



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

Prishtina, on 4 November 2016  
Ref. no.:RK995/16

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI32/16**

Applicant

**Ibrahim Svarça**

**Constitutional review of Judgment Rev. no. 221/2015, of the Supreme  
Court of Kosovo, of 1 September 2015**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Ibrahim Svarça, with residence in Prishtina (hereinafter: the Applicant).

### **Challenged decision**

2. The challenged decision is Judgment Rev. no. 221/2015, of the Supreme Court of Kosovo, of 1 September 2015, which was served to the Applicant on 24 October 2015.

### **Subject matter**

3. The subject matter is the constitutional review of the abovementioned Judgment.
4. The Applicant alleges that the decisions of the regular courts violated the rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), and Article 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR).

### **Legal basis**

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

### **Proceedings before the Constitutional Court**

6. On 16 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 14 March 2016, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 26 April 2016, the Court informed the Applicant about the registration of the Referral, and sent a copy of the Referral to the Supreme Court.
9. On 15 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

10. On an unspecified date, the Applicant filed a claim with the Municipal Court in Prishtina against the Joint Stock Company "Montazha" from Belgrade, requesting the confirmation of ownership over a cadastral parcel which is registered under number 1504/2, based on the sale-purchase contract of 13 May 2005.
11. On 3 April 2007, the Municipal Court in Prishtina (Judgment C. no. 841/2006), approved the Applicant's claim.

12. Following the Judgment of the Municipal Court, the Applicant submitted to the Municipality of Prishtina-Department of Urbanism, Cadastre and Environment Protection (hereinafter: the Municipality of Prishtina), the application for registration of the immovable property.
13. Because of the *"silence of the Administration of the Municipality of Prishtina, regarding the non-fulfillment of the request for making the transaction"*, on 2 October 2007, the Applicant filed an appeal with the Ministry of Public Services, Kosovo Cadastral Agency (hereinafter: the Cadastral Agency).
14. On 8 October 2007, the Cadastral Agency rendered a conclusion (no. 738/7) and *"ordered the Cadastral Office with the Municipality of Prishtina to review the application for registration submitted by the Applicant and to render a decision on this administrative issue."*
15. Because of continued lack of action by the Municipality of Prishtina, on an unspecified date, the Applicant addressed the Municipal Court in Prishtina through enforcement proceedings against the debtor, the Municipality of Prishtina, requesting the registration of the parcel under his name.
16. On 8 February 2011, the Municipal Court in Prishtina (Decision E. no. 6/09), approved the Applicant's request. The decision further states: *"[...] pursuant to enforcement document- Judgment C. No. 841/2006, of the Municipal Court in Prishtina, is final as of 14.05.2007 [...] THE EXECUTION IS DETERMINED, so that the debtor, the Municipality of Prishtina, Department for Property, Geodesy and Cadastre, was ORDERED to register in the book of immovable items, the immovable cadastral plot No. 1504/2 in the name of Ibrahim Svarça from Prishtina"*.
17. On 18 March 2011, the Cadastral Agency (Decision no. 011952-2292) approved the Applicant's request concerning the right to use the property.
18. On 16 April 2011, the Municipality of Prishtina addressed the Cadastral Agency through submission 001-031-218, justifying the non-enforcement of the Judgment of the Municipal Court and claiming that under UNMIK Regulation 2002/12 and UNMIK Direction 2006/17, the Municipality informed the Special Chamber of the Supreme Court about the case, arguing that the case should have been adjudicated in the Special Chamber of the Supreme Court and not in the Municipal Court.
19. On 16 May 2011, the Cadastral Office of the Municipality of Prishtina issued the certificate on property rights over immovable property, no. UL-71914059-09836, in the name of the Applicant.
20. As the Applicant acquired full rights over the abovementioned immovable property, he filed claim for compensation of material damage with the Municipal Court in Prishtina against the Municipality of Prishtina. The Applicant requested *"to oblige the Municipality of Prishtina – Department of Urbanism, Cadastre and Environment Protection in Prishtina that in the name of rent for the property in the cadastral plot 1504/2 [...] compensates*



*for the period from 14.05.2007 until 01.05.2010 the amount of 469. 273.30 euro and the future period starting from 01.05.2010 and further on [...].”*

21. On 20 November 2011, the Municipal Court in Prishtina (Judgment C. no. 2644/08), rejected the statement of claim as ungrounded.
22. On an unspecified date, the Applicant filed an appeal with the Court of Appeal against Judgment C. no. 2644/08 of the Municipal Court of 10 November 2011, on the grounds of substantial violations of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
23. On 3 March 2015, the Court of Appeal of Kosovo (Judgment Ac. no. 4521/12), rejected the appeal as ungrounded. The Court of Appeal of Kosovo reasoned in the Judgment that the first instance court rendered a fair and grounded decision.
24. The Applicant then filed for revision with the Supreme Court of Kosovo against Judgment Ac. no. 4521/12 of the Court of Appeal of Kosovo, on the grounds of violation of the contested procedure provisions and erroneous application of the substantive law.
25. On 1 September 2015, the Supreme Court of Kosovo (Judgment Rev. no. 221/2015), rejected as ungrounded the request for revision. The Supreme Court of Kosovo reasoned “[...] *the lower instance courts, by determining correctly and completely the factual situation, have correctly applied the contested procedure provisions and the substantive law.*”
26. On 23 November 2015, the Applicant filed a request for protection of legality with the State Prosecutor.
27. On 3 December 2015, the State Prosecutor, by notification KMLC. no. 123/2015, rejected the request for protection of legality with the reasoning that *“the legal time limit for filing this legal remedy has expired.”*

