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

Prishtina, on 23 July 2020
Ref. No.:RK1587/20

This translation is unofficial and serves for information purposes only

RESOLUTION ON INADMISSIBILITY

in

Case No. KI179/18

Applicant

Belgjyzar Latifi

Constitutional Review of the Judgment Rev. no. 189/2018, of 13 June 2018, of the Supreme Court of Kosovo

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 Belgjyzar Latifi from Prishtina, who is represented by Vahide Braha, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. no. 189/2018] of 13 June 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [Ac.no.3228/2013] of 22 February 2018 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and the Judgment [C. no. 1726/07] of 6 March 2013 of the General Department of the Basic Court in Prishtina (hereinafter: the Basic Court).

3. The challenged decision [Rev.no.189/2018] of 13 June 2018, was served to the representative of the Applicant on 19 July 2018.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgement of the Supreme Court in conjunction with the relevant Judgments of the Court of Appeals and the Basic Court, respectively, through which, according to the Applicant's allegations were violated her fundamental rights and freedoms guaranteed by Article 31 [Right to a 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 on Human Rights (hereinafter: ECHR) and Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

5. The Applicant also requested that a hearing be scheduled.

Legal basis

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

Proceedings before the Court

7. On 15 November 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 29 November 2018, the President of the Court appointed Judge Gresa Caka-Nimani Judge Rapporteur and the Review Panel, composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

9. On 6 December 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

10. On 28 June 2019, the Court sent a notification letter to the interested party S.RR., in order to notify him about the registration of the referral and to enable him to submit his comments concerning the referral, within a period of fifteen (15) days, from the day of receipt of the notification of the Court.

11. However, the Post of Kosovo informed the Court that on 1 and 2 July 2019 they attempted to deliver the letter of the Court of 28 June 2019 to the address at which, from the case file, it appears that the interested party S.RR. resides; however, the same could not be delivered to him on the grounds that he had not been found at the respective address. After two unsuccessful attempts, the Post of Kosovo returned the envelope along with the undelivered letter to the Court.

12. On 15 July 2019, the Court notified the Basic Court about the registration of the referral and requested from it to submit to the Court a copy of the entire file relating to the referral KI179/18.

13. On 19 and 23 July 2019, the Court Secretariat attempted to contact the interested party S.RR., calling him on his personal telephone number which was found in the case file, but he did not answer the telephone call in none of the Court's attempts.

14. On July 23, 2019, the Basic Court submitted the original file related to the referral KI179/18.

15. On 24 June 2020, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

Procedures conducted before 1999 regarding the apartment which is the subject of the dispute

16. On 2 August 1985, the Socially Owned Enterprise "Gërmia" (hereinafter: N.SH. Gërmia), through the Resolution [no.109] allocated the apartment, which is the subject of the entire dispute before the regular courts, to the interested party S.RR. Through the same Resolution, N.SH. Gërmia obligated S.RR. to sign an agreement for the use of the apartment with the Self-governing Community of Interest for Apartments in Social Ownership (hereinafter: SCI).

17. On 6 March 1986, S.RR. signed the agreement [no.1183/8256] with the SCI for the use of the apartment.

18. From the case file it appears that on an unspecified date, K.O., who was also an employee of N.SH. Gërmia, settled in the apartment which is the subject of the dispute, despite the fact that the apartment in question was allocated to S.RR. through the above-mentioned Resolution.

19. On an unspecified date in the case file, N.SH. Gërmia had filed a lawsuit against K.O. and requested from the Municipal Court in Prishtina (hereinafter: the Municipal Court) to obligate K.O. to vacate the apartment in which K.O. was settled in. According to N.SH. Gërmia, the apartment in question was allocated to S.RR. but, in the meantime, in the same apartment settled in K.O., without any legal basis. For these reasons, N.SH. Gërmia had proposed to the Municipal Court to approve its lawsuit and order K.O. to vacate its apartment.

20. In response to the lawsuit, K.O. had challenged the claim of N.SH. Gërmia, emphasizing that she settled in the disputed apartment only after the managers of N.SH. Gërmia had instructed her to do so based on the fact that "*she had been an employee at this social enterprise for 15 continuous years*".

21. On 3 February 1988, the Municipal Court through Judgment [C. no. 1993/87] approved the claim of N.SH. Gërmia and obligated K.O. to vacate the apartment and hand it over in that moment to the possession of the claimant, respectively, N.SH. Gërmia. In the reasoning of this Judgment, among others, is stated that: *"[...] based on the evidence administered above, it was established that the respondent* [K.O.] *without right and without any legal basis entered the mentioned apartment, settled in and still resides in it, in which case the employee S.RR. was made impossible to settle in the apartment which had been allocated to him by the claimant* [N.SH. Gërmia]."

22. Against the above-mentioned Judgment of the Municipal Court, K.O. filed an appeal with the District Court in Prishtina (hereinafter: the District Court), alleging erroneous and incomplete verification of the factual situation and erroneous application of substantive law. Through her appeal, K.O. requested the District Court to reject the claim of N.SH. Gërmia as unfounded or to void the Judgment of the Municipal Court and return the case to the latter for retrial.

23. On 18 May 1988, the District Court through Judgment [Ac. no. 408/88] rejected as unfounded the appeal of K.O. and upheld the Judgment [C. no. 1993/87] of 3 February 1988 of the Municipal Court.

24. On 3 December 1988, according to the case file, it results that the above-mentioned Judgment of the Municipal Court, fully confirmed by the District Court, became a final and therefore enforceable decision. However, according to the same case file, it results that these Judgments were never executed and as a result, S.RR. had not managed to get the apartment in possession, but in the same K.O. had continued to stay.

25. On 5 July 1991, N.SH. Gërmia, through Judgment [no. 754] decided to take the following actions: (i) to repeal the Resolution [no. 109] of 2 August 1985 of N.SH. Gërmia through which the apartment in question was allocated to the interested party S.RR.; (ii) to allocate the apartment which is the subject of the dispute to its employee, K.O., on the basis of her employment relationship with N.SH. Gërmia; and (iii) to oblige K.O. to sign a contract for the use of the apartment in question with the SCI in Prishtina.

