



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

Pristine, 17 January 2012
Ref. No.: RK 184/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 23/11

Applicant

Pajazit Mulaj

Constitutional review of the Decision of the Municipal Court in Glllogoc, C. no. 150/04, dated 29 January 2009, and the Decision of the Supreme Court of Kosovo, Rev. No. 90/04, dated 14 October 2004.

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. Pajazit Mulaj, residing in Glllogoc.

Challenged decisions

2. The Applicant challenges the Decision of the Municipal Court in Gllgoc, C. no. 150/04, dated 29 January 2009, and the Decision of the Supreme Court of Kosovo, Rev. No. 90/04, dated 14 October 2004.

Subject matter

3. The Referral relates to the Applicant's alleged violation of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 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

5. On 21 February 2011, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 2 March 2011, the President, by Decision No. GJR. 23/11, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 23/11, appointed the Review Panel composed of judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Iliriana Islami.
7. On 9 March 2011, the Referral was communicated to the Municipal Court in Gllgoc and to the Supreme Court of Kosovo.
8. On 23 November 2011, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On 6 May 1985, the construction company "Ndërtimtari", by decision No. 628, allocated a social apartment to the Applicant. The apartment was allocated, while it was still under construction, as a result of which the Applicant could not reside in it yet. After the completion of the construction, the apartment had been usurped by Mr. I.D.
10. On 12 June 2002, the Municipal Court in Gllgoc approved the claim of the Applicant to occupy the apartment and obliged Mr. I.D to vacate the Applicant's apartment (Judgment C. No. 22/2001). Against this Judgment, Mr. I.D complained to the District Court in Prishtina.
11. On 17 December 2003, the District Court rejected the complaint of Mr. I.D and upheld the Judgment of the Municipal Court (Judgment AC. No. 502/2002). Against this Judgment, Mr. I.D submitted a revision with the Supreme Court, requesting it to quash the decisions of the lower instance courts.
12. On 14 October 2004, the Supreme Court quashed the Decisions of the District Court (AC. No. 502/2002, dated 17 December 2003), and of the Municipal Court (C. No.

22/2001, dated 12 June 2002), and remanded the case to the first instance for retrial (Rev. No. 90/2004). The Supreme Court concluded that the lower instances had not confirmed, pursuant to Article 11 of the Law on Housing Relations, the conditions under which the right to occupy the apartment had been acquired. Furthermore, the Supreme Court concluded that the lower instance courts need to confirm whether the social apartment has been transferred into private ownership or whether the social apartment was still under the ownership of the Kosovo Trust Agency.

13. On 24 November 2004, the Municipal Court in Glllogoc rejected the complaint of Mr. I.D to confirm his right to use the apartment. The Municipal Court concluded that the issue had been adjudicated by decisions of the Municipal Court (Judgment C. no. 22/2001 dated 12 June 2002) and of the District Court (Judgment AC. No. 502/2002 dated 17 December 2003).
14. On 29 January 2009, the Municipal Court in Glllogoc, after the case had been remanded by the Supreme Court, declared itself incompetent because the matter was within the competence of the Special Chamber of the Supreme Court for the reason that the disputed apartment was owned by the Kosovo Privatization Agency.

Execution Procedure

15. On 15 September 2004, the Municipal Court allowed the execution of the Municipal Court and District Court decisions (E. no. 24/04). Against this Decision, Mr. I.D filed a complaint with Municipal Court.
16. On 11 November 2004, the Municipal Court rejected as ungrounded the complaint of Mr. I.D.
17. On 8 December 2004, the Municipal Court in Glllogoc, suspended the execution procedure, since the execution title was quashed by Decision of the Supreme Court, Rev. No. 90/04, dated 14 October 2004, whereby all actions taken regarding this judicial issue had been abrogated,.

Applicant's allegations

18. The Applicant claims that his right to use the apartment as guaranteed by Article 46 [Protection of Property] of the Constitution has been violated.
19. The Applicant also claims that the Judgment of the Supreme Court of Kosovo of 14 October 2004 has been partial. Furthermore, the Applicant claims that the decision of the Municipal Court in Glllogoc to declare itself incompetent is suspicious.

Assessment of the admissibility of the Referral

20. As to the Applicant's allegations that his right guaranteed by Article 46 [Protection of Property] of the Constitution has been violated, the Court must first examine whether he has fulfilled all admissibility requirements laid down in the Constitution, the Law on the Constitutional Court and the Rules of Procedure of the Constitutional Court.
21. In respect to the challenged Decision C. No. 150/04 of the Municipal Court of Glllogoc of 29 January 2009, the Court refers to Article 113.7 of the Constitution and 47(2) of the Law, according to which individuals, who submit a referral to the Court, must show that they have exhausted all legal remedies available under applicable law.

22. The Court emphasizes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights (see *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803194, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no 56679/00, decision of 28 April 2004).
23. This Court applied the same reasoning, when it issued Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case KI 41/09 of 27 January 2010, and in the Resolution on Inadmissibility in the case of Mimoza Kusari-Lila vs. The Central Election Commission, Case No. 73/09 of 23 March 2010.
24. As to the present case, it is clear from the Applicant's submissions, that, so far, he has not raised the alleged violation of his right to occupy the apartment with the Special Chamber of the Supreme Court, which according to the decision of the Municipal Court of 29 January 2009, is the competent court to deal with this matter. This information must already have been known to the Applicant, when, by decision of 14 October 2004, the Supreme Court quashed the lower courts' decisions and annulled all actions taken by the lower courts regarding the issue.
25. It follows, that the Applicant has not exhausted all legal remedies available under applicable law, as required by Article 113.7 of the Constitution and Article 47 (2) of the Law.
26. For the foregoing reasons the Referral is Inadmissible.

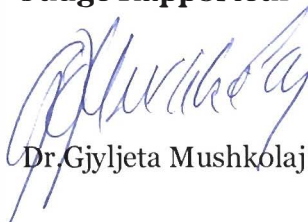
FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3) (h) of the Rules of Procedure, Article 113.7 of the Constitution and Article 47(2) of the Law, and Rule 56 (2) of the Rules of Procedure, on 23 November 2011, 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;
- III. This Decision is effective immediately.

Judge Rapporteur


Dr. Gjyljeta Mushkolaj

President of the Constitutional Court




Prof. Dr. Enver Hasani