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

Prishtina, on 9 March 2020
Ref. no.:RK 1524/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI126/18

Applicant

Council of the Islamic Community in Gjakova

Constitutional review of Judgment Rev. No. 197/2018 of the Supreme Court of the Republic of Kosovo, of 13 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 the Council of the Islamic Community of Gjakova (hereinafter: the Applicant), which is initially represented by Ahmet ef. Hoxha, President of the Islamic Community in Gjakova and then by lawyer Teki Bokshi from Gjakova.

Challenged decision

2. The Applicant challenges Judgment [Rev. No. 197/2018] of 13 June 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [Ac. No. 1870/13] of 16 March 2018 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [C. No. 324/2008] of 2 April 2013 of the Basic Court in Gjakova – General Department –Civil Division (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, which allegedly violates the Applicants' rights and freedoms guaranteed by paragraph 2 of Article 22 [Direct Applicability of International Agreements and Instruments], Article 31 [Right to Fair and Impartial Trial], Article 53 [Interpretation of Human Rights Provisions], Article 46 [Protection of Property], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Articles 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of 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 27 August 2018, the Applicant through mail service, submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 17 September 2018, the President of the Court appointed Judge Bajram Ljatifi Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Selvete Gërxhaliu-Krasniqi.

7. On 28 September 2018, the Court notified the Applicant about the registration of the Referral.

8. On the same date, the Court also notified the Municipality of Gjakova, in the capacity of an interested party, about the registration of the Referral, providing it the opportunity to present its comments regarding the Referral KI126/18 within 15 (fifteen) days of receipt of the notification of the Court.

9. On 28 September 2018, the Court notified the Supreme Court about the registration of the Referral and sent a copy of it.

10. On 5 October 2018, the Municipality of Gjakova submitted its comments to the Court regarding the Referral. It also attached some additional documents in support of its comments (see paragraphs 53-57 for the comments submitted to the Court by the Municipality of Gjakova).

11. On 9 October 2018, the Court notified the Applicant about the comments received by the Municipality of Gjakova regarding Referral KI126/18. The Court attached a copy of those comments for its information.

12. On 22 October 2018, the Applicant submitted to the Court comments regarding the comments submitted by the Municipality of Gjakova. It also attached some additional documents in support of its initial referral (see paragraphs 58-61 for additional comments submitted to the Court by the Applicant).

13. On 26 October 2018, the Court notified the Municipality of Gjakova about the additional comments received by the Applicant in response to the comments of the Municipality of Gjakova of 5 October 2018. The Court attached a copy of those comments for their information.

14. On 19 November 2018, the Municipality of Gjakova submitted an additional response to the Applicant's additional comments (see paragraphs 62-66 for the comments submitted to the Court by the Municipality of Gjakova).

15. On 13 September 2019, the Court requested the Applicant to submit to the Court: (i) a copy of the lawsuit filed with the Basic Court; (ii) a copy of the appeal filed against the Judgment of the Basic Court with the Court of Appeals; and (iii) a copy of the request for revision filed against the Judgment of the Court of Appeals with the Supreme Court.

16. On 23 September 2019, by mail service, the Applicant submitted to the Court the additional documents requested by the Court.

17. On 3 October 2019, the Court notified the Applicant that it received the additional documentation and sent a copy of the additional comments received by the Municipality of Gjakova on 19 November 2018 in response to its additional comments of 22 October 2018. The Court notified the Applicant that the comments in question were being attached only for their information given that the period of comments has already ended and that the Court is in the process of considering the case.

18. On 3 October 2019, the Court notified the Basic Court and the Court of Appeals about the registration of the Referral and sent them a copy thereof. The Court also requested the Basic Court to submit to the Court the full case file relating to the case KI126/18 within 7 (seven) days of receipt of the letter of the Court.

19. On 9 October 2019, the Applicant submitted a power of attorney notifying the Court that in the further proceedings before the Court, it chooses to be represented by the lawyer Teki Bokshi.

20. On 10 October 2019, the Basic Court submitted the full case file to the Court.

21. On 5 February 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

Applicant's lawsuit against the Municipality of Gjakova

22. On 16 April 1997, the Applicant filed a lawsuit against the Municipality of Gjakova with the then Municipal Court in Gjakova. The subject of the lawsuit was the "compensation of damage for confiscation of property without compensation" by the Municipality of Gjakova, for purposes of public needs. The Applicant alleged that the properties in question, two shops, as will be further explained in the section of facts, were taken without proper legal procedure and without compensation. As a result, it had requested the then Municipal Court of Gjakova to be given another property as a form of in-kind compensation for the property taken – or to be compensated this loss in the respective monetary amounts.

23. It follows from the documents in the original case file that the courts of that time never decided on merits of the Applicant's lawsuit.

24. On 17 February 2003, as the Applicant's lawsuit was not decided, it proposed to the Municipal Court in Gjakova to proceed with the review of his lawsuit of 1997. It follows from the original case file that several court hearings were held to examine the Applicant's lawsuit, and the inspection of the site was carried out, as well as the expertise of geodesy to determine the facts of the case was developed.

25. On 12 November 2012, in the Municipal Court in Gjakova, the main hearing on the statement of claim of the Applicant was held. At this hearing, the Applicant specified his lawsuit requesting that the Municipality of Gjakova be obliged to compensate in the total amount of 17,750.00 euro for two cadastral parcels located in the center of Gjakova [4,750.00 euro for the cadastral parcel No. 2549 with a surface area of 19m2; and 13,000.00 euro for the cadastral parcel No. 2556 with a surface area of 52m2]. The Applicant alleged to be the owner of these two parcels registered in its name, but the latter were taken without proper procedure and without compensation. The same cadastral parcels, which are the main subject of dispute between the Applicant and the Municipality of Gjakova, were shops in the past, whereas today they are sidewalks, public roads, on the road "Nëna Terezë" in Gjakova.

26. The Municipality of Gjakova, in response to the Applicant's statement of claim, in the main hearing, stated that it challenges it in its entirety and that the Applicant lacks the legitimacy to be a party to the dispute and that, moreover,

according to the Municipality of Gjakova, the Applicant was late in filing the lawsuit in question and consequently his claim gained the status of *"the absolute statutory limitation"*.