### **Applicant’s allegations**

28. The Applicant alleges that Judgment Rev. no. 221/2015 of the Supreme Court of Kosovo of 9 September 2015, violated the rights guaranteed by the Constitution, namely by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 13 (Right to an effective remedy) of the ECHR.
29. The Applicant requests from the Court:

*“To hold that during this civil procedure in the first instance court, the Basic Court in Prishtina, in the second instance court-the Court of Appeal in Prishtina, and in the Supreme Court of Kosovo, it has been decided to my detriment [...] requesting the ANNULMENT of the judgments of the three (3) legal instances, as noted above.”*

## Admissibility of the Referral

30. The Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.

31. In this respect, the Court refers to Article 113 of the Constitution, which establishes:

*“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.”*

32. The Court also refers to Article 48 of the Law [Accuracy of the Referral], which stipulates that:

*“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.”*

33. The Court further takes into account Rule 36 [Admissibility Criteria] (1) (d) and (2) (d) of the Rules of Procedure, which provides that:

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

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

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

*(...)”*

*(d) the Applicant does not sufficiently substantiate his claim.”*

*(...)”*

34. The Court recalls that the dispute regarding the immovable property in question was conducted in two stages. The first one has to do with the Applicant's request for registration of ownership over the relevant cadastral parcel under his name in accordance with Judgment C. no. 841/2006 of the Municipal Court of 3 April 2007, which request was realized on 16 May 2011, when the Cadastral Office of the Municipality of Prishtina issued certificate of property rights over the immovable property in question. The second one has to do with the request for compensation of material damage from the Municipality of Prishtina on behalf of unrealized rent as a result of untimely



transfer of the immovable property in books, a procedure which was concluded with the Judgment Rev. no. 221/2015 of the Supreme Court of 1 September 2015, which upheld the Judgment of the Court of Appeal and the Judgment of the Municipal Court in Prishtina, and which Judgment is now challenged by the Applicant before the Constitutional Court.

35. The Court notes that the Applicant alleges that the Judgment Rev. no. 221/2015 of the Supreme Court of Kosovo of 1 September 2015, has violated his rights guaranteed by the Constitution, as provided by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR.
36. As to the Applicant's allegation of violation of Article 31 [Right to Fair and Impartial Trial], the Applicant alleges that: "*I have not been taken into consideration by the aforementioned institutions of the Republic of Kosovo, my rights to enjoy the property and the ownership, have been violated.*"
37. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, the Court of Appeal or the Municipal Court in Prishtina, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
38. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
39. It is important to note that the Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *inter alia*, case *Edwards v. United Kingdom*, App. No. 13071/87, Report of the European Commission of Human Rights, adopted on 10 July 1991).
40. Moreover, the Court notes that the Supreme Court specifically addressed and elaborated the basic allegations of the Applicant regarding essential violations of the contested procedure provisions and whether the decisions of the lower instance courts were based on established facts.
41. In this respect, the Court refers to the Judgment of the Supreme Court, which concluded that the challenged Judgment of the Court of Appeal was clear and comprehensible, and that it contained sufficient reasons and decisive facts for rendering a lawful decision. The Judgment of the Court of Appeal further emphasized:

*“This court considers that the appealing allegations are ungrounded, due to the fact that based on the case file, the respondent is not responsible to compensate the damage alleged by the claimant, due to relevant fact that the respondent, in attempting to implement the above mentioned judgment, namely the modification and the transfer of the immovable property to the claimant, and based on the aforementioned reasons, successively requested in line with its legal competencies, the opinion, namely, the relevant consent of the KTA, which considered the aforementioned judgment as a decision issued by a non-competent court, therefore, considering that in regard to the contested property, the Special Chamber of the Supreme Court of Kosovo should decide, and not any other domestic court with no jurisdiction.”* The Court of Appeal further stated in the Judgment that the *“the responsibility for the eventual damage requested by the claimant, cannot be attributed to the action or the inaction of the respondent, the Municipality, because the KTA had intervened in between, with its aforementioned stances, and that the respondent, as resulted by the case file, looked for the relevant consent by KTA.”*

42. Accordingly, the Court concludes that all of Applicant’s arguments, relevant to the resolution of the case were examined by the regular courts; that the factual and legal reasons for the impugned decision were set out at length; and that, accordingly, the proceedings before the regular courts, taken as a whole, were fair.
43. The Applicant also alleges violation of Article 24 [Equality Before the Law] and Article 13 (Right to an effective remedy) of the ECHR. In this regard, the Court notes that the Applicant has not presented any evidence and did not substantiate the allegation of violation of his rights guaranteed by Article 24 of the Constitution and Article 13 of the ECHR. When alleging constitutional violations, the Applicant must present a justified allegation and convincing argument (See case no. KI198/13, Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).
44. The Court recalls that the fact that the Applicant is dissatisfied with the outcome of the proceedings cannot of itself raise an arguable claim of a breach of the Constitution (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).
45. In these circumstances, the Court considers that the Applicant has not substantiated nor has sufficiently justified his allegation on constitutional basis of a violation of fundamental human rights and freedoms guaranteed by the Constitution, specifically violation of Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR, because the facts presented by him do not indicate in any way that the regular courts denied him the rights guaranteed by the Constitution.
46. Therefore, the Referral is manifestly ill-founded on a constitutional basis and is to be declared inadmissible, as established by Article 113.7 of the Constitution, provided for in Article 48 of the Law, and as further specified in Rule 36 (1) (d), (2) (d) of the Rules of Procedure.



### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 48 of the Law and Rule 36 (1) (d), (2) (d) and 56 (b) of the Rules of Procedure, on 15 September 2016, 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**

  
Gresa Caka-Nimani



**President of the Constitutional Court**

  
Arta Rama-Hajrizi