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

Prishtina, on 24 August 2020
Ref.No.:RK 1612/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI47/19

Applicant

Bislim Kosumi

Constitutional review of the Judgment Rev.no.5/2019 of the Supreme Court of Kosovo, of 7 February 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Bislim Kosumi, residing in Podujeva (hereinafter: the Applicant), represented by Saranda Beqiri, lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [Rev. no.5/ 2019] of the Supreme Court of the Republic of Kosovo, of 7 February 2019 (hereinafter: the Supreme Court) in conjunction with the Judgment [Ac. no. 2584/14] of the Court of Appeals, of 17 October 2018 (hereinafter: the Court of Appeals).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgments which allegedly has violated the rights guaranteed by Article 3 [Equality before the Law], Article 24 [Equality before the Law], and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03 / L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 22 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 26 March 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).

7. On 26 March 2019, the Applicant submitted to the Court additional documents related to his case, respectively the request for revision which the Applicant has filed with the Supreme Court.

8. On 11 April 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 17 May 2019, the Applicant again submitted to the Court additional documents related to his case, respectively the Judgment [C.no.296/06] of the Basic Court in Prishtina, Branch in Podujevë, of 15 May 2019.

10. On 6 June 2019, the Applicant again submitted to the Court additional documents related to his case, respectively the response to the appeal of the Municipality of Podujeva, against the aforementioned Judgment.

11. On 22 July 2019, the Applicant's representative submitted to the Court a letter notifying the Court that she was authorized by the Applicant to represent him in Court.

12. On 21 October 2019, the Applicant's representative submitted to the Court a request in which she requested *"to have a meeting scheduled for information purposes, so please inform me about the course of the case"*.

13. On 15 April 2020, the Court notified the Basic Court in Prishtina, Branch in Podujevë, about the registration of the case and requested from it to submit to the Court the original case file.

14. On 12 May 2020, the Basic Court through a submission informed the Court that the original case file is in the Court of Appeals of Kosovo.

15. On 14 May 2020, the Court notified the Court of Appeals about the registration of the case, and requested from it to submit to the Court the original case file.

16. The Court of Appeals did not respond to the Court's request.

17. On 4 June 2020, the Court reiterated its request to the Court of Appeals to submit to the Court the original case file.

18. On 10 June the Court of Appeals submitted to the Court the complete case file.

19. On 22 July 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

20. The Applicant submitted a second Referral to the Court in relation to his case. The first Referral was submitted by the Applicant on 29 January 2010, which the Court had registered in its register on 22 March 2010, as KI34/10.

21. In the following, the Court will present the factual situation developed in each of the two cases: that in relation to Referral KI34 / 10 and that in relation to Referral KI47/19, which is as follows:

Summary of facts with respect to the case KI34/10

22. On 3 July 1985, the Applicant purchased a photo studio in Podujevë.

23. On 11 April 1986, the Applicant filed a claim with the Municipal Court in Podujevë for confirmation of the contract on sale. The Municipal Court was declared incompetent.

24. The Applicant filed the same claim with the District Court in Prishtina, which decided that the Municipal Office of Geodesy in Podujevë is the competent authority to transfer the ownership title.

25. The Public Lawyer, in his capacity as an interceding party, representing the interests of the Municipality of Podujevë, requested from the District Court in Prishtina to reconsider its Decision. The District Court again rejected the Public Lawyer's appeal as inadmissible. The Supreme Court upheld the District Court decision.

26. In Referral KI34 / 10 the Applicant challenged the following decisions: a. Decision C. no. 186/86 of the Municipal Court in Podujeva, of 17 April 1986; b. Decision Ac. no. 444/1986 of the District Court in Prishtina, of 11 July 1986; c. Decision 05 no. 313-500/87 of the Provincial Secretariat of Economy in Prishtina, of 8 October 1987; d. Decision A. no.1234/86 of the Supreme Court of Kosovo, of 13 February 1987; Decision Gz. no. 350/1987 of the Supreme Court of Kosovo, of 6 October 1987; and f. Decision A. no. 1393/1987 of the Supreme Court of Kosovo, of 15 March 1988. In this case the Applicant had requested from the Court *"review of ...) judicial acts and a recommendation order from this Court to have my property right confirmed based on the aforementioned judicial acts and this right to be executed by the competent municipal bodies in Podujevë, namely by the competent bodies of cadastre and urban matters". He alleges that his property right has been violated"*.

