



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

Prishtina, on 19 April 2021  
Ref.no.:RK1752/21

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI144/19**

Applicant

**Tomislav Filipović**

**Constitutional review of Judgment GSK-KPA-A-276/15 of the Supreme  
Court of Kosovo on Kosovo Property Agency Related Matters of 13  
February 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 Tomislav Filipović, having his permanent address in Kursumlia, Republic of Serbia (hereinafter: the Applicant), represented by lawyer Jeton Osmani.

## **Challenged decision**

2. The Applicant challenges the constitutionality of Judgment GSK-KPA-A-276-2015 of the Supreme Court of the Republic of Kosovo on Kosovo Property Agency Related Matters (hereinafter: the Supreme Court, of 13 February 2019, in conjunction with Decision [KPCC/D/A/267/2015] of 30 March 2015 of the Kosovo Property Claims Commission (hereinafter: KPCC) within the Kosovo Property Agency (hereinafter: KPA).
3. The Applicant received the challenged Judgment on 13 May 2019.

## **Subject matter**

4. The subject matter of the Referral is the constitutional review of the challenged Judgment which allegedly violates the rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) and Article 1 of Protocol no. 1 of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution, Article 22 (Processing Referrals) and Article 47 (Individual Requests) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and 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**

6. On 13 September 2019, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court). the Court).
7. On 18 September 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
8. On 12 November 2019, the Court notified the Applicant of the registration of the Referral. On the same day, the Court notified the Supreme Court of the registration of the Referral and requested to submit to the Court the acknowledgment of receipt proving when the Applicant had received the challenged Judgment.
9. On 13 November 2019, the Supreme Court submitted the requested document.
10. On 25 March 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

## Summary of facts

11. Based on the case files it follows that the Applicant alleges that he is owner of property no. 3086/7 which he has acquired, according to him, through purchase.
12. On 6 June 2007, the Applicant filed a Referral with the KPCC, requesting confirmation of the property right over the cadastral parcel no. 3086/7, which is located in the Municipality of Prishtina.
13. On 25 May 2015, the KPCC by decision rejected the complaint of the Applicant reasoning that the Applicant has failed to prove his property right and any other right over the claimed property. Among other things, the KPCC reasoned that the Applicant does not appear in the cadastre that he has ever been the owner of the claimed property.
14. On 19 June 2015, the Applicant filed against the decision of the KPCC filed an appeal with the Supreme Court alleging incomplete determination of the factual situation and erroneous application of the substantive law. Furthermore, the Applicant stated that there is evidence in the case files concluding that he is the sole legal owner of the claimed property and that he lost it due to the circumstances created during 1998 and 1999.
15. On 13 February 2019, the Supreme Court, by Judgment (GSK-KPA-A-276-2015), rejected the appeal as ungrounded. The Supreme Court found that *"The decision of the KPCC was rendered based on complete and fair determination of the factual situation and on this basis both the substantive and the procedural law have been properly applied when making the decision rejecting the request because it was not substantiated on relevant and valid evidence"*.

## Applicant's allegations

16. The Court recalls that the Applicant alleges that through Judgment of the Supreme Court, his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution in conjunction with Article 6.1 (Right to a fair trial) and Article 1 of Protocol no. 1 (Protection of property) of the ECHR have been violated.
17. The Applicant alleges that *"The Supreme Court of Kosovo and the Kosovo Property Claims Commission have not sufficiently established the relevant facts, namely the history of the parcel and other evidence submitted by the Applicant regarding the parcel being subject matter of this Referral"*.
18. Finally, the Applicant requests the Court to declare the challenged Judgment of the Supreme Court invalid.



## Admissibility of the Referral

19. The Court first 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.

20. In this respect, the Court refers to Article 113 of the Constitution which establishes:

*“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.”*

21. The Court also refers to Article 48 of the Law, 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”.*

22. In this regard, the Court refers to Rule 39 of the Rules of Procedure, which 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.”*

23. The Court recalls that the Applicant alleges that the challenged Judgment has violated his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution in conjunction with Article 6.1 (Right to a fair trial) and Article 1 of Protocol no. 1 (Protection of property) of the ECHR.

