



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

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Prishtina, on 30 November 2020  
Ref. No.:RK 1646/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI34/20**

Applicant

**Ramadan Zogaj**

**Constitutional review of Judgment AC-I-0003  
of the Appellate Panel of the Special Chamber of the Supreme Court on  
Privatization Agency of Kosovo Related Matters, of 17 October 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 Ramadan Zogaj, residing in Suhareka (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment [AC-I-0003] of 18 October 2019 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC Appellate Panel).

## **Subject Matter**

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), Article 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 13 (Right to an effective remedy) of the ECHR, paragraph 1 of Article 3 [Equality before the Law] of the Constitution, Article 7 [Values] and Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

## **Legal basis**

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

## **Proceedings before the Constitutional Court**

5. On 18 February 2020, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral which he had submitted by mail on 14 February 2020.
6. On 19 February 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 2 March 2020, the Court notified the Applicant of the registration of the Referral. On the same day, the Court sent a copy of the Referral to the SCSC.
8. On 10 August 2020, the Court requested from the SCSC the case file regarding the challenged Judgment.
9. On 18 August 2020, the Court received from the SCSC the requested case file.
10. On 10 November 2020, after having considered the Report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

11. Based on the case file, the Applicant had been an employee of the enterprise SOE "IGK Balkan" in Suhareka, who in 1989 had applied for the allocation of an apartment in a competition published by this enterprise.
12. On 1 July 1989, based on Decision [no. 5823] of the enterprise SOE "IGK Balkan", where he was employed, the Applicant was ranked nineteenth in the priority list for apartment allocation.
13. In December 1989, based on the consent of the bodies of SOE "IGK Balkan" in Suhareka and the decision to announce the results for the apartment allocation, the Applicant was placed in the apartment, which is located in the Balkan Neighbourhood - Fidanishte, entrance 1, floor I, apartment no. 7, in Suhareka (hereinafter: the apartment).
14. On 27 September 1990, by Decision [no. 612/212] of the provisional bodies of SOE "IGK Balkan", the Applicant was terminated from work.
15. On 4 October 1991, SOE "IGK Balkan" issued a decision to evict the Applicant from the apartment.
16. According to a statement signed by the former employees of SOE "IGK Balkan" in Suhareka, on 30 September 2002, it is stated that in December 1989, based on the consent of the bodies of SOE "IGK Balkan" in Suhareka and the decision to announce the results for allocation of apartments, in December 1989 the Applicant was placed in an apartment located in the Balkan Neighbourhood-Fidanishte, entrance 1, floor I, apartment no. 7, in Suhareka. The statement also states that the Applicant used the apartment from December 1989 until 24 May 1992, when he was evicted from the apartment, and after the end of the war, in June 1999 he moved into this apartment, which he continues to use with eight (8) members of his family.
17. The Applicant in his Referral to the Court also alleges that since June 1999 he has returned (settled) back to the apartment, which he continues to have "in use and possession".
18. On 22 November 1999, the Housing Commission of SOE "IGK Balkan" by Decision [No. 221] had decided that employee H.H. should be allocated an apartment for use, apartment in which the Applicant had settled.
19. On 5 January 2000, SOE "IGK Balkan" and H.H. had entered into a contract for the use of the apartment.
20. Based on the case file, it results that the circumstances of the concrete case are related to four different court proceedings, started in 2001 and ended with the rendering of the challenged Judgment [AC-I-0003] of 18 October 2019 of the SCSC Appellate Panel as follows: (i) Procedure regarding the claim of SOE "IGK Balkan" for the Applicant to vacate the apartment; (ii) Procedure regarding the claim of H.H. against the Applicant; (iii) Procedure regarding the Applicant's claim for granting him the right to purchase the apartment based on the right of

residence, and (iv) Procedure regarding H.H.'s claim for granting him the right to purchase the apartment based on the right of residence.

*(i) Procedure regarding the claim of SOE "IGK Balkan" that the Applicant vacate the apartment*

21. On an unspecified date, SOE "IGK Balkan" filed a claim with the former Municipal Court in Suhareka (hereinafter: the former Municipal Court) with a motion that the Applicant vacate the apartment.
22. According to the case file, it turns out that the former Municipal Court by Judgment [C.nr. 134/01] of 3 March 2003, the former District Court in Prizren (hereinafter: the former District Court) by Judgment [AC.nr.170/03] of 2 October 2003 found that the apartment was owned by the enterprise SOE "IGK Balkan", and consequently, the Applicant, in his capacity as the respondent, was obliged to vacate the apartment. The above-mentioned Judgments of the former Municipal and District Courts were also confirmed through the Judgment [Rev. no. 22/04] of 25 May 2004 of the Supreme Court.

*(ii) Proceedings regarding H.H.'s claim against the Applicant*

23. On an unspecified date, H.H. had filed a claim with the former Municipal Court in Suhareka requesting that the Applicant vacate the apartment.
24. On 14 September 2006, the former Municipal Court by Judgment [C. no. 138/2006] rejected the claim of H.H. In its Judgment, the former Municipal Court had found that H.H. is not the owner of the apartment, but SOE "IGK Balkan" in Suhareka is.
25. On 19 January 2007, the former District Court in Prizren, by Judgment [Ac. no. 416/2006] quashed the Judgment of the former Municipal Court by remanding the case for retrial.
26. On 6 November 2009, the former Municipal Court by Judgment [C. no. 157/09] in the retrial procedure rejected H.H.'s claim.
27. On 18 June 2010, the former District Court by Resolution [Ac. no. 649/2009] upheld H.H.'s appeal overturning Judgment [C. no. 157/09] of 6 November 2009 of the former Municipal Court.
28. On 12 January 2012, the former Municipal Court by Resolution [C. no. 126/10] dismissed H.H.'s claim, due to the lack of substantive jurisdiction to proceed with the case as per H.H.'s claim, and decided that after the Resolution was final, the case be sent to the SCSC as the competent court to decide on the matter.
29. On an unspecified date, the Applicant had filed an appeal with the Court of Appeals against the Resolution [C. no. 126/10], of 12 January 2012.
30. On 10 October 2013, the Court of Appeals of Kosovo by Resolution [CA. no. 3073/12] rejected the Applicant's appeal as ungrounded, upholding the Resolution [C. no. 126/10], of 12 January 2012 of the former Municipal Court

whereby it was decided that the case be sent to the SCSC as the competent court to decide on the case.

31. On 18 March 2014, H.H. had filed a request with the SCSC to withdraw his claim.
32. On 27 November 2014, the SCSC Panel by Judgment [C-II-13-0451-C0001]: (i) approved the withdrawal of H.H.'s claim and (ii) ruled that this Resolution does not prevent the party from filing a claim again. As for the costs of the procedure, the SCSC Specialized Panel assessed that *"The annex to the Law on the Special Chamber gives the Special Chamber discretion to issue or not an order requiring the withdrawn party to pay the costs of the proceedings incurred before the withdrawal. The Panel considers that there is no need to oblige the claimant to pay any additional amount for the costs other than those already paid"*.
33. The Applicant, in his capacity as a respondent in this procedure through his legal representative [letter dated 4 November 2014] had given his consent for the withdrawal of the claim by H.H.
34. On 19 December 2014, the Applicant filed an appeal regarding the procedural costs against the Resolution [C-II-13-04S1-C0001] of 27 November 2014 of the SCSC Specialized Panel to the SCSC Appellate Panel. In his appeal, the Applicant challenged part of the decision regarding the obligation to cover procedural costs after H.H., in his capacity as claimant, had withdrawn his claim with the SCSC Specialized Panel.
35. On 29 November 2019, the Appellate Panel by Resolution [AC-I. 140-0370-A0001] rejected the Applicant's appeal regarding the decision on procedural costs, filed on 19 December 2014 against the Resolution [C-II-13-04S1-C0001] of 27 November 2014 of the SCSC Specialized Panel.

