



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

Prishtina, on 30 December 2019
Ref. No.:RK 1493/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI112/18

Applicant

Mehrije Rexha

**Constitutional Review of the Judgment of the Supreme Court of
Kosovo ARJ-UZVP.nr.43/2018 of 26 June 2018**

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 Mehrije Rexha with residence in Prishtina (hereinafter: the Applicant), represented by Hasan Rexha, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court of Kosovo ARJ-UZVP.nr.43/2018 of 26 June 2018.

Subject Matter

3. The subject matter is the constitutional review of the challenged Decision, which has allegedly violated Applicant's rights guaranteed by Article 21 [General Principles], paragraph 5 of Article 31 [Right to Fair and Impartial Trial], and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 1 of Protocol no. 1 of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 6 August 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 August 2018, the President of the Court appointed Judge Radomir Laban, Judge Rapporteur and the Review Panel, composed of Judges Bekim Sejdiu (Presiding), Radomir Laban and Nexhmi Rexhepi.
7. On 3 September 2018, the Court notified the Applicant and the Supreme Court about the registration of the Referral.
8. On 11 December 2019, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of Facts

9. Regarding the case before us, three sets of procedures have been conducted.

Decisions in contested procedure

10. On an unspecified date, the Applicant filed a lawsuit claiming ownership of the business premises located at "Mother Theresa" Street no. 49/10 in Prishtina, with an area of 135.45 m² (hereinafter: the business premises), based on a contract of sale of 12 March 1999. The Respondent to this claim was the Public Housing Enterprise (hereinafter: PHE).

11. On 22 March 2006, the Municipal Court in Prishtina with Judgment C.nr.602/04 approved the claim of the Applicant and established that the Applicant is the owner of the business premises. The ownership was confirmed based on immovable property contract of sale of 12 March 1999 which the Applicant had provided as evidence before the Municipal Court. Consequently, the Municipal Court obliged the PHE to recognize the property right of the Applicant and to make possible to her for the business premises to be registered in the cadastral books.

Decisions regarding criminal proceedings

12. On 7 February 2007, the Municipal Public Prosecutor's Office in Prishtina, by indictment PP.nr.4064-4/2006 as well as the proposal indictment 796-11/2007 of 16 February 2007, charged the Applicant with the criminal offense "*legalization of false content*".
13. On 19 February 2007, the Municipal Court in Prishtina, by Judgment P.nr.219/07 found the Applicant guilty of committing the criminal offense "*legalization of false content*" for which the Applicant was sentenced to imprisonment of three (3) months, which was substituted by a fine of 1,350 Euros.
14. The Municipal Court in Prishtina reasoned that: "*[The Applicant] has mislead with the content of the untrue documents the Municipal Court in Prishtina which according to those documents as the competent body issued Judgment C.nr.602/04 [...]*" From the evidence it was established that the Applicant had presented "*[...] documents with untrue content*" and that the contract for the sale of the business premises of 12 March 1999 "*[...] had irregularities such as the form of the contract and the price calculation do not match, the signature on the contract is suspicious, there are improvements in the protocol book and in the accounting of the PHE there is no payment made by [the Applicant] based on this contract.*"
15. The Municipal Court in Prishtina also based on Article 114 of the Provisional Criminal Procedure Code of the Republic of Kosovo (hereinafter: PCPCRK), quashed the Judgment of the Municipal Court in Prishtina C.nr.602/04 of 22 March 2006 and cancelled the contract of sale of the business premises of 12 March 1999. The injured parties PHE and S.R. (who in this proceeding had allegedly been the injured party who claimed to be the owner of the business premises) were instructed to pursue their property claims in regular civil litigation.
16. On an unspecified date, the Applicant filed a complaint with the District Court of Prishtina alleging substantial violations of criminal procedure provisions, erroneous and incomplete determination of the factual situation and violations of criminal law.
17. On 24 February 2010, the District Court of Prishtina through Judgment AP.nr.468/2007 found that the Applicant's appeal is ungrounded. The District Court, referring in detail to the factual situation, reasoned as follows: "*[The court of first instance] correctly applied also the criminal law when it found that in*

[the Applicant's] actions all elements of the offense of legalization of untrue content of Article 334, paragraph 1 CCK were invented, and therefore in this aspect the complaints [...] are ungrounded".

