



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

Prishtina, 5 March 2014
Ref. No.: RK 566/14

RESOLUTION ON INADMISSIBILITY

in

Cases No.

**KI161/13, KI162/13, KI164/13, KI165/13, KI166/13, KI167/13, KI168/13,
KI169/13, KI170/13, KI171/13, KI172/13, KI173/13, KI174/13, KI175/13,
KI176/13, KI177/13, KI178/13 and KI179/13**

Applicants

Ramiz Isufi and 17 other individuals

**Constitutional Review
of the 18 Judgments of the Supreme Court of 14 June 2013**

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

The Applicants

1. The following Referrals are submitted by the following Applicants:

- | | |
|--------------------------------|--------------------------------|
| 1. Ramiz Isufi (KI161/13) | 10. Qama Ramaj (KI171/13) |
| 2. Zenullah Pirraku (KI162/13) | 11. Murtez Xhehaj (KI172/13) |
| 3. Fehmi Gecaj (KI164/13) | 12. Ferat Gjoka(KI173/13) |
| 4. Qazim Zogaj (KI165/13) | 13. Ilir Haziri (KI174/13) |
| 5. Lulzim Qorolli (KI166/13) | 14. Mehdi Gjoka (KI175/13) |
| 6. Sami Qorri (KI167/13) | 15. Azemine Hasi (KI176/13) |
| 7. Rusha Uljeviq (KI168/13) | 16. Imer Zeneli (KI177/13) |
| 8. Fevzije Seferaj (KI169/13) | 17. Mevlude Zymberi (KI178/13) |
| 9. Qamil Dragaj (KI170/13) | 18. Asllan Seferaj (KI179/13) |

(Hereinafter: the Applicants), with residence in Glllogoc.

2. Ramiz Isufi is represented by Mr. Zenullah Pirraku (KI162/13), also an Applicant before the Court.
3. The 16 other Applicants are represented by Mr. Feriz Gervalla, a practicing lawyer from Prishtina.

Challenged decisions

4. The Applicants challenge the following Judgments of the Supreme Court of 14 June 2013:

- (1) Ramiz Isufi (KI161/13), Rev.99/2013, served on the Applicant on 27 September 2013.
- (2) Zenullah Pirraku (KI162/13), Rev.109/2013, served on the Applicant on 27 September 2013.
- (3) Fehmi Gecaj (KI164/13), Rev.96/2013, served on the Applicant on served on the Applicant on 30 September 2013.
- (4) Qazim Zogaj (KI165/13), Rev.100/2013, served on the Applicant on 30 September 2013.
- (5) Lulzim Qorolli (KI166/13), Rev.110/2013, served on the Applicant on 30 September 2013.
- (6) Sami Qorri (KI167/13), Rev.98/2013, served on the Applicant on 30 September 2013.
- (7) Rusha Uljeviq (KI168/13), Rev.106/2013, served on the Applicant on 30 September 2013.

- (8) Fevzije Seferaj (KI169/13), Rev.103/2013, served on the Applicant on 30 September 2013.
- (9) Qamil Dragaj (KI170/13), Rev.111/2013, served on the Applicant on 30 September 2013.
- (10) Qama Ramaj (KI171/13), Rev.97/2013, served on the Applicant on 30 September 2013.
- (11) Murtez Xhehaj (KI172/13), Rev.104/2013, served on the Applicant on 30 September 2013.
- (12) Ferat Gjoka (KI173/13), Rev.113/2013, served on the Applicant on 30 September 2013.
- (13) Ilir Haziri (KI174/13), Rev. 108/2013, served on the Applicant on 30 September 2013.
- (14) Mehdi Gjoka (KI175/13), Rev. 105/2013, served on the Applicant on 30 September 2013.
- (15) Azemine Hasi (KI176/13), Rev. 101/2013, served on the Applicant on 30 September 2013.
- (16) Imer Zeneli (KI177/13), Rev. 107/2013, served on the Applicant on 30 September 2013.
- (17) Mevlude Zymberi (KI178/13), Rev. 102/2013, served on the Applicant on 30 September 2013.
- (18) Asllan Seferaj (KI179/13), Rev. 112/2013, served on the Applicant on 30 September 2013.

Subject matter

5. The subject matter is the request for constitutionality review of eighteen Judgments of Supreme Court of 14 June 2013, in which cases the Supreme Court decided to partly approve the revision filed by the Municipality of Glllogoc and to amend the Judgments of the District Court in Prishtina and Judgments of the Municipal Court in Glllogoc, whereby the amounts for compensation of demolished business premises were reduced and the claims for compensation of non-material damage filed by the Applicants were rejected as ungrounded.

Legal basis

6. The Referrals are based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 37 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 17 October 2013, the Applicants Ramiz Isufi (KI161/13) and Zenullah Pirraku (KI162/13) submitted their Referrals to the Court.
8. On 22 October 2013, the Applicants Fehmi Gecaj (KI164/13), Qazim Zogaj ((KI165/13), Lulzim Qorolli (KI166/13), Sami Qorri (KI167/13), Rasha Uljeviq (KI168/13), Fevzije Seferaj (KI169/13), Qamil Dragaj (KI170/13), Qama Ramaj (KI171/13), Murtez Xhehaj (KI172/13), Ferat Gjoka (KI173/13), Ilir Haziri (KI174/13), Mehdi Gjoka (KI175/13), Azemine Hasi (KI176/13), Imer Zeneli (KI177/13), Mevlude Zymberi (KI178/13) and Asllan Seferaj (KI179/13) submitted their Referrals to the Court.
9. On 8 November 2013, the President by Decision GJR. KI161/13 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, by Decision KSH. KI161/13 of the President the Review Panel was appointed, composed of Judges: Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.
10. On 11 November 2013, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI161/13 with Referrals KI162/13, KI164/13, KI165/13, KI166/13, KI167/13, KI168/13, KI169/13, KI170/13, KI171/13, KI172/13, KI173/13, KI174/13, KI175/13, KI176/13, KI177/13, KI178/13 and KI179/13. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the the President on appointment of the Judge Rapporteur and the Review Panel on 8 November 2013.
11. On 13 November 2013, the Court notified the Applicants and the Supreme Court of the registration of the Referrals and the joinder of Referrals.
12. On 7 February 2014, the Review Panel considered the report of Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

13. Based on the case files, between 1992 and 1996, the Municipality of Gllgoc allocated nearly 60 parcels to different individuals for construction of business premises with permanent and temporary character.
14. In September 1999, the Municipality of Gllgoc in the context of the spatial planning decided to clear the parcels and ordered the demolition of the business premises.
15. The Administrative procedures regarding these decisions lasted until 2005.
16. On 21 March 2005, the Supreme Court decided to annul the Administrative Decisions and remand the cases in administrative proceedings, in order to render other decisions.

17. Regardless of pending administrative appeal and prior to the decision of Supreme Court of 21 March 2005, in early March 2005, the Municipality of Glllogoc had already demolished all existing business premises and cleared the parcels.
18. Immediately after the demolition of the business premises, many claims for compensation were filed with the Municipal Court in Glllogoc against the Municipality of Glllogoc.
19. On 8 December 2009 and 25 June 2010, upon request of 18 claimants, EULEX Judges decided to take over the cases.
20. In their claims, the claimants requested compensation for demolition of the business space, compensation for partial destruction of business space, compensation for lost profit, compensation for non-material damage, determination of another parcel for business premise and the interest rate for monetary compensation.
21. Between 27 September 2011 and 21 October 2011, the Municipal Court in Glllogoc partly approved the claims. It only decided to approve the compensation of the demolition of the premises with the specified interest rate starting from the date when the claim was filed, whereas it further decided to approve a compensation for non-material damage and reject the claims for compensation for lost profit and determination of another parcel for business premise.
22. Against the Judgments of the Municipal Court in Glllogoc, the Municipality of Glllogoc filed appeals with the District Court in Prishtina.
23. Between 23 October 2012 and 23 November 2012, the District Court in Prishtina issued Judgments rejecting the appeals and upholding the Judgments of the Municipal Court in Glllogoc.
24. Against the Judgments of the District Court in Prishtina, the Municipality of Glllogoc filed revisions with the Supreme Court, based on essential violation of the provisions of contested procedure and erroneous application of substantive law.
25. On 14 June 2013, the Supreme Court rendered 18 Judgments and decided to partly approve the revision filed by the Municipality of Glllogoc and to amend the Judgments of the District Court in Prishtina and Judgments of the Municipal Court in Glllogoc, whereby the amount for compensations of demolished business premises were reduced and the claims for compensation of non-material damage were rejected as ungrounded.
26. In eighteen Judgments, the Supreme Court held the following:

“Regarding the caused damage by the demolition of the building, the second instance court made a correct determination that the caused damage is only in the form of ordinary damage-of the reduction of the claimant’s property. However, in this regard, the law was not correctly applied. The

damage in this case is the value of the building, when it was constructed in 1997 (equivalent value with the material and the labor force for its construction), is not the value at the time of demolition in 2005 minus depreciation of the building for 8 years of use, but it is only the value of the material, which the claimant could receive is the construction/building would not be demolished, but it would be de-constructed (de-construction is the selective dismantle of the parts of the buildings for re-use). The construction/building was of temporary character, it could not be sold, neither in the market value at the time of demolition, nor the value of construction (the time of construction or the time of destruction minus depreciation). Therefore, the damage is only the value of usable material, which may have been received in case of proper de-construction.”

27. In this respect, the Supreme Court decided to amend the Judgments of the lower court instances and reduce the amount of compensation as determined by the aforementioned courts.
28. Regarding the compensation for the lost inventory, the Supreme Court concluded that the Judgments were fair and the request for revision should be rejected.
29. With regards to the non - material damage, the Supreme Court found that [...]” *the revision is grounded and no non-material awardable damage was suffered. There are no data that the claimant has suffered physical or psychological pain that should be compensated. The claimant and the Municipality have objected the claimant’s right to have this building in the municipality land for many years until the time of its demolition. It is reasonable that the claimant was disappointed and angry when the building was demolished, but not all psychological pain should be compensated with money, in accordance with Article 200 of LOR [Law on Obligational Relationships]. The psychological pain cannot be compensated in cash, if it is not proved that they were so intensive and long, so that they affected the mental health of the claimant. There is no evidence regarding this, therefore, in this part also, the decision should be modified and the claim for moral compensation should be rejected (Article 224 (1) of the Law on Contested Procedure).*

Applicants’ Allegation

30. In their separate Referrals, the Applicants, Ramiz Isufi (KI161/13) and Zenullah Pirraku (KI162/13) allege the following: [...]” *Article 46.3 of the Constitution of the Republic of Kosovo has been violated, since the protection of property and compensation were violated. Article 24.1 of the Constitution was violated, since equality before law was infringed. Article 23 of the Constitution of the Republic of Kosovo was violated, since human dignity was violated. Our right to property has been denied, although allocated on legal grounds, it was built upon valid decisions [...]”.*
31. The same Applicants further request the Constitutional Court: [...]” *We request the approval of our Referral by the Constitutional Court of Kosovo, and Judgment [...] of 14 June 2013 annulled. We seek from the Constitutional*

Court of the Republic of Kosovo the compensation of material, psychological and moral damage.”

32. In their Referrals, the 16 other Applicants argue that: [...]”*Thus, by not approving adequate and proportional compensation for claimants due to unjust demolition of business premises, the right to protection of property pursuant to Article 46 paragraph 1 and 2 of the Constitution of the Republic of Kosovo and provisions of European Convention on Human Rights, based on unjust judgment pursuant to Article 31 of Kosovo Constitution are violated. The judgment is confusing, which fact speaks clearly that we have to do with an unfair trial. The judgment is contradictory and contains contradictory reasons on crucial facts. Whereas by its enacting clause the judgments of lower courts were amended and is awarded a minimum amount of compensation of damages for the demolished premises, the request for compensation of non-material damage is rejected, with paragraph 2 of enacting clause is decided: that the remained part of request is rejected as ungrounded and each party bears its own expenses. [...]*”
33. These Applicants allege violation of Article 31 [Right to Fair and Impartial Trial], Article 46, paras. 1 and 2 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution and Article 1 of Protocol No. 1 of the European Convention on Human Rights.

Assessment of admissibility of the Referral

34. First of all, in order to be able to adjudicate the Applicants’ Referral, the Court has to examine whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
35. The Court refers to Article 113, paragraph 7 of the Constitution establishes that:
- “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.”*
36. In addition, Article 49 of the Law establishes that *“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.”*
37. In the present cases, the Court considers that the Applicants are an authorized party, all legal remedies available to them under the applicable law have been exhausted and that the Referrals have been submitted within the four month time limit.
38. However, the Court also takes into account Rule 36 (2) of the Rules of Procedure, which provides:
- “The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
[...], or*

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...], or
d) when the Applicant does not sufficiently substantiate his claim”.

39. In their Referrals the Applicants argue that the Supreme Court did not determine an adequate and proportional compensation for the demolition of the premises and therefore the right to protection of property was violated. Furthermore, they also allege violation of Articles 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution.
40. However, the Applicants do not explain how and why the Judgments of the Supreme Court violated their rights guaranteed by the Constitution.
41. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, García Ruiz v. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).
42. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in the entirety, have been conducted in such a way that the Applicants had a fair trial (See, *inter alia*, Edwards v. United Kingdom, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
43. Based on the case files, the Court notes that the reasoning provided in the last Judgments rendered by the Supreme Court is clear and reasoned and, after reviewing the entire procedures, the Court also found that the proceedings before the Supreme Court, have not been unfair and arbitrary (See, *mutatis mutandis*, Shub v. Lithuania, Decision of the European Court of Human Rights on admissibility of referral, no. 17064/06, of 30 June 2009).
44. In this respect, the Supreme Court extensively reasoned why it amended the Judgment of the lower court instances, whereby it reduced the amount of compensation for the caused damage and rejected the claim for non-material compensation.
45. With regards to the material damage, the Supreme Court held that the lower court instances erroneously applied the substantive law when they determined the amount of compensation, whereby it reasoned as following: [...]”*The damage in this case is the value of the building, when it was constructed in 1997 (equivalent value with the material and the labor force for its construction), is not the value at the time of demolition in 2005 minus depreciation of the building for 8 years of use, but it is only the value of the material, which the claimant could receive is the construction/building would not be demolished, but it would be de-constructed (de-construction is the*

selective dismantle of the parts of the buildings for re-use). The construction/building was of temporary character, it could not be sold, neither in the market value at the time of demolition, nor the value of construction (the time of construction or the time of destruction minus depreciation). Therefore, the damage is only the value of usable material, which may have been received in case of proper de-construction.” Whereas for the non-material damage, the Supreme Court held that there was no evidence that the Applicants suffered moral damage.

46. For all the aforementioned reason, the Court considers that the facts presented by the Applicants did not in any way justify the allegations of a violation of the constitutional rights and the Applicants did not sufficiently substantiate their claims.

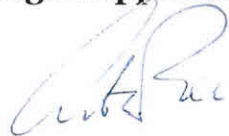
FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2), b) and d), on 7 February 2014, 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



Arta Rama-Hajrizi

President of the Constitutional Court



Prof. Dr. Enver Hasani