



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

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Prishtina, 22 May 2014  
No. Ref.:RK627/14

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI180/13**

Applicant

**Radomir Nikolić**

**Constitutional review of the Decision of the Supreme Court of Kosovo,  
Rev. 125/2013, of 29 July 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 filed by Mr. Radomir Nikolić (hereinafter: the Applicant), temporarily residing in Mladenovac, R. Serbia, represented before the Constitutional Court by Mr. Gani Guraziu and lawyer Mr. Ramiz Suka.

## **Challenged decision**

2. The Applicant challenges the Decision of the Supreme Court of Kosovo, Rev. 125/2013, of 29 July 2013, which was served upon him in September 2013.

## **Subject matter**

3. The subject matter is the constitutional review of the Decision of the Supreme Court of Kosovo, Rev. 125/2013, of 29 July 2013, which according to allegations of the Applicant violated Article 22 and 31 of the Constitution of the Republic of Kosovo as well as Article 10 of the Universal Declaration of Human Rights and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 of (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**

5. On 23 October 2013, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 31 October 2013, the President by Decision no. GJR. KI180/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of by Decision no. KSH. KI180/13, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 9 December 2013, the Court notified the Applicant and the Supreme Court of Kosovo of the registration of the Referral.
8. On 19 December 2013, the Applicant's representative filed with the Court additional documents with new allegations regarding the case.
9. On 10 January 2014, the Applicant's representative submitted to the Court additional documents with new allegations regarding the case.
10. On 30 January 2014, the Applicant's representative submitted to the Court additional documents in the form of the "*supporting act*" with new allegations regarding the case.
11. On 11 February 2014, the Constitutional Court, through a letter requested from the Applicant and his representatives to specify the allegations of violations of the Applicant's rights.
12. On 19 February 2014, the Applicant's representative submitted to the Court the specified allegations of the violations of the Applicant's right.

13. On 27 March 2014, after having reviewed the report of Judge Rapporteur Ivan Čukalović, the Review Panel composed of judges: Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi, made a recommendation to the full Court on the Inadmissibility of the Referral.

### **Summary of facts**

14. On 09 November 1998, a contract 01 no. 361-1507 on sale/purchase of the business premise no. 1/B-3, surface area of 19.90m<sup>2</sup>, ground floor, and surface area of 13.90m<sup>2</sup> in the attic, in the Commercial Centre in Suhareka, was entered between the Municipality of Suhareka, represented by the Mayor Stanimir Radić, on the one hand, and Radomir Nikolić on the other, certified by the Municipal Court in Suhareka, as Vr. no. 2132/98, of 29 December 1998.
15. On an unspecified date of 2004, the Municipal Public Attorney in Suhareka filed a claim against the respondent Radomir Nikolić, represented with power of attorney by lawyer Ruzhdi Gashi, from Suhareka, due to termination of contract on sale/purchase of the business premise in the Commercial Centre in Suhareka, since the respondent has failed to pay the instalments for the months of January, February, March, April, May, until 07.06.1999, to the bank account of the claimant 48502-630-042.
16. The Municipal Public Attorney of Suhareka, in his claim, proposed that the contract on sale/purchase of the abovementioned premise be terminated due to failure to pay dues as per contract.
17. On 28 October 2005, Radomir Nikolić, as seller, signed a contract on sale of disputed property, which is not certified in the court, with Gani Guraziu, (in the proceedings before the Constitutional Court, the representative of Radomir Nikolić) as a buyer in the contract, with the note on interim measures imposed by the Municipal Court in Suhareka, in relation to the ownership rights.
18. On 07 July 2010, the Municipal Court in Suhareka, by Judgment C. no. 03/04 approved the claim and the statement of claim of the claimant as grounded, and thereby terminated the contract 01 no. 361-1507, of 09.11.1998, entered between the Municipality of Suhareka, and Nikolić Radomir, certified by the Municipal Court in Suhareka, with the case number VR. no. 2132/98, of 29.12.1998, due to non-performance of the contract as per Article 3 of the above mentioned contract, thereby reasoning:

*“The respondent has failed to perform obligations, as provided by Article 3 of this contract, for the total amount to be paid in 12 equal instalments. He has not paid any instalment as required by Article 3 of the contract on sale of the business premise. The claimant filed a claim to request the termination of contract due to failure in enforcement, pursuant to Article 124 of the LOR, applicable according to an UNMIK regulation. When the obligation in a certain timeline is an essential and integral part of the contract, and the debtor does not perform on such obligation within such deadline, the contract is terminated by Law itself (Article 125, paragraph 1 of the LOR). Article 3 of the Contract on sale of the business premise, in item*

*3 provides that failure to pay three consecutive instalments results into an entitlement for the seller to terminate the contract.*

*“The allegations of the authorized representative of the respondent, lawyer Ruzhdi Gashi from Suhareka, that the respondent had lawfully purchased commercial premises, and that he had certified the contract with the Court, and had fulfilled his obligations as per contract in their entirety, the letter that the claimant submitted is unilateral and ungrounded, and that the statement of claim of the claimant is under statutory limitation, were taken under the review of the Court, but the Court rejected it as ungrounded, since the authorized representative of the claimant offered proof of failure of payment of instalments to the claimant, while the respondent did not offer any evidence against such claim, and on the other hand, the claim and the statement of claim have not been time-barred (Article 373 of the LOR).“*

19. Deciding upon the complaint of the respondent’s representative, filed against the Judgment of the Municipal Court in Suhareka, C. no. 03/04, of 07 July 2010, the District Court in Prizren, by Judgment Ac. no. 627/2010 of 25 September 2012, rejected the complaint of the respondent’s representative as ungrounded, and upheld the Judgment of the Municipal Court in Suhareka, C. no. 03/04, of 07 July 2010.
20. Deciding upon the revision of the respondent, filed against the Judgment of the District Court in Prizren, Ac. no. 627/2010, of 25 September 2012, the Supreme Court of Kosovo, by Decision Rev. no. 125/2013, of 29 July 2013, rejected as time-barred the revision of the respondent, filed against the Judgment of the District Court in Prizren, Ac. no. 627/2010, of 29.09.2012, thereby reasoning that:

*“From the case file, it may be ascertained that the respondent’s representative by proxy, lawyer Ruzhdi Gashi from Suhareka, has received the second instance court Judgment Ac.no. 627/2010, of 25.09.2012, on 20.12.2012, that may be proven by delivery slip in the case file, while filing revision against the second instance court Judgment on 04.02.2013, by the respondent’s authorized representative Aida Bilibani, rendering clear that it was filed beyond legal timeline.“*

### **Applicant’s allegations**

21. In the submitted Referral, the Applicant reasons in a detailed manner a series of violations, which he considers were committed against him in the regular courts and alleges the following: *“that the challenged decisions, rendered by respective courts, violated the rights guaranteed by Constitution and international acts directly applied in Kosovo, based on Article 22 of the Constitution. Consequently, the challenged decisions, concerning their constitutionality, are ungrounded, because of the following: i) were rendered by the authority (Court) that had no jurisdiction on rendering such decisions; ii) the possibility was not provided to the Applicant to participate when tackling this issue during the main hearing; iii) the Court exceeded the statement of claim of the Claiming Party; iv) the Court failed to address issues raised by the Applicant, etc. These and other violations resulted in violation of*

*Article 31 of the Constitution of the Republic of Kosovo, respectively the right to a fair and impartial trial, guaranteed also by Article 10 of the Universal Declaration of Human Rights and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols”.*

22. Based on the allegations, reasoned in a detailed manner in this Referral, the Applicant seek from the Court:
- *“To declare the Applicant’s Referral as admissible.”*
  - *“In accordance with Rule 39 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, to order a hearing and”*
  - *To hold that there has been a violation of individual right of the Applicant, Mr. Radomir Nikolic, guaranteed by Article 31 of the Constitution of the Republic of Kosovo, Article 10 of the Universal Declaration on Human Rights and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols.*
  - *To hold that there has been any other violation of rights to the Applicant that this Court may find during the review of the matter.*

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

23. The Court observes, that in order to be able to adjudicate the Applicant’s Referral, it is necessary first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and further specified by the Law and the Rules of Procedure.
24. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:
- “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 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”.*
26. Furthermore, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides that:
- „(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that*
- ...

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights“.

27. Considering the Applicant's allegations, regarding the allegation that the decisions: "*i) were rendered by the authority (Court) that had no jurisdiction on rendering such decisions;*" as well as the allegation that "*ii) the possibility was not provided to the Applicant to participate when tackling this issue during the main hearing;*" in the justification of the violations by the Applicant, the Constitutional Court reiterates that the Constitutional Court is not a court of appeal, when considering decisions rendered by regular courts. It is the role of regular courts to interpret the law and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I). The Judgments of the District Court in Prizren, Ac. no. 627/2010 of 25 September 2012 and the Ruling of the Supreme Court in Prishtina Rev. No. 125/2013 of 29 July 2013, provide their detailed reasoning and give response to these Applicant's allegations.
28. Considering the Applicant's allegations, regarding the allegations that "*iii) the Court exceeded the statement of claim of the Claiming Party;*" as well as the allegations that "*iv) the Court failed to address issues raised by the Applicant,*" in the justification of the violation by the Applicant, the Constitutional Court reiterates that the Applicant has not provided any *prima facie* evidence, indicating the violation of his constitutional rights (see, *Vanek v. Republic of Slovakia*, ECHR Resolution on Admissibility of Application, no. 53363/99 of 31 May 2005). Furthermore, the Applicant in his Referral of 10 January 2014, alleges that "*the debtor Radomir Nikolić (now the Applicant) was unable to fulfill the contract due to circumstances, for which he is not responsible*" This leads to conclusion that the Applicant could not become the owner of the premise in question.
29. At the same time, the Applicant in the initial Referral, submitted on 23 October 2013, alleged that "*The temporary representative has not acted upon authorization (decision) on appointment of the temporary representative, and intentionally missed the deadline for using legal remedy, thereby also failing to notify Radomir Nikolic, or his authorized representative Aida, and by this, the right of citizen to fair trial- Article 3 of the Constitution of Kosovo, was violated*".
30. In the additional documents, submitted on 19 December 2013, the Applicant stated the opposite "*... that the representative Aida filed revision in time, which she received on 20.12.2012, which is confirmed by the service note in the case file*". The Supreme Court made a mistake "*While calculating the time limit it was calculated that from 20.12.2012 until 04.02.2013 not counting official holidays and non working days - Saturdays and Sundays, in total it is 28 days 12 hours. This means that the Revision was in time but it was not calculated properly by the Supreme Court*".
31. In this case, the Applicant was provided opportunity to present his case and challenge the interpretation of law, which he considers to be inaccurate, before the Municipal Court in Suhareka, District Court in Prizren, and the Supreme

Court of Kosovo. Upon the review of entire proceedings, the Constitutional Court did not find that such proceedings were in any way unfair or arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, ECtHR Resolution on Admissibility, no. 17064/06 of 30 June 2009).

32. Ultimately, the admissibility requirements were not met in this Referral. The Applicant failed to show and support by evidence that by challenged ruling were allegedly violated his constitutional rights and freedoms.
33. Pursuant to the above, the Referral is manifestly ill-founded, and must be declared inadmissible, in compliance with Rule 36 (2) b) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 48 of the Law, and Rule 36 (2) b) of the Rules of Procedure, on 27 March 2014, 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. This Decision is effective immediately.

**Judge Rapporteur**

Ivan Čukalović

**President of the Constitutional Court**

Prof. Dr. Enver Hasani