27. On 21 January 2011, the Constitutional Court issued a Resolution on Inadmissibility in case KI34/10, declaring the Applicant's Referral inadmissible because it was incompatible *ratione temporis* with the Constitution.

Summary of facts with respect to the case KI47/19

28. The Applicant has exercised the activity of photographer in the business premises "Foto Real", at "Liria" (former Meto Bajraktari) Street no. 22 in Podujevë, located near the Police Station in Podujevë.

29. Based on the case file it is noted that the Applicant, since 1986, used to have a permit to exercise his business activity, on the socially owned construction land and that he had purchased the business premises but not the immovable property where the business premises was located, (Judgment C.no.444/06 of the District Court in Prishtina, of 11 July 1986).

30. On 1 February 2001, the Applicant had entered into a contract [No. 09-32/ 2001] with the Municipality of Podujeva, for the use of socially owned construction land, in order to establish a temporary facility for the exercise of his activity as photographer.

31. On 27 September 2007, the Municipal Assembly of the Municipality of Podujevë, by Decision [no.01/137-400] had decided that due to the implementation of the project for the construction of the square to remove all buildings on the street where the Applicant's facility was located.

32. On 8 May 2008, the Directorate of Urban Planning, Cadastre and Environmental Protection, in the Municipality of Podujevë by Decision [09/15/18] had terminated the Applicant's contract due to the arrangement-

construction of the square in accordance with Decision [no.01/137-400] of the Municipal Assembly of the Municipality of Podujevë, of 27 September 2007.

33. On 24 September 2008, the inspectors, accompanied by the Police, in order to implement the Decision [no.01 / 137-400] of the Municipal Assembly of the Municipality of Podujevë obliged the Applicant to remove all work equipment, from the business premises where he operated as a photographer.

34. In relation to the case before us, there were conducted two sets of procedures for compensation of damages which the Court will present in the following.

Decisions in the proceedings initiated by the Applicant for compensation of damage and which the Applicant challenges before the Court

35. On 10 October 2008, the Applicant filed a claim with the Municipal Court in Podujeva, against the Municipality of Podujevë, Directorate of Urban Planning, Cadastre and Environmental Protection, seeking compensation in the total amount of € 113.000.00 , in name of the material damage alleged to have been caused by the Municipality of Podujevë according to Decision no. 09/15/18 of 08.05.2008, because the respondent unilaterally terminated the Contract of 1 February 2001, thus violating the procedural interests of the Applicant in the administrative procedure.

36. On 7 May 2014, the Basic Court in Prishtina, Branch in Podujevë, by Judgment [C.nr.377 / 08] partially approved the Applicant's statement of claim obliging the Municipality of Podujevë to pay to the Applicant, in the name of material damages caused by the demolition of the building, as a result of Decision [09/15/18], of the Directorate of Urban Planning, Cadastre and Environmental Protection, of May 8, 2008, compensation in the amount of € 10,000 as well as to cover the costs of the contested procedure. Other requests of the Applicant are rejected as ungrounded.

37. The reasoning of the Judgment [C.no.377/08] of the Basic Court states as follows: *"Therefore the respondent in this case did not act contrary to the contract no. 09-32/2001 of 01.02.200, article 4 thereof because by its decision no. 09115118, of 08.05.2008 it has terminated the aforementioned contract for temporary use of public land and has provided a deadline until 13.06.2008 to the claimant, to have removed from the building the equipment and the tools which he had there, but the latter failed to finish this on time. According to the claimant the respondent has implemented its decision on removal of the facility only on 24.09.2001 whereas the machines and other equipment were removed by him without any damage at all. The respondent bears the liability for damaging the business premises as the premises was the property of the claimant since he had bought it and the fact that he is the owner of the said premises was confirmed by the decision _nr.C.nr.444/86 of the District Court of Prishtina, of 07/11/1986, but the respondent bears no liability for the immovable property because it is its property and it is the exclusive right of the municipality to manage it"***.

