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

Prishtina on 14 December 2020
Ref. No.:RK 1663/20

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RESOLUTION ON INADMISSIBILITY

in

Case no. KI211/19

Applicants

Hashim Gashi, Selajdin Isufi, B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R.

Constitutional review of Decision No. 11/111 of the Government of the Republic of Kosovo of 19 July 2019

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 Hashim Gashi and Selajdin Isufi, residing in the Municipality of Gjilan, who are represented before the Court by lawyer Bejtush Isufi (hereinafter: the Applicants).

2. The above lawyer also claims to represent B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R., residing in the Municipality of Gjilan.

Challenged decision

3. The Applicants challenge the Decision [No. 11/111] of 19 July 2019 of the Government of the Republic of Kosovo (hereinafter: the Government) in connection with the Decisions [No. 5/76] of 21 November 2018 and [No. 5/55] of 6 July 2018 of the Government.

Subject Matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicants' fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 159 [Socially Owned Enterprises and Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

5. Article 159 of the Constitution has been repealed by amendment 20 of the Constitution regarding the ending of international supervision of independence of Kosovo. (See, Official Gazette of the Republic of Kosovo no. 25 of 7 September 2012).

Legal basis

6. 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 Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 20 November 2019, the Applicants submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 27 November 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).

9. On 21 January 2020, the Court notified the Applicants of the registration of the Referral and, in accordance with Article 21 (Representation) and paragraph 4 of Article 22 (Processing Referrals) of the Law, requested them to submit to the Court the authorization that proves that the representative mentioned in the Referral is authorized to represent the Applicants before the Court.

10. On 12 February 2020, the authorized representative submitted to the Court the authorizations for representation of Hashim Gashi and Selajdin Isufi. The above-mentioned representative did not submit the requested authorization

regarding the persons B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R. In response to the request of the Court for the respective authorizations, he responded as follows: *"In order to review the Referral without delay and due to inability to contact all applicants, within the legal deadline, we submit these two powers of attorney to the court".*

11. On 12 August 2020, the Court reiterated the request regarding the powers of attorney for representation before the Court for persons B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R.

12. On 31 August 2020, the above-mentioned representative stated that in addition to submitting the powers of attorney for representation of Hashim Gashi and Selajdin Isufi, *"we will not submit authorizations for other applicants. Therefore, we request from the Constitutional Court to continue with the proceedings only for the Applicants who have submitted the powers of attorney in case KI211/19".*

13. On 22 September 2020, the Court notified the Government of the registration of the Referral and gave the opportunity that within fifteen (15) days to submit comments to the Court on the Applicants' Referral, including their allegations of lack of legal remedies to challenge Government Decision. The latter did not submit any comments to the Court.

14. On 11 November 2020, after having considered Report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. The Applicants were employees of SOE KBI "Agrokultura" in Gjilan (hereinafter: SOE Agrokultura). A part of it, based on the case file, was privatized on 21 July 2006.

16. On an unspecified date, in accordance with Section 10 (Employee Rights) of UNMIK Regulation 2003/13 on the Transformation of the Right of Use to Socially-Owned Immovable Property (hereinafter: Regulation 2003/13), the Final List of employees who had fulfilled the conditions for receiving a part of the revenues, respectively twenty percent (20%) from the privatization and liquidation of the above-mentioned enterprise was published. Applicants were part of this List.

17. Between December 2013 and January 2014, the Applicants addressed the Privatization Agency of Kosovo (hereinafter: PAK) with claims for compensation due to the early termination of the employment contract with SOE Agrokultura and with a claim for compensation of a number of salaries. Their claims were submitted within the deadline for filing claims in liquidation and that was 10 January 2014. However, the respective claims were assessed by the PAK as claims for compensation and it was assessed that they were filed after the three (3) year period after which the respective obligation arose, as defined in the Law on United Labour of 1976 (in the text of hereinafter: LUL), applicable in the circumstances of the concrete case, and that based on Law no.

04/L-034 on the Privatization Agency of Kosovo (hereinafter: the Law on PAK), the respective claims were rejected as invalid. The Legal Advice of the PAK Decisions determined that the respective Applicants may address to the Special Chamber of the Supreme Court (hereinafter: the SCSC) within a period of thirty (30) days. Based on the case file, such complaints were not filed with the SCSC.

18. On 17 December 2012, Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality (hereinafter: Law no. 04/L-144), was published in the Official Gazette of the Republic of Kosovo and it entered into force fifteen (15) days after its publication. Article 12 (The Right of the Municipality to Revert Part of the Land Managed by Privatization Agency of Kosovo) of the above-mentioned law, provided the possibility that the municipalities, in the name of public interest, request the return of immovable property, including lands of former Socially Owned Enterprises which are in the territory of the respective municipality and which are administered and managed by the PAK. Based on the same article, the withdrawal from the privatization process and the return of these properties to the ownership of the respective municipality, is realized by the Government in cooperation with the PAK.

19. From the case file it results that PAK had under management some properties of SOE Agrokultura, for which, the Municipality of Gjilan had expressed interest in allocating them as a location for the city cemetery.

20. Between 6 June and 12 November 2018, based on Law no. 04/L-144 and Regulation GRK no. 23/2013 on the Determination of Procedures on the Allocation for Use and Exchange of the Immovable Property of Municipality (hereinafter: Regulation 23/2013), the Government issued a number of decisions for the return of socially-owned properties to the municipalities of Kosovo, and which were under the management of the PAK. (See, Decision no. 05/55, Decision no. 06/55, Decision no. 07/55, Decision no. 08/55, Decision no. 09/55, Decision no. 10/55, Decision no. 04/57, Decision no. 05/57, Decision no. 06/57, Decision no. 07/59, Decision no. 11/60, Decision no. 12/60, Decision no. 17/61, Decision no. 12/62, Decision no. 10/65, Decision no. 11/65, Decision no. 06/66, Decision no. 09/69, Decision no. 10/69, Decision no. 11/71, Decision no. 07/74, Decision no. 08/74 and Decision no. 09/74).

