



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

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Pristine, 30 January 2012  
Ref. No.RK193/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 30/09**

Applicant

**Agim Iliaz Dyla and Others**

**Constitutional Review of the Decision of the Supreme Court of Kosovo, A.No.  
1360/08, dated 19 June 2009**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicants**

1. Applicants are Agim Iliaz Dyla, Njazi Iliaz Dyla, and Myrteza Iliaz Dyla. Applicants are two brothers and one sister who all reside in Gjakova and are representing themselves.

## **The Contested Decision**

2. The challenged decision is that of the Supreme Court of Kosovo, A.No.1360/08, dated 19 June 2009.

## **Subject Matter**

3. The subject matter of the Referral concerns the request of the Applicants to annul a decision on expropriation of property originally made, in 1969, by the Municipality of Gjakova.

## **Legal Basis**

4. Articles 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Law), and Article 56 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 14 July 2009, the Applicants submitted their Referral to the Court.
6. On 29 January 2010, pursuant to Article 22.2 of the Law and Article 33.2 of the Rules of Procedure, the Court sent a copy of the Referral to the Supreme Court of Kosovo for a reply. The Supreme Court of Kosovo did not file a formal response to the Referral.
7. On 15 June 2010, the Reporting Judge, Gjylieta Mushkolaj, presented her Report to the Review Panel, which was composed of Judges Robert Carolan (Presiding), Snezhana Botusharova, and Kadri Kryeziu.

## **Summary of the facts**

8. The Municipality of Gjakova on 11 June 1969, by a Decision Number 03-477-1-1069 of the Directorate for Economy and Finance, expropriated cadastral parcels No. 4350/1 and 4350/02 from the father of the Applicants. The parcels were expropriated in accordance with the needs of the "Services and Repairs Division of 'Kompresor' – Gjakova," a socially owned enterprise.
9. On 09.04.2003, the Applicants submitted a Request to the Municipal Government of Gjakova to annul Decision 03-477-1-1069, dated 11.06.1969.
10. Not having receiving a decision from the Directorate for Economy and Finance, the Applicants submitted another request for continuance of the proceedings to the Directorate on 05.07.2005.
11. On an unreported date, the Directorate declared itself incompetent to deal with the matter and submitted the case to the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency Related Matters. The Special Chamber, it is alleged, however, never received the case.
12. The Applicants submitted another complaint on the administrative silence of the Directorate. As a result, the Kosovo Cadastral Agency issued Conclusion No. 421/07, dated 17.07.2007, which ordered the Directorate to deliberate on the matter within 15 days of the Conclusion.

13. On 11.09.2008, the Directorate for Property-Legal Matters of the Municipality of Gjakova issued Decision No. 11-465-6/03-08, which rejected the Applicants' request for de-expropriation.
14. The Applicants appealed the decision to the Municipal Government of Gjakova, and, on 05.11.2008, the Mayor of Gjakova issued Decision No. 11-465-06/08-08, which rejected the request for appeal.
15. Applicants then submitted an appeal to the Supreme Court of Kosovo. On 19.06.2009, the Supreme Court issued Judgment A.No. 1360/08, which upheld the Decision of the Directorate for Property-Legal Matters of the Municipality of Gjakova, No. 11-465-6/03-08, dated 11.09.2008.

### **Applicant's Allegations**

16. Applicants complain that Decision No. 03-477/1-1969 of the Directorate for Economy and Finance of the Municipality of Gjakova, which expropriated the disputed land, was made for a business interest rather than for a public interest. The Applicants allege that the public interest was required by law.
17. Applicants also complain that the Directorate for Property-Legal Matters for the Municipality of Gjakova unduly delayed deciding on the matter. Applicants state that this delay included ignoring the time limits prescribed by law and the Kosovo Cadastral Agency.
18. Applicants further allege that the Gjakova Municipal Government and the Supreme Court of Kosovo wrongly determined the applicable law concerning expropriations. The Government and Supreme Court applied the Kosovo Law on Expropriation (Official Gazette of SAPK, No. 21/78), as amended by the Law on Amendments and Supplements to the Law on Expropriation (Official Gazette of SAPK, No. 46/86). Applicants, however, claim that the applicable law was the Serbian Law on Expropriations.
19. For these reasons, Applicants claim that Decision A.No. 1360/08 of the Supreme Court of Kosovo violated Articles 24 and 29 on the Constitution, as well as Article 1 of Protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is incorporated into the Constitution through Article 22.2.

