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

Prishtina, on 9 March 2020
Ref. no.:RK 1526/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI194/18

Applicant

Kadri Muriqi and Zenun Muriqi

Constitutional review of Judgment Rev. No. 157/2018 of the Supreme Court of the Republic of Kosovo, of 4 July 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 Kadri Muriqi and Zenun Muriqi, from Peja (hereinafter: the Applicant).

Challenged decision

2. The Applicants challenge Judgment [Rev. No. 157/2018] of 4 July 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [Ac. No. 2743/2016] of 25 January 2018 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [C. No. 896/12] of 18 May 2016 of the Basic Court in Peja – General Department (hereinafter: the Basic Court).

3. The Applicants were served with the challenged Judgment of the Supreme Court on 18 August 2018.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, which allegedly violates the Applicants' fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 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 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR) and Article 1 (Protection of property) of Protocol No. 1 of the ECHR.

Legal basis

5. 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 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 Court

6. On 14 December 2018, the Applicants, through mail services, submitted their Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 20 December 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzie Istrefi-Peci and Nexhmi Rexhepi.

8. On 18 January 2019, the Court notified the Applicants about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On the same date, the Court sent a joint notification to the parties interested in the Referral KI194/18, namely, I.S., H.S., D.S., B.S., Gj.H., and A.D. The Court notified them about the registration of the Referral and sent them a copy of it, providing them the opportunity to present their comments regarding the

Referral. The Court did not receive any comment from the interested parties within the set time limit.

10. On 11 September 2019, the Court notified the Basic Court about the registration of the Referral and requested it to submit to the Court the entire case file related to the Referral KI194/18.

11. On 17 September 2019, the Basic Court submitted the required case file to the Court.

12. On 8 November 2019, the Court, from the original file submitted to the Court, noted that the interested party in Referral KI194/18 is Sh.H., who was also notified about the registration of the Referral and was sent a copy thereof. The Court also provided the opportunity to this interested party to submit her comments regarding the Referral. The Court was informed by the Post of Kosovo that they failed to find the address of Sh.Sh.

13. 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

14. The Applicants purchased an immovable property in 2010. Subsequently, in 2012 they initiated a court proceeding suing their neighbors and seeking "denial of easement and delivery of immovable property". In 2018 all court proceedings in all three stages were completed [Basic Court, Court of Appeals and Supreme Court] regarding the case of the Applicants. In the following, all these facts will be explained chronologically.

Proceedings conducted for confirmation of ownership and sale - purchase of immovable property - the easement in which is the subject of dispute in case KI194/18

15. On 20 June 2008, the Kosovo Property Claims Commission (hereinafter: the KPCC), through group Decision [KPCC/D/A/19/2008] decided that M.M.I. is the sole owner of all parcel no. 5382/4, with possession list no. 9475 CZ Peja, with a total surface area of 500 m2 (hereinafter: the immovable property). Through this Group Decision, the KPCC decided that: (i) M.I.M. is the owner of1/1 of the required property; (ii) M.I.M. is entitled to the possession of the property in question; (iii) the responsible parties or any other person occupying the property will be evicted from the property.

16. On 18 May 2010, the Applicants purchased the abovementioned immovable property from its previous owner, M.I.M. On the same date, they confirmed the sale-purchase contract in the Municipal Court in Peja.

17. On 23 July 2010, the Applicants were provided with Certificate [no. UL-71611071-09475] on the rights of the immovable property for the immovable property in question, stating that the first Applicant, Kadri Muriqi is the owner

of ½ of the immovable property; whereas the second Applicant, Zenun Muriqi is the owner of ½ of the immovable property. Together, the Applicants, brothers, according to the Certificate in question, were the owners of the entire immovable property. Their ownership over this property, as will be seen further, it was never the subject of dispute before the regular courts nor between the Applicants and the interested parties. Disputable throughout the proceedings, as will be explained further, was the border of this property with the neighboring properties of the parties concerned and, more specifically, a road which was opened as an easement for the property of I.S. and which was used also by other neighbors. Also disputable was the moment from which this road was created and whether the easement in question could be extinguished/denied, as the Applicants became the owners of the immovable property in question, while the easement as such was alleged to have existed since the time M.I.M was the owner of the immovable property that was sold to the Applicants.

Proceedings conducted from the time of filing the initial lawsuit until the completion of the 14 court hearings [13 preliminary hearings and 1 main hearing] before the Basic Court

18. On 14 November 2012, the Applicants initially filed lawsuit for "confirmation of ownership" against I.S., Gj.H., A.D., and F.LL. The same lawsuit, was later on a subsequent date specified and reclassified as "lawsuit for denial of easement and delivery of immovable property". The claimants justified their claim by arguing that they purchased the immovable property from its former owner, M.I.M., but later suspected that the cadastral boundaries did not match the situation on the ground and according to them, the interested parties, namely the respondents, used the absence of the owner and have unlawfully usurped his property by moving the border, and have opened a new [disputed road/disputed easement] for access to their immovable property.

19. On 3 June 2013, I.S., the first respondent, in the reply to the lawsuit stated that the Applicants' allegations for usurpation of the immovable property are ungrounded, because he bought his cadastral parcel, adjacent to the parcel of Applicants, in 1973 and since then is in her possession. He stated that he purchased the parcel from D.O. and from the same owner other neighbors also have purchased the land, namely other interested parties. Since then, according to I.S., with the seller D.O. it was agreed that all the owners of the parcels she had sold would widen the road they had access to – as it was narrow – and are using the same road since 1973. Each of the owners, according to I.S., gave them 3 meters from their respective parcels to make the road passable and to use it jointly as a common road - which they regularly use.

20. On 16 July 2013, the Basic Court held the first court hearing to address the Applicants' lawsuit. In this court hearing, the Applicants stood behind their initial statement of claim. The interested parties objected to the statement of claim of the Applicants stating that, in essence, they purchased their properties much earlier and did not usurp any part of the Applicants' property. At the end of the court hearing, the Basic Court, through a procedural decision, approved the Applicants' proposal to inspect the site together with the geodesic expert

and to identify precisely the immovable property of the Applicants. The geodesic expert, Sh.K., was appointed at the same hearing and the next hearing was scheduled for 4 September 2013.

21. On 4 September 2013, the Basic Court held the second court hearing to address the Applicants' lawsuit. According to the minutes, it follows that the Court heard the expertise of the geodesic expert, according to whom: *"The contested parcels which is evidenced by no. 5382/4 CZ Peja in a surface area of 500 m2* [the immovable property in question] *[...] which in cadastral register is evidenced in the name of Kadri Muriqi and Zenun Muriqi* [the Applicants], *is bordered with these cadastral plots: on the northern side with the cadastral parcel no. 5385/7 which is registered in the name of Sh.Sh.; on the eastern side is bordered with the cadastral parcel no. 5382/32 which is registered in the name of M.N., which parcel at the same time divides the parcels of the litigating parties. On the southern part the disputed parcel is bordered with the cadastral parcel no. 5382/5 in the ownership of M.P., on the western side the disputed parcel is bordered with the cadastral parcel no. 5382/30, in the ownership of Xh.U., on the northern side of the disputed parcel on the site lies the cobbled road which according to cadastral register this road extends over all its extent to private property and is not recorded in the cadastral registers as a separate unit".* Subsequently, the minutes of the Basic Court states that: *"the authorized of the claimants* [the Applicants] *without questions and remarks".* However, to the question of the interested party I.S. that in the aero-recording made whether the disputed road exists, the expert of geodesy replied that *"based on the 2004 and 2009 aerial photography the existing route is presented in both cases".* Finally, the court ordered the expert of geodesy to submit his written expertise within seven (7) days. The expert of geodesy submitted his expertise and is part of the original case file.

22. On 30 September 2013, as stated above, the Applicants, through their new lawyer, specified and extended their initial lawsuit. They stated that the original lawsuit did not specify the basis of the statement of claim nor the value of the dispute and are therefore now specifying their legal basis as "denial of easement and delivery of immovable property" with the value of dispute 5,000.00 euro. They also stated that they are now expanding their lawsuit against a new respondent, Sh.Sh., who from now on should figure as the fifth respondent. Specifically, through the specification of their statement of claim, the Applicants requested that the Basic Court renders Judgment, to: (i) establish that respondent I.S. does not have the right of foot traffic easement, tow cart or other vehicle on the contested road; (ii) to oblige I.S. to hand over to the claimants in actual possession the eastern part of cadastral parcel no. 5382/4 in a surface area of 20m2; (iii) to oblige Gj.H. and A.D. to hand over to the Applicants in actual possession the southern part of cadastral parcel no. 5382/4; (iii) to oblige F.LL. and Sh.Sh. to hand over to the Applicants in factual possession the northern part of the cadastral parcel no. 5382/4; and (iv) to oblige the five respondents to bear the costs of the court proceedings.

23. The main allegation of the Applicants' lawsuit was that the respondents I.S., D.S., H.S., and B.S., all of the family S., have no right to cross the road that extends to their immovable property. The main allegation was also the fact that

the respondent I.S. holds in his possession the part of the immovable property of the Applicants in the surface area of 20m2; the respondent Gj.H. holds in his possession the part of 48 m2; the respondent A.D. a surface area of 11m2 and Sh.Sh. a surface area of 14 m2.

24. In counter response to the Applicants' lawsuit, the respondents, namely the interested parties, *inter alia*, pointed out that the road in question has been in continuous and unimpeded use since 1973 and that this road was formed by the then owner of the cadastral parcels, D.O., in agreement with each owner of the neighboring parcels and this road still exists today.

25. On 28 October 2013, the Applicants also extended their statement of claim against H.D.

26. On 9 December 2013, after the failure of some review sessions due to the non-presence of the parties, the Basic Court held the third public hearing to address the Applicants' lawsuit. In this public hearing, the Applicants stated that their lawsuit was withdrawn against Sh.Sh. and H.D., which request was approved by the Basic Court. During the hearing, the Applicants stated that they remained with the rest of their lawsuit; whereas, I.S., the first respondent stated that in 1972 the disputed parcel was a meadow and 5 persons purchased their parcels and agreed to give 3 meters to form the disputed road. According to him, since that year there have been no problems but problems have appeared from the moment the Applicants purchased the immovable property and built their house. According to I.S., the roda was paved with *"cubes"* for 7 years and now the Applicants *"they are trying to stop the road."* In the session, I.S. ptoposed to the Court that their neighbor X. be summoned as a witness. The Applicants also agreed with his proposal for the hearing of this witness and the Court decided to summon the latter as a witness at the next hearing on 23 January 2014. With regard to the Applicants' proposal to go into the field together with the expert of geodesy, the Basic Court stated that a decision about would be taken at the next court session.

27. On 18 February 2014, following the failure of the hearing set for 23 January 2014, the Basic Court held the fourth main trial to address the Applicants' lawsuit. Present at this hearing were: the Applicants' lawyer; the authorized of I.S., the second respondent Gj.H. and fourth respondent F.LL., as well as three witnesses invited by the Court, X. Y., and Z.

28. In this session, the Basic Court, having read their rights provided for in Articles 347.2 and 343 of the Law on Contested Procedure (hereinafter: the LCP), heard all three aforementioned witnesses.

29. The first witness, X., stated that: *"sometime in 1972 those parcels were purchases by the owner D.O., [...] and I am aware that she left the road to through those parcels to sell and other parcels up to I.S. He also stated that at that time the owner D. brought the cadastral expert and measured the parcels one by one [...]. They all had an obligation to make their way up to the house of I.S. and I.S. to pass through that road. I.S. is the first one who started building the house and getting the trucks with tractors to carry for him the*

material of the house". Asked by the Basic Court whether that agreement had was made in writing or orally, witness X. replied that *"the agreement was made in writing that we all gave the equal surface area and the road is 4 meters long and it should be about 80 meters in length up to the house of I.S."* In the sole question of the Applicants; lawyer whether you have registered it as a public road in cadastral evidence, witness X. replied that *"the road is registered in the private property".*

30. The second witness, Y. stated that: *"the first one to buy the property and settled is I.S, then it' was me. in 1974 we started building the house while we settled on it in 1991 [...].We agreed when we bought the parcels to give each one of us a piece of land and the road was foreseen to be 3 meters wide and for 40 years this road has been used by us and by I.S. 4 years ago the road was paved with cubes by the Municipality, and we placed the channel for water and electricity and we all contributed a percentage with the exception of I.S. which we exempted him because of the economic situation. The claimants* [the Applicants] *at the time of purchase he bought with the road, water, electricity and now alleges to close this road".* Asked by the Applicant's lawyer whether he remembered that when building the house on which road you went, witness Y. stated that: *"when I.S started building the house, the road of 3 meters was opened and on that road the material for the construction of the house was carried on that road."* On the other question of the Applicants' lawyer, witness Y. stated that: *"the road we have opened is in a private property, I think it is like that [...] I am certain that the agreement was made in writing, but as a consequence of war it was destroyed".* When asked by the Basic Court whether they had problems with that road, witness Y. replied that *"we have never had a problem with using this road, nor with the respondent I.S. The problem has begun since the claimants* [the Applicants] *have settled there, because if there a possibility to stop it existed* [former owner of the immovable property] *who was the owner of the land but did not stop it".*

31. The third witness, Z. stated that: *"since the time I remember and the way my father told me from the day we bought the parcel in the agreement of the seller of that time, one part was given for the road and one of the first that have started to build the house, I.S. has constructed the house, who started to carry the material for the construction of the house on that road. We bought the house in 1973 and in 1973-74 our house was constructed and after the war, we have requested the Municipality to pave that road with cubes and have regulated the water supply and electricity".*

32. Further in the same session, the Basic Court confirmed in the minutes that without any objection, the Applicants' lawyer, signed the minutes. The Basic Court then granted the Applicants' request to appear together with the expert of geodesy Sh.K.

33. On 17 March 2014, the Basic Court held the fifth court hearing to address the Applicants' lawsuit when it was continued with adducing the evidence of the expertise of geodesy. The latter stated: *"After the discovery of the geodesy network we have started with nature, when on the eastern and western side was shown the cadastral border, whereas in the southern and northern part,*

the reevaluation of the wall on two abovementioned geographical sides was reassessed, on which occasion we will notify the Court in writing about the part that counter proposers hold [the responding parties] *from the parcel of the claiming party* [the Applicants]." In the hearing, the Basic Court obliged the expert of geodesy to present the expertise from the site inspection in writing within 7 (seven) days. The entire record was signed without any objection by the parties.

34. Within the prescribed time-limit, after appearing in the field with the case judge, the expert of geodesy Sh.K., submitted his expertise in written. The subject of expertise was the detailed measurement or survey of the immovable property in question. Judicial expertise highlights all parts that limit the Applicants' immovable property and the current owners/possessors of those neighboring parcels. According to the geodesy expert, the cadastral border for the disputed parcel was marked on the ground, and is shown 4 detail points based on the cadastral records available to the Department of Geodesy of Peja Municipality from the measurement sketch of 1973. The expertise states that after the process of showing these points was made by order of the Basic Court, *"detail recording (survey) of the actual situation in the field, where after calculations we ascertain this situation:*

-The respondent, Gj.H. uses from the parcel of the claiming party (5382-4) a surface area of: 48m2 [...]
-The respondent, A.D. uses from the parcel of the claiming party (5382-4) a surface area of: 11m2 [...];
-The respondent, Sh.S. uses from the parcel of the claiming party (5382-4) a surface area of: 14m2 [...];
-The cubic road on the ground passes through the parcel of the claiming party in a surface area of : 76m2. [...] The length of the road that passes through the parcel of the claiming party is 22.41m from the point: r2 up to r1. [...]"

35. As additional clarification, in his judicial expertise, the expert of geodesy stated: *"The parcel of the claimant* [the Applicants] *in the textual part - Property Certificate has a surface area of: 500m2, while in the graphic part – from points of external cadastral boundaries (points 1, 53, 4, 3, 477, and 2) has a surface area of: 560 m2. Thus, the difference is 60 m2. This difference arouse and was inherited from the division and formation of the parcel of the claiming party in the sketch of 1973. The claiming party* [The Applicants] *currently in the field has a usable surface area of: 411 m2. This surface is without the parts used by neighboring respondent parties and without the road section* [disputed]."

36. The Basic Court sent to the Applicants a copy of the abovementioned judicial expertise prepared by the expert of geodesy.

37. On 2 April 2014, the Applicants submitted their observations on the abovementioned expertise of Sh.K. stating: *"the expert did not physically mark cadastral points 1, 2, 3, 4" and that, according to them*, the surface area of the parcel was not specified, which Gj.H. occupied with the house; the usurped surface of Y.S. was not specified on the eastern side; th surface usurped by the

possessor F.LL. was not accurately measured, namely the owner Sh.S. By this letter, the Applicants also withdrew the lawsuit filed against F.LL. as he was the owner of the neighboring parcels, but was not Sh.S., who they requested to re-qualify again as the responding party.

38. On 10 April 2014, the Basic Court held the sixth hearing to address the Applicants' lawsuit. At this hearing, the Applicants requested the issuance of judicial super-expertise. By a procedural Decision in the same session, the Basic Court rejected the Applicants' request for super-expertise of geodesy. It was also decided that to the claimant Sh.Sh. be appointed a temporary lawyer as he was abroad.

39. On 15 April 2014, the Basic Court held the seventh hearing to address the Applicants' lawsuit. At this hearing, it was decided to withdraw the lawsuit against F.LL., the Basic Court will render a decision, and on extension of lawsuit against Sh.Sh., it will decide after notifying the latter on the lawsuit filed against him.

40. On 13 May 2014, the Basic Court held the eighth court hearing to address the Applicants' lawsuit. In this session, the Applicants requested that the geodesy expert be invited to the next session to clarify the Applicants' observations submitted in writing on 1 April 2014 on the court expertise. The Basic Court granted the Applicants' request and decided to invite the expert of geodesy Sh.K. for the next session. Finally, the Applicants' lawsuit against F.LL was considered as withdrawn and it was decided that Sh.Sh. will be summoned to declare about the extension of the lawsuit also against him.

41. On 2 July 2014, the Applicants, through a new lawyer, further specified and extended their lawsuit against the three sons of the first respondent I.S., namely against H.S., D.S. and B.S.

42. On 3 July 2014, the Basic Court held the ninth court hearing to deal with the Applicants' lawsuit. At this hearing, among other things, it was requested to postpone it, because the responding party Sh.Sh. was expected to personally come to Kosovo from Germany. This request was approved and the session was postponed for 27 August 2014.

43. On 27 August 2014, the Basic Court held the tenth court hearing to address the Applicants' lawsuit. In this hearing, the Applicants requested that in the next hearing be summoned two experts of geodesy, F.H. and Sh.K. given that, according to them, their expertise contradicts each other and to determine the factual situation it is necessary to inspect the site together with the experts. The Basic Court approved the Applicants' request and decided to summon the two proposed experts for the next hearing. [Clarification: Expert of geodesy F.H. presented his expertise on 16 December 2011].

44. On 30 September 2014, the Basic Court held the eleventh court hearing to address the Applicants' lawsuit. In this hearing was approved the Applicants' claim that the two experts of geodesy, Sh.K and F.H., to clarify their expertise given in writing and to provide the responses for four points or the coordinates

requested by the Applicants. At this hearing, the Applicants requested the Basic Court to oblige the expert of geodesy to make notes and determine the 4 coordinate points of the contested parcel as well *"to accurately and graphically and numerically determine the part of the occupied parcel"*. Thereafter, the Court, by procedural Decision, decided to approve the Applicants' proposal and oblige both experts of geodesy to provide their respective explanations regarding the 4 coordinate points required by the Applicants. During the hearing, the experts testified and provided their respective explanations and all those explanations and statements are reflected in the minutes of the hearing which was also received and signed by the Applicants' lawyer.

45. On 12 June 2015, the Applicants also submitted, in connection with their lawsuit, a request for a security measure by which they requested *"prohibition of passage, in any form, through the property-parcel of the claimant* [the Applicants]." According to them, this measure should be taken *"urgently by the Court to avoid the irreparable damage that may suffer, given the circumstances in which they are."*

46. On 20 July 2015, the Basic Court held the twelfth court hearing to address the Applicants' lawsuit. At this hearing, the Applicants proposed to appoint another expert group, because in the first expertise it was found that the surface area of the 27m was usurped by Sh.Sh., whereas from the second expertise it is concluded that we are dealing with surface area of 14m2 – which results in a large difference in the contested surface area. Through a Decision at the same hearing, the Basic Court decided to reject the Applicants' proposal to issue the super-expertise.

47. On 14 September 2015, the Basic Court held the thirteenth court hearing to address the Applicants' claim. At this hearing, the Court obliged the Applicants to regulate their request for a security measure so that it can be examined; otherwise, it will be considered withdrawn.

48. On 17 September 2015 and 12 October 2015, the Applicants adjusted their request for a security measure and further specified it.

49. On 18 May 2016, the Basic Court held the fourteenth court hearing to address the Applicants' lawsuit. The hearing of this date was the main hearing. At this hearing, the Applicants stated that their right to possession of property is being denied and favored by the respondents. Further, the Basic Court decided to adduce the evidence in this case and as such read and considered the following evidence: (i) The sale-purchase contract of the immovable property conclude3d between the Applicants and M.I.M. and the certification of the latter in the Municipal Court in Peja; (ii) Certificate of Ownership confirming the ownership of the Applicants; (iii) Copies of the plan of 23 July 2010; (iv) Decision of the KPCC; (v) Decision of the Municipal Court in Peja No. 17/11 of 16 December 2011 through which, in the contested procedure, was assigned the boundary based on the official cadastral records of 1973 with one of the neighbors A.U. of the Applicants, whereas for other disagreements with other neighbors, the Applicants were instructed to file lawsuit in the contested

procedure to resolve their dispute; (vi) the expertise of the expert of geodesy F.H. of 16 December 2011; (vii) the expertise of the expert of geodesy Sh.K. of 16 July 2013, copy of the plan, sketch of measurement and ownership certificates, sketch of 1973; (viii) orthophotos of 9 October 2010; and (ix) all other documents in the case file C. No. 896/12. As the Applicants had no objection, the Basic Court gave them the opportunity to give their final word. Regarding the latter, the Applicants finally stated: *"I have provided all the evidence proving that I am the owner of the disputed property the release of which is requested by the respondents, the orthophotos prove that the respondents at different times have pushed the boundaries and instead of the previous road have opened a new road through the property now of the claimants, they have done that without any legal right, as they are not the owners of the property which they possess and from which they enter the property of the claimants, the respondents have not brought any evidence that would substantiate their claims to possess the claimants' property [...]I therefore, request the court to approve the claimants' claim".*

Proceedings conducted in the regular courts to decide on the Applicants' lawsuit for "denial of easement and delivery of immovable property" and the Applicants' request and for security measure

Decision making in the Basic Court

50. On 18 May 2016, the Basic Court, by Judgment [C. No. 896/12], rejected the statement of claim of the Applicants in its entirety as ungrounded by emphasizing the said inadmissibility through the five items stated in the enacting clause of that Judgment.

51. In this regard, the Basic Court decided to reject as ungrounded: (1) the Applicants' statement of claim to establish that the responding parties [father I.S. and his sons H.S., D.S. and B.S., and other neighbors A.D., Gj.H. and Sh.Sh.] do not have the right to walk, by towing cart or other vehicle in the northern part of the cadastral parcel in question; (2) the Applicants' statement of claim I.S. to deliver in free and factual possession the eastern part of the said cadastral parcel; (3) the Applicants' statement of claim to oblige Gj.H. and A.D. to deliver in free and factual possession the southern part of the said cadastral parcel; (4) the Applicants' proposal for the issuance of an interim security measure; and (5) the Applicants' statement of claim to pay the costs of the contested procedure.

