



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

Pristina 3 April 2013  
Ref. No.:RK402/13

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI114/12**

Applicant

**Kastriot Hasi**

**Request for constitutional review of the Conclusion of the Directorate for  
Urbanism and Environmental Protection of the Municipality of Gjakova, no.  
07/351-8460, of 24 January 2011**

### 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.

#### **Applicant**

1. The Applicant is Mr. Kastriot Hasi from Gjakova, residing in Gjakova, "Aleksander Mojsiu" Street, no number.

### **Challenged decision**

2. The challenged decision of the public authority is the Conclusion of the Directorate for Urbanism and Environmental Protection of the Municipality of Gjakova, no. 07/351-8460, of 24 January 2011, which the Applicant received in an unspecified date.

### **Subject matter**

3. The subject matter of the Applicant's Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), filed on 8 November 2011, is constitutional review of the Conclusion of the Directorate for Urbanism and Environmental Protection of the Municipality of Gjakova, no. 07/351-8460, of 24.01.2011, by which the Applicant was notified that this Directorate had terminated the procedure of issuing a permit for construction of a multi-storey collective housing building in the cadastral parcels no. 382/2 and 382/4, in the Cadastral Zone Gjakova-City, which was initiated by the request of Mr. Hasi.

### **Legal basis**

4. Article 113.7 of the Constitution, Articles 22 and 27 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

### **Procedure before the Court**

5. On 8 November 2012, the Applicant filed his Referral with the Court. The Referral was registered in the Court's respective register under no. KI 114/12.
6. On 11 December 2012, by decision GJ.R.KI114/12, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur, and by decision KSH114/12, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Prof. Dr. Enver Hasani (members).
7. On 11 December 2012, the Court notified the Applicant of the registration of the Referral with the relevant Court register.
8. On 20 December 2012, the Constitutional Court received by mail additional documentation filed by the Applicant, which consists of a copy of a plan, and sketches of parcels in which construction was to take place and of the object the Applicant had intended to develop.
9. On 6 March 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of the facts**

10. On 29 May 2008, the Directorate for Urbanism and Environmental Protection of the Municipality of Gjakova, upon review of the application filed by Mr. Kastriot Hasi for urban permit and multi-storey housing building permit in the city of Gjakova, issued a notification no. 07-351-1956, by which Mr. Hasi was notified that for the cadastral zone for which he had applied to obtain a multi-storey building permit, there is a design plan of the Municipality, approved on 29 August 2001, which allows "construction of existing buildings, plus one floor" in the cadastral parcels which he owned.

Nevertheless, as Mr. Hasi had applied for a multi-storey building permit, the Municipality requested from Mr. Hasi to supplement the application – namely to obtain the consent from the neighbors for constructing his building.

11. The Municipality requested from Mr. Hasi to obtain and submit to the Municipality the consent of four neighbours, namely: 1) Consent of the Municipal Court in Gjakova, owner of parcels 382/1 and 383/1, cadastral zone Gjakova-City, that bordered on the parcel in which Mr. Hasi was planning to build his multi-storey building; 2) Consent from the neighboring owner of cadastral parcel 382/3; 3) Consent of the western neighbor; and 4) Consent of the northern neighbor, Mr. Selim Tolaj.
12. The Municipality emphasized that obtaining and submission of such “consents in written is a primary condition for review and analysis of the case, for further procedure in issuing the urban and building permits”. Further, the Municipality noted that failure to submit such consents would result in the required permits not being issued.
13. On 29 May 2008, Mr. Hasi requested in writing the consent from the neighboring Municipal Court in Gjakova, but failed to obtain a positive reply, since the reply of the Court was that the design plan of the city did not allow for multi-storey buildings in those parcels.
14. On 30 June 2008, the Municipality of Gjakova – Directorate for Urbanism and Environmental Protection issued a Conclusion no. 07/351-1956, thereby terminating the Procedure initiated by application of Mr. Kastriot Hasi from Gjakova, on issuance of multi-storey housing construction permit in Gjakova, since pursuant to the request of the Municipality on supplementing the application, the Applicant had failed to submit written consents of the neighbors: Municipal Court in Gjakova, western and northern neighbors, as per conditions set forth in the Municipality’s request for supplementing the case file.
15. The Conclusion also noted that in case of eventual compliance with the conditions set forth by the Municipality, Mr. Hasi would be able to reapply for construction permit.
16. On 6 December 2010, the Directorate for Urbanism and Environmental Protection of the Municipality of Gjakova, upon review of a new application by Mr. Kastriot Hasi for urban permit and multi-storey construction permit in the City of Gjakova, issued a notification no. 07-351-8460, by which it required from the Applicant to supplement the application – namely obtain consents of neighbors for construction of his building, the same requirements as mentioned in paragraph 11 of this Resolution.
17. On 8 December 2010, Mr. Hasi filed a written request to the Municipal Court in Gjakova, thereby requiring a written consent for constructing a multi-storey building, as per requirements of the Municipality of Gjakova, and again received a negative reply, with the same reasoning that multi-storey construction is not allowed in the parcels in which he was planning to build.
18. On 24.01.2011, as a result of failure to submit consent of the Municipal Court (since in the meantime Mr. Hasi had obtained written consents of other neighbors), the Municipality of Gjakova – Directorate for Urbanism and Environmental Protection issued a **Conclusion** no. 07/351-8460, thereby terminating procedure initiated by Mr. Kastriot Hasi from Gjakova, for issuing a building permit for a multi-storey building in Gjakova, since the Applicant had not complied with the Municipality’s request for supplementing the case file, namely he failed to produce the written consent of the neighboring Municipal Court in Gjakova.

19. In the legal advice of this Conclusion, it is provided that the discontented party is entitled to appeal against the conclusion, within a time limit of 30 days of its receipt, to the Ministry of Environment and Spatial Planning in Prishtina.
20. On 15 November 2012, Mr. Hasi received a reply from the Secretariat of the Judicial Council, in which it was stated that the Municipal Court in Gjakova and the Judicial Council on its behalf, cannot issue a positive consent for the development of the multi-storey building that Mr. Hasi is requesting as long as the Municipality of Gjakova does not have a detailed urban plan, whereas the design plan of the Municipality which is currently in force does not allow high-rise buildings, and therefore, neither the Municipal Court nor the Judicial Council can go beyond the law.

### **Applicant's allegations of constitutional violations**

21. The Applicant claims that by conclusions of the Municipality and notifications of the Municipal Court, he has been denied his right to construct in his own property, although he has not specified clearly which constitutional right has been violated.
22. The Applicant further states that he feels he is victim of disagreements between the Municipal Court in Gjakova and the Municipality of Gjakova, because due to the bodies laying responsibility on each other, he cannot develop the building as planned.

### **Assessment of the admissibility of the Referral**

23. 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 as further specified in the Law and the Rules of Procedure.
24. In relation to the above, 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."*
25. In this respect, the Court finds that Mr. Hasi is a citizen of Kosovo, he is an individual, and he claims that Municipality's conclusions and notifications of the Municipal Court have violated his rights guaranteed by the Constitution, and therefore, it will review the Referral within the legal bounds of Article 113.7 (Individual Referrals) of the Constitution of Kosovo.
26. Consequently, in accordance with the foregoing paragraph, before addressing the Constitutional Court, Mr. Hasi should have exhausted all legal remedies available under the law.
27. Always in due account of the case files presented by the Applicant, the Court notes that the consents required by the Municipal Court in Gjakova are "documents required with a view of meeting conditions for obtaining a construction permit", therefore, it is clear that the essential request of the Applicant is related to the "CONSTRUCTION PERMIT", which in accordance with the applicable law is issued by the Municipality.

28. In determining whether the Applicant has exhausted legal remedies available, in relation to the subject matter of the issue raised before the Constitutional Court, the Court takes into consideration the applicable legislation, more specifically:

**The Law on Local Self-Government (2008/03-Lo40)**

**Article 17. Own Competencies**

17.1 Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation in the following areas:

(.....)

d) implementation of building regulations and building control standards;

**Article 74. Objectives of the Administrative Review**

The administrative review of the municipalities has the following objectives:

b) to ensure the lawfulness of the activities of local self-government bodies;

**Article 76**

**Supervisory Authorities**

76.1. The ministry responsible for the local government is the supervisory authority unless; the responsibility for the review of municipalities is assigned by law to the responsible ministry or institution with respect to a specific field.

**Statute of the Municipality of Gjakova**

29. The Statute of the Municipality of Gjakova also contains relevant provisions on this issue, specifically the following provisions:

**Article 1**

Statute of the Municipality of Gjakova (hereinafter: the Statute) shall be the highest legal act of the Municipality, approved by the Municipal Assembly, in accordance with the Article 12 item 3 of the Law on Local Self-Government.

**Article 55**

**Directorate for Urbanism and Environmental Protection**

**This Directorate shall be responsible for:**

(.....)

i) Proceeding applications for issuance of construction permits, and determination of urban conditions for the implementation of MDP, UDP, Regulatory Plans and other plans approved by the Assembly;

- j) provide records on sizes and land use of given construction parcels, or development complex and other features of construction – issuance of urban consent and urban permit,
  - k) Issuance of construction and use permits
30. Based on the legal provisions quoted above, the Court concludes that:
- a) Construction permits are issued by the Municipality (Directorate for Urbanism and Environmental Protection)
  - b) Construction permits are an administrative act issued by a competent body, in administrative procedure;
  - c) In case of rejection of permit, or termination of procedure by conclusion, as is the situation in the present case, there is a legal remedy of appeal
  - d) That the legal remedy, according to the Law on Local Self-Government, is filed with the relevant Ministry, which in the present case, according to the legal advice of the Municipality, given with the Conclusion no. 07/351-8460, of date 24.01.2011, is the Ministry of Environment and Spatial Planning (hereinafter: MESP).
31. Furthermore, in case of a negative reply from the MESP, the discontented party is entitled to initiate an administrative conflict proceeding with the competent court, where the legality of administrative acts would be reviewed.
32. Based on the case files presented by the Applicant, the Court does not question the fact that the legal remedies available and provided by law were not used by Mr. Hasi, instead, he filed requests and complaints with the court, and then with the Judicial Council, persisting to obtain a consent for construction of a building from the Municipal Court, as requested by the Municipality of Gjakova.
33. The Court notes that the purpose of the rule on the exhaustion of legal remedies provided by law is not only a constitutional obligation, deriving from the legal definition of Article 113.7, but it is also intended to afford the possibility to the national authorities, and more importantly to the courts and administrative bodies, to prevent and put right the alleged violations of the Constitution. This is also the position of the European Court of Human Rights and it is based on the assumption reflected in Article 13 of the European Convention for Protection of Human Rights, according to which the national legal order will provide for effective legal remedy for the violation of the rights that are guaranteed by the Convention (*Selmouni v. France* [GC], § 74; *Kudła v. Poland* [GC], § 152; *Andrášik and others v. Slovakia* [Judg.]).
34. The Constitutional Court has a subsidiary role in comparison to regular national judicial or administrative systems, and it is desirable that domestic courts or competent administrative bodies with effective decision making competence have initially a possibility to decide on issues of compliance of domestic law with the Constitution (see Decision of ECHR A, *B and C v. Ireland* [GC], § 142).
35. In these circumstances, the Applicant has not demonstrated that he has exhausted all legal remedies available and provided by law, and therefore, in compliance with Rule 36 paragraph 1 item a, the Court concludes that it must reject the Referral as premature, and

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 56 (2) of the Rules of Procedure, on 6 March 2013, 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 on the Constitutional Court;
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

  
Dr. sc. Kadri Kryeziu



  
Prof. Dr. Enver Hasani