



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 16 April 2014
Ref.no.:AGJ 565/14

JUDGMENT

in

Case No. KI187/13

Applicant

N. Jovanović

**Constitutional review regarding non-execution of the Decision GSK-KPA-A-001/12 of the Appellate Panel of the Supreme Court, of 8 May 2012,
and of the Decision of Kosovo Property Claims Commission no.
KPCC/D/A/114/2011, of 22 June 2011**

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was filed by Mrs. N. Jovanović (hereinafter: the Applicant), residing in Belgrade, Republic of Serbia.

2. The Applicant requested that her identity be not disclosed.

Challenged decision

3. The Applicant challenges the non-execution of the Decision GSK-AKP-001/12, of 8 May 2012, of the Appellate Panel of the Supreme Court (hereinafter: the Appellate Panel), and of the Decision no. KPCC/D/A/114/2011, of 22 June 2011, of the Kosovo Property Claims Commission (hereinafter: the KPCC Decision).

Subject matter

4. The subject matter of this Referral is the constitutional review regarding non-execution of the Decision GSK-AKP-001/12, of 8 May 2012, of the Appellate Panel and of the KPCC Decision no. KPCC/D/A/114/2011, of 22 June 2011 in the Applicant's case no. 16008, filed with the Kosovo Property Agency on 23 August 2005.
5. The Applicant alleges that as a result of the non-execution of the above-mentioned decisions, her rights guaranteed by Article 3 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], Article 53 [Interpretation of Human Rights Provisions], Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo, and relevant articles of the European Convention of Human Rights (hereinafter: the ECHR): Article 6, paragraph 1 [Right to Fair Trial], Article 13 [Right to Effective Legal Remedies], Article 14 [Prohibition of Discrimination], Article 1 of Protocol 1 of the ECHR [Protection of Property], were violated.
6. Amongst others, the Applicant requests from the Court to impose an interim measure.

Legal basis

7. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), Rule 55 and Rule 56 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

8. On 29 October 2013, the Applicant filed a Referral with the Court.
9. On 4 November 2013, the President of the Court, by Decision GJR. KI187/13, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No. GJR. KI187/13 appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi (members).
10. On 20 November 2013, the Court notified the Applicant, the Office for Legal Aid in Graçanica, as per recommendation of the Applicant, Kosovo Property Agency

(hereinafter: the KPA), the Appellate Panel, and L. F., as an interested party of the registration of Referral.

11. On 22 November 2013, the Court requested from the KPA additional clarifications in relation to the case.
12. On 20 January 2014, the Review Panel, following the reporting of the case by the Judge Rapporteur, concluded that additional clarifications be requested from the KPA .
13. On 23 January 2014, the President of the Court proposed to the full Court to hold a public hearing, regarding further clarification of the case. The President's proposal was unanimously supported by all present judges in this session and it was decided that the public hearing be held on Monday, 10 March 2014.
14. On 30 January 2014, as per the request of the Review Panel, the Court requested from KPA to file its response regarding the additional clarifications..
15. On 10 February 2014, the KPA filed its response to the request.
16. On 11 February 2014, the Court summoned the Kosovo Property Agency, in capacity of the opposing party, to participate in the public hearing session, , on 10 March 2014, starting at 10:00 hrs. On the same date, the summon for participation in the hearing of 10 March 2014 was communicated to the Applicant Mrs. N. J. and to the Legal Aid Office in Gracanica, upon her recommendation.
17. On 19 February 2014, the Court received a telephone call from KPA, regarding the confirmation of participation in the public hearing of 10 March 2014. The KPA will be represented in this hearing by Mrs. Mirvete Sopjani and Florie Kika.
18. On 10 March 2014, the President of the Court confirmed the participation of the Applicant's and KPA representatives in this public hearing. The Applicant was represented by her daughter Mrs. Dragana Jovanović and by Mr. Rastko Brajković, her representative, whereas KPA was represented by Mrs. Mirvete Sopjani and Mrs. Florie Kika. The session commenced at 10:00 hrs and ended at 12:35 hrs.
19. On 1 April 2013, the Court voted on the admissibility and the merits of the Referral.

