



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

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Prishtina, 31 October 2014  
Ref. No.: RK714/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI74/14**

Applicant

**Radomir Filipović**

**Constitutional Review of the Judgment, Rev. No. 86/2011 of the Supreme  
Court of 23 January 2013**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
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. Radomir Filipović residing in Srbobran, Republic of Serbia (hereinafter, the Applicant). He is represented by the representatives of the Legal Aid Project with seat in Belgrade, Republic of Serbia.

### **Challenged decision**

2. The Applicant challenges the Judgment, Rev. No. 86/2011 of the Supreme Court of Kosovo of 23 January 2013, which was served on the Applicant on 26 December 2013.

### **Subject matter**

3. The subject matter is the request for constitutional review of the Judgment Rev. No. 86/ 2011 of the Supreme Court dated 23 January 2013. The Applicant claims that the Supreme Court by rejecting his request for revision has violated his rights to equality before the law, fair and impartial trial, prohibition of discrimination, legal remedies and protection of property as guaranteed by the Constitution of the Republic of Kosovo (hereafter, the Constitution) and the European Convention on Human Rights (hereafter, ECHR).
4. The Applicant also claims that the regular courts have violated his right to fair trial.
5. In general, the Applicant also complains on a lack of a mechanism for compensation of damages caused to his property in 1999 in relation to the right to a legal remedy and the right to protection of property.

### **Legal basis**

6. 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 Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

### **Proceedings before the Constitutional Court**

7. On 17 April 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
8. On 6 May 2014 the President of the Court by Decision, GJR. KI74/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI74/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
9. On 21 May 2014 the Court informed the Applicant of the registration of the Referral and requested that he files the power of attorney for the representatives that he had announced in his Referral. On the same date the Court informed the Basic Court in Peja of the registration of the Referral and requested that they provide a copy of the letter of receipt indicating the date when the Applicant or his representatives have received the challenged Judgment. Lastly, on the same date the Court sent a copy of the Referral to the Supreme Court.

10. On 27 May 2014 the Court contacted the Applicant by telephone in order to ascertain whether he had received the letter sent by the Court. The Applicant responded positively and reported that he would file the requested document with the Court.
11. On 28 May 2014 the Basic Court in Peja submitted the requested document to the Court.
12. On 9 June 2014 the Applicant filed the requested document with the Court.
13. On 15 September 2014 the President of the Court by Decision, No. KSH. KI 74/14 replaced Judge Robert Carolan with Judge Arta Rama-Hajrizi.
14. On 15 September 2014, Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of Facts**

15. On 1 April 2005 the Applicant filed a claim with the Municipal Court in Klina against the following respondents: Government of Kosovo; Municipality of Klina; United Nations Mission in Kosovo (hereinafter: UNMIK); and Kosovo Peace Keeping Force (hereinafter: KFOR). The Applicant requested compensation for damages in the amount of 10,000.00 € and accrued interest due to alleged looting, theft and destruction of his property in the village of Krnjice, Municipality of Klina.
16. On 19 March 2009 the Municipal Court in Klina (Judgment, P. No. 299/2006) rejected the Applicant's claim as ungrounded and held that:

*"[...] the Court ascertained that the claimant [Applicant] alleges that the damages were caused during 1999. At that time, the responding Municipality of Klina and Government of Kosovo were not established, which is a publicly know fact, thus there is no need to ascertain further.*

*Considering the above and pursuant to Article 73 of the LCP [Law on Contested Procedure], the Court rejects the claim of the claimant since the responding Municipality of Klina and Government of Kosovo lack passive legitimacy.*

*In relation to the claim against the third and fourth respondents, namely UNMIK and KFOR, the Court dismisses the claim because Sections 2.1 and 2.4 of the UNMIK Regulation No. 2000/47 of 18.08.2000 on the Status, Privileges and Immunities of KFOR and UNMIK and their personnel, KFOR, their properties and ownership are excluded from any legal proceedings, while KFOR personnel is excluded from the jurisdiction before courts in Kosovo."*

17. On 15 May 2009 the Applicant filed an appeal with the District Court in Peja due to "substantial violations of the contested procedure, erroneous and

*incomplete ascertainment of the factual situation and erroneous application of the material law.”*

18. On 9 November 2010 the District Court in Peja (Judgment, Gz. No. 235/09) rejected the appeal of the Applicant as ungrounded and held that:

*“[...] The District Court approves the legal stance of the first instance court as proper and lawful because the challenged judgment does not contain any substantial violations of the contested procedure provisions [...]. In regards to proper and complete ascertainment of the factual situation [...] the first instance court has correctly applied the material law.”*

19. On 11 February 2011 the Applicant filed a request for revision with the Supreme Court of Kosovo claiming that the Judgment of the District Court in Peja contained violations of contested procedure provisions and an erroneous application of material law. More specifically, the Applicant argued that:

*“[...] The challenged judgment directly prevents the application of the Convention [ECHR] in this case because if none of the respondents enjoy passive legitimacy; this means that no one is responsible for the destruction of the property of the claimant.*

*The first and second instance court has not produced any evidence throughout the proceedings. We consider that the factual situation is not ascertained at all and it is not clear on what grounds the first and second instance courts rendered their decisions.”*

20. On 23 January 2013 the Supreme Court of Kosovo (Judgment, Rev. No. 86/2011) rejected the Applicant’s request for revision and concluded that:

*“[...] According to the finding of this Court, the allegations made in the request for revision that the challenged judgment was rendered by an erroneous application of material law do not stand ground. In this regard, this Court finds that the first instance court properly applied material law when [...] it rejected the claim suit of the claimant for compensation for material damage.*

*[...] at the time when the claimant suffered material damage, the responsibility for public safety and civil administration was not a mandate of the respondents, and consequently, they are not liable to such compensation. This court also finds that the first instance court properly applied the material law when [...] it dismissed the claim of the claimant against respondents UNMIK and KFOR, since these respondents were excluded from every legal proceeding and jurisdiction in Kosovo.”*

### **Applicant’s allegations**

21. It appears that the Applicant is making a threefold set of allegations in relation to the following issues: the decision of the Supreme Court to reject his request for revision; the violation of the right to fair trial; and, the right to a legal remedy and to the protection of property. The Court will deal with each allegation separately, while describing and analyzing them.

**A. In relation to the decision of the Supreme Court to reject his request for revision**

22. The Applicant alleges that Judgment, Rev. No. 86/2011 of the Supreme Court of 23 January 2013 by rejecting his request for revision has violated his rights guaranteed by the Constitution, namely Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] and his rights guaranteed by the ECHR, namely Article 6 [Right to a Fair Trial], Article 13 [Right to an Effective Remedy], Article 14 [Prohibition of Discrimination] and Article 1 [Protection of Property] of the First Protocol.

**B. In relation to the violation of the right to fair trial**

23. With regards to the alleged violation of his rights under Article 31 of the Constitution and Article 6 ECHR the Applicant claims that: “[...] *there was a violation of the right to access justice in the sense that the proceeding never developed to the review of the substantial violation of the right to peaceful enjoyment of property.* The Applicant further alleges a violation of “*the right to a reasoned judicial decision*” because the court did not review all of the submissions made by the Applicant. Lastly, the Applicant alleges a “*violation of the principle of equality of arms*” since at main hearing the Applicant was allegedly served with a report in Albanian language which he did not understand.
24. Therefore, the Applicant claims that the regular courts have violated his right to fair trial by not providing him with proper access to justice and equality of arms in the proceedings and by not reasoning their decisions sufficiently.

**C. In relation to the lack of a mechanism for compensation of damages caused in 1999 in relation to the right to a legal remedy and the right to protection of property**

25. With regards to the alleged violation of his rights under Article 32 of the Constitution and Article 13 ECHR, the Applicant states that: “[...] *the applicable legislation in Kosovo allows the applicant to initiate a procedure against government (central and local) for compensation of suffered injuries due to terrorist attacks or riots. Nevertheless, in practice, this remedy is completely ineffective.* Consequently, the Applicant argues that even after exhausting all available legal remedies the result is that: “*no one is liable for compensating the damage, nor is there any other mechanism to compensate the claimant.*”
26. With regards to the alleged violation of his rights under Article 46 of the Constitution and Article 1 of the First Protocol of the ECHR in conjunction with Article 54 of the Constitution, the Applicant states that: “[...] *by the acts and procedures of the authorities and bodies of the respondent, the Applicant was disallowed from peaceful enjoyment of his property, while latter (upon destruction thereof) he was deprived of his right to compensation. Public authorities are positively obliged to enable peaceful enjoyment of property*

[...]. The Applicant considers that: “as a result of inactivity of local government and the Government of Kosovo” his right to property has been violated.

