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

Prishtina, on 7 February 2020
Ref. no.:RK 1512/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI41/19

Applicant

Ramadan Koçinaj

Constitutional review of Judgment AA.no.395/2018 of the Court of Appeals, of 13 September 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 Ramadan Koçinaj, residing in Pristina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment AA.no. 395/2018 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), of 13 September 2018, in conjunction with the Judgment) A.no. 187/2015 of the Basic Court in Prishtina (hereinafter: the Basic Court, of 19 April 2018.

3. The Applicant has received the challenged Judgment on 13 November 2018.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which as alleged by the Applicant has violated his fundamental rights and freedoms guaranteed by Article 22[Direct Applicability of International Agreements and Instruments] and Article 46[Protection of Property], in conjunction with Article 1 of Protocol 1 (Protection of Property), of the European Convention on Human Rights (hereinafter: ECHR).

5. Parashtruesi i kërkesës, gjithashtu, kërkon që identiteti i tij të mos zbulohet.

Legal basis

6. The Referral is based on paragraphs 1 and 7 of Article 113[Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], and 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 12 March 2019, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 18 March 2019, 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 Nexhmi Rexhepi(members).

9. On 24 April 2019, the Court notified the Applicant about the registration of the Referral and requested to clarify whether he was the Applicant or the authorized representative of N.N. person.

10. On 30 April 2019, the Applicant submitted to the Court the additional documents, by clarifying at the same time that he is the representative of the Referral (and not an authorized representative of N.N.), as the issue raised in the Referral relates entirely to him.

11. On 6 May 2019, the Applicant submitted to the Court a "Submission" as an additional document to his Referral. In this submission, the Applicant raises allegations of violations of also some other articles of the Constitution.

12. On 18 September 2019, the Applicant submitted to the Court a "Request for urgent review" of his Referral. In this request, the Applicant also refers to several other cases in which he is involved, and which are not related to the present Referral.

13. On 25 September 2019, the Court sent a copy of the Referral to the Basic Court, requesting from it to provide the acknowledgment of receipt as evidence that the challenged judgment had been served on the Applicant.

14. On 27 September 2019, the Basic Court submitted the acknowledgment of receipt as evidence indicating the time when the Applicant had received the challenged Judgment.

15. On 10 January 2020, the Applicant submitted to the Court an additional document (with some evidence in the form of photographs).

16. On 15 January, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

17. The Applicant is submitting a Referral to the Court for the second time, but in a different case.

18. On the basis of the documents contained in the Referral it results that this case relates to the proceedings before the administrative and judicial authorities concerning a land parcel in Prishtina, with no. 67555-0. On an unspecified date, the Applicant had purchased from N.N. person a portion of parcel 67555-0 (namely ½ of the parcel). The entire parcel in question is registered as the property of person N.N.

19. In relation to this case, there have been conducted two sets of proceedings within the administrative bodies (namely at the Municipality of Prishtina and the Ministry of Environment and Spatial Planning), as well as a set of court proceedings. These procedures have been conducted in relation to the request for parcellation of the land parcel no. 6755-0 and granting permission to renovate/reconstruct a building on that parcel.

A. Administrative proceedings

Procedures regarding the request for parcellation of land parcel 6755-0

20. On the basis of the case file, it is noted that on 11 July 2014, the Applicant had filed a claim with the Municipality of Prishtina, on behalf of N.N., in accordance with his authorization, requesting permission for parcellation of the land parcel 6755-0.

21. On 20 August 2014, the Municipality of Prishtina issued an "Information" whereby it informed the Applicant that: *"the parcelization of land parcel 6755-0, owned by NN, could not be made, since in this part of the parcel, according to Urban Development Plan (UDP), it is foreseen to be constructed a planned road and in the future it could not be used for construction, hence such parcellation is not allowed."*

22. The Applicant filed a complaint with the Ministry of Environment and Spatial Planning (hereinafter: MESP) against this "information". In the complaint, the Applicant argued that: *"The Municipality of Prishtina has responded to the pary by an information, only, without issuing an administrative act [...] road construction does not justify the rejection of the request for parcellation, as neither the parcellation nor renovation or eventual construction can stop the implementation of the UDP, which the Municipality of Prishtina carries out through expropriation, if interested."*

23. On 17 November 2014, MESP sent a "Response to Complaint", stating that pursuant to the Law on the Administrative Procedure (LAP) an appeal could be filed against an administrative act, but the "Information" sent by the Municipality of Prishtina did not contain the elements of an administrative act. Further, the MESP requested from the Directorate of Urbanism of the Municipality of Prishtina to "act in accordance with the relevant provisions of the LAP".

24. On 9 December 2014, acting pursuant to the "Response to Complaint" of MESP, the Directorate of Urbanism of the Municipality of Prishtina issued Decision no. 05-035-166404, whereby it rejected as unfounded the request of N.N., for allowing parcellation of land parcel no. 6755-0. In this decision, the Directorate of Urbanism reiterated the argument that, according to the UDP approved by the Municipal Assembly of Prishtina in 2013 *"according to the proposed parcellation scheme, the part of the parcel consisting of 167m2 is located in the planned road and cannot be used in future for construction and as such the parcellation is not permitted."*

25. The Applicant, acting upon the authorization of the N.N. person, filed a complaint with MESP against the Decision no.05-035-166404 of the Directorate of Urbanism of the Municipality of Prishtina.

26. On 26 February 2015, MESP issued the Decision no. A-07/15 rejecting the Applicant's complaint. In this decision, among other things, MESP reasoned as follows:

> *"[...] according to the Urban Development Plan for the cadastral parcel recorded in the possession list no. 011-953-143000 / 2014, KZ Prishtina, the parcel no. 6755, in surface of 167 m2, is included in the planned road, and cannot be used for construction, therefore no parcellation on the land parcel no. 6755-0 is allowed, as the request must be in compliance with the spatial planning documents."*

Administrative procedures in relation to the request seeking the permit to renovate the building on the parcel 6755-0

27. On 25 August 2014, the Applicant, acting upon the authorization of the N.N. person, filed a request with the Directorate of Urbanism of the Municipality of Prishtina for the issuance of a permit to renovate the building on parcel 67555-0.

28. On 18 September 2014, the Directorate of Urbanism of the Municipality of Prishtina, by Decision 05-350-210447, rejected the application seeking a permit for renovation. The decision reasoned that *"the existing state presented in the geodetic survey does not match with the state in the copy of the plan and that the renovation was requested for a building that no longer exists. Moreover, according to the Directorate of Urbanism of the Municipality of Prishtina, there was a new building on parcel no.6755-0, for which the Applicant had stated that it was not his property and that he had property issues related to it."*

29. On 26 September 2014, the Applicant filed a complaint with the MESP, on behalf of N.N., against the aforementioned decision, alleging that the factual situation had been erroneously determined.

30. On 3 November 2014, MESP, by Decision A-242/14, invalidated the decision of the Directorate of Urbanism of the Municipality of Prishtina, 05-350-210447, and remanded the case for reconsideration, by reasoning that the decision was unclear, it failed to specify what was the subject of the request (reconstruction or renovation of the facility), the factual situation was not clearly determined and no minutes were drafted to determine the factual situation.

31. On 29 December 2014, the Directorate of Urbanism of the Municipality of Prishtina, in the re-proceedings, issued the Decision 05-35-210047 and again rejected the request of person N.N. In this decision, the Directorate of Urbanism reasoned that: *"during the review of the case it was found that the building for which renovation was sought is demolished and only the side walls have remained, where according to Article 5 of the Law on Construction no. 04/L - 110, article 5, point 1.3, are not part of the renovation, also there is a new building constructed in the parcel[...] the copy of the plan does not match with the existing situation presented in the geodetic survey [...]".*

B. Court proceedings

32. The Applicant filed a statement of claim with the Basic Court in Prishtina - Department for Administrative Matters (hereinafter: the Basic Court) against MESP Decision, no. A-07/15, of 26 February 2015.

33. On 19 April 2018, the Basic Court, by Judgment A.nr.187/2015, rejected as unfounded the Applicant's claim. In this Judgment, inter alia, the Basic Court reasoned that the MESP's decision was fair and that it was rendered following the determination of substantive facts and relied on the relevant legal

provisions, which stipulate that the request for parcellation should be in harmony with the documents of spatial planning.

34. The Applicant filed an appeal with the Court of Appeals against the aforementioned Judgment, alleging that the Judgment of the Basic Court, A.no.187 / 2015 contains violation. As the main arguments in support of this complaint the Applicant stated that: (i) the factual situation was not correctly determined; (ii) the above judgment was based upon the Urban Development Plan of the Municipality of Prishtina, although this plan remained unenforceable; (iii) the Basic Court has failed to analyze the allegations for a violation of Article 22 of the Constitution in conjunction with Article 1 of Protocol 1 oo the ECHR; (iv) the principle of equality has been violated because, while the Applicant is not granted permission for parcellation and renovation/construction, some other persons have been permitted to build 15 meters away from the Applicant.

35. On 13 September 2018, the Court of Appeals, by Judgment AA.no.395/2018, rejected as unfounded the Applicant's appeal on the ground that the Judgment of the Basic Court, A.no.187 / 2015, of 19 April 2019, did not contain essential violations of the provisions of the Law on Administrative Conflict, since the request for parcellation is not in compliance with spatial planning documents. Moreover, the Court of Appeal held that the Applicant's allegations concerning his request for the issuance of the home construction/renovation permit are generalized and not based upon any evidence with legal support. The Court of Appeal argued that *"the claimant [the Applicant] bases his right claimed in the complaint as well as other case files upon the excerpt from the minutes of the meeting of Executive Council of the Municipality of Klina of 1985, where he was President of the EC, and under point II, of the extract there was adopted a conclusion for the allocation of a plot and the same was sent to the Assembly, but it is not known on what legal basis. The evidence in possession of the claimant on which he bases his right are not disputable, but being in different circumstances now and having a different state status, they have no legal support in the positive laws [...]."*

36. On 8 February 2019, the Applicant filed a request for protection of legality with the Chief State Prosecutor against the aforementioned Judgment, alleging a violation of the provisions of the Law on Administrative Procedure.

37. On 7 March 2019, the Office of the Chief State Prosecutor by Notice KMLA no. 4/2019 rejected the Applicant's Referral on the grounds that there is insufficient legal basis for the submission of a request for protection of legality.

Applicant's allegations

38. The Applicant alleges that the Judgment of the Court of Appeals, AA.no. 395/2018 of 13 September 2018, violated his fundamental rights and freedoms guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments] and Article 46 [Protection of Property], of the Constitution and Article 1 of the Protocol 1 (Protection of property) of the ECHR.

39. With regard to the allegations for a violation of Article 46, in conjunction with Article 1 of Protocol 1 to the ECHR, the Applicant claims that the Judgment of the Court of Appeals, AA.no. 395/2018, concerning the decisions of the lower instance courts, have prevented him from parcelling and registering the property in order to have issued a permit to construct a house.

40. The Applicant supports his allegations stated above by referring to the cases; *Amour v. France*, Judgment of 25 June 1996; *Marckx v. Belgium*, Judgment of 13 June 1979; and *Sporrong and Lönnrothk v. Sweden*, Judgment of 23 September 1982.