21. On 6 July 2018, the Government by Decision [No. 05/55], based on Article 12 of Law no. 04/L-144, (i) decided to approve the proposal of the Ministry of Local Government Administration (hereinafter: (MLGA) for the request of the Municipality of Gjilan for "*withdrawal from the privatization process and the return of the properties of the Agricultural Industrial Combine – Gjilan, which are currently under the administration of the Privatization Agency of Kosovo, to the ownership of the municipality, in order to realize the public interest in the Municipality of Gjilan, respectively to provide location for City Cemetery*"; (ii) determined that the PAK compensation in the amount of twenty percent (20%) of the value of the property according to the assessment, for the respective employees, as well as the claims of the creditors from the process of liquidation up to the total amount of the assessment, will be made according to the relevant legislation in force; and (iii) authorized the MLGA

that in cooperation with the PAK conduct further proceedings until the final decision on the transfer of property.

22. On 6 November 2018, based on paragraph 4 of Article 92 [General Principles] and paragraph 4 of Article 93 [Competencies of the Government] of the Constitution, the President of the Republic requested from the Court, regarding the Government Decisions issued between 6 June and 12 November 2018, including the challenged Decision, to address the following issues: (i) "*should [Government] annul all decisions on the transfer of immovable property of the Republic of Kosovo, for use, to municipalities, in the absence of a legal basis*"; and (ii) "*should [the Government] review all decisions related to the withdrawal from the privatization process of properties and their return to the ownership of the municipalities and follow the procedures according to the legislation in force on this issue*". This Referral was registered with the Constitutional Court under the number KO181/18.

23. On 21 November 2018, the Government through Decision [No. 05/76] suspended all Government Decisions "*on the return of socially owned properties of the PAK to Kosovo Municipalities for the purpose of realizing the public interest which have been addressed to the Privatization Agency of Kosovo by the Ministry of Local Government Administration, until another decision is made*". This Decision also suspended the challenged Decision, namely Decision [No. 05/55].

24. On 7 March 2019, the Assembly of Kosovo approved Law No. 06/L-092 on Allocation for Use and Exchange of Municipal Immovable Property (hereinafter: Law No. 06/L-092), repealing the previous Law, respectively Law no. 04/L-144. According to Article 27 (The right of the municipality to transfer of ownership of immovable property administered by central institutions) of the above law established that (i) municipalities shall, for the purposes of public interest, have the right to request the transfer of ownership of the immovable properties that are in the territory of the municipality and are now administered by central institutions; (ii) the conditions which must be fulfilled in the event of such requests; and (iii) the procedure to be followed for approving such a request by the Government.

25. On 1 July 2019, the Court, by Resolution on Inadmissibility in case KO181/18, declared inadmissible the Referral of the President regarding the challenged Decision. The court rejected the President's request on procedural grounds and, consequently, did not examine the merits of the President's Referral, namely the compliance of the challenged Decision with the Constitution.

26. On 19 July 2019, the Government by Decision [No. 11/111] decided to lift the suspension according to Government Decision [No. 05/76] of 21 November 2018, leaving in force as a result, inter alia, the challenged Decision [No. 05/55].

Applicants' allegations

27. The Applicants initially allege that (i) they have no legal remedy available to challenge Decision [No. 11/111] of 19 July 2019 of the Government; and (ii) that

the same has been issued in violation of their fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 159 [Socially Owned Enterprises and Property] of the Constitution.

28. Regarding the lack of a legal remedy, the Applicants state that (i) Law no. 04/L-144 does not specify the legal remedies that can be used to challenge the decisions issued based on Article 12 thereof; (ii) "*they would have no real likelihood of defending their rights*" in the administrative dispute procedure because based on paragraph 2 of Article 16 [without title] of Law No. 03/L-202 on Administrative Conflicts (hereinafter: LAC) it is provided that "*The administrative act cannot be challenged for incorrect application of the provisions, when the competent body has decided according to the free assessment based on the authorizations and in the framework* of *the limits given to it* with *legal provisions, in accordance* with *the purpose for which* the *authorization has been granted.";* and (iii) by Decision [No.5/76] of the Government of 21 November 2019, the suspension of the Decision [No. 5/55] of 6 July 2018 was lifted, and the Department of Administrative Matters within the Basic Court, has the competence to decide only on the legality of the last administrative act, namely the legality of lifting the suspension, but not the substance of the case, and that consequently, in the circumstances of their case, this legal remedy would not be effective.

29. In the same context, the Applicants also state that (i) the decision issuance of the regular courts regarding their case "*could only be done after a few years and after the project is completed*"; (ii) there was a legitimate expectation that the President's Referral, which challenged the constitutionality of the Government Decisions on the transfer of socially-owned property to the municipalities, would be declared admissible by the Court and that the same would find the respective decisions unconstitutional, including the challenged Decision. While awaiting a meritorious decision by the Court, the Applicants missed the deadline to file for an administrative dispute against the Government Decision in the Basic Court; and (iii) there has been no case in court practice where a collective decision of the Government in an administrative dispute procedure has been overturned. In this regard, the Applicants refer to the Judgments of the Court in cases KI99/14 and KI100/14 (see, Court case, Kl99/14 and KI100/14, with Applicants *Shyqyri Syla and Laura Pula,* Judgment of 8 July 2014) and KI34/17 (see, Court case, KI34/17, with Applicant *Valdete Daka*, Judgment of 12 June 2012) in which, according to the Applicants, it is stated that *"even if there are legal remedies, in the Applicant's case they have not been proven to be effective"*. The Applicants also refer to the Judgment of the Court of 22 December 2010 in case KI56/09, with Applicants *Fadil Hoxha and 59 others against the Municipal Assembly of Prizren* (hereinafter: Court case KI56/09), and which, according to the Applicants, states that "*the fact that the Applicant has not used a legal remedy is not an obstacle for the Court to consider the Referral admissible*", in cases where a legal remedy does not provide reasonable likelihood of success.

30. With regard to the merits of the case, the Applicants allege that the challenged Decision of the Government was issued in violation of Articles 31, 46 and 159 of the Constitution.

31. The Applicants initially state that (i) as former employees of SOE Agrokultura, based on Article 10 of Regulation no. 2003/13, are entitled to benefit from twenty percent (20%) of the amount from the privatization income; and that in this context, (ii) they have the legitimacy to file this claim because they are directly affected by the challenged Government Decision also in terms of the amount they will receive from the disbursement of twenty percent (20%) of the privatization fund, but at the same time by the reduction of funds in the liquidation procedure which will be used to cover the claims of creditors, whose claims are approved by a decision of the liquidation authority or in court proceedings in the SCSC.

32. With regard to the alleged violations of Article 31 of the Constitution, the Applicants state that (i) Decision [No. 05/55] of 6 July 2018, then suspended by Decision [No. 05/76] of 21 November 2018 and finally repealed by Decision [No. 11/111] of 19 July 2019, was issued based on a repealed legal provision, as is Article 12 of Law no. 04/L-144, because in the meantime, the latter, is repealed by Law No. 06/L-092; (ii) the provisions on the basis of which the challenged Decision was issued are also contrary to the Constitution because they do not lay down any procedure by which creditors may challenge the decisions of the Government by which a property is transferred from social ownership to public ownership; and (iii) the challenged Decision is issued on the same day on which the Prime Minister resigned, emphasizing that "*we consider that being a resigned Prime Minister and a Government in resignation, we cannot have any valid decision in this important matter...*".

33. With regard to the alleged violations of Article 46 of the Constitution, the Applicants state that (i) the transfer of ownership through the challenged Decision of the Government is contrary to paragraph 3 of Article 46 of the Constitution; (ii) the transfer of socially owned public property "*is de facto expropriation*", and consequently the guarantees set out in paragraph 3 of Article 46 of the Constitution must be respected, including immediate compensation, which is not the case in the circumstances of the present case. According to the Applicants, this applies, both to the employees in terms of their right to benefit from the amount of twenty percent (20%) of the privatization value, as well as to the creditors of the respective enterprise; and (iii) the challenged Government decision was issued based on a law, respectively Law No. 04/L-44, which does not confer on the Government any competence for the transfer of ownership because, according to the allegation "*the transfer of ownership from one person to another is done either voluntarily or by expropriation*". According to the Applicants, the expropriation procedure is defined by Law No. 03/L-139 on Expropriation of Immovable Property.

34. With regard to the alleged violations of Article 159 of the Constitution, the Applicants state that (i) the transfer of ownership through the challenged Decision of the Government is contrary to Article 159 of the Constitution; and (ii) the challenged Decision of the Government is contrary to this article because the Republic of Kosovo is obliged to privatize all socially owned property and that the transfer of socially owned property to private property is done only through the privatization process, except in cases when socially owned property is necessary for the realization of a public interest.

35. The Applicants also request the Court to impose an interim measure, claiming that the contrary would result in irreparable damage. The latter emphasize that "*the works for the realization of the cemetery project have already started, when the property has not been formally transferred yet*".

36. Finally, the Applicants request the Court to (i) declare the Referral admissible; (ii) to find that by Government Decisions [No.5/55] of 06 July 2018, [No.5/76] of 21 November 2018 and [No. 01/111] of 19 July 2019, Articles 31, 46 and 159 of the Constitution have been violated; and (iii) declare the above Decisions invalid.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Article 31
[Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
[...]

Article 46
[Protection of Property]

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.
[...]

Article 159
[Socially Owned Enterprises and Property]

1. All enterprises that were wholly or partly in social ownership prior to the effective date of this Constitution shall be privatized in accordance with law.

2. All socially owned interests in property and enterprises in Kosovo shall be owned by the Republic of Kosovo.

Amendments I - XXII

Amendment of the Constitution of the Republic of Kosovo regarding the ending of the international supervision of the independence of Kosovo (Official Gazette of the Republic of Kosovo No. 25 of 7 September 2012)

Amendment 20:

Article 159 shall be deleted.

Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality

Article 12
The Right of the Municipality to Revert Part of the Land Managed by Privatization Agency of Kosovo

1. For the purpose of public interest, municipalities shall have the right to revert the immovable properties that include lands of former Socially Owned Enterprises which are in the territory of the Municipality and are now administered and managed by the PAK.
2. Municipalities shall compile a list of land parcels, properties of former Socially Owned Enterprises now managed by the PAK, that Municipalities seek to revert to the public interest.
3. The list of properties, compiled by the municipalities according to paragraph 2. of this Article, shall be forwarded to the Government of Republic of Kosovo, for the purpose of releasing such properties from privatization process, and reverting them under the municipal ownership for the purpose of accomplishing the public interest.
4. Government of Kosovo in cooperation with PAK shall take legal actions for reverting such parcels under the ownership of the municipality.

Law No. 06/L-092 on Allocation for Use and Exchange of Municipal Immovable Property

Article 27
The right of the municipality to transfer of ownership of immovable property administered by central institutions

1. Municipalities shall, for the purposes of public interest, have the right to request the transfer of ownership of the immovable properties that are in the territory of the municipality and are now administered by central institutions.
2. The Municipality shall identify and accurately describe the immovable property whose ownership they request to be transferred for realization of public interest.
3. The Municipality shall, for the purpose of transferring ownership of immovable property managed by central institutions, submit the request

through the Ministry responsible for local self-government, after fulfilling these criteria:

3.1. fulfilment of conditions for exchange of the immovable property, as determined in paragraphs 2., 3. and 4. in Article 24 of this Law, as well as conditions for expropriation of the immovable property, as determined with the relevant legislation for expropriation of immovable property, shall apply even in the case of requests addressed in this Article.

4. The Ministry responsible for local self-government, after reviewing and completing the case received by the Municipality, shall sent it with recommendation to the Government for approval.

5. The Government shall take a decision regarding the request of the municipality.

6. In case of the approval of the request by the Government, the property shall be transferred to the Municipality within thirty (30) days.

7. Creditor obligations for the property transferred to the municipality shall be taken by the Government.

Law No. 03/L-202 on Administrative Conflicts

Article 2
Aim

The aim of this law is provision of judicial protection of rights and interests for legal and natural persons and other parties, the rights and interests that have been violated by individual decisions or by actions of public administrative authorities.

Article 3
Definitions

1. Terms used in this law have the following meaning:

1.1. Body - public administration bodies, central government bodies and other bodies on their dependence, local government bodies and bodies on their dependence, when during exercising public authorizations decide on administrative issues.

1.2. Administrative act - every decision of the body foreseen in sub-paragraph 1.1 of this paragraph, which shall be taken in the end of the administrative procedure on exercising public authorizations and which effects, favourably or unfavourably legally recognized rights, freedoms or interests of natural or legal persons, respectively other party in deciding the administrative issues.

1.3. Administrative issue - according to this law is special uncontested situation and with public interest, in which directly from legal provisions, results the need to define the behaviour of next party in legal-authoritative manner.