18. On an unspecified date, the Applicant filed a request for the protection of legality with the Supreme Court of Kosovo against two lower instance court judgments.
19. On 23 August 2010, the Supreme Court of Kosovo by Judgment Pkl.nr.42/2010 accepted the request for protection of legality as grounded and changed the legal qualification of the criminal offense from legalization of false content to the criminal offense of falsifying the documents provided for in Article 332 paragraph 1 of the CCK. Supreme Court *"rejected the allegation against the Applicant on the ground of absolute statutory limitation since at the time when the second instance court had ruled on the appeals for this criminal offense (falsification of the document) the time limit for absolute statutory limitation had expired"*.
20. Specifically, the Supreme Court reasoned that the Applicant's actions *"the presentation of the contract for the sale of the apartment with forged signatures in the litigation procedure, as evidence is unequivocally illegal and incriminating action since this contract served her in the litigation procedure as proof of ownership"*. Consequently, the Supreme Court reasoned that the Applicant's actions cannot be qualified as *"legalization of false content"* but as *"falsifying the document"*. The Supreme Court stated that for the criminal offense *"falsification of document"* we deal with a criminal offense punishable by a fine or imprisonment of up to one year, and for which the relative statutory limitation is two years while the absolute one is four years, therefore it ascertained that in the Applicant's case, the criminal prosecution statutory limitation had expired.

Decisions in administrative conflict proceedings

21. According to the case file, on an unspecified date, S.R. had filed a complaint with the Kosovo Cadastral Agency, requesting that the registration of the business premises be cancelled and the business premises be registered on her name.
22. On 14 May 2012, the Kosovo Cadastral Agency (hereinafter: KCA) through Resolution 04/252/12 approved the appeal of S.R. and annulled the registration of this part of the building in the Immovable Property Rights Register on behalf of the Applicant. According to the KCA, neither the Applicant nor the other party S.R. possess the relevant documentation to register the property and also reasoned that under Article 3.4 paragraph (iii) of Law 2002/5 on the Establishment of the Immovable Property Rights Register (hereinafter: LEIPRR) it is provided that the application for registration is rejected where the validity of the request or any of the supporting documents is in question. In this regard, the KCA stated that the validity of the contract for the sale of the business premises had been questioned by judicial decisions in criminal proceedings.
23. On an unspecified date, the Applicant filed a claim for annulment of the aforementioned KCA Resolution with the Basic Court in Prishtina/Department

of Administrative Matters alleging that she had been unlawfully deprived of the right of property.

