, appointed Judge Iliriana Islami, as Judge Rapporteur. On the same date, the President, by Order Nr.KSH. 105/10, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.
9. On 19 January 2011, the Referral was forwarded to the Supreme Court.
10. On 4 October 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**

11. On 27 November 2008, the Department for Cadaster and Geodesy of the Municipality of Mitrovica rejected the request of the Socially Owned Enterprise "Gornji Ibar" from Rozaje, Montenegro (hereinafter: "the SOE Gornji Ibar") related to the parcelization and transfer of rights of certain cadastral parcels into the Immoveable Property Rights Register, and refused to register these parcels, due to a lack of relevant evidence which would justify the legal grounds for the request.
12. The Department reasoned that the SOE had been given the possibility to complete the documentation within a certain deadline, but that this had never been done; considering the long period passed and the doubts existing about the originality of the documents

presented by the representative of the SOE, the Municipal Services had tried to trace the original documentation, necessary to eliminate the obstacles to register the property, however without success.

13. On 2 December 2008, a complaint was filed with the Kosovo Cadastral Agency (hereinafter: "KCA") against the Department's decision of 27 November 2008 by Mr. E.K., the authorized representative of the Shareholder Association "2M" Rozaje, registered in Podgorica, with an office in Mitrovica. (N.B. The SOE "Gornji Ibar" and the company "2 M" Rozaje were established, together with 4 other companies, as new enterprises after the mother company "Trgovina" from Rozaje (Montenegro) was dissolved by the Shareholders Assembly on 31 July 1999).
14. By decision of 22 January 2009, the KCA rejected the complaint, reasoning that the case was about the "SOE Gornji Ibar" and immovable property located in Mitrovica, whereas the Shareholder Association "2M" Rozaje had authorized E.K. to represent the enterprise "2M" Rozaje, registered in Montenegro. According to the KCA, this showed that there were 2 entities with different names, the first was the SOE "Gornji Ibar", which was requesting registration of immovable property rights, and the other was the entity called Shareholder Association "2M" Rozaje, which had authorized E.K. from Mitrovica to represent it.
15. The KCA further stated that, according to UNMIK Regulation 2002/12 and Law 03/L-067, the KTA and PAK, respectively, were the only trustee for the property of SOE "Gornji Ibar" and could, therefore, be the only party in the procedure. Therefore, E.K., as the authorized person of the legal entity, called "2M" Rozaje, did not meet the legal conditions laid down by Article 38 of Law no. 02/L-28 on Administrative Procedure, whereby only interested parties allowed by law may initiate a procedure, which, in the present case, were KTA and PAK, respectively. The KCA concluded that the complaint [of E.K.] had to be rejected as having been filed by an unauthorized person.
16. The administrative appeal, submitted by SOE "Gornji Ibar" to the Supreme Court, was rejected as ungrounded on 17 July 2009, the Court being of the opinion that the allegations of the plaintiff were in contradiction with the factual situation as established by the KCA and the evidence in the case file, which showed that E.K. was authorized by "2M" Rozaje to represent it, and not by the plaintiff SOE "Gornji Ibar". The KCA's conclusion that E.K. was an unauthorized party was, therefore, fair and the law had not been violated.
17. The request for protection of legality, submitted by the State Prosecutor on the ground that the judgment did not contain any reasons as far as the decisive facts were concerned, was rejected as ungrounded in the Supreme Court's judgment of 27 August 2010. The Court held that lack of reasoning as to decisive facts did not represent a ground on which the State Prosecutor could file a request for protection of legality and it approved in its entirety the conclusion of the first instance that the legal representative of the Applicant was KTA, respectively, PAK.

### **Applicants' allegations**

18. The Applicant alleges that the contested decisions of the Municipality of Mitrovica, the Kosovo Cadastral Agency and the Supreme Court violate Article 24 [Equality before the Law], paragraph 1, as well as Article 46 [Protection of Property], paragraph 1, by infringing its right to equal legal protection and to property.

19. In the Applicant's opinion, the Supreme Court rejected as ungrounded the request for protection of legality without providing any reasoning why the same court, in the administrative proceedings, found its representative, E.K., illegitimate.

### **Assessment of the admissibility of the Referral**

20. As to the Applicant's allegation that his right guaranteed by Article 24 [Equality Before the Law] and Article 46 [Protection of Property] of the Constitution have been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court notes that an Applicant can not complain that the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution.

22. In this connection, the Constitutional Court emphasizes that it is not a court of fourth instance, when considering 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*, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

23. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *mutatis mutandis*, Resolution on Inadmissibility in Case No. KI. 49/10 Abdullah Shkodra - Constitutional Review of the Judgment of the District Court of Gjilan, AC.no. 70/2010, dated 15 April 2010, of 10 March 2011).

24. As to the present case, the Court notes that the administrative authorities and the Supreme Court only dealt with the preliminary question whether E.K. could be considered as a person authorized to submit, on behalf of the Applicant, a request for parcelization and transfer of property rights of certain cadastral parcels and had come to the conclusion that this was not the case. So far, these institutions have apparently not dealt with the underlying question regarding property rights, claimed by the Applicant.

25. With regard to the question whether the Applicant had been properly represented before the different instances, the Court considers that the Applicant has not shown in which manner the Judgments of the Supreme Court were unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no\_ 17064/06 of 30 June 2009 and Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005) and amounted to an infringement of the constitutional rights invoked by the Applicant.

26. In these circumstances, the Referral must be rejected as manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"

### **Assessment of the request for interim measure**

27. As to the Applicant's request to the Court for interim measures, the Court refers to Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However,

taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

**FOR THESE REASONS**

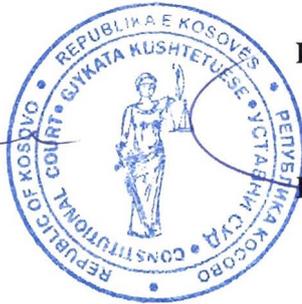
The Constitutional Court, pursuant to Rules 36 (1.c) and 56 (2) of the Rules of Procedure, on ... 2011, ...

**DECIDES**

- I. TO REJECT the Referral as inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. 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;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Dr. Iliriana Islami



**President of the Constitutional Court**

Prof. Dr. Enver Hasani