Decision-making in the Basic Court

27. On 2 April 2013, now the Basic Court and not the Municipal Court, by Judgment [A. No. 1144/14] rejected as ungrounded the statement of claim of the Applicant filed against the Municipality of Gjakova. Initially, the Basic Court clarified the fact that it was uncontested between the litigants that the cadastral parcels in dispute in 1956 were turned into sidewalks on the street "Nëna Terezë" and that in such a situation, thus as sidewalks, they exist even today. Further, the Basic Court clarified that through the History [No. 952-03-3/12 of 28 January 2010] drafted by the Directorate for Cadastre, Geodesy and Property, which was taken as evidence at the main hearing, it was found that the cadastral parcels in question *"have been recorded on behalf of the assets of Vakufi Gjakova"*. In 1955, clarifies the Basic Court, the reambulation has been carried out and the cadastral parcels in question *"have been evidenced in the name of the property of the Islamic Religious Community in Gjakova, an unchanged condition to this day"*.

28. Specifically, the Basic Court reasoned that: *"[...] the claimant* [the Applicant] *initially had to substantiate with the statement of claim that he is the owner of the subject immovable property for which he has requested compensation which means that the claimant had to file a claim for ownership and restitution. However, it did not do so, despite the fact that it was not in possession of the subject immovable property in 1956, whereas it filed the lawsuit in question on 14.05.1997, thus after 41 years, when deprived of the right of ownership and possession of the subject immovable property, from which it follows that the claim of the respondent's legal representative regarding the statutory limitation is grounded, and such an allegation this Court considers to have been based on the provision of Article 371 of the LOR (LOR amendments published in Off. Gazette of RFY no. 31/93 of 18.06.1993), a law applicable in Kosovo according to UNMIK Regulation no. 1999/24. For these reasons, the claimant's statement of claim was found to be ungrounded and as such was rejected"*.

Decision-making in the Court of Appeals

29. On 16 May 2013, the Applicant filed an appeal against the abovementioned Judgment of the Basic Court with the Court of Appeals, on the grounds of violation of the provisions of the contested procedure, erroneous determination of factual situation and erroneous application of the substantive law. The Applicant proposed to the Court of Appeals to approve the appeal and remand the case for retrial or to modify the Judgment of the Basic Court by approving the statement of claim as grounded.

30. On 16 March 2018, the Court of Appeals by Judgment [AC. No. 1870/2013] rejected the Applicant's appeal as ungrounded and, consequently, upheld the abovementioned Judgment of the Basic Court.

31. As to the Applicant's allegations of violation of the provisions of the contested procedure, the Court of Appeals upheld the decision of the Basic Court in that regard, reasoning as follows: *"Setting from such a situation, the Court of Appeals of Kosovo considers that the appealing allegation of the representative of the claimant for violation of the provisions of the LCP, as to the legal basis of the claimant's specified statement of claim, which refers to the compensation of damage, counter value for the payment of the amounts stated in the statement of claim by the respondent Municipality of Gjakova, are ungrounded and unsubstantiated, because the challenged judgment does not contain essential violation of the provision of Article 182 paragraph 2 of the LCP, for which the second instance court takes care ex officio in accordance with the provision of Article 194 of the LCP, nor with any other infringement which would affect the fairness and legality of the challenged judgment* [of the Basic Court]. *Therefore, in the present situation, the appealing allegations of violation of the provision of Article 20 paragraph 1, 37, 33 and 29 of the Law on Property Legal Relationship are ungrounded, because all of these provisions refer to property issues, while the claimant in the present case requested compensation for the parcels no. 2549 CZ Gjakova-City, by culture a former shop, now the pavement of "Nëna Terezë" street and for parcels no. 2556 CZ Gjakova-City, by culture a former shop, now the plateau- the pavement of "Nëna Terezë" street in the prescribed amount and other details as in the enacting clause of the Judgment* [of the Basic Court]".

32. As to the Applicant's allegations of erroneous determination of factual situation, the Court of Appeals upheld the decision of the Basic Court in that regard, reasoning as follows: *"Also, as to the allegation of erroneous determination of factual situation, according to the Court of Appeals, such an allegation of the claimant is ungrounded, because the first instance court, in the course of the proceedings before it, it has administered the evidence and established the factual situation with convincing evidence, including geodesy expertise and court's visit in the site and took lawful and fair decision, taking into account the fact that the representative of the respondent referred to the statutory limitation of the claim and the first instance court assessed such an allegation, so that by applying the relevant legal provisions such as that of Article 371 of the LOR with the amendments made [...]. As the first instance court has concluded, the claimant has not filed a statement of claim since 1956 to substantiate that it is the owner of the subject immovable property, for which now requests compensation, nor it filed claim of confirmat5ion of ownership and its restitution, despite the fact that the latter has not been in possession of the subject immovable property since 1956, but only on 14.05.1997, thus filed a lawsuit for compensation for immovable property after 41 years, by requesting the legal interest. Therefore, setting from the fact that the respondent* [the Municipality of Gjakova] *referred to the statutory limitation of the claim, then the first instance court having been in such a factual situation, has rightly concluded that the claimant's claim is statute-barred and considered the allegation of the respondent's legal representative as grounded".*

33. Finally, the Court of Appeals in relation to the other appealing allegations of the Applicant stated that: *"The appealing allegation of the respondent's representative that more than 20 years have passed since the respondent*

without legal-administrative procedure occupied the two shops for roads without compensation or any other form of compensation are ungrounded, because in the present case the statement of claim is directed at the compensation for the immovable property which is in the possession and use of the respondent. The claimant filed such a claim as stated above, after the legal deadline has expired and such situation cannot be restituted, thus in the present case there is no statement of claim for confirmation of ownership, but only for the compensation of the counter value of the claimant's parcels, which as stated above since 1956 are in the possession and use of the respondent, the Municipality of Gjakova. Given the fact that in the present case there is absolute statutory limitation of the statement of claim, the Court of Appeals held that the claimant's appealing allegations are ungrounded and unsubstantiated, and as such were rejected in their entirety".

Decision-making in the Supreme Court

34. On 18 April 2018, the Applicants filed a revision with the Supreme Court, proposing that the judgments of the two lower instance courts be modified and the Applicant's statement of claim be approved as grounded; or, to quash the judgments of the two lower courts and the case be remanded to the Basic Court. The Applicant submitted the aforementioned revision on three substantive grounds, namely, on the basis of the three main allegations.

