



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

Prishtina, 30 June 2017  
Ref. No.:RK 1097/17

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI92/16**

Applicant

**Jusuf Berisha**

**Constitutional review of  
Judgment Rev. no. 344/2015 of the Supreme Court of Kosovo,  
of 12 January 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 Jusuf Berisha from Prishtina (hereinafter: the Applicant), who is represented by Ramiz Suka, lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment Rev. no. 344/2015 of the Supreme Court of Kosovo of 12 January 2016, which rejected as ungrounded the Applicant's Revision filed against Judgment of the Court of Appeals of Kosovo.
3. The challenged decision was served on the Applicant on 9 March 2016.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

5. 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**

6. On 15 June 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 12 July 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Bekim Sejdiu and Selvete Gërxhaliu – Krasniqi.
8. On 22 August 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 4 November 2016, the President of the Court appointed Judge Almiro Rodrigues as Presiding Judge of the Review Panel replacing Judge Robert Carolan who resigned on 9 September 2016.
10. On 07 December 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**

11. In 2007, the Applicant filed with the Municipal Court in Podujeva a statement of claim for confirmation of his alleged ownership rights over a parcel, which is registered under the ownership of the Municipality of Podujeva.
12. On 14 September 2007, the Municipal Court [Judgment C. no. 114/2007] rejected as ungrounded the Applicant's statement of claim.

13. The Applicant filed with the District Court appeal against that Judgment.
14. On 22 October 2008, the District Court [Decision Ac. no. 970/2007] approved the Applicant's appeal, annulled the first instance judgment and remanded the case for retrial to the Municipal Court.
15. On 1 December 2009, in the repeated proceedings, the Municipal Court [Judgment C. no. 878/2008] rejected as ungrounded the Applicant's statement of claim, reasoning that the Applicant did not submit any evidence which substantiates his claim of ownership over the disputed parcel.
16. The Applicant filed with the District Court an appeal against that Judgment of the Municipal Court.
17. On 8 April 2015, the Court of Appeal [Judgment CA. no. 1627/2012] rejected as ungrounded the Applicant's appeal and upheld the first instance judgment of the Municipal Court.
18. The Applicant filed a request for revision with the Supreme Court against that Judgment of the Court of Appeal.
19. On 1 December 2015, the Supreme Court [Judgment Rev. no. 344/2015] rejected as ungrounded the Applicant's request for revision and upheld the judgments of the lower instance courts. In the reasoning of its judgment, the Supreme Court *inter alia* stated that:

*"[...] the claimant has not provided reasons during the entire proceedings that he or his predecessors have had the ownership right over the contested parcel, based on any legally valid ground for acquiring the ownership right over the immovable property, and that the claimant could not acquire the ownership right over the contested immovable property on the ground of acquisition by prescription [...]"*

### **Applicant's allegations**

20. The Applicant claims a violation of Article 31 [Right to Fair and Impartial Trial].
21. In addition the Applicant's alleges that his right to protection of property was violated, because the disputed immovable property was transferred from private to public property in an unlawful manner.
22. The Applicant alleges that the challenged decision violated his rights to fair trial and to protection of property, because of erroneous and incomplete determination of factual situation and erroneous application of the law. The Applicant does not invoke any other Articles of the Constitution.

## **Admissibility of the Referral**

23. The Court first examines whether the Applicant's Referral has fulfilled the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure.
24. In this respect, the Court refers to Article 113 paragraph 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."*

25. The Court further 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."*

26. The Court also takes into account Rule 36 (1) (d) and (2) (b) of the Rules of Procedure, which foresees:

*"(1) The Court may consider a referral 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."*

27. The Court recalls that the Applicant claims a violation of his right to fair and impartial trial and his right to protection of property.

### **Alleged violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution**

28. The Court notes that the Applicant alleges a violation of his right to fair trial based on erroneous and incomplete determination of factual situation and erroneous application of the law.
29. In that respect, the Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution, which establishes:

*1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal*

*charges within a reasonable time by an independent and impartial tribunal established by law.*

30. The Court reiterates that it is not the jurisdiction of the Constitutional Court to substitute, by its own assessment, the assessment of the regular courts and, as a general rule, it is the duty of the regular courts to assess the evidence before them and to apply the law. (See Constitutional Court Case KI47-48/15, constitutional review of Judgment AC-II-14-0057, of the Special Chamber of the Supreme Court of Kosovo, of 12 March 2015, Applicants *Beqir Kosokoviku and Mustafë Lutolli*); It is the role of the Constitutional Court to find whether the court proceedings were fair and impartial in its entirety, as it is required by Article 6 of the European Court of Human Rights. (See ECtHR cases, *inter alia*, *Edwards v. United Kingdom*, 16 December 1992, para.34, Series A, no. 247 and *B. Vidal v. Belgium*, 22 April 1992, 33, Series A, no. 235).
31. The Court considers that the Applicant does not show that the court proceedings viewed in entirety were unfair or arbitrary in order to the Constitutional Court to conclude that the very essence of the right to fair and impartial trial was violated.
32. Based on the above, the Court reiterates that it is the duty of the regular courts to assess whether the claim for confirmation of the property rights over the disputed immovable property was reviewed in accordance with the law. The claim for confirmation of the property rights was reviewed before the three court instances, with a final Judgment of the Supreme Court, which considered that the Applicant “*has not provided reasons during the entire proceedings that he or his predecessors have had the ownership right over the contested parcel*”.
33. Moreover, the Court notes that the Applicant has not provided evidence showing that the regular court proceedings were unfair or arbitrary, and as such degrading substantially the judicial process in its entirety. (See ECtHR case *Dombo Beheer vs. Netherland*, Judgment of 27 October 1993, Series A, no. 274).
34. The Court further considers that the Supreme Court fully reasoned its decision, by explaining in detail why the request for revision is ungrounded, by assessing the determination of the factual situation and the application of the law in force, and by assessing the decision of the lower instance courts based on the allegations raised by the Applicant.
35. Therefore, in these circumstances, the Court finds that the challenged decision did not violate the Applicant’s right to a fair and impartial trial as guaranteed by Article 31 of the Constitution.

#### **Alleged violation of Article 46 [Protection of Property] of the Constitution**

36. The Court notes that the Applicant also claims a violation of his right to protection of property, because of erroneous and incomplete determination of factual situation and erroneous application of the law.



37. In that connection, the Court refers to Article 46 [Protection of Property] of the Constitution, which establishes:
- 1. The right to own property is guaranteed.*
  - 2. Use of property is regulated by law in accordance with the public interest.*
  - 3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
38. The Court also refers to Art.1 [Property rights] of Protocol 1 of the European Convention on Human Rights (ECHR) which establishes:
- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
  - (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*
39. In that regard, the Court considers Article 46 of the Constitution, in connection with Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights (ECHR), refers to the right to protection of an existing property and does not provide a right to acquisition of the property.
40. The Court recalls that the confirmation of the property rights was the object of the dispute before the three regular court instances and the Judgment of the Supreme Court found that the Applicant “*has not provided reasons (...) that he or his predecessors have had the ownership right over the contested parcel*”. Moreover, the Supreme Court also found that the Applicant “*could not acquire the ownership right over the contested immovable property on the ground of acquisition by prescription [...]*”.
41. The Court recalls Article 53 [Interpretation of Human Rights Provisions] which establishes that “*human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Rights*” Thus, the Constitutional Court, as “*the final authority in Kosovo for the interpretation of the Constitution*” (Article 112 of the Constitution), is bound to take into account the case law of the ECtHR when assessing alleged violations of human rights and fundamental freedoms guaranteed by the Constitution.

42. In that respect, the Court refers to ECtHR jurisprudence which held that “*the Court [the ECtHR] accepted that Article 1 of Protocol 1 does no more than enshrine the right of everyone to the peaceful enjoyment of "his" possessions, but it does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions*”. (See ECtHR case *Marckx v. Belgium*, Application no. 6833/74, 13 June 1979).
43. Thus, the Court considers that Article 1 of Protocol 1 of the ECHR, in conjunction with Article 46 of the Constitution, does not guarantee a right to acquisition of property (assets); the acquisition of property is regulated by the law and potential disputes are to be resolved in the regular courts.
44. Therefore, in these circumstances, the Court finds that the challenged decision did not violate the Applicant’s right to protection of property as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR .

### **Conclusion**

45. The Court concludes that the Applicant built his claims on the basis of legality grounds, namely based on erroneous and incomplete determination of factual situation and erroneous application of the law.
46. Based on all the above, the Court considers that the facts presented by the Applicant do not justify a constitutional allegation of a violation of the right to fair and impartial trial, as guaranteed by Article 31 of the Constitution, and of the right to protection of property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR.
47. Therefore, the Court, in accordance with Rule 36 (1) (d) and (2) (b), finds that the Referral is inadmissible as manifestly ill-founded on a constitutional basis.

## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113 1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (1) (d), (2) (b) of the Rules of Procedure, in the session held on 7 December 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; and
- IV. TO DECLARE this Decision effective immediately;

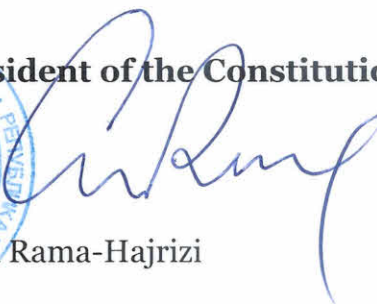
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi