



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

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Prishtina, 20 December 2013  
Ref. No.:RK528/13

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI79/13**

Applicant

**Sokol Haziraj**

**Constitutional review of the Judgment of the Supreme Court of the Republic of Kosovo, Rev. Mlc. no. 217/2010 of 15 April 2013, and the Judgment of the District Court Ac.No. 240/2010 of 14 May 2010**

### 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 has been filed by Mr. Sokol Haziraj (the Applicant), residing in Prishtina, represented by Mr. Naser Peci, a practicing lawyer.

### **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, Rev. Mlc. no. 217/2010, of 16 April 2013, and the Judgment of the District Court Ac.No. 240/2010 of 14 May 2010.
3. The Applicant was served with the Judgment of the Supreme Court of the Republic of Kosovo (Rev. Mlc. No. 217/2010) on 13 May 2013.

### **Subject matter**

4. The subject matter of this Referral is constitutional review of the challenged Judgments, regarding the Applicant's allegation for violations of his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo

### **Legal basis**

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 and 47 of the Law No. 03/1L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules).

### **Proceedings before the Constitutional Court**

6. On 5 June 2013, the Applicant filed the Referral with the Court.
7. On 20 June 2013, the President appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 9 July 2013, the Secretariat informed the Applicant of the registration of the Referral and at the same time requested from him a proof that the party has authorized the lawyer to represent him before the Court.
9. On 19 July 2013, the Applicant submitted the proof on the authorization of the lawyer to represent the party before the Court.
10. On 22 July 2013, the Secretariat notified the Supreme Court of Kosovo of the registration of the Referral.
11. On 4 September 2013, the Court requested from the Applicant to submit the original document of his appeal to the District Court in Prishtina.
12. On the same date, the Secretariat requested from the Basic Court in Prishtina to verify whether the Applicant had filed an appeal to the District Court in Prishtina in connection with case C. no. 397/06.
13. On 6 September 2013, the Basic Court in Prishtina submitted the reply to the Court.

14. On 10 September 2013, the Applicant submitted his reply to the Court.
15. On 18 October 2013, the Review Panel considered the report of the Judge Rapporteur and recommended to the full Court the inadmissibility of the Referral.

### **Summary of the facts**

16. On 25 April 2008, the Applicant in the capacity of the intervenor, through his representative, filed a submission with the Municipal Court in Prishtina, proposing that it approve, in its entirety, the claim of the plaintiff J. G. against the respondents N. V. and N. G., by which it was requested the verification of contract on sale-purchase of the immovable property, cadastral plots no. 653/1 and no. 653/2 at the place called "Novo Lojze", with total area of 0.27,02 ha, arable land of IV class, Cadastral Zone Çagllavicë, Municipality of Prishtina, registered in the possession list nr. 413, Cadastral Zone Çagllavicë, Municipality of Prishtina, concluded in Prishtina on 10 October 1996 between J. G. and N. V., both from Prishtina, and certified at the Municipal Court in Prishtina, and that the said contract be declared null and void.
17. The Applicant endorsed entirely the allegations of the plaintiff J. G. in this case, according to which, the contract concluded between his authorized representative N. G. as the seller and N. V. as the purchaser, was made after the revocation of the authorization which was certified at the Municipal Court VR.no.4896/96, of 14 August 1996, and that the authorized representative was informed thereof.
18. The Applicant claimed that he had purchased a part of this property with surface area of 0.05,00 ha in 1991, by contract, from J. G., for which he had paid the contract price and entered into possession of that part which he used without any obstruction until 2006. According to him, this renders the contract between N. G. and N. V. fictitious in relation to him, according to Article 66 of the Law of Contract and Torts.
19. On 22 December 2009, the Municipal Court in Prishtina, by Judgment C.no.397/2006, after having established the factual situation in the main hearing, rejected as unfounded the claim of the plaintiff and at the same time rejected as unfounded "*the proposal of the intervenor Sokol Haziraj from Prishtina that the claim of the plaintiff be approved in its entirety as well-founded*" since it "*could not confirm the fact that the intervenor Sokol Haziraj from Prishtina, has entered in possession of a part of the disputed immovable property according to the Sale-purchase contract drafted in Prishtina on 10 September 1991, between him and the plaintiff J. G.*"
20. On 3 February 2010, the Applicant filed an appeal to the District Court in Prishtina against the Judgment of the Municipal Court (C.nr.397/2009) due to essential violation of the procedural provisions and erroneous application of the substantive law, specifically violation of Article 66 and 88 of LCT.
21. Against the same Judgment, plaintiff J. G. filed also an appeal.

22. On 15 May 2010, the District Court in Prishtina by Judgment AC. nr. 240/2010 rejected the appeal of the plaintiff J. G. as unfounded because *“the factual situation before the Municipal Court has been established in a correct and complete manner, as there were no essential violations which this court examines ex officio and that the substantive law has been correctly applied, the plaintiff’s appeal is rejected and the challenged Judgment is upheld in accordance with Article 195 paragraph 1 item d) of LCP”*.
23. On 21 July 2010, the Applicant filed a revision with Supreme Court of Kosovo due to essential violations of the contested procedure and erroneous application of the substantive law. According to him, the District Court has not decided at all on the appeal of the intervenor and that *“in accordance with Article 190 of LCP, the second instance court was obliged to decide on the appeal in the session of the trial panel or on the basis of reviewing the matter in a court hearing. On the appeal of the intervenor the second instance court has not decided in either way, and it therefore committed violation under Article 182 para. 1 of LCP, which is a cause for a revision as provided under Article 214 paragraph 214.1 item (a) of LCP.”*
24. Against the same Judgment, the plaintiff J. G. filed a revision.
25. On 16 April 2013, the Supreme Court of Kosovo by Judgment Rev. Mlc. nr. 217/2010 rejected as inadmissible the intervenor’s revision, because *“the said revision has been filed against the Judgment of the first instance court in the part related to the intervenor to proceedings, a Judgment against which within the meaning of Article 211.1 of LCP revision is not allowed. There is no evidence in the case file that the intervenor to proceedings has filed an appeal against the Judgment of the first instance and neither has he presented such evidence in the revision.”*