Summary of the facts

20. On 23 August 2005, the Applicant filed a claim with the KPA against L. F. for confirmation of the right of possession of the immovable property in Sofali neighborhood in Prishtina, registered in the possession list no. 361 in Prishtina.
21. On 22 June 2011, the KPCC, by Decision No. KPCC/D/A/114/2011, claim no. 16008, found that the Applicant is the holder of property right, and ordered any

person occupying the property to vacate the property within a timeline of 30 days, or otherwise will be forcibly evicted from the property.

22. Furthermore, the KPCC Decision, respectively claim no.16008, which is dedicated to the Applicant reads:

"In Claim No. 16008 the Claimant N. Jovanović has filed the claim in the capacity of a property right holder. The Claimant states that she is the owner of the claimed property based on possession list No.361 and contract on gift dated 1980 issued by her late mother Leposave-Savke. Both documents have been positively verified by the Executive Secretariat. The Claimant also asserts that the property is occupied against her consent, and that a residential construction has been erected on the property without her permission. Based on the notification of the claimed property by the Executive Secretariat, such a construction exists. The current occupant of the property, L. F. (the "Respondent"), alleges that sometime in 2000 he was contacted by an unknown person who presented himself as the owner of the claimed property. He concluded a purchase contract with this individual and alleges to have paid DM 2,000 deposit to him. No further payments have been made. The Respondent states that he later found out that the individual from whom he purchased the claimed property was not the owner of the property and alleges to be in contact with the Claimant through a lawyer to negotiate the purchase of the property.

[...]

The Commission considers that the Respondent was aware when occupying the claimed property that the property did not belong to him, and that he had no permission to use the property. The Respondent therefore must also have understood that the erection of a residential property on the property was unlawful, and that he therefore has no right to the claimed property. Accordingly, the Claimant's claim stands to be granted and an eviction order issued as set out above".

23. On 14 December 2011, Mr. L. F. filed a complaint with the Appellate Panel, against the KPCC Decision (KPCC/D/A/114/2011), thereby claiming that the KPCC decision was untrue and incomplete.
24. On 8 May 2012, the Appellate Panel, by its Judgment GSK-KPA-A-001/12, rejected the complaint of Mr. L. F. because the complaint was filed out of time and that Mr. L. F. had not provided any acceptable justification on such delay. The reasoning of the Judgment is as follows:

"On 22 June 2011, the KPCC with its decision KPCC/D/A/114/2011 (regarding case registered at the KPA under the number KPA16008) decided that the claim of Mrs. N. S. Jovanović was grounded, i.e. that she is the owner of the claimed property and ordered the respondent to vacate it.

The KPA has reasoned that the Applicant has successfully confirmed her ownership right. The KPA considers "that the respondent was aware when occupying the claimed property that the property did not belong to him, and that he had no permission to use the property. The respondent therefore must also have understood that the construction of a residential

property on the property was unlawful and that he therefore has no right to the claimed property.

The respondent (hereinafter: the appellant) was served with the decision KPCC/D/A/114/2011 (regarding case file registered at the KPA under the number KPA16008) on 08 November 2011. He filed an appeal on 14 December 2011, stating that the decision was incorrect and erroneous.

He does not dispute that the Applicant is the owner of cadastral parcel 748/1 with a surface of 18 are and 41 square meters, but he claims that he has possessed this land since 2000 and has built 3 two-floor family houses. He refers to violations of the Law on basic property relations (Official Gazette SFRY No 6/80). The appellant claims that, "given that more than 3 years have passed by since the buildings – houses were constructed...they (the owner of the land) can only ask for the market price for the land-their parcel but not for the return of the stated land". He also claims that the demolition of the buildings would not be socially justified and that the owner can only ask for payment. The appellant refers to Articles 2 and 5 of the Law on basic property relations but it is obvious that the numbering he proposes is wrong, because the provisions he is referring to are in Article 25, paragraphs 2 and 5 of the said law.

[...]

Legal reasoning:

The appeal is belated (Art. 186.2 of Law No. 03/L-006 on Contested Procedure). Section 12.1 of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079 provides as follows: "Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

The appellant was served with the decision on 8 November 2011. So, the time limit ended on 8 December 2011. Yet, the appellant filed his appeal only on 14 December 2011, which is outside the above noted time limit. He has given no excuse and the Court cannot detect any reason for the delay.

