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

Prishtina, 29 June 2020
Ref. no.:RK1578/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI133/19

Applicant

Nysret Tafili

Constitutional review of Judgment Rev. No. 204/2019 of the Supreme Court of the Republic of Kosovo, of 25 July 2019

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 Nysret Tafili, from the Municipality of Kaçanik, represented by Sabri Kryeziu, a lawyer in Lipjan (hereinafter: the Applicant).

2. The Applicant challenges Judgment [Rev. No. 204/2019] of 25 July 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment which, according to the Applicant's allegation, has violated his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law 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

5. On 23 August 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On the same date, the Applicant submitted the power of attorney for representation to the Court.

7. On 29 August 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel, composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.

8. On 26 September 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court also notified the Supreme Court about the registration of the Referral.

9. On 27 May 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 14 November 2008, by the Contract [06 No. 784-25] signed between the Applicant and the Municipality of Kaçanik, the right to temporary use of the construction land was extended, where in order to exercise the professional activity of the Applicant as a hairdresser was also placed a prefabricated building. The extension of the abovementioned contract was based on the Contract [03. No. 313-58 / 83] of 30 June 1983.

11. On 1 April 2009, the Municipality of Kaçanik by the Decision [01. No. 7311/08] decided on the demolition of the mounting facility, located on the property given for temporary use, where the Applicant exercised his professional activity. The Municipality of Kaçanik based its aforementioned Decision on the change of destination, in which case according to Article VI of the aforementioned Contract [06 No. 784-25] of 14 November 2008 it was determined that the removal of the object is carried out without any compensation by the Municipality.

12. On 8 March 2012, the Applicant in the former Municipal Court of Kaçanik filed a claim against the Municipality of Kaçanik, requesting: (i) the compensation for damages on behalf of the lost profit in the amount of 9,781 euro, starting from 12 May 2009 until 31 December 2012, including an annual interest rate of 3.5%; (ii) starting from 1 January 2013 until 30 October 2014, compensation in the amount of 2,163.93 euro; (iii) while from 1 November 2014 until the final payment, the annual interest payment of 8% based on the provisions of the Law in force on Obligational Relations; as well as (iv) payment of costs of the contested procedure. On an unspecified date, the Municipality of Kaçanik (hereinafter: the respondent) also submitted a response to the claim in the capacity of the respondent.

13. On 12 December 2014, the Basic Court in Ferizaj, Branch in Kaçanik (hereinafter: the Basic Court) by the Judgment [C. No. 18/12] rejected the claim of the Applicant as ungrounded.

14. The Basic Court in its Judgment based on material evidence, namely the Contract [03. No. 313-58/83] of 30 June 1983 and the Contract [06 No. 784-25] for the extension of the right to use the construction land, of 14 November 2008 confirmed that the location, namely the cadastral parcel 650/3 in which the Applicant's object was placed was a social property under the management of the respondent, which was given to the Applicant for temporary use. The Court further stated that under the Contract [06 No. 784-25] of 14 November 2008, the Applicant accepted all the rights and obligations arising from this Contract, namely pursuant to Article VI of the Contract, it was foreseen that if it comes to the change of destination of the location given to temporary use, then the object will be removed without any compensation. Based on this assessment, the Basic Court found that the Applicant did not suffer the damage claimed through his lawsuit with the fault of the respondent, namely the Municipality of Kaçanik.

15. On 24 December 2014, against the abovementioned Judgment of the Basic Court, the Applicant filed an appeal with Court of Appeals on the grounds of essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, and erroneous application of substantive law. On an unspecified date, the Municipality of Kaçanik, in the capacity of the respondent, submitted a response to the Applicant's appeal.

16. In his appeal, the Applicant regarding the allegation of violation of the provisions of the contested procedure, namely Article 182, paragraph 2, item n) of the Law on Contested Procedure (hereinafter: the LCP) stated that the Judgment of the Basic Court contain flaws, which consist in the fact that its enacting clause is incomprehensible, just as its reasoning is incomprehensible.

Subsequently, the Applicant also specified that as a result of the fact that the Basic Court did not correctly assess the material evidence, the Judgment contained a contradiction between its reasoning and the material evidence on which this court was based.

