



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

Prishtina, on 28 September 2020  
Ref No.:RK 1621/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI119/19**

Applicant

**Privatization Agency of Kosovo (PAK)**

**Constitutional review of Decision APP-UPP.no.1/2018 of the Supreme  
Court, of 26 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 the Privatization Agency of Kosovo (PAK), (hereinafter: the Applicant), represented by Nysret Beka, a jurist.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Decision [APP-UPP.no.1 / 2018] of the Supreme Court, of 26 February 2019, which it has received on 21 March 2019.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which as alleged by the Applicant has violated its rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32[Right to Legal Remedies], 54[Judicial Protection of Rights]of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] and Article 1 of the Protocol no. 1 (Protection of property) of the European Convention on Human Rights (hereinafter: ECHR).

## **Legal basis**

4. The Referral is based on Article 21, paragraph 4 and Article 113, paragraphs 1 and 7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No.03 / L-121 (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 17 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 July 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) Gresa Caka-Nimani and Safet Hoxha (members).
7. On 30 July 2019, the Court notified the Applicant about the registration of the Referral and in accordance with the law sent a copy thereof to the Supreme Court.
8. On 23 October 2019, the Court notified the Kosovo Cadastral Agency, the Directorate for Cadastre and Geodesy in Peja regarding the submission of the Referral.
9. On 23 October 2019, the Court, requested the complete case file from the Basic Court in Prishtina.
10. On 24 October 2019, the Basic Court in Prishtina submitted to the Court the complete case file.
11. On 31 November 2019, also Vesna Drašković, director of the Joint Stock Company SH.A Izgradnja-Peja (hereinafter: JSC "Izgradnja", Peja) was notified about the submission of the Referral KI119/19.

12. On 27 November 2019, lawyer Teki Bokshi, the authorized representative of JSC "Izgradnja"-Peja, submitted comments regarding the PAK Referral and requested that the Applicant's Referral be rejected as inadmissible.
13. On 29 January 2020, the Special Chamber of the Supreme Court (SCSC) on PAK Related Matters requested detailed information in relation to the proceedings (status) of case SCC-10-01S8, the object sought by the claim by the holding company "EKOS" Sh.pk in connection with this dispute.
14. On 5 February 2019, the SCSC submitted the following information to the Court:
  - a. *This case (SCC-10-0158) refers to the claim filed by the claimant, the Holding Corporation "Ekos" LLC, based in Peja.*
  - b. *The claim is filed by lawyer B. M. from Gjakova.*
  - c. *The claimant by the claim requests the confirmation of the shareholder status of the Joint Stock Company "Izgradnja" and the annulment of the Decision of the Privatization Agency of Kosovo for the sale-privatization of the public tender PAK 43 of the New Enterprise "Iliri" shpk Peja.*
  - d. *In the claim the claimant also requested the imposition of injunctive relief on the prohibition of the sale of the aforementioned enterprise (see under item a).*
  - e. *The claimant by the petitem of the statement of claim seeks to confirm that JSC "Izgradnja" based in Peja, from which was established the New Enterprise workshop "Iliri", shpk, is not a socially owned enterprise but a JSC and as such it is considered to be outside the jurisdiction of the Privatization Agency of Kosovo.*
  - f. *By the Decision of the SCSC of 7 September 2010, the request on the imposition of the injunctive relief was approved, and the PAK was ordered not to take any action for the sale of the New Enterprise, workshop "Iliri", shpk.*
  - g. *By the Decision of the Appellate Panel of the SCSC the above Decision (see under article f) is confirmed.*
  - h. *Procedural actions related to the claim, in accordance with the law on SCSC have been taken.*
  - i. *the case relating to the claim is not concluded."*
15. On 10 June 2020, the Review Panel considered the Report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

### ***Background***

16. The Enterprise JSC "Izgradnja" was established by the former development fund of Serbia and the joint stock company "Ekos" in Peja (private enterprise), on the basis of contract no. 2487 and no. 722, of 9 November 1992 on the establishment of joint stock enterprises with mixed capital. On 17 November

1992, in conformity with the above contract, the District Commercial Court in Prishtina by Decision no. 6285/92 carried out the registration of JSC Izgradnja, under identification number Fi.no.6285/1992.