Article 10
No Title

1. Based on the Law, a natural and a legal person has the right to start an administrative conflict, if he/she considers that by the final administrative act in administrative procedure, his/her rights or legal interests has been violated.
2. Administration body, Ombudsperson, associations and other organizations, which protect public interests, may start an administrative conflict.
[...]

Article 16
No Title

1. The final administrative act can be objected:
1.1. for the reason that, the law has not been applied at all or legal provisions have not been correctly applied;
1.2. when the act has been issued by a non-competent body;
1.3. when in the procedure that preceded the act, was not been acted according to the procedure rules, the factual situation has not been correctly verified, or if from the verified facts, incorrect conclusion in the light of factual situation has been issued;
1.4. when with the final administrative act issued based on a free evaluation, the body has exceeded the limits of legal authorization or such act was not issued in compliance with the purpose of this law;
1.5. when the accused party has issued again her earlier act, annulled before with the final decision of the competent court.
2. The administrative act cannot be rejected for incorrect implementation of the provisions, when a competent body has decided according to free assessment based on authorizations and within the limits given with legal provisions, in accordance with the aim for which the authorization was given.

Article 18
No Title

The plaintiff in the administrative conflict may be a natural person, legal entity, Ombudsperson, other associations and organizations, which act to protect public interest, who considers that by an administrative act a direct or indirect interest according to the law, have been violated.

Article 22
No Title

[...]
2. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and

postponing would not bring any huge damage to the contested party, respectively the interested person.
[...]
7. The court decides within three (3) days upon receiving the request.

Article 27
No Title

1. The indictment shall be submitted within thirty (30) days, from the day of delivering the final administrative act to the party.
2. This time-limit shall be also applied for the authorized body for submitting the indictment, if the administrative act has been delivered. If the administrative act has not been delivered, the indictment shall be delivered within sixty (60) days from the date of delivering the administrative act to the party, in favour of which the act has been issued.

Assessment of the admissibility of the Referral

37. The Court initially examines whether the admissibility criteria established by the Constitution and further specified by the Law and the Rules of Procedure have been fulfilled.

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

> "*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."*

39. Based on the above Article, the Court must first assess whether the parties submitting a Referral before the Court are authorized parties and fulfil the constitutional and legal criteria to be considered as such. In this context, the Court shall first examine the fulfilment of the legal criteria with respect to (i) B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R., for whom the respective lawyer has not submitted to the Court the requested authorizations, and then in regard to (ii) Hashim Gashi and Selajdin Isufi, in respect of whom the respective lawyer submitted the requested authorizations to the Court.

(i) With regard to persons B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R.

40. In terms of reference to paragraph 7 of Article 113 of the Constitution, in assessing the admissibility of a Referral, the Court must first determine whether the Applicants are authorized parties before it. One of the criteria that must be met in this regard, are those defined by Article 21 (Representation) of the Law and Rule 32 (Filing of Referrals and Replies) of the Rules of

Procedure. The first stipulates that *"During the process in the Constitutional Court, parties are either represented in person or by a person authorized by the party"*, while the second, stipulates as follows:

> *[...]*
> *"(2) The referral shall also include:*
>
> > *[...]*
> > *(c) a power of Attorney for the representative;*
> > *[...].*
>
> *(3) If a party is represented, the representative shall submit with the referral a valid power of attorney for the referral to the Court."*

41. The Court recalls that with regard to the persons B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R., based on the above legal provisions, has twice addressed a letter to the alleged representative, requesting him to submit to the Court the authorization, through which the above-mentioned persons have authorized him that he may represent them before the Court.

42. More precisely, the Court sent the first letter to the alleged representative on 21 January 2020 and the second letter on 12 August 2020. After the first request, the respective lawyer had submitted to the Court the authorizations for Hashim Gashi and Selajdin Isufi, while regarding the persons B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R., had stated that *"In order to review the Referral without delay and due to inability to contact all applicants, within the legal deadline, we submit these two power of attorneys to the court."* The Court reiterated the request for authorizations for all the Applicants, and the respective lawyer did not submit the requested authorizations to the Court.

43. Based on the above legal provisions but also on the consolidated practice of the Court, failure to submit a valid authorization makes it impossible for the Court to review a referral in accordance with Article 21 of the Law and Rule 32 of the Rules of Procedure.

44. In light of these facts, the Court also refers to paragraph 5 of Rule 35 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules of Procedure, which sets out:

> *"[...]*
> *(5) The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous.*
> *[...]."*

45. In this respect, regarding the persons B.K., H.Z., M.H., R.S., R.E., S.O., S.H., H.I., N.S., S.I., and S.R., the Court concludes that the Referral is incomplete because regarding the same, despite two requests, no valid authorization has been submitted to the Court. (See, inter alia, the Decision on Rejection of the

Referral of 24 June 2019, in case KI203/18, with Applicants *Afrim Salihu, as alleged representative of L.K.*, paragraph 21 and references used therein).

46. Consequently, the Court finds that this part of the Referral should be summarily rejected in accordance with Rule 35 (5) of the Rules of Procedure.

(ii) Regarding the Applicants Hashim Gashi and Selajdin Isufi

47. With regard to these two Applicants, the Court notes that the criteria set out in Article 21 of the Law and Rule 32 of the Rules of Procedure are fulfilled, because for the same, the relevant authorizations have been submitted to the Court. However, in assessing the admissibility of the Referral, the Court must determine whether the other criteria set out in paragraph 7 of Article 113 of the Constitution, Article 47 (Individual Requests) of the Law and Rule 39 (Admissibility Criteria) of the Rules of Procedure have been fulfilled. The latter two stipulate the following:

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."

Rule 39
(Admissibility Criteria)

"1. The Court may consider a referral as admissible if:

[...]
(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted."
[...]

48. Regarding the fulfilment of these criteria, the Court initially states that based on paragraph 7 of Article 113 of the Constitution and Article 47 of the Law, the Applicants, respectively Hashim Gashi and Selajdin Isufi are authorized parties to submit a Referral to the Court. They also challenge an act of a public authority, namely Decision [11/111] of 19 July 2019 of the Government regarding Decision [No. 5/76] of 21 November 2018 of the Government as well as Decision [No. 5/55] of 6 July 2018 of the Government.

49. However, the Court shall further assess whether the Applicants have fulfilled the criterion of exhaustion of legal remedies provided by law, as required by paragraph 7 of Article 113 of the Constitution, paragraph 2 of Article 47 of the Law and point (b) of paragraph (1) of Rule 39 of the Rules of Procedure. In the context of assessing the fulfilment of the criterion for exhaustion of remedies, the Court shall in the following (i) present the general principles of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court

with regard to exhaustion of legal remedies; and (ii) apply the same to the circumstances of the particular case.

(a) General principles of the ECtHR and the Court regarding the exhaustion of legal remedies

50. The Court first notes that paragraph 7 of Article 113 of the Constitution sets out the obligation to exhaust *"all legal remedies provided by law"*. This constitutional obligation is also stipulated in paragraph 2 of Article 47 of the Law by which it is required to exhaust *"all legal remedies"* and further with point (b) of paragraph (1) of Rule 39 of the Rules of Procedure, which emphasizes in particular the obligation to exhaust initially all *"effective"* remedies stipulated by law.

51. Criteria for assessing whether the obligation to exhaust all *"effective"* legal remedies have been fulfilled, are well defined in the case law of the ECtHR, in accordance with which, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution.

52. In this context, the Court emphasizes that the concept of exhaustion and/or obligation to exhaust legal remedies derives from and is based on the "*generally accepted rules of international law*". (See, inter alia, case *Switzerland v. United States of America,* Judgment of 21 March 1959 of the International Court of Justice). The same applies to the ECtHR, which according to Article 35 (Admissibility Criteria) of the European Convention on Human Rights (hereinafter: the ECHR), may *"may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law [...]"*.

53. As the Court has consistently pointed out through its case law, the purpose and justification of the obligation to exhaust legal remedies or the rule of exhaustion is to provide the relevant authorities, first and foremost the regular courts, with the opportunity to prevent or remedy alleged violations of the Constitution. It is based on the assumption reflected in Article 32 [Right to Legal Remedies] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR, that the legal order of the Republic of Kosovo provides an effective remedy for protecting the fundamental rights and freedoms guaranteed by the Constitution. This is an important aspect of the subsidiary character of the constitutional justice machinery. (See, in this context, the ECtHR cases: *Selmouni v. France*, application no. 25803/94, Judgment of 28 July 1999, paragraph 74; and among others, see also the Court case KI147/18, with Applicant *Arbër Hadri*, Resolution on Inadmissibility of 11 October 2019, paragraph 42 and references used therein).

54. The Court consistently respects the principle of subsidiarity, considering that all Applicants should exhaust all procedural possibilities in proceedings before the regular courts, in order to prevent a violation of the Constitution or, if any, to remedy such a violation of a fundamental right guaranteed by the Constitution. The Court has also consistently asserted that the Applicants are responsible when their respective cases are declared inadmissible by the Court

if they have not used due process or have not reported violations of the Constitution in due process. (See, inter alia, Court cases: KI139/12, Applicant *Besnik Asllani*, Decision on the Request for Interim Measures and Resolution on Inadmissibility, of 25 February 2013, paragraph 45; KI89/15, Applicant *Fatmir Koçi*, Resolution on Inadmissibility, of 22 March 2016, paragraph 35; KI24/16, Applicant *Avdi Haziri*, Resolution on Inadmissibility, of 16 November 2016, paragraph 39; and KI30/17, Applicant *Muharrem Nuredini*, Resolution on Inadmissibility, of 7 August 2017, paragraphs 35-37).

55. Exemption from the obligation to exhaust legal remedies, at the level of the ECtHR, is made only exceptionally and only in specific cases when analysing this criterion of admissibility in light of the factual, legal and practical circumstances of a particular case. Even at the level of this Court, based on the practice of the ECtHR, but also in line with the practice of the constitutional courts of the member states of the Venice Commission, the exemption from the obligation to exhaust legal remedies can be done only exceptionally. (See, Court cases in which such an exception has been applied: Kl56/09, Applicant *Fadil Hoxha and 59 others*, Judgment of 22 December 2010, paragraphs 44-55; Kl06/10, Applicant *Valon Bislimi*, Judgment of 30 October 2010, paragraphs 50-56 and paragraph 60; KI41/12, Applicant *Gëzim and Makfire Kastrati*, Judgment of 25 January 2013; paragraphs 64-74; Kl99/14 and KI100/14, Applicants *Shyqyri Syla and Laura Pula,* Judgment of 8 July 2014, paragraphs 47-50; KI55/17, Applicant *Tonka Berisha*, Judgment of 5 July 2017, paragraphs 53-58; and KI34/17, Applicant *Valdete Daka,* Judgment of 12 June 2017, paragraphs 68-73).

56. Exceptions, respectively exemptions from the obligation to exhaust legal remedies, are defined in the case law of the ECtHR, which states that the rule of exhaustion must be applied with a *"degree of flexibility and without excessive formalism"*, taking into consideration the protection of fundamental human rights and freedoms. (Regarding the concept of *"flexibility and lack of excessive formalism"*, See, Practical Guide on Admissibility Criteria of the ECtHR of 30 April 2019, I. Procedural Grounds for Inadmissibility, A. Non-exhaustion of legal remedies, 2. Application of this rule, A. Flexibility, page 22 and, inter alia, the case of the ECtHR *Ringeisen v. Austria*, Judgment of 16 July 1971, paragraph 89).

57. In principle, based on the case law of the ECtHR, the obligation to exhaust legal remedies is limited to the use of those legal remedies, (i) the existence of which is *"sufficiently certain not only in theory but also in practice"*, and consequently the same, must be capable to *"provide resolutions to the allegations of an Applicant"* and *"offer reasonable prospect for success"*; and (ii) which are *"available, accessible and effective"*, characteristics which should be sufficiently consolidated in the case law of the respective legal system. (See ECtHR cases: *Selmouni v. France*, cited above, paragraphs 71-81; *Akdivar and Others v. Turkey*, application no. 21893/93, Judgment of 16 September 1996; see Section B. on the exhaustion of domestic remedies, paragraphs 55-77; *Demopolous and Others v. Turkey*, Judgment of 1 March 2010, Sections: A. Complaints before the Court for exhaustion of domestic remedies and B. Exhaustion of domestic remedies, respectively, paragraphs 50-129; *Öcalan v. Turkey*, application no. 46221/99, Judgment of 12 May 2005, paragraphs 63-

72; and *Kleyn and Others v. the Netherlands*, applications no. 39343/98, 39651/98, 43147/98 and 46664/99, Judgment of 6 May 2003, paragraphs 155-162).

58. However, and beyond these possibilities of exemption, based on the case law of the ECtHR, in all cases the respective Applicant must prove that "*he has done everything that can reasonably be expected of him to exhaust the legal remedies*". (See, ECtHR case *D.H. and Others v. Czech Republic*, application no. 57325/00, Judgment of 13 November 2007, paragraph 116 and references mentioned therein). The ECtHR emphasizes that it is in the Applicant's interest to approach the competent court to give it the opportunity to exercise its existing rights through its power of interpretation. (See, inter alia, the case of the ECHR: *Ciupercescu v. Romania*, application no. 35555/03, Judgment of 15 June 2010, paragraph 169). This, except in cases where an Applicant may indicate, by providing relevant case law or any other appropriate evidence, that an available remedy which he has not used would fail. (See ECtHR cases: *Kleyn and Others v. the Netherlands*, cited above, paragraph 156 and references cited therein, and *Selmouni v. France*, cited above, paragraphs 74-77). In addition, "*mere doubts*" of an Applicant regarding the inefficiency of a legal remedy are not valid as a reason to exempt an Applicant from the obligation to exhaust legal remedies. (See, inter alia, ECtHR cases; *Milošević v. the Netherlands*, application no. 31320/05, Decision of 19 March 2002, last paragraph of page 6; and *MPP Golub v. Ukraine*, Judgment of 18 October 2005, last paragraph of Section C on the Court's Assessment).

59. The Court also emphasizes that the flexible assessment of the necessary characteristics of the legal remedy must be made taking into account the circumstances of each individual case. In this regard, the ECtHR has also adopted the concept of "*special circumstances*", through which it makes the assessment, if there are any special grounds that exempt the respective Applicant from fulfilling the obligation to exhaust the legal remedy. In making this assessment, the ECtHR also takes into account (i) the general legal and political context; and (ii) "*special circumstances*" of an Applicant. (For the concept of "*special circumstances*", inter alia, see the cases of the ECtHR: *Van Oosterijck v. Belgium,* application no. 7654/76, paragraphs 36-40, and relevant references therein; *Selmouni v. France*, cited above, paragraphs 71-81 and relevant references therein; *Öcalan v. Turkey*, cited above, paragraph 67; and *Akdivar and Others v. Turkey*, cited above, paragraphs 67-68 and references therein; furthermore, regarding the consideration of the general legal and political context, inter alia, see *Akdivar and Others v. Turkey*, cited above, paragraphs 68-69 and references therein; and *Selmouni v. France,* cited above, paragraph 77). In cases where it results that an Applicant's obligation to use a legal remedy may be unreasonable in practice and would present a disproportionate impediment to the effective exercise of his right, the ECtHR exempts the Applicant from the obligation to exhaust the legal remedies. (See, inter alia, ECtHR cases: *Veriter v. France*, application no. 31508/07, Judgment of 15 December 1997, paragraph 27; *Gaglione and Others v. Italy*, application no. 45867/07, Judgment of 21 December 2010, paragraph 22; and *M.S. v. Croatia (no. 2)*, application no. 75450/12, Judgment of 19 February 2015, paragraphs 123-125).

60. Finally, the Court notes that, taking into account the principle of flexible assessment of the exhaustion of legal remedies and the adaptation of this assessment to *"special circumstances"* in each case separately, the ECtHR conducted the test of *"burden of proof"*, a process clearly defined in its case law. According to the latter, in the context of the ECtHR, the distribution of the burden of proof is shared between the applicant and the relevant authority that alleges non-exhaustion. (For a more detailed discussion on *distribution of the burden of proof*, inter alia, see ECtHR cases: *Selmouni v. France*, cited above, paragraph 76 and references therein; and *Akdivar and Others v. Turkey*, cited above, paragraph 68 and references therein). In principle, after the allegations of the respective Applicant for lack of legal remedy, the opposing party, respectively the respective state in the context of the ECtHR, bears the burden of proof that there is a legal remedy that has not been used and which is *"effective"*, while the respective Applicants will have to argue the opposite, namely that the referred legal remedy has been used or that it is not *"effective"* in the circumstances of the respective case. Relying on relevant case law is relevant in both cases.

(b) Application of the above principles to the circumstances of the present case

61. In applying these general principles in the circumstances of the present case, the Court must assess whether the Applicants meet the criteria established through the case law of the Court and the ECtHR, to exceptionally be exempted from the obligation to exhaust the legal remedies defined by law. In this context, the Court must assess whether in the circumstances of the present case, the Applicants have proved that the remedies which they have not exhausted are not *"sufficiently certain not only in theory but also in practice"* because they are not capable to *"provide resolutions to the allegations of an Applicant"* and *"offer reasonable prospect for success"*; and (ii) are not *"available, accessible and effective"*. Furthermore, the Court must also assess whether the Applicants *"have done everything that can reasonably be expected of them to exhaust legal remedies"*, also taking into consideration that *"mere doubts"* of an Applicant regarding the inefficiency of a legal remedy are not valid as a reason to exempt an Applicant from the obligation to exhaust legal remedies.

62. In this context, the Court first notes that Government decisions may be challenged in administrative proceedings based on the provisions of the LAC. This is because, among other things, the LAC in its Article 2 (Aim), stipulates that the aim of this law is provision of judicial protection of rights and interests for legal and natural persons and other parties, the rights and interests that have been violated by individual decisions or by actions of public administrative authorities. The latter, respectively the public administration authorities, based on paragraph 1.1 of article 3 (Definitions) of the LAC, also includes the central government bodies, moreover, based on paragraph 1.2 of the same Article, as an administrative act qualifies any decision, including that of the central government, which shall be taken at the end of the administrative procedure on exercising public authorizations and which effects, favourably or unfavourably, legally recognized rights, freedoms or interests of natural or legal persons, respectively other party in deciding the administrative issues.

63. Furthermore, based on Article 10 [no title] of the LAC, the Applicants are authorized to initiate an administrative dispute, if they assess that with the final administrative act in the administrative procedure, their rights or any legal interest has been violated. The same right, based on this article and Article 18 [no title] of the LAC, have the administration body, Ombudsperson, associations and other organizations, which act in protection of public interests.

64. Also, and importantly, while Article 22 [no title] of LAC stipulates that the lawsuit does not prohibit the execution of an administrative act, the same article also stipulates that in certain cases at the request of the plaintiff, the execution of an act may be postponed until the final court decision and that based on paragraph 7 of the same Article, for postponement of execution, the court issues the decision within three (3) days from the date of receiving the request.

65. The above provisions of the LAC, in the assessment of the Court, *"provide resolutions regarding to the allegations of an Applicant"* and *"offer reasonable prospect for success"*. This, inter alia, because the allegations of the Applicants that their rights and/or legal interests have been violated, constitute a basis for initiating an administrative dispute based on Article 10 of the LAC. The Applicants did not use this opportunity, on the grounds that in their case, the provisions of LAC do not provide effective legal remedies.

66. The Court, in this respect, recalls that the three most substantive allegations of the Applicants for the lack of a legal remedy in the circumstances of the present case, relate to the fact that (i) Law no. 04/L-144 does not specify the legal remedies that can be used to challenge the decisions issued based on Article 12 thereof; (ii) the LAC, in paragraph 2 of Article 16 thereof, stipulates that *"The administrative act cannot be rejected for incorrect implementation of the provisions, when a competent body has decided according to free assessment based on authorizations and within the limits given with legal provisions, in accordance with the aim for which the authorization was given.";* and (iii) by Government Decision of 21 November 2019, the suspension of the Decision of 6 July 2018 has been lifted, and that the Department of Administrative Matters within the Basic Court, *"has the competence to decide only on the legality of the last administrative act, namely the legality of lifting the suspension, but not the substance of the case, and that consequently, in the circumstances of their case, this legal remedy would not be effective"*.

67. With regard to the first issue, the Court notes that the fact that Law no. 04/L-144 does not specify the legal remedies which can be used to challenge the decisions issued based on its Article 12, does not exclude the applicability of the provisions of the LAC.

68. With regard to the second issue, the Court notes that the Applicants in essence allege that the procedure established for the return of a part of the land managed by the PAK to the ownership of the municipality in Article 12 of Law 04/L-144, enables the Government to decide according to the free assessment based on the authorizations and within the limits given to it by the legal provisions, thus excluding the possibility of initiating an administrative

dispute, as defined in paragraph 2 of Article 16 of the LAC. Despite the fact that the Government has not submitted any comment regarding the Applicants' allegation of lack of an effective legal remedy in the circumstances of the present case, the Court in the context of this allegation states that the Applicants do not prove why a Government decision based on Article 12 of Law 04/L-144 and Regulation 23/2013, (i) would be dealt with by the relevant court under paragraph 2 of Article 16 of the LAC; while (ii) would not be dealt with by the relevant court under paragraph 1 of Article 16 of the LAC, on the basis of which the final administrative act may be challenged, because a) they have not been applied at all or have not been applied correctly towards legal provisions; b) the act has been issued by an incompetent body; c) in the procedure, which preceded the act, it has not been acted according to the rules of procedure, the factual situation has not been correctly established, or if an incorrect conclusion has been drawn from the verified facts in terms of the factual situation; d) with the final administrative act issued according to the free assessment, the body has exceeded the limits of legal authority or such act has not been issued in accordance with the purpose of this law; or e) the respondent party has issued again its previous act, previously annulled by a final judgment of the competent court. Furthermore, the Applicants before the Court do not support this allegation by any relevant case law or even by its absence, as required by the case law of the ECtHR and the Court.

69. Whereas, regarding the third issue, the Court emphasizes that the claim that "*the Department of Administrative Matters within the Basic Court has the competence to decide only on the legality of the last administrative act, namely the legality of lifting the suspension, but not the substance of the case*", is neither proven nor based on law.

70. The Court further recalls the Applicants' allegation that (i) the decision issuance of the regular courts regarding their case "*could only be done after a few years and after the project is completed*"; and (ii) there was a legitimate expectation that the President's request, which challenged the constitutionality of the Government Decisions on the transfer of socially-owned property to the municipalities, would be declared admissible by the Court and that the same would find the respective decisions unconstitutional, including the challenged Decision, whereas while awaiting a meritorious decision by the Court, the Applicants missed the deadline to file for an administrative dispute against the Government Decision in the Basic Court.

71. With regard to the first issue, the Court notes that this allegation does not stand. This is because, (i) as explained above, the relevant court is obliged to decide within three (3) days whether the conditions for postponing the execution of an act are met until the final decision of the Court, based on Article 22 of the LAC; while (ii) the allegations of the respective Applicants that the legal remedy is not effective on the grounds of possible prolongation of the proceedings before the regular courts, the Court, through its case law, has already qualified them as "*mere doubts*" on "*ineffectiveness*" of the lawsuit on administrative dispute as a legal remedy and consequently, has emphasized that as such, based on the case law of the ECtHR, do not apply as a reason to exempt the Applicant from the obligation to exhaust a legal remedy. (See, for

detailed reasoning, Court case KI108/18, with Applicant *Blerta Morina*, Resolution on Inadmissibility of 30 September 2019, paragraphs 182-187).

72. Whereas in regard to the second issue, the Court states that this allegation also does not stand because (i) the challenged Decision of the Government, respectively Decision [no. 11/111], was issued on 19 July 2018; (ii) pursuant to Article 27 [no title] of the LAC, a lawsuit against an act is filed within thirty (30) to sixty (60) days, as set forth in this Article, and consequently, the initiation of administrative dispute, the Applicants should have initiated by 19 September 2018; while (iii) the Referral of the President to the Court was submitted on 6 November 2018, more than four (4) months after the issuance of the challenged Decision. Consequently, the Applicants' allegations of losing the deadline for initiating an administrative dispute because they had *"legitimate expectations"* that the Court will review the constitutionality of the challenged Decision based on the Referral of the President, do not stand because in fact, the Referral of the President to the Court was submitted after the expiration of this deadline, as stipulated in Article 27 of the LAC.

