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

**Prishtina,on 20 July 2020**
**Ref. No.:RK1585/20**

***This translation is unofficial and serves for informational purposes only***

# RESOLUTION ON INADMISSIBILITY

In

**Case No. KI163/18**

Applicant

**Kujtim Lleshi**

**Constitution review of the notification KMLC no. 134/2018 of the State Prosecutor, of 15 October 2018, Decision AC. no. 4737/2017 of the Court of Appeals of Kosovo, of 3 August 2018 and theWrit P. no. 224/15 of the Private Enforcement Agent, of11 October 2017**

**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 Kujtim Lleshi, from the Municipality of Gjakova (hereinafter: the Applicant) represented by Yll Xhiha, attorney at law from the Municipality of Gjakova.

## Challenged decision

2. The Applicant challenges the Notification [KMLC. no. 134/2018] of the Office if the State Prosecutorof the Republic of Kosovo (hereinafter: the State Prosecutor's Office), of 15 October 2018 and the Decision [AC. no. 4737/2017] of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) of 3 August 2018in conjunction with the Writ [P.no.224/15] of the Private Enforcement Agent (hereinafter: the Private Enforcement Agent), of 11 October 2017.

## Subject matter

3. The subject matter of the Referral is the constitutional review of the aforementioned Notification, Decision and Writ which as alleged by the Applicanthave violated his fundamental rights and freedoms guaranteed by paragraph 2 of Article 3 [Equality before the Law], 31 [Right to Fair and Impartial Trial], 33 [The Principle of Legality and Proportionality in Criminal Cases], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant also alleges violations of the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, without specifying which articles of these two international instruments were violated in his case.

## 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 of Referrals] and 47 [Individual Request] of the Law No. 03 / L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## Proceedings before the Constitutional Court

5. On 23 October 2018, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 31 October 2018, the Applicant submitted to the Court a Decision of the Supreme Court Decision relating to another case implemented in the enforcement proceedings and which, according to the Applicant, was issued under the same circumstances as those of his case.

7. On 5 November 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of Judges: Selvete Gërxhaliu-Krasniqi (presiding), Bajram Ljatifi and Radomir Laban.

8. On 14 November 2018, the Applicant submitted the completed form to the Court.

9. On 26 November 2018, the Court notified the Applicant about registration of the Referral and asked him to complete the official form of the Court and submit the authorization proving that the lawyer, Yll Xhiha, represents him before the Court.

10. On 6 December 2018, the Court received the completed Referral form from the Applicant and the authorization for his representation in the Court.

11. On 27 June 2019 the Court asked the Applicant to inform the Court about the stage of the case and asked him to clarify whether there had been any procedural development, by attaching the respective documentation. Subsequently, the Court also asked the Applicant to specify exactly which decision or decisions of the public authorities he is challenging before the Court.

12. On 12 July 2019 the Applicant informed the Court about the status of the case and specified that heis challengingalso the Writ [P. no. 224/15] of the Private Enforcement Agent, of 11 October 2017.

13. On 23 April 2020 the Court sent a copy of the Referral to the Office of the State Prosecutor, the Court of Appeals, the Private Enforcement Agent and Raiffeisen Bank Kosovo J.S.C. (hereinafter: Raiffeisen Bank).

14. On 24 June 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**

15. On 23 December 2005, Be-Kom L.L.C., represented by the Applicant and Raiffeisen Bank, signed a Loan Agreement [no. 13575] in the amount of four hundred thousand (400,000) Euros. The aforementioned agreement was signed by the Applicant, in the capacity of a borrower; F.Ll, respectively, the spouse of the Applicant, in the capacity of the borrower; B.Ll. and E. Ll., in the capacity of co-borrowers, respectively S. Ll. and B.C., in the capacity of the spouses of co-borrowers. The Pledge Agreement was an annexto the aforementioned Loan Agreement. The same was signed by the above persons.

16. Between 18 September 2007 and 11 September 2011, the Applicant, as the representative of "Be-Kom" LLC, B.Ll. and E.Ll. and Raiffeisen Bank, had also signed other loan agreements: Loan Line Agreement, Pledge Agreement and Mortgage Agreement. The Mortgage Agreements were registered at the Cadastral Office in Gjakova according to the Decisions, as in the following: (i) The decision on the registration of the mortgage [protocol no. 337/07] of 19 September 2007 by the Cadastral Office in Gjakova in the name of of B.Ll. as well as (ii) Decisions, [protocol no. 337/07] of 19 September 2007; [no. 142/08] of 22 April 2008; [no. 345/08] of 19 September 2008; and [no. 254/08] of 14 July 2008, in the name of the Applicant.

17. On an unspecified date, according to the case file and taking into account that the Loan Agreement was not respected by the borrowers, consequently by the

respective co-borrowers, Raiffeisen Bank, in the capacity of the creditor addressed to the Basic Court in Gjakova (hereinafter: Basic Court) with the proposal to initiate enforcement proceedings.

18. On 4 April 2012 the Court of First Instance by the Judgment [E.no.305/2012] allowed Raiffeisen Bank's proposal for enforcementrelating to the debt in the amount of 803,360.62 Euros, concerning the enforcement titles, as listed in its proposal for enforcement.

19. On 18 April 2012, the Applicant and the co-borrowers, in their capacity of debtors (hereinafter: debtors), filed an objection with the same Court against the abovementioned judgment. On 23 April 012, Raiffeisen Bank, in the capacity of creditor, submitted a response to this objection.

20. On 15 January 2013 the Court of First Instance, by the Decision bearingthe same number as that of 4 April 2012, respectively [E.no.305 / 12], rejected the objection of the debtors as unfounded, stating that the appeal against the same Judgment, does not stay the enforcement.

21. On 25 January 2013 the debtors filed an appeal with the Court of Appeals against the above-mentioned Judgment. On 31 January 2013, Raiffeisen Bank submitted a response to the appeal, as well.

22. On 5 November 2013, the Court of Appeals by Judgment [Ac. no. 1599/13] rejected the debtor's appeal as unfounded and confirmed the Decision [E.no. 305/12] of the Basic Court, of 15 January 2013.

23. On 12 March 2015, the Basic Court by Conclusion [E.no. 305/12] transferred the enforcement case to the Private Enforcement Agent.

24. On 10 April 2015, the Private Enforcement Agent issued the Conclusion [P.no. 224/15] whereby he assigned the sale of the mortgaged immovable property, by scheduling the first session for sale, on 11May 2015.

*Procedure regarding the elimination of irregularities in the enforcement procedure*

25. On 5 May 2015, pursuant to Article 52 (Irregularities during the conduct of enforcement) of the Law 04/L-139 on Enforcement Procedure (hereinafter: LEP), debtors submitted a request with the Basic Court for the elimination of the irregularities of the Private Enforcement Agent.

26. On 7 October 2015, the Basic Court by Judgment [PPP. no. 74/15] revoked the conclusion of the Private Enforcement Agent [P.no. 224/15] of 10 April 2015, ordering the latter to appoint an expert to determine the value of the immovable property, so that after the evaluation of the expert, they proceed with the procedure of sale of the respective immovable property.

27. On 22 October 2015, the Private Enforcement Agent, in accordance with the aforementioned Decision, by the Conclusion [P.no.224 / 15], appointed the

expert for valuation of the immovable properties. Based on the case file, after the valuation by the expert, the Private Enforcement Agent, by the Conclusion of 24 November 2016 respectively of23August 2017, set the first and second sale of immovable propertiesthrough public auctions.

28. On an unspecified date, the debtors submitted another request for the elimination of irregularities in the enforcement procedureagainst the above-mentioned Conclusions of the Private Enforcement Agent for the sale of immovable properties through a public auction.

29. On 12 January 2017, the Basic Court by Judgment [PPP. no. 85/2016], rejected as unfounded the debtors' request for the elimination of irregularities in the enforcement procedure.

30. On an unspecified date, the debtors filed an appeal with the Court of Appeals against the aforementioned Judgment, alleging violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and incorrect application of substantive law, by proposing to have the challenged Decision quashed and the case remanded to the court of first instance for reconsideration.

31. On 17 October 2018, the Court of Appeals by Judgment [Ac. no. 845/2017] rejected as unfounded the debtors' appeal, and confirmed the Decision [PPP.no.85 / 2016] of the Basic Court, of 12 January 2017.

*Enforcement procedure in relation to the Writs [P. no. 224/15] of 6 January 2017 and [P.nr.224 / 15] of 11 October 2017 of the Private Enforcement Agent for the sale of immovable property*

32. On 6 January 2017, after the third public session, the Private Enforcement Agent issued the Writ [P.no.224/15], whereby he (i) sold to the Raiffeisen Bank the immovable properties of the debtors determined through this Writ, in thr toral value of 289,059.03 Euros; (ii) obliged thedebtors to transfer the respective immovable property to the possession of the creditor; and (iii) ordered the Directorate of Geodesy and Cadastre in Gjakova to register the respective immovable properties in the immovable property rights registerin the name of the buyer, respectively Raiffeisen Bank. On the basis of the case file, the above amount corresponds to one third (1/3) of the value determined in the Conclusions of the Private Enforcement Agent of 24 November 2016.

33. On 17 January 2017, the debtors filed an appeal with the Court of Appeals against the above-mentioned Writ of the Private Enforcement Agent, alleging essential violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law. A response to this appeal was submitted also by the Raiffeisen Bank.

34. On 11 October 2017, after the third public session, the Private Enforcement Agent issued the Writ [P.no.224/15], whereby he (i) sold to Raiffeisen Bank the immovable properties of the debtors determined through this Writ, in the total value of 533,344.00 Euros; (ii) obligedthe debtors to transfer the respective

immovable properties to the posesson of the creditor; and (iii) ordered the Directorate of Geodesy and Cadastre in Gjakova to register the respective immovable properties in the immovable property rights register in the name of the buyer, respectively Raiffeisen Bank. On the basis of the case file, the above amount corresponds to one third (1/3) of the value determined in the Conclusion of the Private Enforcement Agent of 23 August 2017.

35. On 18 October 2017, the debtors filed an appeal with the Court of Appeals against the above-mentioned Writ of the Private Enforcement Agent, alleging substantial violation of the provisions of contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of the substantive law. Raiffeisen Bank also responded to the appeal. Through this appeal, the debtors, among other things, challenged (i) the professional competence of the expert B.K.; (ii) the fact that he *"is not included in the list of judicial experts of the Court in the territory of which is also the Private Enforcement Agent"*; and (ii) the content of the respective assessment.

36. On 3 August 2018, the Court of Appeals issued theDecision [Ac. no. 4737/2017] whereby it rejected as unfounded the debtors' appeals while it confirmed the Writs [P. no. 224/15] of 6 January 2017 and [P. no. 224/15] of 11 October 2017 of the Private Enforcement Agent for the sale of debtors' immovable properties.

37. On 27 September 2018, the Applicant had submitted to the State Prosecutor a proposal to initiate a request for protection of legality against the Judgment [Ac.no.4737 / 2017] of the Court of Appeals, of 3 August 2018 and Writ [P. no. 224/15] of the Private Enforcement Agent,of 11 October 2017.

38. On 15 October 2018, the State Prosecutor, by the Notification[KMLC.no.134 / 2018], notified the Applicant that the proposal to initiate a request for protection of legality had been rejected, on the grounds that *"there is no sufficient legal basis in this case to submit a request for protection of legality under Article 247.1 item a) and item b) of the Law on Contested Procedure"*.

39. On 30 November 2018, the Cadastral Office in the Municipality of Gjakova by the Conclusion [Case file/protocol no: 11-940/01-31055/18 - DGJKP: 2283/18] approved the request of Raiffeisen Bank for the transfer of property according to the Writ [P.no.224/15] of 6 January 2017 for cadastral units (seven cadastral units), which it had listed in the said Conclusion.