52. The Basic Court explained that it is not disputed that the Applicants purchased the immovable property in question with a surface area of 500 m2, and that both Applicants are co-owners of ½ of the ideal part of this immovable property. Further, it is not disputed that they were not only given possession and use of only the surface area of 411 m2, nor from the total property of the Applicants 76 m2 are road, 14 m2 are in possession of Sh.Sh., 48 m2 in possession of Gj.H., and 11 m2 in possession of A.D. Disputable, according to the Basic Court, during the main hearing *"was the issue filed by the Applicants, according to whom, the respondents without legal basis and in unlawful manner keep the property of the claimants* [the Applicants] *and*

that: the respondents [in question] *are not entitled to easements by foot, cart, tow or vehicle over the claimants' immovable property* [the Applicants] *as the road in a surface area of 72 m2 lies in the claimants' property which road was not established and recorded in the registers in the land books within the meaning of Article 51, 52, 53 and 54 të BPLR* [Law on Basic Property Legal Relations]. *Also, the respondent I.S., a surface area of 20 m2, Gj.H., a surface area of 48 m2, and the respondent A.D., 11 m2, hold unlawfully the claimants' property , which release is requested by lawsuit."*

53. In this regard, The Basic Court stated that in determining this factual situation it heard the statements of witnesses X., Y., and Z. [see their statements in paragraphs 28-31 of this Resolution, which stated, *inter alia,* that the Applicants *"when they purchased the land, they bought it with the* [contested] *road"*. In addition to the witnesses, the Basic Court in its Judgment stated that from the expertise of the expert of geodesy, Sh.K., it is determined that Applicants' immovable property with a surface area of 500 m2, the respondent Gj.H. uses 48m2 of the Applicants' immovable property; the respondent A.D. uses 11 m2 of the Applicants' immovable property; the respondent Sh.Sh. uses 14 m2 of the Applicants' immovable property. The Basic Court states that the expert of geodesy concluded that *"the cubic road passes through the plots of the claimants* [the Applicants] *with a surface area of 76 m2"* and he explained that the Applicants *"According to property certificate has a surface area of 500m2, while in the graphic part – from points of external cadastral boundaries (points 1, 53, 4, 3, 477, and 2) has a surface area of 560 m2. Thus, the difference is 60 m2. This difference arouse and was inherited from the division and formation of the parcel of the claiming party* [the Applicants] *in the sketch of 1973"*.

54. In the subtitle of the Judgment of the Basic Court as to "Legal reasoning", The Basic Court noted that it could not agree with the Applicants' claim that the road which was the subject of the dispute is not registered in the cadastral registers, does not appear as a road but is the private property of the Applicants and that their statement of claims is supported by Articles 51, 52, 53 and 54.2 of the LBPR, because, according to the Basic Court:*"the statement of claim of the claimants is ungrounded, within the meaning of Article 58 of the LBPR, the real easement shall cease if the owner of the servient tenement has opposed to its exercise and the owner of the dominant tenement hasn't been exercising his/her right for three consecutive years, or of the owner of the servient tenement can request cessation of the real easement when it becomes unnecessary for the use of the dominant tenement or when it comes to cessation of some other reason due to which it has been established."* It was further stated that *"it resulted and it was substantiated by facts and evidence that the road, subject of dispute, which denial is requested by the claimants , has existed since 1973-74, the facts established by testimonies of the witnesses X., Y. and Z., to whom the court gave trust because their testimony match also with other evidence in the case with the measurement sketch no. 13 of 21.08.1973, issued by the Municipality of Peja, when there is a division of parcels: 1) I.S., parcel no. 5382/29; 2) M.M. parcel no. 5382/4, now belongs to the claimants; parcel no. 5382/30, B.U., etc, and with the agreement of the owners of immovable property and the access road for the owners of the*

above parcels was formed and the road, subject of dispute, was used uninterruptedly by previous owners and is still used by the current owners, for which the claimants' claim on this ground also had to be rejected".

55. At the end, the Basic Court stated that it agrees with the Applicants that the right to property is guaranteed by the Constitution, international norms and law, but, according to her, they failed to prove the ground of their statement of claim *"namely they failed to substantiate that the respondent had illegally occupied their property"*. As to their request for a security measure, the Basic Court held that the latter should be rejected as ungrounded because the Applicants failed to substantiate the risk that could be caused.

56. Finally, the Basic Court rejected in entirety the statement of claim of the Applicants as ungrounded.

Decision-making in the Court of Appeals

57. On 22 June 2016, the Applicants filed appeal with the Court of Appeals against the abovementioned Judgment of the Basic Court, alleging essential violations of the provisions of the contested procedure, incorrect and incomplete determination of the factual situation and incorrect application of substantive law, with the request to modify the Judgment of the Basic Court and to approve their statement of claim as grounded. Specifically, they complained that the factual situation was not correctly determined and their request for super-expertise was not approved.

58. On 25 January 2018, the Court of Appeals by Judgment [Ac. No. 2743/2016] rejected as ungrounded the Applicants' appeal and upheld in entirety the abovementioned Judgment of the Basic Court.

59. As to the Applicants' allegations of erroneous and incomplete determination of the factual situation, the Court of Appeals reasoned that such allegations *"are unfounded and without basis, on the grounds that, with no convincing and substantiated evidence, have failed to substantiate any other factual situation than that established by the first instance court, in order for the court of second instance to render a decision different from that which the court of first instance has taken"*. Further, as to this allegation, the Court of Appeals stated that:*" court of first instance, based on evidence relevant expertise of geodesy, witness statements and indisputable facts, has rightly established the fact that the claimants without right seek to deny the right of an easement to the respondents, who according to the assessment of evidence contained in the case file, a road for which the claimants seek ti deny the easement, the respondents used it since 1973-1974 and with regard to it, there has never been any obstacle"*.

60. The Court of Appeals further reasoned that the Applicants *"cannot claim a right that the previous owner, namely the seller of the particular case did not have, from whom the claimants purchased the immovable property in 2010"*. According to the Court of Appeals, the appealing allegation that the claimants have usurped the road which is the subject of the dispute also is ungrounded,

because *"in 2010 they have purchased their property along with the part of the road which constitutes the parcel as a whole, a fact that also results from geodesy expertise"*. For the road that exists and for which there were no obstacles for many years and the legal requirements for extinguishing, the denial of the easement are not met, then, according to the Court of Appeals, the Basic Court *"has rightly decided to reject the claimants' statement of claim"*.

61. As to the Applicants' allegations of essential violations of the provisions of the contested procedure, namely on the issue of experts and super-expertise required by the Applicants, the Court of Appeals reasoned that such allegations are also ungrounded. In this regard, the Court of Appeal reasoned that: *"[...] the appealing allegation of the claimants for super-expertise is ungrounded because during the evidentiary procedure when the evidence was read and administered, among them the expertise in the minutes of 18.05.2016, there was no objection from the claimants, but it was marked the claimant with no objection. This difference in meters stated by the claimants, appears in the opinion of experts, but according to the assessment of the Court of Appeals, this difference is not recorded, but only ascertained, because the easement in the present case is not being created, since it has already existed as such."*

62. The Court of Appeals further stated that: *"during the hearings there was no proposal by the claiming party to invite the experts who performed the expertise and in such a situation it cannot be said that there has been a violation of Article 362.1 of the LCP. However, the court of first instance had no reason to act in accordance with Article 144.1 and 147.1 of the LCP, thus the allegation of the claimants was rejected as ungrounded by the Court of Appeals referring to the said provisions,. It is a fact that the claimants have requested that they be provided super judicial expertise, but it has been rejected by the first instance court for the fact that it is unnecessary, as the Court of Appeals now considers, because it is important that the factual situation is correctly and lawfully determined and that there is no usurpation as unjustly claimed by the claimants. [...] So it cannot be said that there is usurpation of property as ascertained by the Kosovo Property Claims Commission, because the word usurpation refers to ownership where the property is intended as a whole, not to the easement of the present case in particular, which in the existing situation cannot be said to be usurpation. Then the part of the immovable property that is used as a road by the respondents of the present case, is the fact that it figures as property of the claimants, but in Kosovo there are many such situations, when, although it is a road (easement), the property still appears in the name of the owner of the parcel through which the road passes, and is not registered as a road"*.

63. As to the Applicants' allegations that the Basic Court has erroneously dealt with the case from the perspective of "extinction of easement" rather than elaborating it from the prism of "denial of easement", The Court of Appeals, emphasizing the legal provisions [Articles 51, 54 and 58 of the LBPR; Article 260 of the Law No. 03/L-154 on Property and Other Real Rights; and legal literature] reasoned that: *"this is not because the denial of the easement cannot stand because the latter in a permanent way has existed as such for years and is established, and there is no legal reasoning for its denial as the*

claimants have unjustly claimed. [...]in the present case, by the fact that the claimants seek denial of the easement of the respondents, then it follows that it is about the extinguishment of the easement that has existed as such for a long time while the requirements of the provision of Article [54] *mentioned above are not met".*

64. The Court of Appeals concluded its reasoning by stating that no matter that a part of the immovable property of the responding parties still exists in the name of someone else but they possess that property for which needs the road, namely the easement of the present case It is still necessary and indispensable. In accordance with Article 54 of the LBPR, the Court of Appeals clarified, *"The real easement shall be acquired through adverse possession when the owner of the dominant tenement has factually exercised the easement during the period of 20 years, and "the owner of the servient tenement hasn't objected to that".* Therefore, based on the factual situation and these legal provisions, the Court of Appeals also held that the Applicants' statement of claim *"does not have legal basis and as such was rightly rejected by the first instance court".*

65. Finally, the Court of Appeals rejected the Applicants' appeal in its entirety and upheld the Basic Court's decision in its entirety.

Decision-making in the Supreme Court

66. On 14 March 2018, the Applicants filed a request for revision with the Supreme Court on the basis of two main allegations, namely (i) violation of the provisions of contested procedure and (ii) erroneous application of substantive law.

67. In this regard, the Applicants alleged before the Supreme Court that: their evidence through which they had requested that former landowners be heard as witnesses has not been examined; no ortho-photos and aero-photography of 2004 are seen where I.S. for access to his house used another road from eastern side; the court of first instance did not approve their request for super-expertise; the Court of Appeals *"did not provide any reasoning for the violations committed by the first instance court"* nor did it provide any justification as to the extension of the claim against Sh.Sh. According to the applicants they were not aware that the immovable property they purchased from the former owner was *"burdened with real claims from anyone or the respondents".* The route that the respondents use, according to the Applicants in their request for revision, *"they have not acquired it on any legal basis but on an unlawful basis, by usurpation, since the respondents do not substantiate it with either of 3 grounds of acquisition of easement foreseen by Article 51 of the LBPR."*

68. On 4 July 2018, the Supreme Court by Judgment [Rev. No. 157/2018] rejected as ungrounded the Applicants' request for revision. Therefore, the Supreme Court upheld the decision of the Basic Court and the Court of Appeals to reject the Applicants' statement of claim as ungrounded.

Applicants' allegations

69. The Applicants allege that the Supreme Court violated their rights guaranteed to: (i) fair and impartial trial under Article 31 of the Constitution in conjunction with Article 6 of the ECHR; (ii) protection of property under Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR and (iii) rights to judicial protection of rights and effective remedy under Article 54 of the Constitution in conjunction with Article 13 of the ECHR.

70. The Applicants allege that they submitted to the regular courts evidence and facts that the former owner of the disputed property from which they purchased the property acquired full ownership of that property through the KPCC Decision and that the latter ordered the neighbors who usurped it to release it. The decision of this Commission, the Applicants claim, became final.

71. The Applicants further state that the former owner sold and handed over the property in question *"without any encumbrance or easement, and that the neighbors had not vacated the property entirely as well as the neighbors on the east side of their plot had opened a road with surface area of 70 square meters on the northern side"*. They claim in this respect that, in support of this fact, the Applicants proposed to the regular courts the facts, as was the final decision of the Commission KPCC/D/A/19/2008 of 20 June 2008 as well as orthophotos from the 2004 and 2009 aero-photographs from which, according to them, it is clearly seen that between 2004 and 2009, the eastern neighbors with the surname S. *"had closed the wide road then through their possession and they opened a new road through the Applicants' parcel now"*.

72. The Applicants also point out that the regular courts proposed that the former owners be heard as witnesses [I.M., M.P. and M.N.] and to prove that the eastern neighbors of the family S. were not owners of the parcel they possessed – which they claimed as the dominant parcel – and that they did not register their right to servitude in the Immovable Property Register. Therefore, according to the Applicants, *"according to the legal norms in force they did not have the right to acquire the right of easement over their parcel"*.

73. Regarding Judgment [C. No. 896/12] of 18 May 2016 of the Basic Court, the Applicants allege that it was unfair and was not impartial. Judge of the case, according to allegation, *"exercised its authority arbitrarily as it did not, during the proceedings, examine the allegations and evidence supporting those allegations of the claimant-applicant, whereas from the respondent did not seek evidence to support the legality of the right to possess the Applicant's parcel."* They state that Judgment [C. No. 896/12] of 18 May 2016 of the Basic Court *"is not fair as it is not reasoned in the procedural and substantive level"* and through the latter *"the facts and evidence submitted by the Applicants have not been examined"*.

74. They emphasize that their request for super-expertise has been arbitrarily rejected by the Basic Court; the proposed witnesses have not been summoned to testify; have not been asked about the decisive evidence proposed by the

Applicants with regard to the orthophotos of 2004 and 2009; the legal norms on the basis of which the required legal protection was rejected and the legal norm on the basis of which this protection was granted to the respondents are not described. This Judgment, in their view, does not reflect an unbiased assessment of the facts and evidence submitted by the parties.. This Judgment has already fulfilled the will of the respondents and the witnesses proposed by them and created a new factual situation different from the real one.. Such a new factual situation, according to the Applicants, has been established solely on the basis of the statements of witnesses-neighbors of the respondents, who stated that there was a written agreement between neighbors in the 1970s for the opening of the disputed road, but that the Applicants consider that the statements of these witnesses clearly show that *"there was a preliminary agreement between the respondent and their witness neighbors, to testify that this road was not opened after the war but was open in the 1970s"*.

75. Regarding the Judgment [Ac. No. 2743/2016] of 25 January 2018 of the Court of Appeals, the Applicants point out that it is also incompatible with Articles of the Constitution and the ECHR, which they claim to have been violated. According to them, it is clearly seen that the said Judgment did not examine the facts and evidence filed in the Applicants' appeal and that the latter is based *"in the unrealistic factual situation created by the challenged Judgment and describes the allegations from the challenged Judgment* [of the Basic Court]". This Judgment, according to them, did not provide the reasoning required in the appeal, as to why in this case were not applied Articles 124, 259 and 295.p3 of LPRR, in accordance with UNMIK Regulation 2002/22.

76. Regarding the Judgment [Rev. No. 157/2018] of 4 July 2018 of the Supreme Court, the Applicants state that it is neither in compliance with the Articles of the Constitution and the ECHR, which they claim to have been violated. According to them, the Supreme Court, through its Judgment did not give any reasoning that would convince the Applicants that their claims in the revision have been taken into consideration. They consider that in the challenged Judgment *"there are no replies and examination of facts and evidence filed in the revision"*, but merely, according to them, the claims of the Judgments of the Court of Appeals and the Basic Court are repeated.

77. In general, on all decisions taken by the regular courts, namely the Basic Court, the Court of Appeal and Supreme Court, the Applicants claim that they should give convincing reasons on the basis of which legal norm has acquired the right of possession over the disputed parcel of the respondent, namely the interested parties. This is mainly, according to the Applicants, given the fact that they had lost this right by the final decision of the Kosovo Property Claims Commission. KPCC/D/A/19/2008 of 20 June 2018 in which decision it was finally established *"clearly who has the property right and possession of 1/1 of this property and ordered all others (including the respondents* [the interested parties]*) to give up the possession of the property."*

78. In this regard, the Applicants emphasize that the decisions of the regular courts, when considering their case, did not apply the same norms as in similar cases dealt with by this Court, and in this regard, the Applicants refer to case

KI67/16 as to the principle *res judicata*; the joint cases KI58/09 and others regarding the legitimate expectation; and case KI89/12 regarding the establishment of easement.

79. Finally, the Applicants request the Court as follows:

(i) To declare the referral admissible;
(ii) To declare invalid the challenged Judgment of the Supreme Court;
(iii) To oblige the Supreme Court to render another Judgment which would recognize the Applicants' right to possession in a peaceful and unimpeded manner the entire property, namely the cadastral parcel No. 5382/4.

Relevant constitutional and legal provisions

The Constitution of the Republic of Kosovo

Article 31 [Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

[...]

Article 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.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.
5. Intellectual property is protected by law.

Law on Basic Property Relations (LPBR), of 30 January 1980, applicable to the circumstance of case KI194/18

Chapter III
THE EASEMENT

Article 49

The real easement is the right of the owner of One real estate ("the dominant tenement") according to which for the needs of such real estate he/she can exercise certain acts on the real estate of another owner ("the servient tenement") or to request from the owner of the servient tenement to restrain him/herself of exercising certain acts that otherwise he/she could exercise on his/her real estate.
The real easement can be established either for certain period of time or for certain season of the year.
If the dominant or servient tenement is the public means in a public legal entity, then workers and other working people in such a public legal entity have the rights and responsibilities that have holders of the rights and responsibilities that result from the real easement, unless otherwise prescribed by law or contract.

Article 50

The real easement shall be exercised in a way in which the servient tenement is the least loaded (burdened).
If for exercise of the real easement it is necessary to use some device or to take some action, the costs of maintenance of such a device and undertaking such actions shall be borne by the owner of the dominant tenement.
If such a device and action also serve for the interests of the owner of the servient estate, the costs of maintenance of such a device and costs for undertaking such an action ° shall, in proportion with the benefits they get, be borne by both owner of the dominant and
owner of the servient estate.

Article 51

The real easement shall be established by legal work, decision of the government authority and adverse possession.

Article 52

On the basis of legal work the real easement shall be acquired by registration into the public notary (cadastral) book, or in some other appropriate way prescribed by law.

Article 53

By decision of a court on division of property or by decision of some other government authority the real easement shall be established when the owner of the dominant tenement in whole or in part can not use such tenement without corresponding use of the servient tenement, as well as in other cases defined by law.
The easement from paragraph 1 of this article shall be acquired on the day of decision validity, unless otherwise prescribed by law.
On request of the owner of the "servient" tenement the competent government authority shall also determine the corresponding compensation that the owner of the dominant tenement shall pay to the owner of the servient tenement.

Article 54

The real easement shall be acquired through adverse possession when the owner of the "dominant tenement has factually exercised the easement during the period of 20 years, and "the owner of the servient tenement hasn't objected to that.
The real easement can not be acquired through adverse possession if it has been exercised by misuse of the owner's trust or holder of the servient tenement, by force, deceit or if the easement has been ceded until revocation.

Article 55

The real easement over the real estate that is the public property incorporated within some public legal entity can not be acquired by adverse possession.

Article 56

The owner of the dominant tenement can request that toward the owner of the servient tenement the existence of the real easement be established.
For an appeal based on paragraph 1 of this Article shall accordingly be applied provisions in Article 37, paragraph 2 of this law.

Article 57

If the owner of the dominant tenement is groundlessly prevented or obstructed to exercise his/her real easement, he/she may lodge a complaint asking interruption of such prevention or obstruction.

Article 58

The real easement shall cease if the owner of the servient tenement has opposed to its exercise and the owner of the dominant tenement hasn't been exercising his/her right for three consecutive years.
The owner of the servient tenement can request cessation of the real

easement when it becomes unnecessary for the use of the dominant tenement or when it comes to cessation of some other reason due to which it has been established.
The real easement shall cease if it is not exercised during the period of time that is necessary for its acquisition through adverse possession, when the same person becomes owner of the servient and dominant tenement or when the dominant or servient tenement become ruined.

Law No. 03/L-154 on Property and Other Real Rights

Article 260 Termination of Real Servitudes

1. The termination of a real servitude requires the owner of the dominant plot to give notice of the intent to terminate the real servitude and an entry into the immovable property rights registry.
2. The owner of the subservient plot can demand the termination of a real servitude if it is no longer necessary for the use of the dominant plot or if the circumstances since the creation of the servitude have otherwise substantially changed. An entry into the immovable property rights register is required.

Admissibility of the Referral

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

81. 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".

82. In addition, the Court also refers to the admissibility requirements as defined by the Law. In this regard, the Court first refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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...".

83. In their Referral before this Court, in essence, the Applicants raised three allegations. The first allegation has to do with (i) a violation of their right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The second allegation concerns (ii) a violation of the right to the protection of property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR. And finally, the third allegation concerns (iii) a violation of the right to judicial protection of rights and effective remedy under Article 54 of the Constitution in conjunction with Article 13 of the ECHR.

84. As regards the fulfillment of these criteria, the Court finds that the Applicants are authorized parties challenging an act of a public authority, namely the Judgment [Rev. No. 157/2018] of 4 July 2018 of the Supreme Court, after exhausting all legal remedies. Regarding their rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR [first allegation] and Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR [second allegation], the Court considers that the Applicants have clarified their allegations in accordance with the criteria required by Article 48 of the Law. They also submitted the Referral in accordance with the deadline established in Article 49 of the Law. Therefore, the Court will further consider the other admissibility criteria in respect of the first allegation of a violation of the right to fair and impartial trial, and the Applicants' second allegation of a violation of their right to protection of property. With regard to these two allegations, hereinafter and jointly, the Court will also examine whether the Applicants have fulfilled other admissibility criteria laid down 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."

85. The Court notes that based on paragraph (2) of Rule 39 of the Rules of Procedure, it may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicants have not sufficiently proved and substantiated their claim of violation of their rights guaranteed by the Constitution. In this regard, the Court recalls the Applicants' respective allegations summarized in paragraphs 68-78 of this Resolution.

86. The Court also recalls the substance of the case which is as follows: Referral KI194/18 comes as a result of a neighborhood dispute about the right of easement, namely crossing a road in a village in the municipality of Peja. The Applicants, two brothers, purchased an immovable property, the exact dimensions of which will be explained in the section of facts. They managed to

register the latter as their joint property in the cadastral register of the Municipality of Peja, so that each of them was the owner of ½ of the entire immovable property. The fact that the Applicants were the legitimate owners of the property in question was never disputable in the proceedings before the regular courts. Contested throughout the court proceedings was whether the neighbors were entitled to an easement on the road passing through and alongside their joint property or not. As a result, they initially filed lawsuits against the possessors/owners of neighboring properties, I.S., Gj.H., A.D., and F.LL. and later, with specification and final extension of the lawsuit, also against Sh.Sh. and the sons of I.S, namely, H.S., D.S., B.S. Against F.LL, another neighbor, they have withdrawn their lawsuit after realizing that he was neither the owner nor the possessor of the neighboring parcel. In conclusion, the responding parties in this case and consequently the interested parties in case KI194/18 are seven in tota;, namely the parent I.S. and his 3 sons H.S., D.S., and B.S., as well as Gj.H., A.D., and Sh.Sh. Following the conduct of the court proceedings to address the Applicants' allegations set out in their lawsuit "for denial of easement and delivery of immovable property"; after hearing responses to lawsuits filed by the interested parties; after the expertise of the geodesy and hearing of neighboring witnesses and, after a total of 14 hearing sessions, the Basic Court decided to reject the Applicants' lawsuit in its entirety deciding, essentially, that the easement has already been established for this road since 1973-74 and since then all the neighbors have used the road without any hindrance and that the former owner has never complained about it. The Court of Appeals and the Supreme Court subsequently upheld the decision of the Basic Court ultimately deciding the rejection of the Applicants' lawsuit. The decision of the Supreme Court is being challenged before the Constitutional Court, regarding the two other lower court decisions which rejected the Applicants' statement of claim as ungrounded.

Regarding the allegation of violation of Article 31 of the Constitution and Article 6 of the ECHR as to the reasoning of court decisions; super-expertise and witness testimony proposed by the Applicants

87. The Applicants essentially complain that in their case the regular courts have violated their right guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR by: (i) not sufficiently reasoning court decisions; (ii) not approving their request for super-expertise; and (iii) not summoning the witnesses proposed by them.

88. In this respect, the Court recalls the final petitum of the Applicants, where they request that the Judgment [Rev. No. 157/2018] of 4 July 2018 of the Supreme Court should be annulled, and to oblige the latter to render a new Judgment recognizing the right of the Applicants to possess their property peacefully and without hindrance.

89. In light of these allegations, the Court first recalls that the Court of Appeals rejected their appeal against the Judgment of the Basic Court and subsequently the Supreme Court rejected their 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, but also the Basic

Court during the initial decision on the statement of claim, have 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: ECtHR) and the case law of this Court.

90. The foregoing conclusion was reached by the Court after examining the lawsuit and all appeals filed by the Applicants in relation to the court decisions rendered by the regular courts.

91. In this regard, the Court recalls that the Court of Appeals responded to all of the Applicants' allegations of essential breach of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law, including the specific allegation of rejection of their request for super-expertise. For more in this regard, see in detail the reasoning of the Court of Appeals, which is broadly and specifically reflected in paragraphs 56-64 of this Resolution – where a response has been given in relation to the Applicants' appealing allegations.

92. As to the Applicants' allegations of essential violations of the provisions of the contested procedure, namely on the question of experts and super-expertise required by the Applicants, the Court of Appeals stated that: *"[...] does not stand the claimants' appeal for super-expertise because during the probationary proceedings when the evidence was read and administered, including the expertise in the minutes of 18.05.2016, there was no objection from the claimant, but the claimant was marked with no objection. This difference in meters stated by the claimants appears in the expert opinion, however, according to the Court of Appeals' assessment, this difference is not recorded, but it is only ascertained because the easement in the present case is not being created because it has already existed as such".*

93. Further, the Court of Appeals also stated that *"it is a fact that* [the Applicants] *have requested that super judicial expertise be provided, but this has been rejected by the first instance court, due to the fact that it is unnecessary, as the Court of Appeals now considers, because it is important that the factual situation is correctly and lawfully determined and that there is no usurpation as unjustly claimed by the claimants."* Finally, after having considered all the substantive allegations, the Court of Appeals rejected the Applicants' appeal as ungrounded.

94. Further, and given that the last challenged decision of the regular courts is that of the Supreme Court, the Court will further explain why it considers that the Applicants' allegations of a violation of their rights by the Supreme Court, are not sufficiently substantiated and as such do not stand and are clearly ungrounded.

95. In this regard, the Court first recalls that before the Supreme Court, the Applicants alleged that: *"their evidence through which they had requested that former land owners be heard as witnesses has not been examined; no ortho-photos and aero-photography of 2004 were examined where I.S. for access to*

his house he used another road from the eastern side; the court of first instance did not approve them the request for super-expertise; the Court of Appeals "did not provide any reasoning for the violations committed by the first instance court" [...]; according to the Applicants they were not aware that the immovable property they purchased from the former owner was "burdened with real claims from anyone nor the respondent". The road used by the respondents, according to the Applicants in their request for revision, "have not acquired it on any legal basis but on an unlawful basis, by usurpation, as the respondents do not substantiate with any of the 3 grounds for earning the easement provided for in Article 51 the LBPR."

96. In this regard, the Court recalls the Supreme Court's reasoning regarding these Applicants' allegations - presented in the revision, which allegedly have not been addressed to them.

97. With regard to the allegations of incomplete determination of the factual situation and erroneous application of the substantive law, the Supreme Court held that: *"the lower instance courts have correctly and completely the factual situation regarding the decisive facts for a fair trial of this legal case, in such a factual situation, according to the assessment of this court, they have correctly applied the substantive law [...].According to the established factual situation it follows that the road which is the subject of the dispute has been used continuously since 1973 and the latter is left for passing under the agreement of the owners of the parcels through which this road passes and that part of it passes through the claimants' parcel of 76m2. Pursuant to the provision of Article 54, paragraph 1 of the LBPR which is applicable to this legal matter is foreseen "that the real easement is acquired on the basis of the adverse possession when the owner of the dominant property has factually exercised the easement during the period of 20 years, and the owners of the servient property has not objected to that". The court of first instance, on the basis of the said provision, rightly held that the respondents had acquired the right of an easement on the road which lies on the parcel 5382/4 owned by the claimants as servient property, since the respondents have been using this road for more than 20 years and that the claimants, when they purchased the parcel in question, purchased the existing parcel. According to Article 51 of LBPR, the real easement is established by legal work, decision of the government authority and adverse possession, and in the present case the basis of acquisition of the easement is the adverse possession."*

98. As to the Applicants' allegations that the Court of Appeals and the Basic Court did not substantiate their decisions when they rejected as ungrounded the Applicants' statement of claim without any legal basis, the Supreme Court stated that: *"The Applicants' claims in the revision are ungrounded that the second instance court when rejecting the claimants' appeal is not based on any legal provision as to the usurped parts of the claimants' parcel and regarding the rejection for delivery of the usurped parts from the respondents. The respondents acquired the right of easement, pedestrian crossing, tow carts or vehicles through the claimants' parcel with the adverse possession, as these respondents have exercised the right of passage for more than 20 years, whereas the claimants as owners of servient property have not*

objected to this and that the respondents did not acquire the right of easement by misusing the trust of the owner of servient property. Therefore the revision claims that the agreement to open the road is not legalized, are no longer influential in this legal case as the respondents have acquired the right of passage servitude by winning prescription rather than by legal work".

99. Regarding the Applicants' allegation of non-approval of their request to present as evidence the hearing in capacity of witnesses of former owners of neighboring cadastral parcels already owned by the Applicants and interested parties, the Court notes that the fact that the Applicants' request was not approved by the regular courts is grounded. Thus the evidence proposed by them to summon the former owners as witnesses was not approved by the regular courts.

100. In this respect it is very important to note that it is the primary duty of the regular courts to *"conduct a proper examination of the submissions, arguments and evidence adduced by the partie in the proceedings"* (see, in this regard, *Van de Hurk v. the Netherlands*, Judgment of ECtHR of 19 April 1994, paragraph 59). It is precisely the domestic courts (regular ones at the level of the Republic of Kosovo) that are best placed to assess the relevance of evidence in matters related to the case at hand (see, among other authorities, decision-making of the ECtHR in cases: *Vidal v. Belgium*, Judgment of 22 April 1992, paragraph 32, page 32-33, and *Edwards v. the United Kingdom,* Judgment of 16 December 1992, paragraph 34).

101. According to the ECHR, the right to a fair trial does not explicitly guarantee the right to call witnesses in civil proceedings; and, at the principle level, the question of the admissibility of evidence is a matter for the domestic law of the contracting states. The role of the ECtHR in that regard is not to replace the manner the domestic courts assess the facts. (see, *Wierzbicki v. Poland*, Judgment of 18 June 2002, paragraph 39; *Dombo Beheer B.V. v. the Netherland*, ECtHR Judgment of 27 October 1993).

102. In the circumstances of the present case, the Court notes that the proposal to summon the former owners as witnesses was not considered relevant evidence which would help to clarify the facts of the case as the factual situation was determined by a huge number of evidence, expertise, field photos, site-visits, hearing of neighbors witnesses, relevant cadastral documentation, etc. Therefore, the regular courts considered that it is not necessary to summon former owners of cadastral parcels as witnesses as they were convinced that the evidence in the case was sufficient to determine correctly the factual situation - which was confirmed as such at the level of the three courts.

103. Now, in this respect, it is not the task of the Constitutional Court to interfere with the work of the regular courts by imposing unnecessary burdens on them. – having regard to the fact that they have done their job in accordance with the standards required for fair and impartial trial and did not base their decision-making only in one evidence but in a large number of evidence. In their decision that there is no need to summon former owners as witnesses, this

Court does not see any arbitrariness that could potentially lead to the violation of the Applicants' rights.

104. Further and finally, the Court notes that the Supreme Court, regarding the Applicant's main issue, stated that: *"In fact, in the present case we are dealing with the legal flaws of the object with regard to the provisions of Articles 508-515 of the Law on Obligational Relationship, the provisions relating to the protection against eviction. According to Article 508 of the LOR, a seller shall be liable should the object sold be subjected to a third party's right (infringements) excluding, reducing or restricting a buyer's right. Under Article 510 par. 1 of the same law when taking the object of the sale-purchase from the buyer, the contract shall be rescinded on the ground of law, , whereas in paragraph 3 of the said Article, the buyer shall in any case be entitled to compensation for loss sustained. It follows from this that the claimants are entitled to seek compensation of the sustained damage from the seller of this parcel because the sold object had legal flaws".*

105. In this regard, the Court recalls that 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).

106. 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 of the Applicants for denial of easement - but only confirmed their legality, as, according to the Supreme Court, the factual situation was correctly determined and the decision in the Court of Appeals and the Basic Court was consistent with the substantive and procedural law regarding the issue of denial of the easement. Thus, the Supreme Court has fully confirmed that the Applicants' statement of claim to order his neighbors to vacate the road entirely and not to exercise their right of easement was ungrounded because the easement was created since the time the first owner had in possession and ownership the immovable property in question and no such thing was ever disputed. Thus, the Applicants' request was essentially statute-barred.

107. 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, namely the appeal, they has addressed the Applicants' substantive arguments as to the determination of factual situation, application of the substantive and procedural law and potential violations as alleged by the Applicants (see *mutatis mutandis,* the ECtHR cases: *Van de Hurk v. the Netherlands*, cited above, paragraph 61; *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.

108. Therefore, the Applicant's allegation of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR on the reasoning of the court decisions, super-expertise and the hearing of some additional witnesses is manifestly ill-founded on constitutional basis. As such, this allegation is to be rejected in accordance with Rule 39 (2) of the Rules of Procedure.

Regarding allegation of violation of Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR pertaining to the protection of property

109. The Court also notes that the Applicants allege that the regular courts have violated their right guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR: (i) not recognizing the right in the entirety to their property, including what was considered by the regular courts to be an easement created in the 1970s.

110. The Applicants complain in this respect that in their case, the regular courts have violated their right to protection of property since they bought the immovable property from the former owner who, according to them, had sold them *"without any burden or easement"* and that, without any right, *"the neighbors* [interested or responding parties] *have not vacated the property in entirety"*. Consequently, the disputed immovable property in question where the road goes through is considered as an easement, according to the Applicants, is *"usurped"* unfairly from the interested parties.

111. According to the Court, all the regular courts essentially dealt with the right to the protection of property and responded clearly that the easement in question had been established since the 1970s, and therefore we are not dealing with the usurpation of immovable property but with the use of property based on the right of acquired easement – which was never challenged by the former owner of the immovable property and consequently led to the absolute statutory limitation of the claim for its denial. In other words, the regular courts considered that the Applicants purchased their property with the burden of easement, and the fact that the owners have changed does not automatically make the easement unlawful. On the contrary, if the Applicants have had any criticism of the defects of the object, namely the immovable property they purchased, they had to seek compensation from the former owner who sold the disputed immovable property to them.

112. In this regard, the Court recalls Article 46 [Protection of Property] of the Constitution, cited above, according to which: *"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. [...]".

113. The Court notes that the first paragraph of Article 46 of the Constitution 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 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.

114. In the present case, Applicants' allegations can be described as allegations that they consider to have been deprived *"arbitrarily from the property"*, because the part of their property that serves as an easement and is used by neighbors is *"usurped"* by the latter.

115. 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 të KEDNJ-së. 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).

116. 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*, ECHR Judgment of 21 February 1986, *James and Others v. United Kingdom*, no. 8793/79, paragraph 37).

117. 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 file, the Court finds that no sufficient arguments have been presented which could prove that in the present case we are dealing with a violation of the right to property or arbitrary deprivation of property nor the right to peaceful enjoyment thereof.

118. Regarding the Applicants' allegations that they are the owners under the sale-purchase Contract with the former owner and that their property was occupied by the neighbors, the Supreme Court reasoned that: *"As to the allegation of the*

revision that the claimants are the owners under the contract of sale-purchase of the parcel 3852/2 in a surface area of 500 m2, that the respondent Gj.H. has usurped a surface area of 48 m2, the respondent A.D. a surface area of 11 m2, whereas Sh.Sh. a surface area of 14 m2, are ungrounded because the seller who has alienated smaller surface area than what is paid, the seller has the right to claim damages for the smallest area handed over to the buyers. The seller, with the sale - purchase contract certified by the Municipal Court in Peja [...], to the buyers, here the claimants has alienated a surface area of 500 m2, whereas the factual situation did not match the factual situation. The right of ownership is not only obtained by the registration in the cadastre, also by the fact that the claimants and the seller [of the immovable property]: were not in the possession of the disputed parts". In this regard, The Supreme Court also accepted that in the present case *"we are dealing with the legal defects of the object"* and *"according to Article 508 of the LOR, the seller is responsible if there is a third party right over the object being sold, which excludes, reduces or limits the right of the buyer"* . Therefore, according to the Supreme Court, *"the claimants have the right to ask the seller of this parcel to claim compensation for the damage suffered because the object sold had legal defects."*

119. In the light of this, 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, 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).

120. Therefore, the Court considers that the Applicants have not substantiated in a sufficient manner their allegations that the relevant proceedings for rejecting their statement of claim for denial of easement were in any way unfair or arbitrary and that the challenged decision of the Supreme Court violated their right to protection of property (see, *mutatis mutandis*, *Shub v. Lithuania,* no. 17064/06, ECtHR, Decision of 30 June 2009).

121. 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 [LBPLR – in this present case] that has led the regular courts to adopt one decision rather than another. 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 Judgment of 21 January 1999, paragraph 28; and see the case KI70/11, Applicants: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).

122. Therefore, the Applicants' allegations of violation of Article 46 of the Constitution, regarding the issue of protection of property, is manifestly ill-founded on constitutional basis. As such, this allegation must be rejected on the basis of Rule 39 (2) of the Rules of Procedure.

123. Finally, the Court recalls that, as to the Applicants' allegations of a violation of their right to "judicial protection of rights" and "effective remedy" guaranteed by Article 54 of the Constitution in conjunction with Article 13 of the ECHR [third allegation], the Court notes that the Applicants have not submitted any argument how this constitutional provision in conjunction with that of the ECHR was violated by the regular courts, which decided on their statement of claim. They have merely cited these articles and requested the Court to find their violation, giving no relevant justification for the grounds of their allegations.

124. 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 Applicants' allegation of a violation of Article 54 of the Constitution in conjunction with Article 13 of the ECHR as the Applicants have not accurately clarified their allegation of a violation of these constitutional provisions (See, in this regard, the Resolution on Inadmissibility of the Constitutional Court in case 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*, paragraphs 52-54).

Conclusions

125. The Court concludes, therefore, that:

(i) The Applicants' 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, non-assignment of super-expertise and the approval of the request for certain additional witnesses 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 Applicants' 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 Applicants' allegations of violation of Article 54 of the Constitution in conjunction with Article 13 of the ECHR regarding the issue of judicial protection of rights and effective remedy 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**

Selvete Gërxhaliu-Krasniqi Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.