41. In this context, the Applicant states that he was *"refused the request for parcellation and (reconstruction of the building on the property in question, because the UDP of the Municipality of Prishtina foresees the construction of a road on that property. The UDP of the Municipality of Prishtina was approved at MESP two weeks after the Law on Spatial Planning, No. 04 / L - 174, which envisages the creation of zoning maps. At that time, in 2014 there was no zoning map [...] Even up to the present day when I'm submitting this request the Municipality of Prishtina has completed neither the zoning maps nor the spatial plan [...] But this should not be an obstacle at all to the parcellation of my property and individual construction permit for me, because even in the case of eventual construction of the road, my house would have the same fate as the other houses."*

42. As to the Judgment of the Court of Appeals, AA.no. 395/2018 of 13 September 2018, the Applicant refers to the part of the reasoning of this Judgment which states that *"the claimant [the Applicant] bases his right claimed in the complaint as well as other case files upon the excerpt from the minutes of the meeting of Executive Council of the Municipality of Klina of 1985, where he was President of the EC,* [...]". In this respect, the Applicant states that this fact is completely untrue, since he has never been a resident of Klina nor the Mayor of Municipality of Klina (in 1985). To support this allegation, he has enclosed to the case file a proof from the archive of the Assembly of Municipality of Klina.

43. The Applicant requests from the Court as follows: *"I request to have recognized my right to register the property, to be granted land parcellation and be issued the construction permit for building a house on my land. If the Municipality is so confident that it will build a road that goes through my parcel according to the UDP, then I request to immediately be enabled the adequate expropriation."*

44. The Applicant also requests that his identity be not publicly disclosed, stating: *"I do not want anyone to discuss with my children the injustice and terror we are experiencing so shamelessly."*

Admissibility of the Referral

45. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.

46. 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."

47. In addition, the Court also examined whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accurracy of the Referral, which provide:

Article 47 of the Law
[*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
[Accurracy 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 [...]."

48. In addition, the Court must consider whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure.

Rule 39
[Admissibility Criteria]

(1) The Court may consider a referral as admissible if:

[...]
(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.

"(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".

49. The Court notes that, in essence, the Applicant complains that the impossibility to partition and register the property in order to obtain a permit to construct a house constitutes a violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol 1 of the ECHR.

50. In this regard, the Applicant also raises allegations for expropriation of his property, stating that ". *If the Municipality is so confident that it will build a road that goes through my parcel according to the UDP, then I request to immediately be enabled the adequate expropriation*".

51. As to these Applicant's allegations, the Court notes that all decisions of rregular courts and those of the administrative authorities have provided explaination as to why the Applicant's claim (and appeals) with respect to the parcellation of property and the issuance of a permit for construction/renovation of the building(house), were rejected.

52. In this regard, the Court recalls that the Directorate of Urbanism of the Municipality of Prishtina, through its Decision05-35-210047, of 29 December 2014, assessed the following:

"This body in the procedure of review and following a visit on the field on 15.09.2014 by the personnel engaged in the processing of this case, for determining the factual situation, has ascertained that the renovation is being requested for a building that no longer exists, the copy of the plan does not match with the existing situation presented in the geodetic survey, so the request as such must be rejected."

53. The Court further notes that MESP, tby Decision no. A-07/15, of 26 February 2015, had clarified that:

"After a thorough examination and administration of the evidence, we found that the complaint of the party is unfounded. On the basis of the Law No. 04/L-174 On Spatial Planning, Article 26, paragraph 7 stipulates that: Existing spatial planning documents which are approved shall remain in force until harmonized with the provisions of this Law. The "Urban Development Plan for the Period 2013-2022" was approved by the Municipal Assembly of Prishtina on 24.09.2013. During the public debate period, all interested citizens in the cadastral zone of Pristina have had the opportunity to address their concerns and proposals in accordance with Article 20 of the Law on Spatial Planning. By decision dated 05.12.2013, Protocol No. 4519113 this plan has been given the consent also by the Ministry of Environment and Spatial Planning and is valid. For the "Moravska" neighborhood, where parcel 11I. 6755-0 is located, there is no

Urban Regulatory Plan, but according to the Urban Development Plan, the cadastral parcel registered in the possession list no. 011-953-143000/ 2014, CZ Prishtina, the parcel no. 6755, in surface of 167 m2, is located on the planned road, and it cannot be used for construction, therefore no parcellation of parcel no.6755-0 is allowed, as the request must be in compliance with the spatial planning documents.

54. The Court further recalls that the Basic Court, through its Judgment A.no. 187/2015 of 19 April 2018, inter alia, had reasoned as follows:

"The Court considers that the decision of the second instance body, which is challenged by the claimant, is fair and based on the law because it was rendered after establishing all relevant facts and was based on the applicable legal provisions that stipulate that the request for parcellation must be in compliance with the spatial planning documents. The court considered the claimant's allegations, but found that they were not based upon the law...".

55. Finally, the Court also refers to the Decision of the Court of Appeals, Ac.no. 2783/18, of 18 September 2018, which explains that:

"The Court of First Instance, acting within the competence of Articles 9 and 44 of the LAC, has reviewed and assessed the legality of the MESP decision, which was challenged by a claim; the said decision contained the arguments on which it has based its reasoning , stating the reasons that on the parcel 6755, consisting of a surface of 167 m2, is planned to be constructed a road, therefore no parcellation of parcel m.6755-0 is allowed, as the request must be in compliance with the spatial planning documents. Claimant's appeal claims regarding the issue under review, the issuance of a permit for construction/renovation of a residential house on parcel 6755-0, located in Prishtina, Str. "ShaipKamberi" m.22, Cadastral Zone in Pristina, are generalized, they are not based upon any evidence with legal support and do not refer to any legal provision, indicating on what basis is the claimant entitled to the alleged right, which the court of first instance has failed to assess or has violated to the detriment of the claimant-Applicant. According to Article 56 of the Law on the Administrative Procedure the burden of proof for the alleged facts rests with the parties to the administrative procedure, despite the obligation of the administration to make available to the parties the evidence in its possession."

56. The Court notes that the Court of Appeals considered the Applicant's as unfounded, on the ground that his Referral was not in compliance with the relevant documents which regulate the spatial planning.

57. In the light of the foregoing facts, despite the Applicant having not expressly raised any allegations relating to a fair trial (guaranteed by Article 31 of the Constitution), the Court considers it necessary to point out that the Applicant was enabled to develop the procedure based on the principle of contradiction; that he was able to present, at various stages of the proceedings, arguments and evidence that he considered relevant to his case; and that all arguments

that were relevant to the resolution of his case, viewed objectively, have been duly heard and considered by the courts; that the factual and legal reasons for the challenged decisions were elaborated in detail; and that, in harmony with the circumstances of the case, the proceedings, viewed in their entirety, were fair. Consequently, the Court finds that the Applicant has enjoyed procedural guarantees embedded in the concept of fair and impartial trial (see, *mutatis mutandis*, inter alia, the case of Court No. KI118/17, Applicant *Sani Kervan et al.*, Resolution on Inadmissibility, 16 February 2018, paragraph 35; also see *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, paragraph 29).

58. The Court highlights that the Applicant's main allegations relate to the violation of his property rights, as a consequence of him being prevented by the relevant authorities, to partition and register the property in order to obtain a permit to construct a house. Moreover, the Applicant in his Referral also refers to his right to compensation for expropriation of his property.

59. The Court recalls that Article 46 of the Constitution does not guarantee the right to acquire property. Such a position is fourfold based on the ECtHR case law (See, *VanderMussele v. Belgium*, paragraph 48, ECtHR Judgment of 23 November 1983; and *Slivenko and Others v. Latvia*, paragraph 121, ECtHR Judgment, of 9 October 2003). In fact, Article 46 of the Constitution guarantees the right to property, but the latter is not an absolute right and is subject to restrictions. In the present case, the regular courts have explained the property restrictions in relation to the Applicant's Referral.

