



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

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Prishtina, 30 June 2014  
Ref. no.: RK654/14

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI225/13**

Applicants

**Hasan Isafi and Muharrem Isafi**

**Constitutional review of Decision of the Court of Appeal of Kosovo CA.  
no. 972/2013 of 18 October 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  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Referral was filed by Mr. Hasan Isafi and Mr. Muharrem Isafi, from village Bec, Municipality of Gjakova (hereinafter: the Applicants), who are represented by Ms. Shahe Isafi from village Bec, Municipality of Gjakova, by power of attorney (hereinafter: the Applicants' representative).

## **Challenged decision**

2. The Applicants challenge Decision of the Court of Appeal of Kosovo CA. no. 972/2013 of 18 October 2013, which according to the Applicants was served on them on 2 November 2013.

## **Subject matter**

3. The subject matter is the Decision of the Court of Appeal of Kosovo, CA. no. 972/2013, of 18 October 2013, which, according to Applicants' allegations, violated Article 46 (Protection of Property), Article 24 (Equality before the Law) and Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), due to a disagreement over property rights between the Applicants and third parties.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, (hereinafter: the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court.

## **Proceedings before the Constitutional Court**

5. On 10 February 2014 the Applicants filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 January 2014 the President by Decision GJR. No. KI225/13 appointed Judge Robert Carolan as Judge Rapporteur. On the same day, the President by Decision No. KSH. KI225/13 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 31 January 2014 the Constitutional Court notified the Applicants of registration of the Referral, and requested from the Applicants' representative to fill in the official form of the Court for registration of the Referral.
8. On 10 February 2014 the Applicants' representative submitted to the Court the official form of the Court for registration of the Referral.
9. On 20 February 2014 the Court notified the Court of Appeals of registration of the Referral.
10. On 12 May 2014, after having considered the report of Judge Rapporteur Robert Carolan, the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi made a recommendation to the full Court on the inadmissibility of the Referral.

## Summary of the facts

11. On 19 September 2007 the Municipal Court in Gjakova decided upon the claim of H. I. from village Bec, filed against the Applicants, by confirming H. L.'s right of servitude on certain immovable property. The property is located in the subservient plot no. 245/11 KK Bec, starting from a public road that is registered as a cadastral plot no. 247 KK Bec. That court rendered Judgment C. no. 43/07 which confirmed the right of servitude to passage for the claimant H. I. The Municipal Court in Gjakova further stated:

*“The court also analyzed other options, presented in the expertise ..... but came to conclusion that the approved option has existed since the division of the litigants’ predecessors ...”*

12. On 3 February 2009 the District Court in Peja decided upon the appeals of the Applicants against Judgment C. No. 43/07 of 19 September 2007, by rendering Judgment AC. no. 308/09, rejecting these appeals as ungrounded. In its Judgment, the District Court in Peja stated:

*“The challenged Judgment does not contain essential violations of the contested procedure provisions, and in the correctly determined factual situation the material right has also been correctly applied, the District Court pursuant to Article 368 of the LCP rejected the appeals of the respondents’ authorized representatives and upheld the challenged Judgment.”*

13. On 18 March 2009 the Municipal Court in Gjakova decided upon Applicants’ request for revision by Decision C. No. 43/07. In that decision it rejected the Applicants’ revisions as inadmissible with the reasoning that:

*“The revisions submitted by the respondents’ authorized representatives are inadmissible pursuant to Article 382 of the Law on Contested Procedure and Administrative Directive no. 2001/10 of date 21 June 2001... on the permitted currency to use in Kosovo that envisaged the value of 1600 DM, and this value of contest must be adapted to the value expressed in euro...”*

14. On 9 June 2009 the District Court in Peja, acting upon the Applicants’ appeal, rendered Decision Ac. No. 194/09 and rejected the appeals as ungrounded, stating:

*“Since the challenged Judgment does not contain essential violations of the provisions of contested procedure, and in the correctly determined factual situation the material right was correctly applied, the District Court pursuant to Article 380, paragraph 1, item 2 of the LCP rejected the appeals of the respondents’ authorized representative and upheld the challenged ruling.”*

15. On 10 September 2012 the Supreme Court of Kosovo decided upon the Applicants’ revision by Decision Rev. No. 432/2009, rejecting the revision as ungrounded and upholding Decision Ac. no. 194/09 of 9 June 2009 of the District Court in Peja.