Therefore the appeal had to be rejected as inadmissible on procedural grounds (Section 13.3 subparagraph (b) of UNMIK Regulation 2006/50 as amended by Law No. 03/L-079.

Accordingly, the Court does not have to decide whether and how the provisions of Art 25, paragraphs 2 and 5 of the Law on basic property relations (Official Gazette SFRY No 6/80) are applicable in this case."

25. On 14 November 2012, the Applicant filed a request with the KPA for restitution of the property into possession. The Applicant stated in her request that her right over the disputed property was confirmed by the KPCC Decision (No. KPCC/D/A/114/2011, claim no. 16008) and the Judgment of the Appellate Panel (GSK-AKP-A-001/12).

26. On 5 June 2013, the KPA, with its letter Ref. No. 00906/13/fk, replied to the Applicant, thereby clarifying the complex situation of the property, due to construction of buildings, thereby currently disallowing demolition of such buildings. Amongst others, the KPA offered the Applicant a possibility of mediation by its trained representatives: *"the Agency may mediate between you and the user of the property, with a view of finding an amicable solution on the use of your property. The Agency employs trained mediators"*.
27. On 11 July 2013, the Applicant submitted a letter with the KPA Supervisory Council, thereby complaining against the KPA Executive Secretariat in failing to execute the Judgment of the Appellate Panel (GSK-AKP-A-001/12) and the KPCC Decision No. KPCC/D/A/114/2011, claim no. 16008), but no reply is found in the case files.
28. On 19 August 2013, the Applicant sent a letter to the Office of the Disciplinary Counsel, thereby presenting her dissatisfaction with the delays in executing the decisions by the KPA Secretariat.
29. On 3 October 2013, the Applicant received from the Office of the Disciplinary Counsel the letter no. KDT/13/zp/892, by which she was notified that the Office of the Disciplinary Counsel *"does not have the legal mandate (competency) to investigate the potential unprofessional (negligence) conduct of KPA employees"*.

KPA responses

30. On 22 November 2013 the Court requested from KPA additional clarifications related to the case, and on 26 November 2013, it received this reply:

"Pursuant to UNMIK Regulation 2006/50 amended and supplemented by Law no.03/L-079, respectively Chapter 5 Article 15: "Remedies for the execution of a decision may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure and demolition of unlawful structures and auction." The Agency in addition to eviction also applies other legal remedies for the execution of Decisions envisaged by the Standard Operating Procedure, such as: eviction, placing the property under administration, lease agreement, seizure and demolition of unlawful structures, seizure and compensation, expropriation, placing servitude, intermediation and auction.

The Agency pursuant to the applicable legislation mentioned above and also considering the complex nature of the cases when in the property that is the object of claim new structures/buildings are built and in order to avoid harmful consequences to the parties, in cases similar to that of Mrs. N. Jovanović has commenced applying the legal remedy of Unbiased Intermediation.

On 3 September 2013, Mrs. N. Jovanović was again notified by the Agency officials in relation to claim KPA 16008 and she was offered the intermediation as a remedy for solving the matter but she rejected it again.

We notify you that the execution of the Decision through the legal remedy “demolition of illegal structures” at this stage is impossible for the Agency due to the lack of financial means to hire a demolition company. The Agency in the proposed budget for 2014 has sought funds to this purpose and if they are permitted it will commence to implement this legal remedy for executing the Decisions”.

31. On 30 January 2014, the Court requested from the KPA to file its response, regarding the proposed question by the members of the Review Panel and by the full Court, in the deliberation session of 20 January 2014.
32. On 10 February 2014, KPA submitted the following response to the Court:

“Kosovo Property Agency (the Agency), wants to inform you that we have received your letter of 30 January 2014, No. 160/14/ZL, where you have requested information on the execution of the claim KPA 16008, submitted in the Agency by Mrs. N. Jovanović.

Pursuant to UNMIK Regulation 2006/50 on the establishment of Kosovo Property Agency (the Agency), amended and supplemented by the Law no. 03/L-079, adopted by the Assembly of the Republic of Kosovo, the Agency has competencies to accept also through Property Claims Commission to resolve the claims related to the conflict over the property and the claims that include the rights of the property use, including the circumstances related directly or which result from the armed conflict, that occurred in Kosovo between 27 February 1998 and 20 June 1999.

As we have informed you earlier, the Agency has no capacity to demolish facilities constructed on the occupied properties. For this reason, the funds were requested from the Kosovo Budget to engage the companies to perform this work, namely to implement this legal remedy of the execution of the decisions but unfortunately the request of the Agency has not been approved. Once the financial means are provided, the Agency will start with implementation of the decision of the Commission with priority, however, we cannot provide any specific date on which these claims will be finally resolved. The Agency is making maximal efforts and will further continue to find an opportunity of implementation of these cases.

Thank you for your cooperation and if you need any additional information or clarification, please do not hesitate to contact us.”

Applicant’s allegations

33. The Applicant alleges that regular court proceedings violated her constitutional rights guaranteed by Articles 24, 31, 32, 46, 54; and Articles 6, 13, 14 of the ECHR, and Article 1, Protocol 1 to the ECHR.
34. Further, the Applicant requests from the Court: 1) “To adjudicate the right to restitution of property 2) To adjudicate the compensation for the damages suffered due to violation of rights of the Applicant as guaranteed by the Constitution of Kosovo 3) To adjudicate the amount of 300.000.00 Euros for

pecuniary damages suffered by the Applicant, and 30.000,00 Euros for non-pecuniary damages, which are immeasurable in nature, due to violation of human rights 4)For the amounts decided to be paid promptly upon publication of Decision/Judgment of the Constitutional Court of Kosovo.”

Allegations of the Applicant’s representatives in the public hearing of 10 March 2014

35. In this public hearing, the Applicant was represented by Mrs. Dragana Jovanović (the Applicant’s daughter), and the Mr. Rastko Brajković (authorized representative, Legal Aid Office in Gračanica). In this public session, Mrs. D. Jovanović, stated among other things that: *in 1999, together with her son and her mother (the Applicant) they fled from Kosovo, by leaving their property. Later on, they found out that in their property were constructed houses. After four (4) months we understood the name of the person, who constructed the houses in our property. After this event, we addressed the KPA and submitted our evidence regarding the (immovable) property in a surface area of 0.18 ha. Based on the documents submitted by my mother (the Applicant), the KPA confirmed that she is the legitimate owner of the abovementioned property. After this, we were notified by KPA that the property over the immovable property was challenged by a person, who had constructed the houses in this property. On this occasion, Mrs. D. Jovanović requests that her property issue is fairly solved by Kosovo institutions.*
36. The Applicant’s representative, among other things, stated: *despite all submitted evidence, the Applicant has not been able to exercise her right over the immovable property for a long period of time, since 1999, i.e. since 2007, when she addressed KPA for confirmation of ownership. If the submitted documentation is examined from the legal point of view, it is noted that there are no disputed elements over this property. The entire procedure lasted in an unreasonable way. Taking into account that the execution of a court decision, as defined by the ECtHR case law, I refer in particular to the case Hornsby v. Greece, where is stated that the execution of a decision is an integral part of the right to a fair trial, and that the effective legal remedy should not remain only in paper, but also to be implemented in practice. In this case, there are violations of the right to a fair trial, taking into account the nature of the case and all the evidence and unreasonable delay of the entire procedure. Since the decision has been rendered and until now, the KPA decision has not been executed. Everything else represents the empty wording that does not lead to the enjoyment of the right to address the system for judicial protection of the acquired rights. Finally, taking into account the KPA response that they do not possess sufficient budget, it is expected a many-year delay, due to the fault of the authority that is competent for providing protection to these persons, so, it is clear that such a case is not expected to be resolved within a short period of time.*

Statements by KPA representatives in the public hearing of 10 March 2014

37. In this public hearing, KPA representative stated among other things that: *based on UNMIK Regulation no. 2006/50, as supplemented by Law no. 03/L-*

079 on KPA, the KPA is competent for resolving such cases. The Kosovo Property Claims Commission (KPCC) within the KPA, resolves the claims of the parties, related to the armed conflict, from February 1998 until 20 June 1999. Among these cases, the claim of Mrs. N. Jovanović was the subject of review before the KPA.

By KPCC Decision (KPCC/D/A/114/2011, claim no. 16008), Mrs. N. Jovanović was recognized the right of possession of the immovable property in question, and ordered any person occupying the property to vacate the property within a timeline of 30 days, from the day of receiving this order. The parties were notified of this decision in a timely manner. Following this, Mr. L.F. filed appeal against the KPCC Decision with the Appellate Panel of the SC on KPA matters. On 8 May 2012, the Appellate Panel of SC rendered the decision, rejecting Mr. L.F. appeal, whereby the KPCC decision became final. Based on its practice, after the KPA is served with the decision from the Appellate Panel, it immediately notifies the parties in the procedure and takes actions in order that the decision is executed within 15 days, following the notification of the parties. However, due to created circumstances, the KPA failed to execute the KPCC decision, due to construction of the new structures in that property; it is about the construction of new houses. The obstacles appeared because, to deliver the possession of the immovable property to the legitimate owner, the KPA needed additional funds to demolish the constructed houses. Apart from the demolition of the structures, the KPA, under the law, has in disposal other legal remedies, such as the remedy of intermediation. The KPA, due to the lack of funds, could not execute the decision, since the budget has already been approved and for this reason, the KPA on 21 October 2013, requested from the Ministry of Finance the approval of the additional budget for 2014, which would ensure the KPA progress and its mandate, but although our requests were reasoned, the Ministry of Finance did not approve the request for additional budget. On 5 June 2013, in order to execute the KPCC decision, the KPA contacted Mrs. N. Jovanović and notified her of the circumstances of the case and requested from her to accept the remedy of intermediation, in order that the issue of the immovable property is solved by agreement and in a friendly manner. However, N. Jovanović J. rejected our request. Another attempt was also made in September 2013, but we have received the same response. It is worth of being mentioned that the KPA has 42.600 cases in total. The KPA possesses only 21 cases similar to the case of Mrs. N. Jovanović, out of which 14 have accepted the remedy of intermediation.

Comments of Applicant's representatives on the statements of KPA representatives

38. The Applicant's representative stated: the KPA had sufficient time to resolve this legal matter. However, it reacted after Mrs. N. Jovanović filed the Referral with the Constitutional Court. The Applicant was told that the KPA does not have sufficient funds to execute the KPCC Decision. This is the substance of that appeal. The remedy of intermediation is not at all disputable; perhaps the Applicant would be interested in that legal remedy. According to the Anglo-Saxon law, in this situation, there is no equality of parties, since one party was denied the right to possession of the property for 15 years in a row, while the other party benefited in an unlawful manner from the Applicant's

property. We refer to the case *Dogan v. Turkey*, where there were violations of the rights of displaced parties, although the proceedings to overcome this had existed.

Parties' answers to the Court's questions

39. The Applicant's representative stated that: *the Referral is based on Article 31, 32, 53 and 54 of the Constitution. These provisions may be connected to 6, 8, 13 and Article 1 of Protocol 1 of ECHR. Furthermore, he added: from the statements of the KPA representatives, it has been concluded that the Agency is competent for execution of the decision in question, but as it is evident, it has not provided the proceedings how to achieve this, since we do not have strict time limits to see when this right will be exercised. We have mentioned, in our appeal, several cases when the execution of the court decision is an element of the right to fair trial. The reason why the intermediation was rejected was the delay and buying in time by KPA and that was the reason why the remedy of intermediation was rejected by the Applicant. The KPA had no clear platform what would happen if the intermediation did not succeed. In addition, KPA did not foresee funds for the demolition of the erected houses. It should have been arranged in advance by proceedings. The Applicant was later told that unfortunately there were no funds to demolish those houses. This fact made that we address the Constitutional Court with our appeal. Mrs. D. Jovanović stated on that occasion: we were not against the intermediation; it is not that we did not want that, but this offer did not exist in the beginning and it was not convincing.*
40. Mrs. D. Jovanović stated among other things: *we do not want anybody's house to be destroyed, but we want a reasonable compensation for that parcel, I absolutely do not agree that the houses are demolished. The Applicant's representative, further explained, by saying: the Applicant's response is clear, meaning that she wants an effective intermediation. The KPA representatives replied stating that: the property was visited several times on 16 January 2013, and Mr. L. F. was again notified of the decision of the Supreme Court Appellate Panel and he was ordered to vacate the immovable property of Mrs. N. Jovanović, but this did not happen. The KPA representatives state that when in cases the eviction is not possible, the KPA uses other available remedies, such as intermediation. On 5 June 2013, the Applicant was notified of the created situation and it was requested from her to accept the remedy of intermediation. In July 2013, the Applicant submitted a letter by which she stated that she does not agree with intermediation. On 3 September 2013, the Applicant was contacted again by KPA and she was again requested to accept the intermediation.*
41. The KPA representatives stated: *the Agency is the only competent authority for execution of these decisions of the SC Appellate Panel. Regarding the mediation proceedings, representative of KPA stated: if the parties agree on the intermediation, then the Agency will render a decision, which will be later communicated to the parties. The procedures provide that the intermediation takes place in several stages, usually 3 to 5 sessions. If the parties reach an agreement on this case, the KPA mandate ends. If reached agreement is not respected, the parties may later initiate other judicial proceedings. [...]when*

the agreement fails, then the KPA proceeds with other available remedies to demolish the structures, constructed in that property. KPA representatives at the end of the session stated: KPA is ready starting from tomorrow, 11 March 2011, to proceed with the mediation remedy.

42. However, from 11 March 2014 until the date when it was decided on the case, the Court does not possess any information from KPA on the actions taken.

Admissibility of the Referral

43. In order to be able to adjudicate the Applicant's Referral, the Court first needs to examine whether the Applicant has met the admissibility requirements provided by the Constitution, and further specified by the Law and Rules of Procedure of the Court.
44. With respect to the Applicant's Referral, the Court refers to Article 113.7 of the Constitution, which 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"*.
45. In this respect, the Applicant has exhausted all legal remedies, provided by law, and due to lack of any other available effective remedy, she has addressed the Constitutional Court with the request for execution of the Judgment GSK-KPA-A-001/12 of 8 May 2012, of the Appellate Panel, which upheld the Decision no. KPCC/D/A/114/2011 of 22 June 2011 of KPCC.
46. The Court also refers to Article 49 of the Law, which provides that: *"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced..."*
47. The Court wishes to reiterate that the requirement for the submission of the Referral within the time limit of four (4) months does not apply in the case of the non-execution of the decisions by the public authority (see, *mutatis mutandis Iatridis v. Greece No. 59493/00, ECtHR, Judgment of 19 October 2000*). The ECtHR explicitly noted, in a similar situation arising in *Iatridis v. Greece*, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision.
48. The Court also refers to Article 48 of the Law, which provides 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"*.
49. Regarding the fulfillment of this requirement, the Court notes that the Applicant has accurately specified what rights, guaranteed by the Constitution have allegedly been violated to her, by non-execution of the Judgment of the Appellate Panel and of the KPCC Decision, by referring to the ECtHR case law in her case.

50. The Court further notes that the Applicant may legitimately claim to be a victim of the non-execution of the KPCC Decision, which was upheld by the Judgment of the Appellate Panel GSK-KPA-A-001/12 of 8 May 2012.
51. In sum, the Court considers that the Applicant is an authorized party; she has exhausted all legal remedies; she has met the requirement of the legal deadline as a result of a continuing situation, and that she has accurately clarified the alleged violation of the rights and freedoms and she has referred to the ECtHR case law, for exercising her right to enjoy and possess the property.
52. Since the Applicant has fulfilled the procedural requirements, provided by the Constitution, the Law and the Rules of Procedure, the Court considers that the Referral is admissible for review on the merits.

Merits of Referral

53. The Court notes that the Applicant alleges violation of her constitutional rights, guaranteed by Article 3 [Equality before the Law]; Article 32 [Right to Legal Remedies]; Article 46 [Protection of Property]; Article 53 [Interpretation of Human Rights Provisions]; Article 54 [Judicial Protection of Rights]; as well as by the respective Articles of the European Convention on Human Rights, Article 6 paragraph 1 [Right to a fair trial]; Article 13 [Right to an effective remedy]; Article 14 [Prohibition of discrimination]; Article 1 of Protocol 1 of ECHR [Protection of Property].
54. In this case, the Court will examine the merits of the Referral, pursuant to Article 31 in conjunction with Article 6.1 of ECHR, Article 46 in conjunction with Article 1 of the Protocol 1 of ECHR and 54 of the Constitution [Judicial Protection of Rights].