38. On an unspecified date, the Municipality of Podujevë filed an appeal with the Court of Appeals against the above-mentioned Judgment of the Basic Court, alleging violation of the provisions of the contested procedure, erroneous application of substantive law and erroneous determination of the factual situation. Also the Applicant filed an appeal alleging violation of the provisions of the contested procedure, erroneous application of the substantive law and erroneous determination of the factual situation, requesting to have the Municipality of Podujeva reimburse all his procedural costs.

39. On 17 October 2018, the Court of Appeals by Judgment [Ac.no.2584/14] approved the appeal of the Municipality of Podujevë, by amending the Judgment [C.no.377/08] of the Basic Court in Prishtina, Branch in Podujevë, of 7 May 2014, in the part which concerned the compensation of material damage and the costs of the procedure, and rejecting the Applicant's statement of claim as unfounded in its entirety. Under point II of the above Judgment it is stated that the Applicant's appeal is rejected in its entirety. Regarding the approval of the appeal of the Municipality of Podujevë, the Court of Appeals reasoned as follows:

> *"The Court of Appeals also based on the appeal claims and ex officio has assessed the application of the substantive law by the court of first instance, considering that in terms of material-legal provisions to which the court of first instance has referred in accordance with the factual situation the substantive law was incorrectly applied, because the premises demolished by the respondent and for which the claimant seeks material compensation , was built in contradiction with the decision allowing temporary construction and on a municipal property, because in such a case the claimant did not have the right to build an object using solid material because he has been aware from the moment when he was allowed the temporary construction of the premises that he could use the municipal property where the premises were built, but this construction of the premises is of a temporary character and at the moment when the respondent needs the property for public interest, and in the concrete case for the purposes of construction or arrangement of the town square, then the claimant must vacate the premises and leave the municipal property, and the claimant had agreed to the conditions set out in the decision granting temporary construction, including the temporary character of construction of the premises, hence on this basis he cannot claim compensation of damage given that he has himself agreed with the conditions set out in this decision, including the removal of the premises from municipal property".*

40. On 20 November 2018, the Applicant filed a request for revision with the Supreme Court, against the Judgment of the Court of Appeals [Ac.no.2584/ 14], of 17 October 2018, alleging a violation of the provisions of the contested procedure, and erroneous application of the substantive law.

41. On 7 February 2019, the Supreme Court of Kosovo by Judgment [Rev. no. 5/2019] rejected as unfounded the Applicant's revision. The Supreme Court in its Judgment, responding to all the allegations of the Applicant, had considered that the decisions of the lower instances are fair and lawful.

Decisions and Procedures initiated at the request of the Municipality of Podujevë for debt compensation

42. On an unspecified date, the Municipality of Podujevë filed a statement of claim with the Municipal Court in Podujevë, against the Applicant for the created debt in the amount of € 3187, due to the use of construction land, from 2001 until 2006.

43. On 15 May 2019, the Basic Court in Prishtina- Branch in Podujevë by Judgment [C.no.269/06] rejected the claim as unfounded, by reasoning that on the basis of the evidence presented by the Municipality of Podujevë it appears that the contract is not signed by the Applicant, respectively given that the contract is not signed by the Applicant no civil-obligatory legal relationship has been created.

44. On an unspecified date, the Municipality of Podujevë filed an appeal with the Court of Appeals against Judgment [C.no.269/06] of the Basic Court in Prishtina – Branch in Podujevë. On the other hand, the Applicant, through the response to the claim, requested that the claim of the Municipality of Podujevë be rejected as unfounded, emphasizing that he fully agrees with the Judgment [C.no.269 / 06], of the Basic Court in Prishtina-Branch in Podujevë.

45. On the basis of the case file that the Court possesses, it is noted that the Court of Appeals has not yet decided on the appeal of the Municipality of Podujevë.

46. As the decisions and procedures initiated by the Municipality for debt compensation are still ongoing, and the Applicant does not dispute these procedures and decisions, they are not subject to review by this Court.

Applicant's allegations

47. The Applicant alleges that the challenged Judgments have violated his right guaranteed by Article 3 [Equality before the Law], Article 24 [Equality before the Law] and Article 31 [Right to Fair and Impartial Trial] of Constitution.

48. The Applicant alleges that *"Article 3 of the Constitution of the Republic of Kosovo has been violated - as I have not been equal before the law"*.

