



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 14 March 2016  
Ref. no.: RK906/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI104/15**

Applicant

**Shaban Dulahu**

**Constitutional review of Judgment Rev. no. 64/2015  
of the Supreme Court of Kosovo, of 10 April 2015**

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

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  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Shaban Dulahu from Fushë-Kosovë (hereinafter: the Applicant) represented by lawyer Mr. Mustafë Musa, from Gjilan.

## **Challenged decision**

2. The Applicant challenges Judgment (Rev. br. 64 / 2015) of the Supreme Court of Kosovo, of 10 April 2015.

## **Subject matter**

3. The subject matter is the constitutional review of the abovementioned judgment of the Supreme Court of Kosovo. The Applicant considers that in the proceedings before the regular courts violated the Applicant's rights pursuant to Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Articles 6 and 13 of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. 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**

5. On 03 August 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 September 2015, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Bekim Sejdiu and Arta Rama- Hajrizi.
7. On 28 September 2015, the Court informed the Applicant about the registration of the Referral and requested to submit to the Court additional documents related to the Referral.
8. On 27 October 2015, the Applicant submitted additional documents to the Court.
9. On 02 November 2015, the Court informed the Supreme Court about the registration of the Referral.
10. On 9 February 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended unanimously to the Court the inadmissibility of the Referral.

## **Summary of facts**

11. On 14 January 2009, the District Court in Gjilan (Judgment C. No. 233/08) decided to terminate the marriage concluded on 4 March 1982 in Gjilan,



between the Applicant and his wife, in accordance with Article 69, paragraph 1 of the Family Law of Kosovo.

12. On 27 April 2009 the Supreme Court (Judgment Ac. no. 12/2009) upheld the Judgment of the District Court in Gjilan.
13. On 27 August 2009 the Applicant's ex-wife filed a lawsuit with the Municipal Court in Lipjan for the division of joint property acquired during the marriage.
14. On 28 September 2009 the Applicant submitted to the Municipal Court in Lipjan the response to the lawsuit, challenging the claim as ungrounded.
15. On 15 February 2011 the Municipal Court in Lipjan (Judgment C. no. 240/09) partly approved the claim of ex-wife, and in the enacting clause decided the following:

*"The statement of claim of Claimant M. D., from Lipjan, is partially APPROVED and it is DETERMINED that the Claimant is the owner of the aliquot share of (3/5 or 6/10), or expressed in percentage 40.95 % of the property acquired during the marriage: the apartment located in Lipjan, "Lidhja e Prizrenit" Street, no. 5/1, measuring a total surface area of 96.08 square meters. In addition, the Claimant is the owner of the ideal part of 1/2 of the property acquired during the marriage, which consists of movable properties [...]"*

*The Respondent - Shaban Dulahu from Lipjan is OBLIGED to recognize the Claimant's right to the property as mentioned in paragraph I of this enacting clause.*

*Each party shall bear its own costs of proceedings.*

*The other part of the statement of claim related to the adjudicated part for the apartment and movable items mentioned in paragraph I of the enacting clause, as well as the cadastral parcel P-71409085-00037, measuring a surface area of 0.10.00 ha, registered in certificate no. UL-714090085-00037 for immovable property right, CZ Topliqan, is REJECTED in entirety".*

16. On 19 May 2011 the ex-wife filed an appeal with the Court of Appeal of Kosovo in Prishtina against the Judgment of the Municipal Court in Lipjan.
17. On an unspecified date, the Applicant also filed an appeal with the Court of Appeal of Kosovo in Prishtina against Judgment of the Municipal Court in Lipjan.
18. On 18 September 2013 the Court of Appeal of Kosovo (Judgment CA. no. 2373/2012) partly approved the appeal of the ex-wife, so that it modified Judgment of the Municipal Court in Lipjan only regarding the costs of the proceedings.

19. The Court of Appeal of Kosovo recognized the ex-wife right to be reimbursed for her costs of proceedings in the amount € 640.50 to be paid by the Applicant. In all other parts pertaining to the division of property, the court upheld Judgment of the Municipal Court in Lipjan.
20. The Court of Appeal of Kosovo did not decide on the Applicants' appeal.
21. On 2 November 2013, the Applicant filed a request for revision with the Supreme Court of Kosovo against Judgment of the Court of Appeal of Kosovo.
22. On 15 June 2014, the Supreme Court remanded the Applicant's case to the Court of Appeal of Kosovo. The Supreme Court stated the following;
 

*"In support of this act, I am remanding the case 42/2014 in order to decide on the appeal of the respondent, given that the second instance court, by Judgment Ca. 2373/2012 of 18.9.2013, decided only on the appeal of the claimant, while no decision was rendered on the respondent's appeal".*
23. On 4 December 2014 the Court of Appeal of Kosovo (Judgment CA. no. 2336/14) rejected as ungrounded the Applicant's appeal and upheld the Judgment (C. no. 240/09) of the Municipal Court in Lipjan.
24. On 14 January 2015 the Applicant filed a request for revision with the Supreme Court of Kosovo against the Judgment of the Court of Appeal of Kosovo.
25. On 10 April 2015, the Supreme Court of Kosovo (Judgment Rev. no. 64.2015) rejected as ungrounded the request for revision and upheld Judgment (CA. no. 2336/14) the Court of Appeal of Kosovo with detailed reasoning.

