



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

Prishtina, 4 March 2021  
Ref. no.:RK 1721/21

*This translation is unofficial and serves for information purposes only*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI132/19**

Applicant

**Kosovo Energy Corporation (KEK)**

**Constitutional review of Judgment ARJ-UZVP. No. 72/2018 of the  
Supreme Court of 16 April 2019**

**THE 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 the Kosovo Energy Corporation (KEK) (hereinafter: the Applicant), which is represented by Jusuf Gerguri, a lawyer.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Judgment [ARJ-UZVP. No. 72/2018] of the Supreme Court of 16 April 2019, which was served on it on 6 May 2019.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged judgment, which, according to the Applicant's allegations, violated its rights and freedoms guaranteed by Articles 3 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 54 [Judicial Protection of Rights] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on Article 21, paragraph 4 and Article 113, paragraphs 1 and 7 of the Constitution, Article 47 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 the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 19 August 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 August 2019, the President of the Court appointed Judge Bajram Latifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu Krasniqi and Gresa Caka Nimani (members).
7. On 6 September 2019, the Court notified the Applicant about the registration of the Referral, and requested the Applicant to enclose the acknowledgment of receipt when the Judgment [ARJ-UZVP. No. 72/2018] of the Supreme Court of 16 April 2019 was served on it.
8. On 6 September 2019, the Court sent a copy of the Referral to the Supreme Court in accordance with the law.
9. On 19 September 2019, the Applicant submitted to the Court the acknowledgment of receipt on service of the Judgment [ARJ-UZVP. No. 72/2018] of the Supreme Court, with the date of service of 6 May 2019.
10. On 3 February 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## Summary of facts

### *Administrative (out-of-court) proceedings*

11. On 13 March 2013, the Applicant submitted to the Directorate for Geodesy and Cadastre of the Municipality of Mitrovica, a request for registration of several immovable properties, among others, the immovable properties with the number of parcels no. 1413, no. 1415, no. 1416 and no. 1837/1, CZ-Mitrovica.
12. On 21 May 2015, the Directorate for Geodesy and Cadastre by Decision [No. 17922/14] partially approved the request of the Applicant in such a way that the request for registration of individual parcels was approved while the request for registration of cadastral parcels no. 1413, 1415, 1416 and 1837, was rejected on the grounds that the devices envisaged for construction on the disputed plots were not built as it was conditioned by the decision of the Government of Kosovo No. 12/168 of 29 January 2014. Against this decision, the Applicant filed a complaint with the Kosovo Cadastral Agency.
13. On 5 November 2015, the Cadastral Agency of Kosovo by Decision [No. 03/2150/15] rejected, the Applicant's appeal as ungrounded and upheld the decision [no. 17922/14] of the Directorate for Geodesy and Cadastre of the Municipality of Mitrovica of 21 May 2015. In the decision, the Kosovo Cadastral Agency stated that after the visit of the geometer on the field, it was determined that no energy devices were not installed on the disputed plots, therefore, as a consequence of this, it is not possible to register the right to use the disputed plots for 99 years as provided by the decision of the Government of Kosovo no. 12/168 of 29 January 2014.

### *Administrative procedure (administrative dispute)*

14. On 24 November 2015, the Applicant filed a statement claim with the Basic Court in Prishtina - Department of Administrative Disputes, requesting the annulment of the Decision [no. 17922/14] of the Department for Geodesy and Cadastre and of Decision [No. 03/2150/15] of the Cadastral Agency of Kosovo.
15. On 18 October 2017, the Basic Court in Prishtina, by Judgment [A. No. 2017/2015] rejected, as ungrounded, the Applicant's statement of claim and upheld the Decision [no. 17922/14] of the Department for Geodesy and Cadastre and Decision [no. 03/2150/15] of the Cadastral Agency of Kosovo. The reasoning of the Judgment reads, "*The claimant did not meet the conditions for registration of the abovementioned cadastral parcels, due to the fact that in the latter were not installed the energy equipment, a condition and criterion according to which the right of consent, use and other property rights for 99 (ninety-nine) years was based on the Decision of the Government of Kosovo no. 12/168, of 29 January 2014. In terms of the abovementioned provisions of Law No. 2002/5 on the Establishment of the Register for Immovable Property Rights, no. 2002/5, namely Article 3 paragraph 3.4 of the same law, the claimant did not meet the requirements for the registration of rights to immovable property*".

