



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

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Prishtina, 22 May 2017  
Ref. no.:RK1067/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI132/16**

Applicant

**Musa Torbani**

**Constitutional review of Decision Rev. No. 97/2016 of the Supreme  
Court, of 14 June 2016**

### **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 Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Musa Torbani (hereinafter: the Applicant), residing in Prizren.

## **Challenged decision**

2. The Applicant challenges Decision Rev. No. 97/2016 of the Supreme Court of the Republic of Kosovo, of 14 June 2016 (hereinafter: the challenged decision), which was served on the Applicant on 25 July 2016.

## **Subject matter**

3. The subject matter of this Referral is the constitutional review of the challenged decision, which as the Applicant alleges has violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 24 [Equality Before the Law] and Article 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, 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 15 November 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 December 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 14 February 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 3 May 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral inadmissible as manifestly ill-founded on constitutional basis.

## **Summary of facts**

9. On an unspecified date, the claimants I.F. and B.A. from Prizren filed a statement of claim for recognition of the ownership right with respect to the immovable properties p.k. no. 520/3 with a surface area of 8434 m<sup>2</sup> and p.k. no. 5201/4 with a surface area of 600 m<sup>2</sup>.
10. On 28 January 2014, the Basic Court in Prizren (Judgment, C. no. 642/11) approved the claimants' statement of claim and upheld that the latter based on good faith maintenance are co-owners of the immovable property in question. By this decision, the Applicant and two other respondents are obliged to recognize to claimants the co-ownership over the immovable properties and to allow them the registration of these properties in the cadastral books.

11. On an unspecified date, the Applicant and the respondents filed appeal against the decision of 28 January 2014 with the Court of Appeal in Prishtina, on the grounds of erroneous determination of facts and erroneous application of the substantive law.
12. On 18 May 2015, the Court of Appeal (Judgment Ac. No. 2285/2014) rejected the appeal of the Applicant and of the respondents as ungrounded and upheld as fair the decision of 28 January 2014.
13. The Applicant and the respondents, against the Judgment of 18 May 2015, filed a request for revision with the Supreme Court.
14. On 14 June 2016, the Supreme Court (Rev. No. 97/2016) rejected their request for revision as ungrounded and upheld the Judgment of 18 May 2015. Moreover, the Supreme Court reasoned:

[...]

*“The Supreme Court of Kosovo assesses that the lower instance courts rightfully ascertained that the claimants as co-owners, based on Article 20 of the LBPR (applicable law in Kosovo based on UNMIK Regulation No. 1999/24), and Article 40, paragraph 1, of Law No. 03/L-154 on Property and Other Real Rights, acquired the ownership on the ground of the legal transaction – possession in bona fide.*

*The claim mentioned in the revision that the Judgment of the second instance court was rendered contrary to the legal provisions under Article 204 and Article 182, paragraph 1 and 2, item (n), of the LCP, because it did not provide any reasoning regarding the claims presented in the appeal, was considered as ungrounded by the Supreme Court of Kosovo because the challenged Judgment contained reasons for all relevant facts for a fair and based on law Judgment and also all the appealing allegations which were assessed that they did not put into doubt the legality of the appealed judgment, were reasoned*

[...]

### **Applicant’s allegations**

15. The Applicant alleges that all the decisions of the regular courts are contrary to the Constitution. He further alleges a violation of his right to property, because the regular courts recognized the right of ownership to the claimants without being based on facts and evidence, and that this immovable property was registered unlawfully in the name of the claimants.

### **Admissibility of the Referral**

16. The Court shall examine whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
17. In this respect, the Court refers to Article 113 (7) of the Constitution which establishes:

*“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”.*

18. In addition, the Court refers to Article 48 [Accuracy of the Referral] 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”.*

19. The Court also takes into account Rule 36 [Admissibility Criteria], paragraph (1) sub paragraph (d) and paragraph (2) sub paragraph (b) and (d) of the Rules of Procedure, which stipulate:

*“The Court may only deal with Referrals 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.”*

20. The Court recalls that the Applicant’s allegations are related to the violation of the right to equality before the law, the right to a fair trial and the right to property.
21. Regarding the allegation about fair trial and equality before the law, the Court notes that the Applicant merely mentions these Articles of the Constitution but he does not argue further how and why these concrete Articles of the Constitution have been violated by the regular courts.
22. Regarding the allegation of violation of the right to property, he argues that there has been a violation of this right because the regular courts unlawfully and without relying on facts and evidence recognized to the claimants the right of ownership over the immovable property, which allegedly belonged to him.
23. The Court reiterates that the confirmation of the ownership right is the jurisdiction of the regular courts. The mere fact that the property right belongs to the claimants, should not be considered automatically as a violation of the property right guaranteed by Article 46 of the Constitution.
24. In this respect, the Court reiterates that it is not a fact-finding court and that the correct and complete determination of factual situation is within the full jurisdiction of regular courts, while the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution. Therefore, the Constitutional Court in the present case cannot act as a fourth instance court (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment

of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

25. In addition, it is not the role of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court can only consider whether the regular courts' proceedings in general have been conducted in such a way that the Applicant had a fair trial (See case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
26. The Court considers that the Applicant has not substantiated and proved that the regular courts acted arbitrarily or unfairly during the adjudication of his case. Therefore, the mere fact that the Applicant is not satisfied with the outcome of the proceedings cannot of itself raise an arguable claim of a breach of the right to fair and impartial trial (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).
27. The fact that the Applicant does not agree with the outcome of the case cannot of itself raise an arguable claim of a breach of the right to fair and impartial trial (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).
28. From the foregoing, the Court concludes that the Applicant does not sufficiently substantiate his claim of a violation of fundamental rights guaranteed by the Constitution and the Convention, because the facts and arguments presented by him do not in any way show that the regular courts denied him the constitutional rights.
29. Therefore, the Applicant's Referral on constitutional basis and in accordance with Rule 36 (2) (b) and (d) of the Rules of Procedure is to be declared manifestly ill-founded and inadmissible.

## FOR THESE REASONS

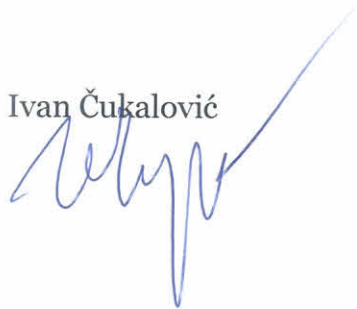
The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 49 of the Law and Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, on 3 May 2017, unanimously

## 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; and
- IV. This Decision is effective immediately;

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Arta Rama-Hajrizi

