



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

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Pristina, 25 January 2011  
Ref. No.: 80/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI 11/10**

Applicant

**Feti Islami**

**Constitutional Review of The decision of the Supreme Court of Kosovo  
Rev. 395/2008 and The decision of District Court in the Municipality of  
Peja Ac.No.306/06**

### **THE CONSTITUTIONAL COURT OF 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 Mr. Feti Islami from Peja.

### **Challenged decisions**

2. Challenged decisions are the decision of the Supreme Court of Kosovo rev 395/2008 of 2 June 2009 and the decision of District Court in the Municipality of Peja Ac. No. 306/06 of 25 May 2008.

### **Subject matter**

3. The subject matter of the case submitted with the Constitutional Court of Republic of Kosovo on 26 January 2010 is the review of the constitutionality of the Judgment of the Supreme Court of Kosovo rev, 395/2008, which rejected the revision of plaintiffs: Feti Islami, Zyhdi Islami, Nexhmedin Islami, Belkize Shala, Muhamet Islami, Sehid Islami and Myzafere Dobroshi filed against the Judgment of District Court in Peja Ac.no. 306/06, and of the very Judgment of the District Court in Peja Ac.no.306/06 which had rejected the appeal of the abovementioned plaintiffs and it had upheld the Judgment of the Municipal Court in Peja C. no 195/05 of 26 May 2006.

### **Alleged violations of the constitutionally guaranteed rights**

4. The Applicant alleges that the challenged decisions of the competent Courts have violated his rights guaranteed by the Constitution of Kosovo, as follows:
  - a) Fundamental rights and freedoms, Article 21 paragraphs 1, 2, 3 and 4.
  - b) Violations of international agreements and conventions pursuant to Article 22 paragraphs 1, 2, 3, and 4.
  - c) Violation of equality before the law, Article 24, paragraphs 1, 2, and 3;
  - d) Violation of fair and impartial trial, Article 31, paragraph 1;
  - e) Violation by non-transparency and obstruction of the right to access public documents, Article 41, paragraphs 1 and 2;
  - f) Violation of the right to protection of property based on Article 46, paragraphs 1 and 3;
  - g) Violation in the interpretation of the provisions on human rights, in harmony with court decisions of the European Court, Article 53 and
  - h) violation of the right to effective legal remedies, Article 54.

### **Legal basis**

5. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter referred to as: the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of Republic of Kosovo (hereinafter referred to as: the "Law"), and Section 29 of the Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter referred to as: the "Rules of Procedure").

### **Proceedings before the Court**

6. The Applicant submitted his Referral with the Constitutional Court on 26 January 2010.
7. On 25 March 2010, the Constitutional Court notified the Supreme Court of Kosovo regarding the Referral submitted by Mr. Feti Islami. On 26 March 2010, Supreme Court of Kosovo by letter AGJ. No. 147/2010 sent a reply to the Constitutional Court of Republic of Kosovo in its submission regarding the Referral KI 11/10 and on that occasion it reiterated that "the Supreme Court has provided all the facts related to the case in the reasoning of Judgment Rev. no. 395/08 and it has nothing else to add about this case".

8. On 31 August 2010 the Constitutional Court sent a letter to the Municipal Court in Peja requesting the Judgment AC. No 54/01 of 30 March 2001 which was missing in the case file submitted before the Constitutional Court. The Court received the requested copy of the Judgment on 16 September 2010.
9. On 13 December 2010, after reviewing the report of Judge Rapporteur Altay Suroy, the Review Panel composed of Judges Snezhana Botusharova (Presiding), Robert Carolan and Enver Hasani recommended to the full court to reject the Referral as inadmissible.

### **Applicant's Complaint**

10. The Applicant complains that the District Court by Judgment Ac.no 306/06 which rejected the lawsuit of the abovementioned plaintiffs and also the Supreme Court of Kosovo by rejecting Revision on this Judgment have violated the right to establish the ownership to property based on inheritance in the town of Peja which in Municipal Cadastral Service is registered as socially-owned property. The Applicant has requested from the Constitutional Court, in compliance with Article 50 of the Law on Constitutional Court of Kosovo, to restore the situation to the conditions prior to the judgments i.e. to allow the repeating of the procedure and to enforce the Judgment of the Municipal Court in Peja C.no. 54/01 of 28 March 2001 which was favorable for the Applicant.

### **Summary of the facts**

11. On 30 March 2001, the Municipal Court in Peja issued Judgment C. no. 54/01 approving the claim filed by plaintiffs Feti Islami, Zyhdi Islami, Nexhmedin Islami, Belkize Shala, Muhamet Islami, Sehid Islami and Myzafere Dobroschi, and acknowledging their right to the immovable property registered in the cadastral plot 2774 with an area of 3007, 3021, 2976, registered in the possession lists 2606 and 313 in Peja CM as follows: to the first two plaintiffs Feti and Nexhmedin Islami, each in the size of 5/20 ideal parts, whereas to the other plaintiffs Belkize, Muhamet, Zuhdi, Sahit and Muzafere, each in the size of 2/20 ideal part.
12. This Judgment took final and executable form on 28 June 2001.
13. The Municipality of Peja, acting as the respondent, had submitted a request to allow for the repetition of proceedings and the Municipal Court in Peja, on 11 April 2003 UPHELD this proposal and ALLOWED for the repetition of the proceedings, through Decision C. No. 54/01.
14. Acting upon an appeal by the plaintiffs against this decision, District Court in Peja issued Decision Ac. No. 262/03 of 25 May 2004, which QUASHED the Decision of the Municipal Court in Peja C. No. 43/01, which allowed for the repetition of proceedings and returned the case to the same court for Re-Trial.
15. On 14 November 2004, the Municipal Court in Peja, again deciding upon the order of the District Court in the retrial procedure for this case, AGAIN decided to UPHOLD the proposal of the respondent, Municipality of Peja, and allowed a repetition of the proceedings concluded with the final Decision of the Municipal Court in Peja, in which the claim suit of the plaintiffs denoted in paragraph 6 of this decision was upheld, thus acknowledging their right to the immovable property which was the subject of this claim-suit, or the right to a commensurate compensation of 114.000 €.
16. On 26 May 2006, the Municipal Court in Peja, acting upon the claim-suit submitted by plaintiffs Feti Islami, Zyhdi Islami, Nexhmedin Islami, Belkize Shala, Muhamet Islami, Sehid Islami and Myzafere Dobroschi, in accordance with the allowed repeated

proceeding, issued JUDGMENT C. No. 195/05, which entirely rejected the claim-suit of the plaintiffs, assessing that the plaintiffs did not provide evidence that would verify their right to the disputed immovable property, whereas the respondent, Municipality of Peja, had provided convincing evidence that the object of this claim-suit is socially-owned property and that its former owners were compensated in a legal manner at the time of its expropriation.

17. On 22 May 2008, the District Court in Peja, through its Judgment Ac. No. 306/06, rejected the appeal presented by the plaintiffs through their authorized representative as unfounded and UPHELD the Judgment of the Municipal Court in Peja, C. no. 195/05 of 26 May 2006.
18. On 2 June 2009, the Supreme Court of Kosovo, through its Judgment Rev no. 395/2008, rejected the revision requested by the plaintiffs against Judgment Ac No. 306/2006 of the District Court in Peja as UNFOUNDED.
19. According to the personal statement of Mr. Feti Islami, he had received a copy of this Judgment on 15 July 2009.
20. Unsatisfied with the progress of the case, Mr. Feti Islami presented a submission at the Office of the Disciplinary Prosecutor against Judge Ymer Jahëmurtaç and filed a criminal suit against this Judge, registered under PP. no. 1915/09, which was partially rejected, while the party was instructed to file a private claim-suit, if he still considers that there are grounds for criminal prosecution.
21. Mr. Feti Islami had also submitted a request for protection of legality with the State Prosecution, registered under number PCK no. 108/09, and the latter had responded that no procedure for protection of legality can be initiated against the Decisions of the Supreme Court on Revisions.
22. Finally, on 26 January 2010, Mr. Feti Islami filed a referral with the Constitutional Court of the Republic of Kosovo.

#### **Assessment of admissibility**

23. In order to be able to adjudicate the Applicants' Referral, the Constitutional Court needs first to examine, whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution.
24. In reference to this, the Court refers to Article 113.7 of the Constitution, which stipulates that:

*"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", and,*

25. Article 47.2 of the Law on the Constitutional Court of the Republic of Kosovo stipulates that:

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

26. Article 49 of the Law on the Constitutional Court determines that:

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”*

27. From the documentation submitted by the Applicant, it may be concluded that Mr. Feti Islami has filed his referral to the Constitutional Court on 26 January 2010, whereas the Judgment of the Supreme Court, as a final decision, was served on him on 15 July 2009, thus he had submitted the referral to the Constitutional Court 6 months and 11 days from the day of the receipt of the final decision, and referring to the admissibility criteria, it appears that this referral is inadmissible as it was submitted to the Court after the expiration of the legal deadline, foreseen in Article 49 of the Law on the Constitutional Court
28. The Court concludes that even if the referral had been submitted within the foreseen 4 month deadline, it should have again been declared as inadmissible, since it is manifestly ill-founded.
29. In fact, the Constitutional Court of Kosovo enjoys no appeal jurisdiction and may not intervene from the theoretical aspect, if the courts had taken a wrong decision or had erroneously evaluated facts. The role of the Constitutional Court is to ensure compliance with the rights that are guaranteed with the Constitution and other legal instruments and therefore can not act as a “forth instance court” (see, mutatis mutandis Akdivar vs. Turkey, 16 September 1906, R.J.D. 1996-IV, paragraph 65).
30. Furthermore, the Court considers that there is nothing in the referral that would show that the regular courts, during the proceedings in the case, had lacked impartiality or that the proceedings were unfair. The simple fact that the applicants are unsatisfied with the result of the case does not grant them the right to file a substantiated referral on the violation of Article 31 of the Constitution (see mutatis mutandis the ECHR Judgment Appl. No. 5503/02 Meztur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005).
31. Since Article 53 of the Constitution stipulates that “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”, and Article 22 of the Constitution determines that the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols is directly applicable in the Republic of Kosovo, than similar to the statement of ECHR, which in accordance with Article 35.3 finds a referral inadmissible when it is manifestly ill-founded in relation to the European Convention on Human Rights (see mutatis mutandis Application no. 25101/05 by Mordechai Poznanski and Others against Germany) the Constitutional Court states that the referral is inadmissible as manifestly ill-founded in relation to the Constitution of Kosovo, when deciding on its admissibility (Article 54, paragraph 1, item (b) of the Rules of Procedure of the Constitutional Court).
32. In such circumstances, the Applicant has not met the criteria for the admissibility of the referral.

**FOR THESE REASONS**

After the review of all presented facts and evidence and after having deliberated on the matter on 13 December 2010, the Court concluded that the Applicant has submitted the Referral after the expiration of the time-limit of four (4) months, foreseen in Article 49 of the Law on the Constitutional Court, and unanimously,

**DECIDES**

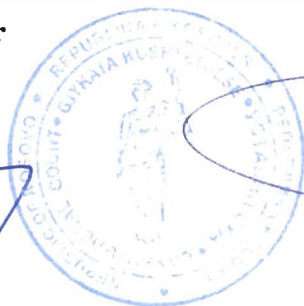
I. TO REJECT the Referral as Inadmissible;

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.

This Decision is effective immediately.

**Judge Rapporteur**

  
Altay Suroy



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani