



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

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Prishtina, 3 August 2017  
Ref. No.:RK 1112/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI151/16**

Applicant

**Gani Sopi and Sabri Sopi**

**Request for constitutional review of Judgment Rev. No. 108/2016 of the  
Supreme Court of Kosovo of 13 July 2016**

### **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 Gani Sopi and Sabri Sopi from Bujanovc, Republic of Serbia (hereinafter: the Applicants), who are represented by Abdylaziz Sadiku, a lawyer from Gjilan.

## **Challenged decision**

2. The Applicants challenge Judgment Rev. No. 108/2016 of the Supreme Court of Kosovo of 13 July 2016.
3. The challenged judgment was served on the Applicants on 7 September 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), as well as Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).
5. The Applicant also requests the Court to impose an interim measure and suspend Judgment Rev. No. 108/2016 of the Supreme Court from the date of filing the Referral until the decision on the merits on this case is rendered.

## **Legal basis**

6. The Referral is based on Article 113.7 of the Constitution, Articles 27 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 54 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

7. On 30 December 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 16 January 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Arta Rama Hajrizi and Selvete Gërxhaliu-Krasniqi.
9. On 2 February 2017, the Court notified the Applicants and the Supreme Court of Kosovo about the registration of the Referral.
10. On 29 May 2017, the Review Panel considered the report of the Judge Rapporteur, and recommended to the full Court the inadmissibility of the Referral.

## **Summary of facts**

11. In 2004, the Applicants filed a statement of claim for confirmation of ownership rights with the Municipal Court in Gjilan. The statement of claim was related to the confirmation of property rights over the parcel which was the subject of a verbal agreement of 1999, reached between the Applicant and the S.S.

12. On 21 September 2005, the Municipal Court in Gjilan [Judgment C. No. 704/2004] approved the Applicants' statement of claim and confirmed that the Applicants are the owners of the disputed parcel that was a subject of a verbal agreement of 1999. In the reasoning of its judgment, the Municipal Court *inter alia* states:

*"[...] on the basis of Article 73 of the Law on Contracts and Torts "Official Gazette SFRY, No. 29/78", the Court concludes that a contract for the conclusion of which a written form is required, is considered applicable, despite the fact that it was not concluded in this form; if the contracting parties have applied the entirety, or a dominant part of the obligations that stem from it [...]"*

13. Against Judgment of the Municipal Court in Gjilan S.S. filed appeal with the District Court in Gjilan, on the grounds of erroneous determination of factual situation and erroneous application of the law.
14. On 30 January 2006, the District Court [by Judgment Ac. No. 320/2005] rejected as ungrounded the appeal of S.S. and upheld the first instance judgment.
15. S.S. filed a request for revision with the Supreme Court against the Judgment [Ac. No. 320/2005] of the District Court in Gjilan on the grounds of erroneous determination of factual situation and erroneous application of the law.
16. On 29 May 2008, the Supreme Court [by Decision Rev. No. 115/2006] approved the request for revision of S. S., quashed the second-instance and first instance judgment and remanded the case for retrial to the first instance court. In the reasoning of its decision the Supreme Court *inter alia* states:

*"[...] the court ascertained that between the claimants was established another civil - legal relation for sale-purchase of the surface area of 2.000 square meters, therefore it is unclear whether in the present case if the litigants had joint investments or verbal agreement on a sale-purchase of a parcel [...]"*

17. On 21 December 2009, the Municipal Court in Gjilan [Judgment C. No. 355/08] in the repeated proceeding confirmed the factual situation of the previous proceedings and approved the statement of claim of the Applicants. In the reasoning of its judgment, the Municipal Court *inter alia* states:

*"[...] Based on the fact that the verbal contract on sale-purchase is co validated in entirety by the litigants, it has been decided to approve the statement of claim of the claimants [...]"*

18. S.S. filed appeal with the District Court in Gjilan against Judgment [C. No. 355/08] of the Municipal Court in Gjilan, on the grounds of erroneous determination of factual situation and erroneous application of the law.
19. On 7 June 2010, the District Court [by Judgment Ac. No. 108/2010] rejected the appeal of S. S as ungrounded and upheld the first instance judgment.

