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

Prishtina, on 13 August 2019
Ref. no.:AGJ 1408/19

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JUDGMENT

in

Case No. KI145/18

Applicant

Shehide Muhadri, Murat Muhadri and Sylë Ibrahimi

Constitutional review of Decision AC. No. 530/2016 of the Court of Appeals of 18 June 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Shehide Muhadri, Murat Muhadri and Sylë Ibrahimi, residing in the village Babush i Muhaxherëve, Municipality of Lipjan (hereinafter: the Applicants), who are represented by Sabri Kryeziu, a lawyer from Lipjan.

Challenged decision

2. The Applicants challenge the constitutionality of Decision Ac. No. 530/2016 of the Court of Appeals of 18 June 2018, which was served on them on 12 July 2018.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violates the Applicants' rights guaranteed by Article 3 and 24 [Equality Before the Law] of the Constitution, and Article 6 of the European Convention on Human Rights (hereinafter: the Convention), in conjunction with Article 31 of the Constitution.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article of the Constitution, Article 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] 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 2 October 2018, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 9 October 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).

7. On 26 October 2018, the Court notified the Applicants about the registration of the Referral. A copy of the Referral was sent to the Court of Appeals on 8 May 2019.

8. On 10 May 2019, the Court requested additional information from the Basic Court in Prishtina, Branch in Lipjan, regarding the Judgments which the Applicants attached to the Referral.

9. On 22 May 2019, the Basic Court in Pristina, Branch in Lipjan informed the Court that Judgments C. No. 164/2003 (25 February 2003) and C. No. 146/2009 (12 November 2007) are final, after being upheld by the former District Court in Prishtina, whereas Judgment C. No. 98/2010 (21 January 2014) to which the Applicants also refer *"has been remanded for re-procedure where now it has a new case number C. No. 526/18 and is in the process of judicial review"*.

10. On 19 July 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral admissible and to assess the content of the referral.

Summary of facts

11. The present referral relates to some immovable properties, namely cadastral parcels no. 173, 636, 638 and 641, all identified in possession list no. 169 CZ Babush i Muhaxherëve, Lipjan municipality. The immovable property in question was purchased from the Municipality of Lipjan by some private owners (in the 1960-ies). The funds for purchase were provided by the United Nations International Refugee Fund, headquartered in Geneva, Switzerland, for the purpose of sheltering and integrating refugees who came from Albania in the 1960-ies. This immovable properties were then given for use, in good faith, to the Applicants in 1969. However, ownership of these immovable properties has since remained registered in the name of the Municipality of Lipjan.

12. On 25 February 2009, the Applicants filed a statement of claim with the Municipal Court in Lipjan seeking to confirm the ownership over the immovable property referred to above, claiming that they had acquired it by lawful possession since 1969 by the Municipality of Lipjan, based on the contract Vr. No.248 /68 of 17 June 1968.

13. On 16 August 2010, the Municipal Court in Lipjan, by Judgment C. No. 48/2009, upheld the Applicant's claim and confirmed that they had acquired the right of ownership on the basis of lawful possession of the immovable property no. 173, 636, 638 and 641, all registered in the possession list no. 169 CZ Babush i Muhaxherëve. By this judgment, the court obliged the respondent, the Municipality of Lipjan, to recognize to the Applicants the right of ownership of the immovable property in question and to allow their registration as the property of the Applicants in the Immovable Property Registry in Lipjan Municipality, Cadastral Zone Babush i Muhaxherëve.

14. In its judgment, the first instance court reasoned as follows: *"Based on [these] facts the court in support of the provisions of Article 28 para. 4 of the Law on Property-legal Relations concludes that the claimants as conscientious possessors have acquired the ownership right to the disputed immovable property described in item I of the enacting clause over 20 years as a bona fide possessors, despite the fact that this the immovable property is registered in the books of the Cadastral Register in the name of the respondent, as Article 16 of the Law Amending and Supplementing the Law on Basic Property Relations no. 29 promulgated in the Official Gazette of RSY no. 29/1996 by which provision was deleted Article 29 of the said Law which provides that in socially owned objects the right of ownership cannot be acquired by retention, so after the deletion of this legal provision the social and private property are equated in terms of the acquisition of the right of ownership by retention".*

15. On an unspecified date, the Municipality of Lipjan filed an appeal with the Court of Appeals on the grounds of essential violations of the provisions of the

contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law.

16. On 14 November 2014, the Court of Appeals by Decision Ac. No. 1855/12 quashed the judgment of the court of first instance and remanded the latter for re-trial and reconsideration, on the grounds that "*...the legal assessment of the first-instance court that pursuant to the institute of the acquisition by prescription, the claiming party has acquired the property right under Article 28 para. 4 of the LBPLR, in conjunction with Article 16 of the Law on Amending and Supplementing this Law, cannot stand, because it is also subject to the provisions of the Law on Associated Labor, the legal rules of civil law and Article 29 of the LBPLR. -the right of ownership in socially owned property cannot be acquired on the basis of the acquisition by prescription*".

17. On 11 November 2015, the Basic Court in Prishtina, Branch in Lipjan, joined two claims, that of the Applicants and of some other claimants, who also requested the confirmation of ownership of the abovementioned immovable property, and in a single case decided to:

    1) rejected the statement of claim of the Applicants requesting a confirmation of ownership over the parcels no. 173, 636, 638 and 641, all registered in CZ Babush i Muhaxherëve, in possession list number 169, with the reasoning that "*Since in the present case the claimants Shehide Muhadri, Murat Muhadri and Sylë Ibrahimi, from the village Babush I Muhaxherëve, with no evidence until the conclusion of the main hearing, argued the manner of acquiring the ownership over the immovable property described in the enacting clause of this judgment, as provided by the foregoing provisions, therefore, the court rejected the statement f claim of the claimants as unfounded and decided as in item I of the enacting clause of this judgment*".

    2) rejected the statement of claim of claimants A.L., M.L. and A.L, from Babush i Muhaxherëve, who also sought the confirmation of ownership of parcels 173, 636, 638 and 641, all registered with CZ Babush i Muhaxherëve, on the basis of the 1966 sale-purchase contract, alleging that their predecessor paid the price in the name of the deposit from 1/3 of the total price in respect of the immovable property in question.

18. On 29 December 2015, the Applicants appealed to the Court of Appeals against the first instance judgment of 11 November 2015 on the grounds of essential violations of the provisions of the contested proceedings, erroneous determination of the factual situation and erroneous application of substantive law. The Applicants specifically requested the court in question to treat their case similar to some of the same other cases (of several other families), which had acquired the property right by way of the acquisition by prescription.

19. On 18 June 2018, the Court of Appeals, by Judgment Ac. No. 530/18, rejected as ungrounded the Applicants' appeal and upheld Judgment C. No. 19/2015 of

the Basic Court in Prishtina-Branch in Lipjan, of 11 November 2015, with the following reasoning:

> *"In order to acquire the property right, the two legal requirements must be fully met, to exist a valid basis for acquiring the property right (Article 20 of the aforementioned law), but in addition the property right is acquired by registering in public books of the immovable property or otherwise provided by law (Article 33 of the same law). It follows that in addition to the legal basis for acquiring ownership, there must also be a legal way of acquiring property, and in this case it does not exist due to the fact that immovable property is still evidenced as socially owned property in the name of Lipjan Municipality..*
>
> *The second instance court accepts the assessment of the first instance court that, pursuant to the institute of the acquisition by prescription, the first claimants could not acquire the right of ownership over the contested immovable property, even though by the provision of Article 16 of the Law on Amending and Supplementing the Law LBPLRY, "Official Gazette of the SFRY, No. 29/26, which entered into force on 05.07.1996, stipulating that Article 29 of this Law shall be deleted, but this provision cannot be applied in this specific legal case, but eventually it is possible to apply after the entry into force of this law, whereas in the case of the claimants this provision was not in force, and the principle that the law which was in force at the time of the establishment of the legal-civil relationship applies. According to these provisions, taking into account the provisions of the Law on Associated Labor, the right of ownership of socially owned property in no circumstances can be acquired on the grounds of acquisition by prescription. From the reasons presented the court finds that the first claimants have not met any legal requirements to be recognized the right of ownership by acquisition by prescription and that under Article 28 of the LBPLRY".*

20. On 9 August 2018, the Applicants filed a request with the State Prosecution in the Supreme Court against the Judgment of the Court of Appeals of 18 June 2018 on the grounds of erroneous application of the substantive law.

21. On 27 August 2018, the Office of the Chief State Prosecutor, by Notification KMLC. No. 117/2018, notifies the Applicants that it has not found sufficient legal basis to file a request for protection of legality with the Supreme Court.

22. On 31 August 2018, the Applicants submit a request for reconsideration to the Office of the Chief State Prosecutor of the proposal for a request for protection of legality, invoking discrimination, namely unequal treatment.

23. On an unspecified date, the Office of the Chief State Prosecutor examines the Applicants' Referral and reasons: "*...we inform you again that we have found that we have no legal basis for filing this extraordinary legal remedy, because this remedy can only be filed by us only if the violation pertains to territorial jurisdiction, since the first instance court rendered the judgment without a main hearing, whereas it was obliged to hold the main hearing, if it was*

decided on the request on the ongoing case, or if in contravention of the law the public was excluded from the main hearing or if the substantive law was violated. In the present case, according to none of our findings, these legal requirements for filing this extraordinary legal remedy were met".

Applicant's allegations

24. The Applicants allege that the regular courts, by failing to recognize their ownership right over the disputed immovable property, have violated the equality before the law and Article 6 of the Convention on the following grounds and reasons

> *"the plaintiffs are Ashkali, minorities, while from the same legal basis as refugees of the Republic of Albania, at the same time, the immovable property (house and land) was given for use, the same court granted ownership to F.I. family from the village of Babush i Muhaxherëve, from the same base is given also to the family of E.M., A.M., A.M., A.M. and F.D. all from the village Bregu i Zi Lipjan Municiplaity, then to Bresa family from the village Gracka e Vogel from M. Lipjan". In addition to this Referral, we attach to the Constitutional Court a judgment, where it was decided on the recognition of ownership by the same court to Xh.H. from village Babush i Muhaxherëve, M. of Lipjan, where the case is identical in both the factual and the legal situation. And in this way for the identical case the court, because they are Ashkali, did not recognize to the claimants the right of ownership, while to all other cases did, whereby it violated equality before the law".*

25. In support of their allegation, the Applicants have attached to the Referral three Judgments of the former Municipal Court in Prishtina C. No. 164/2003 of 25 February 2003, C. No. 146/2009 of 12 November 2007 and C. No. 98/2010, of 21January, 2014.

26. Finally, the Applicants request the Court to modify Judgment C. No. 19/2015 of the Basic Court in Prishtina-Branch Lipjan, of 11 November 2015 and to approve their statement of claim for recognition of the ownership over the disputed immovable property, or to quash Judgment C. No. 19/2015 of the Basic Court in Prishtina-Branch in Lipjan of 11 November 2015 and Judgment Ac. No. 530/2016 of the Court of Appeals of 18 June 2018 and remand the case for retrial.

Admissibility of the Referral

27. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.

28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *1. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

[...]

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.

[...]".

29. The Court also examines whether the Applicants have fulfilled the admissibility requirements, foreseen by Articles: 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

Article 48
[Accuracy of the Referral]

"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".

Article 49
[Deadlines]

"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...".

30. As to the fulfillment of the abovementioned criteria, the Court finds that the Applicants are authorized parties; have exhausted available legal remedies; have clarified the act of public authority which constitutionality they challenge and the constitutional rights which allegedly have been violated, and have submitted the referral in time.

31. The Court further examines whether the Referral fulfills the admissibility requirements laid down in Rule 39 (1) (d) and 39 (2) of the Rules, which establish:

Rule 39
[Admissibility Criteria]

(1) "The Court may consider a referral as admissible if:
[...]
(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions".

(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".

32. The Court concludes that this Referral initiates a constitutionally reasoned allegation *prima facie* and is not manifestly ill-founded within the meaning of Rule 39 (2) of the Rules of Procedure.

33. Therefore, the Court will assess the merits of the case by examining the allegations as filed in the Referral.

Merits of the Referral

34. Initially, the Court recalls that Article 53 of the Constitution obliges the Constitutional Court that: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

35. With regard to the rights claimed by the Applicants, the Court recalls the case law of the European Court of Human Rights (hereinafter: ECtHR), which states that: *"A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on"* (See, ECHR case *Ştefanica and Others v. Romania*, Judgment of 2 November 2010, paragraph 23).

36. Therefore, the Court will analyze the Applicants' complaints, relying on the alleged facts and the evidence attached to the Referral, in order to respond to the allegations of violations of the rights guaranteed by the Constitution and the Convention.

37. The Court notes that the Applicants challenge Judgment Ac. No. 530/2016 of the Court of Appeals, of 18 June 2018, which upheld Judgment C. No. 19/2015 of the Basic Court in Prishtina-Branch Lipjan of 11 November 2015. They allege that these judgments violated their right to "equality before the law" guaranteed by Article 24 of the Constitution and the right to a "fair trial" guaranteed by Article 6 of the Convention.

38. Regarding this case, the Court notes that the Applicants as the main allegation before the Court raise the issue of treating their case differently, as compared to some other identical cases. The Applicants emphasize that the same court, alluding to the former Municipal Court in Prishtina, recognized the property rights to some other families on the basis of the acquisition by prescription, while in their case the courts did not take into account the same factual and legal circumstances. In support of this allegation, they have attached to the

Referral three decisions of the same courts on identical cases. (see paragraph 25 of this Judgment).

39. The Court, based on the principle of subsidiarity, namely the exhaustion of effective legal remedies in the substantive sense, will assess whether the Applicants' allegation regarding the different treatment of cases under the same factual and legal circumstances was raised before the regular courts and if addressed by them, in accordance with the right to a reasoned decision, as guaranteed by Article 31 of the Constitution and Article 6 of the Convention.

40. In this regard, the Court recalls that Article 31 of the Constitution and Article 6 of the Convention, establish:

Article 31 [Right to Fair and Impartial Trial of the Constitution

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".

Article 6.1 (Right to a fair trial) of the Convention

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

General principles on the right to a reasoned decision developed by ECtHR case law

41. The Court notes, first of all, that the guarantees contained in Article 6 paragraph 1 of the ECHR include the obligation of the courts to provide a reasoning for their decisions. The reasoned court decision, shows to the parties, that their case has really been examined. (see judgment of the ECtHR *H. v. Belgium*, application 8950/80, paragraph 53 of 30 November1987).

42. The Court also states that, according to the ECtHR case law, Article 6 paragraph 1 obliges the courts to give reasons for their judgments, but this cannot be understood as requiring a detailed answer to every argument (see ECtHR cases *Van de Hurk v. Netherlands*, judgment of 19 April 1994, *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, paragraph 26, *Jahnke and Lenoble v. France*, *Perez v. France* [GC], paragraph 81.).

43. In this regard, the ECtHR adds that even though a domestic court has a certain margin of appreciation when choosing arguments and admitting evidence, it is

also obliged to justify its activities by giving reasons for its decisions (see ECtHR Judgment *Suominen v. Finland*, Case 37801/97, 1 July 2003, paragraph 36).

44. The Court also states that, in accordance with the ECtHR case law, when examining whether the reasoning of a court decision meets the standards of the right to a fair trial, the circumstances of the particular case should be taken into account. The court decision cannot be without any reasoning, nor will the reasoning be unclear. This applies in particular to the reasoning of the court decision deciding upon the legal remedy in which the legal position presented in the lower instance court decision has been changed (see: case of ECtHR *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994, paragraph 61).

45. The Court wishes to reiterate that the notion of a fair procedure, in accordance with the case law of the ECtHR, requires that a national court which has given sparse reasons for its decisions, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court. This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings (see *Helle v. Finland*, ECHR Judgment, Case 157/1996/776/977, 19 December 1997, para. 60).

46. In addition, the Court refers to its case law where it is established that the reasoning of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them (the Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; no. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58, and KI96/16 *IKK Classic*, Judgment of 8 December 2017).

Application of the abovementioned principles to the right to a reasoned decision in this case

47. The Court recalls that in examining allegations of a violation of the right to fair and impartial trial, the Court assesses whether the court proceedings in their entirety have been fair and impartial, as required by Article 31 of the Constitution (*see, inter alia, mutatis mutandis, Edwards v. United Kingdom,* 16 December 1992, p. 34, Series A, No. 247 and *B. Vidal v. Belgium,* 22 April 1992, p. 33, Series A. No. 235).

48. As mentioned above, the Court will assess whether the Applicants' allegation has been properly addressed by the regular courts and in accordance with the right to a reasoned and reasonable decision.

49. On the basis of the case file, the Court notes that the Applicants raised the allegation of unequal treatment before the regular courts, initially before the Basic Court in Prishtina, Branch in Lipjan, which by Judgment C. No. 19/2015 of 11 November 2015, reasoned that:

"...in the present case it has adjudicated and decided based on the Law and not in accordance with the case law and also following the instructions of the Court of Appeals of Kosovo".

50. The Court notes that the same allegation was also raised by the Applicants in the Court of Appeals, where they specifically stated in their appeal that:

"...they presented to the court also a final judgment, whereby the same ground was acquired the ownership of an identical case similar to that of a refugee in the same village, however the court did not take into account this judgment on the grounds that it had decided based on the law and not according to the case law".

51. However, the Court notes that the Court of Appeals upholds Judgment C. No. 19/2015 of the Basic Court in Prishtina, Branch in Lipjan, of 11 November 2015, without addressing the Applicants' allegation as to the decision of their case in line with the case law of the first instance court, as it had decided in the cases of other families in identical circumstances.