49. The Applicant further alleges that *"None of my evidence has been taken into account, although I am entitled to be the owner of the premises - this has not been taken into account at all, the matter has been decided on the basis of contracts submitted by the Municipality of Podujevë- which contracts have never been submitted to me, neither did I sign them [...] I used to have a premises over which I used to have the ownership which was recognized to me by the Judgment of the Supreme Court of Kosovo P.no.444/86 (Parnica-meaning Civil) of 11.07.1986 which is final"*.

50. The Applicant also alleges that *"Article 24 of the CONSTITUTION OF THE REPUBLIC OF KOSOVO has been violated, because I have not been equal with the respondent Municipality of Podujevë, which by using manipulated*

evidence has managed to win the dispute. I have not had equal legal protection".

51. The Applicant also alleges that *"Article 31 of the Constitution of the Republic of Kosovo has been violated because I have not been guaranteed equal protection of my rights in court proceedings".*

52. The Applicant also states: *"Every person who used to have a premises of temporary character in the Municipality of Podujevë - was given a new location to continue with his craft. It is only me Bislim Kosumi, that has not been given such an opportunity, only because I have no connections and I am a poor person, whilst I did not have a premises of temporary character - BUT I HAD A PREMISES OVER WHICH I USED TO HAVE THE OWNERSHIP BASED ON THE JUDGMENT OF THE SUPREME COURT OF KOSOVO, MY RIGHT TO THIS PREMISES WAS RECOGNIZED BY THE JUDGMENT P.no.444/86 (Parnica - meaning Civil), of 11.07.1986, which became final on 27.08.1986."*

53. The Applicant requests from the Court "I wish to be compensated for the damage caused by the demolition of the premises of which I used to be the owner. As well as to realize my right, or like everyone else to be given another location in order to work".

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 3
[Equality before the Law]

[....]

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.

Article 24
[Equality before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

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.
[....]

LAW NO. 04/L-077
Law on Obligational Relationships

Article 136.
Basis for liability

1. Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former.
2. Persons shall be liable for material damage and activities that result in major risk of damage to the environment, irrespective of culpability.
3. Persons shall also be liable for damage irrespective of culpability in other cases defined by law.

UNMIK Regulation No. 2000/45

Chapter 8 Property of the Municipality

Article 44
Land and Buildings

44.1 The Chief Executive Officer shall ensure that a record is prepared and maintained of all land and buildings owned or occupied by the municipality.
44.2 A municipality shall not sell or lease for more than ten years land or buildings without approval of the Central Authority.

Assessment of the admissibility of the Referral

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

55. 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."

56. The Court also refers to Article 47[Individual Requests], Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law which set out:

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..."

57. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party; is challenging an act of a public authority, namely the Judgment [Rev. no.5/2019] of the Supreme Court, of 7 February 2019 in conjunction with the Judgment [Ac. no. 2584/14] of the Court of Appeals, of 17 October 2018, after having exhausted all legal remedies. The Applicant has specified the rights and freedoms which he alleges to have been violated; also he has submitted the Referral within the stipulated legal deadline.

58. In addition to these criteria, the Court also refers to Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) stipulates that:

"(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."

59. The Court first recalls that the Basic Court in Prishtina, Branch in Podujevë, by Judgment [C.no.377/08] of 7 May 2014, had approved the Applicant's request for compensation of material damage due to the demolition of the building, as a result of the implementation of the decision [09/15/18] of the Directorate of Urban Planning, Cadastre and Environmental Protection, of 8 May 2008. The Court of Appeals by Judgment [Ac.no.2584 / 14] of 17 October 2018, approved the appeal of the Municipality of Podujevë, and rejected the Applicant's statement of claim as unfounded in its entirety, including the request for compensation due to the demolition of the building, by amending the aforementioned Judgment of the Basic Court. The Applicant's request for revision relating to the compensation of damages concerning the demolition of

the building was rejected as unfounded, by the Judgment [Rev no.5/2019] of the Supreme Court, of 7 February 2019.

60. In this respect, the Court first recalls that the Applicant in essence alleges that his constitutional right to equality before the law has been violated (contrary to Articles 3.2 and 24 of the Constitution) for two reasons: (i) the Supreme Court , did not take into account the Applicant's evidence by deciding solely on the basis of Contracts submitted by the Municipality, and (ii) was not guaranteed equal protection of rights in the proceedings before the courts (contrary to Article 31 of the Constitution). The Court recalls that Article 3.2 and Article 24.1 of the Constitution provide:

Article 3
[Equality before the Law]
[....]