35. The first allegation of the Applicant was on the ground of essential violation of the provisions of the contested procedure, namely a violation of Article 182.1, item n) of the Law on Contested Procedure (hereinafter: the LCP) because, according to the allegation, the Judgment of the Basic Court was flawed, contradictory to the reasons and there was no reason to the decisive facts.

36. The Applicant's second allegation was on the ground of essential violation of the provisions of the contested procedure which were committed by the Court of Appeals in the second instance as, according to allegation, the appealing allegations filed in the appeal have not been analyzed.

37. The Applicant's third allegation was on the ground of erroneous application of the substantive law in respect of which the Applicant alleged that it has not lost any rights because the state has acted unlawfully and, therefore, all actions to depriving it of possession of the disputed parcels are null. Furthermore, the Applicant stated that the disputed parcels are its "property" and that the latter *"to this day is recorded on behalf of the claimant* [the Applicant]. *The claimant is charged with taxes on this property. The fact that the state body, by violating fundamental civil rights, fundamental human rights, that violation would not have to be rewarded in favor of the state, in this case the municipality".*

38. Regarding this allegation, the Applicant further stated in the request for revision that: *"Rejecting the lawsuit is a reward for the state for violating the basic human rights of the claimants, of the Muslim community, of this Religious Community which is legally a citizen legal entity. Now, in freedom, in completely changed circumstances, in circumstances where the European Convention for the Protection of Human Rights and Freedoms is in force in*

Kosovo and a number of international documents [...] This way of depriving citizens of their property for the time cited has been a common behavior of the then power. All over the former communist and socialist world the properties taken from the totalitarian state, the properties of the citizens have been returned. The deprivation of property has been particularly emphasized in Kosovo against Albanians due to the anti-Albanian state policy of the time, that there was a program for Albanians to be deprived of their property by pressuring them to move to Turkey. In the current situation of a completely different reality, the properties must be returned to their former owners". As to the issue of restitution of property, the Applicant stated before the Supreme Court that it should consider the Comprehensive Proposal for the Kosovo Status Settlement and in particular Article 8.6 stipulating that Kosovo should prioritize all property restitution issues. In this regard, the Applicant stated that the lower instance courts did not take into account Article 46 of the Constitution which, according to it, should be interpreted on the basis of the aforementioned Proposal for the Kosovo Status Settlement.

39. At the end of the revision submitted to the Supreme Court, the Applicant stated as follows: *"It should also be borne in mind that the municipality, as a state body, knew it and by knowing that it was someone's else property, private property, has not applied the expropriation procedure so that it is in unlawful possession of a private property, had to be expropriated beforehand by the private owner and the latter be compensated and that it did not take those imperative legal actions, it is a party in mala fide, a dishonest party, an unconscious and unlawful party, and must bear the consequences of unlawfulness".*

40. On 13 June 2018, the Supreme Court by Judgment [Rev. No. 197/2018] rejected as ungrounded the Applicant's request for revision – thus upholding in entirety the decision-making of the Court of Appeals and of the Basic Court.

Applicant's allegations

41. The Applicant, referring to paragraph 2 of Article 22 of the Constitution which provides for the direct applicability of the ECHR to the Republic of Kosovo and Article 53 of the Constitution providing for the obligation to interpret human rights and freedoms in accordance with the judgments of the European Court of Human Rights (hereinafter: ECtHR), alleges that the challenged Judgment of the Supreme Court and the judgments of two other regular courts, that of the Court of Appeals and of the Basic Court, violated its rights to: (i) fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR; (ii) protection of property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR; (iii) for judicial protection of rights guaranteed by Article 54 of the Constitution.

Regarding the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

42. First, as to the right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant alleges

that this right, according to the case law of the ECtHR cited by the Applicant (see, *Tatishvili v. Russia*, Judgment of 22 February 2017, paragraph 58; and *Hadjianastassiou v. Greece*, Judgment of 16 December 1992, paragraph 33), implies in itself the principle of the proper administration of justice according to which *"the decisions of the courts and tribunals must adequately state the reasons on which they are based". The* courts, the Applicant states, according to the ECtHR, although enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6 (1) of the ECHR, they are obliged to *"indicate with sufficient clarity the grounds on which they based their decision".*

43. In this regard, the Applicant states that the regular courts have violated its right to a reasoned court decision through the lack of an analysis and by not taking into account the appealing allegations, which *"in essence have not been considered".* It states that in the appeal before the Court of Appeals and in the revision before the Supreme Court, it stated that there were insufficient reasons given by the first instance court. In the reasoning of the Supreme Court which states that: *"the court of first and second instance in this legal case concerning the statutory limitation of the claimant's claim for payment of the counter value of the subject parcels, which reasons are also accepted by the Supreme Court, so it is unnecessary to repeat them now",* an unilateral interpretation of the law has been made which, according to the Applicant, the Supreme Court has no right to do.

44. The conclusion of the Supreme Court that: *"here the claimant sues only for compensation of the counter value and also the confirmation of the ownership right over these parcels, which issue should have been presented as a preliminary matter to decide on the compensation of the counter value of the subject parcels"* – it is quite impossible to ascertain according to the Applicant because the claimant, namely the Applicant was rejected the request due to statutory limitation and that the regular courts *"did not say that the Council of the Islamic Community of Gjakova is not the owner, has no active legitimacy, but that the claim is prescribed".*

Regarding the allegations of violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR

45. Secondly, with regard to the right to protection of property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, the Applicant alleges that the Council of the Islamic Community [the Applicant] *"was and continues to be registered as the owner of the cadastral parcel a) no. 2549, by culture shop, in a surface area of 19 m2, CZ Gjakova – city, which store has been unilaterally demolished and turned into a plateau, sidewalk and used for public needs"* and, also, the owner of the cadastral parcel *"b) no. 2556, by culture shop, in a surface area of 52 m2, CZ Gjakova – city, which has also been unilaterally demolished and turned into a plateau, sidewalk* [parcels subject of dispute]*"* and is used for public needs.

46. The Applicant alleges that it failed to resolve this matter in an extrajudicial manner as provided for by the Law on Expropriation of Kosovo (Official Gazette of the SAPK 21/78), and by Law No. 03/L-139 on the Expropriation of

Immovable Property of the Republic of Kosovo, and consequently had to initiate a legal dispute *"with the hope that the judicial authorities of the Republic of Kosovo will establish justice"* taking into account that *"the communist system and that of the domination of discriminatory, anti-national and anti-religious foreign power has passed"*.