26. On an unspecified date, K.O. signed an agreement with SCI for the use of the apartment in question. Whereas, on 21 May 1993, K.O. signed a contract of sale and purchase [Vr. 3396/93] for the apartment in question with N.SH. Gërmia. On the same day (i) the contract in question was certified by the Municipal Court; and (ii) Directorate of Geodesy and Cadastre in Prishtina through Decision [No.lo.950-3/768] approved K.O.'s request for registration of her property right over the apartment in question.

Procedures conducted after 1999 regarding the apartment which is the subject of the dispute

27. On 27 July 2000, after the end of the war in Kosovo, S.RR. had submitted a request to the Housing and Property Claims Commission (hereinafter: the Commission) established by UNMIK Regulation no. 1999/23 of 15 November 1999 on establishing the Housing and Property Directorate and the Housing and Property Claims Commission (hereinafter: Regulation 1999/23). The Commission registered the claim of S.RR. as a "category A" claim, with the reference DS000241. Through this claim, S.RR. had claimed the return of the property right to the apartment which is the subject of the dispute.

28. On 1 March 2001, the Applicant, in the capacity of buyer, signed a sale and purchase contract for the apartment in question, with K.O., in the capacity of seller. On the same day, the Municipal Court, through the Decision [VR.No.1157/2001] certified the above-mentioned sale and purchase contract of the apartment. From the case file it is clear that the applicant had started living in the apartment in question since the moment she bought it from K.O.

29. On 12 January 2002, K.O. had filed a claim with the Commission, which registered it as a "category C" claim, with the reference DS000241. Through this claim, K.O. had claimed the property right over the apartment in question be confirmed to her.

30. On 20 August 2005, the Commission, pursuant to Regulation 2000/60 of 31 October 2000 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission (hereinafter: Regulation 2000/60), issued the Decision [HPCC/D/212/2005/A&C] through which, among other claims, it addressed it in a group, it also rejected: (i) the "category A" claim of the interested party S.RR.; and (ii) the "category C" claim of K.O.

31. Within the legal deadline, S.RR. and K.O., submitted their respective requests for review of the Commission's Decision [HPCC/D/212/2005/A&C] of 20 August 2005.

32. On 19 October 2006, the Commission issued a Decision on the Request for Review [HPCC/REC/74/2006] of the above-mentioned claims. With regard to the interested party S.RR., it decided that (i) *"Category A claim DS000241 be approved and the property right of the Petitioner* [Court Note: S.RR.] *be returned."*; meanwhile, as far as K.O. is concerned, it decided that (ii)

"Category C claim DS302948 be rejected." The Commission reasoned its decision as follows:

> *"For the claims no. DS000241 & DS302948, Commission* [HPCC] *had initially decided to reject both claims. Category A claim* [Court Note: S.RR.'s claim] *was rejected on the grounds that the Petitioner had never entered the claimed property, so that he had never acquired the right of residence, while category C claim* [Court Note: K.O.'s claim] *was rejected on the grounds that she had voluntarily relinquished her claim to the property. Following the notification of the Commission's decision, Petitioner A* [Court Note: S.RR.], *as a claimant, had submitted the request for review within 30 days. The petitioner claims to have had a valid decision on the allocation and the contract on the use, but had never been able to take possession of the claimed property because Petitioner C* [Court Note: K.O.] *had illegally usurped the property, violating the court order. Directorate* [Court Note: Housing and Property Claims Directorate] *had notified the current resident* [Court Note: Applicant] *on the decision of the Commission. Current resident* [Court Note: Applicant], *as a claimant, asserts that she is the owner of the claimed property considering that she had purchased it from Petitioner C* [Court Note: K.O.]. *Commission has carefully examined the evidence provided. The Commission finds that although the claimant* [Court Note: S.RR.] *had never taken possession of the claimed property, this had been because Petitioner C* [Court Note: K.O.] *had refused to comply with a valid court order* [Court Note: see Judgment of the Municipal Court in Prishtina, [C. no. 1993/87] of 3 February 1988 and the Judgment of the District Court in Prishtina [Ac. no. 408/88] of 18 May 1988, cited above, through which K.O. was ordered to vacate the apartment in question as she had settled in there without legal basis]. *In these circumstances, the Commission concludes that the impossibility of the petitioner to take possession* [Court Note: S.RR.] *cannot be used against him. Consequently, the request for review must be approved and the decision be rendered as mentioned above. The Commission notes that this decision is without prejudice to the right of the current resident* [Applicant] *to recover the purchase price from Petitioner C* [Court Note: K.O.]. *The decision does not affect category C claim which was rightly rejected in the first instance."*

33. Pursuant to paragraph 2.7 of Article 2 (Housing and Property Claims Commission) of Regulation 1999/23, the final Decisions of the Commission are binding and are not subject to review by any other judicial or administrative authority in Kosovo. As a result, the case file shows that the interested party S.RR. has requested from the Housing and Property Claims Directorate to return the apartment to his possession and the same be vacated by the Applicant, who was living in the disputed apartment since the conclusion of the sale and purchase contract for the apartment in question with K.O. in 2001. The Housing and Property Claims Directorate responded positively to the request of S.RR. and requested from the Applicant, on the basis of the validity of the above-mentioned Commission Decision, to vacate the apartment.

34. On 2 July 2007, the Housing and Property Claims Directorate visited the apartment in question and confirmed that it had been vacated by the Applicant. On the same day, the Housing and Property Claims Directorate handed over the keys to the apartment in question to the interested party S.RR. Following the completion of these proceedings, the Housing and Property Claims Directorate considered this case to be closed in terms of its jurisdiction.

35. On 31 July 2007, the Commission had sent another letter to K.O., who, based on the case file, appears to have appealed against the Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006, through which, it clarifies to the same that (i) she had already used all legal remedies; and (ii) pursuant to paragraph 2.7 of Regulation 1999/23, "*the final decisions of the Commission are binding and enforceable*".

Procedures followed by the Applicant

36. On 18 July 2007 the Applicant filed a lawsuit *"for confirmation of ownership with a proposal for the issuance of an injunction"* against the interested party, S.RR. in the Basic Court. In support of her arguments, the claimant, respectively, the Applicant, refers to (i) Decision [no. 756] of 5 July 1991 of N.SH. Gërmia; (ii) sale and purchase Contract certified by the Municipal Court through the Decision [Vr.no.3396/93] of 21 May 1993; and (iii) the Decision of the Directorate of Geodesy and Cadastre of 21 May 1993. In the reasoning of her lawsuit, the Applicant stated that she was the sole legitimate owner of the apartment as she had purchased the apartment in question from the legal predecessor K.O. and that she had a contract certified by the Municipal Court in 2001, through which is evidenced the respective sale and purchase.

