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

Prishtina, on 7 December 2012
Ref.no.:AGJ329/12

JUDGMENT

in

Case no. KI 72/12

Applicant

Veton Berisha and Ilfete Haziri
Constitutional review of the Supreme Court Judgment A.nr.1053/2008, dated 31 of May 2012

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy – President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama – Hajrizi, Judge.

Applicants

1. The Applicants are Veton Berisha and Ilfete Haziri, residing in Prishtina.

Challenged decisions

2. The Applicants challenge the Judgment of the Supreme Court Judgment A.nr.1053/2008, dated 31 of May 2012, and served on the Applicants on 25 July 2012.

Legal basis

3. The Referral is based on Article 113.7 of the Constitution, Articles 20 and 27 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, 15 January 2009, (hereinafter, the Law), and rules 54 and 56.1 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Subject matter

4. The Applicants complain against the demolition of the sheds allegedly owned by the Applicants, via the Decisions of the Directorate of Public Services and Civil Emergencies in the Municipality of Prishtina, and the Mayor of Prishtina, which were upheld by the Supreme Court Judgment.

5. In addition, the Applicants request the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose interim measures pursuant to Article 27 of the Law in order to protect the sheds from being demolished by the Municipal Inspectorate in Prishtina.

Procedure before the Court

6. On 30 July 2012, the Applicants filed the Referral with the Court.

7. On 4 September 2012, the president appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Kadri Kryeziu and Enver Hasani.

8. On 1 October 2012, the Referral was communicated to the Supreme Court and the Mayor of Prishtina.

9. On 5 October 2012, the Applicants were notified of the registration of the Referral.

10. On 30 October 2012, the Applicants were asked to submit additional documents to complete their Referral, namely in relation to the current status of the sheds.

11. On 5 December 2012, the Review Panel deliberated on the report of Judge Rapporteur and recommended to the Court the admissibility of the Referral and the imposition of interim measures.

Summary of the facts in relation to Veton Berisha

12. On 6 July 1990, the Municipality of Prishtina (Decision no. 08-360-247) gave to the Applicant Veton Berisha the use of the apartment "located in Prishtina XXX Block III, Building 4, No.1 on the floor entrance". The apartment "has a total residential area of 43.90 square meters, it contains 2 rooms; 1 room, 1 kitchen, 1 bathroom, 1 WC, ante-room 1, hall, balcony, terrace 1, interior balcony, basement 1, shed and garage".

13. On 16 July 1990, the BVI - ON HOUSING AND COMMERCIAL PREMISSES PRISHTINA and the Applicant signed the contract no.1193/3127 on the use of that apartment. The contract *inter alia* stipulated:

> *"Based on the Decision of the entity giving the apartment, the Municipal Assembly (MA) Prishtina, from Prishtina 08nr.360-247 dated 06.07.1990,the organization delivers, while the tenure rights holder receives into use for an undefined period of time the apartment which is located in Prishtina XXX Block III, Building 4, No.1 on the floor ----entrance. The building has a total residential area of 43.90 square*

meters, it contains 2 rooms; 1 room, 1 kitchen, 1 bathroom, 1 WC, ante-room 1, hall, balcony, terrace 1, interior balcony, basement 1, shed and garage".

"The tenure rights holder will use the apartment – which is the subject matter of this contract together with the members of his family. The tenure rights holder is obliged to pay the rent to the organization in the amount of 40, 00 dinars. He is charged on 01.08.1990, dinars per month in advance, at the latest on the 5th of every month".

"The minutes on the delivery of the apartment to the tenure rights holder, compiled in the presence of both contractual parties on...where situation of the apartment has been established upon receiving the apartment for use are also an integral part of this Contract".