47. The Applicant states that in the proceedings before the regular courts, the Basic Court, Court of Appeals and Supreme Courts, *"it has been undoubtedly established that the property is of the Islamic Community Council, that it is the property of vakuf and that the latter from the business premises which have been demolished and turned into sidewalks for public use, that it is owned by the Islamic Community Council, is registered and that no obligational legal procedure for the expropriation of private property for public needs has been conducted; that the compensation procedure has not been initiated at all, obligation that was foreseen and is foreseen today, but the request was rejected because of the prescription"*.

48. In this matter, according to the Applicant, *"there is no statutory limitation"*. The statute of limitations, it points out, begins as the claim becomes accessible and that the statutory limitations would begin if the amount of compensation was set by administrative or judicial decision. *"If the municipal authorities, namely public authorities, have expropriated the Islamic Community Council from its property and then destined it for public needs, it is the fault of the public authorities that failed to comply with legal obligations, have not initiated the expropriation procedure"*.

49. According to the Applicant, it is a *"crystallized judicial practice"* that claims for compensation of private property expropriated for public needs are not prescribed. In this respect, the judgments of the regular courts which based their decision on the statutory limitation of the claim, *"do not provide clear reasons for the appealing allegations and of the revision"*. Further, the Applicant continues that it was not able to seek confirmation of ownership as the property has been arbitrarily deprived and expropriated, as it is not disputable that the shop of 19 m2 and the one o f 52 m2 is a sidewalk and a street in the square "Nëna Terezë" in downtown of Gjakova. There is no way to prove ownership of the shops when the immovable property is sidewalk. Therefore, neither the Supreme Court nor the lower courts, as alleged, *"have reasoned judgments, acted partially and violated the property right"*.

50. The Applicant concludes its reasoning by stating that *"this evidence for the Islamic Community is very important as they have been left to the Islamic Community and its believers so that the Islamic Community will be able to carry out its mission"*.

51. The Applicant also refers to paragraph 2 of Article 22 of the Constitution as well as Articles 53 and 54 of the Constitution, without giving any further explanation regarding these Articles.

52. Finally, the Applicant proposes to the Court:

(i) To declare the Referral admissible;
(ii) To hold that there has been a violation of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR and Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR;
(iii) To declare invalid the challenged Judgment of the Supreme Court and other judgments of the lower instance courts which preceded this judgment;
(iv) To remand the challenged Judgment of the Supreme Court for reconsideration in accordance with the Judgment of this Court.

First comments of the Municipality of Gjakova of 5 October 2018

53. The Municipality of Gjakova, in the capacity of an interested party, submitted its comments to the Court following opportunity given by the latter.

54. The Municipality of Gjakova emphasized that the Applicant's allegations are ungrounded and unsubstantiated as it failed to present material evidence that would prove the grounds of the Referral before the Constitutional Court.

55. According to the Municipality of Gjakova, the Basic Court decided correctly and based on the provisions of applicable law and *"basing on the indisputable circumstances and the administered evidence held that the claimant initially had to substantiate by the statement of claim that he is the owner of the subject immovable property for which has sought compensation, meaning that the claimant had to file a claim for confirmation of ownership and its restitution"*. However, as the Applicant has not acted in spite of the fact that it is not the possessor of the contested property since 1956 but filed the claim 41 years later, namely on 14 May 1997 it follows that it *"has been deprived of the right of ownership and possession of the subject immovable property, where it results that the allegation of the respondent's legal representative is grounded* [the Municipality of Gjakova] *regarding the statutory limitation"*, pursuant to Article 371 of the Law on Obligational Relationship (Amendments of LOR published in Off. Gaz. of RFY no. 31/93, of 18 June 1993), Law applicable in Kosovo according to UNMIK Regulation no. 1999/24, for these reasons, the specified claimant's statement of claim was found to be ungrounded and as such was rejected.

56. The Court of Appeals, too, the Municipality of Gjakova states, upheld the decision of the Basic Court, where it assessed that the Applicant's appealing allegations are not grounded *"as in the present case there is an absolute statutory limitation of the statement of claim"*. Also, even though the Supreme Court, according to the Municipality of Gjakova, has rightly accepted as grounded the legal position of the two lower instance courts with the fact that the Applicant's request to oblige the Municipality of Gjakova to pay the counter value of the cadastral disputed parcels has become statute-barred and this based on Article 371 of the LOR (cited above) and on the fact that the Applicant

"is not in possession of subject parcels since 1956" while he filed his claim on 14 May 1997, after 41 years.

57. In conclusion, the Municipality of Gjakova proposed to the Court to declare the Referral inadmissible as, according to it, the arguments presented in the Referral KI126/18 are ungrounded and contrary to the factual situation. The Basic Court, the Court of Appeals and the Supreme Court, according to the final allegation, have decided correctly and on the basis of the applicable legal provisions finding that in the present case the Applicant's claim has been prescribed.

The Applicant's first comments in response to the comments of the Municipality of Gjakova

58. The Applicant submitted additional comments on the comments submitted by the Municipality of Gjakova.

59. In its additional comments, the Applicant stated that the comment of the Municipality of Gjakova *"is completely ungrounded and a commitment to deny us an elementary ownership right"*. In this regard, the Applicant reiterated the fact that compensation for immovable property expropriated by legal procedure or factual expropriation is not statute-barred and in this regard reiterates the decisions of the foreign courts which it presented as evidence in the Referral submitted before this Court which were challenged by the Municipality of Gjakova as irrelevant evidence for the decision-making of this court.

60. Further to this point, the Applicant clarified that the case law of the courts in Bosnia and Herzegovina and Serbia were based on the Law on Expropriation which was completely similar to the Kosovo Law on Expropriation and therefore *"we consider that the case laws mentioned are relevant to this issue as well"*. The Applicant specifically requested that the Constitutional Court should take into account Article 41 of Law no. 03/L-205 on Amending and Supplementing Law no. 03/L-139 on Expropriation of Immovable Property.

61. In conclusion, the Applicant proposed to the Court to declare the Referral admissible under the proposed petitum in the original Referral.

