



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 19 February 2016  
Ref. no.:RK892/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI126/15**

Applicant

**Hajzer Aliu**

**Constitutional review of Judgment Rev. nr. 106/2015  
of the Supreme Court of Kosovo, of 6 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 Gërxhaliu, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Hajzer Aliu from Skenderaj (hereinafter: the Applicant) who is represented by lawyer Mr. Adem Vokshi from Mitrovica.

## **Challenged decision**

2. The Applicant challenges Judgment (Rev. nr. 106/2015 of 6 May 2015) of the Supreme Court of Kosovo, which was served on him on 25 June 2015.

## **Subject matter**

3. The subject matter is the request for constitutional review of the abovementioned Judgment of the Supreme Court of Kosovo. The Applicant considers that in the proceedings before the regular courts were violated Article 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 of the Protocol 1 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 56 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 20 October 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 November 2015 by Decision GJR. KI126/15, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI126/15, the President appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
7. On 24 November 2015 the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 26 October 2016, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral.

## **Summary of facts**

9. On an unspecified date in 1983, the construction land that was registered as a socially owned enterprise of the Municipality of Skenderaj was given in use to the Working Organization "Prvi Maj" in order to carry out the activity of production of the construction bricks.
10. The legal representative of the Working Organization "Prvi Maj" (hereinafter: WO "Prvi Maj") was at the time the Applicant.

11. WO "Prvi Maj" in accordance with the previously issued construction permit built a plant for the production of the construction bricks in the construction land that was registered as a social ownership of the Municipality of Skenderaj.
12. On an unspecified date, the Applicant built without a construction permit the residential building, a house of 133.80 m<sup>2</sup> on the building land which was given for use to WO "Prvi Maj", and which was registered as a social ownership of the Municipality of Skenderaj.
13. On an specified date in 2009, the Applicant filed a lawsuit with the Municipal Court in Skenderaj, requesting that it be confirmed that the Applicant by adverse possession as a conscientious holder became owner of the cadastral plots whereon he built the residence premises, a house with surface area of 133,80 m<sup>2</sup>.
14. On 24 June 2010, the Municipal Court in Skenderaj by Judgment (C.no.195/2009) rejected as unfounded the Applicant's lawsuit in its entirety, reasoning that:  
  
*"Article 29 of the Law on Property-Legal Relationships of SFRY [...] clearly provides that the property right over the public property is not acquired by adverse possession"*
15. Within legal deadline the Applicant filed an appeal with the Court of Appeal of Kosovo against Judgment (C no. 195/2009) of the Municipal Court in Skenderaj.
16. On 2 September 2014 the Court of Appeal of Kosovo, by Judgment (Ac. no. 1824/2012) rejected as ungrounded the appeal of the Applicant and upheld Judgment (C no. 195/2009) of the Municipal Court in Skenderaj of 24 June 2010.
17. Within legal deadline the Applicant filed a request for revision with the Supreme Court of Kosovo against Judgment (Ac. no. 1824/2012), of the Court of Appeal.
18. On 6 May 2015 the Supreme Court by Judgment (Rev. no. 106/2015) rejected the request for revision and upheld Judgment (Ac. No. 1824/2012) of the Court of Appeal of Kosovo with a detailed reasoning.

### **Applicant's allegations**

19. The Applicant alleges that by the above-mentioned judgments in the proceedings before the regular courts were violated Article 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 of the Protocol 1 of the European Convention on Human Rights (hereinafter: the ECHR).

20. The Applicant essentially alleges that the regular courts have incorrectly applied Article 29 of the Law on Basic Property Relations of SFRY, because *"by Article 16 of the Law on Amendment and Supplement of the Law on Legal-Property Relationship of SFRY the Article 29 of this law in 1996 was repealed"*.
21. The Applicant alleges that by Article 16 of the Law on Amendment and Supplement of the Law on Basic-Property Relationship of SFRY was deleted a provision that prohibits the acquisition of the ownership by adverse possession (*usucapio*) on public property.
22. Further, the Applicant states that under Article 21 (LBPR) a possibility of acquiring ownership by *"building on someone else's land,"* and considering that Article 29 (LBPR) was abolished then there is a possibility of acquiring property on the social land.
23. The Applicant as a legal basis for the recognition of property rights mentions Article 22 (LBPR), which provides that *"...A person who builds a new object using his/her material and work shall acquire the property right over that object. The property right over an object belongs to the owner of whose material, based on legal affair, such an object has been built by another person ...."*.
24. The Applicant requests the Court to declare his Referral admissible and to determine the following:

*"To hold that there has been a violation of Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo, as read in conjunction with Article 1 [Right to Property] of Protocol 1 of the European Convention on Human Rights.*

*To hold that there has been a violation of Article 31 of the Constitution [Right to Fair and Impartial Trial], as read in conjunction with Article 6 of the European Convention on Human Rights [Right to a Fair Trial].*

*To declare invalid Judgment Rev. no. 106/2015, of the Supreme Court of Kosovo in Prishtina, of 06.05.2015, and Decision Ac. no. 1824/2012, of the Court of Appeals of Kosovo in Prishtina, of 02 September 2014, as well as Judgment C. no. 195/2009, of the Municipal Court in Skenderaj, of 24.06.2010 ".*

### **Assessment of admissibility of the Referral**

25. The Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
26. The Court needs also to examine Article 48 of the Law which stipulates:

*"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."*

27. Moreover, the Court recalls the Rule 36 (2) (b) of the Rules of Procedure, which stipulates:

*„(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“.*

28. The Court notes that all the Applicant's allegations essentially consist of erroneous application of Article 29 (LBPR) and that due to such an erroneous interpretation of the law were violated Articles 31, 46, 53 and 54 of the Constitution and Article 6 of the Protocol 1 of the ECHR.
29. Further, the Court notes that the Applicant presented these same allegations also in the proceedings upon the request for revision before the Supreme Court of Kosovo. The Supreme Court by Judgment (Rev. no. 106/2015) of 6 May 2015, provided a detailed explanation of the manner in which the Court applied the procedural and the substantive law:

*“...The claimant stated that he has been using the challenged immovable property since 1983, but until the amendment of the LBLPR in 1996, the property right cannot be acquired by adverse possession, whereas since 1996 until the time of filing claim has not passed the time provided and the legal requirements were not provided for acquisition of property and the right to use of challenged immovable property, therefore, the Supreme Court assessed as ungrounded the allegation that the substantive law was erroneously applied “.*

30. The Applicant essentially challenges the way the procedural and substantive law was applied, and which 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 and at the same time all three instances emphasize that:

*"In the present situation, the claimant was aware as of the beginning that he was constructing on someone else's land, which is public property, thus, it cannot be considered that he did it in good faith" (bona fides).*

31. 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 as erroneously interpreted before the Municipal Court, the Court of Appeal of Kosovo in Prishtina and the Supreme Court of Kosovo in the regular court proceedings.
32. 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 entirety, was fair.

33. The 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).
34. 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.
35. The Court after reviewing the proceedings in entirety has not found 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).
36. The Court considers that the admissibility requirements have not been met. The Applicant failed to present and substantiate claims that the challenged decision violated his constitutional rights and freedoms.
37. Therefore, the Referral is manifestly ill-founded on constitutional grounds and is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

## FOR THESE REASONS


The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Article 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, on 26 January 2016, unanimously:

## DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Arta Rama-Hajrizi