40. On 23 January 2019, the Private Enforcement Agentby the Conclusion [P.no. 224/15] obliged the Applicant, as well as B.Ll. and E. Ll., in the capacity of debtors, to vacatethe immovable properties which are subject to enforcement proceedings.

## Applicant's allegations

41. The Applicant alleges that the Notification [KMLC. no. 134/2018] of the State Prosecutor, of 15 October 2018, Judgment [Ac. no. 4737/2017] of the Court of Appeals, of 3 August 2018and the Writ [P. no. 224/15] of the Private Enforcement Agent, of 11 October 2017 were issued in violation of his fundamental rights and freedoms guaranteed by paragraph 2 of Article 3

[Equality before the Law] and Articles 31 [Right to Fair and Impartial Trial], 33 [The Principle of Legality and Proportionality in Criminal Cases], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution. As explained above, the Applicant also alleges violations of the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, without specifying which articles of these two international instruments were violated in his case.

42. With regard to his allegations for violation of Article 31 of the Constitution, the Applicant alleges that (i) the Loan Agreement, part of of which was also theContract of Pledge was*"not legalized or notarized"*, and consequently, such a document cannot be considered an enforcement document within the meaning of Article 21 (Legal basis for awarding enforcement) of the LEP, because it is not an enforcement notarial document, nor a mortgage agreement certified by the competent body and registered in the public registry according to the law, as defined in Article 22 (Enforcement Document) of the LEP. In the context of this allegation, the Applicant also alleges that the Loan Agreement is null and void, referring to Article 89 (Nullity) of Law 04/L-077 on Obligational Relationships (hereinafter: LOR), and that consequently, pursuant to Article 66 (Completion ofenforcement procedure) of the LEP, the enforcement procedure must be completed *ex officio*. In the context of this allegation, the Applicant refers to a Decision of the Supreme Court, which as alleged byhim includes the same circumstances as those of his case; (ii) his wife F. Ll., had not given *"consent to the mortgage"* and consequently, the sale of the mortgage is contrary to Article 139 (Authority to Dispose thePledged Item) of the Law no. 03/L-154 on Property and Other Real Rights (hereinafter: the Law on Property and Other Real Rights). In the context of this allegation, the Applicant also notifies the Court that in the context of a request for injunctive relief, there is going on the contested procedure which has under its review also the *"lack of consent to mortgage"*, a procedure in respect of which which the Applicant has not submitted to the Court any documents; and finally (iii) that the Private Enforcement Agent during the enforcement *procedure "contrary to the legal provisions"* appointed an expert for valuation of immovable properties, who was not licensed in the territory where the enforcement procedure was taking place and was not included in the list of experts in the relevant field.

43. The Applicant also states that Raiffeisen Bank (i) *"did not act in compliance with the Law when it disbursed a credit line, respectively it ignored the banking and legal procedures for legalizing a loan agreement [...] and the registration of pledge that are prerequisites for a proper execution as well as the issuance of a loan."*; (ii) it had not specified " *the debt, regular interest and penalties"* in the Loan Agreement; and (iii) *"the disbursement process by Raiffeisen Bank has been conducted in violation of the Law"*.

44. The Applicant also alleges that the challenged decisions have been issued contrary to paragraph 2 of Article 3, and Articles 33, 46 and 54 of the Constitution, and the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights.

45. Finally, the Applicant requests from the Court to *"Oblige the Enforcement Body to reject the enforcement proposal as unlawful due to non-legalized loan and pledge agreement and, and irregularities that occurred during the process, or*

*alternatively the enforcement procedure to be returned to point zero, because the creditor had overturned the banking and legal proceedings at the time when the loan was issued".*

**Relevant constitutional and legal 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.*
*3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*
*4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*
*5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.*

**Law No. 03/L-008 on Executive Procedure, repealed by Law No. 04/L-139 on Enforcement Procedure, published in the Official Gazette on January 3, 2013**

**Article 23**
**Legal basis for determination of execution**

*The court determines execution only in the basis of execution title (titulus executions) or confident document, unless otherwise foreseen by this law.*

**Article 24**

**Execution title**

*24.1 Execution titles are:*

*a) execution decision of the court and execution court settlement;*
*b) execution decision given in administrative procedure and administrative settlement,if it has to do with monetary obligation and if by the law is not foreseen something else;*
*c) notary execution document;*
*d) other document which by the law is called execution document.*

**Law No. 04/L-139 on Enforcement Procedure**

**Article 21**
**Legal basis for awarding enforcement**

*The enforcement authority shall award, respectively perform enforcement only on the basis of enforcement document (titulus executions) and authentic document unless otherwise foreseen by this law.*

**Article 22**
**Enforcement document**

*1. Enforcement documents are:*

*1.1. enforcement decision of the court and enforcement court settlement (reconciliation);*
*1.2. enforcement decision awarded in administrative procedure and administrative settlement (hereinafter: the settlement)*
*1.3. notarized document enforceable according to the law on notary;*
*1.4. agreements reached in the mediation procedure in accordance with the law on mediation after approval of the Court;*
*1.5. the judgments, acts, and memoranda on court settlements of foreign courts, as well as the awards of foreign arbitration courts and the settlements reached before such courts in arbitration cases, which have been accepted to enforcement within the territory of the Republic of Kosovo;*
*1.6. decision and enforcement agreement of the arbitration of the Republic of Kosovo declared enforceable by the Court;*
*1.7. mortgage agreements certified by the competent body and registered in the public registry in accordance with law;*
*1.8. court decision certified as European enforcement writ;*
*1.9. other document which is qualified by the law as an enforcement document.*