Second additional comments of the Municipality of Gjakova of 19 November 2018

62. The Municipality of Gjakova, in the capacity of an interested party, submitted additional comments in response to the Applicant's additional comments.

63. The Municipality of Gjakova stated that it challenges in entirety all the arguments and evidence presented by the Applicant, emphasizing that all three regular courts have decided correctly and substantiated their decisions with *"evidence and facts"*.

64. The Municipality of Gjakova further states that the Applicant's reference to the decisions of the foreign courts, namely the case of the Constitutional Court of

Bosnia and Herzegovina (cited above) and the judgments of the Supreme Court of Cassation and Court of Appeals of Serbia and the case law regarding compensation for factual expropriation are decisions that *"cannot have an impact on this case in the proceedings before the Constitutional Court of Kosovo, as Kosovo has its own laws which have been strictly applied in this case"*.

65. With regard to the Applicant's argument that *"factual expropriation is not statute-barred"*, the Municipality of Gjakova states that such an assessment is not grounded as the regular courts of Kosovo by their judgments in this case *"have correctly applied the applicable legal provisions of the Republic of Kosovo"*.

66. In conclusion, the Municipality of Gjakova proposed to the Court to declare the Referral inadmissible.

Admissibility of the Referral

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

68. In this respect, the Court refers to paragraph 4 of Article 21 [General Principles] of the Constitution as well as paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

Article 21
[General Principles]

"4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".

Article 113
[Jurisdiction and Authorized Parties]

"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".

69. The Court further refers to 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".

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".

70. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [Rev. No. 197/2018] of 13 June 2018 of the Supreme Court, after having exhausted all legal remedies, and stated all rights and freedoms it claims to have been violated. It also submitted the Referral in accordance with the deadlines established in Article 49 of the Law. In the present case, the Islamic Community of Gjakova, in the capacity of the Applicant, appeared as a legal person seeking protection of the rights and freedoms guaranteed by the Constitution against the decision-making of a public body, in this case the Supreme Court. The present case relates to a civil right, such as the property right, and for this civil right there has been a dispute between the Applicant and the Municipality of Gjakova. (See, for contrast and comparison, the case of the Constitutional Court KI133/17, Applicant *Ali Gashi*, Resolution on Inadmissibility of 29 July 2019 on the grounds of inadmissibility *ratione materiae* as well as general principles regarding the necessity of existence of "a civil right" and a "dispute", paragraphs 4-52).

71. Further, as regards the admissibility requirements set out in Article 48 of the Law, the Court considers that the Applicant has sufficiently clarified its allegations regarding the violation of the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR [allegations of violation of the right to fair and impartial trial] and Article 46 of the Constitution [allegations of violation of the right to protection of property].

72. Whereas, as to the Applicants' allegation of a violation of their right to "judicial protection of rights" guaranteed by Article 54 of the Constitution and paragraph 2 of Article 22 of the Constitution and Article 53 of the Constitution, the Court notes that the Applicant has not presented any argument how these constitutional provisions have been violated by the regular courts which have

decided on its statement of claim. It merely referred to these articles and requested the Court to find their violation or on their basis, without giving any relevant justification for the grounds of the allegations related to them.

73. In this regard, the Court recalls that the mere citation of Articles of the Constitution cannot be regarded as fulfillment of the legal obligation under Article 48 of the Law in conjunction with item (d) of paragraph (1) of Rule 39 of the Rules of Procedure, where it is required from the Applicants to clarify *"accurately and adequately [...] the allegations of a violation of constitutional rights or provisions"*. Therefore, and in line with the case law of this Court, the latter will not further deal with the Applicant's allegation of a violation of Article 54 of the Constitution, as the Applicant has not accurately clarified their allegation of a violation of this constitutional provision (See, in this regard, the Resolutions on Inadmissibility: of the Constitutional Court – where similar allegations were rejected: KI02/18, Applicant *the Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning],* paragraphs 40-41; and KI91/18, Applicants, *Njazi Gashi, Lirije Sadikaj, Nazife Hajdini-Ahmetaj and Adriana Rexhepi,* Resolution on Inadmissibility of 10 September 2019, paragraphs 52-54).

74. Consequently, the Court will further consider other admissibility criteria only in respect of the first allegation, of a violation of the right to fair and impartial trial, and of the Applicant's second allegation of a violation of the right to protection of property. In relation to these two allegations, hereinafter and jointly, the Court will also examine whether the Applicants have fulfilled other admissibility criteria established in Rule 39 (2) of the Rules, which establishes:

> *"(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".*

75. The court recalls that the entire dispute in question relates to two immovable properties that in the 1950s were shops on a central street in the city of Gjakova. The latter, were owned by the Islamic Community of Gjakova; however, on an unspecified date, they were confiscated by the then public authorities and turned into public pavement. Such situation exists today. In 2003, the Islamic Community of Gjakova reactivated its initial lawsuit of 1997, in which case, through the specification of the claim, it requested the regular courts to approve its statement of claim for compensation for the two properties [former shops] in question in a total amount of 17,750.00 euro. The Municipality of Gjakova, as a party sued by the Applicant, challenged the lawsuit by claiming that in the present case we are dealing with *"absolute statutory limitation"* of the claim, because the Applicant appeared after 41 (forty one) years to claim the claimed rights. The regular courts, the Basic Court, the Court of Appeals and the Supreme Court, all essentially and on the same line of reasoning, agreed with this objection of the Municipality of Gjakova and decided that, in fact, in the present case we are dealing with an absolute statutory limitation of the claim. Consequently, the Applicant's statement of claim was rejected on the basis of absolute statutory limitation. The Applicant disagrees and does not consider that property rights claims may

be prescribed and, therefore, it challenges the decision of the regular courts before this Court.

76. Regarding these proceedings before the regular courts, the Applicant, in substance, before this Court complains that in their case:

(i) the regular courts violated their right guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR regarding the obligation to reason the court decisions by failing to provide sufficient reasoning for rejecting his statement of claim; and

(ii) the regular courts violated the right guaranteed by Article 46 of the Constitution by failing to recognize his right to property and erroneously deciding that property rights may be prescribed.

As to alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR pertaining to the reasoning of the court decisions

77. In this respect, the Court recalls the Applicant's allegations of a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, where they mainly emphasize that the Supreme Court and the Court of Appeals did not sufficiently reason their decisions and did not respond to their substantive allegations filed in the appeal and revision.

