



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Pristine, 18 January 2012  
Ref. No.: RK185/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI94/11**

Applicant

**Lumnije Krasniqi**

**Constitutional review of the Decision of Housing and Property Claims  
Commission HPCC/D/144/2004/C of 27 August 2004**

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

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **The Applicant**

1. The Applicant is Lumnije Krasniqi residing in “Hasan Remniku” str. in Prishtina.

## Challenged decision

2. Challenged decision is the decision of Housing and Property Claims Commission (hereinafter: "HPCC") HPCC/D/144/2004/C of 27 August 2004 by which it was rejected the request of the Applicant to grant her possession of the immovable property which is located in "Sunny Hill II".

## Subject matter

3. The Applicant challenges the decision HPCC/D/144/2004/C of 27 August 2004, without stating any concrete Article of the Constitution of Republic of Kosovo but he claims the following: *„That he has a certificate from the municipality and the local community that he has been an occupant in the said apartment from 1999 until 30 March 2007, and that in every other country some one who is a citizen of that country is given priority and that after 3 years or more the apartment should be given to him with a deed in accordance with the law in a way that is easiest and economically fairest for its people...“*

## Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on Constitutional Court of Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 paragraph 2 of the Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter: "Rules of Procedure").

## Proceedings before the Court

5. On 20 January 2011, the Applicant submitted by mail a part of the documentation as a Referral to the Constitutional Court of Republic of Kosovo (hereinafter: the "Court").
6. On 21 January 2011, the Constitutional Court through a notification informed the Applicant of what a Referral should contain in order to be considered a Referral with the Constitutional Court, whereas the case was registered as a temporary case.
7. On 11 July 2011, the Applicant supplemented his Referral with the required documentation and the Referral was registered in KI record of the Court.
8. On 21 July 2011, the Applicant in his third approach to the Court requested through a submission that her identity be protected during the proceeding before the Court justifying that:  
  
*„ Her family has threefold enemies.“*  
*„From generation to generation by Serbian agents have been following her family because they are patriots and fighters. “*  
*„She wishes that her rights be realized in the name of Kosovo.“*
9. On 26 July 2011, the Constitutional Court notified the Applicant and Kosovo Property Agency (hereinafter: KPA) which is the legal successor of HPCC that a proceeding of constitutional review of decisions in case no. KI 94/11 has been initiated.
10. On 5 August 2011, KPA in its reply informed the Court in detail about the proceedings regarding Decision HPCC/D/144/2004/C of 27 August 2004. At the same time it

furnished the Court with a copy of the decision and a reply for the party that is requesting the reconsideration.

11. On 21 November 2011, after considering the report of Judge Kadri Kryeziu, the Review Panel composed of Judges: Altay Suroy (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Gjyljeta Mushkolaj, made a recommendation to the full Court to reject the Referral as inadmissible. At the same time, the Court assessed that the request for protection of identity is ungrounded.

### **Summary of the facts**

12. The Applicant fled the country during the war. After the war she returned to Kosovo and since she did not have any shelter KFOR accommodated them in a building in quarter Sunny Hill II, „because they were in the open “.
13. On 29 August 2001, HPCC received request no. DS001936 which was filed by M.K. authorized by Z.P., by which it was requested that the apartment in Sunny Hill II, be returned to his possession. As the opposing party in this case was F. K., Applicant's husband (hereinafter: F.K.)
14. HPCC after examining the documentation submitted by the parties in request no. DS001936 by Decision HPCC/D/144/2004/C of 27 August 2004 decided to return to Z.P. the right to possession of the apartment concerned.
15. The Decision HPCC/D/144/2004/C of 27 August 2004 was served on the then occupant of the apartment concerned Mr. F. K. on 13 October 2005.
16. On 19 December 2005 HPCC received a request for reconsideration of Decision HPCC/D/144/2004/C of 27 August 2004, filed by the F. K.
17. The request for reconsideration was rejected by HPCC because it was submitted after the legal time limit of 30 days provided by Section 14.1 of UNMIK Regulation 2000/60.
18. At the same time, the party which requested reconsideration F. K. did not present any new evidence which was not considered before, namely any evidence which would prove the right of F. K. to the apartment concerned.
19. Official notification on rejection of the request for reconsideration of Decision HPCC/D/144/2004/C of 27 August 2004 has been served on F.K.
20. After the Decision HPCC/D/144/2004/C of 27 August 2004 became final and upon the request of P.Z as a successful party in this dispute for the said apartment to be returned to him, on 14 February 2006, KPA evicted Applicant's family from the apartment and on 15 February 2006 it handed over possession of the apartment to the successful party in the dispute, Mr. Z. P., whereby the case before KPA was completed.

### **Applicant's allegations**

21. The Applicant challenges Decision HPCC/D/144/2004/C of 27 August 2004 without stating concrete Articles of the Constitution of Republic of Kosovo, but he requests from the Constitutional Court the following:

*„That the state should allocate the apartment concerned with a deed to her and with a reasonable price for paying it over a longer period of time according to the Law which supports our economy. The price should be determined based on how old is the*



*apartment and based on the economy of this tormented people because of the injustice experienced and who has suffered before and during the war, and that to this day the enemy is given priority in free Kosovo...”*

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

22. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, and further specified in the Law and the Rules of Procedure.
23. Regarding this submission, the Constitutional Court finds that the Applicant is complaining of the Decision HPCC/D/144/2004/C of 27 August 2004 which was served on him on 13 August 2005. This means that the Referral relates to events before 15 June 2008, which is the date when the Constitution of Republic of Kosovo entered into force. Based on the foregoing, the Referral has been filed out of time limit and it is therefore incompatible *ratione temporis* with the provisions of the Constitution and the Law (see *mutatis mutandis Jasiūnienė vs. Lithuania, Application no. 41510/98, ECHR Judgments of 6 March and 6 June 2003*).
24. It results that the Referral is inadmissible pursuant to Rule 36 (3h) of Rules of Procedure which provides: “A Referral may also be deemed inadmissible in any of the following cases: h) the Referral is incompatible *ratione temporis* with the Constitution.”

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (1h) of the Rules of Procedure, on 25 November 2011, unanimously,

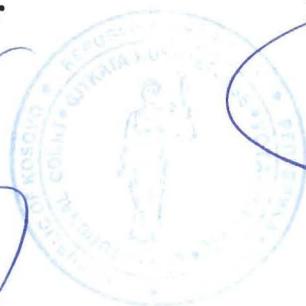
### **DECIDES**

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

**Judge Rapporteur**

  
Dr. Kadri Kryeziu

**President of the Constitutional Court**



  
Prof. Dr. Enver Hasani