14. On 2 August 1992, the Applicant bought (contract no.06-360-9/92-7) the said apartment from the Municipality of Prishtina as the seller. The purchase contract was concluded on the basis of the contract on the use of apartment no.1193/3127 concluded on 16 July 1990. The purchase contract *inter alia* stipulated:

"*Municipal Assembly of Prishtina with address Prishtina Trepcanska No.2 (hereinafter: the seller) represented by Novica Sojevic, MA President, and Veton Berisha (Applicant) from Prishtina III Residential Block No.4 (hereinafter: Purchaser)"*

"Contractual parties ascertain that the seller is the holder of the disposition of apartment No.4 in the street III Residential Block no.4 in Prishtina with surface 43,90 square meters, located on land plot KOB, ZKUL and consisting of 2 rooms, 1 kitchen, 1 bathroom with WC, 1 anteroom, 1 hallway, 1 terrace, 1 shed and other premises used by the Purchaser (Applicant) as the holder of occupancy rights, (Lesee indefinitely)under a contract for use of apartment No.1193/3127, concluded 16 July 1990".

"Contractual parties agree that the purchase price of property under article 1 of this contract on day 2 August 1992 amounts to 88 810 dinars (letters eighty-eight thousand eight hundred and ten). Seller sells and the Buyer purchases real property under article 1 of this contract at a price of 2.023 dinars per square meter, making a total agreed price by the amount of 78.597 dinars (letters seventy-eight thousand five hundred and ninety seven). Contract Price specified in paragraph 1 of this Article is determined after the prescribed impairment. An integral part of this contract is the contract price calculation of the apartment".

"The rights and obligations of the Purchaser under this contract shall be transferred to his heirs".

"On the date of this Contract shall cease all rights and obligations of tenancy rights (lessee indefinitely) and on that basis concluded a contract for use of apartments in Article 1 of this contract, provided that the Purchaser is obliged to bear the costs of current maintenance in the manner prescribed the law".

"Contractual parties agree that the cost of certification of the Contract by the court and registration of property rights and the encumbrance of mortgage in public records shall be borne by the Purchaser (Applicant)".

15. On 14 July 1995, the Municipal Court in Prishtina, in a law-suit for delivery of real estate, by Judgment P.no.866/94 ordered a third party to handover the shed to the Applicant for use and disposal. The Municipal Court of Prishtina reasoned:

> *"On the basis of contract ov.br.12709/93, dated 12 February 1993, pertinent to the apartment purchase, the court found that the plaintiff (the Applicant) as the holder of dwelling rights from the Municipality of Prishtina, as the holder of the right of disposal, bought the apartment in the third block of flats No. 4, a surface area of 43.90 square meters which consists of two rooms, one kitchen, one bathroom, a hallway and a shed".*
>
> *"From Pl.No.1000 KO Prishtina, from 3 February 1995, the court found that the plaintiff (the Applicant) is registered in the Municipal Geodetic Administration in Prishtina, as the owner of purchased apartment".*
>
> *"The provision of Article 20, paragraph 1 of the Basic Property Relations stipulates that ownership is acquired by the law, based on legal affairs and inheritance. As the plaintiff (Applicant) acquired the use of the flat jointly with the shed in dispute, and since he bought them based on the afore-mentioned contract he has property rights over the* shed too, *as a part of the capital".*

16. On 30 August 2002, the Directorate of Finance and Property MA Prishtina stipulated (Decision 02 No.03-2/2743) *inter alia* the following:

> *"To Veton Berisha from Prishtina is DETERMINED a tax on transaction of immovable property in the value of 100 euro.*
>
> *The basis to determine this tax derives from the Judgment on the verification of purchase of immovable property verified in the Municipal court of Prishtina no.866/94 dated 14 July 1995.*
>
> *...From the documentation it can be seen that the Judgment on the verification of the purchase of immovable property between V.K and Veton Berisha , it has as the object of purchase 1 unit (plot-s) recorded in the possession list no.III Municipal Cadastre III utility shed, where each unit is paid 100 euro".*

Summary of facts in relation to Ilfete Haziri

17. On 1 February 1977, SAI (Self-governing Association of Interest) for Residential and Business Premises in Prishtina and Nazmi Haziri (the late spouse of Ilfete Haziri) signed the contract no. 1193/3125 on the use of apartment. The "apartment has a total surface area of 43, 90 square meters and consists of 2 bedrooms, 1 kitchen, 1 bathroom, 1 toilet, 1 lobby, hallway, balcony, terrace, utility room, cellar, pantry and garage".

