



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

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Prishtina, 24 February 2014  
Ref. No.: RK 557/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI192/13**

Applicant

**Hatixhe Avdyli**

**Constitutional Review  
of the Judgment of the Supreme Court, Rev. No. 11/2013,  
of 23 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

### **The Applicant**

1. The Referral is submitted by Mrs. Hatixhe Avdyli (hereinafter: the Applicant), represented by Mr. Skender Musa.

## **Challenged decision**

2. The challenged Decision is the Judgment of the Supreme Court, Rev. No. 11/2013, dated 23 July 2013, which was served on the Applicant on 17 October 2013.

## **Subject matter**

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court Rev. No. 11/2013, dated 23 July 2013. In its Judgment, the Supreme Court, approved the request for revision of the respondent V. A. and amended the Judgments of the Municipal Court in Prishtina and the District Court in Prishtina, thereby rejecting the claim of the Applicant as ungrounded. The Applicant had filed a claim with the Municipal Court in Prishtina to annul the sales contract for the purchase of an Apartment, to confirm that the Applicant has the rights to use the Apartment, and oblige the respondent to allow the Applicant free possession over the Apartment and to bear the procedural expenses.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 56 (2) 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 11 November 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 29 November 2013, based on the Decision of the President GJR. KI192/13, Judge Snezhana Botusharova was appointed as Judge Rapporteur.
7. On 3 December 2013, based on the Decision of the President KSH. KI192/13, the Review Panel was appointed composed of judges, Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 4 December 2013, the Court informed the Applicant of the registration of the Referral. On the same date, the Court also notified the Supreme Court of the Referral.
9. On 5 December 2013, the Court decided to reject the Request for Interim Measures as ungrounded pending the final outcome of the Referral (See Decision on Interim Measures, dated 9 December 2013).
10. On 7 February 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

## The facts of the case

11. In the period 1988 to 1989, the Applicant, as an employee of the Socially Owned Enterprise "Amortizatorët" (hereinafter the SOE), was allocated an Apartment in Prishtina. The Decisions on the allocation of the Apartment were annulled by the Joint Labor Court in Prishtina and this annulment was upheld by the Joint Labor Court of Kosovo.
12. On 26 July 1990, the provisional organs of the SOE terminated the employment contract of the Applicant.
13. On 8 October 1992, the provisional organs of the SOE decided to allocate the Apartment to employee V. A. and, as a result, a contract on the use of the Apartment was concluded. Based on a sales contract, certified by the Municipal Court in Prishtina, dated 28 December 1995, V. A. acquired ownership rights over the apartment.
14. After the war in Kosovo, V. A. fled from the Apartment, which was later occupied by the Applicant.
15. On 9 December 2004, the Housing and Property Directorate issued an Order (HPCC/REC/41/2004) on the eviction of the Applicant from the Apartment.
16. Consequently, on an unspecified date, the Applicant filed a claim with the Municipal Court in Prishtina, requesting the annulment of the aforementioned sales contract (certified by the Municipal Court in Prishtina, dated 28 December 1995) and to confirm that the Applicant has the right to use the Apartment, and oblige the first respondent to allow her free possession over the Apartment.
17. On 10 November 2006, the Municipal Court in Prishtina in its Judgment (C. No. 1502/2005) decided to approve the claim of the Applicant.
18. On 31 October 2008, following an appeal filed by V. A., the District Court in Prishtina with its Judgment (Ac. No. 367/2007) quashed the Judgment of the Municipal Court in Prishtina and remanded the case for retrial.
19. On 12 May 2009, the Municipal Court in Prishtina with its Judgment (C. No. 2038/2008) approved the claim of the Applicant as grounded, annulled and voided the sales contract and further confirmed that the Applicant is the holder of the right for the use of the Apartment.
20. The Municipal Court in Prishtina reasoned its Judgment as following:

*"The fact that she was not a party to the contract VR no. 7903/95 does not exclude her legitimacy, because in terms of Article 109 of the LOT [Law on Obligation and Tort], the review of validity of the contract may be claimed by every person interested for the reasons mentioned in Article 103 of the LOT. Based on the claim suit of the claimant, and in terms of Article 109 of the LOT, the Court has largely reviewed the content of the contract of the*

*case, and has found that there is contradiction and inconsistency in between its provisions and also in relation to the contracted price of sale and payments made according to certificate no. 2010/1. And this inconsistency, in terms of the subject of the contract, makes the same invalid and as such, the Court annulled it.”*

21. On 18 June 2012, the District Court in Prishtina (Ac. No. 1087/2009) rejected the appeal of the respondent V. A. and upheld the Judgment of the Municipal Court in Prishtina (C. No. 2038/2008 of 12 May 2009).

