



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

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Pristina, 7 May 2014  
Ref.no.:RK538/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI136/13**

Applicant

**Rashit Alidema**

**Constitutional review of the Decision Rev. no. 131/2013 of the Supreme  
Court of the Republic of Kosovo, dated 25 March 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  
Kadri Kryeziu, Judge, and  
Arta Rama-Hajrizi, Judge.

#### **Applicant**

1. The Referral was submitted by Mr. Rashit Alidema (hereinafter, the Applicant), residing in Pristina.

## **Challenged decision**

2. The Applicant challenges the Decision Rev. No. 131/2013 of the Supreme Court of Kosovo, dated of 25 March 2013, which was served on him on 16 July 2013.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Decision which allegedly *"is wrongful and is based on illegal constitutional grounds, since in the reasoning of the ruling is rejected as inadmissible, because the revision of the claimant is inadmissible. This conclusion of the Supreme Court is wrongful and not real."*
4. In this respect, the Applicant claims that Articles 3 [Equality Before the Law], 54 [Judicial Protection of Rights], 102 [General Principles of the Judicial System], and 112 [General Principles] of the Constitution were violated.

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 22 and 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter, the Law).

## **Proceedings before the Court**

6. On 3 September 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 24 September 2013, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 8 October 2013, the Supreme Court was informed of the Referral.
9. On 19 November 2013, 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**

10. On 19 January 2010, a third party was issued a construction permit to construct a residential building in Pristina, which is very close to the property of the Applicant.
11. During the course of construction by the third party, the Applicant's property was damaged. Following the damage occurred to his property, the Applicant filed a request with the Municipality of Pristina in order to find that the third party has exceeded the permit given.

12. On 22 May 2012, the Municipality of Pristina informed the Applicant that on 24 April 2012 the inspectors of the Municipality of Pristina had concluded that the third party has exceeded the permit and that on 25 April 2012, it had issued a decision to demolish those parts that exceeds the permit. These parts were demolished on 30 April 2012.
13. On 24 August 2012, the Municipal Court in Pristina (C. no. 1671/2012) rejected the Applicant's request for a determination of security measure (interim measures) and the request to prevent the continued construction of the third parties building.
14. On 31 October 2012, the District Court in Pristina (Ac. no. 1130/2012) rejected as ungrounded the appeal the Applicant filed against the Municipal Court's decision.
15. On 25 March 2013, the Supreme Court (Decision Rev. no. 131/2013) held that the Applicant's request for revision of the Ruling of the District Court in Pristina (Decision Ac. no. 1130/2012, dated 31 October 2012) was inadmissible and upheld the ruling of the Municipal Court in Pristina (C. no. 1067/12, dated 24 August 2012). In its decision, the Supreme Court noted that "*pursuant to Article 215 of the Law on Contested Procedure [hereinafter, the LCP], found that: [t]he revision of claimant is inadmissible.*" However, the court further noted that "*according to Article 228.1 of [the] LCP, the parties can file a revision against final rulings by which is terminated the proceeding of the court of second instance [...].*"
16. On 27 August 2013, the Applicant filed a request for intervention with the Ministry of Environment and Spatial Planning (hereinafter, the MESP), because the third party again had exceeded the permit for construction.
17. On 3 September 2013, the Applicant filed a Referral with the Court seeking a constitutional review of the Supreme Court's decision.
18. On 27 September 2013, the MESP approved the Applicant's complaint of 27 August 2013. In the MESP's decision, the Directorate of Inspectorate of Pristina Municipality ordered the immediate demolition of the third parties property (residential building, Pristina). In its reasoning, the MESP found that "*Investor A. E. did not respect the urban-technical conditions permitted by the Directorate of Urbanism – Prishtina Municipality; [a]dditionally, the basement usurps the property of Mr. Rashit Alidema; [e]xceedances of the Construction Permit by the investor A. E. on the residential building Mr. Rashit Alidema have caused cracks, material damages which make impossible living in the house.*" In response to these findings, the MESP determined that the Inspection Directorate – Prishtina Municipality violated Articles 33 and 34 of the Law on Construction No.04/L-110.

## **Applicant's allegations**

19. The Applicant alleges that “[t]he Law on Construction of the Republic of Kosovo is violated seriously, particularly the Articles 40, 55, 56 and 57. Construction permit is issued in illegal way, the Ulpiana neighborhood has a detailed urban plan and as such cannot be issued construction permit, but only renovation permit. Ruling of Supreme Court of Kosovo Rev.no.131/2013 dated 25.03.2013 is wrongful and is based on illegal constitutional grounds, since in the reasoning of ruling is rejected as inadmissible, because the revision of claimant is inadmissible. This conclusion of Supreme Court is wrongful and not real. The party, respectively the proposer evidences the truth that within legal time-limit have been processed the proceedings in first and second instance and for which possesses all evidence, which are attached to the case. The fact that the property of claimant was put into risk and damaged by irresponsible and illegal acts of the respondent A. E. was not taken into consideration. During construction of the building, due to lack of care and illegal action came up to the splitting of walls of my property under the permanent risk of ruining of house. ... [O]ne part of foundation in the width of 50-60 cm had laid in my property by damaging the fences of yard and by putting into risk the ruining of the house. The legal provisions and Articles 3, 54, 102 and 112, provisions stipulated by the Constitution of the Republic of Kosovo were also violated.”

## **Assessment of admissibility**

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
21. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:
  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 [Accuracy of the Referral] 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.*
23. In addition, the Court takes into consideration Rule 36.1.c of the Rules of Procedure which foresees:

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

24. The Court recalls that the Applicant claims that the “*conclusion of the Supreme Court is wrongful and not real*”, when it concluded that “*the revision of the claimant is inadmissible*”.
25. 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 regular court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).
26. The Court notes that the Applicant is challenging the Decision Rev. no. 131/2013 of the Supreme Court, on a determination of security measure (interim measures). Although a decision was rendered by the MESP in favor of the Applicant, this assessment of admissibility shall only be applicable to the Supreme Court decision on the security measure (interim measure) and shall have no bearing on the merits of the case, namely on the Ministry’s decision.
27. The Court also notes that, at the time the Referral was submitted with the Court, the MESP decision had not been rendered. In fact, the MESP decision, which is in the Applicant’s favor, was issued on 27 September 2013; the Referral was filed on 3 September 2013.
28. In respect, to the Decision of the Supreme Court, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that its rights and freedoms have been violated by that public authority. Therefore, the Court cannot conclude that the relevant proceedings before the Supreme Court was in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant Municipality of Podujeva, Resolution on Inadmissibility of 12 March 2013).
29. Therefore, the Court considers that the Applicant did not show why and how the conclusion of the Supreme Court that “*the revision of the claimant is inadmissible*” has infringed his rights and freedoms protected by the Constitution.
30. As such, although the MESP decision is in the Applicant’s favor, the Applicant’s Referral is nevertheless inadmissible as manifestly ill-founded with regards to the challenged decision of the Supreme Court only on the security measure (interim measure).
31. However, the fact that the Referral is inadmissible as manifestly shall not prevent the Applicant from following avenues available to him as a result of the MESP decision.
32. In sum, pursuant to Rule 36.1.c of the Rules of Procedure, it follows that the Referral is inadmissible because it is manifestly ill-founded.



## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 48 of the Law and Rule 36.1.c and 56.2 of the Rules of Procedure, on 19 November 2013, unanimously

## DECIDES

- I. TO REJECT the Referral as 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 immediately effective.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Prof. Dr. Enver Hasani