37. The interested party, S.RR., had filed a response to the lawsuit, proposing that the claim of the Applicant be rejected by the Basic Court as unfounded. S.RR. had challenged the claims of the Applicant, stating that (i) he had acquired the right to use the disputed apartment in due process through the Decision [no. 109] of 2 August 1985 of the N.SH. Gërmia and then, as requested, had entered into a contract for use with the SCI; (ii) with the establishment of "*coercive and discriminatory measures*" in N.SH. Gërmia in 1991, the then authorities have allocated the apartment in question to K.O., despite the fact that with a final decision, K.O. had been obliged to vacate the disputed apartment; (iii) K.O., taking advantage of the situation of discrimination after 24 March 1989, managed to conclude the contract for the use of the apartment with the SCI and then to make the purchase of the disputed apartment from N.SH. Gërmia; and (iv) the Resolution certifying the allocation of the apartment under the name of K.O. is unlawful because prior to the allocation of the apartment to K.O., the same was assigned to him, respectively S.RR., and this makes the contracts for the use and purchase of the apartment by K.O., null and invalid. According to S.RR., the reasons listed above, had resulted in the Decision [HPCC/REC/74/2006] of 19 October 2006 of the Commission, through which K.O. was obliged to vacate the disputed apartment. Following this decision, S.RR. had stated that he had registered his right of use in the cadastre and was in the current possession of the apartment.

38. On 6 March 2013, the Basic Court, through Judgment [C. no. 1726/07], rejected the Applicant's claim as unfounded. The Basic Court based its decision on the rejection of the claim on the following evidence: (i) the case file C. no. 1993/87; (ii) Resolution [no. 109] of 2 June 1985 of N.SH. Gërmia, through which the disputed apartment was originally allocated to S.RR.; (iii) the contract for the use of the apartment [no. 1183/8256] concluded between SCI and S.RR. on 6 March 1986; (iv) Resolution [no. 754] of 5 July 1991 of N.SH. Gërmia, through which the apartment was then allocated to K.O.; (v) Contract on use of apartment no. 1193/8156 concluded between SCI and K.O. on 3 April 1991; (vi) Contract [Vr. 3396/93] of 21 May 1993 for the purchase of the apartment between N.SH. Gërmia and K.O.; (vii) Resolution [No.lo.950-3/768] of 21 May 1993 of the Directorate of Geodesy and Cadastre in Prishtina, through which the disputed apartment was registered as the property of K.O.; (viii) Contract [Vr. 1197/2001] of 1 March 2001 on the sale and purchase of the apartment between K.O. and the Applicant certified in the Municipal Court; (ix) Contract on participation in the expenses of the apartment with the Housing Property Enterprise in Prishtina of 29 July 1993; (x) Immovable property registration certificate [no. 011-953-165/2003] issued on 10 January 2013; (xi) Response of the Kosovo Property Agency of 3 December 2012 and their decisions; (xii) Statement of K.O. of 4 March 2013 certified in the Basic Court in Novi Pazar, Republic of Serbia; and (xiii) Municipal Utility Invoices and the letter of the Housing Property Enterprise in Prishtina of 21 February 2013.

39. The Basic Court, in its reasoning, focused on three basic issues (i) the competence of the Commission to decide on the claims of persons who have lost the right to property-apartment after 23 March 1989 and until 24 March 1999 as a result of discrimination; (ii) the right of person S.RR. to the disputed apartment based on the relevant background since the Decision [no. 109] of 2 August 1985 of N.SH. Gërmia, through which this apartment had passed into the possession of the person S.RR.; and (iii) the alleged right of ownership of the Applicant.

40. Regarding the first issue, the Basic Court first recalled the background of the events before the war in Kosovo in regard to "*coercive measures and dismissals on a discriminatory basis*" and then the developments that took place after 1999 with the establishment of the administration of the United Nations Mission in Kosovo (hereinafter: UNMIK). In this regard, the Basic Court recalled the Regulations issued by UNMIK, namely Regulation 1999/23 and Regulation 2000/60, which set out the Commission's competence to decide on the claims of persons who have lost property-apartment rights after 23 March 1989 and until 24 March 1999 as a result of discrimination and due to other cases, as defined by the two aforementioned regulations, excluding the competence of regular courts in this regard.

41. The Basic Court emphasized the Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006 of the Commission through which was approved "category A" claim of S.RR. The relevant court recalled that the above decision, based on the applicable law, respectively paragraph 2.7 of Article 2 of Regulation 1999/23, is final, stating that "*Final decisions of the*

Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo".

42. Regarding the second issue, the Basic Court recalled that the interested party S.RR. by legal procedure, respectively through the Resolution [no. 109] of 2 August 1985 of N.SH. Gërmia has been granted the right to allocation of the disputed apartment. Based on the same decision, a contract was signed for the use of the apartment with SCI, but S.RR. *"failed to settle in the apartment because the predecessor [...] K.O. had settled in into the apartment illegally".* N.SH. Gërmia itself had filed a lawsuit to vacate this apartment and the Municipal Court through Judgment [C.No.1993/87] of 3 February 1988, had obliged K.O. to vacate the apartment. This Judgment was upheld by Judgment [Ac.no.408/88] of 18 May 1988 of the District Court and had become final on 3 December 1988. According to the Basic Court, furthermore, after *"the imposition of coercive measures"*, the predecessor of the Applicant, respectively K.O., who had been in illegal possession of the apartment *"has exploited the situation at the coercive institution* [N.SH. Gërmia] *to get the resolution no. 754, of 05.07.1991, then to conclude the contract for the use of the apartment in the Public Housing Enterprise and to privatize the apartment with the contract Vr. No. 754, dated 05.07.1991".* Ultimately, after the end of the war in Kosovo and the establishment of the UNMIK administration, K.O. through the sale and purchase contract [Vr. 1197/2001] of 1 March 2001, had sold the disputed apartment to the Applicant. This contract of sale and purchase was examined by the Commission which through the Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006, had ruled in favour of S.RR. and had instructed the Applicant to request through relevant procedures the dissolution of the contract and the relevant compensation. The Basic Court also stated that *"after receiving the final decision of the HPCC, of 02 July 2007* [Court Note: based on the case file, 31 July 2007], *the same* [Court Note: Applicant] *had a legal interest to request from the predecessor-seller of the disputed apartment K.O., dissolution of the contract, Vr. 1197/2001, of 01.03.2001, refund of the sale/purchase price of the disputed apartment and compensation of material damage as a result of dissolution of the contract".*

