



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

Prishtina, on 31 October 2016  
Ref. No.:RK988/16

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI42/16**

Applicant

**Valdet Sutaj**

**Constitutional review of Decision Rev. no. 201/2015, of the Supreme  
Court of Kosovo, of 8 September 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  
Bekim Sejdiu, Judge  
Selvete Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

### **Applicant**

1. The Referral is submitted by Valdet Sutaj (hereinafter: the Applicant) from Deçan, represented by Gazmend Nushi, lawyer from Prishtina.

### **Challenged decision**

2. The Applicant challenges Judgment Rev. no. 201/2015, of the Supreme Court, of 8 September 2015, in conjunction with Judgment Ac. no. 277/2008, of the District Court in Peja, of 12 April 2010, and Judgment C. no. 227/07, of the Municipal Court in Deçan, of 1 April 2008.
3. The Decision of the Supreme Court was served on the Applicants on 29 October 2015.

### **Subject matter**

4. The subject matter is the constitutional review of the challenged decisions of the regular courts, which allegedly violated the Applicant's right to property, as guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 1 of Protocol no. 1 of the European Convention of Human Rights (hereinafter: the Convention).
5. The Applicant also raises in substance the allegation of violation of the right to fair and impartial trial, but without reference to any constitutional provision in particular.

### **Legal basis**

6. 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**

7. On 26 February 2016, the Applicant submitted the Referral through mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 14 March 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova, Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
9. On 17 May 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court and the Basic Court in Peja-Branch in Deçan.
10. On 17 May 2016, the Court requested the Applicant and the Basic Court in Peja-Branch in Deçan to submit evidence (acknowledgment of receipt), indicating the date of receipt of the challenged decision of the Supreme Court by the Applicant.
11. On 12 July 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## Summary of facts

12. From the documents contained in the Referral, it results that in the period from 2004 until 2007, the Applicant and the company "Compacterm AG" based in Switzerland, had concluded 32 loan contracts. The company "Compacterm AG" continuously lent to the Applicant different amounts of money with different interest rate, where the total amount of these was € 1,357,321.
13. On 23 August 2007, the Applicant sold to the company "Compacterm AG" its own hotel "Rio De Janeiro" in the amount of 1.000.000 CHF due to non-payment of debt under the conditions set by the contract. The Applicant was obliged to return the other part of debt with his work. However, this contract was not implemented and executed.
14. Meanwhile, the company "Compacterm AG" filed a statement of claim with the Municipal Court in Deçan for return of the debt, based on the conditions specified in the contracts concluded between them and the Applicant.
15. On 1 April 2008, the Municipal Court in Deçan, by Judgment C. no. 227/07, approved the statement of claim of the company "Compacterm AG" as entirely grounded and determined, based on the administered evidence, that between the Applicant and the company a binding legal relationship was established. The Municipal Court, *inter alia*, reasoned that the company "Compacterm AG" had fulfilled its obligations and not the Applicant, that the Applicant is obliged to pay the borrowed debt. The Municipal Court had also imposed interim measure against the Applicant's hotel until the completion of the civil proceedings.
16. The Applicant filed an appeal with the District Court in Peja, alleging violations of the procedural law, erroneous determination of factual situation and erroneous application of the substantive law.
17. On 12 April 2010, the District Court in Deçan, by Judgment, Ac. nr. 277/08 rejected as ungrounded the appeal of the Applicant and upheld the challenged judgment of the Municipal Court. The District Court modified the Judgment of the Municipal Court only in the part related to the interest.
18. On 15 June 2012, the Municipal Court in Deçan, by Decision E. no. 251/2010 allowed the execution of the abovementioned Judgment of the Municipal Court in Deçan. The Applicant's immovable property was sold to the company "Compacterm AG" and in this way the total amount of debt was paid.
19. The Applicant filed a request for revision with the Supreme Court on the grounds of the substantial violation of the procedural law and erroneous application of the substantive law. The Applicant mainly complained that: (i) the Municipal Court had no territorial jurisdiction, (ii) the lower instance courts played a role of an expert in converting Swiss Francs into Euros, (iii) the courts have exceeded the subject of the statement claim, and (iv) the contracts are simulated and invalid.

20. On 8 September 2015, the Supreme Court by Judgment Rev. no. 201/2015 rejected as ungrounded the Applicant's request for revision filed against the decision of the District Court. The Supreme Court, among the other, reasoned that the request for revision was ungrounded, because the lower instance courts have correctly and completely determined the factual situation, and also correctly applied the procedural and substantive law.
21. Regarding the allegation for substantial violations of the procedural law, the relevant part of the Judgment of the Supreme Court provides:

*“The allegations stated in the revision of the respondent and his representative that the judgment of the first instance court and the court of appeal were rendered with the essential breaches of the provisions of the contested procedure under Article 354, paragraph 2, item 14 of the LCP (there should be Article 182 paragraph 2, item (n) of the LCP), as according to their consideration from the enacting clause of the judgment cannot be determined which amounts the respondent has to pay, because we have to deal with the interest rates ranging from 9.5%, 10%, 13% up to 14%. The Supreme Court of Kosovo found as ungrounded, since the second instance court in its judgment regarding the interest rate specified that the respondent has to pay the claimant the interest rate of 10% of the principal debt, starting from the 4.12.2007 (the date when the claim was submitted), and until the final payment. According to the assessment of the Supreme Court the challenged judgment was not rendered with this essential breach of the contested procedure, and that the enacting clause of judgment is clear to be executed, while determination of the interest rate is based on Article 277, in conjunction with Article 399 of LOR. The Supreme Court of Kosovo found as ungrounded the allegation in the revision that the judgment is incomprehensible and contradictory with the factual situation and the proofs verified in the proceeding, since according to the assessment of this court, the challenged judgment and the judgment of the first instance court are comprehensible and consistent with the evidence reviewed during the proceeding.”*

22. As to the allegation of the territorial jurisdiction of the Municipal Court in Deçan, the relevant part of the Judgment of the Supreme Court reads:

*“The claims stated in the revision of the respondent that the Municipal Court in Deçan was not competent to decide on this legal-civil matter, because the claimant is from Switzerland, the respondent is the permanent employee in Switzerland and also the contractual relationship has been established in Switzerland. The Supreme Court considered as ungrounded, because under Article 40 of the LCP, for the trial in the contests against the Kosovo citizens permanently residing abroad, general territorial jurisdiction court is the court of his last residence in Kosovo, while the last residence of the respondent was in the village Llukë e Epërme, Municipality of Deçan, where he has built also the hotel "Rio De Janiero", which in the contracts mentioned he has declared as the mortgage for the loan security.”*

23. As to the allegation that the lower instance courts did not conduct an expertise, the relevant part of the Judgment of the Supreme Court provides:

*“The allegations that essential violations consist in the fact that the lower instance courts played the role of the expert, because on their own they have calculated the converting of the Swiss Francs into Euro currency, this Court considered as ungrounded, because the claimant by his submission of 19.2.2008 on specification of the statement of claim, requested the amount of the debt expressed in Euro currency.”*

24. As to the allegation that the lower instance courts exceeded the statement of claim, the relevant part of the Judgment of the Supreme Court provides:

*“The authorized representative of the respondent claims that the lower instance courts have exceeded the statement of claim, but does not make the reasoning of any fact related with any case where the exceeding of the statement of claim is manifested, while for the court is not sufficient the conclusion that “...such a thing can be best proved by the case file.”*

25. Regarding the allegation of the lack of authenticity of contracts, the relevant part of the Judgment states:

*“The Supreme Court of Kosovo considered also the claims stated in the revision of the respondent that the mentioned contracts are simulative contracts, because behind them is hidden a contract on money laundering, for what they are not legally valid, but such a claim was considered to be ungrounded, since in this case in all contracts are confirmed the contractual obligations between the litigants, the loan date, the amount of the loan in Swiss Francs, repayment date, respective rate of interest, the manner and the timeline of the loan repayment, the signatures of the litigants and legalization at the notary office in Switzerland, therefore according to the consideration of this court, the lower instance courts have rightly assessed that that the contracts have the legal form from which arise the rights and obligations for contracting parties based on the provisions of the Articles 557, 558 and 559 of the LOR...*

*The Supreme Court of Kosovo considered also other claims of the revision related to certification of the contracts at the notary office in Switzerland, the challenge of signatures of the contracts in front of the notary, submission of the claim within legal time limit, but the same were the claims presented to the lower instance courts, for which claims they have provided sufficient reasons in their judgment, therefore this Court considered that it was not necessary to repeat them again, but the reasoning provided in the judgment of the lower instance courts considers as fair and based on the law.”*

26. As to the allegation of the interim measure, the relevant part of the Judgment of the Supreme Court reads:

*“The Supreme Court of Kosovo did not consider the allegations stated in the revision regarding the decision on interim measures, because under the provision of the Article 228 paragraph 1 of the LCP, the parties can file a revision only against final judgments, by which is completed the proceeding of the second instance court. Taking this into consideration, the revision against the decision on interim measures is not admissible, since with such decision the proceeding is not finally completed. The interim measure is a procedural decision which can be proposed before and during the contested court proceeding and also after its completion until the execution is completely finished.”*

27. As to the allegations mentioned in the supplement to the revision, the relevant part of the Judgment reads:

*“The Supreme Court of Kosovo has not considered either the allegations stated in the supplement of the revision, since the latter have been submitted on 14.05.2015, while the revision was submitted on 19.05.2010, which means that the supplement of the revision was filed out of time”.*

### **Applicant’s allegations**

28. The Applicant alleges that in his case was violated the right to property guaranteed by Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol 1 of the Convention.
29. As regards the proceedings conducted before the regular courts, the Applicant alleges: *“...the Supreme Court of Kosovo has adjudicated the value according to lump sum assessments and despite facts which proved that the alleged debt, or at least a part of it, seemed to have been paid before the dispute had started.”*
30. The Applicant also alleges that: *“The Supreme Court of Kosovo, as well as lower instance courts, adjudicated the debt in the value of which the alleged amounts of loans which had failed to be paid at the moment of deciding, have also been calculated.”* The Applicant further alleges: *“The value of the adjudicated debt is also based on some “Loan agreements” which contain provisions of a null character...”*
31. Regarding the actions of the courts, the Applicant alleges: *“...the proportionality between the measures taken (rendering the Judgment) and the purpose achieved (payment of debt) has been violated qualitatively, because the value of the immovable property...is objectively much higher than the real value of that debt...”*
32. Finally, the Applicant alleges that: *“...an unlawful and unconstitutional factual situation was created, as the immovable property...was transferred to the ownership of the responding party even though it never had and yet has no legal presence in the territory of Kosovo.”*

## Admissibility of the Referral

33. The Court first examines 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.

34. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

*“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.”*

35. The Court also 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.”*

36. The Court also refers to Rule 36 (2) (d) of the Rules of Procedure which specifies:

*“(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”.*

37. In the present case, the Court notes that the Applicant explicitly refers to violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the Convention and also, in substance, invokes a violation of the right to fair and impartial trial.

38. The Court notes that the Supreme Court responded to all central allegations of the Applicant, because it explained: (i) the rights and obligations of the contracting parties and regularity of the contracts (ii) the territorial and subject matter jurisdiction of regular courts in this case and (iii) the expertise issues and the exceeding of the statement of claim.

39. As regards the Applicant’s allegation for violation of the principle of proportionality, the Court notes that the proceedings conducted before the regular courts were fair and impartial, and moreover, in the second instance they have addressed and specified the question of the interest of the Applicant’s debt. The Court considers that this allegation is ungrounded because from the documents submitted, it does not result that the rights guaranteed by the Constitution and Convention have been substantially violated from the supposed inverse application of the principle of proportionality.

40. In addition, the Court notes that the Applicant had the benefit of the conduct of the proceedings based on adversarial principle; at the various stages of those proceedings he was enabled to submit the arguments he considered relevant to his case, that he was given the opportunity to challenge effectively the arguments and evidence presented by the responding party; and that all the arguments, viewed objectively, that were relevant for the resolution of his case, were heard and reviewed by the regular courts; that the factual and legal reasons against the challenged decision were presented in detail; and that, in accordance with the circumstances of the case, viewed in their entirety, the proceedings were fair. (See, for example, the case *García Ruiz v. Spain* [GC], application no. 30544/96, Judgment of 21 January 1999, paragraph 29).
41. In this respect, it should be borne in mind, since this is a very common source of misunderstandings on the part of applicants, that the “fairness” required by Article 31 is not a “substantive” fairness (a concept which is part-legal, part-ethical and can only be applied by the trial judge), but rather a “procedural” fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (See the case of *Star Cate – Epilekta Gevmata and Others v. Greece*, application no. 54111/07, ECtHR, Decision of 6 July 2010).
42. The Court considers that the Applicant only quotes and generally describes the content of the provisions of the Constitution and Convention, without substantiating how those constitutional norms were violated to his detriment as it is required by Article 48 of the Law.
43. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
44. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
45. The Constitutional Court recalls that it is not a fact-finding Court and that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, while the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, 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).
46. The Court reiterates that the task of the Court is to assess whether the proceedings before the regular courts were fair in their entirety, including the way the evidence was taken (See case *Edwards v. United Kingdom*, no.

13071/87, Report of the European Commission of Human Rights, of 10 July 1991).

47. The fact that the Applicant disagrees with the outcome of the case cannot serve him as a right to raise an arguable claim on the violation of Article 46 of the Constitution (See, for example, Case No. KI125/11, *Shaban Gojnovci*, Resolution on Inadmissibility of 28 may 2012, paragraph 28).
48. In these circumstances, the Court considers that the Applicant has not substantiated the allegation of a violation of fundamental human rights and freedoms guaranteed by the Constitution, because the facts presented by him do not indicate in any way that the regular courts denied him the rights guaranteed by the Constitution.
49. Therefore, the Referral, on constitutional grounds, is manifestly ill-founded and is to be declared inadmissible as established by Article 113.7 of the Constitution, provided for in Article 48 of the Law and further specified in Rule 36 (2) (d) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and Rule 36 (2) (d) of the Rules of Procedure, on 12 July 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. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Arta Rama-Hajrizi