



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristine, 24 January 2012
Ref. No.: RK189/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 54/11

Applicant

Adem Qamili

**Constitutional Review of the Judgment of the Supreme Court Rev.nr.11/2002
dated 6 February 2002**

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 Adem Qamili from the Municipality of Vitia

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo Rev.nr.11/2002 dated 6 February 2002.

Subject Matter

3. The Applicant Claims there has been a violation of Article 22 Paragraph 2 [which provides for the application of the European Convention on Human Rights, namely Paragraph 1 of Article 6] Article 24 [Right to Equality before the Law], Article 31 [the right to a fair trial] and Article 54 [Right of Judicial Protection] of the Constitution of the Republic of Kosovo (hereinafter the "Constitution").

Legal Basis

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Law on the Constitutional Court"), 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").

Procedure before the Court

5. On 21 April 2011 the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter the "Court")
6. On 21 April 2011 the President appointed Kadri Kryeziu as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova, Prof .Dr. Enver Hasani and Dr Gjyljeta Mushkolaj.
7. On 29 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. On 25 July 2001 the Municipal Court in Vitia by Judgment, C.nr. 53/2001, confirmed the priority right of the Applicant to buy the cadastral parcel no.3089/1 at "Sello-Oborr", a house and yard with a surface of 0.02,20 ha. In reaching this decision the Court annulled an uncertified formal contract, dated 30 April 2001, by which the cadastral property was sold to N.A. by J.S. the authorized representative and custodian of the property for other inheritors.
9. The Municipal Court ordered, *inter alia*, J.S. to conclude a contract for sale of the cadastral property with the Applicant and certify it before the Municipal Court within a deadline of 15 days or it would be subject to forcible execution. The Municipal Court stated that if J.S. failed to comply with this deadline the Judgment would serve as a ground to have the Applicant registered as owner in the property records.
10. The Municipal Court ordered the N.A. to comply with the transfer of ownership rights of the contested cadastral parcel.
11. On 23 October 2001 the District Court of Gjilan in its Decision AC.nr.128/01 rejected an appeal by J.S. and N.A. and confirmed the Judgment C.nr.53/2001.

12. On 6 February 2002 the Supreme Court of Kosovo by its Judgment, Rev.nr.11/2002, granted J.S. and N.A. reversed the Decision of the District Court of Gjilan, Ac.nr.128/2001, and the Decision of the Municipal Court of Vitia C.nr.53/2001. The Supreme Court fully rejected as ungrounded the Applicant's summary claim regarding the confirmation of the presale right to immovable property evidenced as cadastral parcel no. 3089/1, at "Sello-Oborr" and to annul the uncertified contract dated 30 April 2001.
13. The Supreme Court after reviewing the appealed Judgment, pursuant to the provision of Article 386 of the Law on Contested Procedure *SFRY OG No. 4/1977* (hereinafter LCP), found the revision grounded because of erroneous application of the material right in the case.
14. The Supreme Court held that according to Article 4 Paragraph 2 of the Law on Transfer of Immovable Property Official Gazette of Serbia no. 43/81, 24/89, 30/89 and 40/89 (hereinafter "LTIP"), a contract which has not been drafted pursuant to Article 4 Paragraph 1 of the LTIP should not have legal effect. In this case the contract between the parties was not certified by the court so it did not have legal effect therefore it is considered as null and void, and its conclusion did not provide for the presale right either. Pursuant to Article 26 Paragraph 2 of the LTIP, a claim can be filed within a deadline of one year from the day of the conclusion of contract, but in this case there was no valid contract. Therefore the Supreme Court held that the first instance court and the second instance court have erroneously applied the material right.
15. The Supreme Court also held that it reached its Decision because, as indicated in the case files, the claimant did not deposit the immovable property price at the time when he filed the claim and he failed to do so even at the time when the proceedings before the second instance court were ongoing, which was in contradiction with Paragraph 2 of Article 26 of the LTIP.

Applicant's allegations

16. The Applicant alleges that when the Supreme Court of Kosovo in its Judgment Rev.nr.11/2002 of 6 February 2002 unfairly applied the LTIP it violated several of his Constitutional rights; his right to equality before the law guaranteed by Article 24 of the Constitution, his right to a fair trial under Article 31 of the Constitution, his right to judicial protection as guaranteed by Article 54 of the Constitution, and his rights under Article 22 of the Constitution because his right to a fair trial under Article 6 Paragraph 1 of the European Convention of Human Rights was not respected.

Assessment of admissibility

17. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
18. From the documents in the referral it appears that the Judgment of the Supreme Court of Kosovo Ac.nr. 128/2001 was adopted on the 6 of February 2002 which was prior to the Constitution entering into force (which took place on 15 June 2008). The Applicant even states on page 6 of his referral that the Court was not operational when he received the Judgment of the Supreme Court.
19. The Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequently to the entry into force

of the Constitution. Accordingly, the Court cannot deal with the a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denić *et al* of 17 August 2011).

20. It follows that the referral is inadmissible pursuant to Rule 36.3 (h) of the Rules of procedure which provides that a referral may also be deemed inadmissible if the "Referral is incompatible *ratione temporis*", with the Constitution.

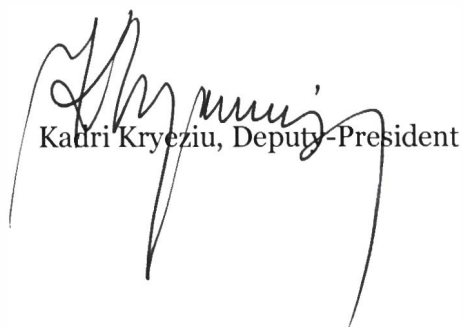
FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, and Rule 36.3 (h) of the Rules of the Procedure unanimously:

DECIDES

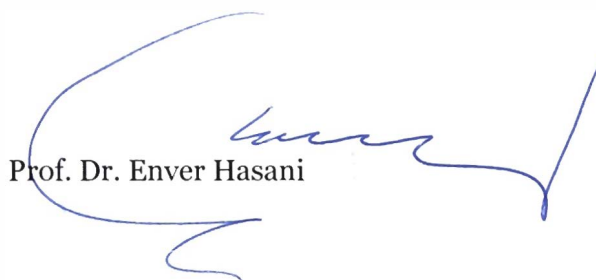
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Kadri Kryeziu, Deputy-President

President of the Constitutional Court



Prof. Dr. Enver Hasani