



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

Prishtina, on 3 August 2020  
Ref. no.: RK 1591/20

*This translation is unofficial and serves for informational purposes only*

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI41/20**

Applicant

**Shaqir Krasniqi**

**Constitutional review of the Judgment [C. no. 865/09]  
of the Basic Court in Gjakova, of 16 May 2016**

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

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

### **Applicant**

1. The Referral was submitted by Shaqir Krasniqi (hereinafter: the Applicant), residing in Gjakova.

## **Challenged decision**

2. The Applicant challenges the Judgment [C. no. 865/09] of the Basic Court in Gjakova, of 16 May 2016.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Judgment of the Basic Court, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Article 31 [Right to a Fair and Impartial Trial], and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 of the European Convention on Human Rights (hereinafter: ECHR).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] 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 25 February 2020, the Applicant submitted the Referral via mail to the Court.
6. On 28 February 2020, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur. On the same day, the President of the Court appointed the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 17 March 2020, the Court notified the Applicant of the registration of the Referral. On the same day, the Court notified the Basic Court of the registration of the Referral and sent a copy of the Referral.
8. On 27 May 2020, the Review Panel reviewed the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. Based on the documents found in the Referral, it follows that the Applicant, in capacity of buyer, on 14 November 1991, entered into a contract for sale-purchase of a socially-owned apartment with "Gorenje Elektromotori a.d.", in capacity of seller, which was legalized in the Municipal Court in Gjakova on 31 December 1991. Under this contract, the buyer had to pay for the apartment for 38.5 years, while the parties, inter alia, agreed that if the buyer does not pay three (3) consecutive monthly installments, the seller reserves the right to

unilaterally terminate the contract. The Applicant - the buyer, until 1999, has regularly paid the monthly installments, but from 1999 until 4 January 2016, until the day of determination of the factual situation in the court did not pay any installments.

10. On an unspecified date, "Gorenje Elektromotori sh.a", in the capacity of seller, filed a lawsuit with the Basic Court and requested to terminate the contract for sale of the apartment with the Applicant, arguing that the latter had failed to pay the obligation agreed as set out in the contract.
11. On 16 May 2016, the Basic Court by Judgment [C. no. 865/09] based on Articles 17 and 124 of the Law of Contract and Torts of 30 March 1978 of the SFRY, decided that "Gorenje Elektromotori sh.a" has the right to unilaterally terminate the contract as the Applicant had not complied with the payment procedure as provided in the contract entered between them.
12. In the reasoning of its Judgment, the Basic Court clarified:

*"According to the conviction of this court, the allegations of the claiming party are grounded after it was completely established that the claimant and the respondent have entered into a contract for the sale-purchase of socially-owned apartment according to which, among others in point III of the contract have agreed for the sale price of the apartment and the deadline until when the price will be paid in the name of the sale-purchase of the apartment. In the present case, the sale price of the apartment had to be paid in installments within 38.5 years, while the respondent from the time of entering into the contract until 1999 paid the installments regularly, while from 1999 he stopped paying the installments in the name of the purchase of the apartment. Therefore, in the present case, the claimant according to Article VIII of the contract Leg. No. 4981/91, dated. 31.12.1991, has the right if the buyer, here the respondent, does not pay three (3) consecutive monthly installments under point III of the contract, the seller has reserved the right to unilaterally terminate the contract, therefore the court decided as under point I of this judgment."*

### **Applicant's allegations**

13. The Applicant alleges that the Judgment [C. no. 865/09] of the Basic Court, of 16 May 2016, was rendered in violation of its fundamental rights and freedoms set forth in Article 31 [Right to a Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution and Article 6 (Right to a fair trial) of the ECHR.
14. The Applicant further alleges that he "has acquired ownership of that property by statute of limitations".
15. Finally, the Applicant requests the Court to declare the challenged Judgment of the Basic Court invalid.

## Admissibility of the Referral

16. The Court first examines whether the Applicant has fulfilled the admissibility criteria established in the Constitution, provided by the Law and further specified in the Rules of Procedure.
17. The Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, which establish:

*“(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 exhaustion of all legal remedies provided by law.”*

18. The Court also refers to the admissibility criteria, as provided by the Law. In this regard, the Court first refers to Article 47 [Individual Requests], which provides:

Article 47  
[Individual Requests]

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

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

19. The Court also refers to Rule 39 (1) (b) of the Rules of Procedure, which specifies:

*“(1) The Court may consider a referral as admissible if:*

*[...]*

*(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.”*

20. The Court recalls that the rule for exhaustion of legal remedies under Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) of the Rules of Procedure, obliges those wishing to bring their case before the Constitutional Court that they must first use the effective legal remedies available in accordance with the law, against a challenged judgment or decision.

21. In that way, the regular courts must be afforded the opportunity to correct their errors through a regular judicial proceeding before the case arrives to the Constitutional Court. The rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR that under the domestic legislation there are available legal remedies to be used before the regular courts in respect of an alleged breach regardless whether or not the provisions of the ECHR are incorporated in national law (see, *inter alia*, *Aksoy v. Turkey*, paragraph 51 of the Judgment of the ECtHR, of 18 December 1996).
22. The principle is that that the protection mechanism established by the Constitutional Court is subsidiary to the regular system of judiciary safeguarding human rights (see, *inter alia*, *Handyside v. United Kingdom*, paragraph 48 of the Judgment of the ECtHR, of 7 December 1976).
23. Under Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violations. The existence of such legal remedies must be sufficiently certain not only in theory but also in practice, and if this is not so, those legal remedies will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vemillo v. France*, paragraph 27 of the Judgment of the ECtHR, of 20 February 1991, and *Dalia v. France*, paragraph 38 of the Judgment of the ECtHR, of 19 February 1998).
24. It falls to the Court to examine whether the legal remedies have been exhausted and whether the legal remedy was effective, available in theory and practice at the relevant time, that is, that the remedy was accessible, and that it could redress the violations in relation to the objections of the Applicant and that it enables reasonable prospect for success (see, *inter alia*, *Civet v. France*, paragraphs 42-44, of the Judgment of the ECtHR, of 28 September 1999).
25. However, when a legal remedy is provided by law, it is up to the Applicant to prove that the legal remedy provided by law has in fact been exhausted or that for any reason it was not available and effective in the particular circumstances of the case, or that there have been special circumstances due to which he or she is exempted from the requirements of exhaustion of legal remedies.
26. In the present case, the Court notes that against the challenged Judgment of the Basic Court in Gjakova, C. no. 865/09, of 16 May 2016, there is a possibility to file an appeal, as an effective legal remedy against the challenged Judgment, which was emphasized by the Basic Court in the legal instruction, which states that, "*against this Judgment an appeal is allowed within 15 (fifteen) days, after the receipt of the latter, to the Court of Appeals in Prishtina, and through this court*", which the Applicant failed to do in the present case.
27. Based on the foregoing, the Court concludes that the Referral of the Applicant must be declared inadmissible as the Applicant has not exhausted all regular legal remedies in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 39 (1) (b) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 39 (1) (b) of the Rules of Procedure, on 27 May 2020, unanimously

## DECIDES

- I. TO DECLARE the referral 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. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi



Arta Rama-Hajrizi

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