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members."

Article 24
[Equality before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination."

[...]

61. As regards the Applicant's allegations for violation of Articles 3.2 and 24.1 of the Constitution, the Court notes that, in substance, the Applicant complains that in his case the regular courts have not correctly determined the factual situation, by rejecting as unfounded the Applicant's request for compensation of damage which as alleged by the Applicant was caused by the Municipality of Podujevë during the demolition of his premises. The Applicant alleges that he has been in an unequal position with the Municipality of Podujevë, because according to him the case was decided on the basis of contracts submitted by the Municipality of Podujevë, which the Applicant claims to have not signed. Specifically, with regard to Article 24.1 the Applicant *states "because I was not equal to the respondent Municipality of Podujevë, which using manipulated evidence has managed to win the dispute. I have not had equal legal protection".*

62. The Court emphasized that in addressing the Applicant's allegations, it will apply the standards of the case law of the European Court of Human Rights (hereinafter: the ECHR), pursuant to which, on the basis of Article 53[Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

63. With regard to the above allegations, the Court considers that the Applicant has built his case on the basis of legality, namely the allegations of erroneous

determination of evidence and facts, by the Supreme Court and the courts of lower instances.

64. However, the Court takes into account the reasoning of the Supreme Court in its Judgment [Rev. no.5 / 2019] where it had stated the following regarding the evidence:

> *"The allegations of the revision that all the evidence presented have not been assessed do not stand because the court of second instance, in the correctly determined factual situation by the court of first instance, has amended the judgment of the court of first instance in relation to 6 the compensation of material damage - demolition of the building, by ascertaining that the court of first instance has erroneously applied the substantive law and that the court of second instance provides sufficient and well-founded reasons which are accepted by this court, as well. The Supreme Court has not assessed the other revision allegations concerning the incomplete and erroneous determination of the factual situation because on the basis of the provision of Article 214 para.2 of the LCP, the revision cannot be presented due to erroneous and incomplete determination of the factual situation."*

65. The Court takes into account also the reasoning of the Court of Appeals which in its Judgment [Ac. No. 2584/14] had stated as follows*:*

> *"In the reasoning of the judgment, the court (of first instance) stated that it was not disputable that the claimant has exercised the activity of photographer in the business premises "Foto Real", at "Liria" (former Meto Bajraktari) Street no. 22 in Podujevë, located in the vicinity of the Station Police in Podujevë. This was confirmed by the statements of the litigants, the statements in the claim, respondent's certificates, as well as other evidence contained in the case file. Neither the fact that the claimant had bought the business premises, but not the immovable property where his premises were located was disputable, this circumstance was confirmed by the litigants, the Judgment C.no.444/06 of the District Court in Prishtina, of 11.07. 1986, photographs and other evidence found in the case file. It also was not disputable the fact that the claimant possessed a permit for photography work, a circumstance confirmed by the evidence contained in the case file and that he had numerous problems with the respondent when obtaining the permit. Nor is disputable the fact that the a contract between the claimant and the respondent bearing the number no. 0932/2001, was entered by the litigants on 01.02.2001, as well as the right of the respondent that it can terminate the contract concluded when it is in the general interest but, it bears liability in respect of business damage as the premises was the property of the claimant and he had purchased it."*

66. In this respect, the Court notes that it is not its duty to deal with errors of law allegedly committed by the regular courts (legality), unless and insofar as they may have infringed fundamental rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a *"fourth instance"* court, which would result in exceeding the limits imposed on its jurisdiction. In accordance with the ECtHR case law and its

already consolidated case-law, the Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law and that no abstract assessments can be made as to why a regular court has decided in a certain way rather than in another (see the case *García Ruiz v. Spain*, ECtHR No. 30544/96, of 21 January 1999, para.28 and see also the case of the Court KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Resolution on Inadmissibility, of 16 December 2011).

67. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see inter alia, case *Edwards v. United Kingdom*, Application No. 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991)

68. The Court notes that the Applicant alleges that the challenged Ruling also violates his rights guaranteed by Article 24.1 by alleging that *"Every person who used to have premises of temporary character in the Municipality of Podujevë - was given a new location to continue with his craft. It is only me Bislim Kosumi that has not been given such an opportunity, only because I have no connections and I am a poor person"*.