18. On 11 April 1996, the Directorate for Legal and Property Affairs within the Municipality of Prishtina, issued verification no.2218/96, whereby Ilfete Haziri is recognized as as a purchaser. In addition, the quittance shows that Ilfete- Haziri, Block 3, Number 3, Prishtina, has paid for the purpose of buying an apartment.

Summary of the facts in relation to both Applicants

19. On 20 June 2008, the Directorate of Public Services and Civil Emergencies – Inspectorate Section in the Municipality of Prishtina ordered (Decision 07 No.355-

15711) the immediate "demolition of 3 sheds located on a public space". The Inspectorate Section reasoned that "the sheds are located in public space" and "are being misused for various physiological needs".

20. On 30 June 2008, the Applicants appealed against that Decision to the Head of Directorate of Administration and Personnel of the Municipality of Prishtina. They "harshly complain about the way and procedure of the action of a person that compiled and approved this Decision" and allege that "prior to the Decision on the demolition, the above-mentioned body should have analyzed issues related to documentation of the given premises, at least to request in writing from the owner of the premises whether there is any documentation on the ownership".

21. In supporting that appeal, they submitted "evidences regarding ownership over the given sheds", namely: the cadastral recording of the part of Dardania quarter, where one could see existence of the shed; two contracts on the use of the apartment, where could be seen existence of the shed; two sales contracts of the apartment; Judgment nr.866/94 (which it is about the shed); Decision of the Directorate of Finance and Property (which is about the shed); and Decision of the Directorate of Public Services and Civil Emergencies, Municipal Inspectorate Section.

22. On 14 July 2008, the Mayor of Prishtina, rejected the appeal, "because based on the inspection control carried out by authorized inspectors, it was found that the sheds located on the public space are being misused in various ways, therefore for purposes of protection of public space it was decided to conduct the demolition of the above-mentioned premises, and that the appellants do not support with any evidence whatsoever the fact that these premises were constructed based on a construction permit".

23. On 20 August 2008, the Applicants filed an appeal with the Supreme Court of Kosovo thereby requesting it "to confirm that the plaintiffs Veton Berisha and Ilfete Haziri with the address "Musine Kokollari nr 3 and 4 are THE OWNERS of this immovable property – THE SHEDS, and of the houses according to the sales contracts and other documentation".

24. The Applicants alleged before the Supreme Court that "Despite the fact that we have submitted an appeal and have presented these arguments – EVIDENCE, the second instance has rejected the appeal of the plaintiffs [Applicants], and had not even taken into consideration the evidence".

25. The Applicants further alleged that they "are the permanent and legitimate possessors of these sheds and houses, meaning of this immovable property". Therefore, they asked the Supreme Court "to present and reveal the proposed evidence in the deliberation session".

26. On 31 May 2012, the Supreme Court of Kosovo (A.no.1053/2008), rejected the Applicants appeal, finding that *"the disputed decision is fair and based on the law, whereas claims of the lawsuit have no impact on establishing of another factual situation"*.

27. On 20 September 2012, the Applicants, upon the request of the Court, informed orally that the sheds are still intact and not demolished.

Applicants' allegations

28. The Applicants claim that their rights to a fair and impartial trial as well as their right to property were violated by public authorities; but they do not invoke any specific constitutional provisions. However based on their statements the Court considers that

they claim a violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution.

29. The Applicants claim that the Supreme Court Judgment A.no.1053/2008 dated 31 May 2012, is wrongful because it rejected the Applicants lawsuit for the verification of ownership rights for which they claim to possess indisputable proof.

30. The Applicants claim that the Supreme Court by Judgment A.no.1053/2008 dated 31 May 2012, did not take into account all the proof set forth by them and which includes (1) the contract for the purchase of the apartment which also includes the sheds, and (2) the final judgment No. 866/94 dated 14 July 1995 by the Municipal Court in Prishtina.

31. Moreover, the Applicants require the Constitutional Court:

    a) "to annul the judgment of the Supreme Court A.no.1053/2008 dated 31 May 2012, (...) and valid verdict by which the ownership is certified"; and

    b) to impose interim measures pursuant to Article 27 of the Law in order "to protect the premises (the shed) from demolition by the Municipal Inspectorate of Prishtina. This measure is necessary to avoid dangers or irreparable damages".

Admissibility of Referral

32. In order to be able to adjudicate the Applicants Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

33. Article 113.1 of the Constitution provides:

    "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".

34. Article 113.7 of the Constitution provides:

    "Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law".

35. In the instant case, the Court notes that the Applicants have sought recourse to protect their rights and interests in administrative procedure before two bodies within the municipality of Prishtina, and finally before the Supreme Court of Kosovo. The Applicants, therefore are authorized parties and have exhausted all legal remedies afforded to them by the applicable law in Kosovo, and consequently meet the admissibility requirement set up by Article 113.1 and 113.7 of the Constitution.

36. Article 49 of the Law 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. 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".

37. From the submitted documents it can be inferred that the Applicants were served with the Supreme Court decision on 25 of July 2012, and filed their Referral with the Court on 30 July 2012. The Referral was filed in a timely manner as required by Article 49 of the Law.

38. In the case at issue, the Court is satisfied that the cumulative procedural requirements to be an authorized party, filing of the referral within the legal deadline and exhaustion of legal remedies are met. The Referral is admissible; the Court will now delve into and assess the merits of the case.

The merits

39. The Applicants claim that the Supreme Court (Judgment A.no.1053/2008, dated 31 May 2012) did not take into account all the proof set forth by them on ownership rights and which included, namely, the contract for the purchase of the apartment which also includes the sheds.

40. In fact, the Court notes that the Applicants set forth the following documents: the cadastral recording of the part of Dardania quarter, where one could see existence of the sheds; two contracts on the use of the apartment, where could be seen existence of the sheds; two sales contracts of the apartment; Judgment nr.866/94 (which is about the sheds); Decision of the Directorate of Finance and Property (which is about the sheds); and Decision of the Directorate of Public Services and Civil Emergencies, Municipal Inspectorate Section.

41. The Applicants argued before the Supreme Court that "despite the fact that we (...) have presented (...) EVIDENCE, the second instance has rejected the appeal of the plaintiffs, and had not even take into consideration the evidence". They further concluded asking the Supreme Court "to present and reveal the proposed evidence in the deliberation session" and "to confirm that the plaintiffs Veton Berisha and Ilfete Haziri (...) are THE OWNERS of this immovable property – THE SHEDS, and of the houses according to the sales contracts and other documentation".

42. The Court notes that the Municipal Inspectorate Section decided to demolish the sheds in question in order to protect public space and to stop their misuse. However, the said decision by the Municipal Inspectorate Section was made without establishing first if there were any property issues in relation to the sheds.

43. The court notes that the Mayor of Prishtina reasoned that the sheds were being misused and that they were ordered to be demolished in order to protect the public space, and that the ownership arguments adduced by the Applicants did not in any way justify with proof that the demolished sheds were built based on construction permit. The Mayor did not provide an express reply to the submissions of the Applicants in relation to the ownership of the sheds.

44. Furthermore, the Court notes that the Supreme Court reasoned its judgment as follows:

> *"The Court established that claims of the plaintiffs are ungrounded, because they are in contradiction with the factual situation confirmed by the administrative bodies and based on the evidence contained in the case file. The plaintiffs have failed to provide any arguments whatsoever to support their claims, while the evidence they have presented has no impact on taking another decision on this legal matter".*
>
> *"Article 56.1 of the Law on Administrative Procedure provides that the obligation to submit evidence over the claims is with the interested parties to administrative proceeding, irrespective of the obligation of the administration to make available to the parties the evidence at its disposal".*

"In Court's view, the disputed decision is clear and understandable and contains sufficient reasons for decisive facts, acceptable to this Court as well. Starting from the situation related to this matter, the Court has established that factual situation of this administrative matter has been confirmed correctly and that the law has not been violated to the detriment of the plaintiffs, therefore has not accepted claims of the plaintiffs, because they have no impact on establishing another situation, other than that what has been confirmed by administrative bodies".

"Pursuant to all the aforesaid, the Court found that the disputed decision is fair and based on the law, whereas claims of the lawsuit have no impact on establishing of another factual situation"

45. The Supreme Court did not provide either an express reply in relation to the Applicants submissions on property rights over the sheds in question, but rather stated that "*claims of the plaintiffs are ungrounded"* and "*the plaintiffs have failed to provide any arguments whatsoever to support their claims, while the evidence they have presented has no impact on taking another decision on this legal matter".*

46. The Supreme Court does not describe what were the claims, what was "*the evidence they have presented",* what kind of "*impact on taking another decision",* nor what was the*" legal matter"* at stake. These are general statements without legal reasoning and logical foundation, as the argument made by the Applicants and the evidence presented by them has to do with the heart of the case, meaning the contested demolition of a property which allegedly belongs to the Applicants.

47. Article 31 [Right to Fair and Impartial Trial] of the Constitution establishes that

1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations (...)*

48. On the other side, paragraph 1 of Article 6 [Right to a fair trial] of the the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) states that

In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

49. Furthermore, the right to a fair hearing, as embodied in the constitutional texts and Article 6 of the Convention, is of fundamental nature to safeguard fundamental rights, in this case the right to property.

50. In fact, Article 46 [Protection of Property] establishes that

1. *The right to own property is guaranteed.*

2. *Use of property is regulated by law in accordance with the public interest.*
3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is*

followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*

51. In addition, Article 1 of Protocol 1[Protection of property] of the Convention states that:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

52. Finally, Article 53 [Interpretation of Human Rights Provisions] establishes 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.

53. Therefore, the Applicants have the right to obtain a court ruling in conformity with the law and decisions of the European Court of Human Rights (the ECtHR) when "disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo". This right includes the obligation for courts to provide reasons for their rulings with reasonable grounds at both procedural and material level. The right to have reasons for court decisions requires explanations with plausible and legally well constructed reasons for the decision taken in each individual case.

54. Thus the right to a fair hearing includes the right to a reasoned judgment. The ECtHR has held that, while authorities enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6(1) of the Convention, their courts must "indicate with sufficient clarity the grounds on which they based their decision". (See *Hadjianastassiou v. Greece*, ECtHR Judgment of 16 December 1992, paragraph 33).

55. In a recent judgment, the ECtHR reiterated that "judgments of courts and tribunals should adequately state the reasons on which they are based". (See *Tatishvili v Russia*, ECtHR Judgment of 22 February 2007, paragraph 58).

56. Article 31 of the Constitution and Article 6 of the Convention oblige courts to give reasons for their judgments. However, it does not mean as requiring a detailed answer to every argument or question (See Van de Hurk v Netherlands, 19 April 1994, paragraph 61). The extent to which this duty to give reasons applies may vary according to the nature of the decision. Nevertheless, if a submission is fundamental to the outcome of the case, as it is property in a case of demolition, the court must then specifically deal with it in its judgment.

57. A further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the

administration of justice. (See *Tatishvili v Russia*, ECtHR Judgment of 22 February 2007, paragraph 58).

58. In addition, the right to obtain a court decision in conformity with the law includes the obligation for the courts to provide reasons for their rulings with reasonable grounds at both procedural and substantive level. Providing reasons requires explanations with plausible and legally constructed reasons for the decision taken in each individual case, which should include both the legal criteria and factual elements in support of the decision.

59. In Hiro Balani v. Spain, the applicant had made a submission to the court which required a specific and express reply. The court failed to give that reply making it impossible to ascertain whether they had simply neglected to deal with the issue or intended to dismiss it and if so what were the reasons for dismissing it. This was found by the ECtHR to be a violation of Article 6 (1) of the Convention.

60. Consequently, the statement of reasons must enable the person for whom the decision is intended and the public in general, to follow the reasoning that led the court to make a particular decision.

61. Thus, the justification of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on the one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them.

62. The Court notes that, in the case at issue, the reasoning of the Supreme Court is not sufficiently expressed and elaborated, as the relationship between pertinent evidence, relevant assessment of applicable legal provisions and merit findings is not clearly and completely established.

63. Thus, the Court considers that the failure of the Supreme Court to provide clear and complete answers vis-à-vis crucial property submissions is in breach of the Applicants rights to be heard and right to a reasoned decision, as a component of the right to a fair and impartial trial.

64. Therefore, the Court concludes that there is a violation of Article 31 [Right to fair and Impartial Trial] of the Constitution, in connection with paragraph 1 of Article 6 [Right to a fair trial] of the Convention.

Interim Measures

65. As abovementioned, the Applicant requested from the Court to impose interim measure, "pursuant to Article 27 of the Law No. 031L-121 on the Constitutional Court concerning the case that is the matter in the proceedings to protect the premises (the sheds) from demolition by the Municipal Inspectorate of Prishtina". The Applicant further states that "this measure is necessary to avoid dangers or irreparable damages".

66. The Court also concludes that the request on interim measure is grounded and justified in a subject matter dealing with immovable property. Furthermore, the Court considers that an eventual pecuniary compensation cannot redress irreparable damage done to the Applicants should the sheds be demolished, because immovable property is unique and the sheds are unique too.

67. In fact, the subject matter of the case deals mainly with a contested ordered of demolition of the sheds allegedly owned by the Applicants, via the Decisions of the Directorate of Public Services and Civil Emergencies in the Municipality of Prishtina and the Mayor of Prishtina, which were upheld by the Supreme Court Judgment.

68. The Court considers that the alleged property and the ordered demolition are related legal matters and intertwined into each other and, thus, it appears that Decision of the Mayor of Prishtina 01.No.07-15711, of 14/07/2008, by which the demolition was ordered and the implementation of the judgment of the Supreme Court A.nr.1053/2008, dated 31 of May 2012, may result in unrecoverable damages for the Applicants by executing the abovementioned demolition.

69. Therefore, the Court, pursuant to Article 116(2) of the Constitution and Article 27 of the Law, on 5 December 2012, without prejudging the final outcome of the disputed matter, decides to grant the requested interim measures, from the date of the adoption of a Decision until final reconsideration of the Supreme Court and immediately suspending the implementation of the order of demolition as confirmed by the Judgment of the Supreme Court.

FOR THESE REASONS

The Constitutional Court, in its session of 5 December 2012, unanimously:

I. DECLARES the Referral admissible.

II. HOLDS that there has been a breach of Article 31 [Right to Fair and Impartial Trial] in conjunction with paragraph 1 of Article 6 [Right to a Fair Trial] of the European Convention on Human Rights.

III. DECLARES invalid the Judgment of the Supreme Court of Kosovo A.nr.1053/2008 of 31 of May 2012.

IV. REMANDS the Judgment of the Supreme Court for reconsideration in conformity with the judgment of this Court;

V. GRANTS the request for interim measure until the time the Supreme Court of Kosovo reconsiders the matter as per *ratio decidendi* of this Court.

VI. REMAINS seized of the matter pending compliance with that order;

VII. ORDERS this Judgment be notified to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VIII. DECLARES that this Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Almiro Rodrigues Prof. Dr. Enver Hasani