24. Initially, the Court notes that the Applicant in his Referral did not provide any argument as to how or by what actions his rights guaranteed by Articles 31 and 46 of the Constitution were violated.

25. The Court also notes that with regard to the administration of evidence, the Supreme Court had extensively analyzed the evidence submitted and the allegations raised by the Applicant. Therefore, the Supreme Court in its reasoning stated the fact that *“The Executive Secretariat of the KPCC has found ex officio the claimed parcel in the cadastral data in Kosovo registered in the name of a third party since 1987. In an additional effort made by the Secretariat, the latter requested the requesting party to provide additional evidence to prove his right, but he has failed to do so. Therefore, based on the evidence submitted before it, the Commission concludes that the Claimant has failed to prove his property right, or any other property right over the claimed property, immediately, before, or during the 1998-99 conflict, and consequently the claim is to be rejected”*. On this basis, the Supreme Court concluded that *“The challenged Decision of the KPCC was rendered based on complete and fair determination of the factual situation”*, and consequently rejected the claim of the Applicant due to lack of relevant and valid evidence.

26. On the other hand, the Court also notes that the Supreme Court addressed the Applicant's allegation that the property was lost as a result of the events of 1998-1999. In this regard, the Court also refers to the relevant part of the Judgment of the Supreme Court, which states the following:

*"The Supreme Court considers that the above mentioned facts lead to the conclusion that the loss of possession over the claimed property is not a result of the armed conflict that occurred during the years 1998-1999, therefore the allegations of the appellant in this regard when he states that surely he has legally possessed the claimed property and has lost this right due to the circumstances of the armed conflict, are rejected as ungrounded because it is not proven by any evidence that he has legally had the claimed property in possession and ownership or any other property right over the claimed property in the period of time, immediately, before, or during the 1998-99 conflict".*

27. Based on the above, the Court considers that the Applicant did not explain how and why the conclusion that he "did not prove" his property right over the property, which was given in the challenged Judgment, violated his rights to a fair and impartial trial and protection of property.
28. The Court further considers that the proceedings before the KPCC and the Supreme Court were fair, and that the decisions were fully reasoned, explaining that the Applicant *"has failed to prove any property right over the claimed property"* (See *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
29. Furthermore, the Applicant has not submitted any *prima facie* evidence that would indicate violation of his constitutional rights (See *Vanek v. Slovak Republic*, ECHR, No. 53363/99, 31 May 2005).
30. In fact, the Court notes that the Applicant has not constructed his claim on constitutional basis. On the contrary, he based his complaint on *"erroneous and incomplete establishment of facts"*. This falls within the jurisdiction of the regular courts.
31. The Court has consistently stated that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "fourth instance", which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (See ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and also see, among others, cases of the Court: *KI06/17*, cited above, paragraph 37; and *KI122/16*, cited above, paragraph 57; and *KI154/17* and *05/18* cited above, paragraph 61).
32. The Court has consistently held this view based on the ECtHR case law, which clearly states that it is not the role of this Court to review the findings of the



regular courts as to the factual situation and the application of substantive law (see ECtHR case Pronina v. Russia, Judgment of 30 June 2005, paragraph 24; and the Court cases KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58 and KI154/17 and 05/18, cited above, paragraph 62).

33. Therefore, the Court considers that the facts submitted by the Applicant do not justify the alleged violation of constitutional rights invoked by the Applicant, and that he has failed to sufficiently prove his allegation.
34. In sum, the Referral is manifestly ill-founded on constitutional basis and, consequently, inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 39 (2) of the Rules of Procedure, on 25 March 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**

Nexhmi Rexhepi



Arta Rama-Hajrizi

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