20. The State Prosecutor filed a request for protection of legality with the Supreme Court against Judgment [Ac. No. 108/2010] of the District Court in Gjilan.
21. On 20 May 2013, the Supreme Court [Decision Rev. Mlc. No. 272/2010] approved the request for protection of legality of the State Prosecutor, and therefore, annulled the judgment of the District Court and remanded the case for retrial to the same court. In the reasoning of its judgment, the Supreme Court stated *inter alia* states:  
  

*"[...] the Judgment of the second instance court does not contain any statement regarding the assessment of the allegations in the appeal for the substantial violations of the provisions of the contested procedure which were mentioned in the appeal, [...] Therefore, the second instance court committed substantial violations of the contested procedure provisions [...]"*.
22. On 15 January 2016, the Court of Appeal [Judgment CA. No. 1812/13] in the repeated proceedings modified Judgment [C. No. 355/08] of the Municipal Court and rejected the Applicant's statement of claim.
23. The Applicants filed a request for revision with the Supreme Court against Judgment [CA. No. 1812/13] of the Court of Appeal, on the grounds of essential violation of the provisions of the Law on Contested Procedure, and erroneous application of the substantive law.
24. On 13 July 2016, the Supreme Court [Judgment Rev. No. 108/2016] rejected as ungrounded the Applicant's request for revision and upheld the Judgment [CA. No. 1812/13] of the Court of Appeal.

### **Applicant's allegations**

25. According to the Applicants' allegations :

*„The Court of Appeal by Judgment CA. No. 1812/2013 of 15.01.2016 and the Supreme Court of Kosovo, by Judgment Rev. No. 108/2016 of 13/07/2016 assessed in an impartial and unfair manner the evidence presented at the hearing of first instance on the basis of which was rendered Judgment C. No 355/2008, of 21.12.2009. “*

26. The Applicants further allege:

*„This unfair assessment of evidence, and clinging to formal issues [...] of the sale-purchase of the immovable property, have deprived the claimants Gani and Sabri Sopi of their property rights.”*

27. The Applicants request the Court as it follows:

*“We request from the Court to render a decision on temporary suspension of Judgment Rev. No. 108/2016 of the Supreme Court of Kosovo, of 13.07.2016, by which the revision of claimants Gani and Sabri Sopi was rejected as ungrounded.*

*To uphold the Decision on interim measure...*

*To approve the request filed by Gani and Sabri Sopi, in relation to constitutional and legal assessment of the Judgment of the Supreme Court, and the recognition of the property right for cadastral parcel No. 624/20, in the place called "Petigovc", with a culture: third class arable field, with a surface area of 1975 m<sup>2</sup>, registered in Possession list No. 6236, CZ Gjilan, registered in the name of Skender (Behxhet) Shaqiri from Gjilan, namely to uphold Judgment C. No. 355/2008 of the Municipal Court in Gjilan, of 21.12.2009, and in this manner, protect the property rights of the Applicants – Gani and Sabri Sopi."*

### **Admissibility of the Referral**

28. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution and as further provided in the Law and specified in the Rules of Procedure.
29. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish that:

*„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.”*
30. The Court further refers to Article 48 [Accuracy of the Referral] of the Law, which provides that:

*“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 “.*
31. Moreover, the Court takes into account paragraphs (1) d) and (2) d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee:

*(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:*  
*[...]*  
*d) the Applicant does not sufficiently substantiate his claim“.*
32. In the present case, the Court notes that the Applicants are authorized party to submit a Referral to the Constitutional Court, they have exhausted the effective legal remedies and therefore met the procedural requirements provided for in



Articles 113.7 of the Constitution. The Referral was also filed within legal time limit of four months, as required by Article 49 of the Law.

33. However, to determine the admissibility of the Referral, the Court still has to assess whether the Applicants have met the requirements of Article 48 of the Law and the admissibility criteria stipulated in Rule 36 of the Rules of Procedure.
34. In this regard, the Court notes that the Applicants have built their case claiming:
  - (i) violation of Article 31 of the Constitution and
  - (ii) violation of Article 46 of the Constitution

***(i) Allegations regarding violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution***

35. As regards the Applicant's allegation that the regular courts assessed impartially and unfairly the evidence presented at the hearings and erroneously applied the substantive law, the Court emphasizes that the determination of factual situation and the application of the substantive law is the jurisdiction of the regular courts.
36. The Court notes that the Applicants repeat the same allegations which have stated in the proceedings before the regular courts, where the regular courts gave detailed answers to all these allegations of the Applicants.
37. The Court reiterates that it is not its role to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging violation of the rights and freedoms guaranteed by the Constitution by the public authority, the Applicant must present a reasoned and a convincing argument.
38. The Court first recalls that it is not the role of the Constitutional Court to deal with the alleged material errors or legal flaws of the regular courts, unless these errors, namely the flaws, may have infringed rights and freedoms protected by the Constitution, and only to the extent that such violations have occurred.
39. Furthermore, it is not the role of the Constitutional Court to determine whether the certain types of evidence is allowed, what evidence should be taken, nor to specify what evidence is acceptable and what is not. That is the role of the regular courts. The role of the Constitutional Court is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken (see: Case *Dukmedjian v. France*, Application no. 60495/00, paragraph 71, ECtHR Judgment of 31 January 2006).
40. In addition, the Court also reiterates that the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, and, and not to deal with, the interpretation and application

of the domestic law, it is the role of regular courts (see case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, see also case: KI70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima* Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

