



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

Prishtina, 31 August 2015  
Ref. no.: RK 830/15

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI14/15

Applicant

Milić Krstić

**Request for Constitutional Review of Judgment of the Supreme Court of  
Kosovo – Appellate Panel of Kosovo Property Agency, GSK-KPA-A-  
284/13, of 2 December 2014**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge

#### **Applicant**

1. The Applicant is Mr. Milić Krstić, with residence in Sremska Mitrovica, Republic of Serbia (hereinafter: the Applicant), who is represented by a lawyer Mr. Goran Belić.

### **Challenged Decision**

2. The Applicant challenges Judgment of the Supreme Court of Kosovo –Appellate Panel of the Kosovo Property Agency, GSK-KPA-A-284/13 (hereinafter: the KPA Appellate Panel), of 2 December 2014.

### **Subject Matter**

3. The subject matter is the constitutional review of the Judgment [GSK-KPA-A-284/13] of the KPA Appellate Panel, of 2 December 2014, which allegedly has violated the Applicant's right under Article 46 [Protection of Property] of the Constitution of Kosovo.

### **Legal Basis**

4. Article 113.7 of the Constitution, Article 49 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 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 11 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 March 2015, the President of the Court, by Decision No. GJR. KI14/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI14/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 27 March 2015, the Court notified the Applicant and the KPA Appellate Panel of the registration of the Referral.
8. On 26 June 2015, the President of the Court by Decision no. KSH. KI14/15 appointed Judge Ivan Čukalović as Judge Rapporteur instead of Judge Arta Rama – Hajrizi. By the same Decision, the President appointed Judge Arta Rama – Hajrizi as member of the Review Panel instead of Judge Kadri Kryeziu, whose mandate at the Constitutional Court ended on 26 June 2015.
9. On 6 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

### **Summary of Facts**

10. According to the Applicant's allegation, on 8 September 1998, the administrative authority of the Municipality of Istok rendered a decision allocating to the Applicant the use of land parcel no. 1800/2, where he later constructed the business premise, which is the subject of this constitutional complaint.

11. On 6 July 2007, the Applicant submitted a claim to the Kosovo Property Agency (hereinafter: the KPA), by which he requested the confirmation of the property rights over the business premises located at the Varosh Street, Municipality of Istok, in parcel no. 1800/2, with a total surface area of 48 m<sup>2</sup>.
12. On 18 April 2013, the Kosovo Property Claims Commission (hereinafter: the KPCC) rendered its Decision [KPCC/D/C/200/2013], which rejected the Applicant's property claim as ungrounded. In the conclusion of the decision is stated:

*"[...] the Executive Secretariat of the KPCC did not verify the authenticity of the documents submitted by the claimant. The Commission finds that the claimant did not prove any property right over the claimed property."*

13. On 6 September 2013, the Applicant filed an appeal with the KPA Appellate Panel against the Decision [KPCC/D/C/200/2013] of the KPCC, of 18 April 2013.
14. On 2 December 2014, the KPA Appellate Panel rendered Judgment [GSK-KPA-A-284/13] by which it rejected the Applicant's appeal as ungrounded, and upheld in entirety the KPCC Decision [KPCC/D/C/200/2013] of 18 April 2013.
15. In the conclusion of the Decision of the KPA Appellate Panel of 2 December 2014 it stated as follows:

*"[...] the appellant [Applicant] did not submit any decision on allocation or evidence that confirms the right of use or the property right over the business premises despite the fact that the Commission requested clarifications and additional information, therefore the KPA Appellate Panel finds that the KPCC rendered the correct decision, based on the complete and correct proceedings. The KPA Appellate Panel finds that the substantive law had not been violated or that the facts had not been determined completely, therefore the appeal is ungrounded."*

### **Applicant's Allegations**

16. The Applicant alleges in the Referral that the courts violated the substantive law and erroneously determined the factual situation regarding his request for confirmation of the property right.
17. The Applicant addresses the Court with the request:

*"[...] that the Constitutional Court of Kosovo holds that in the proceedings before the KPA Appellate Panel of the Supreme Court of Kosovo in case no. GSK-KPA-A-284/13 the right of the Applicant pursuant to Article 46 [Protection of Property] of the Constitution has been violated and that it also determines the manner how to legally satisfy the Applicant, respectively order the Supreme Court of Kosovo –Appellate Panel of KPA, to render a new decision pertaining to the appeal."*



## **Admissibility of the Referral**

18. In order to be able to adjudicate the Applicant's Referral, the Court needs to first 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.

19. In this respect, Article 113, para. 7, of the Constitution 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.”*

20. The Article 48 of the Law, states 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“.*

21. In this case, the Court refers to Rule 36 (1) (d) of the Rules of Procedure, which provides:

*(1) “The Court may consider a referral if:*

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.“*

22. The Court notes that the Applicant's Referral is exclusively based on an allegation of a violation of Article 46 [Protection of Property] of the Constitution. This article provides that:

*“1. The right to own property is guaranteed.*

*2. Use of property is regulated by law in accordance with the public interest.*

*3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*

*4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*

*5. Intellectual property is protected by law.”*

23. The Court further notes that, apart from his allegation of a violation of Article 46 of the Constitution, the Applicant did not justify his allegation before the Court by any other argument.

24. The Court notes that the right to property under Article 46 of the Constitution, is subject to protection in the constitutional system of Kosovo and its content corresponds with the right to the free enjoyment of property under Article 1 of Protocol no. 1 of the European Convention of Human Rights (hereinafter ECHR). This right is protected by the Constitution in such a way that the regulation, limitation or deprivation of the use of property must be based on law.
25. In the Court's opinion, the mere fact that in the legal proceedings for the confirmation of a property right, the Applicant has not been successful, is not sufficient to establish a violation of his rights as guaranteed by Article 46 of the Constitution, The Applicant must demonstrate that as a result of the court decision he has been arbitrarily and unjustly deprived of his property (See case *mutatis mutandis Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).
26. The Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain*, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
27. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, as the Applicant has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.
28. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) (d) of the Rules of Procedure, in the session held on 31 August 2015, 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 paragraph 4 of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Vjosa Rama-Hajrizi