24. On 7 March 2017, the Basic Court in Prishtina/Department for Administrative Matters through Judgment A.nr.813/2012 rejected the claim of the Applicant and upheld the decision of the Respondent-Kosovo Cadastral Agency. The Basic Court in Prishtina/Department of Administrative Matters rejected the Applicant's claim based on Articles 2, 3.2, 3.4 and 3.7 of the LEIPRR and Article 5 of Administrative Instruction No.2004/3. The Basic Court in Prishtina also reasoned that the Judgment of the Municipal Court C.nr.602/04 of 22 March 2006, pursuant to which the immovable property (business premises) was registered, was quashed by the Criminal Judgment of the Municipal Court in Prishtina P.N219/07 of 19 June 2007, citing paragraph II of the Supreme Court Judgment P.nr.42/2010 of 23 August 2010 which: *"approves the objection of the party (the Applicant) only with regard to the prosecution on the ground of absolute statutory limitation, whereas in paragraph II of this judgment it considers that the actions such as the presentation of the contract for the sale of the apartment by Mihrije Rexha constitute elements of the criminal offense of falsifying the document under Article 332 paragraph 1 of the CCK. Therefore, based on this, the claimant has been denied the right to register the aforementioned property in the register of immovable property rights under Article 3.4 paragraph (iii) of Law No. 202/5"*.
25. On an unspecified date, the Applicant filed an appeal with the Court of Appeal against Judgment A.nr.813/2012 of the Basic Court in Prishtina.
26. On 12 August 2017, the Court of Appeal of Kosovo through Judgment AA.nr. 189/2017 rejected the Applicant's appeal as ungrounded, fully approving the position of the first instance court. The Court of Appeals *among others* reasoned that *"the evidence on which she bases her [Applicant's] right, as to the contract of sale of [business premises], is not valid, this fact is established by the Judgment of the Municipal Court in Prishtina P.N.nr.219/07, which annulled the Judgment of the same court [...]"*.
27. On an unspecified date, the Applicant had filed a request for extraordinary review against Judgment AA.nr.189/2017 of the Court of Appeal.
28. On 26 June 2018, the Supreme Court of Kosovo through Judgment ARJ-UZVP.nr.43/2018, rejected as ungrounded the request for extraordinary review of the Applicant on the ground that Article 3.2 of the LEIPRR requires the Applicant to attach relevant documentation to substantiate the right to property. The Supreme Court also referred to Article 5 of Administrative Instruction No. 2004/3 which establishes the legal basis for registration and which is based on a valid document by a competent body and a legal transaction that complies with the provisions of applicable law.
29. Finally, the Supreme Court reasoned that the Applicant was rightly rejected the request for annulment of the KCA decision by the lower instance courts because the Applicant *"did not present valid evidence"* and regarding the sales contract *"found it to contain elements of the criminal offense of falsification"* according to the Judgments of the regular courts in criminal proceedings.

Applicant's allegations

30. The Applicant alleges that the challenged decision violated her right guaranteed by Article 21 [General Principles], paragraph 5 of Article 31 [Right to Fair and Impartial Trial], as well as paragraphs 1-4 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.
31. Further, the Applicant alleges also the violation of Articles "1, 2, 4, 8, 10, 20 and 37 of the Basic Law on Property and Legal Relations; the provisions of Articles 38, 39 and 97 of the Law on Property and Other Property Rights; Article 3.2 of Law No. 2012/5 on the Establishment of the Immovable Property Rights Register; Article 4 of the Law Amending and Supplementing the Law No. 2012/05, on the Establishment of the Immovable Property Rights Register".
32. The Applicant initially alleges that the Kosovo Cadastral Agency, by Resolution 04/252/12, out of any proceeding and arbitrarily had deprived her of the title to the property.
33. The Applicant relates the aforementioned claim to the fact that according to her, the Supreme Court with Judgment UZVP.nr.43/2018 of 26 August 2018, violated her right to a fair and impartial trial for not taking into account the fact that the indictment against her was rejected. Further, the Applicant alleges that according to principle "*in dubio pro reo*", any person suspected of a criminal offense shall be presumed innocent until proven guilty by a final judgment and according to her "*[...] the judgments cited by the Supreme Court have been amended and as such do not present any evidence of criminal liability*".
34. The Applicant states that she has in fact not been tried and found guilty, therefore she alleges that there is a constitutional violation due to the fact that she was rejected an indictment while the Supreme Court during reasoning "*has stated that [the Applicant] has been found guilty in criminal proceedings and should therefore be deprived of her title*".
35. The Applicant further contends that the same judicial instance in criminal proceedings cannot annul the final judgment of the same instance and that only the higher court can do so.
36. The Applicant alleges that "*[...] there can be no elements of the criminal offense or adjudication of the case in the case of rejection of the indictment [...]*".
37. Finally, the Applicant requests the Court to annul the Judgment ARJ-UZVP.nr.43/2018 and remand the same to the Supreme Court for reconsideration.

Relevant legal provisions

LAW NO. 2002/5 ON THE ESTABLISHMENT OF THE IMMOVABLE PROPERTY RIGHTS REGISTER AMENDED AND SUPPLEMENTED BY LAW NO. 04/L-009 ON AMENDING AND SUPPLEMENTING THE LAW

NO. 2002/5 ON THE ESTABLISHMENT OF THE IMMOVABLE PROPERTY RIGHTS REGISTER

Section 2 [Immovable Property Rights]

2.1 Immovable property rights, as regulated by the Applicable Law, pertaining to land, buildings and apartments (hereinafter the “immovable property”) shall be recorded in the Register.

2.2 Immovable property rights include:

- a. Ownership;*
- b. Mortgages;*
- c. Servitudes; [...]*

Section 3 [Registration of Immovable Property Rights]

3.1 Requests for the registration of immovable property rights shall be made in writing to the MCO where the concerned immovable property is located. The MCO shall confirm the time and date of receipt of the request for registration.

3.2 The Applicant requesting the registration of an immovable property right shall attach to the request the documentation to support the immovable property right as required by the Applicable Law and subject to section 3.7 of the present law.

[...]

3.4 The MCO shall reject registration if the documentation submitted is not sufficient to prove that the Applicant is holder of the:

- (i) Claimed immovable property right;*
- (ii) The request and supporting documents contain apparent irregularities;*
- (iii) The validity of the request or any of the supporting documents is in question*
- (iv) If documentation is so incomplete that it cannot form a basis for registration.*

[...]

3.7 Rights on immovable property as provided under Article 2 of the Law shall be registered based on:

- a). final court decision;*
- b). the decision of state administrative body;*
- c). contract for transfer of immovable property rights certified by the competent body;*
- d). decision or contract for the privatization issued by the Kosovo Privatization Agency;*
- e). the Commission’s decision for the Reconstruction of Cadastre;*
- f). the Commission’s decision for the regulation of lands; and*
- g). other document that by special Laws there is foreseen the property rights registration.*

ADMINISTRATIVE INSTRUCTION MPS No. 2004/03 – ON THE IMPLEMENTATION OF THE LAW ON THE ESTABLISHMENT OF AN IMMOVABLE PROPERTY RIGHTS REGISTER

Article 5 *[Legal Basis for the Registration]*

5.1 *The registration of an immovable property right may be based on:*
i) *a valid document of a competent authority (judicial or administrative)*
ii) *a final decision of a competent court;*
iii) *a legal transaction, evidenced by any document that complies with applicable law.*

PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO

Article 114

If a property claim pertains to the annulment of a specific legal transaction and the court finds that the petition is well founded, it shall order in the judgment the complete or partial annulment of that legal transaction with the consequences that derive from it, without prejudice to the rights of third parties.

Admissibility of the Referral

38. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

39. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provide:

“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.”

40. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as set out in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

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... .”

41. As to the fulfilment of these criteria, the Court concludes that the Applicant is an authorized party, challenging an act of a public authority, after having exhausted all legal remedies. The Applicant has also clarified the rights and freedoms she claims she has been violated by the challenged decision in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.

42. However, the Court needs to further assess whether the criteria set out in Rule 39 of the Rules of Procedure have been met, including the requirement that the Referral is not manifestly ill founded. Rule 39 [Admissibility Criteria], paragraph (2) of the Rules of Procedure, provides:

“(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.”

43. The Court recalls that the Applicant essentially alleges that her constitutional rights have been violated for two reasons: (i) she alleges a violation of her right to presumption of innocence, as guaranteed by paragraph 5 of Article 31 of the Constitution because according to her the regular courts did not take into account the fact that the indictment against her was rejected and she was not tried and convicted of a criminal offense and (ii) arbitrary and out of any procedure deprivation of her property ownership title on the business premises, as a consequence of the violation of her right to the presumption of innocence. The Applicant also claims that the same court instance in criminal proceedings cannot annul the final judgment, namely Judgment P.nr.219/07 of the Municipal Court in Prishtina.