### **Judgment of the Supreme Court**

20. The Supreme Court of Kosovo, in its Judgment A.No. 1360/08, dated 19.06.2009, considered the allegations of Applicants as unfounded. The Supreme Court held that the case file clearly indicated that the expropriation was decided for the needs of the Socially Owned Enterprise and not for the needs of a privately owned business. The Supreme Court further stated that Applicants failed to verify their allegations in any manner.
21. In its Judgment the Supreme Court also held that the de-expropriation request of Applicants was time-barred, because, according to the Law on Expropriation (Official Gazette of SAPK, No. 21/78), the Expropriation Decision No. 03-477/1-1969 became final in 1969. Article 21.4 of the aforementioned law stipulates that a final expropriation decision may be annulled if the expropriating party did not perform the necessary construction/development of the pre-determined facility, provided that the previous owner of the expropriated property submits an adequate request within three years from the moment when the expropriation decision has taken final form.

22. Article 21.5 further stipulates that no request for the annulment of such a decision can be submitted after 10 years have passed from the time when the expropriation decision became final.

### **Assessment of the Admissibility of the Referral**

23. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal or a court of fourth instance in respect to decisions taken by ordinary courts. It is the role of such courts to interpret and apply the pertinent procedural and substantive laws (see, *mutatis mutandis*, *García Ruiz v. Spain*, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).
24. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that Applicants have had a fair trial (see, among other authorities, Report of the Eur. Commission on Human Rights in the case of *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10.07.1991).
25. Having examined the documents submitted by Applicants, however, the Constitutional Court does not find any indication that the proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis* *Vanek v. Slovak Republic*, App. No. 53363/99, ECHR Decision of 31.05.2005). The Supreme Court gave ample reasons why Applicants' claims were unfounded and time-barred. It therefore follows that this Referral is manifestly ill-founded and must be rejected.
26. Finally, as far as the question of restitution of property is concerned, the Constitutional Court refers to the Comprehensive Proposal for the Kosovo Status Settlement. Annex XII of the Settlement, in its Article 2 (Legislation to be Formally Approved During or Adopted After the Transition Period) requires the Assembly to adopt, "as a matter of priority immediately upon the conclusion of the transition period..." *inter alia*, a "Law of Restitution" (Article 2.13).
27. The Court would also like to point out that the Constitution of Kosovo itself, which stipulates in Article 143.3 that "The Constitution...shall be interpreted in compliance with the Comprehensive Proposal for the Kosovo Status Settlement..." The Protection of Property guaranteed by Article 46 must, therefore, also be interpreted by the Court in light of the Settlement.
28. Furthermore, Article 143.1 of the Constitution provides that "All authorities in the Republic of Kosovo shall abide by all of the Republic of Kosovo's obligations under the Comprehensive Proposal for the Kosovo Status Settlement..."
29. As to the issue of property restitution, these provisions mean, *inter alia*, that the Assembly of Kosovo is under the obligation, as a matter of priority immediately upon the conclusion of the transition period (i.e. immediately after 26.07.2007), to adopt a "Law on Restitution." The Court notes, however, that no such law has thus far been adopted by the Assembly of Kosovo.
30. The Court also notes that in its Resolution on Inadmissibility in the case of the Heirs of Ymer Loxha and Sehit Loxha, K.I. 14/09, dated 15 October 2010, the Court reminded that authorities of the Republic of Kosovo of the obligation "to establish an independent mechanism to formulate the policy, legislative and institutional framework for addressing property restitution issues, as required by Annex VII, Article 6.1 of the Comprehensive Proposal for the Kosovo Status Settlement, and the

*Assembly to adopt a Law on Restitution, pursuant to Article 143 of the Constitution in conjunction with Article 2.13 of Annex XII of the Comprehensive Proposal for the Kosovo Status Settlement.”*

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 20 of the Law and Article 56 of the Rules of Procedure by a majority vote,

**DECIDES**

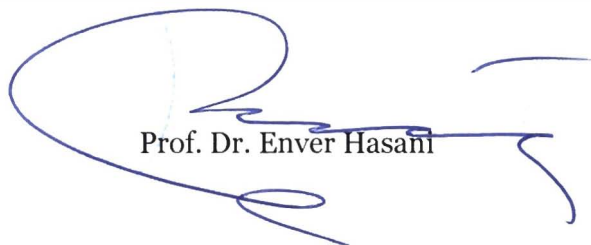
- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Parties; and
- III. This Decision shall be published in the Official Gazette in accordance with Article 20.4 of the Law and is effective immediately.

**Judge Rapporteur**



Dr. Gjyljeta Mushkolaj

**President of the Constitutional Court**



Prof. Dr. Enver Hasani