17. The Applicant concludes by emphasizing that the first instance Judgment *"[...] was rendered without relying at all on the substantive law, which has resulted also in the essential violation of the procedural provisions and the erroneous and incomplete determination of the factual situation"*.

18. On 6 May 2019, the Court of Appeals by Judgment [Ac. No. 272/2015] rejected the Applicant's appeal as ungrounded and upheld the aforementioned Judgment [C. No. 18/12] of 12 December 2014 of the Basic Court.

19. The Court of Appeals, in its Judgment, initially found that *"[...] the position and legal conclusion of the court of first instance is fair and lawful, as the challenged decision does not contain essential violation of the provisions of the contested procedure from Article 182 par.2 item b), g), j), k) and m) to the LCP and the substantive law has been correctly applied, for which reasons the Court of Appeals takes care ex officio in accordance with the provision of Article 194 of the LCP"*.

20. Subsequently, with respect to the Applicant's allegations that the Judgment of the Basic Court is unclear and does not contain reasoning based on the evidence submitted by him, the Court of Appeals held that: *"[...] the appealing allegation that the challenged judgment contain essential violation of the provisions of the contested procedure under Article 182 par. 2 item n) of the LCP is ungrounded and does not contain flaws due to which it cannot be examined because the challenged judgment does not contain flaws due to which it cannot be examined and in connection with this, the enacting clause of the judgment is clear and enforceable and contains sufficient reasons for all the decisive facts which have been taken into consideration by the court of first instance, according to which it has also been decided on the grounds of the statement of claim"*. The Court of Appeals confirmed that *"[...] the claimant did not suffer this damage by the fault of the respondent, because with the lease contract with the respondent he accepted all the rights and obligations arising from this contract 06 no. 784-25 dated 14.11.2008, concluded between the litigating parties, where it is proved that this property is the property of the Municipality of Kaqanik and that it was given to the claimant for temporary use"*.

21. In the end, the Court of Appeals found that under Article VI of the Contract [06 No. 784-25] of 14 November 2008 *"[the applicant] was previously informed that if the destination of the location where the premise was located changes, then the premise will be removed without any compensation"*.

22. On 28 May 2019, against the abovementioned Judgments of the Basic Court and the Court of Appeals, on the grounds of violations of the provisions of the contested procedure and erroneous application of substantive law, the Applicant filed revision with the Supreme Court. In his request for revision, the Applicant also submitted the Decision in case [Rev. No. 57/2019] of the

Supreme Court rendered on 18 March 2019, for which the Applicant claimed to be identical to the factual and legal circumstances of his case.

23. In his request for revision, the Applicant regarding the allegation of essential violation of the challenged provisions, namely Article 182, paragraph 1 in conjunction with Article 189 of the LCP, specified that the reasoning given by the Judgment of the Court of Appeals (i) is contradictory; (ii) is not based on material evidence, and (iii) does not address his claims, raised in his appeal before this Court.

24. On 25 July 2019, the Supreme Court by Judgment [Rev. No. 204/2019] rejected the revision of the Applicant as ungrounded.

25. In its Judgment, the Supreme Court initially upheld the assessments and findings of the lower instance courts, which refer to the determination of factual situation.

26. With regard to Applicant's allegation of violation of the provisions of the contested procedure, the Supreme Court reasoned that *"[...] the statements of the [Applicant] referred to in the revision that the challenged judgment was rendered with essential violation of the provisions of the contested procedure under Article 182, paragraph 2 (n) of the LCP, because, as stated in the enacting clause of the judgment, is contrary to the evidence found in the case file, that the reasoning does not contain reasons regarding the decisive facts, the court of revision found that the challenged judgment does not contain violations of the procedure, because the enacting clause of the judgment is in accordance with the evidence administered when the appellate court found that the claimant and the respondent have entered into the contract no. 784-25 of 14.11.2008, which provides for the use of the construction land for the exercise of the activity of the [Applicant]"*.

27. In the end, the Supreme Court found that *"[...] the claims in the revision that the respondent could not dispose of the immovable property which is in temporary use [of the Applicant] are ungrounded, because the latter is registered in the immovable property registers on behalf of the Agricultural Cooperative, on the grounds that the assets of agricultural cooperatives are administered by the municipality in whose territory the immovable property is located [...]"*.

Applicant's allegations

28. The Applicant alleges that the challenged Judgment violates his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial of the ECHR.

29. The Applicant specifically states that the Supreme Court in another case, which according to him, contains factual and legal circumstances identical to those of his case, by its Decision accepted the revision of the party. In the context of this allegation, the Applicant states that the Supreme Court, having decided

otherwise in two identical cases, has violated his right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

30. The Applicant also refers to the case KI145/18 Court (Applicant *Shehide Muhadri, Murat Muhadri and Sylë Ibrahimi*, Judgment of 19 July 2019) for which case, according to him, the Court in a "similar referral" as in his case, found a violation of Article 31 of the Constitution.

31. Finally, the Applicant requests the Court to declare the Referral admissible; (ii) to find a violation of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR; (iii) to declare invalid the Judgment [Rev. No. 204/2019] of 25 July 2019 of the Supreme Court; and (iv) remand the case for retrial.

Relevant constitutional provisions

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.

(...)

European Convention of Human Rights

Article 6
(Right to a fair trial)

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Admissibility of the Referral

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

33. 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."*

34. In addition, the Court also examines whether the Applicant has met 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...".*

35. As to the fulfillment of these requirements, the Court finds that the Applicant filed the Referral as an authorized party, and challenges an act of a public authority, namely Judgment [Rev. 204/2019] of 25 July 2019 of the Supreme Court, after having exhausted all legal remedies defined by law. The Applicant also clarified the fundamental rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law, and submitted the referral in accordance with the deadlines set out in Article 49 of the Law.

36. The Court notes that the Applicant in his referral alleges that the challenged Judgment violated his right guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

37. In addressing this allegation, the Court initially examines whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a Referral including the criterion that the referral is not manifestly ill-founded. Specifically, Rule 39 (2) of the Rules of Procedure establishes that:

"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."

38. In this context, and in the following, in order to assess the admissibility of the referral, namely in the circumstances of this case, the assessment of whether the latter is manifestly ill-founded on constitutional basis, the Court will first recall the essence of the case, included in this referral and the relevant allegations of the Applicant, in the assessment of which, the Court will apply the standards of the case law of the ECtHR, in compliance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

39. In this regard, and initially, the Court recalls that under the Contract [06 No. 784-25] of 14 November 2008 concluded between the Applicant and the Municipality of Kaçanik, the right to temporary use of the construction land was extended by the Applicant, where for the purpose of exercising his professional activity was placed a prefabricated building. On 1 April 2009, the Municipality of Kaçanik by the Decision [01. No. 7311/08] decided to demolish the abovementioned prefabricated building, located on the property given for temporary use and exploited by the Applicant. After the demolition of the premise, the Applicant filed a claim with the former Municipal Court of Kaçanik, on behalf of the lost profit, for compensation from the Municipality of Kaçanik. The Basic Court rejected his claim for compensation as ungrounded. Consequently, the Court of Appeals, as a result of his appeal against the Judgment of the Basic Court, upholding the reasoning of the Basic Court, also rejected his appeal as ungrounded. In its Judgment, the Court of Appeals upheld the reasoning given by the Judgment of the Basic Court, which was based on the Contract [06 No. 784-25] of 14 November 2008, signed between the Applicant and the Municipality of Kaçanik, in the capacity of the respondent. The Court of Appeals also found that the Applicant through this Contract has accepted all the rights and obligations arising from this Contract, respectively pursuant to Article VI of the aforementioned Contract, where it was provided that if there is a change of destination of the location given in temporary use, then the object will be removed without any compensation. As a result of the request for revision against the two aforementioned Judgments of the Basic Court and the Court of Appeals, filed by the Applicant, the Supreme Court by the challenged Judgment [Rev. No. 204/2019] of 25 July 2019 finding that these two Judgments did not contain essential violation of the provisions of the contested procedure and that the lower courts have correctly applied substantive law, rejected the Applicant's revision as ungrounded.

40. Consequently, in his referral, the Applicant alleges that the Supreme Court, by rendering two different decisions in identical circumstances both in factual and legal terms, violated his right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. In the context of this allegation, the Court notes that the Applicant in essence alleges a violation of the principle of legal certainty as a result of the Supreme Court's contradictory decisions.

41. Therefore, in addressing the Applicant's allegation, the Court will refer to the general principles regarding the lack of consistency established through the case law of the Court, in accordance with that of the ECtHR, in the context of the procedural guarantees embodied in Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

(i) Principles and criteria established through the case law of the ECtHR and the Court

42. The Court initially states that the principles and criteria set by the ECtHR, this Court, while examining the Applicants' allegations of violation of the principle of legal certainty, as a result of contradictory decisions, have also applied in its case law. (See cases of the Court KI87/18, Applicant "*IF Skadeforsikring"*, Judgment of 27 February 2019 and KI35/18, Applicant *Bayerische Versicherungsverbrand*, Judgment of 6 January, where the Court found, *inter alia*, violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to the violation of the principle of legal certainty, as a result of divergence in the case law of the ECHR).

43. In light of the development of general principles regarding the lack of consistency established through the case law, the Court initially refers to the case law of the ECtHR, which has consistently stated that one of the essential components of the rule of law is legal certainty, which, among other things, guarantees a certain security in legal situations and contributes to public confidence in the courts. (See ECtHR case *Brumarescu v. Romania* [GC], application no. 28342/95, paragraph 61; case *Ştefănică and Others v. Romania* application no. *38155/02, Judgment of 2 November 2010,* paragraph 38, and case *Nejdet Sahin and Perihan Sahin v. Turkey*, Judgment of 20 October 2011, paragraph 56).

44. According to the ECtHR, "*the presence of conflicting court decisions, on the other hand, may create situations of legal uncertainty, which would reduce the public's trust in the judicial system*". (See *Paduraru v. Romania*, application no. 63252/00, paragraph 98; *Vinčić and others v. Serbia*; application no. 44698/06, paragraph 56, Judgment of 1 December 2009; and case *Ştefănică and Others v. Romania, cited above, paragraph 38*). The ECtHR, however, has specified that there is no right acquired for consistency of case law. (See the case *Unédic v. France*, application no. 20153/04, paragraph 74, 18 December 2008, see the case cited above *Nejdet Sahin and Perihan Sahin v. Turkey*, paragraph 56, see also the case of the Court cited above KI35/18, Applicant *Bayerische Versicherungsverbrand*, paragraph 65, as well as the case KI42/17, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 25 January 2018, paragraph 33).

45. Also, the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may also arise within the same court, which divergence cannot be considered contrary in itself (see case *Santos Pinto v. Portugal*, application no. 39005/04, paragraph 41, Judgment of 20 May 2008, paragraph 41, see also the case of the Court KI87/18, Applicant "*IF Skadeforsikring*", cited above, paragraph 66).

46. In addition, the ECtHR has established three criteria, which are also accepted in the case law of the Court to determine whether a divergence of the alleged court decisions constitutes a violation of Article 6 of the ECHR, and which determine as follows: (i) whether "*profound and long-standing differences*" exist in the case-law; (ii) whether the domestic law provides for a mechanism to overcome these divergences, and (iii) whether that mechanism has been applied and, if so, to what extent, (in this regard, see ECtHR cases, *Beian v. Romania* (no. 1), Judgment of 6 December 2007, paragraphs 37-39; *Lupeni Greek Catholic Parish and others v. Rumania*, Judgment of 29 November 2016, paragraphs 116-135*; Iordan Iordanov and Others v. Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Şahin and Perihan Şahin v. Turkey*, cited above, paragraph 53; and see the case of the Court, KI29/17, Applicant *Adem Zhegrova,* Resolution on Inadmissibility, of 5 September 2017, paragraph 51 and also see the cases of the Court cited above, KI42/17, Applicant *Kushtrim Ibraj,* paragraph 39, KI87/17 Applicant "*IF Skadiforsikring*", paragraph 67, cited above, KI35/18 Applicant "*Bayerische Versicherungsverbrand*", cited above, paragraph 70, KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, 11 March 2020).

47. The Court notes that the ECtHR in developing the concept of "*profound and long-standing differences*" also considered whether the discrepancy was isolated or affected a large number of people. (See, *inter alia*, the ECtHR case, *Lupeni Greek Catholic Parish and others v. Rumania,* cited above, paragraph 135).

48. The Court also notes in this respect that the ECtHR has not found a violation of Article 6 of the ECHR in cases of divergent case law even and if it has affected a large number of people regarding the same matter over a short period of time, before the respective divergences were settled by the higher courts, thereby enabling state mechanisms to ensure proper consistency. (See, *inter alia*, the case of the ECtHR, *Albu and Others v. Romania*, Judgment of 10 May 2012, paragraphs 42 - 43).

49. The latter relates to the second and third criteria, namely the existence of a mechanism capable of resolving inconsistencies in case law and whether this mechanism has been used and to what extent. In this regard, the ECtHR initially held that the absence of such a mechanism constituted a violation of the right to a fair trial guaranteed by Article 6 of the ECHR. (See, in this context, *Tudor Tudor v. Romania*, Judgment of 4 March 2009, paragraphs 30-32; and $ Ştefănică and Others v. Romania, Judgment of 2 February 2010, paragraphs 37-38; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 54).

(i) Application of such principles in the circumstances of the present case

50. In the following, the Court will apply the principles elaborated above in the circumstances of the present case, applying the criteria on the basis of which the Court and the ECtHR address the divergence issues with regard to case law, starting with the assessment of whether, in the circumstances of the present case, (i) the alleged divergences in case law are "*profound and long-standing*" and, if this is the case, (ii) the existence of mechanisms capable of resolving the relevant divergence; and (iii) an assessment of whether these mechanisms have

been implemented and with what effect in the circumstances of the present case.

51. Initially, the Court must also reiterate that, based on the case law of the ECtHR and that of the Court it is not its function to compare different decisions of the regular courts, even if given in apparently similar proceedings, it must respect the independence of those courts. (See case of ECtHR *Adamsons v. Latvia*, cited above, paragraph 118, see also cases of the Court KI87/18 Applicant *IF Skadeforsikring* and KI35/18, Applicant *Bayerische Versicherungsverbrand, cited above*).

52. Moreover, regarding the allegations of constitutional violations of fundamental rights and freedoms as a result of divergences in the case law, the Applicants should submit to the Court relevant arguments concerning the factual and legal similarity of the cases alleging that they have been resolved differently than the regular courts, thus resulting in a divergence in case law and which may have resulted in a violation of their constitutional rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. (See case cited above KI35/18, Applicant *Bayerische Versicherungsverbrand*, paragraph 76).

53. Based on the above, the Court recalls that the Applicant, in the context of his allegation of violation of the principle of legal certainty, as a result of divergence in the case law of the Supreme Court, submitted to the Court the Decision [Rev. No. 57/2019] of 18 March 2019 of the Supreme Court, for which alleges that his case encompasses the same factual and legal circumstances as those of the case established by the challenged Judgment [Rev. No. 204/2019] of 25 July 2019 of the Supreme Court. In addition to the Decision of the Supreme Court, the Applicant has also submitted all the submissions and decisions of the lower instance courts regarding this case decided by the Supreme Court [Rev. No. 57/2019].

54. In case [Rev. No. 57/2019], submitted by the Applicant, the Court notes that this case refers to a claimant from the Municipality of Kaçanik, who also after the demolition of the mounting premise at the location provided for use by the authorities of the Municipality of Kaçanik, in the former Municipal Court of Kaçanik on behalf of the lost profit, filed a claim for compensation. The Basic Court in Ferizaj, Branch in Kaçanik, rejected his claim for compensation as ungrounded. Consequently, the Court of Appeals, as a result of his appeal against the Decision of the Basic Court, upholding the reasoning of the Basic Court, rejected his appeal as ungrounded. In its Judgment, the Court of Appeals refers to the Contract signed between the claimant and the respondent in 2003, by which the claimant was given the socially-owned land, which was under the management of the Municipality of Kaçanik, for use for a certain period of time. The Court of Appeals also found that the claimant through the Contract of 2003 has accepted all the rights and obligations arising from this contract, namely under Article V of this Contract it was provided that if it comes to changing the destination of the location given for temporary use then the object will be removed without any compensation. However, unlike the Applicant's case, the Supreme Court by the Judgment [Rev. No. 57/2019] of 18 March 2019 approved the claimant's revision, filed against the two lower instance decisions, as

grounded, and consequently decided to remand the case for retrial to the first instance. The Supreme Court found that it approves as grounded the allegation of the claimant raised by his revision that the decisions of the lower instance courts were rendered *"with essential violation of the provisions of the contested procedure, provided by Article 182 par. 2 item (n) of the LCP, for which reason the latter had to be demolished"*. According to the Supreme Court *"Essential violations of the provisions of the contested procedure exist in the fact that the enacting clause of the judgment of the court of first instance is unclear and from the same it cannot be understood what the statement of claim of the claimant was and what was rejected. Article 143 par. 1 of the LCP has provided that by a judgment the court decides on the request related to the main issues and accessory requests, while from the judgments of the lower instance courts the claims of the claimant cannot be understood, therefore in the retrial the first instance court must include the claimant's request in the enacting clause of the judgment, in order to eliminate essential violations of the above-mentioned legal provisions"*.

55. The Court also recalls that the Applicant, in his Referral, referred to the case of the Court KI145/18 (Applicants S*hehide Muhadri, Murat Muhadri and Sylë Ibrahimi*, Judgment, 19 July 2019). In the context of this case, the Applicant claims that the Court has found violations in a similar case. In case KI145/18 of the Court, the Applicants alleged that the regular courts, by not recognizing their right to ownership over the disputed immovable property, violated equality before the law, as well as Article 6 of the ECHR. According to them, from the same former Municipal Court in Prishtina and based on the same statement of claim, the right of ownership was recognized to several other families in the same Municipality. In support of their allegation, the Applicants attached to the Referral three Judgments of the former Municipal Court in Prishtina C. No. 164/2003, 25 February 2003, C. No. 146/2009, of 12 November 2007 and C. No. 98/2010, of 21 January 2014. The Court in this case considered that the Court of Appeals did not address at all the Applicants' allegation, who requested that their case be treated similarly with other cases where other families, as refugees who came from the Republic of Albania, in the 60'ies, had acquired the right of ownership over the disputed properties with factual possession by means of the acquisition by prescription. After assessing the proceedings as a whole, and especially from reading the Judgment of the Court of Appeals, the Court found that failure to address the allegation of the Applicants constitutes a violation of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR as a result of non-reasoning of the court decision by the Court of Appeals.

56. However, based on the allegations raised by the Applicants in case KI145/18 and the decisions of the regular courts, the Court notes that this case does not include similar factual and legal circumstances as the case of the Applicant. Furthermore, taking into account the fact that the Court had not found a violation of the principle of legal certainty as a result of the contradictory decisions of the Supreme Court as alleged in the substance by the Applicant, but found a violation of the right to fair trial as a result of non-reasoning of the Judgment of the Court of Appeals.

57. Returning to the Applicant's allegation that the Supreme Court has decided differently in two identical cases, the Court recalls that in cases KI87/18 and KI35/18, it found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to violation of the principle of legal certainty as a result of divergence of case law, in case KI87/18 in the assessment of 3 (three) cases of the Supreme Court, rendered in a time period of 3 (three) years, and in case KI35/18 in the assessment of 9 (nine) cases of the Supreme Court issued in a period of 5 (five) years and after finding that (i) there were "*profound and long-standing differences*"; (ii) the mechanism of the Supreme Court for the harmonization of case law existed; but that (iii) the abovementioned mechanism was not used (see cases of the Court KI87/18, cited above, paragraph 79 and paragraphs 81 to 85, and case KI35/18, cited above, paragraph 70 and paragraphs 110-111).

58. Whereas, the Court in its cases KI29/17, KI42/17, KI35/18 and KI107/19 noted that "*profound and long-standing differences*" cannot be ascertained, in comparing only 2 (two) cases even if the same can be contradictory. In this case, in such a circumstance, where the Applicants refer only to one decision, which contains a finding and conclusion different from the decision, issued in the case of the Applicants, the Court had not found that the principle of legal certainty had been violated. (See cases of the Court: K29/ 7, cited above, paragraph 53, KI42/17, cited above, paragraph 44, KI35/18, cited above, paragraphs 104 and 114, and KI107/19, cited above, paragraph 75).

59. Similarly, in the circumstances of the present case, the Applicant submitted to the Court only one (1) decision, namely the Decision [Rev. No. 57/2019] of 18 March 2019 of the Supreme Court, for which case through the submission of all submissions in relation to this case, has proved the factual and legal connection with that of his case. However, referring to this case referred to by the Applicant, the Court recalls that the Supreme Court by its Judgment [Rev. No. 57/2019] of 18 March 2019 found essential violation of the provisions of the contested procedure, as a result of not including the claimant's claim in the enacting clause of the Decision of the Basic Court, and, consequently, the case was remanded for retrial to the Basic Court with the request to address the violation found by the Supreme Court.

60. Whereas in the case of the Applicant, the Court recalls that the Supreme Court by its Judgment [Rev. No. 205/19] initially proved that *"[…] the second instance court on the basis of correct and complete determination of factual situation by the first instance court has applied correctly the provisions of the contested procedure and substantive law, when it found that the statement of claim of [the applicant] is ungrounded",* and subsequently found that the Applicant's allegations that "*[…] the challenged judgment dealt with essential violation of the provisions of the contested procedure under Article 182 paragraph 2 item (n) of the LCP, because, as stated the enacting clause of the judgment is contrary to the evidence found in the case file, that the reasoning does not contain reasons related to the decisive facts, the court of revision found that the challenged judgment does not contain such violations of the procedure, because the enacting clause of the judgment is in accordance with the evidence administered when the appellate court found that the claimant and the respondent entered into a contract no. 784-25 of 14.11.2008, which provides*

for the use of construction land for the exercise of the activity of [the Applicant]".

61. Based on the above, the Court notes that the Supreme Court in the case of the Applicant found that the judgments of the Basic Court did not contain essential violation of the provisions of the contested procedure, reasoning that the enacting clause and reasoning given by these courts is based on the material evidence on which these courts have based their assessment and reasoning.

62. In this regard, the Court considers that the Judgment of the Supreme Court is reasoned and that the interpretation of the Supreme Court with regard to the facts presented for assessment by the Applicant cannot be said to be arbitrary, not reasoned or that it could have influence on a fair trial, but was merely a matter of the law enforcement. (See analogously, case KI29/17, Applicant *Adem Zhegrova*, cited above, paragraph 57).

63. Recalling the obligation established by the case law of the Court that the Applicants must present to the Court the relevant arguments regarding the factual and legal similarity of cases which claim to have been resolved differently by the regular courts, resulting in conflicting decisions in case law, the Court notes that in addition to the submission of a single case, which refers to factual and legal circumstances similar to those in the Applicant's case, the Applicant has failed to present additional arguments to the Court, or other cases that have been decided differently by the Supreme Court, and consequently to support his allegation of violation of legal certainty, as a result of conflicting decisions of the Supreme Court.

64. Accordingly, in the light of its case law, the Court considers that it is not possible to ascertain the existence of *"profound and long-lasting differences"* in the case law of the Supreme Court which endanger the principle of legal certainty by invoking only one Decision of the Supreme Court, rendered 4 (four) moths earlier. (See in an analogous way case KI29/17, Applicant *Adem Zhegrova*, cited above, paragraph 53)

65. Therefore, the Court considers that neither the number of judgments allegedly contradictory nor the period within which these judgments were rendered, nor the manner in which the Supreme Court has reviewed and reasoned the Applicant's case create sufficient grounds to justify the allegation of violation of the principle of certainty, as a result of the Supreme Court's contradictory decisions (See case KI29/17, cited above, paragraph 58).

66. Therefore, the Court finds that the Applicant's Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with paragraph 7 of Article 113 of the Constitution, Article 47 of the Law and paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraph 7 of Article 113 of the Constitution, Article 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 27 May 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;

IV. This Decision is effective immediately.

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

Safet Hoxha | Arta Rama-Hajrizi