



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

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Prishtina, 13 November 2015  
Ref. No.: RK 857/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI56/15**

Applicant

**Qamil Haxhibeqiri**

**Request for constitutional review of Judgment Rev. no. 367/2014 of the  
Supreme Court of the Republic of Kosovo, of 20 February 2015**

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge and  
Bekim Sejdiu, Judge

### **Applicant**

1. The Applicant is Mr. Qamil Haxhibeqiri, with permanent residence in Rahovec, represented by Mr. Gazmend Haxhibeqiri.

## **Challenged Decision**

2. The Applicant challenges Judgment of the Supreme Court of Kosovo, Rev. no. 367/2014, of 20 February 2015 (hereinafter: the Supreme Court), which rejected the statement of claim approved by the lower instance courts, regarding the confirmation of the right of pre-emption of an immovable property.

## **Subject Matter**

3. The subject matter is the constitutional review of the challenged Judgment Rev. nr. 367/2014, which allegedly violated constitutional rights due to wrong interpretation of Article 20 of the Law on Transfer of Immovable Property (Official Gazette of KSAK no. 45/81, 29/86 and 28/88) by the Supreme Court.

## **Legal Basis**

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

## **Proceedings before the Constitutional Court**

5. On 7 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 29 June 2015, the President of the Court, by Decision No. GJR. KI56/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision No. KSH. KI56/15, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama -Hajrizi (member) and Bekim Sejdiu (member).
7. On 22 July 2015, the Court informed the Applicant about the registration of Referral and sent a copy of the Referral, pursuant to Article 22.2 of the Law, to the Supreme Court.
8. On 15 October 2015 the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. The request is related to the right of priority of purchase of immovable property( business premises, warehouse), described as a parcel in the surface area of 0.09,03 ha, registered in the cadastral books under no. 2695/1 as PL no. 139 CZ Rahovec. This parcel was sold to Sh. I. (the buyer) from Rahovec by T.V. (the seller) and the sale contract was certified in the Municipal Court in Mitrovica.
10. The Applicant alleges that the said immovable property had been rented by T.V. and he did not agree that the latter would be lawfully sold to Sh. I. Therefore,

the Applicant claimed that the right of pre-emption belonged to him under the applicable law. The Applicant then filed a statement of claim with the Municipal Court in Rahovec.

11. On 12 September 2012, the Municipal Court in Rahovec, by Judgment, C. no. 183/08, approved the Applicant's statement of claim, by determining that the Applicant had the right of pre-emption of the immovable property, annulled the sale-purchase contract of the immovable property in question, certified by the Municipal Court in Mitrovica and obliged the respondent T.V. to conclude the contract with the Applicant under the same conditions he had sold to the second respondent SH. I.
12. The respondents, against the Judgment of the Municipal Court in Rahovec, filed an appeal with the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal), alleging substantial violations of the provisions of the law.
13. On 4 September 2014, the Court of Appeal (Judgment Ac. No. 5032/12), rejected as ungrounded the appeals of the respondents and upheld Judgment C. no. 183/08, of the Municipal Court of Rahovec, of 12 September 2008.
14. The respondents filed a request for revision with the Supreme Court against the Judgment of the Court of Appeal, because of an alleged essential violation of the contested procedure provisions and erroneous application of the substantive law.
15. On 20 February 2015, the Supreme Court (Judgment, Rev. no. 367/2014), approved as grounded, the respondents' request for revision and modified the judgments of lower instance courts, which were in favor of the Applicant's request.
16. Furthermore, the Supreme Court, reasoned:

*“... considering that the contested plot, although by culture field, according to the above mentioned certificate of Rahovec Municipality, the latter is the construction land included in the urban plan of the city, and the lower instance courts have erroneously applied Articles 22 and 23 of this law when they found that the claimant had the right of preemption of this warehouse-premise. This premise-warehouse was constructed illegally by the first respondent and is not legalized, and it was sold together with the land this plot covers by the first respondent.*

*Moreover, the first respondent, although pursuant to Article 20 of the above mentioned law was not obliged, as it is confirmed by the testimony of witness G. H., the claimant's son (the Applicant) had first made a verbal offer to the claimant to purchase this entire immovable property for the amount of DM 160.000,00, which the claimant had rejected with a counter offer of DM 120.000,00. Then the first respondent had sold this immovable property to the second respondent for the price of DM. 140.000,00. Thus, according to the assessment of the Supreme Court this fact also confirms that the first respondent did not violate the claimant's right of preemption of this immovable property”.*

## **Applicant's allegations**

17. The Applicant alleges that *“the Supreme Court has erroneously interpreted Article 20 of the Law on Transfer of Real Property by stating that only the Municipality has the right of preemption without clarifying the provision of Article 20, therefore due to this fact we shall provide in this Referral the complete text of Article 20 of this law:*

### *Article 20*

*“The ownership right holder, who intends to sell the land in construction area, is obliged to first offer it to the municipality in whose territory the land is located.*

*The provisions of Article 19 of this law shall also apply to transfer of forests and forestland in the construction areas.*

*The provision of paragraph 1 of this Article relates to construction land within an urban plan, as well to construction land in a designated construction area, determined by municipal council decision.*

*The declaration regarding the written offer for the land subject to sale shall be given by a body or an organization determined by municipal council”.*

18. In addition, the Applicant alleges that: *“From the evidence presented it is clearly noted that Article 20 of the Law on Transfer of Immovable Property was applied and the Municipality through its designated authority replied that it is not interested in purchase of the property which is offered for sale. Therefore, in this case we have no erroneous application of the substantive law.”*

## **Admissibility of the Referral**

19. Before considering the submitted Referral, the Constitutional Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.

20. In the present case, the Court refers to Article 48 of the Law, which provides:

*“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“.*

21. In addition, the Rule 36 (1) (d) of the Rules of Procedure, provides:

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

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.”*

22. Furthermore, Rule 36 (2) of the Rules of Procedure, provides:

(2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

[...]

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights;*

[...]

23. In the present case, the Court notes that the subject matter before the regular courts was the Applicant's request for confirmation of the right of pre-emption of the abovementioned immovable property, which right was recognized to the Applicant by Judgment C. no. 183/08 of the Municipal Court in Rahovec. The Judgment of this Court was upheld by the Court of Appeal. However, the Supreme Court, deciding upon the request for revision filed by the respondents, rejected the Applicant's statement of claim as ungrounded by modifying the judgments of the lower instance courts, due to erroneous application of the substantive law.
24. Based on the case file, the Court notes that the Applicant's allegations concern the question of interpretation of the provisions of substantive law (legality) by the Supreme Court.
25. In this regard, the Court considers that the Applicant's allegations were not filed based on violations of the rights guaranteed by the Constitution (constitutionality). In fact, the Applicant alleged that the Supreme Court rejected his statement of claim by erroneously interpreting the provisions of the substantive law and that this, according to him, constitutes a violation of the rights guaranteed by the Constitution and law.
26. In this respect, the Court reiterates that the issue of determination of facts and the interpretation of provisions of the substantive and procedural law are the responsibility of the regular courts and falls under their jurisdiction.
27. The Court also reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by regular courts or other public authorities. It is the role of regular courts or of other public authorities to interpret and apply pertinent rules of procedural and substantive law (See, *mutatis mutandis*, *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28).
28. The Court can only consider whether the evidence before the regular courts or other authorities has been presented in such a manner that the proceedings in general, viewed in entirety, have been conducted in such a way that the Applicant had a fair trial (See, *inter alia*, Report of the European Commission of Human Rights in case *Edwards v. United Kingdom*, Application No. 13071/87, adopted on 10 July 1991).

29. The Court considers that the Supreme Court in its judgment comprehensively reasoned why the judgments of lower instance courts should be modified and the Applicant's statement of claim be rejected.
30. Therefore, the Constitutional Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (see: *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. For the aforementioned reasons, the Court concludes that the Applicant's Referral in accordance with Article 48 of the Law, Rule 36 (1) d) of Rules of Procedure is to be declared as manifestly ill-founded and, therefore, inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law and in accordance with Rule 36 (1) d), 36 (2) b) and 56 (2) of the Rules of Procedure, on 13 November 2015, unanimously

### DECIDES

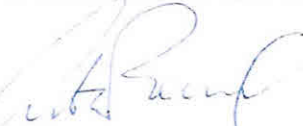
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this decision to the parties;
- III. TO PUBLISH this decision in Official Gazette in accordance with article 20.4 of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**



Robert Carolan



Arta Rama-Hajrizi