44. The Court initially states that in addressing the Applicant's allegations, it will apply the European Court of Human Rights' case law standards (hereinafter:

ECtHR), in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution is bound to interpret the fundamental rights and freedoms guaranteed by the Constitution.

(i) *As to the allegation of the right to presumption of innocence as provided for in paragraph 5 of Article 31 of the Constitution*

45. The Court, taking into account that the essence of the Applicant's allegations relates to the issue of presumption of innocence in connection with administrative conflict proceedings, first recalls paragraph 5 of Article 31 of the Constitution which provides: "*Everyone charged with a criminal offense is presumed innocent until proven guilty according to law*". This Article also relates to Article 6 paragraph 2 of the ECHR which provides "*Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*".
46. Based on the Applicant's allegations, the Court notes that the latter complains about the set of decisions taken in the administrative dispute procedure, namely the appeals against the decision of the KCA annulling the registration of the business premises in its Register of immovable property rights on behalf of the Applicant, however, the Applicant relates this claim to the set of proceedings that have taken place in criminal proceedings where a refusal Judgment has been rendered because of the statute of limitations. The Court will therefore deal with the first and second allegation of the Applicant together.
47. The Court recalls the practice of the ECtHR, which stipulates that Article 6 paragraph 2 of the ECHR encompasses (i) the substantive aspect of the guarantee and (ii) the practical and effective aspect, which implies the aim of protecting individuals who are released from a criminal charge or for which criminal proceedings have been terminated by the treatment of public officials or authorities as if they were guilty of the charge charged (see, *mutatis mutandis*, the case of the ECHR *Allen v. The United Kingdom*, no. 25424/09, Judgment of 12 July 2013, paragraphs 93-94). The latter relates to cases even after the criminal proceedings have been completed, with the so-called "subsequent court proceedings" (see *Allen v. The United Kingdom*, cited above, paragraphs 96-97).
48. The Court notes that in the case of *Vassilios Stavropoulos v. Greece*, the ECtHR found a violation of Article 6 paragraph 2 because the Administrative Courts had interpreted for the benefit of the doubt, the judgment of the criminal courts with which *Mr. Stavropoulos* was acquitted and had disregarded the principle *in dubio pro reo*. The Administrative Courts had expressed such terms that went beyond the administrative context of the dispute and left no doubt as to the purported purpose of the dispute of *Mr. Stavropoulos* not to be included in his statement all the properties in his possession. Therefore, the ECtHR found that their reasoning was incompatible with the principle of the presumption of innocence (see ECtHR case, *Vassilios Stavropoulos v. Greece* no. 35522/04, Judgment of 27 September 2007).
49. ECtHR in the case of *Çelik (Bozkurt) v. Turkey* reiterated that the scope of Article 6 paragraph 2 of the ECHR is not confined to pending criminal proceedings, but may extend to judicial decisions taken after termination or

release, insofar as the issues raised in these cases are consequent and are associated with the criminal proceedings in question, in which the Applicant was the "accused". ECtHR in the case of *Çelik (Bozkurt) v. Turkey* considered that the language used by the Administrative Court in dismissing the Applicant's case created a "link" between the criminal case and the administrative proceedings, which justify extending the scope of Article 6 paragraph 2 to cover the latter (see ECtHR case, *Çelik (Bozkurt) v. Turkey*, no. 34388/05, Judgment of 12 April 2011, paragraph 34).