### ***Administrative (extrajudicial) procedure***

17. On an unspecified date, JSC "Izgradnja" -Peja had submitted a request for registration of immovable property with no. 2243 and no. 3168, CZ-Peja in the Directorate for Geodesy and Cadastre, Municipality of Peja.
18. On 8 June 2012, the Directorate for Geodesy and Cadastre, by Decision [no.01 /729-11], rejected as unfounded the request of the company JSC "Izgradnja"-Peja for registration of properties in her ownership.
19. On 19 June 2012, JSC "Izgradnja"-Peja filed a complaint with the Kosovo Cadastral Agency, against the Decision [no.01 / 729-11] of the Directorate of Geodesy and Cadastre of the Municipality of Peja.
20. On 31 July 2012, the Kosovo Cadastral Agency, by Decision [ACA no.03/ 313/12], rejected as unfounded the complaint of the Company JSC "Izgradnja"-Peja and confirmed the Decision [no.01/729-11] of the Directorate for Geodesy and Cadastre, Municipality of Peja, of 8 June 2012.

### ***Administrative Procedure (Administrative Conflict)***

21. On an unspecified date, JSC "Izgradnja"- Peja filed a statement of claim with the Basic Court in Prishtina-Department of Administrative Matters, requesting the annulment of the Decision [no.01/729-11] of the Directorate for Geodesy and Cadastre and the Decision [no.03/313/12] of the Kosovo Cadastral Agency.
22. On 13 September 2013, the Basic Court in Prishtina, by Judgment [AU.no.986 /2013], rejected as unfounded the claim filed by JSC "Izgradnja" -Peja and confirmed the Decision [no.01/729-11] of the Directorate for Geodesy and Cadastre and the Decision [no.03/313/12] of the Kosovo Cadastral Agency.
23. JSC "Izgradnja" -Peja, lodged an appeal with the Court of Appeals, against Judgment [AU.no.986 / 2013] of the Basic Court of Prishtina, of 13 September 2013.
24. On 9 December 2014, the Court of Appeals, by Judgment [AA.UZH.no.352/ 2013], rejected as unfounded the appeal of JSC "Izgradnja" - Peja and confirmed the Judgment [AU.no.986/2013] of the Basic Court, of 13 September 2013.
25. SH.A. Izgradnja-Peja, submitted a request for extraordinary review of the court decision to the Supreme Court, against Judgment [AU.no.986/2013] of the Basic Court in Prishtina and Judgment [AA.UZH.no.352/2013] of the Court of Appeals, due to violations of the provisions of the procedural law.

26. On 30 December 2015, the Supreme Court through Judgment [ARJ-UZVP.nr.8/2015], approved as founded the request of JSC "Izgradnja" - Peja, for extraordinary review; annulled the Judgment of the Court of Appeals [AA.no.325/2013] of 9 December 2014 and the Judgment [A.no.968/2012 of 13 September 2013 and decided to remand the case for retrial, with the reasoning:

*"...The Supreme Court for the time being cannot accept such a legal conclusion of the lower instance courts, that the tax burden may be an obstacle to registering and carrying out the change in the cadastral register. This change does not exclude the obligation to pay the tax by JSC 'Izgradnja'-Peja, therefore according to the opinion of this court, this change cannot be a reason for rejecting the request for registration of changes in the cadastral register. (...). Having in mind the contract on the establishment of JSC 'Izgradnja' in Peja with mixed ownership and the registration performed at the Commercial Court in Prishtina-Decision no. 6285/92 of 17.11.92, the Supreme Court considers that, for the time being, the legal views of the courts of lower instance, presented in their reasoning or judgments are inadmissible, because in the opinion of this Court the claimant has requested for the naming of the owner to be done in accordance with its statutory changes and not to carry out the change of the ownership. This is so for the reason that, furthermore, taking into consideration the fact that the request for changes in the cadastral register was submitted on 22.03.1993. The reasoning of the administrative bodies and courts of lower instances that the Pak has not taken part in the procedure conducted upon the request of the claimant for changes in the cadastral register, in the opinion of this Court, cannot be a reason for rejecting the claimant's request for changes in the cadastral records, especially when taking into consideration the date of submission of the first request for changes (year 1993) and the fact that the administrative body of the first instance could itself request from this agency the opinion on the legality of the request for registration of changes in the cadastral register. (...) Given the current state of the case, the Supreme Court has found that for the time being such a legal conclusion of the Court of Appeals and that of the Basic Court in Prishtina, Department for Administrative Matters cannot be accepted, due to erroneous application of the provisions of the LAC, for which reason the judgments of the lower instance courts had to be annulled. (...)"*

### ***Review of administrative procedure (administrative conflict)***

27. On 8 September 2016, the Basic Court in Prishtina, by Judgment [A.no.707/2016], rejected as unfounded the claim filed by the JSC "Izgradnja" -Peja, thus upholding the Decision [no.01/729-11] of the Directorate for Geodesy and Cadastre and the Decision [no.03/313/12] of the Kosovo Cadastral Agency.
28. JSC "Izgradnja"-Peja, filed an appeal with the Court of Appeals, against Judgment [A.no.707/2016] of the Basic Court in Prishtina, of 8 September 2016, due to violations of the provisions of the procedural law.

29. On 16 February 2017, the Court of Appeals, by Judgment [A.UZH. no.368/2016], rejected as unfounded the appeal submitted by JSC "Izgradnja" - Peja and confirmed the Judgment [A.nr.707 / 2016] of the Basic Court in Prishtina, of 8 September 2016, in its entirety.
30. On 18 May 18, 2017, the JSC "Izgradnja" - Peja submitted a request for extraordinary review of the court decision to the Supreme Court, against Judgment [AA.UZH.no.368/2016] of the Court of Appeals, of 16 February 2017 and Judgment [A.no.707/2016] of Basic Court in Prishtina, of 8 September 2016, due to erroneous application of substantive law and violation of the provisions of the administrative procedure, by proposing to have the challenged Judgments amended and its statement of claim to be approved.
31. On 10 May 2018, the Supreme Court, through Judgment [ARJ-UZVP.no.31/2017], approved as founded the request for extraordinary review of the court decision submitted by the JSC "Izgradnja" - Peja; amended the Judgment of the Court of Appeals [AA.UZH.no.368/2016] of 16 February 2017 and the Judgment [A.U.no.707/2016], of 8 September 2016; annulled the Decision [no.03/313/12] of the Kosovo Cadastral Agency of 31 July 2012 and the Decision [no.01/729-11] of the Directorate of Geodesy and Cadastre, Peja, of 8 June 2012; and obliged the Directorate for Geodesy and Cadastre in Peja, to register in the cadastral register the changes in the immovable properties no.2243 and no.3168, Cadastral Zone Peja, from the construction enterprise "Izgradnja" Peja , to JSC "Izgradnja" Peja, within a term of 15 days from the day of receipt of this judgment. On that occasion the Supreme Court reasoned:

*"Therefore, taking into consideration the fact that the court of first instance and the court of second instance did not take into account at all the instructions which were given by this Court in the judgment ARIUZVP.no.8 / 2015, of 30.12.2015, by which were quashed the judgment of the Court of Appeals AA.UZH.no.368/2016, of 16.02.2017 and the judgment of the Administrative Department of the Basic Court in Prishtina A.U.no. 707/2016 of 08.09.2016, by taking in the re-proceedings almost identical judgments and given that the evidence which exists in the case file are sufficient to make a meritorious decision - the Supreme Court rendered a judgment whereby it approved as grounded the request of claimant for extraordinary review of the court decision filed against the above decisions of the two courts of lower instance, amended the judgment of the Court of Appeals AA.UZH.no.368/ 2016, of 16.02.2017 and the judgment of the Administrative Department of Basic Court in Prishtina A.U.no.707/2016, of 08.09.2016 and annulled the decision of the respondent KCA no.03/313/12, of 31.07.2012 and the decision of the Directorate for Geodesy and Cadastre of the Municipality of Peja no.01/729-11, of 08.06. 2012, by obliging this Directorate to carry out the registration of changes in the immovable properties no. 2243 and 3168, Cadastral Zone Peja, from the Socially owned Construction Enterprise "Izgradnja" from Peja - to JSC "Izgradnja" from Peja, within 15 days from the day of receipt of this judgment."*