78. In light of these allegations, the Court notes that the Court of Appeals rejected the Applicant's appeal against the Judgment of the Basic Court and subsequently the Supreme Court rejected the request for revision filed against the Judgment of the Court of Appeals. According to this Court, both the regular courts, namely the Supreme Court and the Court of Appeals, fulfilled their constitutional and legal obligations to provide sufficient legal reasoning as required by Article 31 of the Constitution and Article 6 of the ECHR and in accordance with the case law of the European Court of Human Rights (hereinafter: the ECtHR) and the case law of this Court. All the regular courts which reasoning the Applicant challenges for insufficiency clearly responded to the substantive allegation of the whole case concerning the issue of absolute statutory limitation of the claim. Therefore, this Court also considers that the Applicant's allegation is ungrounded and unsubstantiated with sufficient constitutional arguments that it did not benefit from the constitutional guarantee to render a reasoned court decision.

79. In order to accurately verify the Applicant's allegations of non-reasoning of the court decisions, the Court requested the Applicant to submit copies of all appeals filed before the regular courts – including lawsuit; and, furthermore, subsequently requested the full case file from the Basic Court. All these documents were examined by the Court and the allegations submitted by the Applicant before the regular courts and before this Court are in detail reflected in paragraphs 41-51 of this Resolution. There, the main allegations that the Applicant filed in the revision may be seen.

80. More specifically, as can be seen from the facts which largely reflect the reasoning of the Court of Appeals, the latter in relation to the appealing allegations made against the decision of the Basic Court stated, inter alia, that *"in the present case there is no statement of claim for confirmation of ownership, but only for the compensation of the counter value of the claimant's parcels, which as stated above since 1956 are in the possession and use of the respondent, the Municipality of Gjakova. Given the fact that in the present case there is absolute statutory limitation of the statement of claim, the Court of Appeals held that the claimant's appealing allegations are ungrounded and unsubstantiated, and as such were rejected in their entirety"*. In other words, the Court of Appeals, as well as the Basic Court, justified the entire ground for rejecting the case on the ground that the claim reached absolute statutory limitation.

81. The Supreme Court also reasoned the upholding of the Judgment of the Court of Appeals, responding to the Applicant's substantive allegations submitted in the revision. The Supreme Court confirms that, according to it, there is no doubt that the Applicant's statement of claim *"was prescribed"* and, in this regard, the Applicant's appealing allegations did not lead to different decision-making of the case.

82. More specifically, the Supreme Court first reiterated the facts which led to the factual situation determined by the regular courts where it noted that the parties did not challenge the fact that the shops had been turned into sidewalks in 1956 and as such continue to exist. The Supreme Court also stated that in such a factual situation: *"The first instance court found that the claimant had to substantiate that he is the owner of the subject immovable property for which he has requested compensation based on the claim for confirmation of ownership and restitution. However, the claimant* [the Applicant] *did not do so, despite the fact that it was not in possession of the subject immovable property since in 1956, whereas he filed the lawsuit claiming the counter value of this parcels filed with the court on 14.05.1997. Having regard to the objection of the respondent* [Municipality of Gjakova] *opposition to statutory limitation, the first instance court finds that the claimant's claim to oblige the respondent to pay the counter value of these parcels is was prescribed based on the provision of Article 371 of the LOR, for which reason decided in its entirety as in the enacting clause of its judgment"*.

83. Secondly, the Supreme Court, regarding the allegations made in the revision, stated that the Applicant only generally stated that the Judgment of the Court of Appeals contains essential violations of the provisions of contested procedure and did not *"specifically clarified what are those"*. According to the Supreme Court, the Applicants only mentioned but did not clarify where is the contradiction between the enacting clause and the reasoning. Meanwhile, regarding the reasons as to the decisive facts, according to the Supreme Court, *"the first and second instance courts gave sufficient reasons for the relevant fact for air adjudication in this legal matter concerning the statutory limitation of the claimant's claim for the payment of the counter value of the parcels, which is also accepted by the court of revision, so it is unnecessary to repeat them now, this Court therefore finds that the findings in the revision*

regarding essential violations of the procedural provisions as to the judgment of the first instance court are ungrounded".

84. Thirdly, with regard to the allegations in the revision regarding the erroneous application of substantive law, the Supreme Court considered the latter as ungrounded. More specifically in this regard, the Supreme Court reasoned that: *"The claimant's allegation that the parcels in question are the property of the claimant, as they are registered in his name in the cadastral records, is ungrounded, because in the present case it is not being adjudicated according to the claimant's claim regarding the confirmation of the property right and restitution of possession, but in the present case, the contested procedure is conducted according to the claimant's claim for the payment of the counter value of the parcels in question, therefore, in this situation, the claimant's allegations for ownership over these parcels are irrelevant".*

85. In this regard, the Court recalls the general principles regarding the right to a reasoned judicial decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. (See, for updated case law, Judgment of the Constitutional Court in case KI35/18, Applicant *Bayerische Versicherungsverbrand,* Judgment of 11 December 2019, paragraphs 50-52; see also, the fundamental principles regarding the right to a reasoned judicial decision have also been elaborated in the cases of this Court, including but not limited to KI72/12, Applicant *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, Applicant *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant "*IKK Classic*", Judgment of 9 January 2018; and KI143/16, *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018; and KI124/17, Applicant *Bedri Salihu,* Judgment of 27 May 2019; see also some of the key ECtHR cases on which the Constitutional Court's case law of the right to reasoned court decision is built: *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007).

86. According to the abovementioned principles, which are now part of the case law of this Court, in rejecting an appeal, or as in the present case, rejecting a request for revision, the Supreme Court may, in principle, merely approve the reasons for rendering the decision of the lower instance court, in this case the Court of Appeals (see ECtHR cases, *García Ruiz v. Spain*, cited above, paragraph 26; *Helle v. Finland*, application No. 20772/92, Judgment of 19 December 1997, Reports 1997-VIII, paragraphs 59-60; see also the case law of the Constitutional Court cited in paragraph above).