41. The Court considers that the Applicants had the opportunity to present before the regular courts the factual and legal reasons for the resolution of dispute; their arguments were duly heard and examined by the regular courts; the proceedings taken as a whole were fair and the rendered decisions were reasoned in detail.
42. Accordingly, the Court notes that the regular courts have taken into account all the allegations of both parties to the proceedings, of the Applicant as a claimant and the respondent, when establishing the property right over the immovable property concerned and placed them in an equal position, by allowing them to present their arguments, documents and evidence.
43. The Court further notes that the Court of Appeal concluded “*the verbal agreement on sale was entered into formally and the purpose of the reached agreement results to be different, so the return of the debt.*” Therefore, the Court of Appeal in the repeated proceedings without not accepting “*the validation of the contract, the purpose of which is the return of the debt since such form of validation is not recognized by the law.*”
44. The Court further notes that the Supreme Court held that “*The facts which were assessed by the Court of the second instance are not put in question in the statements of the revision, the other evidence that were analyzed in details by the second instance court materialize the conclusion of the latter regarding the application of the substantive law on the occasion of the rejection of the appeal of the claimants. The challenged Judgment does not contain in substantial violations of the provisions of the contested procedure for which this Court takes care ex-officio or in the violations that are alleged in the revision as well.*”
45. The Court considers that the Applicants do not agree with the outcome of proceedings before the regular courts. However, the disagreement of the Applicants with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim of a breach of the right to fair and impartial trial (see: *mutatis mutandis* case *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005).
46. The Court notes that the Applicants did not accurately and specifically state violation of their rights and did not explain how and why the judgment of the Supreme Court may have violated their constitutional rights; they only emphasized the there has been a violation of their constitutional rights. They did not provide any *prima facie* evidence which would indicate a violation of their constitutional rights (see *Trofimchuk v. Ukraine*, ECtHR, paragraph 50-55, Judgment no. 4241/03, of 28 October 2010).

47. Accordingly, the Court considers that the Judgment of the Supreme Court is reasoned and in accordance with the requirements of Article 31 of the Constitution and Article 6 of ECHR.

***ii) Allegations regarding violation of Article 46 (Protection of Property) of the Constitution***

48. The Court notes that the Applicants also referred to Article 46 [Protection of Property] of the Constitution. However, the Applicants do not justify the allegations that their constitutional right to property has been violated.
49. The Court recalls that Article 46 of the Constitution and Article 1 of Protocol No. 1 do not guarantee the right to acquisition of property (see *Van der Mussele v. Belgium*, paragraph 48, ECHR Judgment of 23 November 1983, and *Slivenko and others v. Lithuania* paragraph 121 ECtHR Judgment of 9 October 2003).
50. The Applicants may allege a violation of Article 46 of the Constitution only in so far as the challenged decisions related to his “possessions”; within the meaning of this provision “possessions” can be “existing possessions”, including claims, in respect of which an applicant can argue that he has at least a “legitimate expectation” that the effective enjoyment of a property right will be realised.
51. No “legitimate expectation” can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant’s submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia*, paragraph 50 of the Judgment of the ECtHR, of 28 September 2004).

**Conclusion**

52. In sum, the Applicants have not substantiated that the relevant proceedings have been in any way unfair or arbitrary. In fact, the Applicants have not substantiated that the challenged decisions violated their constitutional rights and freedoms guaranteed by the Constitution and the ECHR.
53. Therefore, the Court considers that the Applicants’ Referral has not met the admissibility requirements, as established in the Constitution, foreseen by the Law and as further specified in the Rule of Procedure.
54. For these reasons, the Applicants’ Referral is manifestly ill-founded on constitutional basis, and as such, inadmissible.

**Assessment of the request for interim measure**

55. The Court notes that the Applicants request the Court to impose an interim measure and to repeal the judgment of the Supreme Court of Kosovo Rev. No. 108/2016, of 13 July 2016, from the date of submission of the Referral until the Constitutional Court renders its decision on the merits on this issue, which is the subject of proceedings.



56. In order for the Court to impose interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it is necessary that:

*“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted;*

*(c) the interim measures are in the public interest.”*

57. As previously concluded, the Referral is inadmissible, and, therefore, there is no *prima facie* case for the imposition of interim measure. For these reasons, the request for an interim measure is to be rejected as ungrounded.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to 113.1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d), 36 (2) (b), 55 and 56 of the Rules of Procedure, in the session held on 29 May 2017, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measure;
- 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;
- V. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Arta Rama-Hajrizi