27. Therefore, the Applicant complains, in general, on the lack of a mechanism for compensation of damages caused in 1999 in relation to the right to a legal remedy and the right to protection of property.
28. The Applicant concludes by requesting the Court:

*“I. [...] to find this referral admissible, and to annul the mentioned judgments of the regular courts, concluding that the judgment of the Supreme Court of Kosovo, Rev. No. 86/2011, of 23.01.2013, is unconstitutional.*

*II. To confirm the above-mentioned violations of the Constitution of the Republic of Kosovo, committed to my detriment:*

- Article 24 [Equality before Law]*
- Article 31 [Right to Fair and Impartial Trial]*
- Article 32 [Right to Legal Remedy]*
- Article 46 [Protection of Property]*
- Article 54 [Judicial Protection of Rights]*

*And violations of the European Convention on Human Rights and Fundamental Freedoms, with Protocols thereto:*

- a) Right to Fair Trial, Article 6, paragraph 1 of the Convention*
- b) Right to Effective Legal Remedy, Article 13 of the Convention,*
- c) Right to Peaceful Enjoyment of Property, Article 1 of the Protocol 1 to the Convention*
- d) Right to Enjoyment of Rights and Freedoms of the Convention without discrimination on any grounds, Article 14 of the Convention.*

*III. On the basis of the concluded violations of rights guaranteed by Constitution and laws, to order compensation of material and non-material damage. For material damages, the amount of 10.000 Euros, and for pecuniary damages, the amount of 5.000 Euros, totalling into 15.000 Euros.“*

### **Assessment of the admissibility**

29. The Court examines whether the Applicant has met the necessary requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

#### **A. As to the Applicant’s allegations related to the decision of the Supreme Court to reject his request for revision**

30. In this respect, the Court refers to Rules 36 (1) c) and 36 (2) b) of the Rules of Procedure, which provide that:

*“(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*

*(2) The Court shall reject 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,*

[...]"

31. As mentioned above, the Applicant had filed a claim for compensation of damages that allegedly occurred during the period of 1999 in Kosovo. Following those events, the Applicant had sued the Municipality of Klina, the Government of Kosovo, KFOR and UNMIK alleging that they were responsible for not preventing the looting, theft and destruction of his property. As a result, the Applicant considers that the respondents should have been held responsible and ordered to pay the requested amount of compensation.
32. The Court notes that the Applicant's claim for compensation of damages was rejected by the Municipal Court in Prishtina. The Court also notes that his appeal filed with the District Court was rejected as ungrounded, as was his request for revision filed with the Supreme Court.
33. The Applicant alleges that the Supreme Court of Kosovo, by rendering its Judgment, Rev. No. 86/2011 and rejecting his request for revision and consequently his request compensation for damages violated his rights to: equality before the law; fair and impartial trial; prohibition of discrimination; legal remedies; and protection of property as guaranteed by the Constitution and the ECHR.
34. However, the Court notes that in the appeal procedure, the District Court and the Supreme Court regarding the request for compensation of damages reasoned their decisions referring to the provisions of the Law in force. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
35. In that respect, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violations of the law, substantial violations of procedural provisions and erroneous ascertainment of facts allegedly committed by the District Court when it rejected his appeal on compensation of damages. The Supreme Court stated that:

*"[...] lower instance courts had fully and fairly ascertained the factual situation, properly applied contested procedure provisions and material law when finding the claim ungrounded. Both judgments of lower court instances contain sufficient reasoning on decisive facts relevant to the proper adjudication of this legal matter, accepted as such by this Court. The challenged Judgment does not contain substantial violations of contested procedure provisions, or any other violations which would influence the regularity and legality of the judgment, as reviewed by this Court ex officio."*
36. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).

37. The Constitutional Court further reiterates that it is not its task under the Constitution 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). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution.
38. The Constitutional Court can only consider whether the evidence has been presented in a correct manner and 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).
39. In that respect, the Court notes that the reasoning referring to the request for compensation of damages in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the District Court and the Municipal Court have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
40. The Court also wishes to recall that the Applicant's case is similar to the case No. KI01/11 (see case KI01/11 of the Applicant *Gradjevinar*, Constitutional Court case, Resolution on Inadmissibility of 4 October 2011). In that case, the Applicant had requested the constitutional review of a Judgment of the Supreme Court which rejected his request for revision in regards to compensation of damages that occurred in 1999. The Applicant's request for constitutional review was rejected as manifestly ill-founded pursuant to Rule 36 (2) b) of the Rules of Procedure. The Court considered that the presented facts did not in any way justify the allegation of a violation of the constitutional rights.
41. In the present case, the Court observes that even though the Applicant has attempted to substantiate his claim through enumeration of various case-law and other arguments. However, the Court considers that the presented facts do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant.
42. Consequently, this part of the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rules 36 (1) c) and 36 (2) b) of the Rules of Procedure.