69. The Applicant also alleges a violation of Article 31.2 of the Constitution in conjunction with Article 6 of the ECHR *"because I have not been guaranteed equal protection of my rights in court proceedings"*.

70. In this respect, the Court recalls that it has consistently stated that the mere mention of Articles of the Constitution and the ECHR is not sufficient to build a reasoned allegation for a constitutional violation. When alleging such violations of the Constitution, the Applicant must provide reasoned allegations and compelling arguments (see, in this context, the cases of Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, paragraph 33; KI187/18 and KI11/19, Applicant: *Muhamet Idrizi* Resolution on Inadmissibility of 29 July 2019, paragraph 73, and most recently the case KI125/19 Applicant: *Ismajl Bajgora*, Resolution on Inadmissibility of 11 March 2020, paragraph 63).

71. However, with regard to the Applicant's allegations for a violation of Article 31 of the Constitution, based on the case file, the Court notes that the reasoning provided in the Judgment of the Supreme Court is clear and having examined all the proceedings, the Court also found that the proceedings before the Court of Appeal and the Basic Court were not unfair or arbitrary (see, the case *Shub v. Lithuania*, No. 17064/06, ECtHR Judgment of 30 June 2009).

72. The Supreme Court, when examining the Applicant's allegations, reasoned that the Court of Appeals acted correctly when rejecting the Applicant's appeal as unfounded, as the Applicant, as the owner of the temporary building, had the right of ownership over the temporary building and he enjoys the judicial protection that belongs to the owner of the thing until the demolition of this temporary object.

73. More specifically, the Supreme Court in its Judgment had stated the following:

> "*The challenged judgment does not contain any shortcomings that would have affected its legality and that the Court of Revision also assesses that the owner of the temporary object had the right of ownership over the temporary object and enjoys the judicial protection that belongs to the owner of the thing until demolition of this temporary object The respondent, who is the holder of the right of ownership in the land where the temporary premises of the claimant is located, is entitled to request the termination of the contract for the use of the land and the removal of the temporary building since the same land was needed for the realization of the spatial plan of the city of Podujevë, respectively for the construction of the city square as a priority project of the Municipality of Podujevë. The claimant does not have the right to compensation for damage to the temporary premises as the competent bodies of the Municipality of Podujevë, when removing this facility, have acted within the authorizations they had by law. In order for a compensation obligation to exist the damage in the sense of Article 136, para.21 of the Law on Obligational Relationships, there must be met the preconditions, such as:1. there must exist parties to the obligational relationship and the liability for the damage caused- the party causing the damage and the party incurring the damage;2.there must exist the damaging fact, where does the damage result from;3. there must exist the damage caused; 4. there must exist the causal link between the damaging fact and the damage caused; and 5. there must exist the unlawfulness of respondent's action, respectively of the inaction which caused the damage. Based on this it results that one of the elements is also the respondent's unlawful action, which in the concrete case does not exist, as the respondent has acted within the meaning of legal provisions when demolishing the said premises."*

74. In light of this, the Court further considers that the Applicant has not proved that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution have been violated as a result of erroneous interpretation of procedural law. The Court reiterates that the interpretation of the law is the duty of the regular courts and is a matter of legality (see the case of Court KI63 /16, Applicant *Astrit Pira*, Resolution on Inadmissibility, 8 August 2016, paragraph 44 and see also case KI150/15; KI161/15; KI162/15; KI14/16; KI19/ 16; KI60/16 and KI64/16, Applicants: *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on inadmissibility, of 15 November 2016, paragraph 62).

75. The Court notes that the mere fact that the Applicant is not satisfied with the outcome of the Judgment of the Supreme Court or the mere mention of Articles of the Constitution is not sufficient to build an allegation for a constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, the case of Court KI136/14, Abdullah Bajqinca, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

76. Consequently, the Court considers that the Applicant has not substantiated the allegations that the respective proceedings were in any way unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution.

77. In conclusion, pursuant to Rule 39 (2) of the Rules of Procedure the Referral is manifestly ill-founded on constitutional basis and consequently inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.1 and 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 22 July 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**

Remzije Istrefi- Peci | Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.