



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

Prishtina, on 12 April 2016
Ref. No.:RK935/16

RESOLUTION ON INADMISSIBILITY

In

Case No. KI62/15

Applicant

Xhavit Shala

**Constitutional review of Decision Ac. no. 4332/2012 of the Court of
Appeal of 26 November 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Xhavit Shala from village of Mushtisht, Municipality of Suhareka (hereinafter, the Applicant), represented by Mr. Ismet Islami, lawyer practicing in Suhareka.

Challenged decision

2. The Applicant challenges Decision Ac. no. 4332/2012 of the Court of Appeal of Kosovo (hereinafter, Court of Appeal), of 26 November 2014, which was served on the Applicant on 11 December 2014.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated Article 46 [Protection of Property] of the Constitution of Kosovo (hereinafter, the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 15 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 29 June 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 24 July 2015, the Court notified the Applicant and the Court of Appeal about the registration of the Referral.
8. On 29 July 2015, the Basic Court in Prizren notified the Court when the challenged decision was served to the Applicant.
9. On 28 January 2016, the Court requested from the applicant to submit additional documents required to complete his referral.
10. On 15 February 2016, the Applicant submitted to the Court the requested documents.
11. On 15 March 2016 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

12. On 26 October 2005, the Municipal Court in Suhareka (Decision C.no 55/05) approved the claim of the Applicant and obliged the Municipality of Suhareka to compensate the Applicant for the expropriated land. The Municipality of Suhareka submitted an appeal to the District Court in Prizren against the decision of 26 October 2006.

13. On 22 September 2006 the District Court in Prizren (Decision Ac. no. 510/05) quashed the decision of the Municipal Court of 26 of October 2006 and remanded the case for retrial before the first instance court.
14. On 17 September 2010 the Municipal Court in Suhareka (Decision C. nr. 285/2006) rejected as ungrounded the claim of the Applicant.
15. On 5 July 2012, the District Court in Prizren (Decision Ac. no. 598/2010) rejected the appeal submitted by the Applicant and upheld the decision of the first instance court of 17 September 2010.
16. On 16 October 2012, the Municipal Court in Suhareka rejected the request for revision submitted by the Applicant. The Applicant submitted an appeal.
17. On 26 November 2014, the Court of Appeal (Decision Ac. no. 4332/2012) refused the appeal as unfounded and upheld the decision of the Municipal Court of 16 October 2012.

Applicant's allegations

18. The Applicant claims that the Judgment of the Appellate Court violated his right to protection of Property.
19. The Applicant alleges that the Court of Appeal deprived the Applicant from his right to protection of Property, because according to the Applicant: *“it did not notify the applicant concerning the rules provided by the provisions of Article 218 of the Law on Contested Procedure. The Court of Appeal found that the request for revision is impermissible because in the claimant's claim it is stated that the value of the contest is € 100 which is why the Revision is impermissible as the stated value of the contest should have been over € 3.000. Thus, the request for revision was rejected as impermissible which in turn means that the court should have notified the claiming party pertaining to the consequences of setting the value of the contest at € 100”*

Admissibility of the Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
21. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”
22. The Court also refers to Article 49 of the Law, which provides:

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...

23. The Court further takes into account Rule 36 (1) (c) of the Rules of Procedure, which foresees:

“(1) The Court may consider a referral if:

[...]

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”

24. The Court notes that Decision Ac. no. 4332/2012 of the Court of Appeal was rendered on 26 November 2014 and served on the Applicant on 11 December 2014 whereas the Applicant submitted his Referral to the Court over five months later on 15 May 2015.
25. Consequently the Referral was filed with the Court after the expiry of four months from the date when the Decision of the Court of Appeal was served on the Applicant.
26. In this regard, the Court reiterates that the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is of preclusive nature and is established to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See case *O’LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).
27. It follows that the Referral was filed out the deadline provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure and, thus, is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 15 March 2016 unanimously:

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Arta Rama-Hajrizi

