



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

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Pristina, 17 August 2011  
Ref. No.: RK135/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 87/10**

Applicant

**Shpresa Loxha-Pllana**

**Constitutional Review of the Decision of the Municipal Court of Peja, C.no.  
644/06, dated 1 July 2008.**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

#### **Applicant**

1. The Applicant is Shpresa Loxha-Pllana, residing in Mitrovica, represented by Sami Sharaxhiu, a practicing lawyer in Peja.

## **Challenged court decision**

2. The decision challenged by the Applicant is the Judgment of the Municipal Court of Peja of 1 July 2008, which was served upon the Applicant on the same day.

## **Subject matter**

3. The Referral of the Applicant concerns the non-implementation of the law, without specifying which law, and/or which court, such as the Municipal Court of Peja and/or the Special Chamber of the Supreme Court of Kosovo.

## **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: "the Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

## **Proceedings before the Court**

5. On 20 September 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 9 November 2010, the Referral was forwarded to the Municipal Court of Peja.
7. On 14 December 2010, the President, by Order No.GJR. 87/10, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Order No.KSH. 87/10, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalovič.
8. On 16 May 2011, the Review Panel, consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalovič considered the Report of the Judge Rapporteur Robert Carolan and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of the facts**

9. On 13 July 1929, the first instance Court in Peja (No. 169) issued a decision that recognized that the legal ownership of the land in Peja belonged to the grandfather of the Applicant based on the Tapia (land registry).
10. This property was in the 1930's nationalized by the government.
11. On 18 March 1936, the Commercial Court of Dubrovnik (Judgment POSL. BR.U25/35/8) recognized the ownership right to the nationalized land of the grandfather of the

Applicant and ordered the authorities to restitute the confiscated land to its lawful owner, i.e. the Applicant's grandfather. However, this judgment was never enforced and was not executed by the authorities.

12. On 3 March 1946, the Applicants grandfather was subject to nationalization of 48,65,36 Ha of land in Peja by the Decision of District Agrarian Court for Kosovo in Pristina (No. 591).
13. On 11 April 1946, the District Agrarian Court of Kosovo in Pristina (No. 1182) returned a piece of the legal title to the land to the Applicant's grandfather.
14. The heirs of the late grandfather of the Applicant filed in 1985 a claim with the Executive Council of the Autonomous Socialist Province of Kosovo (KSAK) – Secretariat for finance and economy – against the decision of the District Agrarian Court. They requested the reopening of the procedure since new facts had been brought to their attention.
15. On 3 April 1985, the Provincial Directorate for Property and Judicial Matters in Pristina rejected the request to reopen the procedure concluded by decision of the District Agrarian Court on the ground that it was time-barred (no. 03-466-993/84). This decision was appealed to the Supreme Court of Kosovo.
16. On 14 November 1985, the Supreme Court rejected the claim as ungrounded, the request for reopening the procedure being time barred (A-no. 745/85).
17. On 19 February 1999, the Applicant filed a request with the Commission for restitution of land to previous landowners of the Municipal Assembly of Peja for the restitution of the land taken from the Applicant's predecessors. No response or decision in this matter is present in the case file.
18. On 8 December 2005, the Applicant submitted a request for restitution of the nationalized property, which at the moment is used by the Biotechnical Institute of Peja, to the Kosovo Trust Agency (hereinafter: the "KTA").
19. On 4 October 2006, the Applicant filed a claim with the Special Chamber of the Supreme Court requesting the annulment of the decision to nationalize the land. On 31 January 2007, the Special Chamber transferred the case to the Municipal Court of Peja to decide this matter and indicated that, if the Applicant would appeal against the decision of the Municipal Court, it should be done before the Special Chamber.
20. On 30 August 2006, the Applicant filed a claim with the Municipal Court of Peja to annul the decision to nationalize the land. On 1 July 2008, during the main hearing it was decided to terminate the procedure upon the proposal of the representative of the Applicant since it was necessary to decide first, in preliminary proceedings, whether to transform KTA into a new agency, as stated in its letter to the Applicant, dated 4 June 2008, or to reach a solution after the establishment of the state of Kosovo. The

respondent's representative had no objection to the proposal for termination, since the procedure could be re-initiated as per request of one of the litigating parties.

### **Applicant's allegations**

21. The Applicant alleges that the Municipal Court and the Special Chamber of the Supreme Court has not applied the law.

### **Preliminary assessment of the admissibility of the Referral**

22. As to the Applicants Referral concerning the non-implementation of the law, without specifying which law, and/or which court, such as the Municipal Court of Peja and/or the Special Chamber of the Supreme Court of Kosovo, the Court observes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first 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.
23. As one of the requirements, the Applicant must establish that she has submitted the Referral within a period of 4 months, as stipulated by Article 49 of the Law. However, it appears from the Applicant's submissions that the final court decision regarding her case was the Decision of the Municipal Court of Peja, C.no. 644/06, dated 1 July 2008, served upon her on 1 July 2008, whereas she submitted her Referral to the Constitutional Court only on 20 September 2010, that is more than 4 months after the entry into force of the Law (see Article 56 of the Law). To be admissible, the referral should have been filed before 15 May 2009 in accordance with the combined legal provisions of Article 49 and 56 of the Law.
24. It follows that the Referral is out of time pursuant to Article 49 of the Law.
25. With regard to the issue of property restitution, the Constitutional Court refers to its previous case KI 14/09 Heirs of Ymer Loxha and Sehit Loxha vs. Decision No. PKL.Nr.21/07 of the Supreme Court of the Republic of Kosovo, dated 17 December 2008 of 15 October 2010.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, 49 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, unanimously, on 16 May 2011

**DECIDES**

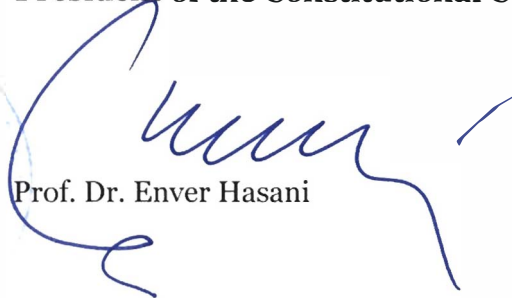
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**



Prof. Dr. Enver Hasani