



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 8 February 2017  
Ref. no.:RK 1037/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI01/16**

Applicant

**Agim Arifi**

**Constitutional review of Judgment GSP-KPA-A-110-13, of the Supreme  
Court of Kosovo – Kosovo Property Agency Appeals Panel, of 20 July  
2015**

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

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Applicant is Agim Arifi from Vitia, who is represented by Sahit Musa, lawyer from Vitia.

## **Challenged decision**

2. The Applicant challenges Judgment GSP-KPA-A-110-13 of the Supreme Court of Kosovo-Kosovo Property Agency Appeals Panel (hereinafter: Appeals Panel) of 20 July 2015, which was served on the Applicant on 18 December 2015.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated Article 46, paragraph 1 and 2 [Protection of Property] of the Constitution of the Republic of Kosovo.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (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 31 December 2015, the Applicant submitted by mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 February 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 30 March 2016, the Court informed the Applicant about the registration of the Referral, and requested that he submits the additional documents, including the power of attorney for his legal representative. On the same date, the Supreme Court was notified on the Referral.
8. On 12 April 2016, the Court received the requested power of attorney as an additional document.
9. On 3 May 2016, the Court requested again the additional documents from the Applicant, in particular the completed Referral with all the data and the copies of all decisions related to the case, by setting the deadline within which these documents should be submitted to the Court. The Court did not receive any response from the Applicant regarding this Referral.
10. On 27 May 2016, the Court requested from the Supreme Court a copy of the acknowledgment of receipt regarding the date of service of the challenged Judgment on the Applicant.
11. On 20 July 2015, the Court received the required copy of acknowledgment of receipt.

12. On 13 September 2016, the President by Decision appointed for this case as Judge Rapporteur Judge Ivan Čukalović replacing Judge Robert Carolan, who resigned from the position of a judge on 9 September 2016.
13. On 17 October 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

14. On 26 February 2007, M. D. filed a claim with KPA – Kosovo Property Claims Commission (KPCC), for repossession of an immovable property– a private apartment described in detail as in the claim, which allegedly was usurped by the Applicant.
15. On 5 September 2012, the KPCC by Decision, KPCC/D/R/167/2012, rejected the submitted claim.
16. On 20 July 2015, the Appeals Panel rendered Judgment GSP-KPA-A-110-13, which modified the KPCC Decision, so that it approved the appeal of M.D as grounded and declared the Appellant the owner of the challenged apartment.

### **Applicant's allegations**

17. The Applicant alleges that by the Judgment of the Appeals Panel he is deprived of the immovable property (the apartment), which he acquired in a lawful manner under a valid contract concluded with M. D., which provided that, in case of non-payment of goods purchased by M. D. from the Applicant's company within the deadline stipulated in the contract, the ownership of the apartment which previously belonged to M.D. shall be transferred to the latter, and by this the Applicant's right to property provided by Article 46 of the Constitution has been violated.

### **Admissibility of Referral**

18. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and Rules of Procedure.
19. In this respect, the Court refers to Article 113. 7 of the Constitution, which establishes:

*“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 Court, also refers to Article 49 of the Law, which provides:

*“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...”.*

21. The Court further takes into account Rules 27 (3) (4) and 36 (1) (c) of the Rules of Procedure, which specify:

*“27. A time period prescribed by the Constitution, the law or these Rules shall be calculated as follows:*

*(...)*

*(3) When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred;*

*(4) When a period is expressed in months and days, the period shall be first calculated in whole months and then in days”.*

*“36. The Court may consider a referral if:*

*(...)*

*(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”*

22. In the present case, the Court notes that the challenged decision was served on the Applicant’s representative on 18 July 2015, whereas the Referral was submitted to the post office on 31 December 2015, which is counted as a date of submission of the Referral to the Court, however, it is quite obvious that the Referral was served out of the legal deadline of 4 (four) months.
23. The Court recalls that the purpose of the 4 (four) months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See *mutatis mutandis* case *O’Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).
24. The Court notes that it is the duty of the applicants or of their representatives to act with *due diligence*, in order to ensure that their requests for protection of rights and fundamental freedoms are filed within the legal time limit of four (4) months provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure (See Case *Mocanu and Others v. Romania* [GC], Application no. 10865/09, 45886/07 and 32431/08, Judgment of 17 September, 2014, paragraphs 263-267).

25. Therefore, the Referral is to be declared inadmissible for review because it is out of time.

### **FOR THESE REASONS**

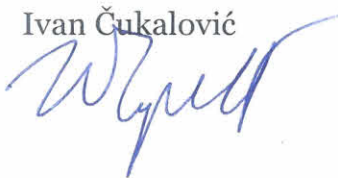
The Constitutional Court, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 20 October 2016, unanimously

### **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 effective immediately;

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Arta Rama-Hajrizi