52. The Court notes that the same allegation was raised by the Applicants in their request for protection of legality with the Office of the Chief State Prosecutor. This request was rejected on the grounds that there was no legal basis for filing this extraordinary legal remedy.

53. In this regard, the Court recalls that the right to fair and impartial trial, guaranteed by Article 31 of the Constitution, also includes the right to a reasoned judicial decision. The reasoning of decisions is an essential element of a fair decision. A further function of a reasoned decision is to demonstrate to the parties that they have been heard, and to afford a possibility to them to appeal against it. In addition, it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice (see Judgment of the Constitutional Court, case KI72/12, Judgment of 17 December 2012).

54. The Court reiterates that the regular courts are not obliged to address all of the allegations submitted by the Applicants. However, they must address the main allegations underlying the case under consideration - and which are raised in all stages of the proceedings as it happened in the present referral. (see *mutatis mutandis*, Constitutional Court decisions: KI135/14, Judgment of 8 February 2016 and KI22/16, Judgment of 2 May 2017).

55. The Court reiterates that the right to fair and impartial trial includes, above all, the obligation of the courts to provide sufficient reasons for their decisions, both in procedural and in substantive terms (see Constitutional Court, case KI135/14, Judgment of 8 February 2016 and case KI22/16, Judgment of 2 May 2017).

56. The application of this principle was assessed by the Court on a case-by-case basis, depending on the concrete circumstances of the case, analyzing whether the challenged court decisions have sufficiently fulfilled the obligation to

reason their decisions. The extent to which this duty to give reasons applies may vary according to the nature of the court decision and must be determined in the light of the circumstances of the case (*Hirvisaari v. Finland,* ECtHR Judgment, of 27 September 2001, par. 30).

57. The Court considers that the Applicants' allegation of unequal treatment before the courts, which was raised before the regular courts, was substantial and supported by material evidence which raised issues under Article 24 of the Constitution, namely the question of inequality of the parties before the law. The proper addressing of the allegation in question by the regular courts would strengthen the Applicants' conviction that they were properly heard, in accordance with the requirements of Article 31 of the Constitution and Article 6.1 of the Convention.

58. Had the Court of Appeals addressed the Applicant's substantive allegation of unequal treatment by the first instance court - irrespective of the response to that allegation (that is, whether this allegation would have been admissible or would be rejected as unfounded), then the condition of "the heard party" and proper administration of justice would be met.

59. The Court notes that it is not the task of the Constitutional Court to examine to what extent the Applicants' allegations in the proceedings before the regular courts are reasonable. However, the procedural fairness requires that the fundamental allegations raised by the parties before the regular courts should be properly answered - especially if they relate to important issues such as equality before the law. This especially applies for the reasoning of decisions where courts decide to change their legal position, for cases with the same factual and legal circumstances, namely, where they deviate from the previous case law.

60. After having assessed the proceedings in entirety, and in particular the reading of the Judgment of the Court of Appeals, the Court finds that the failure to address the Applicants' allegation constitutes an insuperable flaw of the Judgment and is therefore inconsistent with Article 31 of the Constitution and Article 6 of the Constitution.

61. The Court has just found that the Judgment of the Court of Appeals of 18 June 2018 is in contradiction with Article 31 of the Constitution and Article 6 of the Convention. Therefore, the Court considers it unnecessary at this stage to address the Applicants' allegations of violation of the rights guaranteed by Articles 3 and 24 of the Constitution and Article 14 of the Convention.

62. In conclusion, the Court finds that Judgment Ac. No. 530/2016 of the Court of Appeals of 18 June 2018, which rejected the Applicants' appeal, did not respect the constitutional standard of reasoning of the court decision. Accordingly, the Court finds that there has been a violation of Article 31 of the Constitution [Right to Fair and Impartial Trial] and Article 6.1 of the Convention [Right to a fair trial].

FOR THESE REASONS

The Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, Rule 59 (1) of the Rules of Procedure, in its session held on 19 July 2018, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of Article 31.1 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR;

III. TO DECLARE Judgment Ac. No. 530/2016 of the Court of Appeals, of 18 June 2018, invalid and REMAND it for retrial, in accordance with the Judgment of the Court;

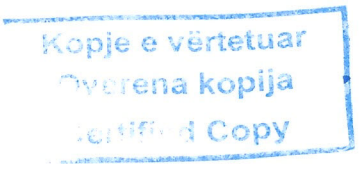
IV. TO REMAIN seized of the matter, pending compliance with that order;

V. TO ORDER that its Judgment KI145/18 be notified to the Parties and, in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VI. This Judgment is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Bekim Sejdiu | Arta Rama-Hajrizi



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