



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

Prishtina, 16 December 2019  
Ref. no.:RK 1488/19

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## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI62/19**

Applicant

**Gani Gashi**

**Constitutional Review of the Judgment of the Supreme Court of Kosovo,  
GSK-KPA-A-243/15, of 4 December 2018**

### **CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by Gani Gashi, from Prishtina (hereinafter: the Applicant), represented by Sabri Ademi, a lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo, [GSK-KPA-A-243/15], of 4 December 2018, which the Applicant received on 12 February 2019.

## **Subject Matter**

3. The subject matter is the constitutional review of the challenged Decision, which has allegedly violated Applicant's rights guaranteed by Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on paragraph 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution, Article 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), as well as Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 15 April 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 April 2019, the President of the Court appointed Judge Radomir Laban, Judge Rapporteur and the Review Panel, composed of Judges Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 6 May 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court notified the Supreme Court about the registration of the Referral and requested it to submit to the Court the receipt note proving that the Applicant had received the challenged decision.
8. On 18 July 2019, the Court repeated the request to the Supreme Court, requesting that it submit to the Court the receipt note proving that the Applicant had received the challenged decision.
9. The Supreme Court of Kosovo had not submitted any response to the Court's request.
10. On 18 July 2019, the Court requested the Applicant to submit to the Court the receipt note proving when he had received the challenged decision as well as several regular court decisions.
11. On 19 July 2019, the Supreme Court of Kosovo submitted the requested document to the Court.

12. On 6 August 2019, the Applicant submitted the requested documents to the Court.
13. On 13 November 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of Facts**

### *The procedure regarding the award of the flat, which resulted in a final Decision*

14. On 10 March 1999, the Housing Affairs Commission of the former Institute for the Protection of Cultural Monuments of Kosovo, by Decision [no. 69] had awarded to B.M., as an employee of this enterprise, a flat located in Prishtina's Bregu i Diellit neighbourhood. The Applicant alleges that the Housing Affairs Commission of the former Institute for the Protection of Cultural Monuments of Kosovo, on the same day as holding the meeting, also made the score point ranking list for potential candidates, ranking B.M. with 94.5 points in the first place as a beneficiary, while the Applicant had been ranked with 91 points.
15. On 22 March 1999, the Applicant had filed a complaint with the Governing Council of the former Institute for the Protection of Cultural Monuments of Kosovo - as a second instance body, against the aforementioned Decision, alleging that this flat was awarded on discriminatory ethnic grounds and moreover, on such a thing no legal criteria had been respected.
16. The Applicant had never received a response to his complaint from the aforementioned body.
17. On 7 June 2001, the Applicant filed a suit with the Municipal Court in Prishtina for annulment of the Decision with [No. 69], dated 10 March 1999, issued by the former Institute for the Protection of Cultural Monuments of Kosovo.
18. On 19 June 2003, the Municipal Court in Prishtina, by Decision [C.nr.642/2001], had terminated the proceedings in this case, on the grounds that proceedings were being conducted before the Housing and Property Claims Commission (hereinafter: the HPCC) as the same had jurisdiction over the disputed property.
19. From the case files, it is noted that both the Applicant, alleging property rights over the disputed property, and M.B., who stated that he had lost the opportunity to exercise his property right due to the circumstances that occurred during 1998/1999, had simultaneously filed a complaint with the HPCC.
20. On 28 September 2004, the HPCC, through Decision [HPCC/D/130/2004/A], rejected the Applicant's and the M.B.'s claims, noting that neither party had proved a valid property right on the disputed property.



21. The Applicant and M.B. filed a request for reconsideration of the HPCC Decision [HPCC/D/130/2004/A] of 28 September 2004 with the HPCC.
22. On 30 August 2006, the HPCC, through Decision [HPCC/REC/66/2006], rejected the Applicant's and the M.B.'s claim as unfounded on the ground that neither party had sufficiently substantiated their property right on the disputed property.
23. The judgment became *res judicata* on 27 September 2006.

*Regarding the second court proceedings*

24. On 22 December 2007, S.D., as a member of the M.B. family household, as the alleged property right holder, filed a claim with the Kosovo Property Agency (hereinafter: the KPA) seeking repossession of the disputed property.
25. On 22 February 2008, the KPA physically identified the property and found that it was usurped by the Applicant.
26. The Applicant, in the capacity of the Respondent, in support of his claim, submitted several documents which he considered relevant to his case and, inter alia, stated that the disputed property had been awarded to him by his employer, Institute for the Protection of Cultural Monuments of Kosovo.
27. On 21 October 2014, the Kosovo Property Claims Commission (hereinafter: the KPCC), by Decision [KPPC/D/R/263/2014], rejected S.D.'s claim, stating that this matter is a matter already judged (*res judicata*). The reasoning of the group decision inter alia states that "*the same claim for the same flat from the evidence submitted by the parties and secured ex officio results that this matter was decided by a final decision*".
28. On 20 January 2015, the Applicant, after receiving the aforementioned decision, filed an appeal with the Supreme Court against it, alleging that the flat which was awarded to M.B. was unlawfully awarded because according to him, the same had not fulfilled the formal conditions, for such a thing.
29. On 4 December 2018, the Supreme Court of Kosovo, through Judgment [GSK-KPA-A-243/15], rejected the Applicant's appeal as ungrounded and upheld the Decision [KPPC/D/R/263/2014] of 21 October 2014, of the KPCC. The Supreme Court in its Judgment stated that "*The Decision KPPC/D/R/263/2014 of 21 October 2014 of the KPCC was just and lawful, within the boundaries and jurisdiction and powers of the KPCC, because the matter is res judicata, because it relates to the same parties, the same property and the same legal context decided earlier by the HPCC/REC/66/2006 Decision of 30 August 2016 of the KPCC.*"

**Applicant's allegations**

30. The Court recalls that the Applicant alleges that the challenged decision had violated his rights guaranteed by Article 24 [Equality before the Law] of the Constitution.

- (i) The Applicant's allegations concerning the first proceeding resulting in a final decision
31. The Applicant alleges that *"I consider that Article 24 of the Constitution of the Republic of Kosovo has been violated against me, as I have not been equal before the law because, by any legal provision, there is no possibility that when deciding on the award of a flat for an employee, a list of points be made on the same day by the Housing Affairs Commission, and immediately on the same date, to one of them also be rendered a decision on the award of a flat, without rank list being posted on the bulletin board and without the possibility of appeal given, these remarks were not taken into account at all, nor the second-instance commission to which I submitted a written objection had responded [...] therefore such a decision is unlawful and discriminatory in relation to me, as an Albanian, it should have been cancelled and the Institute where I work be obliged to re-award that flat in a just manner [...]."*
- (ii) The Applicant's allegations concerning the second court proceedings
32. The Applicant also alleges that *"the Supreme Court of Kosovo based on Judgment GSK-KPA-A-203/15 rejected my appeal on the ground that my claims were not just and lawful."*
33. The Applicant concludes by requesting that the Court declare the challenged Decision null and void.

### **Admissibility of Referral**

34. The Court will examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
35. In this regard, the Court refers to Article 113.7 [Jurisdiction and Authorized Parties] 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."*
36. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as set out in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

#### **Article 47 [Individual Requests]**

- 1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*



2. *The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*

Article 48  
[Accuracy of the Referral]

*"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."*

Article 49  
[Deadlines]

*"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 [...]."*

37. As to the fulfilment of these criteria, the Court concludes that the Applicant is an authorized party, challenging an act of a public authority, after having exhausted all legal remedies. The Applicant has also clarified the rights and freedoms he claims he has been violated by the challenged decision in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.
38. The Court based on the case files and the Applicant's allegations found that two proceedings had been conducted in the regular courts and that both proceedings had resulted in final decisions.
39. The Court notes that, in substance, the Applicant raises constitutional allegations in respect of both proceedings.
40. Therefore, the Court, in the course of its further examination of whether the Applicant has fulfilled the admissibility criteria, will treat these two allegations separately.
  - (i) *With regard to the Applicant's allegations concerning the first proceeding which resulted in the final decision*
41. Initially, the Court must assess whether the criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure, including the condition set out in Rule 39 ((3) (d)), are satisfied, which state:

*The Court may also consider a referral inadmissible if any of the following conditions are present*

*(d) the Referral is incompatible ratione temporis with the Constitution;*

42. As to the Applicant's allegation in relation to this proceeding, he alleges that equality before the law was violated because, according to him, he was not equal before the law, because Decision [no. 69], of the Housing Affairs

Commission of the former Institute for the Protection of Cultural Monuments of Kosovo, of 10 March 1999, on the basis of which M.B. had been awarded the flat that is subject of the dispute is discriminatory on ethnic grounds.

43. In this regard, the Court notes that the first proceedings started in 2001, when the Applicant filed a claim with the Municipal Court and ended on 30 August 2006 with Decision [HPCC/REC/66/2006] of the HPCC, which had become final, where the subject-matter of this claim has been settled.
44. The Court concludes that the actions and decisions concerning the Applicant's first proceedings were conducted in different circumstances and at a time when the Court had no temporal jurisdiction, and as such are not *ratione temporis* in accordance with the Constitution, which came into force on 15 June 2008 (see, for example, Case no. KI47/14 Applicant: *Mustaf Zejnullahu*, Resolution on Inadmissibility of 11 August 2014, paragraph 25).
45. Accordingly, pursuant to Rule 39 (3) (d) of the Rules of Procedure, the Court finds that the Referral concerning the Applicant's allegation relating to the first court proceedings must be declared inadmissible because it is not *ratione temporis* in accordance with the Constitution.