***Request for review of the procedure, respectively request for review of the Judgment [ARJ-UZVP.no.31/2017] of the Supreme Court, of 10 May 2018***

32. On 7 November 2018, the Applicant in its capacity as an interested party filed with the Supreme Court a request for review of the Judgment [ARJ.UZVP.no.31/2017] of the Supreme Court, of 10 May 2018, alleging a violation of the provisions of the procedural law and erroneous application of substantive law with the proposal to approve its request for review, to quash the Judgment [ARJ-UZVP.no.31/2017] of the Supreme Court, and to remand the case to the court of first instance court for reconsideration.
33. On 26 February 2019, the Supreme Court, by the challenged Decision [APP-UPP.nr.1 / 2018], rejected as inadmissible the Applicant's request for review of the Judgment [ARJ.UZVP.no.31/2017], of the Supreme Court, of 10 May 2018, on the grounds that the request for review was submitted by an unauthorized party, which was not part of this dispute, because the claimant in the administrative dispute is JSC "Izgradnja"-Peja whereas the respondent is the Kosovo Cadastral Agency.
34. On 6 June 2019, the Applicant requested from the Basic Court in Prishtina-Department for Administrative Matters, copies of the Judgments of all court instances. In its letter addressed to the Basic Court in Prishtina, the Applicant, among other things, informed the Basic Court that a dispute is ongoing in the SCSC, regarding the status of the JSC "Izgradnja"-Peja.

**Applicant's allegations**

35. The Applicant alleges that the challenged Decision of the Supreme Court [APP-UPP.no.1/2018] of 26 February 2019 is in contradiction with Articles: 31, 32 and 54 of the Constitution and Article 1 of Protocol no. 1 of the ECHR.
36. Initially, the Applicant states: *"The Privatization Agency of Kosovo ("PAK") is an independent public body that shall carry out its functions and responsibilities with fully autonomy. Established by the Assembly of the Republic of Kosovo by Law No.04/L-034, PAK is authorized for administration, including the authorization to sell, transfer and/or liquidate Enterprises and Assets defined in this law. According to the Law on the Privatization Agency of Kosovo (Law No. 04/L-034), until its transformation, the PAK has a legal obligation to represent, protect and increase the value, assets and properties in the ownership of the socially owned Enterprises in Kosovo."*
37. With respect to the disputable case, the Applicant states that: *"On 11 October 2018, PAK was for the first time notified about the Judgment of the Supreme Court of Kosovo. Based on the PAK Law, the Board of Directors in 2009, has determined that the legal entity-Socially Owned Enterprise "Izgradnja" based in Peja, falls under the jurisdiction of PAK, within the meaning of Article 5.1 of the Law on the PAK"*.

38. In relation to the challenged Judgment, the Applicant adds: *"As the legal representative of SOE "Izgradnja", PAK considers that the Judgment of the Supreme Court of Kosovo was issued as a result of procedural violations, acting in violation of the law and as such is unjust and illegal, therefore it filed a request for review of this Judgment. The request was filed within the meaning of Article 55.1, paragraph 1.6 of the Law on Administrative Conflicts which defined who could file such a request and that: "the interested person has not been given the opportunity to participate in the administrative conflict"*.
39. Further, the Applicant alleges that: *"The decision of the Supreme Court has violated the provisions of the law, Article LAC, 39.1, it should have been invited in the procedure (in the capacity of the interested person) this article has determined that: "Supervising Judge determines the day of review and shall invite the interested parties to the review", and not only this article, but also the provisions of Article 30.3, 37.1 etc. which have defined the procedural principles and the rights of the parties to the procedure as well as the obligation of the court to include the interested party in the procedure as well as the Law on TAK, Articles 22, 32.1 and 33 of this Law (No.3 / L-222)."*
40. The Applicant considers that: *"The Supreme Court of Kosovo by this Decision has gravely violated the exercise of the legal mandate of the PAK, by violating the right to legal representation of the interested party for SOE "Izgradnja" based in Peja, where the subject matter of this process were the properties of this enterprise"*.
41. The Applicant, at the end concludes that: *"The decision of the Supreme Court was accompanied by a number of legal violations, namely the Law on the Privatization Agency of Kosovo no. 04/L-034, Law on the Special Chamber of the Supreme Court of Kosovo No.04/L-033, Law on Contested Procedure No.03/L-006, Law on Tax Administration of Kosovo No.03/L-222, respectively Articles 32.1, 33.1 and Article 22 of this Law. The Applicant emphasizes that "As a result of these violations there has occurred the erroneous application of substantive law and the Constitution of Kosovo"*.
42. Finally, the Applicant requests from the Court: *"... to ascertain the violations as cited in the description of this Referral and the Decision of the Supreme Court of Kosovo APP-UPP. No. 1/2018, to declare invalid and to annul the Judgment of the Supreme Court of Kosovo ARJ-UZVP. No. 31/012 and the case to be remanded for retrial"*.

## **Legal Provisions**

### **Law No. 03/L-202 on Administrative Conflicts**

#### *Article 30*

*3. Together with the indictment, a copy of the indictment and attached documents shall be presented for the indicted body and to any interested person, if there is such.*

#### *Article 37*

*1. In case the court does not disallow the indictment in accordance with paragraph 2 of Article 33 and Article 34 of this law or does not annul the administrative act in accordance with Article 35 of this law, the court shall sent a copy of the indictment with the attachments to the indicted party and interested parties.*

#### *Article 39*

*1. Supervising Judge determines the day of review and shall invite the interested parties to the review.*

#### *Article 55 Reviewing*

*1. The interested party may request reviewing of the decision in effect, when:*

*[...]*

*1.6. the interested person was not allowed to take part in the administrative conflict.*

#### *Article 58*

*The court that has issued the decision shall decide on the request for reviewing.*

#### *Article 60*

*1. On request for reviewing the court shall decide in a closed session.*

*2. The Court shall overrule the request with the decision if the court verifies that the request was submitted by an unauthorized person or the request was not submitted on time, or that the party has not made believable the existence of legal basis for reviewing.*

## **Admissibility of the Referral**

43. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
44. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], in conjunction with paragraph 4 of Article 21 [General Principles] of the Constitution which provide:

#### *Article 113 of the Constitution [Jurisdiction and Authorized Parties]*

*“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.”*

[...]

Article 21 of the Constitution  
[General Principles]

[...]

*4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

45. Furthermore, the Court also refers to the admissibility criteria as established by the Law. In this respect, the Court refers to Articles 47[Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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...”*

46. As to the fulfillment of the admissibility criteria, as mentioned above, the Court considers that the Applicant is an authorized party that is challenging an act of a public authority, namely the Decision of the Supreme Court [APP-UPP.no.1/2018] of 26 February 2019, after having exhausted all legal remedies provided by law. The Applicant has also specified the fundamental rights and freedoms for which it alleges to have been violated, in accordance with Article

48 of the Law and has submitted the Referral within the deadline set out in Article 49 of the Law.

47. However, in addition, the Court examines whether the Applicant has also met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure, in accordance with paragraphs (2) and (3) (b) of Rule 39 of the Regulation, which define:

*“(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.”*

48. The Court recalls that the Applicant alleges that the Supreme Court by the challenged Decision [APP-UPP.no.1/2018], of 26 February 2019, violated its rights guaranteed by Articles 31, 32 and 54 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, because: *“...the judgment of the Supreme Court of Kosovo was rendered as a result of procedural violations, by acting in violation of the law and as such it is unjust and illegal, for the reason that, “the interested person has not been given the opportunity to take part in the administrative conflict”.*