### **Applicant's allegations**

26. The Applicant claims that in the proceedings before the regular courts his rights were violated, pursuant to Article 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] 46 [Protection of Property] and 54 [Judicial Protection of Rights], as well as Articles 6 and 13 of the ECHR.
27. The Applicant alleges: *".. My right was violated at all the stages of the proceedings for the review of the statement of claim, especially during the stage of the presentation of the evidence and the testimonies on the origin of property as well as the contribution of the Claimant to the acquisition of the joint property during marriage, who provides no piece of evidence except for the ascertainment that she was in an employment relationship".*
28. The Applicant did not explain how Article 46 [Protection of Property] of the Constitution was violated by the regular courts, but only states: *"... the lower courts by their decisions violated the rights guaranteed by the Constitution, the right to protection of property."*
29. The Applicant alleges that Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 of the ECHR were violated in the following manner: *"Neither the Court of Appeal nor the Supreme Court reasoned why the*



*procedure should continue although the Claimant died, because, pursuant to the provision of Article 95.1 of the Law on the Contested Procedure, the authorization is terminated upon the death of the natural person. The Court of Appeal of Kosovo did not act in accordance with this provision, but continued with the proceedings of reviewing the appeal of the claimant, and regardless of the fact that the claimant passed away on 20.04.2013, while for the statement of claim it was decided by judgment on 4.12.2014 ...”*

30. Finally, the Applicant alleges that: *“The Court of Appeal of Kosovo and the Supreme Court of Kosovo, when reviewing my appeal, did not correctly apply the substantive Law, because the contested procedure had to be terminated, pursuant to Article 277 of Law on the Contested Procedure”.*

### **Admissibility of Referral**

31. The Court shall examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

32. 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”.*

33. Moreover, the Court recalls Rule 36 (2) (b) and (d) of the Rules of Procedure, which 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.*

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

34. The Applicant essentially alleges that a certain number of Articles of the Constitution have been violated in the proceedings before the regular courts due to incorrect application of the substantive and the procedural law.
35. The Court considers that the Supreme Court of Kosovo provided a reasoned response to all of the Applicant's allegations, in relation to the reasons for the application of the relevant rules of the procedural and the substantive law.
36. The question of whether the regular courts considered *“the testimonies on the origin of wealth, as well as the contribution of the claimant in the creation of the joint property gained during marriage”* were reasoned in details by the Judgment of the Supreme Court of Kosovo as it follows:

*“... Within the meaning of Article 8.1 and 2 of the LCP, only the court is competent to decide on eligibility of the evidence truthfully and cautiously*



*as well as based on the results of the entire proceeding. Therefore, the lower instance courts, by assessing the indisputable fact that the Claimant and the respondent were in an employment relationship, wherefrom they earned certain personal income, and accepting the financial expertise and financial super expertise as grounded, pursuant to legal provisions of Article 47.1 and 4 and Articles 54.1 and 55.1 of the Kosovo Family Law, they ascertained that the contribution of the Claimant to the acquisition of the challenged apartment as well as the challenged movable property, is in the ideal part established by the first and second instance court..."*

37. The allegation on whether the regular courts "... did not reason why the procedure should continue, although the claimant died" "was reasoned in detail by the Judgment of the Supreme Court as it follows:

*"... In the provisions of the LCP, from Article 277 through 281, the matter of the termination of the proceedings conducted before the first instance court when due to death of a litigant, is legally regulated, while in Article 337.1, item (e) of the LCP, is provided that from the moment when the Claim is filed until the moment when the main hearing session for the matter is scheduled, by a decision, the first instance court shall decide on the termination of the proceedings. Based on the provisions of the LCP, the possibility for the second instance courts or revision Court to terminate the proceedings due to the death of one of the parties while the appealed proceedings are being conducted before these courts, namely, decision upon the revision as an extraordinary legal remedy, is not provided..."*

38. As stated above, the Court notes that the allegations raised by the Applicant are not supported by the documents submitted to the Court.
39. Turning to the circumstances of the present case, the Court notes that the Applicant tried to challenge the validity of the manner of the division of property acquired during marriage, by referring to Article 46 of the Constitution.
40. The Applicant essentially challenges the interpretation of relevant provisions of the law. This interpretation was reasoned by the regular courts in three instances. This conclusion was reached by the regular courts, after detailed examination of all the arguments presented by the Applicant.
41. The Applicant was given the opportunity at various stages of the proceedings to present arguments and evidence he considered relevant to his case. At the same time, he had the opportunity to effectively challenge the arguments and evidence presented by the opposing party and to challenge the interpretation of the law before the Municipal Court in Lipjan, the Court of Appeal and the Supreme Court in the regular court proceedings.
42. The Court considers that all the Applicant's arguments, which were relevant to the resolution of the dispute, were properly heard and that they were duly examined by the courts, that the material and legal reasons for the decision he challenges were presented in details and that, based on the above, the procedure before the regular courts, viewed in their entirety were fair.

43. The Constitutional Court reiterates that it is not its duty 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 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
44. Although the Applicant alleges that his rights have been violated by erroneous determination of the facts and by erroneous application of the law by the regular courts, he did not indicate how the abovementioned decision violated his constitutional rights.
45. The Applicant has not proved that the relevant proceedings were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
46. The Court considers that the admissibility requirements have not been met. The Applicant failed to present and substantiate his claims that the challenged decision violated his constitutional rights and freedoms.
47. Therefore, the Court must conclude that the Referral is manifestly ill-founded on constitutional basis and should be declared inadmissible, in accordance with Rule 36 (2) (b) and (d) of the Rules of Procedure.



## FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (2) (b) and (d) of the Rules of Procedure, in the session held on 9 February 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 effective immediately;

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**



Arta Rama-Hajrizi