87. Similarly and in the same line of reasoning, the Court also recalls that cases where a court of third instance or appellate court confirms the decisions taken by the lower courts – its obligation to reason decision-making differs from cases where a court changes the decision-making of lower courts. In the present case, the Supreme Court did not change the decision of the Court of

Appeals or that of the Basic Court – rejecting the claim for compensation of damage - but only confirmed their legality, as, according to the Supreme Court, the factual situation was correctly determined and the decision of the Court of Appeals and the Basic Court was consistent with the substantive and procedural law regarding the absolute statutory limitation of the Applicant's claim. Thus, the Supreme Court has fully confirmed the reasoning of the two regular courts according to which the Applicant should have in due time sought protection of its rights and do so before his claim was prescribed on an absolute basis under the legislation in force in the Republic of Kosovo.

88. In this respect, the Court considers that, even though the Supreme Court and the Court of Appeals may not have responded at every issue raised by the Applicants in their request for revision (see, the ECtHR case *Van de Hurk v. the Netherlands*, cited above, paragraph 61), it has addressed the Applicants' substantive arguments as to the application of the substantive and procedural law and potential violations (see, the ECtHR case: *Buzescu v. Romania*, cited above, paragraph 63; and *Pronina v. Ukraine*, Application No. 63566/00, Judgment of 18 July 2006, paragraph 25). In doing so, the Supreme Court has fulfilled its constitutional obligation to provide a reasoned court decision, in accordance with the requirements of Article 31 of the Constitution in conjunction with Article 6 of the ECHR and the case law of the ECtHR and this Court itself.

89. The Court further considers that the Applicants did not substantiate that the proceedings before the Supreme Court or the Court of Appeals were unfair or arbitrary, or that their fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous interpretation of the substantive or procedural law. The Court reiterates its general position that, in principle, the interpretation of the law, both substantive and procedural – also in respect of the issue of statutory limitation, is a primary duty of the regular courts and as such is a matter of legality. (See, case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see joined cases KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62). It is an obligation and a burden on the Applicant to satisfy the Court that his allegations are not merely the allegations of "legality" but that, in fact, the latter raise "the constitutional issues". And, in this case, this is not the case since the Applicant failed to satisfy the Court that his arguments go beyond the scope of legality.

90. The Applicant's dissatisfaction with the outcome of the proceedings before the regular courts, cannot of itself raise an arguable claim of violation of the right to fair and impartial trial (See, *mutatis mutandis*, case, *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; and see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

91. As a result, the Court considers that the Applicant has not substantiated its allegations that the relevant proceedings for rejection of his statement of claim for compensation of damage were in any way unfair or arbitrary and that the

challenged decision of the Supreme Court violated the rights and freedoms guaranteed by the Constitution and the ECHR. (see, *mutatis mutandis*, *Shub v. Lithuania,* no. 17064/06, ECtHR, Decision of 30 June 2009).

92. Therefore, the Applicant's allegation of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, on the questions of reasoning of judicial decisions, is manifestly ill-founded on constitutional basis. As such, this allegation is to be rejected based on Rule 39 (2) of the Rules of Procedure.

Regarding alleged violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR as regards the protection of property

93. In this regard, the Court recalls the Applicant's allegations of a violation of Article 46 [Protection of Property] of the Constitution where it mainly states that *"it was and continues to be registered as an owner"* of the contested cadastral parcels, namely the former shops that are already sidewalk. Furthermore, it states that the regular courts have established that the property belongs to the Applicant and that it is *"vakuf property"* for which no procedures for expropriation of private property for public needs or compensation have been conducted. The Applicant alleges that in his case *"there is no statutory limitation"* and that it is not its fault but that of public authorities that laws have not been properly implemented and that proper expropriation procedures have not been initiated. In this regard, the Applicant again claims that the regular courts *"did not provide clear reasons regarding the appealing allegations and of the revision"* and that *"by not reasoning the judgments, have partially acted, they violated their property right"*.

94. Regarding the allegations of non-reasoning of the court decisions, which the Applicant relates again to allegations of violation of the right to protection of property, the Court recalls its reasoning above, where it was also stated that the regular courts have fulfilled their constitutional obligations to reason the judicial decisions. The Applicant failed to satisfy the Court what was its substantive allegation, which was presented and was not addressed. Therefore, all allegations pf non-reasoning of the court decisions of the regular courts, this Court has already declared as manifestly ill-founded allegations on constitutional basis and will not address them for the second time.

95. Whereas, as regards the right to the protection of property, the Court first cites the provision of Article 46 [Protection of Property] of the Constitution and Article 1 (Protection of Property) of Protocol no. 1 of the ECHR, which establish as follows:

Article 46 [Protection of Property]

"1. The right to own property is guaranteed..
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate

property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated. [...]".

Article 1 [Protection of property] of Protocol No. 1 of the ECHR

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

96. The Court notes that the above Article has a total of 3 paragraphs. The first paragraph provides, in general terms, that the right to property is guaranteed by the Constitution. In the second paragraph, it is sanctioned that the use of property by property owners is regulated by law – be natural of legal persons - is regulated by law and in accordance with the public interest. In the first sentence of the third paragraph, it is clarified that no one may be arbitrarily deprived of their property. In the second sentence of the third paragraph, it is stated that property right is not an absolute right but a qualified right which, under certain conditions, may also be expropriated. Expropriation of property must be legally authorized, necessary or appropriate for the achievement of a public purpose, and followed by adequate immediate compensation mechanisms.

97. In this regard, the Court notes that the ECtHR, in the interpretation of Article 1 of Protocol no. 1, has ascertained that the right to property consists of three fundamental rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 of the ECHR. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognizes that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph (See, *mutatis mutandis*, the ECHR Judgment of 23 September 1982, *Sporrong and Lonnrot v. Sweden*, no. 7151/75; 7152/75, paragraph 61).

98. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules concern particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (See, *mutatis mutandis*, ECtHR Judgment of 21 February 1986, *James and Others v. United Kingdom*, no. 8793/79, paragraph 37).

99. In this respect, having regard to the constitutionality of the challenged decision of the Supreme Court in the light of the allegations of constitutional violation and of the facts presented by the Applicants and those which the Court has noted from the complete case file, the Court finds that the fact that the Applicant's request was rejected, in procedural terms, for absolute statutory limitation of the statement of claim - does not result in a violation of the right to property nor to its peaceful enjoyment. What the Applicant essentially does with its Referral is to challenge the manner in which the regular courts have applied the applicable law in respect of declaring the statement of claim as statute-barred.

100. In this regard, the Court also recalls that in the proceedings before the regular courts it was not disputable that the Applicant owned the two shops in question in the 1950s, nor it was it disputable that they were confiscated. Thus, in the present case, there has been "an interference" on the right of property of the Applicant by the public authorities of that time. However, the Court also notes that the regular courts had never decided on the Applicant's claim on merits because it has submitted it 41 (forty one) years from the moment its property was expropriated. That is, it filed its allegations of unlawful expropriation and without compensation, out of time – according to the reasoning of the regular courts.

101. In this regard, the Applicant's allegations of violation of the property rights are built on whether or not there should be an absolute statute of limitations for its claim. This case, and as raised and substantiated by the Applicant - is a matter of legality and as such cannot, in principle, be considered by the Court.

102. As it is known from the case law of this Court, it is not the duty of the latter to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law that has led the regular court to adopt one decision rather than another – in the present case the law dealing with absolute statutory limitation of the Applicant's claim. If it were otherwise, the Court would be acting as a court of "*fourth instance*", which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of the procedural and substantive law (see, case *García Ruiz v. Spain*, ECtHR, no. 30544/96Judgment of 21 January 1999, paragraph 28; and see also the case KI70/11, Applicants: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

103. Finally, in respect of the restitution of property and the compensation of the property taken by the former regimes or authorities, the Court recalls its reasoning given in several other cases before it, where the general principles in this respect have been emphasized. (See case KI78/18, *Applicant Pashk Malota*, Resolution on Inadmissibility, of 27 February 2019- which cites the ECtHR case law on property restitution, namely: ECtHR Judgment of 4 March 2003, *Jantner v. Slovakia*, no. 39050/97, paragraph 34; ECtHR Judgment [GC], of 10 July 2002, *Gratzinger and Gratzingerova v. the Czech Republic*, No. 39794/98, paragraphs 70-74).

104. In case KI78/18, in paragraphs 49-53, the Court, *inter alia* emphasized that the ECHR and the ECtHR case law: *"(i) does not oblige the Contracting States to issue a Law on Restitution of Property; (ii) allows the Contracting States considerable freedom in the establishment and determination of the scope of the restitution of property and the choice of the conditions applicable to it; (iii) enables the Contracting States to define and/or exclude certain categories from the right to property restitution; and (iv) obliges the Contracting States to respect the right to protection of property guaranteed by Article 1 of Protocol NO.1 of the ECHR, if they have decided to issue a law on restitution of property, as in such cases the protection by this article is a right guaranteed by the ECHR. These are the four general principles regarding the issue of "restitution of property", based on the ECHR and the case law of the ECtHR, already consolidated in this regard".*

105. In this regard, the Court notes that there is no special law in the Republic of Kosovo on the property restitution and, consequently, the claims for restitution of property cannot be based on the guarantees provided by Article 1 of Protocol no. 1 of the ECHR or, *mutatis mutandis*, in the safeguards of Article 46 [Protection of Property] of the Constitution. This is, as explained above, for the sole reason that the property restitution claims cannot be considered to constitute a "legitimate expectation" as long as there is no law on property restitution.

106. Therefore, as a result, the Applicant's allegation of violation of Article 46 of the Constitution in matters of protection of property is manifestly ill-founded on constitutional basis. As such, this allegation is to be rejected based on Rule 39 (2) of the Rules of Procedure.

107. Finally, the Court notes that the Applicant substantiates his allegations also with reference to the various decisions of the foreign courts, in particular the Supreme Court of Serbia [see, Decision Rev. No. 1580/98, of 24 June 1998 as well as decision (without number) of 28 and 29 May 1986], the decisions of the courts in Bosnia and Herzegovina as well as some laws published in the Official Gazette of the Republic of Serbia, such as The Law on Obligational Relationships of 8 December 1997 and the Law on Expropriation (without date, published in the Official Gazette no. 53/95).

108. Regarding these allegations, the Court recalls its position in Judgment KI48/18 which specifically states that: *"The decisions of other courts do not constitute a source of law in the constitutional order of the Republic of Kosovo and may only be used for comparative purposes and for the purpose of determining the existence of a consensus on a particular issue at European or world level."* Further, the same Judgment of the Court also specifies the constitutional position and interpretation according to which: *"only the decisions of the ECtHR have the status of the source of the law in the legal system of the Republic of Kosovo".* (See, the case of the Constitutional Court KI48/18, *Applicant Arban Abrashi and the Democratic League of Kosovo*, Judgment of 23 January 2019, paragraphs 275-277). The same line of reasoning applies to the laws of other countries cited by the Applicant.

109. In this respect, the Court notes, in the circumstances of the present case, that the Applicants have highlighted and cited these decisions of the foreign courts and the laws of a foreign state, which they considered relevant to their case and similar to the circumstances of the present case, but they did not elaborate their factual and legal connection with the circumstances of the present case and have not even argued that they are applicable in the Republic of Kosovo. The Court recalls, in the end, its position that all *"reasoning of other constitutional [supreme] or international courts should be interpreted in the context of constitutional and legal guarantees and in the light of the factual circumstances in which they were rendered"*. (See, case of the Constitutional Court KI48/18, cited above, paragraph 276).

Summary

110. The Court, in conclusion, decides that:

(i) The Applicant's allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR with regard to the reasoning of the court decisions are manifestly ill-founded on constitutional basis, and as such, are to be rejected as inadmissible in accordance with Article 113.7 of the Constitution and Rule 39 (2) of the Rules of Procedure;

(ii) The Applicant's allegations of violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR regarding the property right are manifestly ill-founded on constitutional basis and as such are to be rejected as inadmissible based on Article 113.7 of the Constitution and Rule 39 (2) of the Rules of Procedure;

(iii) The Applicant's allegations of violation of Article 22 paragraph 2, Article 53 and Article 54 of the Constitution regarding the issue of judicial protection of rights are not adequately clarified and as such are to be rejected in accordance with Article 48 of the Law in conjunction with Rule 39 (1) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (1) (d) and 39 (2) of the Rules of Procedure, on 5 February 2020, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

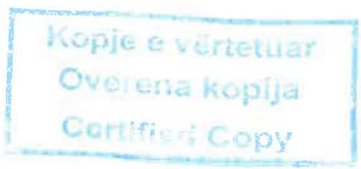
II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and

IV. This Decision is effective immediately.

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

Bajram Ljatifi | Arta Rama-Hajrizi



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