**B. As to the Applicant's allegation regarding the violation of his right to a fair trial by the regular courts**

43. As stated above the Applicant claims that the regular courts violated few components of his right as guaranteed by Article 31 of the Constitution and Article 6 ECHR, namely his "right to access to justice"; his "right to a reasoned decision" and his "right to equality of arms".
44. In relation to these particular allegations, the Court notes that the Applicant has never alleged before the District Court or the Supreme Court a violation of his right to fair trial. He merely insisted that: "*the Municipality of Klina and Government of Kosovo are liable on the basis of Article 180 of the Law on Obligation Relationships*" and that "*there is a responsibility of KFOR and UNMIK, grounded upon the UN Security Council Resolution 1244.*"
45. The Court observes that the Applicant had ample opportunity to present these allegations before the regular courts. Yet, the Applicant is raising these allegations for the first time before this Court.
46. The Court further notes that the Applicant has always raised his concerns regarding the issue of "*passive legitimacy*" for the Municipality of Klina and the Government of Kosovo and the issue that "*KFOR and UNMIK should not be immune from liability*". However, he has never raised the allegation that his right to fair trial had been infringed or violated in any way.
47. In other words, the Applicant only complained on the basis of "*substantial violations of contested procedure*"; "*erroneous and incomplete ascertainment of the factual situation*"; and "*erroneous application of material law*" that were directly related to his request for compensation of damage. He never alleged, directly or indirectly that his right to fair trial had been violated. Thus, the District Court and the Supreme Court could not have taken into account such allegations because they were not raised before them.
48. In this connection, the Court recalls that one of the foundation principles of the constitutional review is the principle of subsidiarity. In the special context of the Constitutional Court, this implies that the duty to ensure respect for the rights provided by the Constitution pertains originally to the regular judicial authorities, and not directly or immediately to the Constitutional Court (see *Scordino vs. Italy*, no. 1, ECHR, Judgment of 29 March 2006, § 140).
49. In this regard, the Court considers that the Applicant should have provided the regular courts with an opportunity to review these particular complaints and if necessary to fix them in line with their jurisdiction and legal competencies.
50. Therefore, the Court concludes that no violation of the right to fair trial has to be considered.

**C. As to the Applicant's allegations relating to the lack of a mechanism for compensation of damages caused in 1999 in relation to the right to a legal remedy and the right to protection of property**

51. The Applicant, besides complaining on the alleged unconstitutionality of the Judgment, No. Rev. 86/2011 of the Supreme Court of 23 January 2013, he also complains, in general, on the: “[...] *lack of a mechanism for compensation of damages caused on his property in 1999, which brought violations of his constitutionally guaranteed rights.*”
52. In this regard, the Applicant “[...] *calls upon the Constitutional Court to take its position in due consideration of such obligations and the succession of various holders of duties in the territory of the Republic of Kosovo.*” He attempts to substantiate this request by stating that: “[...] *it is too simplified to dismiss claims for compensation of destroyed property only on grounds of the situation in 1999, thereby stating that UNMIK and KFOR enjoyed immunity, and that local institutions did not exist at that time.*”
53. In relation to this, the Court notes that the substance of the Applicant's complaint relates to the alleged inexistence of an effective remedy in connection with his right to protection of property as guaranteed by the Constitution and the ECHR. Therefore, the Applicant requests the Court to “*take a position*” in order to address this matter.
54. In this respect, the Court notes that the request of the Applicant goes beyond challenging the constitutionality of the decisions of the regular courts, including the Supreme Court. The request of the Applicant goes beyond the jurisdiction of the Court established by Article 113 (7) of the Constitution which states that: “*Individuals are authorized to refer violations of their individual rights and freedoms guaranteed by the Constitution [...]*”.
55. In relation to this, the Court also draws attention to Rule 36 (3) f) of the Rules of Procedure which provide that:
- “(3) A Referral may also be deemed inadmissible in any of the following cases:  
[...]  
f) the Referral is incompatible *ratione materiae* with the Constitution”*
56. In this regard the Court notes that the request of the Applicant that the Constitutional Court should “*take a position*” in this given matter does not fall within the jurisdiction of the Constitutional Court. In other words, these general claims made by the Applicant do not give rise to a constitutional matter within the competences prescribed under Article 113 (7).
57. Therefore, the Court concludes that pursuant to Rule 36 (3) f) of the Rules of Procedure this part of the Referral should be declared inadmissible because it is *ratione materiae* incompatible with the Constitution.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Rules 36 (1) c), 36 (2) b), 36 (3) f) and 56 (2) of the Rules of Procedure, on 15 September 2014, 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 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately


**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Prof. Dr. Enver Hasani