



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

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Prishtina, 15 August 2014  
Ref.no.:RK703/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 06/14**

Applicants

**Olga Petrović, Svetolik Patrnogić, Vesna Dejanović and  
Miroslava Ivančić**

**Constitutional Review  
of the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10  
of 18 September 2013**

### **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  
Arta Rama-Hajrizi, Judge

#### **Applicants**

1. The Applicants are Olga Petrović, Svetolik Patrnogić, Vesna Dejanović, with residence in Kragujevac, Republic of Serbia, and Miroslava Ivanović with residence in Roscoe, the United States of America.

2. The first Applicant (Ms. Olga Petrović), based on authorisation latter to sell property owned by the fourth Applicant (Ms. Miroslava Ivanović) claimed to be the fourth applicant's legal representative.

### **Challenged decision**

3. The Applicants challenge the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10 of 18 September 2013, which allegedly was served to the Applicant's temporary representative appointed *ex officio* by the Basic Court in Ferizaj on unspecified date.

### **Subject matter**

4. The subject matter is the request for constitutional review of the Judgment of the Basic Court in Ferizaj, Pc. No. 559/10 of 18 September 2013.
5. The Applicants allege that the challenged judgment was adopted in violation of their rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in particular Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution. The Applicants also claim that their rights guaranteed by the Article 6 of the European Convention on Human Rights have been violated.
6. In addition, the Applicants requested the Constitutional Court of the Republic of Kosovo (hereinafter, "the Court") to impose interim measures, *"ordering the Municipal Cadastral Office in Ferizaj to revoke ownership of I. B. on cadastral parcel P-72217092-02323-0 MC Ferizaj in total surface area of 1917 m2 and reinstate previous state, respectively, carry out registration od property rights to Julijana Patrnogić."*

### **Legal basis**

7. Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo, (hereinafter: the "Law"), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

### **Proceedings before the Court**

8. On 20 January 2014 the Applicants submitted the Referral to the Court.
9. On 31 January 2014 the President of the Court based on Decision GJR. KIO6/14 appointed Judge Kadri Kryeziu as Judge Rapporteur.
10. On 31 January 2014 the President of the Court based on Decision KSH. KIO6/14 appointed the Review Panel composed of Judges, Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.

11. On 10 February 2014 the Constitutional Court informed the Applicants of the Referral's registration. In the same letter, the Applicants were asked to submit to the Court the filled referral form and the challenged judgement. Furthermore, the Court asked the first Applicant (Ms. Olga Petrović) to submit authorization to represent the fourth Applicant (Ms. Miroslava Ivančić) before the Constitutional Court.
12. On the same date the Court also notified the Municipal Court in Ferizaj on the Referral.
13. Also on 10 February 2014, the Review Panel considered the Report of the Judge Rapporteur and recommended to the full Court to reject the Request for Interim Measures pending the final outcome of the Referral. On the same date, the Court, pursuant to Article 27 of the Law, and in accordance with Rules 55 (4) and 56 (3) of the Rules of Procedure, decided to reject the request for interim measures.
14. On 5 March 2014, the Applicants Ms. Olga Petrović, Mr. Svetolik Patrnogić, Ms. Vesna Dejanović submitted the filled referral forms and a copy of the challenged judgment. However, the first Applicant (Ms. Olga Petrović) failed to submit the authorisation letter for the fourth Applicant (Ms. Miroslava Ivančić).
15. On 19 May 2014, after having considered the Report of the Judge Rapporteur, the Review Panel took the unanimous decision to postpone deliberation and to ask the Basic Court in Ferizaj to submit the Court the case file Pc. Mo 599/10.
16. On 2 June 2014, the Court received the case file Pc. Mo 599/10 from the Basic Court in Ferizaj.
17. On 26 June 2014, Judge Kadri Kryeziu notified the Court in writing about his exclusion from the deliberations, for the period June to July 2014 until the Court decided on the allegations raised against him.
18. On 1 July 2014, the President of the Court, by Decision no. KSh. 06/14, replaced Judge Kadri Kryeziu as Judge Rapporteur, appointing Judge Snezhana Botusharova in his place.
19. On 4 July 2014, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

20. On 23 October 2000 the Applicants' predecessor Julijana Patrnogić reached an agreement with B. I. on the purchase price for the immovable property registered in the cadastral plot (No- P 72217092-02323-0) in Ferizaj.
21. On 5 February 2008 the Applicants' predecessor Julijana Patrnogić signed an authorisation in the notary office in Tetovo, Republic of Macedonia, authorising A. I. to use, sell and transfer the immovable property to third parties.