### **Applicant’s allegations**

26. The Applicant alleges violation of Article 31 and 32 of the Constitution, as his *“appeal was not reviewed at all”* before the District Court. Whereas the Supreme Court rejected his revision as inadmissible *“with the reasoning that no appeal was filed before”*
27. The Applicant requests from the Court to *“approve the Referral as being admissible and annul Judgment Rev. Mlc. No. 217/2010, of 14.04.2013.”*

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

28. In order to be able to review the Applicant’s Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
29. Article 113 (7) of the Constitution establishes that:

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. In addition, the Court refers to Article 49 of the Law prescribes that:

*“The Referral should be submitted within a period of four (4) months”*

31. In the concrete case, the Court notes that the Applicant requested protection of his rights before the Municipal and District Court and finally before the Supreme Court of Kosovo. The Court also notes that the Applicant has received the Judgment of the Supreme Court on 13 May 2013, while has submitted the Referral with the Court on 5 June 2013, which means that the Referral is submitted in compliance with the abovementioned provision.

32. Furthermore, Rule 36 (1) of the Rules of Procedure provides that:

*(1) “The Court may only deal with Referrals if:*

*(c) the Referral is not manifestly ill-founded”*

33. Further, pursuant to Rule 36 (2), the Court shall reject a Referral as 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 right;*

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

34. The Court also 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.”*

35. Regarding the exhaustion of the effective legal remedies, the Court requested clarification from the Basic Court with regard to the submission of this appeal, which in its reply clarified that *“we have sent the civil case C. no. 397/2006, upon appeal, to the Court of Appeals on 1 July 2013”* which corresponds to 25 days after the Applicant submitted his Referral with the Court.

36. From the reply of the Basic Court it is evident that the case is still pending before the regular courts.

37. The Court wishes to emphasize that the rationale for the legal remedies exhaustion rule, as interpreted by the European Court of Human Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the Court, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the legal order of Kosovo will provide an effective legal remedy for the violation of the constitutional rights (see, Case KI41/09, Applicant AAB/RIINVEST University

LLC, Prishtina, Resolution of 27 January 2010; also, *mutatis mutandis*, ECtHR, Selmouni v. France, no. 25803/94. Decision of 28 July 1999).

38. In the present case, the Applicant alleges that the regular courts have not reviewed at all his appeal and thus violated Articles 31 and 32 of the Constitution and requests that the Court “*annul Judgment Rev. Mlc. 217/10.*”
39. The Court notes that the Supreme Court rejected the Applicant’s revision against the Judgment of the District Court in Prishtina as being inadmissible, because the Applicant had not provided evidence that he had submitted an appeal to the District Court against the Judgment of the Municipal Court in Prishtina in connection with case C. no. 397/2006.
40. As to the allegations with regard to the Judgment of the Supreme Court (Rev. Mlc. no. 217/2010) which rejected Applicant’s revision as inadmissible, the Court draws attention that it cannot deal with errors of facts and law (legality), allegedly committed by the lower instance courts and the Supreme Court, unless and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality). Thus, the Constitutional Court does not 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 [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-1;).
41. Therefore, the Court can only consider whether the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, *mutatis mutandis* Report of the European Commission on Human Rights on Case Edwards v. United Kingdom, Application No 13071/87, 10 July 1991).
42. The Court notes the conclusion of the Supreme Court in its Judgment (Rev.Mlc.217/2010) that “*There is no evidence that the intervenor to proceedings has filed an appeal against the Judgment of the first instance and neither has he presented such evidence in the revision*”, while on the other hand, the Applicant has also failed to submit to the Court the original document of the appeal which he claims to have made. In his reply to the Court’s request to submit original copy of the appeal as a proof, the Applicant states that “*the only original copy of the appeal which I had in the capacity of authorized representative of the intervenor was requested from me by the Basic Court in Prishtina and I have submitted to them. Now I possess only the copy.*”
43. Consequently, the Applicant has neither succeeded in building a case on violation of the rights that he invoked nor has he provided any *prima facie* evidence that shows alleged violations of the constitutional rights (see, Vanek vs. Slovak Republic, Decision of ECtHR on admissibility of the Referral no. 53363/99, of 31 May 2005).
44. In all, the Court notes that the Applicant’s Referral does not meet the admissibility criteria on either the admissibility or in the merits of the Referral, because the Applicant failed to prove that the challenged decisions have violated his rights guaranteed by the Constitution.

45. In sum, the Court concludes that the Referral is inadmissible as manifestly ill-founded.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, and Rule 36 (2) b) and d) and the Rule 56.2 of the Rules of Procedure, on 18 October 2013,

### **DECIDES**

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and it shall be published in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Prof. Dr. Enver Hasani