**Article 66**
**Completion of enforcement procedure**

*1. Unless foreseen otherwise by this law, the enforcement will conclude ex officio if the enforcement document is annulled, amended, revoked, invalidated or in other manner rendered ineffective, respectively if the certificate for its enforceability is annulled by a final decision. Enforcement will also conclude ex officio if a case has been suspended twice and fulfills the criteria for entering suspended status as defined in paragraph 1 of Article 65 of this Law*

*[...]*

**Article 217**
**The manner for the determination of the value**

*1. The enforcement body shall decide through conclusion on the manner of determining the value of real estate, immediately after rendering the enforcement decision or enforcement writ. If considered necessary, prior rendering the conclusion, the enforcement body may hold a court session or hearing of parties.*
*2. Determination of the value of real estate shall be done after the enforcement decision or enforcement writ becomes final.*
*3. Determination of the value of real estate shall be done prior to the moment defined in paragraph 2 of the present Article, if the creditor requires so and pays the costs for determining the value of real estate even in the case when the enforcement procedure is suspended.*
*4. The value of real estate is determined on the basis of expert evaluation and other facts related to its market price on the day of evaluation.*
*5. During determination of the value of real estate the facts that may decrease its value shall be considered, this if certain rights on real estate remain even after the sale*

**Law No. 04/L-077 on Obligational Relationships**

**Article 89**
**Nullity**

*1. A contract that contravenes the public order, compulsory regulations or moral principles shall be null and void if the purpose of the contravened rule does not assign any other sanction or if the law does not prescribe otherwise for the case in question.*
*2. If one party alone is prohibited from concluding a specific contract the contract shall remain in force unless stipulated otherwise by law for the case in question, while the party that infringed the legal prohibition shall bear the appropriate consequences.*

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

**Article 139**
**Authority to dispose the Pledged Item**

*1. The pledgor must be the owner of the pledged item at the time the pledge becomes effective. It the pledger is not the owner of the pledged item, he must have the legal authority to pledge the item.*
*2. Property that is jointly or commonly owned may be pledged only if all joint or common owners consent the pledge.*
*3. A person who owns a partial interest in movable property may pledge that interest without the consent of other holders of a partial interest.*

## Admissibility of the Referral

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

47. 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."*

48. In addition, the Court also refers to the admissibility criteria as defined by Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accuracy of the Referral] and 49 [Deadlines], which provide:

> Article 47
> [Individual Requests]
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law"*
>
> Article 48
> [Accuracy of the Referral]
>
> *"In his /her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*
>
> Article 49
> [Deadlines]
>
> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision..."*

49. As to the fulfillment of these requirements, the Court considers that the Applicant is an authorized party challenging an act of public authority, namely the Notification [KMLC. no. 134/2018] of the State Prosecutor, of 15 October 2018 and the Judgment [Ac. no. 4737/2017] of the Court of Appeals, of 3 August 2018 relating to the Writ [P. no. 224/15] of the Private Enforcement Agent, of 11

October 2017, after exhausting all legal remedies defined by law. The Applicant has also specified the rights and freedoms which he alleges to have been violated, in accordance with the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

50. In addition, the Court also examines whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. In this regard, the Court will refer to the relevant rules of the Rules of Procedure, as follows::

Rule 39
Admissibility Criteria

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

*(...)*

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

*(...)*

*(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim."*

51. In this respect, the Court of First Instance initially recalls that the circumstances of the present case relate to a Loan and Mortgage Agreement, disregard of which resulted in the initiation of enforcement proceedings by Raiffeisen Bank. In April 2012, the Basic Court by the Judgment [E.no.305/ 2012] allowed Raiffeisen Bank's proposal for the debt in the amount of 803,360.62 Euros, concerning the enforceemnt titles, as listed in its enforcement proposal, in respect of which both the objection and the appeal were rejected, by the Basic Court and the Court of Appeals, respectively, and the case was transferred to the Private Enforcement Agent. The latter issued the Conclusion for the sale of the respective immovable properties, a Conclusion which was revoked by the Basic Court in October 2015, following the request of the debtors for the elimination of irregularities in the enforcement procedure, by ordering the appointment of an expert to determine the value of mortgaged real estate. The said expert was appointed by the Private Enforcement Agent, and after the vaulation by the expert, the procedure of issuing the next Conclusions for the sale of immovable properties continued, and consequently the debtors again submitted a request for elimination of irregularities in the enforcement procedure, a request that was rejected by both, that is, the Basic Court and the Court of Appeals. Public sales of debtors' immovable properties were realized in the third public session, on 6 January 6 and 11 October 2017, through the Writs [P. no. 224/15] of 6 January 2017 and [P. no. 224/15] of 11 October 2017, respectively, to the benefit of Raiffeisen Bank. The appeal filed with the Court of Appeals against these Writs as well as the proposal submitted to the State Prosecutor for initiation of the request for protection of legality were rejected.

52. The Applicant is challenging these findings before the Court, by alleging a violation of Article 31 of the Constitution; and (ii) violation of paragraph 2 of Article 3, Articles 33, 46 and 54 of the Constitution and the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights. The Court notes that despite the fact that the Applicant challenges before the Court also the Notification [KMLC. no. 134/18] of the State Prosecutor, of 15 October 2018, he failed to present to the Court any argument in this respect, and consequently, the Court, in its assessment, will focus on the Judgment [AC. no. 4737/2017] of the Court of Appeals,of 3 August 2018 concerning the Writ [P.no.224 / 15] of the Private Enforcement Agent,of 11 October 2017. The Court recalls that the Applicant did not challenge before the Court the other Writ of the Private Enforcement Agent, respectively [P.no. 224/15] of 6 January 2017.

53. With regard to the first category of Applicant's allegations, namely those that relate to the violation of Article 31 of the Constitution, the Court recalls that the Applicant alleges that (i) the Pledge Agreement *"was not legalized or notarized"* and that consequently, such a document cannot be considered an enforcement document within the meaning of Article 21 of the LEP because it is not an enforceable notarial document, nor a mortgage agreement certified by the competent authority and registered in the public registry in accordance with the law, as defined in Article 22 of the LEP; andconsequently, pursuant to Article 89 of the LOR, the Loan Agreement is null and void, hence, pursuant to Article 66 of the LEP, the enforcement procedure must be completed ex officio. As explained above, in the context of this allegation, the Applicant refers to a Decision of the Supreme Court, which allegedly includes circumstances similar to those of his case; (ii) his wife F. Ll. had not given her *"consent to the mortgage"* and consequently, the sale of the mortgage is contrary to Article 139 of the Law on Property and Other Real Rights; and (iii) that the Private Enforcement Agent during the enforcement procedure *"contrary to the legal provisions"* appointed an expert for valuation of immovable properties, who was not licensed in the territory where the enforcement procedure was taking place and was not included in the list of experts of the relevant field.

54. In the following, in order to assess the admissibility of the application, the Court shall first assess the allegations of the Applicant in respect of the alleged violations of Article 31 of the Constitution. In this context, the Court will first assess (i) the Applicant's allegations regarding the nullity of the Loan and Mortgage Agreement as a result of the lack of *"legalization or notarization"*and the lack of *"consent to mortgage"* by his wife relating to the Mortgage Agreement, for the purpose of ascertaining whether the legal remedies have been exhausted in formal and substantive terms as defined in Rule 39 (1) (b) of the above Rules of Procedure; while thereupon it will assess (ii) the Applicant's allegationsconcerning the fact that the Private Enforcement Agent during the enforcement proceedings *"contrary to the legal provisions"* appointed an expert for the vaulation of immovable properties, who was not licensed in the territory where the enforcement proceedings were being conducted, and was not includedin the list of experts of the relevant field. Finally, the Court will proceed with the assessment of the Applicant's allegations regarding the violations of Articles 3, 33, 46 and 54 of the Constitution and the Convention on the Elimination of All Forms of Discrimination against Women and the Universal

Declaration of Human Rights, respectively. In assessing the admissibility of these allegations, the Court shall also apply the standards of case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, pursuant to Article 53 [Interpretation of HumanRights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

*I. In relation to the Applicant's allegations for violation of Article 31 of the Constitution*

55. As explained above, the Court will first assess (i) the Applicant'sallegations regarding the nullity of the Loan and Mortgage Agreement as a result of their lack of "legalization or notarization" and lack of "consent to mortgage" by his wife in respect of the Mortgage Agreement, in order to proceed with the assessment of (ii) allegations regarding the determinationby the expert of the value of the respective immovable property *"contrary to the legal provisions"*.

*(i) In relation to the "nullity" of the Loan Agreement and the lack of "consent to mortgage"*

56. The Court initially notes that on the basis of the case file, it does not appear that the Applicant hadraised an allegation regarding the nullity of the Loan Agreement as a result of the alleged lack of *"legalization or notarization"* in the proceedings before the regular courts. Moreover, the same applies to the alleged lack of signature of his wife in the Mortgage Agreement. In this regard, the Applicant himself states that in connection with this case, on the basis of a request for injunctive relief, a separate contested procedure is being conducted, in respect of which, he has not submitted the relevant documents to the Court.

57. Moreover, the Applicant did not specify at what stage of the enforcement proceedings such a request for injunctive relief was submitted in the contested procedure, and also did not specify before which court the contested procedure is ongoing. Consequently, the Applicant failed to specify whether this request for injunctive relief, for which he had not submitted any document or court decision, was (i) submitted after the issuance of the contested decision [Ac. no. 4737/2017] of the Court of Appeals, of 3 August 2018 or Notification [KMLC. no. 134/2018] of the State Prosecutor's Office, of 15 October 2018 or if (ii) such a request was initiated at the same time while the enforcement proceedings were being conducted before the regular courts. However, in the case file before the Court, it does not result that the Applicant's allegation that his wife did not sign the Mortgage Agreement was ever raised in the enforcement proceedings which are being challenged before the Court in this case.

58. In such a context, as regards the criteria for exhaustion of legal remedies in essential sense the Court refers to its case law and the case law of the ECtHR.

59. The Court initially emphasizes that, while in the context of machinery for the protection of human rights, the rule on the exhaustion of remedies must be applied with a degree of flexibility and without excessive formalism, this rule normally requires also that the complaints and allegations intended to be made subsequently at the court proceedings, shpuld have been aired before the regular

courts, at least in substance and in compliance with the formal requirements and time-limits laid down through the applicable law (see the case of the ECtHR, *Jane Nicklinson v. the United Kingdom* and *Paul Lamb v. the United Kingdom*, Judgment of 16 July 2015, paragraph 89 and the references therein; see also the cases of the Court, KI119/17, Applicant *Gentian Rexhepi*, Resolution on Inadmissibility, of 3 May 2009, paragraph 71; KI 154/17 and KI05 / 18, Applicant *Basri Deva, Aferdita Deva and the Limited Liability Company "BARBAS"*, Resoltuion on Inadmissibility, of 22 July 2019, paragraph 92; and KI155/18, Applicant *Benson Buza*, Resolution on Inadmissibility, of 25 September 2019, paragraph 50).

60. Even more specifically, the ECtHR maintains the position that,in so far as there exists a legal remedy enabling regular courts to address, at least in substance, the argument of violation of a right, it is that remedy which should be used. If the complaint presented before the Court has not been put, either explicitly or in substance, to the regular courts when it could have been raised in the exercise of a remedy available to the applicant, the regular courts have been denied the opportunity to address the issue, which the rule on exhaustion of legal remedies is intended to give (see, the ECtHR case, *Jane Nicklinson v. the United Kingdom* and *Paul Lamb v. the United Kingdom*, cited above, paragraph 90 and the references therein; and see also the case of the Court, KI119/17, cited above, paragraph 72; case KI154/17 and KI05/18, cited above, paragraph 93; and case KI155/18, cited above, paragraph 49).