22. On 26 April 2011 the Basic Court in Kragujevac, Serbia issued Decision no. 0-517/10 and 0-518/10 and confirmed, *inter alia*, that the inheritance of the late Julijana Patrnogić consists of the real estate in Ferizaj in the surface area of 1, 46.71 ha. By the same decision 22 relatives, including the four Applicants, were declared as the successors of the late Julijana Patrnogić. In this decision, the postal addresses of all 22 heirs of the late Julijana Patrnogić, including the four Applicants were clearly listed.
23. On an unspecified date B. I. submitted a statement of claim to the Municipal Court in Ferizaj requesting recognition of the immovable property registered in the cadastral plot (No- P 72217092-02323-0) in Ferizaj with an area of 00.19,17 are that allegedly he bought from Julijana Patrnogić in March 1992. The respondent parties in this property related proceedings were all 22 heirs of the late Julijana Patrnogić, including the four Applicants.
24. On 29 July 2013 the Basic Court in Ferizaj issued Decision C. no. 559/10 on the appointment of the temporary representative Ilmi Prima, due to the alleged lack of postal addresses of all 22 heirs of the late Julijana Patrnogić, including the four Applicants.
25. On 18 September 2013 the main public hearing was held in the presence of the temporary representative, an attorney from Ferizaj.
26. On the same date the Basic Court in Ferizaj issued the challenged Judgment (C.No.559/10) and approved the statement of claim for recognition of property by B. I. The Applicants and the other 18 heirs of late Julijana Patrnogić were obliged to permit B. I. to register the ownership in the respective cadastral books in Ferizaj.
27. It was stated in the reasoning of the challenged judgement that *“the court confirmed the fact that since sales/purchase of the immovable property ... in 1992, until now there have been no contesting facts between litigating parties, the claimant has paid in full to the respondents’ predecessor in the same year and handed over in the claimant’s possession and free use the immovable property of the matter, which the latter had in continuous peaceful possession and that the legal conditions confirm the right of the property based on adverse possession pursuant to Article 28.4 of the Basic Law on Fundamental Property Relationship ....”*
28. In the reasoning of the challenged judgement it was stated that the temporary representative was *“appointed to the respondents due to the lack of the address of the same, he initially stated that he challenges the claim and the statement of claim whereas after the evidences administrated in his closing statement he stated that pursuant to all the administrated written evidences I believe that the entire sales/purchase agreement was concluded in 2008 when the price for immovable property was paid.”*

29. On 27 November 2013 the Notary Nexhat Sh. Qorroli informed the attorney Miloš Petković from Štrpce as the authorized representative of the legal heirs of the late Julijana Patrnogić, of the following: *“addressing to civil proceedings is necessary, considering that the notary found that the real estate subject to this matter is undergoing civil proceedings and the Court rendered a Judgment that recognizes the right of property of B. I. from village Grebno on the cadastral parcel number P-72217092-02323-0 MC Ferizaj in total surface area of 1917 m<sup>2</sup>. Pursuant to the Court judgment, changes were conducted in the cadastral registry on the Municipality in Ferizaj.”*

### **Applicant's allegations**

30. The Applicants allege that *“the procedure that was conducted and concluded ...by the Basic court in Ferizaj violated the rules of procedure because it did not service the claim to the respondent for an answer nor did it service summons for the review before the court, but without respecting the procedure appointed an interim representative although it is clear that the claimant had all the data of respondents, and consequently the data on their addresses.”*
31. The Applicants claim that their postal addresses were listed in the Ruling of the Basic Court in Kragujevac to which the challenged judgement refereed *“thus it is clear that the actions of the claimant, interim representative and the court were illegal with the aim of preventing the Applicants and the other heirs to defend their property rights and interest before the court.”*
32. The Applicants further allege that they could not establish the contact with the temporary representative who did not reply to their phone calls and an electronic message.
33. Accordingly, the Applicants consider that their right to fair and impartial trial and with their property rights guaranteed by Article 31 of the Constitution as well as their property rights guaranteed by Article 46 of the Constitution have been violated.

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

34. The Court observes that, in order to be able to adjudicate the Applicants' complaints, it is necessary to examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
35. As to the present Referral the Court recalls that while the first three Applicants (Ms. Olga Petrović, Mr. Svetolik Patrnogić and Ms. Vesna Dejanović) submitted the filled referral forms and a copy of the challenged judgment to the Court, the first Applicant (Ms. Olga Petrović) failed to submit to the Court the authorisation letter for the fourth Applicant (Ms. Miroslava Ivančić).



**a) Assessment of admissibility of the Referral submitted by the first three Applicants**

36. As regards the first three Applicants (Ms. Olga Petrović, Mr. Svetolik Patrnogić and Ms. Vesna Dejanović), the Court notes that, pursuant to Article 232 of the Law on Contested Procedure of the Republic of Kosovo (2009/03-L-006 of 29 July 2008) they were entitled to submit the request for Repeating Procedures. Article 232.1 of the Law on Contested Procedure reads as follows:

*“Finalized procedure with an absolute decree can be repeated based on the proposal party:*

*a) if the party with an illegal act, especially in the case of not being invited to the session, the party is not given the opportunity to part take in the examination of the main issue;“*

37. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes that:

*“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.”*

38. The Court also refers to Article 47.2 of the Law, which provides:

*“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

39. Furthermore, the Court also refers to Rule 36 (1) a) of the Rules of Procedures which provides that:

*“(1) The Court may only deal with Referrals if: (a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or”*

40. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).

41. The Court also recalls that in accordance with the principle of subsidiarity, the Applicants are under the obligation to exhaust all legal remedies provided by law,

as stipulated by Article 113(7) and the other legal provisions, as mentioned above. Therefore, the Applicants should have filed a request specified above.

42. Thus, the Applicants in failing to proceed further with the request within the foreseen deadline is liable to have their case declared inadmissible, as it shall be understood as a waiver of the right to further proceedings on objecting the violation of constitutional rights (See Case KI16/12, Applicant *Gazmend Tahiraj*, Constitutional Court, Resolution on Inadmissibility of 22 May 2012).
43. The Court also considers that a mere suspicion on the perspective of the matter is not sufficient to exclude an applicant from her obligations to appeal before the competent bodies in due time (See *Whiteside v the United Kingdom*, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80 and Case KI 16/12, Applicant *Gazmend Tahiraj*, Constitutional Court, Resolution on Inadmissibility of 22 May 2012)).
44. In the present case, the Court finds that the first three Applicants have not exhausted all effective remedies under Kosovo law, in order for the Court to proceed with their allegation about the constitutionality of the Judgement of the Basic Court in Ferizaj.

**b) Assessment of admissibility of the Referral submitted by the first Applicant on behalf of the fourth Applicant**

45. As regards to the Referral submitted by the first Applicant (Ms. Olga Petrović) on behalf the fourth Applicant (Ms. Miroslava Ivančić) the Court recalls Rule 36 (3) c) that reads as follows:

*“A Referral may also be deemed inadmissible in any of the following cases:  
c) the Referral was lodged by an unauthorised person;”*

46. The Court notes that Ms. Miroslava Ivančić authorized the first Applicant (Ms. Olga Petrović) to *“sell my 1/6 part –owned share of the real estate inscribed in the extract form the Land Registry number 491 KO Uroševac....”* However, Ms. Ivančić did not authorize the first Applicant (Ms. Olga Petrović) to represent her before the Constitutional Court.
47. Consequently, as regards the fourth Applicant (Ms. Ivančić), the referral was lodged by an unauthorized party.

### FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (1.) a ) and Rule 36 (3) c) of the Rules of the Procedure, in its session held on 4 July 2014, unanimously:

### DECIDES

- I. TO REJECT the Referral of the first three Applicants (Ms. Olga Petrović, Mr. Svetolik Patrnogić and Ms. Vesna Dejanović) as Inadmissible because of non-exhaustion of all legal remedies provided by law;
- II. TO REJECT the Referral of the fourth Applicant (Miroslava Ivančić) as Inadmissible because of it was lodged by an unauthorised party.
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- V. TO DECLARE this Decision immediately effective.

**Judge Rapporteur**

  
Snezhana Botusharova



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani