



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

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Prishtina, on 9 December 2016  
Ref. No.:RK1016/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI79/16**

Applicant

**Sabit Gori**

**Constitutional review of Judgment Rev. no. 302/2015 of the Supreme  
Court of Kosovo, of 3 November 2015**

### **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 Mr. Sabit Gori, with residence in Prishtina, (hereinafter: the Applicant), who is represented by Mr. Shemsi Uka, a lawyer from Prishtina.

## **Challenged decision**

2. The challenged decision is Judgment Rev. no. 302/2015 of the Supreme Court of Kosovo, of 3 November 2015, which was served on the Applicant on 5 February 2016.

## **Subject matter**

3. The subject matter is the constitutional review of Judgment Rev. no. 302/2015 of the Supreme Court of Kosovo, of 3 November 2015. The Applicant alleges that the decisions of the regular courts violated Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights ] 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 19 May 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 June 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Gresa Caka-Nimani.
7. On 23 June 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 20 October 2016 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

9. On 15 February 2001, the Applicant filed a claim with the Basic Court in Prishtina against the Municipality of Prishtina, requesting the confirmation of ownership over a cadastral plot which is registered under the no. 220/1.
10. On 30 July 2013, the Basic Court in Prishtina (Judgment C. no. 59/01), rejected the Applicant's statement of claim. Further, the Judgment states "[...] *the Court related the lack of grounds of the statement of claim to the fact that the Claimant failed to prove that he has really bought the contested parcel from the Respondent, after a regular administrative procedure. [...] The Court also recalls that provisions of the Law on Basic Property Relations,*

*which was applicable at the time when the alleged contract was concluded, have excluded the property right over items in social ownership[...].”*

11. The Applicant filed an appeal with the Court of Appeals of Kosovo against Judgment C. no. 59/01, of 30 July 2013 of the Basic Court in Prishtina.
12. On 14 April 2015, the Court of Appeals of Kosovo (Judgment Ac. no. 3004/2013) rejected as ungrounded the Applicant's appeal, upholding the stance of the Basic Court, in its entirety.
13. On an unspecified date, the Applicant filed a request for revision with the Supreme Court against Judgment Ac. no. 3004/2013 of the Court of Appeals of 14 April 2015.
14. On 3 November 2015, the Supreme Court of Kosovo (Judgment Rev. no. 302/2015) rejected the revision as ungrounded.

### **Applicant's allegations**

15. The Applicant alleges that the decisions of the regular courts violated his rights protected by the Constitution, namely under Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
16. With respect to Article 24 [Equality Before the Law], the Applicant alleges that *“[...] there was no equality before the courts, because all judgments were based on a sole justification that: “allegedly the procedures of public auction were not followed” when it comes to the property of the Municipality, while the testimonies of witnesses as evidence in proceedings were not taken into account at all.”*
17. With respect to Article 31 [Right to Fair and Impartial Trial], the Applicant alleges that *“the right to fair trial has been violated by the fact that the claimant is in unobstructed possession and use of the contested immovable property initially as a tenant from 1993 to 1997, while from 1997 until today also as a legal owner and possessor in good faith.”*
18. The Applicant further alleges that Article 46 [Protection of Property] has been violated stating that *“Article 46 of the Constitution has been violated because the claimant was denied the property right [...] was not considered by any judgment, so despite the abovementioned facts and evidence, as well as all those that are in the case file, they were not assessed correctly and completely [...].”*
19. The Applicant concludes by requesting the Court:

*“To annul all judgments of the courts and to remand the case for retrial and decision on merits.”*



## Admissibility of the Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113 of the Constitution which stipulates:

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*(...)*

*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.”*

22. The Court also refers to Article 48 of the Law [Accuracy of the Referral], 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 a public authority is subject to challenge.”*

23. The Court further takes into account Rule 36 [Admissibility Criteria] (2) (d) of the Rules of Procedure, which provides:

*“(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

*(...)*

*(d) the Applicant does not sufficiently substantiate his claim.”*

24. In his Referral, the Applicant challenges Judgment Rev. no. 302/2015 of the Supreme Court, of 3 November 2015, which rejected the Applicant’s request for confirmation of the ownership.

25. As to the violation of Article 24 [Equality Before the Law], the Court finds that the Applicant has not presented any fact nor he has sufficiently substantiated his allegation about unequal treatment. When alleging such a constitutional violation, the Applicant must present a reasoned allegation and a convincing argument.

26. The Court notes that the Applicant has not shown that he has been treated differently compared to how other individuals in the same situation would have been treated. In order for an issue to be discriminatory there must be a difference in the treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is

not a reasonable relationship of proportionality between the means employed and the aim sought to be realized (See Case *Burden v. UK* [GC] No. 13378/05, ECHR, Judgment of 29 April 2008).

27. Regarding the violation of Article 31 [Right to fair and impartial trial], the Applicant failed to give any explanation as to how and why his right to a fair trial has been violated by the regular courts.
28. In this regard, the Court refers to the reasoning of the Supreme Court Judgment in response to the Applicant's allegations of "*essential violation of the contested procedure provisions, erroneous application of the substantive law and submission of new evidence*". The Supreme Court in its reasoning stated that "*in the present case, the requirements foreseen by the applicable law, for confirmation of the right of ownership in favor of the claimant over the contested immovable property, which is registered as cadastral parcel 220-1, in terms of the provision of Article 4, par. 4 of the Law on Circulation of Real Estate (OG of the "RSS" no. 40/89), are not fulfilled, because the contested immovable property was not acquired in the limits of [...]. The claimant failed to prove the fact that legal requirements from paragraph 4 of the abovementioned Law were fulfilled, for legal effects of the contract on sale of the immovable property [...].*"
29. With respect to Article 46 [Protection of Property], the Applicants alleges that "*Article 46 of the Constitution has been violated because the claimant was denied the property right [...] was not considered by any judgment, so despite the abovementioned facts and evidence, as well as all those that are in the case file, they were not assessed correctly and completely [...].*"
30. In the present case, the Court notes that the Applicant has never become the holder of property rights, on the contrary, the Court notes that the Basic Court has dealt with the basis of possession of the plot: "*Based on the order dated 27.10.2000, it results that the Municipal Administrator of UNMIK in Prishtina and the Director of the Department for Cadastre and Geodesy have ordered the Claimant that within the time limit of three days to vacate the social property [...] since it was being used without legal basis [...]. Therefore, such a legal situation "cannot be regarded as a "possession" within the meaning of Article 1 of Protocol No. 1.*"
31. The Court notes that all his expectations that he will acquire effective enjoyment of a property right were rejected by the regular courts.
32. The Applicant alleges that Article 54 [Judicial Protection of Rights] has been violated, by merely referring to the respective Article of the Constitution without giving any further explanation as to how and why this right was violated by the Supreme Court.
33. The Court notes that the Applicant requests: "*To annul all judgments of the courts and to remand the case for retrial and decision on merits.*"
34. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the



Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

35. The Court 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 the Applicants *Faik Hima, Magbule Hima and Besart Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The fact that the Applicant is dissatisfied with the outcome of the proceedings in his case cannot of itself raise an arguable claim of a breach of his rights protected by the Constitution.
36. The Court notes that the Applicant had the opportunity to present the case before the regular courts. The question why the Applicant's request for confirmation of ownership was rejected is extensively reviewed by the Basic Court, the Court of Appeals and the Supreme Court. The latter responded to all the allegations of the Applicant emphasizing the fact that the sale-purchase contract based on which the Applicant claims to acquire an ownership right over the cadastral plot cannot create legally valid effects for the approval of the statement of claim, because such a contract does not meet the legal requirements for its validity.
37. In this regard, it is important to note that the Constitutional Court can only consider whether the evidence has been correctly presented and that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *inter alia*, case *Edwards v. United Kingdom*, Report of the European Commission of Human Rights, App. No. 13071/87, adopted on 10 July 1991).
38. In this regard, the Court notes that the reasoning regarding the rejection of the property right over the cadastral plot in the Judgment of the Supreme Court is clear and, after reviewing all the proceedings, the Court also found that the proceedings before the Basic Court and the Court of Appeals have not been unfair or arbitrary (see case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
39. For the foregoing reasons, the Court considers that the Applicant failed to substantiate his allegations as to how and why his rights were violated by the Supreme Court.
40. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (2) (d) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113 of the Constitution, Article 48 of the Law and Rules 36 (2) (d) and 56 (b) of the Rules of Procedure, on 20 October 2016, unanimously

## DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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**

Selvete Gërxhaliu-Krashniqi



**President of the Constitutional Court**

Arta Rama-Hajrizi