As to alleged violation of the right to fair and impartial trial

55. The Court notes that the Applicant mainly alleges that the delay and non-execution of the Decision of Appellate Panel GSK-AKP-001/12 and KPCC Decision (KPCC/D/A/114/2011), violate her rights to a fair trial.
56. In this respect, the Court refers to Article 31 of the Constitution, which establishes:
 1. *“Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers”.*
 2. *“Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.”*
57. In addition to this, Article 6.1 [Right to a fair trial] of ECHR establishes:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

58. Moreover, Article 54 of the Constitution provides that:

"Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated."

59. In the present case, under UNMIK Regulation 2006/50, as amended and supplemented by Law no. 03/L-079 of the Republic of Kosovo, the Court finds that the KPA is the only responsible and competent organ for the execution of the decision of Appellate Panel of the Supreme Court on Kosovo Property Agency Related Matters and of the decisions of the Kosovo Property Claims Commission of KPA. This fact was confirmed also by KPA representatives in the public hearing session held on 10 March 2014 in this Court.
60. The Court notes that the decision of KPCC KPCC/D/A/114/2011 recognized Applicant's right of ownership over the property in question. Against that decision, Mr. L. F. filed an appeal with the Appellate Panel of the Supreme Court. His appeal was rejected as belated. In this context, we understand that the KPCC Decision has become final and represents an adjudicated matter.
61. In the sense of the execution of those decisions, the Applicant approached KPA several times requesting to have its property returned into her possession. Further, she approached other institutions of the Republic of Kosovo. The Applicant has continuously made efforts to exercise her right in an institutional way, but this right of hers has not been exercised.
62. In this regard, the Court notes that it is the right of an unsatisfied party to initiate court proceedings in case of the failure of realization of the earned right as provided by Article 31 of the Constitution of the Republic of Kosovo and Article 6 in conjunction with Article 13 of the European Convention on Human Rights (ECHR). It would be meaningless if the legal system of the Republic of Kosovo allow that a final judicial decision remains ineffective in disfavor of one party. Interpretation of the above Articles exclusively deals with the access to the court. Therefore, non-effectiveness of procedures and the non-implementation of the decisions produce effects that bring to situations that are inconsistent with the principle of the Rule of Law (Article 7 of the Constitution), a principle that the Kosovo authorities are obliged to respect (see *ECtHR Decision in the case Romashov v. Ukraine, Submission No. 67534/01. Judgment of 25 July 2004*).
63. The Court considers that the execution of a decision rendered by a court should be considered as an integral part of the right to a fair trial, a right guaranteed by the above articles (see case *Hornsby v. Greece case, Judgment of 19 March 1997, reports 1997-II, p. 510, par. 40*). In this specific case, the Applicant should not have been deprived of the benefit of a final decision, which is in her favor.

64. No authority can justify non-execution of decisions, intending to obtain revision and fresh review of the case (see, *Sovtranstvo Holding against Ukraine*, No. 48553/99, § 72, *ECtHR 2002-II*, and *Ryabykh v. Russia*, No. 52854/99, § 52, *ECtHR 2003-IX*).
65. Competent authorities, therefore have an obligation to organize an efficient system for implementation of decisions which are effective in law and practice, and should ensure their implementation within reasonable time, without unnecessary delays (see *Pecevi v. former-Republic of Yugoslavia and Macedonia*, no. 21839/03, 6 November 2008; *Martinovska v. Former-Republic of Yugoslavia and Macedonia*, no. 22731/02, 25 September 2006).
66. The Court emphasizes that it is not its duty to determine what is the most appropriate way for KPA to find efficient mechanisms of execution, within its competences, in the sense of completely fulfilling the obligations it has under the Law and the Constitution. However, every individual is entitled to judicial protection in case of violation or denial of any right guaranteed by the Constitution or by law (see Article 54 of the Constitution).
67. Therefore, the burden of the responsibility for the non-execution and for not finding adequate mechanisms for the execution of the final Decision of KPCC, KPCC/D/A/114/2011, falls primarily with KPA itself. The lack of executive mechanisms of this public institution should not in any way be an excuse of the denial of the right to enjoy property.

As to the allegation of the violation of the right to protection of property

68. The Applicant alleges the violation of Article 46 of the Constitution [Protection of Property] and Article 1 of the Protocol no. 1 of ECHR.
69. Article 46 [Protection of Property] of the Constitution provides:
 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 (...)*

[...]

70. Article 1 of Protocol 1 of ECHR provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of

property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

71. Regarding the alleged violation of the protection of property, the Court concludes that the KPCC Decision presents a legitimate expectation for the Applicant, that she is entitled to the of the property. Therefore, the Applicant is entitled to enjoy peacefully that property, as guaranteed by Article 1 of Protocol no. 1 of the Convention. Under these circumstances, her right to enjoyment and possession of property was denied (see, *mutatis mutandis*, *Gratzinger and Gratzingerova v. the Czech Republic (dec.)*, no. 39794/98, para. 73, ECtHR 2002-VII).

In relation to the request for imposing interim measure

72. In this regard, the Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution, which provides: *“While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages”*.
73. The Court also takes into consideration Article 27 of the Law, which provides:
- “The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest”*.
74. Regarding this request, the Court notes that the Applicant has not substantiated or proved why and how would she suffer irreparable damages with the non-execution of the KPCC Decision. A request for imposition of an interim measure must be substantiated on real grounds for a risk or an irreparable damage, the value of which would be irrecoverable in material and monetary aspect.
75. In this respect, the Court did not find real grounds for approving the request for imposing interim measure as required by Article 27 of the Law.
76. The Court wishes to emphasize that in the public hearing, the representatives of KPA pledged that on 11 March KPA would undertake concrete measures so that within a reasonable period of time and in an expedited procedure, by mediation, it would organize three to five sessions for reaching an acceptable agreement for the Applicant which means a monetary compensation of the real value of the property. KPA representatives also pledged that in case of failure to reach an agreement, under the applicable law, KPA would finally make use of other available remedies, such as the demolition of the structures built by the illegal user and the return of the property into possession of the legitimate owner.
77. In this regard, the Court refers to Rules 63 (4) of the Rules of Procedure which provides: *“4) The Court may specify in its decision the manner of and time-limit for the enforcement of the decision of the Court.”*

78. Therefore, in accordance with the abovementioned Rule, the Court orders KPA to fulfill its pledge for execution of the KPCC decision and to inform the Constitutional Court on the measures taken to enforce this Judgment of the Court within three (3) months.

CONCLUSION

79. As a conclusion, the non-execution of the KPCC Decision by the KPA and the failure of competent authorities of the Republic of Kosovo to ensure efficient mechanisms for execution of final decisions are in contradiction with the principle of the Rule of Law and constitute violation of the fundamental human rights guaranteed by the Constitution.
80. In these circumstances, the Court concludes that the non-execution of the final Decision KPCC/D/A/114/2011 constitutes a violation of Article 31 of the Constitution in conjunction with Article 6.1 of ECHR and Article 54 of the Constitution.
81. Furthermore, the Court finds that the Applicant was unjustly deprived of her property due to the delay and non-execution of the Decision KPCC/D/A/114/2011. Thus, the Applicant's right to peaceful enjoyment of her property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of ECHR, has been also violated.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 56 (1) of the Rules of Procedure, in its session held on 1 April 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;
- II. HOLDS that there has been a violation of Article 31 of the Constitution in conjunction with Article 6.1 of ECHR;
- III. HOLDS that there has been a violation of Article 54 of the Constitution;
- IV. HOLDS that there has been a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 of ECHR;
- V. DECLARES that the Decision no. KPCC/D/A/114/2011 of 22 June 2011 must be executed by Kosovo Property Agency;
- VI. ORDERS Kosovo Property Agency, pursuant to Rule 63 of the Rules of Procedure, to submit information to the Constitutional Court within three (3) months about the measures taken to enforce the Judgment of this Court.
- VII. TO NOTIFY this Judgment to the Parties;
- VIII. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IX. This Judgment is effective immediately.

Judge Rapporteur



Prof. Dr. Ivan Čukalović



President of the Constitutional Court



Prof. Dr. Enver Hasani