50. The Court, taking into account the practice of the ECtHR and taking into account the circumstances of the concrete case, will not relate to the set of criminal proceedings because the Applicant does not dispute them with us, but will deal with the set of administrative conflict proceedings resulting from the deprivation of title to the business premises and for which the Applicant alleges that they have violated her right to the presumption of innocence.
51. The Court recalls that the Applicant with the Judgment of the Municipal Court in Prishtina C.nr.602/04 of 22 March 2006 in contested procedure had acquired title to the business premises due to a sale contract which she had presented in this proceeding but for which it was ascertained *"that it contains elements of the criminal offense of falsification"* in subsequent criminal proceedings. Consequently, the Judgment of the Municipal Court in Prishtina C.nr.602/04 of 22 March 2006 and the sale contract were annulled.
52. In the light of the foregoing, the Court considers that the regular courts in the administrative dispute procedure had given the relevant reasons for their decisions, noting that the LEIPRR sets out specific grounds for the registration of immovable property, and in referring to the Applicant's case, the document (contract of sale) that she had submitted to the Municipal Court in Prishtina [Judgment C.nr.602/04] does not consist with her property right.
53. Furthermore, as to the Applicant's allegation that the regular courts did not take into account the fact that she was denied the indictment and that the Supreme Court in deciding *"has stated that [the Applicant] has been found guilty in criminal proceedings and should therefore be deprived of her title"*, the Court recalls Judgment ARJ-UZVP.nr.43/2018 of 26 June 2018 which had reasoned as follows:

"Based on such condition of the matters of the case, and based on the provisions of the law, the lower instance courts have rightly established that the claimant [the Applicant] did not present any valid evidence in support of her claims during the proceedings. Thus, this Court finds that the lower instance courts have correctly applied the provisions of the administrative procedure and the substantive law, when they have rejected the claimant's request for annulment of the decision of the respondent KCA no.04/252/12 dt.14.05.2012, because the claimant's allegations are contrary to the factual situation established by the respondent body and contrary to the provisions of the Law (LEIPRR) no.2002/5 and AI no.2004/3. This Court considered as regular the position of the lower instance courts regarding the claim of [the Applicant] and the presentation of the contract for the sale of business premises no. 03-750/1 dt.12.03.1999, according to which during the

criminal proceedings before the District Court in Prishtina and the Supreme Court of Kosovo it was established that it contains elements of the criminal offense of falsification of the document. This fact has been established by the judgment of the Municipal Court in Prishtina PN.(K)nr.219/07 which had annulled the judgment of the same Court C(P) nr.602/04 dt.22.03.2006”.

54. Based on the above reasoning of the Supreme Court and the decisions of the first and second instance courts, the Court notes that the regular courts refer only to the sales contract and the fact that this contract contains elements of the criminal offense of falsifying the document. However, in none of the decisions of the regular courts, in the administrative dispute proceedings has the issue of the Applicant's guilt or innocence been affected. The Supreme Court had only clarified to the Applicant that she *"did not present valid evidence"* and the contract of sale *"was found to contain elements of the criminal offense of falsification"*.
- (ii) *As to the allegation of arbitrary and out of any procedure deprivation of her property ownership title on the business premises, as a consequence of the violation of her right to the presumption of innocence*
55. The Court initially recalls that the Applicant's second allegation concerning *"arbitrary deprivation of ownership title"*, relates to her claim to be presumed innocent because of the Judgment of the Supreme Court [Pkl.nr.42/2010] of 23 August 2010, she has not been found guilty of the offense. In this regard, the Applicant also states that *"[...] there can be no elements of the criminal offense or adjudication of the case in the case of rejection of the indictment [...]"*.
56. The Court recalls that the administrative dispute procedure occurred as a result of the complaint of the S.R. person to the KCA, who had requested that the registration of the business premises on behalf of the Applicant be cancelled and that the premises be registered on her name. As a consequence of the complaint, the KCA had cancelled the registration of this part of the building in the Immovable Property Rights Register on behalf of the Applicant, due to the lack of relevant documentation. The court recalls that the S.R. person was present in the capacity of the injured party in the set of criminal proceedings.
57. The Court, regarding this allegation, first notes that the Supreme Court in its Judgment [Pkl.nr.42/2010], rejected the allegation against the Applicant based on Article 389 paragraph 4 of the PCPCRK, which states as follows:
- Article 389*
The court shall render a judgment rejecting the charge, if:
- 4) The period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution.*
58. Consequently, the Supreme Court in its Judgment [Pkl.nr.42/2010] upheld the Applicant's request for protection of legality and, on the abovementioned legal basis, amended the Judgments of the lower courts, namely the Final Judgment of the Municipal Court in Prishtina [P.nr.219/2007] of 19 June 2007 and the Judgment of the District Court of Prishtina [Ap.nr.468/2007] of 24 February