16. On 13 November 2017, the Applicant filed an appeal with the Court of Appeals against the Judgment [A. No. 2017/2015] of the Basic Court in Prishtina of 18 October 2017, *“due to essential violations of the provisions of the LCP Incomplete and erroneous determination of factual situation, and erroneous application of substantive law”*.
17. On 19 September 2018, the Court of Appeals by Judgment [AA. No. 547/2017] rejected as ungrounded the Applicant’s appeal and upheld the Judgment [A. No. 2017/2015] of the Basic Court of 18 October 2017.
18. On 8 October 2018, the Applicant submitted to the Supreme Court a request for extraordinary review of the court decision against the Judgment [A. no. 2017/2015] of the Basic Court in Prishtina and Judgment [AA. no. 547/2017] of the Court of Appeals, *“on the grounds of violation of the provisions of the procedure and violation of the application of substantive law”*.
19. On 16 April 2019, the Supreme Court, by Judgment [ARJ-UZVP. No. 72/2018] rejected as ungrounded the Applicant’s request for extraordinary review of the Judgment of the Court of Appeals and the Basic Court.

### **Applicant’s allegations**

20. The Applicant alleges that the challenged judgment of the Supreme Court violated its rights guaranteed by Articles 3 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 54 [Judicial Protection of Rights] and Article 102 [General Principles of the Judicial System] of the Constitution.
21. The Applicant also alleged *“that the regular courts did not act in accordance with the legal provisions governing the matter: [Property rights of energy enterprises], Chapter VIII of the Law no. 03/L - 184 on Energy of 4 October 2010, namely Article 24, paragraphs 1 and 2.*
22. The Applicant in essence reasons the violation of the above-mentioned articles of the Constitution, alleging the violation, *“of Law on Energy of 2010, namely Article 24, paragraphs 1 and 2 and Article 2, paragraph 1, sub paragraph 1.11.*
23. Finally, the Applicant requests the Court,

*“I. TO DECLARE the Referral admissible;*

*II. TO HOLD that there has been a violation of the rights guaranteed by the Constitution of the Republic of Kosovo, Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights], in conjunction with Article 102, paragraph 5 [General Principles of the Judicial System] of the Constitution, Article 46 of the Constitution of Kosovo regarding the protection of property as well as with Article 24 paragraphs 1 and 2, Article 2, paragraph 1, sub paragraph 1.11 of the Law on Energy No. 03/L – 184;*

III. TO HOLD that the request for extraordinary review of court decisions of 10.10.2018, of the Applicant - claimant, filed against Judgment ARJ - UZVP. No. 72/2018 of the Supreme Court of Kosovo in Prishtina of 16 April 2019 is grounded;

IV. TO DECLARE Judgment ARJ-UZVP. No. 72/2018 of the Supreme Court of Kosovo in Prishtina of 16 April 2019 invalid;

V. TO REMAND Judgment ARJ - UZVP. No. 72/2018 of 16 April 2019 of the Supreme Court of Kosovo for reconsideration”.

## **Relevant legal provisions**

**Law No. 2002/5**  
**On the establishment of the Immovable Property Rights Register of**  
**17 October 2002**  
**[...]**

### **Section 3**

#### **Registration of Immovable Property Rights**

**[...]**

3.2 The Applicant requesting the registration of a immovable property right shall attach to the request the documentation to support the immovable property right as required by the Applicable Law and subject to section 3.7 of the present law.

**[...]**

3.7 Without prejudice to Section 1.2 (b), UNMIK Regulation No. 1999/23 (on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) the MCO shall only register a immovable property right in the register if the competent court has issued the appropriate documents in writing to the MCO for the registration of the immovable property right in the Register.

**Administrative Instruction**  
**no. MJS 2004/03**  
**On the implementation of the law on the establishment of an immovable**  
**property rights register of 31 March 2004**  
**[...]**

### **Article 5**

#### **Legal basis for the Registration**

5.1 The registration of an immovable property right may be basen on:

A valid document of a competent authority (judicial or administrative).

*A final decision of a competent court.*

A legal transaction, evidence by any document that complies with applicable law .

**DECISION**  
**of the Government of the Republic of Kosovo**  
**No. 12/168**  
**of 29.01.2014**

[...]

1. *Energy enterprises to be granted a formal right of easement, use or property rights for 99 (ninety-nine) years, in the properties where Energy Enterprises have installed Energy devices, the property for which they have not secured a formal property right in accordance with the applicable law.*
2. *Property rights granted to Energy enterprises according to the Law on Energy, before being registered in the Municipal Cadastral Offices, a cadastral survey report should be prepared for those cadastral units in which the Energy devices are located.*
3. *Cadastral measurements that will determine the final boundary of the parcel on which the plant or energy device is located that ensures normal and regular use of the Energy facility must be in accordance with applicable cadastral legislation (administrative instructions and frameworks for practical work) and other applicable legislation.*
4. *Municipal cadastral offices are recommended to consider all requests of Energy Enterprises and to register their rights as defined by applicable legislation.*
5. *The decision shall enter into force on the date of signing.*

**Admissibility of the Referral**

24. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
25. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

Article 113 of the Constitution  
[Jurisdiction and Authorized Parties]

*„1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

[...]

*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 “.*

*[...]*

Article 21 of the Constitution  
[General Principles]

*[...]*

*4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

26. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Article 47 [Individual Requests] Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which establish:

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... .”*

27. The Court initially notes that in accordance with paragraph 4 of Article 21 of the Constitution, the Applicant has the right to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms, applicable both to individuals and to legal persons (see case of the Constitutional Court of the Republic of Kosovo, No. KI41/09, Applicant: AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo, Resolution on Inadmissibility of 3 February 2010).

28. As to the fulfillment of these requirements, the Court finds that the Applicant submitted the Referral in the capacity of an authorized party, challenging an act of a public authority, namely Judgment [ARJ-UZVP. No. 72/2018] of the Supreme Court of 16 April 2019, clearly stating the articles of the Constitution which it considers to have been violated, after the exhaustion of all legal remedies prescribed by law. The Applicant has also specified the rights and freedoms claimed to have been violated, in accordance with the requirements referred to in Article 48 of the Law and submitted the Referral in accordance with the deadline prescribed in Article 49 of the Law.
29. However, the Court also examines whether the Applicant has fulfilled the requirement established in Rule 39 [Admissibility Criteria], of the Rules of Procedure, which stipulates that:
- “(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”.*
30. The Court initially notes that the abovementioned rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.
31. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as “manifestly ill-founded” in its entirety or only with respect to any specific claim that a referral may constitute. In this regard, it is more accurate to refer to the same as “manifestly ill-founded claims”. The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of “*fourth instance*”; (ii) claims that are categorized as “*clear or apparent absence of a violation*”; (iii) “*unsubstantiated or unsupported*” claims; and finally, (iv) “*confused or far-fetched*” claims. (See, more precisely, the concept of inadmissibility on the basis of a referral assessed as “*manifestly ill-founded*”, and the specifics of the four above-mentioned categories of claims qualified as “*manifestly ill-founded*”, The Practical Guide to the ECtHR on Admissibility Criteria of 31 August 2019; Part III. Inadmissibility Based on Merit; A. Manifestly ill-founded applications, paragraphs 255 to 284).
32. In the context of the assessment of the admissibility of the referral, namely, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the merits of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

33. The Court recalls that the Applicant alleges that the challenged decision violated, (i) Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] and Article 102 [General principles of the Judicial System], (ii) Article 46 [Protection of Property] of the Constitution.
34. The Court notes that the Applicant reiterates the same arguments it submitted in the proceedings before the Directorate for Geodesy and Cadastre of Mitrovica and the Kosovo Cadastral Agency as well as the regular courts, that the Supreme Court dealt with this issue, so that the Court will further elaborate the proceedings before the regular courts.
35. As regards the abovementioned violations of the rights guaranteed by Articles 3, 31, 46, 54 and 102 of the Constitution, the Court recalls that according to the well-established case law of the ECtHR, the Court declares the submission inadmissible as manifestly ill-founded under criterion (iii) “*unsubstantiated or unsupported*” claims, when one of the two characteristic requirements is met, namely;
- a) when the applicant merely cites one or more provisions of the Convention or the Constitution, without explaining in what way they have been breached, unless this is obvious from the facts of the case (See: to that effect, case of the ECtHR *Trofimchuk v. Ukraine (decision)* no. 4241/03 of 31 May 2005, see also *Baillard v. France (decision)* no. 6032/04 of 25 September 2008);
  - b) when the applicant omits or refuses to produce documentary evidence in support of his allegations (in particular, decisions of the courts or other domestic authorities), unless there are exceptional circumstances beyond his control which prevent him from doing so (for instance, if the prison authorities refuse to forward documents from a prisoner’s case file to the Court) or unless the Court itself determines otherwise.