(ii) *As to the allegations concerning the second court proceedings*

46. Regarding this allegation, the Court needs to further assess whether the criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure have been met, including the requirement that the Referral be not manifestly ill-founded. Thus, Rule 39 (2) of the Rules of Procedure provides:

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*

47. As to the second procedure, the Court notes that the Applicant essentially alleges that the Supreme Court did not consider the allegations raised by the Applicant.
48. The Court notes that the essence of the Applicant's allegations relates to an erroneous finding of factual situation by the Supreme Court.
49. The Court notes that the Applicant has made the same allegations in his appeal to the Supreme Court.
50. In this regard, the Court notes that Judgment [GSK-KPA-A-243-15] of 4 December 2018 of the Supreme Court addressed and decided on the above-mentioned allegations, which had already been raised by the Applicant.
51. The Court recalls that the Supreme Court rejected the Applicant's appeal against Decision KPCC/D/R/263/2014 of the KPCC of 21 October 2014, because the case was *res judicata*, since it concerned the same parties, the same property and the same legal dispute and moreover the Claimant,



although claiming the legal right to the disputed property, had not challenged or argued with any valid evidence the aforementioned decision.

52. In this regard, the Court refers to Judgment GSK-KPA-A-243/15, of the Supreme Court, which reasoned "*The allegations in the appeal of the appellant and of the respondent are not sustained [...] and therefore the appeal is rejected as ungrounded because the KPCC had not decided on the merits of the appealed decision as to the merits of the case, because the matter was previously decided according to the Decisions cited by the HPCC/D/130/2004/A dated 28.09.2004 and second instance, HPCC/REC/66/2006, dated 30 August 2006*". The Supreme Court further stated that "the KPCC decided correctly and that the Applicant did not dispute or argue with any valid evidence its content"
53. The Court considers that, based on the facts of this case, which derive from the documents presented and the Applicant's alleging complaints, the Supreme Court has sufficiently reasoned its decision, including the reasons on which the Applicant's appeal was rejected.
54. The Court notes that the Applicant disagrees with the outcome of the proceedings before the regular courts, disputing the assessment of the evidence and the establishment of the facts by those courts.
55. The Court recalls that the mere fact that the Applicant is not satisfied with the outcome of the Supreme Court decisions or the mention of Articles of the Constitution is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, *mutatis mutandis*, Constitutional Court case KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).
56. In this regard, the Court notes that it is not the duty of the Constitutional Court to deal with errors of fact or of law alleged to have been committed by the regular courts in assessing evidence or law enforcement (legality), unless and to the extent such may have violated the rights and freedoms protected by the Constitution (constitutionality).
57. It is the duty of the regular courts to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, par. 28, European Court of Human Rights [ECtHR] 1999-I, the case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
58. The Constitutional Court recalls that it is not a fact-finding court and that a fair and complete determination of the factual situation is within the full jurisdiction of the regular courts. The role of the Constitutional Court is only to ensure that constitutional standards are respected during judicial proceedings in regular courts, therefore, it cannot act as a "court of fourth instance" (see ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, *inter alia*, the cases of the Court: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16



December 2011, paragraph 29; KIo6/17, Applicant *L.G. and five others*, paragraph 37).

59. The fact that the Applicant does not agree with the outcome of the case cannot in itself raise a substantiated allegation of a violation of the rights and freedoms guaranteed by the Constitution and the Convention (see Court case no. KI125/11, *Shaban Gojnovci*, Resolution on Inadmissibility of 28 May 2012, paragraph 28).
60. In this regard, the Court notes that the Applicant has not substantiated his allegation regarding the verification of the property right over the flat located in Prishtina.
61. Accordingly, the Referral is manifestly ill founded on constitutional grounds and is declared inadmissible pursuant to Rule 39 (2) of the Rules of Procedure.

### **Conclusion**

62. With regard to the Applicant's first allegation concerning the first proceeding which resulted in the final decision, the Court finds that pursuant to Rule 39 (3) (d) the Referral must be declared inadmissible because it is not *ratione temporis* in accordance with the Constitution.
63. Regarding the Applicant's second allegation concerning the second court proceedings, the Referral is manifestly ill founded on constitutional grounds and is declared inadmissible pursuant to Rule 39 (2) of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, and Rules 39 (2) and 3 (d) of the Rules of Procedure, on 13 November, unanimously

## **DECIDES**

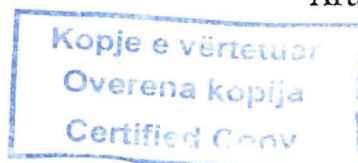
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Radomir Laban

Arta Rama-Hajrizi



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