73. The Court also recalls that based on the case law of the ECtHR, an Applicant must prove that "*he has done everything that can reasonably be expected of him to exhaust the legal remedies*". In the circumstances of the present case, the Applicants have not demonstrated a single attempt to exhaust the legal remedies provided by the LAC. In the absence of such an attempt, the respective Applicants would have to prove, by providing relevant case law or any other appropriate evidence, that an available legal remedy which they did not use would fail. In this sense, the Applicants have not even proved that the legal remedies stipulated by the LAC, (i) are not "*sufficiently certain not only in theory but also in practice*", and that consequently, are not capable to *"provide resolutions to the allegations of an Applicant"* and neither can "*offer reasonable prospect for success*"; and (ii) are not "*available, accessible and effective*". On the contrary, the Court considers that the Applicants' allegations that there is no legal remedy in their case are based on "*mere doubts*", and as such, may not constitute grounds for the exemption of the Applicants from the request for exhaustion of legal remedies provided by law, as stipulated in paragraph 7 of Article 113 of the Constitution.

74. Finally, the Court also recalls that in support of their request for exemption from the obligation to exhaust legal remedies, the Applicants also refer to Court cases KI99/14 and KI100/14, KI34/17 and KI56/09.

75. In this aspect, The Court initially notes that, in addition to the fact that the Applicants have stated and have cited these decisions, they have not elaborated their factual and legal connection with the circumstances of the specific case. The Court emphasizes that the reasoning of other court decisions must be interpreted in the context and in the light of the factual circumstances in which they were issued. (See, inter alia, in this context, the Judgment in case KI48/18 of 4 February 2019, with Applicants *Arban Abrashi and the Democratic League of Kosovo* (LDK), paragraph 275; KI147/18, with Applicant *Arbër Hadri*, Resolution on Inadmissibility of 11 October 2019, paragraph 80; and KI119/17, Applicant *Gentian Rexhepi*, Resolution on Inadmissibility, of 3 May 2019, paragraph 80).

76. The Court notes, however, that the circumstances of the cases referred to by the Applicants do not correspond to their circumstances. In the above cases, the Court found that the respective Applicants had proved that (i) no legal remedies were available, as is the case in the Court case KI56/09 (see paragraphs 57-59 of Case KI56/09), and which is one of the first Court cases, after which the case law of the Court in terms of exhaustion of legal remedies has been significantly consolidated; or (ii) the legal remedies available to the Applicants were not sufficiently effective in addressing the relevant allegations. (See paragraph 73 of case KI34/17 and paragraph 50 of case KI99/14 and KI100/14).

77. The court notes that in cases KI99/14 and KI100/14 and KI34/17, in assessing the exhaustion of legal remedies, it, exceptionally, had taken into consideration the specifics of the election procedure for the position of Chief State Prosecutor or the President of the Supreme Court, including the necessity that this be done in a timely manner, noting that in the context of the allegations raised in these claims, it was *"of the opinion that there is no legal remedy that effectively addresses the allegations raised"*. (See, Court cases, KI34/17, cited above, paragraph 73; and KI99/14 and KI100/14, cited above, paragraph 50). However, the Court has in the meantime consolidated this practice by rejecting as inadmissible other similar cases, on the grounds of non-exhaustion of legal remedies and/or non-fulfilment of the criteria defined by the case law of the Court and the ECtHR to be exempted from this constitutional obligation, including but not limited to cases KI147/18 with Applicant *Arbër Hadri*, cited above, paragraphs 51-61; and KI43/20, with Applicant *Fitore Sadikaj*, Resolution on Inadmissibility of 31 August 2020, paragraphs 37-38; and KI42/20, with Applicant *Armend Hamiti*, Resolution on Inadmissibility of 31 August 2020, paragraphs 43-66.

78. Furthermore, the Court has rejected as inadmissible due to non-exhaustion of legal remedies cases in which the request for exemption from this obligation is based, inter alia, on *"legal and political context"* but also on *"special circumstances"* of an Applicant, as is the case with KI108/18, with Applicant *Blerta Morina*, Resolution on Inadmissibility of 30 September 2019.

79. Therefore, while the case law of the Court recognizes exceptions, the latter are limited and conditional on ungrounded argumentation on *"mere doubts"* of an Applicant, that in his/her circumstances, the remedies either do not exist or (i) are not *"sufficiently certain not only in theory but also in practice"* because they are not capable to *"provide resolutions to the allegations of an Applicant"* and they do not *"offer reasonable prospect for success"*; and (ii) are not *"available, accessible and effective"*, always arguing that the respective Applicant *"has done everything that can reasonably be expected of him to exhaust legal remedies"*. Based on all the explanations elaborated in this Resolution, the Court considers that in the circumstances of the concrete case, this is not the case.

80. Consequently, based on the above and taking into consideration the allegations raised by the Applicants and the facts presented by them, the Court, relying also on the standards set in its case law in similar cases and the case law of the ECtHR finds that the Applicants do not meet the admissibility criteria as they

have not exhausted the legal remedies as defined in paragraph 7 of Article 113 of the Constitution, paragraph 2 of Article 47 of the Law and point (b) of paragraph (1) of Rule 39 of the Rules of Procedure, and as such, the Referral must be declared inadmissible.

Request for an interim measure

81. The Court recalls that the Applicants requested the imposition of an interim measure to suspend the execution of the challenged Government Decision, arguing that "*the works for the realization of the cemetery project have already started, when the property has not been formally transferred yet*", and consequently, the execution of the challenged Decision would result in irreparable damage to the Applicants.

82. The Court has already concluded that the Applicants' Referral must be declared inadmissible.

83. Therefore, in accordance with paragraph 1 of Article 27 (Interim Measures) of the Law and point (a) of paragraph (4) of Rule 57 (Decision on Interim Measures) of the Rules of Procedure, the Applicants' request for an interim measure must be rejected, because the same cannot be subject to review, once the Referral is declared inadmissible. (See, in this context, Court cases: KI107/19, with Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility of 21 April 2020, paragraphs 88-90; KI159/18, with Applicant *Azem Duraku*, Resolution on Inadmissibility of 6 May 2019, paragraphs 89-91; and KI19/19 and KI20/19, Applicants *Muhamed Thaqi and Egzon Keka*, Resolution on Inadmissibility of 26 August 2019, paragraphs 53-55).

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20, 21, 27 and 47.2 of the Law and pursuant to Rules 35 (5) and 39 (1) (b), 57 and 59 (2) of the Rules of Procedure, on 11 November 2020, unanimously:

DECIDES:

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for an interim measure;

III. TO NOTIFY this Decision 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 informational purposes only.