22. The District Court in Prishtina held that:

*[...]*

*“This court considers that on the basis of the correct determination of the factual situation the first instance court has properly applied the substantive law when approved the claim of the claimant as grounded and decided as per enacting clause of the challenged judgment”.*

23. On 23 July 2013, following the request for revision filed by respondent V. A., the Supreme Court in its Judgment Rev. No. 11/2013 decided to approve the revision of the respondent and amend the Judgments of the Municipal Court in Prishtina (C. No. 2038/2008 of 12 May 2009) and the District Court in Prishtina (Ac. No. 1087/2009 of 18 June 2012), thereby rejecting the claim of the Applicant filed with the Municipal Court as ungrounded.

24. In its Judgment, the Supreme Court held that:

*“Proceeding from such a situation of the matter, the Supreme Court of Kosovo found that the lower instance courts have properly and fully determined the factual situation, and based on such a situation, have erroneously applied substantive law, when approved the claim suit of the claimant, thereby annulling the contract on sale of disputed apartment, signed between the first respondent as a buyer, and the second respondent – as a seller.*

*Erroneous application of substantive law consists in the fact that Article 103 of the Law on Obligations and Torts provides that a contract contrary to principles provided by the Constitution and social policy, compulsory regulations, social order or social morals shall be void unless the purpose of the rule violated refers to another sanction, or unless the law provides for something else. The contract on sale does not contain any of the reasons that would cause the absolute nullity, which would enable a third person to request the annulment of the contract on sale of disputed apartment. The claimant did not acquire the right of use of the apartment, because the decisions on allocation of the apartment to the claimant were annulled by the Basic Joint Labour Court at that time. Since the contract signed by the first respondent and the second respondent does not contain any elements of an absolute nullity, then the claimant has no active legitimacy.”*

## **Applicant's allegations**

25. The Applicant alleges that the Judgment of the Supreme Court, by amending the Judgments of the lower court instances, violated her rights guaranteed by the Constitution, namely Article 3 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo [hereinafter: the Constitution).
26. The Applicant concludes by requesting the Court: “[...]that on the basis of evidence and testimony that we are presenting, to annul the Decision of the Supreme Court of Kosovo as ungrounded and absolutely null, and to CONFIRM the Decisions of the Municipal Court and District Court in Prishtina by which the statement of claim of Hatixhe Avdyli is APPROVED, by which her right to use the Apartment is recognized, and the sale-purchase-privatization contract of the disputed apartment concluded between [...] and SOE “Amortizatorët” be ANNULLED as an absolutely ungrounded contract”.

## **Admissibility of the Referral**

27. In order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
28. 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.”*
29. In addition, Article 49 of the Law provides that *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”*
30. In the concrete case, the Court notes that the Applicant has made use of all legal remedies available under the law. The Court also notes that the Applicant was served with the Judgment of the Supreme Court Rec. No. 11/2013 on 17 October 2013 and filed his Referral with the Court on 11 November 2013.
31. Thus, the Court considers that the Applicant is an authorized party and has exhausted all legal remedies afforded to her by the applicable law and the Referral was submitted within the four months time limit.
32. However, the Court also takes into account Rule 36 of the Rules of Procedure, which provides that:
  - (1) *“The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*

(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, or*

*[...], or*

*d) when the Applicant does not sufficiently substantiate his claim.”*

33. The Applicant alleges that the Judgment of the Supreme Court (Rev. No. 11/2013) violates her rights, guaranteed by Articles 3 [Equality before the Law], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.
34. However, the Applicant does not explain how and why the Judgment of the Supreme Court violated her rights guaranteed by the Constitution.
35. In this respect, the Court reiterates that under the Constitution, it is not its task to act as a fourth instance court with respect to decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgement of 21 January 1999; see also case KI70/11 of the Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).
36. The Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see inter alia Case Edwards vs. United Kingdom, Application No. 13087/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
37. Based on the case file, the Court notes that the reasoning give in the last Judgment of the Supreme Court is clear, and after having reviewed all the proceedings, the Court has also found that the proceedings before the Supreme Court have not been unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).
38. Moreover, the Supreme Court in its Judgment reasoned that [...] “*Erroneous application of substantive law consists in the fact that Article 103 of the Law on Obligations and Torts provides that a contract contrary to principles provided by the Constitution on social policy, compulsory regulations, social order or social morals shall be void unless the purpose of the rule violated refers to another sanction, or unless the law provides for something else. The contract on sale does not contain any of the reasons that would cause the absolute nullity, which would enable a third person to request the annulment of the contract on sale of disputed apartment.*” [...]
39. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegations of a violation of her constitutional rights and the Applicant has not sufficiently substantiated her allegation.

## FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (2), b) and d), of the Rules of Procedure, on 24 February 2014, unanimously:

### DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

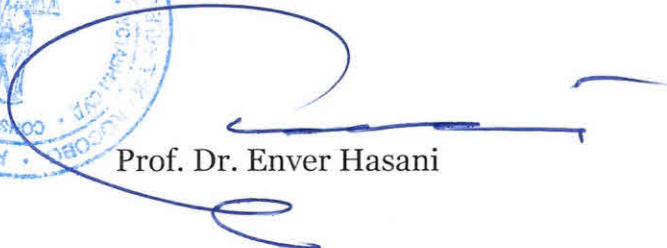
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Prof. Dr. Enver Hasani