16. On 22 March 2013 the Basic Court in Gjakova, acting upon the Applicants' objection in the execution matter, rendered Decision E. no. 368/09, thereby rejecting as ungrounded the Applicants' objection against Decision E. no. 368/09 of 27 March 2009, by which the execution was permitted according to the proposal of H. I., based on Judgment C. no. 43/07 of 19 September 2007.
17. On 18 October 2013 the Court of Appeals of Kosovo decided upon the Applicants' appeal against Decision of the Basic Court in Gjakova E. no. 368/09, of 22 March 2013, and rendered Decision CA. no. 972/2013, thereby rejecting the appeal as ungrounded. The Court further stated:

*"The panel finds correct and legally grounded this legal stance of the first instance court, since the court decision pursuant to which the execution was set is final and the time limit for the voluntary fulfillment of the obligation set in execution title, pursuant to which the debtors are obliged to respect the right of servitude of the creditor H. I., grounded on the enacting clause of final Judgment of the Municipal Court in Gjakova C. no. 43/07 of 19.09.2007, has expired."*

### **Applicant's allegations**

18. The Applicants allege that:

*"According to the abovementioned decisions, I consider that Article 46 of the Constitution of Kosovo, item 1, 2 and 3, Article 24 item 1 and 2 and Article 31, are violated since the parties in first and second case were not allowed to protect their property, despite the fact that they have presented new facts regarding this matter..."*

19. The Applicants conclude by requesting from the Court:

*"... the annulment of the decisions rendered by the court and remand of the cases to the first instance for reconsideration and retrial and fair and impartial trial, uninfluenced by outside..."*

### **Admissibility of the Referral**

20. The Court observes that, in order to be able to adjudicate the Applicants' Referral, it is necessary first to examine whether they have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

21. 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"*

Regarding these referrals, the Court notes that the Applicants are natural persons and are authorized parties, pursuant to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

22. The Applicants also should prove whether they have fulfilled the requirements of Article 49 of the Law, regarding the submission of the Referral within the provided period of time. From the case file it can be seen that there is no evidence that would disprove the Applicants' allegations that the Judgment of the Court of Appeal of Kosovo, CA. no. 972/203, of 18 October 2013, was served on them on 2 November 2013, therefore the Referral was submitted within four (4) months, as provided by the Law and the Rules of Procedure.
23. As to the Referral, the Court also takes into account Rule 36 (2) 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:  
[...], or  
(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;”
24. In this connection, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis Garcia Ruiz v. Spain*, no. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
25. The Constitutional Court can only consider whether the evidence has been presented in such a 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*, *Edwards v. United Kingdom*, App. No. 13071/87, Report of the European Commission of Human Rights, of 10 July 1991).
26. Based on the case file, the Court notes that the reasoning provided in the Judgment rendered by the Court of Appeals of Kosovo is clear and, after reviewing the entire proceedings, the Court also found that the proceedings before the regular courts have not been unfair and arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009). The Court considers that the Applicant failed to present convincing arguments that would substantiate the alleged violations.
27. Moreover, the Applicants have not submitted any *prima facie* evidence showing a violation of their rights under the Constitution (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005).
28. For all of the aforementioned reasons, the Court considers that the facts presented by the Applicants do not in any way justify the allegation of a



violation of the constitutional rights and the Applicants have not sufficiently substantiated their claims.

### 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) and d) of the Rules of Procedure, in the session of 12 May 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**

  
Robert Carolan



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani