



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

Prishtina, 14 April 2014
Ref.no.: AGJ597/14

JUDGMENT

in

Case No. KI94/13

Applicants

Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj

**Constitutional review of the Judgment Ac. No. 324/12 of the District
Court in Peja, dated 21 December 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 Referral was submitted by Mr. Avni Doli, Mr. Mustafa Doli, Mr. Zija Doli and Mrs. Xhemile Osmanaj from Gjakova (hereinafter, the Applicants).

Challenged Decision

2. The Applicants challenge the Non-Execution of the Decision of the Directorate for property matters, cadastre, geodesy and land consolidation of the Municipality of Gjakova (hereinafter, the Directorate), dated 1 August 2002, which is related with the Judgment Ac. No. 324/12 of the District Court in Peja, dated 21 December 2012, upholding the Decision E. No. 1395/11 of the Municipal Court in Gjakova, dated 24 April 2012. The Decision of the District Court was served on the Applicants on 18 January 2013, and was subject to a request of protection of legality, rejected on 7 March 2013.

Subject matter

3. The subject matter is the constitutional review of the Non-Execution of the Decision of the Directorate and of the related Judgment of the District Court in Peja (Ac. No. 324/12, dated 21 December 2012), which upheld the Decision (E. No. 1395/11, dated 24 April 2012) of Municipal Court in Gjakova, annulling the Execution Procedure of the Decision of the Directorate.
4. The Applicants claim that the challenged decisions allegedly violated their rights to: Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR); Judicial Protection of Rights, as guaranteed by Article 54 of the Constitution, and Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No.1 of the ECHR.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Court

6. On 3 July 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 5 August 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 27 August 2013, the Court informed the Applicants and the Basic Court in Gjakova on the registration of the Referral.
9. On 11 October 2013, the Court also informed the Directorate on the registration of Referral and called for comments on the Referral, if any.

10. On 21 October 2013, the Directorate informed that it fully respects the Decision of the Directorate (No. 11 465-8/93, of 1 August 2002).
11. On 25 October 2013, the Court requested the Directorate information on the registration of the property in the name of Applicants as established in its Decision of 1 August 2002.
12. On 7 November 2013, the Court received the response given by the Directorate.
13. On 10 February 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

The facts of the case

14. On 6 April 1975, the Secretariat for legal and administrative matters of Gjakova Municipality decided (No. 03-465-23/1972) on expropriation of the property of the Applicants.
15. On 1 August 2002, the Directorate, upon request of the Applicants, decided (Decision 11 No. 465-8/93) to amend the abovementioned Decision and return parts of cadastral plot No. 5531/1 MA in Gjakova with an area of 0.33.01 ha to the Applicants' possession.
16. The Directorate further decided that the Cadastre and Geodesy Service of the Directorate for property matters, cadastre, geodesy and land consolidation of the Municipality of Gjakova shall unregister the aforementioned immovable property in the name of the Municipality of Gjakova and register it in the name of the Applicants.
17. That Decision advised that *"Against the Decision an appeal can be submitted through this body to the Executive Chief of the Municipality of Gjakova within a time limit of 15 days, from the day of the receipt of this Decision"*.
18. That Decision bears a certification reading: *"Decision is final. Gjakova, 09.01.2003"*.
19. The Directorate executed its Decision 11 No. 465-8/93 dated of 1 August 2002 in relation to a third party; but not in relation to the Applicants.
20. On 4 June 2004 and on 17 September 2004, the Applicants requested to the Directorate the execution of its Decision in relation to them.
21. On 22 September 2011, the Directorate informed the Applicants that *"In relation to the expropriation 11 no. 465-8/1993 dated 01.08.2002, final from 09.01.2003, once more we notify you that this Decision as such cannot be registered in the cadastral system because it is incomplete [...]. Thus, this Directorate directs you to address the Municipal Court in Gjakova regarding the realization of the rights you seek, although so many years have passed"*.