61. The Court emphasizes that the exhaustion of legal remedies includes two elements: (i) the exhaustion in the formal-procedural aspect, which implies the possibility of using a legal remedy against an act of a public authority, in a higher instance with full jurisdiction; and (ii) exhausting the remedy in a substantial aspect, which means reporting constitutional violations in *"substance"* before the regular courts so that the latter have the opportunity to prevent and correct the violation of human rights protected by the Constitution and the European Convention on Human Rights (hereinafter: the ECHR). The Court considers as exhausted the legal remedies only when the Applicants, in accordance with the applicable laws, have exhausted them in both aspects (see also the cases of the Court, KI71/18, Applicants, *Kamer Borovci, Mustafë Borovci and Avdulla Bajra*, Resolution on Inadmissibility, of 21 November 2018, paragraph 57; case KI119/17, cited above, paragraph 73; and case KI154 / 17 and KI05/18, cited above, paragraph 94).

62. Having regard to these principles and the circumstances in which, according to the case file it results that these specific allegations of the Applicant have been filed for the first time before the Court, it concludes that the Applicant did not give the opportunity to the regular courts, including the Court of Appeals, to address these allegations and, on that occassion, to prevent alleged violations raised by the Applicant directly before this Court, without having exhausted legal remedies in their substance. (See, *mutatis mutandis*, the case of the Court, KI118/15, Applicant *Dragiša Stojković*, Resolution on Inadmissibility, of 12 April 2016, paragraphs 30-39; see also the case KI119/17, cited above, paragraph 74; and the case KI154/17 and KI05/18, cited above, paragraph 95).

63. The Court also notes that the Applicant refers to a Decision of the Supreme Court, which allegedly has been issued in the same circumstances as those of his case. In this respect, the Court first emphasizes that such an allegation cannot be considered by the Court, taking into account the finding that the allegations of the Applicant's do not meet the criteria for exhaustion of legal remedies in substantial aspect. However, the Court for clarification purposes emphasizes that it has established general principles regarding the lack of consistency, respectively the divergence in the case law, in the context of the procedural guarantees embodied in Article 31 of the Constitution in relation to Article 6 (Right to a fair trial) of the ECHR, through Judgments KI35/18, with Applicant, *Bayerische Versicherungsverbrand*, Judgment of 6 January 2020 (hereinafter: Judgment KI35/18) and KI87/18, Applicant, *IF Skadeforsikring*, Judgment, of 27 February 2019.

64. Through these cases, the Court has initially clarified that it is the duty of each applicant to provide arguments on the divergence in the respective case law, as it is not its function to compare different decisions of regular courts even if rendered in apparently similar proceedings. It must respect the independence of the courts. In the case of the Court KI35/18, the Court had emphasized that in such cases, namely when alleging constitutional violation 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 which allegedly have been resolved in different ways by the regular courts, thus resulting in divergence in the case law and which may have resulted in a violation of their constitutional rights and freedoms guaranteed by Article 31 of the Constitution in connunction with Article 6 of the ECHR (see, in this respect, the case of the Court KI35/18 , cited above, paragraph 76).

65. The Applicant, in the circumstances of the present case, has not fulfilled this obligation. Moreover, and in so far as it is relevant for the circumstances of the present, the Court in the Judgment KI35/18 has clarified that by comparing only two (2) decisions, even if the same may be contradictory, there cannot be ascertained *"profound and long-standing differencies"*, as one of the three criteria required to ascertain a divergence in the case law. In such a circumstance, where the respective applicants refer to only one decision, which, as alleged, contains a finding and conclusion different from the decision issued in his/her case, the Court cannot find that the principle of legal certainty has been violated (see the case of the Court KI35/18, cited above, paragraphs 104 and 114; and case KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, of 11 March 2020, paragraph 75).

66. Consequently, as regards the above-mentioned allegations of the Applicant concerning the nullity of the Loan and Mortgage Agreement as a result of the lack of *"legalization or notarization thereof"* and the lack of *"consent to mortgage"* by his wife for the Mortgage Agreement, the Court finds that they should be rejected as inadmissible on procedural basis due to substantial non-exhaustion of all legal remedies, as required by paragraph 7 of Article 113 of the Constitution, paragraph 2 of Article 47 of the Law and item ( b) of paragraph (1) of Rule 39 of the Rules of Procedure.

*(ii) In relation to appointment of the expert for the determination of the value of the immovable property "contrary to the legal provisions"*

67. In the following, the Court will also consider the Applicant's allegation that the Private Enforcement Agent during the enforcement proceedings "contrary to the legal provisions" appointed an expert for the valuation of immovable property who was not licensed in the territory where the enforcement proceedings were being conducted and was not included in the list of experts of the relevant field.

68. In addressing this allegation, the Court also considers whether the Applicant has fulfilled the admissibility criteria set out in paragraph (2) of Rule 39 of the Rules of Procedure, respectively the criterion for the Referral or an allegation contained therein not to be manifestly ill-founded, in order to be declared admissible. Specifically, Rule 39 (2) stipulates 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"*

69. This rule, on the basis of the ECtHR case law but also of the Court, enables the latter to declare inadmissible *as "manifestly ill-founded"* a referral in its entirety or only a specific allegation that a referral may contain. Based on the ECtHR case law, *"manifestly ill-founded"* allegations can be categorized into four separate groups: (i) allegations that qualify as *"fourth instance"* allefations; (ii) allegations that manifest a *"clear or apparent absence of violation"*; (iii) *"unsubstantiated or unjustified"* allegations; and finally, (iv) *"confused or far-fetched"* allegations (see, more precisely, for the concept of inadmissibility on the basis of a referral assessed as *"manifestly ill-founded"*, and the specifics of the four above-mentioned categories of allegations qualified as *"manifestly ill-founded"*, the ECtHR Practical Guide on Admissibility Criteria of 31 August 2019; Part III. Inadmissibility based on the merits; A. Manifestly ill-founded applications, paragraphs 255 to 284).

70. The Court considers that the Applicant's allegation in respect of the fact that the Private Enforcement Agent during the enforcement proceedings *"contrary to the legal provisions"* appointed an expert for valuation of the immovable properties who was not licensed in the territory where the enforcement proceedings were being conducted and was not included the list of experts in the relevant field, falls into the category of "fourth instance" allegations, because it includes issues related to the interpretation and application of the law, namely *"legality"* and not *"constitutionality"*.

71. More exactly, and as regards the "fourth instance" allegations, the Court emphasizes that based on the case law of the ECHR, but also taking into account its features, as defined by the ECHR (see in this context, the clarification in the ECtHR Practical Guide on Admissibility Criteria of 30 April 2019; part I. Inadmissibility based on the merits; A. Manifestly ill-founded applications; 2. "Fourth Instance", paragraphs 262 and 263), the principle of subsidiarity and fourth- instance doctrine, it has consistently emphasized the difference between *"constitutionality" and "legality"* and has stated that it is not its duty to deal with errors of facts or erroneous interpretation and application of the law, allegedly

committed by a regular court, unless and insofar as they may have infringed the rights and freedoms protected by the Constitution and/or the ECHR (see, in this context, inter alia, the cases of the Court KI49/19, Applicant Joint Stock Company Limak Kosovo International Airport JSC, "Adem Jashari", Resolution of 31 October 2019, paragraph 47; KI56/17, Applicant Lumturije Murtezaj, Resolution on Inadmissibility, of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, cited above, paragraph 60).

72. The Court has also consistently stated that it is not the role of this Court to review the conclusions of the regular courts regarding the factual situation and the application of substantive law and that it may not itself assess the facts which have led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of "fourth instance", which would result in exceeding the limits imposed on its jurisdiction (see, in this context, the ECtHR case *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and the references therein; and see also the cases of the Court, KI49/19, cited above, paragraph 48; and KI154/17 and KI05/18, cited above, paragraph 61).

73. In this regard, and in accordance with its case law and the ECtHR case law, the Court cannot, as a general rule, question the findings and conclusions of the regular courts relating to: (i) determination of case facts; (ii) the interpretation and application of the law; (iii) the admissibility and assessment of evidence at trial; (iv) substantive fairness of the outcome of a civil dispute; or even (v) the guilt or innocence of the accused in criminal proceedings (see, also, the ECtHR Practical Guide of 30 April 2019 on Admissibility Criteria; part I. Inadmissibility based on the merit; A. Manifestly ill-founded applications; 2 . "Fourth instance", paragraph 264).

74. The Court also emphasizes the fact that in assessing the *"fourth instance"* allegations relating to alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, it has also consistently stated that the *"fairness"* required from the above-mentioned articles it is not a *"substantial"* justice, but a "procedural" fairness. This concept in practical terms, in principle, implies (i) the possibility of contradictory procedures; (ii) the ability of the parties to bring arguments and evidence at various stages of these proceedings which they consider relevant to the relevant case; (iii) the ability to effectively challenge arguments and evidence presented by the opposing party; and (iv) the right to have their arguments, which are objectively important for the resolution of the case, heard and examined by the courts in an appropriate manner; so that, as a result, the proceedings as a whole would result to be fair (see also ECtHR Practical Guide of 30 April 2019 on Admissibility Criteria; Part I. Inadmissibility based on the merits; A. Manifestly ill-founded applications; 2. "Fourth Instance", paragraph 264 and references therein). Moreover, the fairness of a proceedingsis assessed in its whole, and this is one of the main premises of the case law of the Court and that of the ECtHR (see, in this context, the case of the ECtHR *Barbera, Messeque and Jabardo v. Spain* , Judgment of 6 December 1988, paragraph 68; and cases of the Court, KI104 / 16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and KI143/16, Applicant Muharrem Blaku and others, Resolution on Inadmissibility, of 13 June 2018, paragraph 31).

75. The Court, however, emphasizes that the case law of the ECtHR and of the Court also determine circumstances under which exceptions to this stance should be made. As noted above, while the primary duty of the regular courts is to resolve problems relating to the interpretation of applicable law, the role of the Court is to ensure or verify that the effects of this interpretation are in compliance with the Constitution and the ECHR (see the ECtHR case, *Miragall Escolano et al. v. Spain*, Judgment of 25 May 2000, paragraphs 33-39; and see also the case of the Court KI154/17 and KI05/18, cited above, paragraph 63). In principle, such an exception relates to cases which result to be apparently arbitrary, including those in which a court has "applied the law manifestly erroneously" in a particularcase and which may have resulted in "arbitrary conclusions" or "manifestly unreasoned" for the respective applicant (for a more detailed explanation of the concept of "manifestly erroneous application of the law", see, inter alia, the case of Court KI154/17 and 05/18, cited above, paragraphs 60 to 65 and the references used therein).

76. In the circumstances of the present case, the Court reiterates that the Applicant, beyond the allegation for a violation of Article 31 of the Constitution, as a result of the appointment of an expert *"contrary to the legal provisions"* by the Private Enforcement Agent through the Conclusion [P.no.224/15] of 22 October 2015, does not sufficiently substantiate or argue before the Court how this interpretation of *"legal provisions"* by the regular courts, which the Applicant did not specify in his Referral, may have been *"manifestly erroneous"* thus resulting in *"arbitrary conclusions"* or *"manifestly unreasoned"* for the claimant or how the proceedings before the regular courts, in their entirety, may not have been fair or may have even been arbitrary.

77. Moreover, the Court considers that the Court of Appeals has taken into account all the facts and circumstances of the case and the allegations of the Applicant submitted through the debtor's appeal against the Order [P.no. 224/15] of the Private Enforcement Agent, of 11 October 2016

78. In this respect, the Court recalls the Judgment [PPP. no. 74/15] of the Basic Court, of 7 October 2015 whwreby the Private Enforcement Agent was ordered to appoint an expert for the valuation of immovable property. The Private Enforcement Agent, pursuant to the above-mentioned Decision, through the Conclusion [P.no.224 / 15] of 22 October 2015, had appointed the expert for the valuation of the respective immovable properties. On the basis of the case file, having appointedg the expert and received his evaluation, the Private Enforcement Agent, through the respective Conclusions, scheduled the first and second sale of immovable properties through public auctions. The debtors had submitted another request for the elimination of irregularities in the enforcement proceedings against the above-mentioned Conclusions of the Private Enforcement Agent for the sale of immovable properties, through which, among other things, the issue of appointing the expert was disputed.

79. The Court recalls that the Basic Court by Judgment [PPP. no. 85/2016] of 12 January 2017 rejected the debtors request for the elimination of irregularities in the enforcement proceedings as unfounded. This finding of the Basic Court was also confirmed by the Court of Appeals through the Decision [Ac.no.845/ 2017]

of 17 August 2018, whereby it rejected the debtors' appeal, by assessing that: *"[...] the challenged decision does not contains a substantial violation of the provisions of the contested and enforcement procedure which this Court notes ex officio, nor those which the appeal invokes. At the same time, alongside the correctly determined factual situation also the substantive law has been correctly applied".*

80. Further, the Court also notes that the issue of the appointment of an expert by the Private Enforcement Agent was also raised in the debtors' appeal against the Order [P. no. 224/15] of the Private Enforcement Agent,of 11 October 2017. As to the debtor's appeal, the Court recalls the Judgment [Ac. no. 4737/2017] of the Court of Appeals, of 3 August 2018 which had confirmed the above-mentioned Order of the Private Enforcement Agent stating that the allegations in the debtors' appeal are unfounded.

81. Therefore, and based on the above clarifications, the Court considers that the Applicant does not sufficiently prove and substantiate his allegation regarding the appointment of the expert by the Private Enforcement Agent "contrary to the legal provisions", and consequently, these allegations are manifestly ill-founded on constitutional basis, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

*II. In relation to the allegation for violation of Articles 3, 33, 46 and 54 of the Constitution and international instruments*

82. The Court also recalls that the Applicant also alleges violation of Articles 3, 33, 46 and 54 of the Constitution, for which he does not provide any justification before the Court, and also alleges violation of international instruments, the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, respectively, without specifying which articles of these two international instruments have been infringed in his case.

83. In addressing these allegations, the Court also examines whether the applicant has fulfilled the admissibility criteria set out in paragraph (2) of Rule 39 of the Rules of Procedure, namely the criterion for the referral not to be manifestly ill-founded in order to declare it admissible.

84. The Court recalls that this rule, based on the case law of the ECtHR but also of the Court, enables the Court to declare inadmissible certain allegations as "manifestly ill-founded" on constitutional basis, if they are "unsubstantiated". or "unreasoned". The Court considers that as regards this category of allegations, this is the case.

85. In this context, the Court states that, pursuant to Article 48 of the Law and paragraphs (1) (d) and (2) of Rule 39 of the Rules of Procedure and its case law, it has consistently stated that (i) the parties have an obligation to clarify precisely and present adequately the facts and allegations; and also (ii) to sufficiently prove and substantiate their allegations for violation of constitutional rights or provisions.

86. The Court also recalls that it has consistently stated that the mere mention of an article of the Constitution, without a clear and adequate reasoning indicating how that right has been violated, is not sufficient a sufficient argument to activate the protection machinery provided by the Constitution and the Court, as an institution that takes care for the observance of human rights and freedoms (see, in this context, the cases of Court KI02/18, Applicant the Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning], Resolution on Inadmissibility, of 20 June 2019, paragraph 36; and KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility, of 8 October 2019, paragraphs 30-31; see also the ECtHR Practical Guide on Admissibility Criteria, of 30 April 2019 part I. Inadmissibility based on the merits; A. Manifestly ill-founded applications; 4. Unsubstantiated complaints: lack of evidence, paragraphs 280 to 283).

87. In the present case, the Applicant alleges violation of Articles 3,33,46 and 54 of the Constitution, without providing arguments and justifying their violation by the challenged Decision of the Court of Appeals, further he also alleges a violation of international instruments, the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, respectively, without specifying which articles of these two international instruments have been violated.

88. Therefore, the Applicant's allegations for violation of Articles 3, 33, 46 and 54 of the Constitution, as well as the violation of the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, are "unsubstantiated and unreasoned" allegations, and consequently are inadmissible as manifestly ill-founded on constitutional basis, as defined in paragraph (2) of Rule 39 of the Rules of Procedure.

89. Therefore, and finally, the Court finds that the Applicant's Referral is inadmissible because, (i) the allegations for violation of Article 31 of the Constitution, relating to the nullity of the Loan and Mortgage Agreement as a result of the lack of "legalization or notarization" and the lack of "consent to mortgage" by the Applicant's spouse are inadmissible as a result of non-exhaustion of legal remedies in accordance with paragraphs 1 and 7 of Article 113 of the Constitution, paragraph 2 of Article 47 of Law, and item (b) of paragraph (1) of Rule 39 of the Rules of Procedure; (ii) allegations for violation of Article 31 of the Constitution relating to the appointment of an expert to determine the value of immovable property by the Private Enforcement Agent are inadmissible because they are manifestly ill-founded on constitutional basis, as defined by Articles 47 and 48 of the Law. and paragraph (2) of Rule 39 of the Rules of Procedure; and (iii) the allegations for violation of Articles 3, 33, 46 and 54 of the Constitution, as well as violations of international instruments, the Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights, respectively, are inadmissible because they are "unsubstantiated" or "unreasoned" allegations, and therefore inadmissible as manifestly ill-founded on constitutional basis, as stipulated in Articles 47 and 48 of the Law and paragraph (2) of Rule 39 of the Rules of Procedure.

**FOR THESE REASONS**

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rule 39(1) (d) and (2) of the Rules of Procedure, on 24 June 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**

Gresa Caka-Nimani Arta Rama-Hajrizi



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