



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

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Prishtina, 20 December 2013  
Ref. no.:RK527/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI54/13**

Applicant

**Gani Alidema**

**Constitutional review of the Judgment of the Supreme Court of Kosovo**  
**Rev. no. 177/2010 of 8 January 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 Applicant is Mr. Gani Alidema from village Pozharan, Municipality of Vitia (hereinafter: the "Applicant"), represented before the Constitutional Court of the Kosovo by Mr. Gafur Elshani, practicing lawyer from Prishtina.

## **Challenged decision**

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Rev. no. 177/2010 of 8 January 2013.

## **Subject matter**

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo Rev. no. 177/2010 of 8 January 2013, which according to the Applicant's allegations has violated Articles 24 and 31 of the Constitution of the Republic of Kosovo as well as Article 6 of the European Convention on Human Rights (hereinafter: ECHR) and Article 10 Universal Declaration on Human Rights (hereinafter: UDHR).

## **Legal basis**

4. The Referral is based on Articles 113.7 of the Constitution, Article 22 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 10 April 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. The President, by Decision no. GJR.54/13 of 16 April 2013, appointed Judge Ivan Čukalović as a Judge Rapporteur. On the same day, the President, by Decision no. KSH.KI54/13, appointed a Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 05. June 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that proceedings of constitutional review of decisions related to case no. KI54/13 had been initiated.
8. On 16 October 2013, after reviewing the report of Judge Ivan Čukalović, the Review Panel recommended to the full Court the inadmissibility of the Referral.

## **Summary of the facts**

9. On 22 October 2008, B. R. filed with the Municipal Court in Gjilan a lawsuit for the confirmation of the ownership against the Applicant requesting that it be determined that B. R. is the owner of the business premises no. 19, which is located in Gjilan, „Dardania I str.” - Trade center, ground floor, with surface area of 51.21 m<sup>2</sup>, built on cadastral plot no. 3299, 3300, 3302, 3304 and 3307, CZ Gjilan, on the basis of the sale-purchase contract.

10. On 6 November 2008, the Applicant filed a reply in writing to the lawsuit whereby it rejected entirely the claim of B.R. and proposed to the court to reject the claim as legally unfounded.
11. Municipal Court in Gjilan, by Judgment C. no. 564/08 of 28 April 2009, approved the lawsuit of B. R. and determined that B. R. is the owner of said immovable property.
12. On 18 June 2009, the Applicant filed an appeal against the said Judgment with District Court in Gjilan, proposing that the Judgment of the Municipal Court C. no. 564/08 of 28 April 2009 be quashed and the case be remanded to the first-instance court for retrial.
13. Deciding upon the appeal of the Applicant the District Court in Gjilan, by Judgment Ac. no. 198/2009 of 6 April 2010 rejected the appeal of the Applicant as unfounded and upheld the Judgment of the Municipal Court in Gjilan C. Nr. 564/08, of 28 April 2009.
14. Against the Judgment of the District Court in Gjilan Ac. no. 198/2009, of 06. April 2010, the Applicant filed a revision with the proposal that the judgments of the lower courts, that is, the Judgment of the Municipal Court in Gjilan C. no. 564/08 and the Judgment of the District Court in Gjilan Ac. no. 198/09 be quashed and the case be remanded for reconsideration and retrial.
15. The Supreme Court of Kosovo, by Judgment Rev. No. 177/2010 of 1 January 2013, rejected as unfounded the Applicant's revision filed against the Judgment of the District Court in Gjilan Ac. No. 198/2009 of 6 April 2010.

### **Applicant's allegations**

16. The Applicant alleges that Articles 24 (Equality before the Law) and Article 31 (Right to Fair and Impartial Trial) of the Constitution, Article 6 (Right to a Fair Trial) of the European Convention on Human Rights and Article 10 (Right to equality in fair and public hearings) Universal Declaration of Human Rights have been violated by this Judgment of the Supreme Court and he alleges the following:

*"(...) the applicant considers that the above quoted decisions have violated his rights to a fair and impartial trial, because the parties to the proceedings were not treated equally and that the courts did not evaluate the evidence and facts provided by the applicant(...)."*

17. The Applicant also alleges that:

*"(...) "by revision Judgment Rev.177/2010 dated 08.01.2013 the Revision Court in page 3 of the Judgment reasoning invokes inexistent evidence that the party filing the revision has allegedly purchased premises no. 13 and not premises no.19, although during the whole procedure, the dispute between the litigants was about premises no. 19 (...)"*

18. The Applicant requests from the Constitutional Court:

*“to annul the said judgments and remand the case so that it would be retried impartially and in accordance with evidence.”*

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

19. In order to be able to adjudicate the Applicants complaint, the Court first examines whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

20. In this respect the Court refers to Article 48 of the Law on the Constitutional Court of the Republic of Kosovo 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.“*

21. Furthermore, Rule 36 (2b) of the Rules of Procedures, provides:

*“(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

*b) the presented facts do not in any way justify the allegation of a violation of the constitutional right.”*

22. The Applicant’s allegation referring to:”... *inexistent evidence that the party filing the revision has allegedly purchased premises no. 13 and not premises no.19, although during the whole procedure, the dispute between the litigants was about premises no. 19 (...)*”, are related to the erroneous and incomplete determination of the material evidence by the regular courts.

23. 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 courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

24. The Court’s duty is to examine whether the proceedings, in their entirety, have been fair and in accordance with protection measures clearly established in the Constitution. Therefore, after having examined the proceedings in their entirety, the Constitutional Court has not found that the relevant proceedings were in any way unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).

25. Thus the Court is not to act as a court of third instance, in the present case, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the applicable rules of procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).

26. In the present case there is no *prima facie* evidence that the Supreme Court has erroneously assessed the evidence presented by the Applicant (See, Vanek vs.

Slovak Republic, Decision of ECtHR on the admissibility of the Application, no. 53363/99 of 31 May 2005). In fact, the Applicant has failed to prove that the Supreme Court of Kosovo has violated Article 6 of the European Convention on Human Rights, Articles 24 and 31 of the Constitution and Article 10 of the Universal Declaration of Human Rights. The Applicant has not provided necessary evidence that would substantiate his allegation that the Supreme Court and other competent judicial bodies have violated his fundamental human rights guaranteed under the Constitution.

27. It follows that the Applicant's Referral is manifestly ill-founded.

### FOR THESE REASONS

The Constitutional Court, pursuant to Articles 20 and 48 of the Law and Rule 36 (2) b) of the Rules of Procedure, on 16 October 2013, unanimously

### DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

**Judge Rapporteur**



Ivan Čukalović



**President of the Constitutional Court**



Prof. Dr. Enver Hasani