



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

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Pristine, 29 October 2012  
Ref. No.: RK317/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 60/12**

Applicant

**Muharrem Sulaj**

**Constitutional Review of the Judgment of the Supreme Court, Rev. no.  
58/2007, dated 15 March 2010**

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

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

## **Applicant**

1. The Referral was submitted by Mr. Muharrem Sulaj (hereinafter: the “Applicant”), residing in Gjilan.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court, Rev. no. 58/2007, of 15 March 2010, which was served on him on 19 April 2010.

## **Subject matter**

3. The Applicant alleges that the abovementioned decision violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), namely Article 21 [General Principles], Article 24 [Equality Before the Law], Article 34 [Right not to be Tried Twice for the Same Criminal Act], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights].
4. Furthermore, the Applicant requests the Court not to have his identity foreclosed.

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the “Law”) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

## **Proceedings before the Court**

6. On 18 June 2012, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
7. On 5 July 2012, the President of the Constitutional Court, with Decision No.GJR.KI-60/12, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-60/12, appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.

8. On 25 June 2012, the Court requested from the Municipal Court in Gjilan the case file, which they provided the Court with on 17 August 2012.
9. On 31 August 2012, the Referral was communicated to the Supreme Court.
10. On 18 October 2012, 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**

11. On 29 September 2003, the Municipal Court in Gjilan, (Judgment C. no. 441/2003), approved the Applicant's claim of property right. The Municipal Court held that *"From the evaluation of the evidence and verified facts, the Court finds that between the litigants there is nothing contestable."* This Judgment became final on 8 October 2003. On 28 April 2004, Mr. R.A. filed a complaint with the Municipal Court in Gjilan requesting it to annul the final judgment of the Municipal Court of 29 September 2003 and to confirm the right to ownership. Furthermore, he requested the Municipal Court to grant interim measures.
12. On 29 April 2004, the Municipal Court in Gjilan (Decision C. no. 204/04) approved Mr. R.A. request for interim measure.
13. On 16 December 2004, the Municipal Court in Gjilan (Judgment C. no. 204/04) approved Mr. R.A. complaint and confirmed that Mr. R.A. is the owner of the contested property and not the Applicant. Further, the Decision C. no. 204/04 of 29 April 2004 on the interim measure remains in force until final resolution of this dispute. The Applicant complained against this Judgment to the District Court in Gjilan.
14. On 25 June 2005, the District Court in Gjilan, (Decision Ac. no. 95/05) approved the Applicant's complaint and quashed the Judgment of the Municipal Court in Gjilan of 16 December 2004 and returned it for retrial. The District Court held that the Judgment of the Municipal Court of 16 December 2004 *"[...] lacks the reasoning for the decisive facts and the ones that are given are incomplete, are not convincing and are not sufficient."*
15. On 21 March 2006, the Municipal Court in Gjilan (Judgment C. no. 480/05) approved the claim of Mr. R.A. and confirmed his right to the property that previously with the Judgment of the Municipal Court in Gjilan of 29 September 2003 (Judgment C. no. 441/2003) was confirmed to the Applicant. The

Municipal Court further held that the judgment, C. no. 204/04 of 29 April 2004 on the appointment of an interim measure remains in force until final resolution of this dispute. The Municipal Court reasoned that:

*“As the plaintiff according to this issue claims that he obtained the ownership right of this field with the purchase and as such also the defendant Muharrem Sylaj claims, the Court assessed the evidence separately and as a whole and concludes that among the two equal claimants to obtain the ownership of the disputed field, the strongest is the plaintiff because he proves his claim with examined evidence which indicate that he bought this field from the defendant Sh. as the factual owner but paid the amount of money after he received the consent of the sole successor of the only legal owner S.Z. and having paid the price for the transaction he took it over in possession, and possessed it without disturbance until the defendant Muharrem announced that he had transferred the same field on his ownership, while the defendant Muharrem although he is in possession of lawful decision on the obtaining of ownership right over this field he didn't prove it in any way because his testimony is in contradiction with the evidence of the defendants V.K. and Sh.H. and especially with evidence of the defendant S.Z. who testified that in confidence he was deceived by the defendant Muharrem and his lawyer signing the statement without knowing its content thinking that the defendant Muharrem bought this field from the plaintiff with whom he had spoken in Switzerland for the transfer of the field.”*

