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Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina,11 may 2010
Ref. no.:RK. 15 /10

RESOLUTION

Case No. KI. 21/09,

Agim Kryeziu
vs.
Municipality of Prizren

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of:

Enver Hasani, President
Snezhana Botusharova, Judge
Robert Carolan, Judge
Ivan Čukalović, Judge
Iliriana Islami, Judge
Kadri Kryeziu, Judge
Gjylieta Mushkolaj, Judge
Almiro Rodrigues, Judge and
Altay Suroy, Judge

Applicant

1. The Applicant, Agim Kryeziu, is residing in Prizren.

Responding Party

2. The Responding Party is the Municipality of Prizren.

Subject matter

3. The Applicant claims that he has submitted numerous requests to the Municipalities of Prizren and Malisheva, asking for support in order to enable him to reconstruct his property which was damaged during the war, but has not received any support so far.

Legal basis

4. Article. 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Court

5. The Applicant submitted his Referral to the Constitutional Court on 15 June 2009. On 18 February 2010, after having considered the Report of the Reporting Judge, Almiro Rodrigues, the Review Panel, composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Iliriana Islami, forwarded its recommendation to the full Court to reject the case as inadmissible on the same day.

Facts

6. It appears from the documents submitted by the Applicant, that, on 15 May 2001, while he was living with 7 family members in a house which had suffered substantial damages during the war, he received confirmation from the Commission for Construction and Reconstruction of the Municipality of Malisheva that no construction material would be provided to him. A further confirmation was sent to the Applicant on 5 August 2002, which stated that the Applicant had not received any assistance in the rebuilding of his house and that the confirmation should be used to enroll in a reconstruction program. On 15 August 2002, the Applicant bought a piece of land in the Municipality of Prizren.

7. By letter of 3 August 2004, the Applicant, who had apparently submitted a request for aid to the Municipality of Prizren, was informed by the Prizren Directorate for Construction, Reconstruction, Development and Public Investments that aid could only be provided to the citizens of Prizren Municipality and that he should submit his problem to the competent organs of Malisheva Municipality, since his house was burned down in Pagarusha Village in the Municipality of Malisheva.

8. On 12 September 2006, the Applicant requested Prizren Municipality to review his previous request for construction material for his house in the Municipality of Malisheva. He referred to the fact that he had bought a piece of land in Prizren and was now, together with his family, a resident of Prizren.

9. By letter of 4 April 2007, the Applicant reiterated his request to Prizren Municipality, informing it that he had by then not received any construction aid from any of the Municipalities, although he had no roof over his head, faced a serious

health situation, had a family of seven and was unemployed. He submitted a further request on 25 May 2007.

10. Again, by letter of 26 May 2009, the Applicant wrote to the Directorate for Reconstruction of the Municipality of Prizren, explaining that, despite his numerous requests, he still had not received any aid, although the Ombudsperson, whom he had also approached, had told him that sooner or later he would benefit from aid from the Municipality of Prizren. He added that he would pursue his request all the way to the Constitutional Court.

Applicant's allegations

11. The Applicant complains that, since the end of the war, he has addressed numerous requests for reconstruction of his house which was damaged during the war to the Municipalities of Prizren and Malisheva, but has not received any support so far. He claims that his right to the reconstruction of his property has been violated.

Comments by the Responding Party

12. The Responding Party, to which the Referral was communicated by the Court's Registry Office on 18 December 2009, did not submit its comments within the period of 45 days, as provided by Article 22.2 of the Law.

Assessment of the Admissibility of the Referral

13. 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.

14. In this connection, 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";

and to Article 47.2 of the Law, stipulating that:

> "The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law."

15. The Court notes, however, that in his Referral, the Applicant has not submitted any evidence whatsoever, that he appealed either from the decisions of the Municipality of Prizren, or from those of the Municipality of Malisheva or used any other remedy, which may have been open to him under applicable law in order to challenge the contested decisions or to complain about the absence of a decision.

16. As indicated in Case No. KI.41/09, AAB-RIINVEST University vs. the Government of the Republic of Kosovo (Resolution Nr. RK-04/10 of the Constitutional Court of the Republic of Kosovo, dated 27 January 2010), the Court

wishes to emphasize that the rationale for the exhaustion rule, as interpreted by the European Court of Human of Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (see, mutatis mutandis, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, no. 56679/00, decision of 28 April 2004).

17. In this connection, the Court would like to stress that applicants are only required to exhaust remedies that are available and effective. Discretionary or extraordinary remedies need not to be exhausted, for example, by requesting a court to revise its decision (see, mutatis mutandis, ECHR, Cinar v. Turkey, no 28602/95, decision of 13 November 2003). Where an applicant has tried a remedy that the Court considers inappropriate, the time taken to do so will not interrupt the running of the four-month time limit (Art. 49 "Deadlines" of the Law), which may lead to the complaint being rejected as out of time (see, mutatis mutandis, ECHR, Prystavka, Rezgui v. France, no 49859/99, decision of 7 November 2000).

18. As to the present case, the Applicant submitted his constitutional complaint directly to this Court, arguing that his right to the reconstruction of his property had been violated, without invoking any Article of the Constitution or of the European Convention of Human Rights and Fundamental Freedoms.

19. Furthermore, Law No. 02/L-28 on the Administrative Procedure of 22 July 2005, in its Section IX, provides that "Any interested party has a right to appeal against an administrative act or against an unlawful refusal to issue an administrative act" (Article 127.2), while "The administrative body, the appeal is addressed to, shall review the legality and consistency of the challenged act" (Article 127.3). Moreover, the Law provides that "The interested parties may address the court only after they have exhausted all the administrative remedies of appeal" (Article 127.4).

20. However, in his submissions, the Applicant has not substantiated in whatever manner, why he considers that the legal remedies, mentioned in Law No. 02/L-28 on the Administrative Procedure, including an appeal to the regular courts, would not be available and, if available, would not be effective and, therefore, not need to be exhausted.

21. In these circumstances, the Applicant cannot be considered to have fulfilled the requirements under Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Section 54(b) of the Rules of Procedure, 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.

III. This Decision is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Almiro Rodrigues | Prof. dr. Enver Hasani