22. Subsequently, on 13 December 2011, the Applicants proposed to the Municipal Court in Gjakova the Execution of the Decision 11 No. 465-8/93 dated 1 August 2002.
23. On 22 December 2011, the Municipal Court (E. No. 1395/11) decided that *“The Executive Debtor is obliged within the time limit of 7 days/ and in contests related to the bill of exchange and checks within the time limit of 3 days/ from the day the Decision is served to pay the debt together with the specified procedure expenses”*.
24. The Decision of the Municipal Court advises that *“The Party can challenge this Decision at this Court within 7 days starting from the day of receipt of this Decision”*.
25. Meanwhile, on 24 April 2012, the Municipal Court (E. No. 1395/11) decided [...] *“to annul the Decision E. No. 1395/11 dated 22 December 2011, (...) and annul all actions undertaken in this matter”*. The Municipal Court reasoned that [...] *“from what it stated above pursuant to Article 24 item b), the document- the quoted Decision is not an Executive Title since the enacting clause of the Decision does not foresee any monetary obligation of the debtor towards the creditors, whereas the enforcement of this Decision is not foreseen by other laws”*.
26. On 15 May 2012, the Applicants filed an appeal with the District Court in Peja against that Decision of the Municipal Court.
27. The Applicants argued that the Decision (E. No. 1395/11) of the Municipal Court, of 22 December 2011, has not been appealed by the Directorate and thus it became final and executable.
28. The Applicants further argued that [...] *“it is not clear to the creditors how is it possible to annul the Decision permitting the creditors’ proposal dated 22.12.2011 when this Decision was not challenged by the debtor within the legal time frame on the grounds of any reasons mentioned in Article 55 of the LEP [Law on Execution Procedure], since Article 13.1 of the LEP provides that: “The decision against which the objection is not filed in foreseen time-limit becomes final and executable”, a circumstance which defines the challenged Decision as ungrounded and illegal [...]”*.
29. The Applicants concluded that [...] *“the first instance court has committed serious violations of legal provisions and has erroneously implemented the substantive law against the creditors [...]”*. The Applicants further requested the District Court to approve as grounded their joint appeal and oblige the Directorate to register the immovable property in the name of the Applicants.
30. On 21 December 2012, the District Court (Judgment Ac. No. 324/12) rejected the appeal of the Applicants as ungrounded and upheld the Decision of the Municipal Court in Gjakova (E. No. 1395/11, of 24 April 2012).
31. The District Court held that [...] *“the first instance court pursuant to Article 24, item b) in conjunction with Article 44 of the Law on Executive Procedure by*

the challenged Decision annulled the Decision rendered in administrative procedure that is not related to monetary obligations does not represent an Executive Title” and concluded that [...]” the challenged Decision did not contain essential violations of the provisions of contested procedure as foreseen in Article 182.2 of LCP [Law on Contested Procedure] and the substantive law has been correctly implemented, considered by the second instance court in its ex officio mandate as foreseen in Article 194 of the LCP, regardless whether they have been raised or not by the submitter of appeal.”