43. Finally, regarding the third issue, the Basic Court also evaluated the Applicant's claims that she had acquired the right to property through legal work within the meaning of Article 20 in conjunction with Article 33 of the Law on Basic Legal-Property Relations of 30 January 1980 (hereinafter: the Law on Legal-Property Relations), describing them as unfounded. The Basic Court in this context, emphasized that (i) the Applicant *"is not as a contracting party under contract Vr. 3396/93, of 21.05.1993, but is a contracting party to the contract Vr. 1197/01, of 01.03.2001"*; (ii) the predecessor of the claimant, respectively the Applicant, *"has acquired the right to the disputed apartment in bad faith at the time of the mass discrimination in Kosovo, that is, with the resolution of the provisional governing authority"*; and (iii) precisely to avoid the consequences of discrimination in Kosovo caused by the then government, *"SRSG* [Court Note: Special Representative of the Secretary-General of the United Nations], *after the establishment of the International Mission in Kosovo in June 1999, has approved the Regulation, no. 1999/23, with which it*

established the Directorate for Housing and Property Issues, HPCC, an institution that had the exclusive competence to decide on the claim of the predecessor of the claimant, claimant and respondent regarding the disputed apartment, which means that in this case judicial jurisdiction is excluded. So, the decision of this institution is binding for this court as well, and for this reason the claim of the claimant has been rejected".

44. Against the above-mentioned Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, alleging a substantial violation of the procedural provisions, incomplete and erroneous confirmation of the factual situation and erroneous application of substantive law. On that occasion, the Applicant proposed that her appeal be upheld and that the above-mentioned Judgment of the Basic Court be amended so that her claim may be approved or the case returned to the Basic Court for retrial. The respondent S.RR. submitted to the Court of Appeals a response to the appeal, proposing that the Applicant's appeal be rejected as unfounded and that the above-mentioned Judgment of the Basic Court be upheld.

45. On 22 February 2018, the Court of Appeals, through Judgment [Ac. no. 3228/2013] rejected the Applicant's appeal as unfounded and upheld the Judgment of the Basic Court.

46. On an unspecified date, against the aforementioned Judgment of the Court of Appeals, the Applicant filed a request for revision with the Supreme Court, alleging a substantial violation of the provisions of the contested procedure and erroneous application of substantive law, proposing that the Judgments of the first and second instance court be amended, so that the claimant's claim is approved as grounded or the case be returned for retrial.

47. On 13 June 2018, the Supreme Court through Judgment [Rev.no. 189/2018] rejected as unfounded the request of the Applicant for revision.

Applicant's allegations

48. The Applicant claims that the Supreme Court, through the issuance of the contested Judgment, respectively Judgment [Rev.no.189/2018] of 13 June 2018, has violated her fundamental rights and freedoms guaranteed through Article 31 [Right to a Fair and Impartial Trial] in conjunction with Article 6 (Right to fair trial) of the ECHR and Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

49. Regarding the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant initially claims that the Judgment of the Basic Court was issued by a biased court, emphasizing that, *"if an impartial judge judged it, the evidence administered in the court would certainly be taken into consideration, and with this it would convincingly strengthen the basis of the claimant's claim* [Court note: Applicant] *with which she has requested the confirmation of the right to property".*

50. Furthermore, the Applicant also claims that the contested Judgments were issued in violation of applicable law, namely Article 11 of Law on Housing Relations of 19 March 1990 (hereinafter: the Law on Housing Relations); Law on Obligatory Relations of 1 October 1978; and Articles 20, 33 and 45 of the Law on Basic Legal-Property Relations because they (i) are based on Resolution [no.109] of 2 August 1985, and did not take into account that it had been repealed by N.SH. Gërmia itself through Resolution [no.754] of 5 July 1991, against which, according to the claimant, the party, S.RR., had not used any legal remedies; (ii) are based on Judgment [C.no.1993/87] of 3 February 1988 of the Municipal Court, which had been rendered as a result of a judicial proceeding between K.O. and N.SH. Gërmia, and in which S.RR. was not a party, emphasizing the fact that this Judgment *"had no subjectivity for the opposing party, S.RR."*; and finally (iii) are erroneously based on Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006 of the Commission and which *"has decided only on the issue of possession and not on the right to property"*.

51. The Applicant also challenges the reasoning of the decision of the Basic Court regarding the application of discriminatory laws against the Albanian ethnicity, and the finding of the Basic Court that the party, K.O., has entered the disputed apartment *"in bad faith"*. Regarding the first, she emphasizes the following: *"The court reasoned that at that time the SAPK was repealed and the coercive measures applied the discriminatory law against the Albanian ethnicity, forgetting that that regime had the same treatment for the Muslim ethnicity in this case K.O."*; while, regarding the second issue, she emphasizes as follows: *"The court supported the judgment in this case also on the judgment of the case C.no.1993/87, of 03.02.1988, concluding that K.O., had entered into possession in bad faith and the respondent had not been able to execute that decision since 1984. It is paradoxical and unbelievable to think that in the socialist regime someone will usurp someone else's property, and the State not act with its own means!? Because we are talking about the time when SAPK had strong legal mechanisms"*.

52. Finally, the Applicant requests the Court to declare her claim admissible and to declare invalid the Judgment [Rev. no. 189/2018] of 13 June 2018 of the Supreme Court in conjunction with the Judgment [Ac. no. 3228/2013] of 22 February 2018 of the Court of Appeals and Judgment [C. no. 1726/07] of 6 March 2013 of the Basic Court. The Applicant specifically requests from the Court *"to ascertain whether the Basic Court and subsequent decisions of the higher courts have fulfilled their obligations for a fair and impartial trial"*.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Article 31
[Right to a Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

[...]

Article 46
[Protection of Property]

1. The right to own property is guaranteed.

[...]

European Convention on Human Rights

Article 6
(Right to a fair trial)

1. 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.

[...]

Protocol no. 1 of European Convention on Human Rights

Article 1
(Protection of property)

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the

public interest and subject to the conditions provided for by law and by the general principles of international law.

[...]

Law on Basic Legal-Property Relations of 30 January 1980

Article 20

The right of ownership is acquired according to the law itself, based on legal action and inheritance.
The right of ownership is also acquired based on the decision of the state body in the conditions and in the manner prescribed by law.

Article 33

Based on the legal action, the right of ownership over the immovable property is acquired by registration in the public book or in the other respective way determined by law.

Article 45

The right of ownership that a certain person has over one thing ceases when the other person acquires the right of ownership over this thing.

Admissibility of the Referral

53. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

54. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides:

"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."

55. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as set out in the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, 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...".

56. As to the fulfilment of these criteria, the Court concludes that the Applicant is an authorized party, challenging an act of a public authority, respectively Judgment [Rev.no.189/2018] of 13 June 2018 of the Supreme Court, after having exhausted all legal remedies provided by Law. The Applicant has also clarified the rights and freedoms she claims she has been violated by the challenged decision in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.

57. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph (2) of Rule 39 of the Rules of Procedure sets out the criteria on the basis of which the Court may examine the referral, including the criterion that the referral is not manifestly ill-founded. 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."

58. The above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, i.e. if it deems that the content of the

referral is manifestly ill-founded on constitutional grounds, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.

59. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "*manifestly ill-founded*" in its entirety or only with respect to any specific claim that a referral may constitute. In this regard, it is more accurate to refer to the same as "*manifestly ill-founded claims*". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of "*fourth instance*"; (ii) claims that are categorized as "*clear or apparent absence of a violation*"; (iii) "*unsubstantiated or unsupported*" claims; and finally, (iv) "*confused or far-fetched*" claims. (See, more precisely, 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 claims qualified as "*manifestly ill-founded*", The Practical Guide to the ECtHR on Admissibility Criteria of 31 August 2019; part III. Inadmissibility Based on Merit; A. Manifestly ill-founded applications, paragraphs 255 to 284).

60. In this context, and further, in order to assess the admissibility of the referral, respectively, in the circumstances of this case, the assessment of whether the same is manifestly ill-founded on constitutional grounds, the Court will first recall the merits of the case that this referral entails. and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of case law of the ECtHR, in accordance 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.

61. In this regard, and initially, the Court recalls that in the circumstances of the present case, the dispute relates to the ownership of an apartment in Prishtina. Included in this context are a total of three parties, (i) the party S.RR. who had been confirmed the right to this apartment through Judgment [C.no.1993/87] of 3 February 1988 of the Municipal Court; Judgment [Ac. no. 408/88] of 18 May 1988 of the District Court, becoming final on 3 December 1988; Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006 of the Commission; Judgment [C.no.1726/07] of 6 March 2013 of the Basic Court and upheld by Judgment [Ac. no. 3228/2013] of 22 February 2018 of the Court of Appeals and Judgment [Rev.no. 189/2018] of 13 June 2018 of the Supreme Court; (ii) the party K.O., who, after 24 March 1989, through another Resolution of N.SH. Gërmia had been granted the right to the same apartment, a Resolution that later resulted in a contract of sale and purchase between K.O. and N.SH. Gërmia, certified by the Municipal Court, but whose claims regarding the respective property were rejected through the Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006 of the Commission; and (iii) the Applicant, who had purchased the same apartment from the party K.O. in 2001, and whose lawsuit claim for confirmation of ownership had been rejected by Judgment [C. no. 1726/07] of 6 March 2013 of the Basic Court and upheld through Judgment [Ac. no. 3228/2013] of 22 February 2018 of the Court of Appeals and Judgment [Rev.no. 189/2018] of 13 June 2018 of the Supreme Court.

62. The Court also recalls that on 15 November 1999 the SRSG had issued Regulation 1999/23, through which (i) it had established the Directorate for Housing and Property Issues and the Housing and Property Claims Commission; (ii) had determined their competence, inter alia, with regard to the claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent, as defined in point a) of paragraph 1.2 of Article 1 (Directorate for Housing and Property Issues) of this Regulation; (iii) had excluded the competence of the regular courts, with regard to the matters referred to in this Regulation, in paragraph 1.2 of Article 1 and paragraph 2.5 of Article 2 (Housing and Property Claims Commission); and (iv) had determined that the final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo, in paragraph 2.7 of Article 2 thereof. On 31 October 2000, the SRSG also issued Regulation 2000/66, defining the Rules of Procedure and Evidence of the Housing and Property Directorate as well as the Commission.

63. In the circumstances of the concrete case and (i) taking into account that after 23 March 1989, the date after which for the disputes clarified above the competence of the Commission is determined, respectively on 5 July 1991, N.SH. Gërmia, despite two final Judgments, had annulled the Resolutions by which the disputed apartment was allocated to the interested party S.RR., by allocating the same to K.O., through the Resolution [no. 754]; and (ii) based on Regulations 1999/23 and 2000/66, respectively, the interested party S.RR., had requested from the Commission to confirm his right to the disputed apartment. The Commission through the Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006, had upheld the right of the interested party S.RR. and had rejected all claims of the party, K.O.

64. On the other hand, the Applicant had purchased the apartment from K.O. in 2001 while the rights to this apartment were contested and pending review before the Commission, whereas in 2007, the proceedings against the aforementioned Decision on the Request for Review by the Commission had begun.

65. The three regular courts, the Basic Court, the Court of Appeals and the Supreme Court, respectively, rejected the claim of the applicant and recognized the fact that S.RR. was rightly given back the apartment in question. The regular courts, in essence, had recognized the (i) competence of the Commission to finally decide on residential disputes, "*ownership, possession or right of residence*" regarding to which it is "*revoked after 23 March 1989 based on the legislation which is discriminatory both in its application and in its intent*", as defined in point a) of paragraph 1.2 of Article 1 of Regulation 1999/23; and had emphasized that (ii) the final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo, as defined in paragraph 2.7 of Article 2 of Regulation 1999/23.

66. Before this Court, the Applicant disputes these findings of the regular courts which have rejected her claim filed against S.RR., emphasizing that she has legally purchased the apartment from K.O. and that she is its legitimate owner, and claiming as a result (i) a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to of erroneous verification of facts and misinterpretation of applicable law; (ii) violation of the aforementioned articles, due to "bias of *the Basic Court"*; and (iii) violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

67. Regarding the first category of claims of the Applicant for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court emphasizes that she, in essence, raises allegations related to erroneous verification of facts and erroneous application of applicable law by regular courts, claims which, the Court considers as "*fourth instance claims*".

68. In the context of this category of claims, the Court emphasizes that based on the case law of the ECtHR, but also taking into account its peculiarities, as are determined through the ECHR (see in this context, clarification in The Practical Guide of the ECtHR of 30 April 2019 on Admissibility Criteria; part I. Admissibility Based on Merit; A. Manifestly ill-founded claims; 2. "Fourth instance", paragraphs 262 and 263), the principle of subsidiarity and the doctrine of the fourth instance, it has consistently emphasized the difference between *"Constitutionality"* and *"Legality"* and has asserted that it is not its duty to deal with errors of facts or misinterpretation and misapplication of the law, which are alleged to have been made by a regular court, except as far as such errors may have infringed the rights and freedoms protected by the Constitution and/or the ECHR. (See, in this context, among others, the Court cases KI49/19, with Applicant *Limak Kosovo Joint Stock Company International Airport JSC, "Adem Jashari",* Resolution of 31 October 2019, paragraph 47; KI56/17, with Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, with Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility, of 12 August 2019, paragraph 60).

69. The Court has also consistently reiterated that it is not the role of this Court to review the conclusions of the regular courts in relation to the factual situation and the application of substantive law and that it cannot 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 the neglect of the limits set in its jurisdiction. (See, in this context, the case of the ECtHR *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and references used 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).

70. In this regard, and in accordance with its case law and that of the ECtHR, the Court may not, as a general rule, question the findings and conclusions of the regular courts relating to: (i) the verification of case facts; (ii) the interpretation and application of the law; (iii) the admissibility and evaluation of evidence at

trial; (iv) substantive justice of the outcome of a civil dispute; or even (v) the guilt or innocence of the accused in criminal proceedings. (See also ECtHR Practical Guide of 30 April 2019 on Admissibility Criteria; Part I. Inadmissibility Based on Merit; A. Manifestly ill-founded claims; 2. "Fourth instance", paragraph 264).

71. The Court also emphasizes the fact that in the assessment of claims *"of the fourth instance"* which are related to alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, it has also consistently stated that *"justice"* requested by the aforementioned articles is not *"substantial"* justice but *"procedural"* justice. This concept mainly in practical terms, in principle, implies (i) the possibility of contradictory procedures; (ii) the possibility for the parties at various stages of these proceedings to bring arguments and evidence that 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 that their arguments, which, objectively, are relevant to the resolution of the case, be properly heard and examined by the courts; and that, consequently, the procedure, taken as a whole, would turn out to be fair. (See also ECtHR Practical Guide of 30 April 2019 on Admissibility Criteria; Part I. Inadmissibility Based on Merit; A. Manifestly ill-founded claims; 2. "Fourth instance", paragraph 264 and the references mentioned there). Moreover, the assessment of the fairness of a procedure in its entirety is one of the main premises of case law of the Court and that of ECHR. (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).

72. The Court, however, emphasizes that the case law of the ECtHR and the Court also determine the circumstances under which exceptions to this position should be made. As noted above, while the regular courts have the primary task of resolving problems regarding the interpretation of applicable law, the role of the Court is to ensure or verify that the effects of this interpretation are compatible with the Constitution and the ECHR. (See ECtHR case, *Miragall Escolano and others 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 ān exception is related to cases which turn out to be significantly arbitrary, including those in which a court has "*applied the law manifestly erroneously*" in a particular case and which may have resulted in *"arbitrary"* or "manifestly *unreasonable*" conclusions for the respective applicant. (For a more detailed explanation regarding the concept of "*manifestly erroneous application of the law*", see, among others, the case of the Court KI154/17 and 05/18, cited above, paragraphs 60 to 65 and references used therein).

73. In the circumstances of the concrete case, the claims of the Applicant are related to (i) the confirmation of the facts by the regular courts, respectively confirmation that Resolution [no.109] of 2 August 1985 had been repealed by N.SH. Gërmia itself through Resolution [no.754] of 5 July 1991 and the fact

that the party S.RR. had not challenged, respectively used a remedy against the Resolution [no.754] of 5 July 1991, through which the disputed apartment was allocated to K.O., and that the regular courts had not taken into account the fact that the Judgment [C.no.1993/87] of 3 February 1988 of the Municipal Court was rendered as a result of a judicial proceeding between K.O. and N.SH. Gërmia, and in which S.RR. was not a party; and (ii) the erroneous application of applicable law, namely Article 11 of Law on Housing Relations; Law on Obligatory Relations; and Articles 20, 33 and 45 of the Law on Basic Legal-Property Relations.

74. As it is noted above, based on the principle of subsidiarity and fourth instance doctrine, and the case law of the ECtHR and of the already consolidated Court in this respect, the issues of fact assessment and interpretation of the law, are cases of regular courts, and outside the jurisdiction of the Court, insofar as the proceedings followed by the regular courts have not been arbitrary and consequently, contrary to the Constitution and the ECHR and insofar as the relevant judicial proceedings in their entirety, turn out to have been right. (See ECtHR Practical Guide of 30 April 2019 on Admissibility Criteria; Part I. Inadmissibility Based on Merit; A. Manifestly ill-founded claims; 2. "Fourth instance", paragraph 265 and the references mentioned therein; and also see the case of the ECtHR, *Miragall Escolano and others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

75. The Court states that in the circumstances of the concrete case, the Applicant, beyond the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous verification of facts and misinterpretation of the law, does not sufficiently support nor argue before the Court how this interpretation of the applicable law by the regular courts may have been *"manifestly erroneous"*, resulting in *"arbitrary"* or "manifestly *unreasonable*" conclusions for the applicant or how the proceedings before the regular courts, in their entirety, may not have been fair or even arbitrary.

76. Furthermore, the Court considers that the regular Courts have taken into consideration all the facts and circumstances of the case, the claims of the Applicant submitted through the lawsuit, the appeal and the revision, respectively and have reasoned the same.

77. In this context, the Court emphasizes that the regular courts have initially emphasized the fact that based on Regulations 1999/23 and 2000/60, respectively, it is the Commission, which has the competence to decide on the disputed apartment because the same has been revoked from the interested party S.RR., after 23 March 1989, based on *"legislation which is discriminatory both in its application and in its intent"*. The Court also notes that the regular courts had emphasized the fact that, on the basis of the above-mentioned Rules of Procedure, the jurisdiction of the regular courts regarding issues that fall into the above category is excluded and that, consequently, the decisions of the Commission are final.

78. In this context, among others, the Basic Court, through Judgment [C. no. 1726/07] of 6 March 2013, had emphasized, as follows:

> *"The Court of First Instance considers that the decisions of the HPCC are binding decisions for the parties and the court has no jurisdiction to make any assessment of them, except in the case of a meritorious decision, to adopt them as binding decisions."*

79. Such a finding of the Court was also confirmed by the Court of Appeals and the Supreme Court, through the relevant Judgments.

80. Whereas, regarding the claims of the Applicant that the decisions of the regular courts were issued (i) based on erroneous and incomplete verification of the factual situation; (ii) contrary to applicable law, namely Article 11 of Law on Housing Relations; Law on Obligatory Relations; and Articles 20, 33 and 45 of the Law on Basic Legal-Property Relations; and (iii) are erroneously based on Decision on the Request for Review [HPCC/REC/74/2006] of 19 October 2006 of the Commission and which *"has decided only on the issue of possession and not on the right to property"*, the Basic Court, among other things, had clarified (i) the issue of possession and ownership, also referring to the Decision [HPCC REC/174/2006] of 19 October 2006 of the Commission and which refers to the property right of the party S.RR; (ii) the Applicant's claims that through legal work and on the basis of the aforementioned articles of applicable laws she has acquired the right of ownership on the disputed apartment; (iii) the right to the disputed apartment of the party S.RR. acquired through final Judgments in 1988; (iv) the fact that K.O. had acquired the right to this apartment, after 1989, and after *"imposition of coercive measures"* in Kosovo, based on discriminatory legislation *"both in implementation and in its intents"*; and (v) the Applicant's right to initiate a new civil dispute in order to exercise her rights.

81. In this context, and with regard to the first and second issue, the Basic Court had clarified the following:

> *The Court of First Instance considers that the decision HPCC REC/174/2006, of 19 October 2006, of the Commission for Housing Property Issues, which approves the request for review, the Decision of the Commission HPCC/D/2 12 2005 through which it is amended to the extent that it has to do with this claim and a new decision is issued, so that the Category A claim of S.RR. DS 000241, is approved and the property right of the petitioner is given back, while the Category C claim DS 302948, is to be rejected, whereas the decision in question is final and the same cannot be reviewed by any other legal or administrative authority in Kosovo.*
>
> *The Court considers that the claim for the main issue in paragraph two of the submission in the final word of the claimant's authorized representative, where was requested verification of ownership on the disputed apartment according to contract Vr. No. 3396/93, of 21.05.1993 with a sale and purchase price in the amount of €25,000, is unfounded despite the abovementioned reasoning due to the fact that the claimant*

Belxhizare Latifi is not a contracting party under the contract Vr. 3396/93, of 21.05.1993, but is a contracting party to the contract Vr. 1197/01, of 01.03.2001. Thus, the claimant's claim that she is the owner of the disputed apartment in accordance with the legal work in the sense of Article 20 in conjunction with Article 33 of the LBLPR is refutable, due to the fact that the claimant's predecessor acquired the right to the disputed apartment, in bad faith at the time of mass discrimination in Kosovo, that is, by decision of the provisional governing authority, while to avoid the consequences of discrimination in Kosovo caused by the then government, the SRSG, after the establishment of the International Mission in Kosovo in June 1999, approved the Regulation no. 1999/23, with which he established the Directorate for Housing and Property Issues, HPCC, an institution that had exclusive competence to decide on the claim of the predecessor of the claimant, the claimant and the respondent regarding the disputed apartment, which means that in these cases, judicial jurisdiction is also excluded. Thus, the decision of this institution is obligatory for this court as well, and for this reason the claim of the claimant was rejected.

82. Regarding the third and fourth issue, the Basic Court, among others, stated the following:

Judgment, C. no. 1993/87, which became final on 03.02.1988, was not executed and as a result of non-execution the respondent failed to enter the possession, while after 02.07.1990, all institutions of Kosovo had been dissolved, while in the Public and Social Enterprises, coercive measures were imposed. Based on this circumstance, the predecessor of the claimant, who had been in possession of the disputed apartment, exploited the situation at the coercive institution, to get the resolution no. 754, of 05.07.1991, then to conclude the contract for the use of the apartment in the Public Housing Enterprise and to privatize the apartment with the contract Vr. No. 754, of 05.07.1991. After the end of the war in Kosovo, the claimant's predecessor alienates the claimant's apartment with a contract of sale and purchase Vr. 119712001, of 01.03.2001, although the claimant Belgjizare Latifi, knew the circumstance caused in Kosovo after 23.03.1989 and especially after 02.07.1990, so the same should have been careful on the occasion of concluding the contract, while with article 3 of the contract, the claimant's predecessor guaranteed the claimant that the disputed apartment had not been sold, is not under debt, lien or mortgage, it has no physical and legal defects, while the same does not even express interest in interfering in this process, on the part of the claimant.

This institution established by the SRSG, in paragraph 27, has reasoned the decision in question where it begins in line 14, we are quoting, the Commission concludes that the impossibility of taking possession by the claimant (the respondent S.RR.) cannot be used against him. Consequently, the request for review and the decision should be rendered as mentioned above. The Commission states that this decision is without prejudice to the right of the resident to recover the purchase price from the Petitioner C (the claimant). The decision does not affect the category C

claim, which was rightly rejected in the first instance. Thus, with this decision, the procedure regarding the right to use the disputed apartment has been completed and despite the fact that the predecessor of the claimant K.O. had received from the authority of provisional management measures of SOE "Gërmia". Resolution no. 754, of 05.07.1991, at the time of the mass discrimination of the population in Kosovo, this does not provide her with legal grounds to dispose with the apartment by selling it to the claimant and therefore the court considers that the sale and purchase was carried out without respecting the principle of awareness and honesty, for the fact that the claimant as the buyer of the apartment had known the circumstance of discrimination in Kosovo as a result of the events of 23 March 1989 and should not have entered into this contractual relationship with her predecessor.