49. In this context and in the following, the Court will treat the allegations of the Applicant concerning (i) the alleged violations of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, and (ii) the alleged violations of Articles 32 and 54 of the Constitution, as well as Article 1 of Protocol no. 1 of the ECHR, by applying the case law of the European Court of Human Rights (hereinafter: the ECtHR), on the basis of which the Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

*As regards the allegation for violation of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR*

50. Taking into consideration that the essence of the Applicant's allegations concerns a fair trial and regular court process, the Court recalls the content of the provisions of Article 31 of the Constitution and Article 6.1 of the ECHR, which provide:

*Article 31 of the Constitution*

*“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 6.1 of the ECHR*

*“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...”*

51. The Court notes that the Applicant's allegations for a violation of Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR concern the denial of its right to participate as an interested party in the proceedings of the administrative conflict, which took place between JSC “Izgradnja”-Peja (the claimant) and the Kosovo Cadastral Agency ( the respondent), a dispute which had to do with the request of the JSC “Izgradnja”-Peja seeking the registration of the above mentioned immovable properties in its name, in the cadastral books in Peja.
52. In this respect, the Court refers to the relevant parts of the challenged Decision of the Supreme Court [APP-UPP.no.1/2018] of 26 February 2019, and notes that the Supreme Court had reasoned the alleged denial of the Applicant's right to be invited in the capacity of the interested party to participate in the administrative conflict that took place between JSC “Izgradnja”- Peja and the Kosovo Cadastral Agency, as follows: *“Article 58 of the Law on Administrative Conflicts stipulates that the request for reviewing shall be decided by the court that has issued the decision ... while Article 60, paragraph 2 of this law stipulates that the Court will reject the request with the decision if the court verifies that the request was submitted by an unauthorized person.”*
53. Further, the Supreme Court reasoned: *“In the present legal case an administrative conflict was conducted according to the claim of the claimant JSC “Izgradnja” from Peja, against the respondent Kosovo Cadastral Agency, for the annulment of the administrative act. Based on what stated above, the litigants in the administrative conflict are JSC “Izgradnja” and the Kosovo Cadastral Agency, therefore they have the exclusive authority to exercise regular and extraordinary legal remedies.”*
54. At the end, the Supreme Court had concluded: *“In the opinion of this court, the authority submitting the request for reviewing, the Privatization Agency of Kosovo is not a party to this administrative conflict and is therefore not the person authorized to file a request for reviewing, therefore this court, based on all what was stated above, rejected as inadmissible the request for reviewing of the Privatization Agency of Kosovo, filed against the judgment of the Supreme Court of Kosovo ARJUZVP.no.31/2017, of 10.05.2018, having in consideration that the request for reviewing, in accordance with Article 60, paragraph 2 of the Law on Administrative Conflict, was submitted by an unauthorized person.”*

55. On the basis of the above the Court notes that the Supreme Court did not recognize the Applicant's legitimacy of the authorized party, thus it decided to uphold its Judgment[ARJ.UZVP.no.31/2017] of 10 May 2018. In the circumstances of the present case, the Court notes that the Supreme Court had dismissed the Applicant's request as "inadmissible" for procedural reasons and without examining the merits of the request. The Supreme Court, by interpreting the provisions of the Law on Administrative Conflicts came to the conclusion that the Applicant's request for review of the Judgment of the Supreme Court itself [ARJ.UZVP.no.31/2017] of 10 May 2018, should be dismissed as inadmissible as the request was submitted by an unauthorized party which was not part of the administrative conflict that took place between JSC "Izgradnja" and the Kosovo Cadastral Agency.
56. Therefore, as it can be seen, the Supreme Court, dismissed the request submitted by the Applicant on procedural grounds of admissibility, for the reasons provided in the challenged Decision APP-UPP.no.1/2018], of 26 February 2019. In this respect, the Court notes that there is nothing to indicate and prove that the Supreme Court in this case violated the Applicant's rights guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR, because the Decision of the Supreme Court is clear also in terms of final findings and tests.
57. Moreover, the Court notes that the Applicant alleges that: *"The decision of the Supreme Court has violated the provisions of the law, Article 39.1 of the LAC ... and the provisions of Article 30.3, 37.1 etc... which have defined the procedural principles and the rights of the parties in the procedure as well as the obligation of the court for the involvement of the interested party in the procedure, as well as the Law on TAK, Articles 22, 32.1 and 33 of this law (No.3 /L-222)."*
58. In the context of an allegation relating to erroneous interpretation of the applicable law, the Court first notes that, as a general rule, the allegations for erroneous interpretation of the law allegedly made by the regular courts relate to the scope of legality and as such, are not within the jurisdiction of the Court, and therefore, in principle, the Court cannot consider them. (See the cases of the Court: No. KI06/17, *Applicant LG and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 36; KI122/16, *Applicant Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; and the case of the Court KI154/17 and 05/18, *Applicants, Basri Deva, Aferdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility, of 28 August 2019, paragraph 60).
59. The Court has repeatedly reiterated that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and in so far as they may have violated the rights and freedoms of protected by the Constitution (constitutionality). It cannot itself assess the law that led a regular court to adopt a decision rather than another. If it were otherwise, the Court would act as a court of "fourth instance" that would result in exceeding the limits imposed on its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law. (see

the ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see also, inter alia, the cases of the Court: KI06/17, cited above, paragraph 37; and KI122/16, cited above, paragraph 57; and KI154/17 and 05/18, cited above, paragraph 61).

60. This stance has been consistently maintained by the Court, on the basis of the case law of the ECtHR, which clearly states that it is not the role of this Court to review the conclusions of the regular courts in respect of the factual situation and application of the substantive law. (See, the ECtHR Case, *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and cases of the Court KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraphs 58 and KI154/17 and 05/18, cited above, paragraph 62).
61. The Court, however, emphasizes that the case-law of the ECtHR also provides for the circumstances under which exceptions from this stance must be made. The ECtHR has pointed out that while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation, the role of the Court is to verify whether the effects of such interpretation are compatible with the ECHR. (See, the ECtHR Case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).
62. Consequently, even though the role of the Court is limited in terms of assessing the interpretation of the law, it must ensure and take measures where it observes that a court has “*applied the law manifestly erroneously*” in a particular case or which may have resulted in “*arbitrary conclusions*” or “*manifestly unreasoned*” for the Applicant. (See, inter alia, the case of the Court KI154/17 and 05/18, cited above, paragraphs 60 to 65 and the references used therein).
63. Therefore, in this respect, the Court finds that the Applicant's allegation for a violation of the Constitution, as a result of erroneous interpretation or erroneous application of the provisions of the relevant laws is clearly unfounded, because the above condition has not been met, so that in the concrete case we would have to do with a “manifestly erroneous application of the law” which would lead to “arbitrary conclusions” or “manifestly unreasoned” for the Applicant.

*As regards the other allegations for violation of Articles 32 and 54 of the Constitution and Article 1 of Protocol no. 1 of the ECHR*

64. Furthermore, the Court notes that the Applicant alleges that the challenged Decision also violates its rights guaranteed by Articles 32 and 54 of the Constitution and Article 1 of Protocol No. 1 of the ECHR. In the present case, the Applicant only mentions the respective articles, but does not justify by a single word how did the challenged Decision violate the constitutional rights from Articles 32 and 54, as well as Article 1 of Protocol No. 1 of ECHR. In this respect, the Court recalls that it has consistently emphasized that the mere mention of articles of the Constitution and the ECHR is not sufficient to build an argumentative 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 cases of the Constitutional 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).

65. Therefore, with respect to these allegations, the Court pursuant to its case law declares the Applicant's Referral manifestly ill-founded and consequently inadmissible.

## **Conclusion**

66. In conclusion, the Court concludes that the Applicant's Referral, as regards the allegations for violation of Articles: 31 [Right to Fair and Impartial Trial] 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, as well as Article 1 of Protocol no. 1 [Protection of Property] of the ECHR, must be declared manifestly ill-founded on constitutional basis and consequently inadmissible, pursuant to Rule 39 (2) of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (2) and 59 (2) of the Rules of Procedure, in the session held on on 2 September 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.*

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