



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

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Prishtina, on 4 July 2016  
Ref. No.:RK960/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI121/15**

Applicant

**Qerim Zogaj**

**Constitutional review of Judgment Rev. no. 133/2015  
of the Supreme Court, of 14 May 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 Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

### **Applicant**

1. The Referral was submitted by Mr. Qerim Zogaj from Prishtina (hereinafter, the Applicant).

### **Challenged decision**

2. The challenged decision is the Judgment Rev. no. 133/2015 of the Supreme Court, of 14 May 2015. This Judgment was served on the Applicant on 7 September 2015.

### **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Articles 3 [Equality Before the Law], 7 [Values], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

### **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution and Article 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 6 October 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 6 November 2015, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 9 December 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 17 May 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

### **Summary of facts**

9. On 9 February 1986, the then Employer-the Labour Organization of Mines with Flotation "Kishnica and Novobërda" (hereinafter: Mines Kishnica and Novobërda) by Decision [no. 4159] allocated to the Applicant an apartment for use, into which subsequently he moved and lived.
10. The Mines Kishnica and Novobërda in 1989 allocated [Decision no. 2801] to Applicant on behalf of enlargement a (larger) apartment. However, subsequently his employment with the Mines Kishnica and Novobërda was terminated to the Applicant. Therefore, the Applicant has never moved into the (larger) apartment.

11. In 1991, the Mines Kishnica and Novobërda quashed the Decision [no. 2801] of 1989, and allocated abovementioned (larger) apartment for the use to another worker who subsequently moved into and lived [Decision no. 3201].
12. On an unspecified date, the Applicant submitted to the Municipal Court in Prishtina a request for the confirmation of right to purchase a (smaller) apartment allocated [Decision no. 4159] by Mines Kishnica and Novobërda.
13. On 23 November 2006, the Municipal Court in Prishtina [Decision N. no. 376/2006] recognized to the Applicant the right to purchase a (smaller) apartment, which was allocated by the Mines Kishnica and Novobërda [Decision no. 4159].
14. On 7 October 2009, the Applicant filed a claim with the Municipal Court in Prishtina requesting partial annulment of the Decision [no. 3201] of the Mines Kishnica and Novobërda, and recognition of the right by the court to a part of the (larger) apartment allocated based on the expansion by Decision [no. 2801] of the Mines Kishnica and Novobërda.
15. On 17 November 2009, the Municipal Court in Prishtina [Judgment C. no. 1041/2006] rejected the claim of the Applicant as ungrounded. In the reasoning of its judgment, the Municipal Court, *inter alia*, stated:

*“The claimant in this contest has not, by any means, proven before the Court any of the valid legal grounds based on which he would have the ownership right and, therefore, the right to possess the contesting immovable property, which is a someone else’s property and may be possessed and used only if there is an explicit consent by the owner of the property.”*

16. On 30 August 2010, the Applicant filed an appeal with the Court of Appeal against the Judgment of the Municipal Court in Prishtina.
17. On 6 August 2014, the Court of Appeal [Judgment CA. no. 2464/2012] rejected the Applicant’s appeal and confirmed the Judgment of the Basic Court in Prishtina.
18. On 28 November 2014, the Applicant filed with the Supreme Court a request for revision against the Judgment of the Court of Appeal.
19. On 14 May 2015, the Supreme Court [Judgment Rev. no. 133/2015] rejected the request for revision of the Applicant and upheld the Judgment of the Court of Appeal. In the reasoning of its decision, the Supreme Court, among other, stated:

*“The claimant, by the mere fact that, based on Decision N. no. 376/2006 of the Municipal Court in Prishtina, of 23 November 2006, he had acquired the right to purchase the apartment in “Sunny Hill”, second street, L-IV, first floor, apartment no. 4, measuring a surface area of 62,36 meters square, has lost all the rights in relation to the apartment which was allocated based on the expansion right, namely, the right to the space*

*difference between these apartments. Based on Article 12 of the Law in question, it is defined that the holder of the occupancy right may have the occupancy right over one apartment only”.*

## **Relevant legal provisions**

### **Law on Housing Relations**

Official Gazette of Kosovo, no. 11/83, 29/86 and 42/86  
5 April 1983, amendments of 1 November 1986

#### *Article 12*

*The holder of the occupancy right may have the occupancy right over one apartment only.*

## **Applicant's allegations**

20. The Applicant claims that the challenged decision violates his right to equality before the law and to protection of property.
21. The Applicant requests the Court:

*“The realization of the fundamental right guaranteed by the Constitution, the occupancy right acquired by the final decision over the apartment – subject of the contest presented herein, the right of being equal before the law and without ethnic-based discrimination; the right to a fair and impartial trial, and to find the judgments mentioned above as anti-constitutional and unlawful, and remand the matter to the first instance for retrial and decision-making.”*

## **Admissibility of the Referral**

22. The Court first examines whether the Referral meets the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
23. The Court refers to Article 113.7 of the Constitution, provides:

*“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.”*
24. The Court mentions that Article 48 of the Law states:

*“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 a public authority is subject to challenge”.*
25. The Court refers to Rule 36 of the Rules of Procedure, which stipulates:

“(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:*

*[...]*

*(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.”*

26. The Court recalls that the Applicant recalls that the judgment of the Supreme Court and the judgments of the regular courts violated his right to equality before the law and to protection of property.
27. The Court notes that the Applicant did not provide any procedural or substantive reasoning in his Referral. He only mentions some articles of the Constitution, without further explaining how these claimed violations occurred.
28. The fact that the Applicant does not agree with the outcome of this case cannot of itself raise an arguable claim of a violation of the Constitution (See case: *Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECtHR Judgment of 26 July 2005).
29. The Court also notes that the Supreme Court rejected as ungrounded the Applicant's request for revision and upheld the reasoning of the Court of Appeal and of the Supreme Court.
30. In addition, the Court notes that the Supreme Court reviewed each Applicant's allegation, explaining in detail, why the request for protection of legality of the Applicant had to be rejected as ungrounded and the Judgment of the lower instance court be upheld.
31. The Court considers that the Judgment of the Supreme Court did not violate the rights guaranteed by the Constitution, as claimed by the Applicant.
32. As to the allegation of the factual situation and interpretation of legal provisions, the Court reiterates that it is not its task to deal with errors of fact or law (legality), allegedly committed by the regular courts or public authorities, unless and insofar as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
33. The Court further reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. The role of the regular courts or of other public authorities is to interpret and apply the pertinent rules of both procedural and substantive law (See: *mutatis mutandis Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, para. 28).

34. The Constitutional Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (See: *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
35. The Court further considers that the proceedings before the regular courts, including those before the Supreme Court, were fair and reasoned (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009)
36. The Court notes that the Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision, no. 53363/99 of 31 May 2005) and that he did not specify how the abovementioned Articles of the Constitution support his allegation, as it is required with Article 113.7 of the Constitution and Article 48 of the Law.
37. In sum, the Court concludes that the Applicant's claims of a violation of rights and freedoms are ungrounded and unproven. Therefore, his allegation should be declared inadmissible, as manifestly ill-founded.
38. Therefore, in accordance with Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, the Referral is to be declared as manifestly ill-founded.

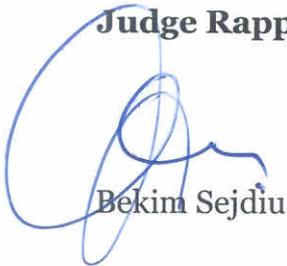
## FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, in the session held on 17 May 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;

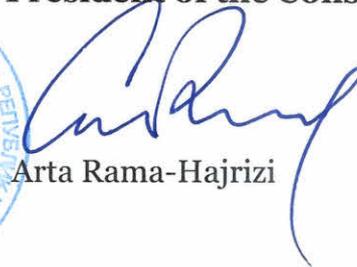
**Judge Rapporteur**



Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi