



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

Prishtina, 25 September 2017
Ref. No.: RK1126/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI25/17

Applicant

Bukurije Gashi

**Constitutional review of Judgment GSK- KPA- A- 221/14
of the Kosovo Property Agency Appeals Panel of the Supreme Court of
Kosovo of 3 August 2016**

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Bukurije Gashi from Suhareka (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [GSK-KPA-A-221/14] of the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo (hereinafter: the KPA Appeals Panel) of 3 August 2016, served on her on unspecified date.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the KPA Appeals Panel, which allegedly has violated the Applicant' rights under Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 3 March 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 April 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Selvete Gërxfhaliu-Krasniqi and Gresa Caka-Nimani
7. On 19 April 2017, the Court notified the Applicant and the KPA Appeals Panel about the registration of the Referral.
8. The Court also requested from the Applicant to submit the acknowledgment on receipt within a specified period as evidence when the challenged judgment was served on her.
9. The Applicant did not respond to the request of the Court within a specified period.
10. On 17 May 2017, the Applicant sent a letter to the Court with comments which did not contain the evidence of the date of service of the challenged judgment.
11. On 17 May 2017, the Court sent a letter to the KPA Appeals Panel, requesting to submit the evidence when the challenged judgment was served on the Applicant.
12. The KPA Appeals Panel did not respond to the request of the Court.
13. On 21 June 2017, the Court submitted again the request to the KPA Appeals Panel, in which it requested to submit the acknowledgment on receipt as evidence when the challenged judgment was served on the Applicant.

14. The KPA Appeals Panel did not respond to this request of the Court either.
15. On 6 September 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on inadmissibility of the Referral.

Summary of facts

16. Based on the case file in the Referral, the Court can notice that on 19 January 2007, the Housing and Property Claims Commission (hereinafter: the HPCC) rendered a decision HPCC/REC/89/2007, which recognized the right of possession over the apartment located in the neighbourhood Rasadnik in Suhareka to the third party Z.S.
17. On 10 October 2007, the Applicant filed an appeal with the Kosovo Property Agency (hereinafter: the KPA), requesting the possession over the aforementioned apartment.
18. On 13 March 2014, the Kosovo Property Claims Commission (hereinafter: the KPCC) rendered Judgment No. KPCC / D / R / 231/2014, which rejected the Applicant' appeal as ungrounded, with the reasoning: *"The Applicant, in this case the appellant, did not lose the possession as a result of the conflict 1998/99."*
19. On 23 May 2014, the Applicant filed an appeal with the KPA Appeals Panel against the KPCC Decision No. KPCC/ D/ R/ 231/2014.
20. On 3 August 2016, the KPA Appeals Panel rendered Judgment [GSK-KPA-A-221/14] which rejected the Applicant's appeal as ungrounded, while it upheld the KPCC decision of 13 March 2014, in entirety. The reasoning of the Judgment reads: *"There are sufficient elements in the case file that show that the apartment was not in possession of the appellant (the Applicant) at the moment when the conflict happened."*

Applicant's allegations

21. The Applicant alleges in the Referral: *"that the HPD, namely the Kosovo Property Agency, violated the law and her right to property."*
22. The Applicant requests the Court to *"annul the decision of the KPA Appeals Panel and to approve her request for the use of the apartment."*

Assessment of the admissibility of Referral

23. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
24. 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.”

25. The Court, also refers to Article 49 of the Law, which foresees:

“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...”

26. The Court further takes into account Rule 36 (1) (c) of the Rules of Procedure, which provides:

“1) 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.”

27. Having reviewed the Applicant’s Referral, the Court notes that she challenges Judgment [GSK-KPA-A-221/14] of the KPA Appeals Panel, of 3 August 2016. In this regard, on 19 April 2017, the Court sent a letter to the Applicant requesting her to indicate when the challenged Judgment [GSK-KPA-A-221/14] of the KPA Appeals Panel was served on her, as well as to submit evidence to justify her allegations about the date of service of the judgment.
28. The Court further notes that the Applicant did not submit any reply to the Court within specified period.
29. On 17 May 2017, the Applicant sent a letter to the Court with comments based on which the Court could not conclude when the challenged judgment was served on her.
30. In addition, in order to determine when the challenged judgment was served on the Applicant, the Court sent two requests for additional documentation (on 17 May 2017 and on 21 June 2017), to the KPA Appeals Panel.
31. However, the Court wishes to reiterate that the KPA Appeals Panel did not send replies to any of the Court's requests.
32. The Court adds that even assuming that the challenged judgment of the KPA Appeals Panel was served on the Applicant sometime between 4 August 2016 and 2 November 2016, the Referral is out of time limit of four (4) months, because it was submitted on 3 March 2017.
33. 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 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).

34. Therefore, the Referral is to be declared inadmissible for review because it is filed out of time, as it is established by Article 113.7 of the Constitution, provided for in Article 49 of the Law, and as further specified in Rule 36 (1) (c) of the Rules of Procedure.

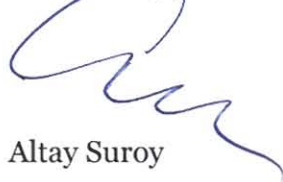
FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on its session held on 6 September 2017, unanimously

DECIDES

- I. TO DECLARE the Referral 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



Altay Suroy



President of the Constitutional



Arta Rama-Hajrizi