32. The Applicants submitted a request for protection of legality to the State Prosecutor of Kosovo.
33. On 7 March 2013, the State Prosecutor notified the Applicants that, in his opinion, there was no legal basis to proceed with the request for protection of legality. On 3 July 2013, the Applicants filed their referral with this Court.
34. On 11 October 2013, the Court, in its notification of the registration of the Referral to the Directorate, invited the Directorate to comment on the Referral.
35. On 21 October 2013, the Directorate commented that: [...] *“In relation to your note the Directorate for Geodesy, Cadastre and Property of Gjakova Municipality, by analyzing all these, on this matter, notifies You, respectively this Directorate’s comment is as follows: I fully remain by the final Ruling of the Directorate for legal affairs, cadastre, geodesy and land consolidation of Gjakova Municipality no.11-465-8/93, dated 01.08.2001, that became final on 09.01.2013, that obliged the DEBTOR to return in possession and permanent use to the applicants of this Referral and Rexhep Doli from Gjakova, ½ of the ideal part respectively 1/6 of the ideal part to each of plot no.5531/1 MA Gjakova- outside the city with an area of 0.33.01 ha, as emphasized in the enacting clause of this Ruling, thus the administrative Authority forwarded the Ruling to be executed pursuant to its enacting clause”.*
36. On 25 October 2013, the Court additionally requested the Directorate to inform about the reasons for having registered the property at stake in the name of R.D., and for not having registered yet the same property in the name of the Applicants, as established in the Decision of the Directorate (No. 11 465-8/93, of 1 August 2002).
37. On 7 November 2013, the Directorate informed that *“the Decision of the Directorate for property, legal, cadastre, geodesy and land consolidation matters of Gjakova Municipality, that became final on 09.10.2003, was sent to the cadastre and geodesy service in Gjakova on 14.01.2003, to register it in cadastre registers, which is proven by the service note, a copy of which is enclosed to this notification. To find out in the name of which beneficiary this immovable property has been registered, or not registered, for the other beneficiaries, please refer to the cadastre and geodesy service, within the Directorate for geodesy, cadastre and property of Gjakova municipality on this matter, and this service will provide to you exact information on how the immovable property acquired with the above mentioned Decision has been registered”.*

The arguments of the Applicants

38. As said above, the Applicants claim that the District Court (Judgment Ac. No. 324/12) rejected the appeal of the Applicants as ungrounded and upheld the Decision of the Municipal Court in Gjakova (E. No. 1395/11, of 24 April 2012).
39. The Applicants argue that [...] *“Gjakova Municipality did not submit at all an appeal for the reasons stated in Article 55 of the LEP [Law on Execution Procedure]. Therefore the Decision became final pursuant to the provisions of Article 13.1 of the LEP, that confirms that the Applicants have been discriminated and their rights and freedoms have been violated, namely: “The right to a fair and impartial hearing in relation to the decisions on the rights and obligations guaranteed with the provisions of Article 31, paragraphs 1 and 2 of the Constitution; The right to judicial protection in case of violations or denial of a right guaranteed,...” such as the right of property, guaranteed with the provisions of Article 54 of the Constitution, and the rights pursuant to Article 7.1 of the Constitution of Kosovo, European Convention No.6 and 13, Protocol No.14 of EU (European Union) and European Convention – Protocol No.1 of the Convention dated 20.03.1952, that entered into force on 18.05.1954, which added 6 new provisions for the protection of human rights and fundamental freedoms, among which the right for the protection of property”.*
40. The Applicants conclude requesting the Constitutional Court:

“The execution of the Decision of Directorate for Property Matters, Cadastre, Geodesy and Property of Gjakova Municipality, 11 No. 465-8/93 dated 01.08.2002 and to OBLIGE Gjakova Municipality - Directorate for Cadastre, Geodesy and Property in Gjakova, to register under the name of the Applicants, within the time limit of 8 days from the day this Decision is received, land banks no. 80, 81, 82, 84, 86 and 88 that are part of cadastral plot no.5531/1, Gjakova Cadastral Municipality – outside city limits, with a total area of 0.33.01 ha (or 3301 m²), and compensate their procedural expenses”.

Relevant legal provisions relating to procedures for the execution of administrative and court decisions

Law on Executive Procedure (Law no. 03/L-008)

Article 1 [Content of the law]

“1.1 By this law are determined the rules for court proceedings according to which are realised the requests in the basis of the executive titles (executive procedure), unless if with the special law is not foreseen otherwise.

1.2 The provisions of this law are also applied for the execution of given decision in administrative and minor offences procedure, by which are foreseen obligation in money, except in cases when for such execution, by the law is foreseen the jurisdiction of other body”.

Article 24 (1) [Execution title]

“Execution titles are:

- a) execution decision of the court and execution court settlement;*
- b) execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen something else;*
- c) notary execution document;*
- d) other document which by the law is called execution document”.*

Article 26 (3) [Executability of decision]

“A given decision in administrative procedure is executable if as such is done according to the rules by which such procedure is regulated”.

Law on Enforcement Procedure (No. 04/L-139)

Article 22 .1 [Legal Basis for Awarding Enforcement] provides:

“1. Enforcement documents are:

[...]

1.2. enforcement decision awarded in administrative procedure and administrative settlement (hereinafter: the settlement).”

Admissibility of the Referral

41. First of all, the Court examines whether the Applicants have fulfilled the Referral's admissibility requirements.

42. In that respect, the Court refers to Article 113 of the Constitution which provides:

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

[...]

7. 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.”

43. The Court also refers to Article 48 and 49 of the Law, which provide that:

“48. In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.

49. 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.”

44. The Court also takes into account Rule 36 (1) of the Rules of Procedure, which foresees:

“The Court may only deal with Referrals if:

(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or

(b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

(c) the Referral is not manifestly ill-founded.”

45. The Court notes that the Applicants may legitimately claim to be victims of the non-execution of the Decision of the Directorate, which was in their favour and also the impossibility to bring further actions for the non-execution of the Decision of the Directorate for several years.
46. The Court further notes that the Applicants have sought all judicial remedies to protect their rights before the Municipal Court, the District Court and the State Prosecutor.
47. The Court also notes that the requirement for the submission of the Referral within the time limit of four (4) months does not apply in the case of the non-execution of decisions by the public authority. (See *mutatis mutandis* Iatridis v. Greece No. 59493/00, ECtHR, Judgment of 19 October 2000). The ECtHR explicitly noted, in a similar situation arising in Iatridis v. Greece, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision.
48. The Court further notes that the Judgment Ac. No. 324/12 of the District Court, dated 21 December 2012, was served on the Applicants on 18 January 2013 and the Applicants filed a request of protection of legality with the State Prosecutor. On 7 March 2013, the State Prosecutor rejected such a request.
49. In that respect, the Court considers that the non-execution of the Decision of the Directorate continues even today. Thus, the requirement of submitting the Referral within four (4) months after the final court decision is not applicable in the case.
50. In fact, a similar situation of the non-execution of both the Court and Independent Oversight Board of Kosovo decisions has arisen in a number of other cases before the Constitutional Court. In these cases, the Court has found the existence of a continuing situation and, thereby, the non-applicability of the established time limit of four (4) months. (See Constitutional Court Case No. KI 08/09, Applicant Independent Trade Union of the employees of the Steel Factory IMK Ferizaj, Judgment dated 17 December 2010 and Case KI 50/12, Applicant Agush Lolluni, Judgment dated 16 July 2012).
51. Therefore, the four (4) months deadline is rendered irrelevant by the continuing situation.

52. In addition, the Court notes that the Applicants have indicated what constitutional rights they claim to have allegedly been violated and they challenge the concrete Directorate Decision (No. 11 465-8/93, of 1 August 2002), the Decision of the Municipal Court (No. 1395/11), of 24 April 2012, and the Judgment of the District Court (Ac. No. 324/12), of 21 December 2012.
53. In sum, the Court considers that the Applicants are an authorized party, have exhausted all legal remedies, have met the deadline requirement as a result of continuous situation, and that they have accurately clarified the alleged violation of the rights and freedoms and referred to the decisions they challenge.
54. Therefore, the Court concludes that the Referral meets all the requirements for admissibility.

Substantive legal aspects of the Referral

55. The Applicants mainly allege a violation of their rights to
 - a). Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR;
 - b). Judicial Protection of Rights, as guaranteed by Article 54 of the Constitution, and
 - c). Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR.
56. The Court reviews the merits of each of the Applicant's allegations.
57. As said above, the Applicants claim that the challenged decision violated their right to fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.
58. The Applicants argue that [...] *"Gjakova Municipality did not submit at all an appeal for the reasons stated in Article 55 of the LEP. Therefore the Decision became final pursuant to the provisions of Article 13.1 of the LEP, that confirms that the Applicants have been discriminated and their rights and freedoms have been violated [...]"*.
59. The Court recalls that the Municipal Court decided (E. No. 1395/11, of the 22 December 2011) on the Execution of the Decision of the Directorate (hereinafter, the first Decision).
60. The aforementioned Decision of the Municipal Court advises that *"The Party can challenge this Decision at this Court within 7 days starting from the day of receipt of this Decision"*.
61. The Directorate did not file an appeal against that Decision of the Municipal Court.
62. In this respect, the Court considers that, in the absence of any appeal filed by the Directorate in its capacity of debtor, the Decision became final and binding (*res judicata*) and as such executable.

63. However, on 24 April 2012, the Municipal Court decided [...] “to annul the Decision E. No. 1395/11 dated 22 December 2011 (...) and annul all actions undertaken in this matter” (hereinafter, the second Decision).
64. The Court notes that that second Decision dated of 24 April 2012 was taken almost five months after the Municipal Court having rendered the Decision E. No. 1395/11 dated 22 December 2011 on execution and without any request of the interested parties.
65. In this respect, Article 31 of the Constitution establishes:
- “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 or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”*
66. In addition, Article 6 (1) of the ECHR establishes:
- “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*
67. The Court refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which establishes:
- “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*
68. The European Court of Human Rights (hereinafter, the ECtHR) has quite often stressed the prominent place of the right to a fair trial in a democratic society. (See, *Perez v France*, No. 47281/99, ECtHR, Judgment of 12 February 2004).
69. In the instant case, the Applicants proposed to the Municipal Court the execution of the Decision of the Directorate. The Municipal Court in its first Decision granted the Applicant’s proposal for the execution of the Decision of the Directorate. That decision of the Municipal Court became final and binding and thus acquiring the status of *res judicata*. However, the right of the Applicants to a court became illusory, because the same Municipal Court, with its second Decision, annulled that final and binding Decision.
70. On the other side, the right to a fair trial also implies that a final and binding Decision (*res judicata*) becomes irreversible. In fact, the ECtHR held that “one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires inter alia that where the courts have finally determined an issue, their ruling should not be called into question”. (See, *mutatis mutandis*,

Brumarescu v. Romania, No. 28342/95, ECtHR, Judgment of 28 October 1999, par. 61).

71. Accordingly, the principle of legal certainty presupposes respect for *res judicata*, which is the finality of judgments. (See Brumarescu v. Romania, No. 28342/95, ECtHR, Judgment of 28 October 1999, par. 62). *“This principle underlines that no party is entitled to seek a review of a final and binding court decision merely for the purpose of obtaining a rehearing and a fresh determination of the case. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character”*. (See Ryabykh v. Russia, No. 52854/99, ECtHR, Judgment of 24 July 2003, par. 52. See also KI55/11, Applicant Fatmir Pirreci, Constitutional Court, Judgment of 16 July 2012, par. 42).
72. The Court notes that the second Decision of the Municipal Court, annulling its first Decision, was rendered without any initiative or appeal filed by the parties.
73. In this relation, Article 13 (1) of the Law on Execution Procedure foresees that: *“The decision against which the objection is not filed in foreseen time-limit becomes final and executable.”*
74. The Court further considers that the second Decision of the Municipal Court reopened a judicial process which already had ended in a final and binding judicial decision and thus was *res judicata*. (See Rosca v. Moldova, No. 6267/02, ECtHR, Judgment of 22 March 2005, par. 28).
75. As a result, the District Court, when upholding the second decision of the Municipal Court, infringed the principle of legal certainty and, consequently, violated the Applicant’s right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.
76. In addition, the Court notes that the Municipal Court, in its second Decision, reasoned that [...] *“from what it stated above pursuant to Article 24 item b), the document- the quoted Decision is not an Executive Title since the enacting clause of the Decision does not foresee any monetary obligation of the debtor towards the creditors, whereas the enforcement of this Decision is not foreseen by other laws”*.
77. On 21 December 2012, the District Court (Judgment Ac. No. 324/12) rejected the appeal of the Applicants as ungrounded and upheld the second Decision of the Municipal Court.
78. The District Court held that [...] *“the first instance court pursuant to Article 24, item b) in conjunction with Article 44 of the Law on Executive Procedure by the challenged Decision annulled the Decision rendered in administrative procedure that is not related to monetary obligations does not represent an Executive Title”* and concluded that [...] *“the challenged Decision did not contain essential violations of the provisions of contested procedure as foreseen in Article 182.2 of LCP [Law on Contested Procedure] and the*

substantive law has been correctly implemented, considered by the second instance court in its ex officio mandate as foreseen in Article 194 of the LCP, regardless whether they have been raised or not by the submitter of appeal.”

79. In this regard, the Court refers to its case law (See among others Constitutional Court Case KI04/12 Applicant Esat Kelmendi, Judgment dated 20 July 2012 and Case KI112/12, Applicant Adem Meta, Judgment of 5 July 2013), whereby a similar situation of the non-execution of administrative decisions by courts, which also did not exclusively foresee a monetary obligation has arisen. In these cases, the Court concluded that a decision issued by an administrative body established by law, produces legal effects for the parties and, therefore, such a decision is a final administrative and executable decision.

80. The aforementioned case law of the Court is reflected in the newly adopted Law No. 04/L-139 on Execution Procedure, of 20 December 2012. In fact, Article 22 1. 2. provides:

“1. Enforcement documents are:

[...]

1.2. enforcement decision awarded in administrative procedure and administrative settlement (hereinafter: the settlement).”

81. Therefore, the Court concludes that the decision of the Directorate was final and executable.

82. The Court considers that the execution of a final and executable decision should be taken as an integral part of the right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of ECHR. The above-mentioned principle is of greater importance within the administrative procedure regarding a dispute, which result is of special importance for the civil rights of the party. (See, *mutatis mutandis*, Hornsby v. Greece, Judgment of 19 March 1997, reports 1997-II, p. 510, paras. 40-41).

83. It follows from the above that the District Court in Peja, when upholding the decision of the Municipal Court not to execute a final and executable administrative decision, violated the Applicant's right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

84. Furthermore, the Applicants argue that [...] *“The right to judicial protection in case of violations or denial of a right guaranteed, such as the right of property, guaranteed with the provisions of Article 54 of the Constitution[...].”*

85. In this respect, the Court also refers to Article 32 and 54 of the Constitution and Article 13 of ECHR.

86. Article 32 [Right to Legal Remedies] establishes that:

“Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.”

87. Article 54 [Judicial Protection of Rights] establishes that:

“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.”

88. In addition, Article 13 of the ECHR states that:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

89. In that respect, the Court notes that the Applicants exhausted all legal remedies available regarding the execution of the Decision of the Directorate. However, despite their efforts, that Decision was not executed either by the competent bodies of the Municipality of Gjakova, or by the competent courts.

90. The Court reiterates that the inexistence of legal remedies or of other effective mechanisms for the execution of the Decision of Directorate affects the right to an effective legal remedy, as guaranteed by Articles 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] of the Constitution, and Article 13 of the ECHR. According to these provisions, each person has the right to use legal remedies against the judicial and administrative decisions, which violate his rights or interests as provided by law. (See *mutatis mutandis*, Voytenko v. Ukraine, No. 18966/02, Judgment dated 29 June 2004, paragraphs 46-48).