***(i) Regarding alleged violations of the rights guaranteed by Article 3 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] and Article 102 [General Principles of the Judicial System] of the Constitution***

36. In the present case, the Applicant merely alleges a violation of Articles 3, 31, 54 and 102 of the Constitution, but does not reason or explain how these Articles were violated.
37. The Court therefore finds that as regards the Applicant’s allegations of a violation of the rights guaranteed by Articles 3, 31, 54 and 102 of the Constitution, the Court concludes that this part of the Referral should be declared inadmissible as manifestly ill-founded as these allegations qualify as allegations falling into category (iii) “*unsubstantiated or unsupported*” allegations because the Applicant merely cited one or more provisions of the Convention or the Constitution, without explaining how they were violated.

Therefore, the latter are manifestly ill-founded on constitutional basis, in accordance with paragraph (2) of Rule 39 of the Rules of Procedure.

**(ii) Regarding allegations of violation of Article 46 of the Constitution**

38. Having regard to the Applicant's allegations relating to the right to property, the Court finds that the Supreme Court [bz Judgment ARJ-UZVP No. 72/2018] found that due to non-fulfillment of obligations provided by Decision No. 12/168 of the Government of Kosovo, as of 29 January 2014, it was not possible to register the Applicant's right to use the disputed parcels for a period of 99 (ninety-nine) years.
39. The Court also notes that as regards the Applicant's allegations regarding the right to property, the Supreme Court replied to the Applicant, reasoning that by the decision of the Government it was decided (i) to grant the Energy Enterprises with a right to an easement, use or other property rights for 99 (ninety-nine) years, and that for the properties where Energy Enterprises have set up energy devices; (ii) that after the surveyor went out on the field, it was stated that no energy devices were installed on the disputed plots; and that (iii) as a result of it, it was not possible to register the right to use the disputed parcels for a period of 99 years, based on the decision of the Government of Kosovo, [no. 12/168 of 29 January 2014], because the requirements for registration of rights to immovable property in terms of the provisions of Law No. 2002/05 and Administrative Instruction no. 2004/3 have not been met.
40. In this regard, the Court finds that in accordance with the relevant legislation as well as the content of the Government's decision [no. 12/168], the regular courts and in particular the Supreme Court found that the Applicant failed to comply with the legal requirements for the registration of rights to the disputed property due to non-compliance with the requirements stipulated by the Decision of Government.
41. The Court recalls that Article 46 of the Constitution and Article 1 of Protocol No.1 of the ECHR do not guarantee the right to acquisition of property (see: *Van der Musselev. Belgium*, paragraph 48, ECtHR Judgment of 23 November 1983, *Slivenko and others v. Lithuania*, paragraph 121, ECtHR Judgment of 9 October 2003).
42. The Applicant may allege violation of Article 46 of the Constitution only in so far as the challenged decisions relate to his "*possessions*"; within the meaning of this provision "*possessions*" can be "*existing possessions*", including claims, in respect of which the applicants can argue a "*legitimate expectation*" that they will acquire an effective enjoyment of any property right.
43. No "*legitimate expectation*" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and where the Applicant's submissions are subsequently rejected by the national courts (see: *Kopecký v. Slovakia*, paragraph 50 of the Judgment of the ECtHR, of 28 September 2004).

44. Therefore, the Court finds that as regards these Applicant's allegations of violation of the rights guaranteed by Article 46 [Protection of Property] of the Constitution, the Court concludes that this part of the Referral should be declared inadmissible as manifestly ill-founded as these allegations qualify as allegations falling into category of (iii) "*unsubstantiated or unsupported*" allegations because the Applicant merely cited one or more provisions of the Convention or the Constitution, without explaining how they were violated nor did it present material evidence to substantiate its allegations of a violation of the right to property. Therefore, the latter are manifestly ill-founded on constitutional basis, in accordance with paragraph (2) of Rule 39 of the Rules of Procedure.

## **Conclusion**

45. The Court therefore finds that as regards these Applicant's allegations of violation of the rights guaranteed by Article 3, 31, 46, 54 and 102 of the Constitution, the Court concludes that the Referral should be declared inadmissible in its entirety as manifestly ill-founded, because these Applicant's allegations qualify as allegations falling into the category (iii) "*unsubstantiated or unsupported*" allegations. Therefore, the latter are manifestly ill-founded on constitutional basis, as it is established in paragraph (2) of Rule 39 of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, on 3 February 2021, 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**

Bajram Ljatifi



Arta Rama-Hajrizi

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