*“The Court has assessed the claims of the representative of the defendant Muharrem Sylaj - the lawyer Gazmend Sylaj given in the submission of the defendant and in the response to the claim that this case is considered as judged case such an contention is considered unjustified because for a case to be judged there must be fulfilled three criteria and such as the same identity of the parties in the procedure and the role of parties, the identity of claims of the parties and the identity of factual grounds which is not the case because in this case except the defendants M. V. and S. involved in the civil case C. no. 441/03, there are also involved the plaintiff R.A. and the defendant Sh.H.*

16. On 28 October 2006, the District Court in Gjilan, (Judgment Ac. no. 190/06) rejected the Applicant's complaint as unfounded and upheld the judgment of the Municipal Court of Gjilan of 21 March 2006. The Applicant filed a revision with the Supreme Court against this Judgment.
17. On 15 March 2010, the Supreme Court (Judgment Rev. no. 58/2007) rejected as unfounded the Applicant's request for revision. The Supreme Court held that *“In the reasoning of the judgment, the second instance court added that in*

*1994 the plaintiff acquired the property right over the disputable immovable property based on the transaction with the defendant Sh.H., and immediately gained possession and use over it and used it without any obstruction by anyone until 2003 when he was informed by the defendant M.S. that the title of the disputable property was transferred onto him based on a final judicial decision. The district court found that although the defendant M.S. has a final judgment for acquisition of ownership over the disputable immovable property, he did not acquire this right in reality because he failed to prove beyond reasonable doubt that that he became an owner of this immovable property based on a transaction, and he did not get the free possession and use over it until now. The District Court found that all the administered evidence, apart from the above mentioned judgment and partially the testimony of the defendant V.K., and defendant M.S., verify that the plaintiff has lawfully acquired the ownership right over this immovable property, while the defendant M.S. and V.K., unrightfully challenge the this right of the plaintiff.*

*Based on such factual situation of the matter, the Supreme Court of Kosovo, found that lower instance courts, have properly applied the substantive law by finding that the claim-suit of the plaintiff is well grounded. The challenged judgments as well as the first instance judgment contain sufficient reasons about the relevant facts, which are essential for fair review of this legal matter and those reasons are upheld by this court as well.”*

18. Furthermore, no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

### **Applicant's allegations**

19. The Applicant alleges that the Supreme Court judgment was taken in violation of Article 21 [General Principles], Article 24 [Equality Before the Law], Article 34 [Right not to be Tried Twice for the Same Criminal Act], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution, because the Applicant has a Judgment from the Municipal Court in Gjilan, Judgment C. no. 441/2003 of 29 September 2003, which approved the Applicant's claim of property right and which became final on 8 October 2003. Notwithstanding, this final Judgment, the Supreme Court concluded that the Applicant is not the owner of the property.

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

20. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to first examine whether he has fulfilled the

admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court emphasizes that it can only decide on the admissibility of a Referral, if the Applicant shows that he/she has submitted the Referral “within a period of four (4) months [...] from the day upon which the claimant has been served with a court decision.”, pursuant to Article 49 of the Law.
22. The final judgment of the Supreme Court, Rev. no. 58/2007 was taken on 15 March 2010, and was served on the Applicant on 19 April 2010, whereas the Applicant filed the Referral with the Court on 18 June 2012, i.e. more than 4 months from the day upon which the Applicant has been served with the Supreme Court decision.
23. It follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law.
24. As to the Applicant’s request for not having his identity foreclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 49 of the Law and Rule 56 (2) of the Rules of Procedure, on 18 October 2012, unanimously

### **DECIDES**

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT his request not to have his identity foreclosed;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Prof. Dr. Enver Hasani