91. Furthermore, *“the competent authorities have the obligation to organize an efficient system for the implementation of decisions which are effective in law and practice, and should ensure their application within a reasonable time, without unnecessary delays”*. (See Case Constitutional Court case KI50/12, Applicant Agush Lolluni, Judgment of 16 July 2012, par. 41. See also Pecevi v. Former Yugoslavian Republic of Macedonia, no. 21839/03, ECtHR, Judgment of 6 November 2008).

92. Therefore, the Court concludes that the impossibility to bring any further legal actions for the non-execution of the Decision of the Directorate also constitutes a violation of Articles 32 and 54 of the Constitution and Article 13 of ECHR.

93. The Applicants also allege a violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No.1 of the ECHR.

94. Article 46 [Protection of Property] of the Constitution establishes:

“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."

95. Article 1 of Protocol No. 1 of ECHR provides:

"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."

96. In that respect, the Court recalls that the Decision of the Directorate became final and binding on 9 January 2003.

97. Thus, the Court considers that the Decision of the Directorate constitutes a legitimate expectation for the Applicants that they would be entitled to the property. (See Constitutional Court case KI40/09, Imer Ibrahim and 48 other Employees of the Kosovo Energy Corporation, Judgment of 23 June 2010).

98. Such legitimate expectation is also guaranteed by Article 1 of Protocol No. 1 to the Convention. (See *mutatis mutandis* Gratzinger and Gratzingerova v. the Czech Republic, No. 39794/98, ECHR, Decision of 10 July 2002, para 73).

99. Therefore, the Constitutional Court considers that the Applicants have a "legitimate expectation" to have the property registered in their names as provided in the Decision of the Directorate, which became final and binding on 9 January 2003. (See *mutatis mutandis* Pressos Compania Naviera SA and Others v. Belgium, ECHR, Judgment of 20 November 1995, Series A no. 332, para. 31).

100. For the foregoing reasons, the Court concludes that the non-execution of the Decision of the Directorate constitutes a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of ECHR.

Conclusion

101. In conclusion, the Court finds that the non-execution of the Decision of the Directorate by the competent administrative authorities and the regular courts, and the ensuing failure to ensure effective mechanisms for the enforcement of respective decisions of the relevant authorities and court decisions, constitutes a violation of Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of the ECHR. As a result of this violation, the Applicants are deprived from registering the property in their names. Thus, the right to protection of property guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the

ECHR was violated. Therefore, the Decision of the Directorate must be executed.

102. At the outset, the Court clarifies that this conclusion only relates to the alleged Constitutional violations. In fact, the conclusion does not relate to whether the judgment of the regular courts or the earlier administrative decision of the Directorate correctly interprets the applicable law, because the Constitutional Court cannot act as a court of fourth instance with respect to what is the proper interpretation of the law.
103. In sum, in accordance with the Rule 74 of the Rules, the Judgment Ac. No. 324/12 of the District Court in Peja dated 21 December 2012 is invalid and, in accordance with Article 39 (2) of the Law on Courts, the case is remanded to the Court of Appeal for reconsideration.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 56 (1) and 74 (1) of the Rules of Procedure, unanimously, at its session held on 24 March 2014,

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been violation of Articles 31, 32, 46 and 54 of the Constitution, in conjunction with Article 6 and 13 of the ECHR and Article 1 of Protocol 1 to the ECHR;
- III. TO DECLARE INVALID the Judgment Ac. No. 324/12 of the District Court in Peja, of 21 December 2012, AND REMAND the case to the to the Court of Appeal for reconsideration in conformity with the Judgment of the Constitutional Court, namely for taking into account that the Decision of the Directorate must be executed;
- IV. TO REMIND the competent authorities of their obligations under Article 116 [Legal Effect of Decisions] of the Constitution and Rule 63 [Enforcement of Decisions] of the Court's Rules of Procedure;
- V. TO ORDER the Court of Appeal, pursuant to Rule 63 (5) of the Rules of Procedure, to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;
- VI. TO NOTIFY this Judgment to the Parties;
- VII. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;
- VIII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani