



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

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Prishtina, 13 December 2013  
Ref. no.:RK515/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI21/13**

Applicant

**Elfete Haxhiu**

**Constitutional Review of the Decision of the Supreme Court of Kosovo-  
Appellate Panel of Kosovo Property Agency, GSK-KPA-A-63/12, of 17  
January 2013**

### **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 Applicant is Ms. Elefete Haxhiu, from Viti (hereinafter: Applicant), who is represented by lawyer Mr. Sahit Musa from Viti.

## **Challenged decision**

2. The Applicant challenges the Decision of the Appellate Panel of the Supreme Court of Kosovo on Kosovo Property Agency Matters (hereinafter: KPA Appellate Panel), GSK-KPA-A-63/12, of 17 January 2013, which was served on her on 6 February 2013.

## **Subject matter**

3. The Applicant alleges that the decision of the KPA Appellate Panel, GSK-KPA-A-63/12 of 17 January 2013 violates her constitutionally guaranteed rights, such as: the property right and the right of freedom to choose residence.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22, the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, (hereinafter: the Law) and on the Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules).

## **Proceedings before the Court**

5. On 25 February 2013, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo, and the same was registered under the number KI21/13.
6. On 28 May 2013, the President appointed Arta Rama-Hajrizi as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 17 October 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility.

## **Summary of the facts**

8. On 19 September 2001, M. S. submitted a request to the Housing and Property Claims Commission in Gjilan (hereinafter: HPCC) to confirm the ownership right over a property, respectively over an apartment, which is located in Viti.
9. On the same day, the HPCC registered the request of M. S. under number DS 200669.
10. On 29 April 2003, A. A. submitted also a request to HPCC in Gjilan for confirmation of the ownership right over the same property, respectively the apartment, which is located in Viti.
11. On the same day, the HPCC registered the request of A.A. under the number DS 605934.

12. On 15 May 2003, M. S. submitted a request to the HPCC in Gjilan, requesting the withdrawal of the request, which he submitted on 19 September 2001.
13. On 5 April 2004, M. S., concluded a sale-purchase agreement of the apartment with the Applicant at the Municipal Court of Viti.
14. On an unspecified date, M. S., submitted a request to the Municipal Court of Viti, requesting from the Court to approve the conclusion of the sale-purchase agreement of the apartment, which he and the Applicant signed on 05 April 2004.
15. On 29 April 2004, the Municipal Court in Viti rendered Decision [no. N.No. 26/2004], approving the proposal of M. S., and thereby approved the signing of the sale-purchase agreement of the apartment.
16. In the enacting clause of the Ruling, the court stated that:

*„The Court has administered evidence proposed by representative of proposer and counter-proposer: the sale-purchase agreement of apartment with no. 250/94, of 05.04.1994, certified at this court, the power of attorney no. 150/2000, of 14.09.2000, form for interviews of Housing Property Affairs Directorate- Housing Property Claims Commission in Gjilan, in the name of M.S. no. DS -200669 of 23.12.2002, the consent of municipal administrator in Viti, no. 223 of 29.09.2003, pursuant to Regulation 2001/17, and at the end concluded that the proposal of proposer is entirely grounded and was approved in entirety as grounded.”*

#### **Proceedings before HPCC upon the request of A. A.**

17. On 17 October 2003, in the proceeding of the first instance, the HPCC rendered Decision [no. HPCC/D/93/2003], which recognized to A. A. the right of ownership over the apartment in Viti.
18. On an unspecified date, the Applicant filed an appeal to the second instance panel of HPCC against the decision of the first instance of HPCC [HPCC/D/93/2003] of 17 October 2003.
19. On an unspecified date, the second instance panel of HPCC rendered decision [HPCC/REG/95/2007], rejecting the Applicant's request for reconsideration of the first instance decision of HPCC [HPCC/D/93/2003] of 17 October 2003.
20. On 14 May 2012, the Applicant filed an appeal to the KPA Appellate Panel against the decision of the first and the second instance of HPCC.
21. On 17 January 2013, KPA Appellate Panel rendered Judgment [GSK-KPA-A-63/12], rejecting Applicant's appeal as inadmissible.
22. In the reasoning of judgment, the KPA Appellate Panel stated that:

*“The abovementioned decisions are rendered based on UNMIK Regulation, 2000/60 (hereinafter: the Regulation). By Decision HPCC/REG/95/2007,*

*the request for reconsideration submitted by appealing party against Decision HPCC/D/93/2003 is rejected. UNMIK Regulations do not provide legal remedy (appeal or any other extraordinary legal remedy) against final decisions of Housing Property Claims Commission - argument pursuant to Article 22 and 23, at the same place. In this regard, this is also the law case of Constitutional Court of the Republic of Kosovo (see Case no. KI104/10, paragraph 64, 74 and 75). Thus, the abovementioned appeal, filed against the final decision is inadmissible and should be rejected.”*

### **Applicant’s allegations**

23. The Applicant alleges that by the decisions of the HPCC and KPA Appellate Panel are violated the rights guaranteed by Constitution, such as: the right of property and right to choose the residence.
24. Applicant addresses the Court, requesting that:

*„The Court decides to my benefit, because to me and my family were violated the constitutional rights.”*

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

25. In order to be able to adjudicate the Applicant’s Referral, the Constitutional Court has to assess beforehand whether the Applicant has met admissibility requirements laid down in the Constitution, further specified by the Law and the Rules of Procedure.
26. The Court refers to Article 113 (7) 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.”*
27. The Court notes that the Applicant has fulfilled the requirements prescribed by Article 113 of the Constitution and therefore the Applicant is an authorized party to file the Referral with the Court.
28. The Court also refers to Article 48 of the Law on Constitutional Court, which reads:

*“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...”*
29. In addition, the Court takes into account Rule 36 (1) c) of Rules of Procedure, which provides that:

*“(1) The Court may only deal with Referrals if: (...) the Referral is not manifestly ill-founded.”*

30. The Constitutional Court recalls that under the Constitution, it is not the duty of the Constitutional Court to act as a court of appeals, when considering decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR],1999-1).
31. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).
32. The Court states that it dealt with the HPCC decisions in case KI104/10, and that on 29 April 2012 it rendered the Judgment AGJ221/12, in which is stated that: "*In the Court's view, the HPCC decision of 15 July 2006 must be considered as the final decision, which became res judicata, when it was certified by the HCPP Registrar on 4 September 2006, as was confirmed by the HPCC Letter of Confirmation to the Applicant, dated 7 May 2008. This letter also stated that the procedures in connection with the Applicant's application had been submitted to the Housing and Property Directorate in accordance with Section 1.2 of UNMIK Regulation 1999/23, and had been completed, while the remedies that were available to the parties in accordance with the provisions of UNMIK Regulation 2000/60 had been exhausted.*" (See *mutatis mutandis* Case No. KI104/10, Draža Arsić, Constitutional Review of Decision GZ No. 78/2010 of the District Court of Gjilan dated 7 June 2010).
33. After having reviewed the documents submitted by the Applicant, the Constitutional Court does not find that the proceedings before HPCC and KPA Appellate Panel were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Vanek v. Slovak Republic, ECHR Decision as to the admissibility of application no. 53363/99, of 31 May 2005).
34. Consequently, the Applicant has not shown why and how her rights guaranteed by the Constitution were violated. The mere statement that the Constitution was violated cannot be considered as a constitutional complaint. Therefore, pursuant to the Rule 36 (1) (c) of the Rules of Procedure, the Referral is manifestly ill-founded and consequently it is inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 17 October 2013, unanimously

### DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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**

  
Arta Rama-Hajrizi

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