83. Whereas, in the end, regarding the fifth issue, the Basic Court had instructed the applicant to pursue another civil dispute, namely that of dissolution of the contract of sale and purchase of 1 March 2001 with K.O., requesting the dissolution of this contract, requesting a refund of the price and compensation for the damage, explaining as follows:

The Court of First Instance considers that the claimant, after accepting the final decision of the HPCC, of 02 July 2007, the same had a legal interest to request from the predecessor - the seller of the disputed apartment K.O., dissolution of the contract, Vr. 1197/2001, of 01.03.2001, the refund of the sale and purchase price of the disputed apartment and the compensation of the material damage as a result of the dissolution of the contract. The court considers that the claimant's predecessor according to the statement Vr. 04.03.2013, in the Basic Court in Novi Pazar, R. of Serbia, had been aware of the circumstance of the procedure taking place in this court as well as the decision of HPCC.

84. Therefore, in these circumstances, based on the above and taking into consideration the claims raised by the claimant and the facts presented by her, the Court emphasizes that the claims of the claimant relating to the erroneous verification of the facts and the misinterpretation and misapplication of applicable law, are claims that fall into the category of "*fourth instance*" and as such, reflect claims at the level of *"legality"*, and are not proven at the level nor do they involve issues of the level of "*constitutionality*". Consequently, they are manifestly ill-founded on constitutional grounds, as defined in paragraph (2) of Rule 39 of the Rules of Procedure.

85. The Court also recalls that the Applicant also alleged a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to "*bias*" of the Basic Court and violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR. Regarding the first, she emphasizes that, *"if an impartial judge judged it, the evidence administered in the court would certainly be taken into account, and with this it would convincingly strengthen the basis of the claimant's claim* [Court note: Applicant] *with which she has requested the confirmation of the right to property.";* while

with regard to the second, namely the right to property, does not provide any reasoning before the Court.

86. The Court considers that these claims fall into the category of *"unsubstantiated or unreasonable"* claims. In the context of this category of claims, the Court, based on Article 48 of the Law and paragraphs (1) (d) and (2) of Rule 39 of the Rules of Procedure and its case law, has consistently stated that (i) the parties have an obligation to clarify precisely and adequately present the facts and claims; and also (ii) to prove and sufficiently substantiate their claims of violations of constitutional rights or provisions.

87. The Court has also consistently stated that merely mentioning an article of the Constitution, without a clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the protection machinery provided by the Constitution and the Court, as an institution caring for respect of human rights and freedoms. (See, in this context, the cases of the Court KI02/18, Applicant *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 ECtHR Guide of 30 April 2019 on Admissibility Criteria; Part I. Admissibility Based on Merit; A. Manifestly ill-founded claims; 4. Unsubstantiated complaints: lack of evidence, paragraphs 280 to 283).

88. Furthermore, in the context of the applicant's claims on *"the bias of the Basic Court",* the Court emphasizes that the right to an impartial trial is an essential aspect of the procedural guarantees set out in Article 31 of the Constitution in conjunction with Article 6 of the ECHR. It has elaborated the basic principles contained in this right, in at least three Judgments, Judgment in case KI24/17 of 24 July 2019, Judgment in case KI128/17 of 26 August 2019 and Judgment in cases KI87/18 and KI11/19 of 26 August 2019. In these three Judgments, the Court has elaborated (i) the general principles of ECtHR case law regarding the criteria for assessing the impartiality of a court; (ii) the concept of subjective and objective impartiality of the court; (iii) the case law of the ECtHR in terms of assessing the impartiality of the court, i.e. the concept of *"legitimate suspicions"* and the fact that they must be *"objectively justifiable"* in order to ascertain the impartiality of a court. However, regarding this claim of hers, the applicant did not present to the Court any concrete arguments based on the Constitution, the ECHR or even the aforementioned case law. She has acted in the same way in regard to the claims of violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

89. Therefore, in these circumstances, based on the above and taking into consideration the claims raised by the claimant and the facts presented by her, the Court emphasizes that the claims of the claimant relating to *"bias of the Basic Court"* and her right to property, constitute *"unsubstantiated or unreasonable"* claims, and as such, the same are manifestly ill-founded on constitutional grounds, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

90. In this respect, the Court also emphasizes that the applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot in itself raise an argumentative claim for the violation of the fundamental rights and freedoms guaranteed by the Constitution. (See, ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

91. Finally, Court, based on the standards set in its case law in similar cases and the case law of the ECtHR, finds that the applicant has not proved and sufficiently substantiated her claims of violations of fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, and that the same, consequently, are manifestly ill-founded on constitutional grounds. The Court considers that the court proceedings that have resulted in the contested acts in the circumstances of the concrete case, in their entirety, are fair and not arbitrary.

92. Consequently, the Court finds that the referral is manifestly ill-founded on constitutional grounds and declares it inadmissible, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

Request for a hearing

93. The Court recalls that the applicant also requested the Court to schedule a hearing.

94. In the reasoning of her request for a hearing, the applicant states that *"On the basis of the evidence presented to you, we propose to the Court to have an open main hearing, summon the parties and examine the applicant's claims"*.

95. In this regard, the Court recalls that pursuant to paragraph (2) of Rule 42 [Right to Hearing and Waiver] of the Rules of Procedure, *"The court may order a hearing if it believes a hearing is necessary to clarify issues of fact or law"*.

96. The Court notes that the above-mentioned rule of the Rules of Procedure is of a discretionary nature. As such, that rule only provides for the possibility for the Court to order a hearing in cases where it deems it necessary to clarify issues of fact or law. Thus, the Court is not obliged to order a hearing if it considers that the existing data in the case file are sufficient, beyond any doubt, to reach a meritorious decision in the case under review. (See, in this context, the Judgment of the Court in case no. KI48/18, with Applicant, *Arban Abrashi and the Democratic League of Kosovo*, 4 February 2019, paragraphs 269-274).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 24 June 2020, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for a hearing;

III. TO NOTIFY this Resolution to the Parties;

IV. TO PUBLISH this Resolution in the Official Gazette, in accordance with Article 20.4 of the Law;

V. This Resolution is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Gresa Caka-Nimani

Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only