2010, thus the Applicant was rejected charges (pursuant to Article 389 paragraph 4 of the PCPCRK).

59. The Court observes that in the cases of the Judgment rejecting the charge, the regular courts rule on the relevant proceedings, confining themselves to the reasons for the rejection and not the merits of the case. The Supreme Court in its Judgment [Pkl.nr.42/2010], referred only to the statute of limitations of criminal prosecution, while regarding the Applicant's actions such as the presentation of a private contract for the sale of the apartment, with falsified signatures in contested procedure, as evidence, are unlawful actions, and by this the criminal offense of falsifying the document has been perpetrated.
60. In the present case, the Court notes that the Supreme Court in its Judgment [Pkl.nr.42/2010], states:

“The actions of [the Applicant] - the presentation of a private contract for the sale of the apartment, with forged signatures in the contested procedure, as evidence, are unequivocally illegal and incriminating, as this contract served her in the proceedings litigation, as proof of ownership.

However, the actions of the convicted person cannot be brought under the legal norm of legalization of false content, as provided by Article 334 paragraph 1 of the CCK, for the fact that as stated above, in such circumstances none of the elements of this criminal offense have been perpetrated, but with her offenses, without any doubt, she perpetrated all elements of the criminal offense of falsification of the document provided for in Article 332 par 1 of the CCK.”

61. Further, the Court observes that in its Judgment, the Supreme Court refers to Article 457 paragraph 1 item 1 in conjunction with Article 389 item 4 of PCPCRK. Article 457 of the PCPCRK provides:

Article 457 of PCPCRK

(1) If the Supreme Court of Kosovo determines that a request for protection of legality is well founded it shall render a judgment by which, depending on the nature of the violation, it shall:

1) modify the final decision;

62. In the present case, the Court notes that the Supreme Court in its Judgment [Pkl.nr.42/2010], has changed the judgments of the lower courts respectively the Municipal and District Courts rendered in criminal proceedings. This implies that these Judgments, as far as the Applicant is concerned, have been amended only with regard to the charge, namely the statute of limitations for prosecution.

63. The Court observes that, in other cases, pursuant to Article 457 paragraph (1) item 2), the Supreme Court, in establishing as grounded the claim for protection of legality, renders a judgment by which, having regard to the type of violation, it:

2) annuls in whole or in part the decision of both the Basic Court and the higher court or the decision of the higher court only, and returns the case for a new decision or retrial to the Basic Court or the higher court.

64. From this, it results that the Judgment of the Supreme Court [Pkl.nr.42/2010] as to the annulment of the Judgment of the Municipal Court in Prishtina C.nr.602/04 of 22 March 2006 as well as the contract of 12 March 1999 for the sale of the business premises was not amended by the Supreme Court in its Judgment [Pkl.nr.42/2010]. This point was also raised in the Applicant's arguments, who states that the same judicial instance in criminal proceedings cannot annul the final judgment of the same instance.

65. The Court in this case also recalls the Judgment of the Municipal Court in Prishtina P.nr.219/07 of 19 February 2007, where the Municipal Court had reasoned on the matter and quashed the Judgment of the Municipal Court in Prishtina C.nr.602/04 of 22 March 2006 and the contract of 12 March 1999, for the sale of the business premises.

66. In the light of the above, the Court notes that the Applicant has failed to prove and substantiate her claim that the regular courts in the set of administrative conflict proceedings violated paragraph 5 of Article 31 of the Constitution. The findings of the Basic Court, the Court of Appeal and the Supreme Court in the set of administrative conflict proceedings support their reasoning in the relevant legislation on the issue of documentation to prove the right to property, thus referring to the relevant provisions of the Law no. 2002/5 on the Establishment of the Register of Immovable Property Rights and Administrative Instruction MPS no. 2004/03 – on the Implementation of the Law on the Establishment of an Immovable Property Rights Register, the legal requirements of which the Applicant did not meet.

67. The Court, referring also to the Applicant's allegations alleging violation of certain legal provisions, states that it is not the task of the Constitutional Court

to deal with errors of fact or law alleged to have been committed by the regular courts in assessing the merits. evidence or application of law (lawfulness), unless and to the extent that they may have violated the rights and freedoms protected by the Constitution (constitutionality). Indeed, it is the duty of the regular courts to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis*, the case of the ECtHR, *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 21 January 1999, paragraph 28).

68. In the present case, the Court considers that the Applicant has failed to substantiate how the application of the legal provisions in her case by the regular courts has resulted in a violation of her constitutional rights.
69. The Court also considers that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot by itself constitute a substantive allegation of a violation of the right to a fair and impartial trial (see, *mutatis mutandis*, the case of the ECtHR, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005 paragraph 21).
70. The Court considers that the Applicant did not substantiate the allegations that the proceedings in question were in any way unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR (see, *mutatis mutandis*, the case of the ECtHR, *Shub v Lithuania*, no. 17064/06, Decision of 30 June 2009).
71. Furthermore, as to the Applicant's allegation concerning her right to protection of property guaranteed by Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, the Court notes that Article 1 of Protocol no. 1 of the ECHR does not guarantee the right to property (see, *mutatis mutandis*, the case of the ECHR, *Van der Mussele v. Belgium*, Judgment of 23 November 1983, paragraph 48 and the case of the ECtHR, *Slivenko and others v. Latvia*, Judgment of 9 October 2003, paragraph 121).
72. The Applicant may allege a violation of Article 1 of Protocol no. 1 of the ECHR only insofar as the contested decisions relate to her "property". Within the meaning of this provision, "property" can be considered "existing ownership", including claims based on which the Applicant may have "legitimate expectations" to acquire any property rights. But the hope of recognizing property rights cannot automatically be regarded as "property" within the meaning of Article 1 of Protocol no. 1 of the ECHR. Similarly a claim which ceases to be valid as a result of non-compliance with the legal criteria (see ECtHR case, *Liechtenstein's Prince Hans-Adam II v. Germany*, Judgment of 12 July 2001, paragraphs 82 - 83, and the case of the ECtHR *Gratzinger and Gratzingerova v. Czech Republic*, Decision on Admissibility of 10 July 2002, paragraph 69 as well as see *mutatis mutandis* cases of the Constitutional Court, KI44/16, *Biljana Topko*, Resolution on Inadmissibility of 31 March 2017, paragraph 41 and KI26/18, Applicant "*Jugokoka*", Resolution on Inadmissibility of 26 September 2018, paragraph 49).
73. To sum up, the Court considers that the Applicant has not presented evidence, facts and arguments showing that the proceedings before the regular courts have

in any way constituted a constitutional violation of her rights guaranteed by the Constitution, namely her right on presumption of innocence guaranteed by paragraph 5 of Article 31 and the right to the protection of property guaranteed by Article 46 of the Constitution.

74. Accordingly, the Court concludes that the Referral is manifestly ill-founded on constitutional grounds and is declared inadmissible, pursuant to Article 113.7 of the Constitution and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, and Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 11 December 2019, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Remzije Istrefi-Peci

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.