60. The Applicant may allege a violation of Article 46 of the Constitution only in so far as the challenged decisions relate to his "possessions". Within the meaning of this provision "possessions" can be "existing possessions", including claims, in respect of which an applicant can argue that he/sh has a "legitimate expectation" that he/she will acquire an effective enjoyment of any property right. (see, the cases of the Constitutional Court KI26/18, Applicant *"Jugokoka"*, Resolution on Inadmissibility, of 6 November 2018, paragraph 49; and Case KI156/18, *Applicant Verica (Aleksić) Vasić and Vojislav Čađenović*, Resolution on Inadmissibility, of 17 July 2019, paragraph 52).

61. Pursuant to the ECtHR case law, it cannot be said that any "legitimate expectation' may arise with respect to any property right(including certain property rights claims) where there is a dispute concerning fair interpretation and application of domestic law and where the Applicant's submissions are subsequently rejected by the domestic courts(see, the case of Constitutional Court KI156/18, Applicant *Verica(Aleksić) Vasić and Vojislav Čađenović*, Resolution on Inadmissibility, of 17 July 2019, paragraph 53 and see also the ECtHR case *Kopecky v. Slovakia*, paragraph 50 of the ECtHR Judgment, of 28 September 2004).

62. In the light of the foregoing, the Court considers that the Applicant has failed to prove that the refusal of his request for parcellation and the registration of his property in order to be granted permission to construct a house has been unlawful or arbitrary. Consequently, the Court concludes that the Applicant's allegation for a violation of his property rights, guaranteed by Article 46 of the

Constitution and Article 1 of Protocol 1 to the ECHR (due to the non-registration of the property and non-issuance of a permit to contruct the house), is manifestly ill-founded on constitutional grounds.

63. The Court also refers to the Applicant's allegation relating to expropriation. In this regard, the Court notes that the case file shows that the Applicant had never raised the issue of expropriation before the regular courts, thus not providing any opportunity to the regular courts to address the said issue.

64. In this respect, the Court notes that, pursuant to the principle of subsidiarity, the Constitutional Court cannot consider this case (this allegation) without first having been raised and assessed in the proceedings before the regular courts (see, the case KI24/16, Applicantr *Avdi Haziri*, Resolution on Inadmissibility, of 16 November 2016, paragraph 37).

65. The principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have its case declared inadmissible by the Constitutional Court, when failing to exhaust all available legal remedies before the administrative bodies or regular court (see, Resolution in Case KI139/12, *Besnik Asllani*, Review of Supreme Court Judgment PKL No. 111/2012, of 30 November 2012, paragraph 45; Resolution in Case No. KI07 / 09, *Deme Kurbogaj and Besnik Kurbogaj,* Review of Supreme Court Judgment Pkl.no. 61/17, of 24 November 2008, paragraph 18; Resolution in Case No. KI89/15, *Fatmir Koci*, Review of Court of Appeals Judgment, PAKR No.473/2014 of 21 November 2014, paragraph 35).

66. Therefore, the Court considers that the Applicant has not exhausted the legal remedies available to him in respect of the allegations concerning the expropriation of his property.

67. The Court further refers to the Applicant's allegation that the Court of Appeals based its reasoning upon a false finding as to the excerpt from the meeting of the Executive Council of the Municipality of Klina. In this respect, the Court notes that the Court of Appeals had reasoned that the Applicant based his right upon the excerpt from the minutes of the meeting of the Executive Council of the Municipality of Klina in 1985, where he allegedly served as the president of the Executive Council. According to the Applicant this finding is untrue, and this he proved by a document from the archive of the Municipality of Klina.

68. In this regard, the Court wishes to point out that the administrative bodies and the regular courts, when deciding on the Applicant's Referral, wherein he was a party to the proceedings, had issued their rejecting decisions on the ground that his Referral was not in compliance with the relevant law regulating the spatial planning and not on the basis of erroneous determination of a finding or fact - which concerns an excerpt from the miutes of the meeting of the Executive Council of the Municipality of Klina in 1985 - as alleged by the Applicant. However, the Applicant has not even argued that the Court can find that this fact was decisive, or determinant, for the outcome of the

administrative and judicial procedures that have were conducted in the Applicant's case.

69. In this context, the Court once again reiterates that in the central part of the reasoning of the Judgment of the Court of Appeals, that *"Claimant's appeal claims regarding the issue under review, the issuance of a permit for construction/renovation of a residential house[...] are generalized, they are not based upon any evidence with legal support and do not refer to any legal provision, indicating on what basis is the claimant entitled to the alleged right, which the court of first instance has failed to assess or has violated to the detriment of the claimant-Applicant".*

70. Finally, the Court notes that the Applicant in his Referral also refers to Articles 22 and 113 of the Constitution, but he has not clarified his allegations regarding potential violations of these Articles. The Court notes that the mere mention of Article 22 of the Constitution, by alleging that it has been violated, without providing sufficient and plausible explanations as to how these violations occurred, is not sufficient to raise a reasoned allegation for constitutional violations. When alleging such violations of the Constitution, the Applicant must provide reasoned allegations and compelling arguments (see, the Constitutional Court case, KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility, of 10 February 2015, paragraph 33). Whereas, as to the Article 113 of the Constitution, which the Applicant refers to, the Court notes that that Article of the Constitution defines the jurisdiction of the Constitutional Court as well as the parties authorized to submit a referral to the Constitutional Court (see paragraph 46 of this Resolution).

71. In conclusion, fon the basis of the arguments and the reasonings elaborated above, the Court concludes that:

> (i) As to the allegation that the administrative bodies and the regular courts have violated the rights guaranteed by Article 46 [Protection of Property] in conjunction with Article 1 of Protocol 1 of the ECHR, by rejecting his request for parcellation and registration of property, in order to obtain a permit to construct a house, the Referral must be declared inadmissible, as manifestly ill-founded on constitutional grounds, in accordance with Rule 39 (2) of the Rules of Procedure;
>
> (ii) With regard to the Applicant's allegations for expropriation, the Referral must be declared inadmissible because the Applicant has not exhausted the legal remedies as required by Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 39. 1 (b) of the Rules of Procedure.

Applicant's request for non-disclosure of identity

72. The Court notes that the Applicant in his Referral also requested that his identity be not disclosed.

73. The Applicant justifies his request for non-disclosure of identity as follows: *"I do not want anyone to discuss with my children the injustice and terror we are experiencing so shamelessly."*

74. In this regard, the Court refers to Rule 32 (6) of the Rules of Procedure, which provides:

> *"(6) Parties to a referral who do not wish their identity to be disclosed to the public shall so indicate and shall state the reasons justifying such a departure from the rule of public access to information in the proceedings before the Court [...]".*

75. On the basis of the justification presented by the Applicant, the Court considers that that justification does not provide sufficient arguments for the approval of the present request (see, the Constitutional Court's case: KI74/17, Applicant *Lorenc Kolgjeraj*, Resolution on Inadmissibility, of 5 December 2017; case KI202/18, Applicant Ejup Qerimi, Resolution on Inadmissibility, of 27 March 2019, paragraph 30).

76. Consequently, the Applicant's request for non-disclosure of his identity must be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47.2 of the Law and Rules 39 1 (b) (d) and (2) and 59 (2) of the Rules of Procedures, on 15 January 2020, unanimously

DECIDES

I. TO DECLARE the Referral Inadmissible;

II. TO DISMISS the request for non-disclosure of identity.

III. TO NOTIFY this Decision to the parties;

IV. TO PUBLISH this Decision in the Official Gazette;

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Bekim Sejdiu

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.