*(iii) Procedure regarding the Applicant's claim for granting the right to purchase the apartment based on the right of residence*

36. On 12 April 2014, the Applicant submitted a claim to the Privatization Agency of Kosovo (hereinafter: PAK) for the right to purchase the apartment based on the right of residence.
37. On 14 May 2012, the PAK informed the Applicant that they had received his claim for the right to purchase the apartment, and in order for the PAK to be able to decide on the merits of his claim, the Applicant had been requested to submit additional documents.
38. On 26 September 2014, the PAK Board of Directors, by Decision [No. 7367] rejected the Applicant's claim for purchase of the apartment, finding that the Applicant had not substantiated his right to housing "within the meaning of Article 3 paragraph 1.6 of the Law on Sale of Apartments for which there is a housing right no. 04/L-061, in conjunction with Article 2 and 11, of the Law on Housing Relations (Official Gazette of the SAP of Kosovo no. 11/83-29/86 and 42/86).



39. On 17 November 2014, the Applicant, in his capacity as a claimant against the Decision [No. 7367], of 26 July 2014 of the PAK Board of Directors filed an appeal with the SCSC Specialized Panel. According to the Applicant's claim, the SCSC has not decided on his appeal to this date.
- (iv) *Procedure regarding H.H.'s claim for granting him the right to purchase the apartment based on the right of residence*
40. On 17 April 2012, H.H. had also filed a claim with the PAK for the right to purchase the apartment based on the right of residence.
41. On 20 November 2013, the PAK Board of Directors, by Decision [KB-86/2012] rejected H.H.'s claim to purchase the apartment.
42. On 13 March 2014, H.H. filed an appeal against the annulment of Decision [KB-86/2012], of 20 November 2013 of the PAK Board of Directors with a request to obligate the PAK to enter into a contract for the purchase of the apartment.
43. On 10 September 2015, H.H. had filed a submission with the SCSC requesting that this court decide on the merits of his appeal against Decision [KB-86/2012], of 20 November 2013 of the PAK Board of Directors.
44. On 10 February 2016, the PAK had filed an injunction against H.H.'s appeal against Decision [KB-86/2012], of 20 November 2013 of the PAK Board of Directors.
45. On 26 August 2016, the SCSC, by the Order, had invited H.H. and the PAK, in their capacity as parties to the proceedings, to a hearing to be held on 15 September 2016.
46. On 15 September 2016, the Specialized Panel held a hearing, attended by H.H. and the PAK.
47. On 16 December 2016, the Specialized Panel by Resolution [C-II-14-0041] found that the SCSC *"has no jurisdiction to adjudicate this civil-legal case and remanded the case for retrial to the jurisdiction of the Basic Court in Prizren, Suhareka branch"*.
48. On 30 December 2016, the PAK, in its capacity as a respondent, had filed an appeal against the Resolution [C-II-14-0041] of 16 December 2016, of the SCSC Specialized Panel, alleging that the Resolution is contradictory in itself for the fact that *"in one sentence, the SCSC states that it has no jurisdiction over this case while in the other sentence it states that the SCSC has jurisdiction only over claims or challenges against the PAK and socially-owned enterprises in relation to the PAK"*. H.H., in his capacity as claimant, filed a response to the PAK appeal with the motion that the SCSC Appellate Panel approve the PAK appeal as grounded and annul the Resolution [C-II 14-0041] of 16 December 2016, of the SCSC Specialized Panel.
49. On 17 October 2019, the SCSC Appellate Panel, by Judgment [AC-I-17-0003]: (i) approved the PAK's appeal as grounded; (ii) amended the Resolution [C-II 14-0041] of 16 December 2016, of the SCSC Specialized Panel; (iii) annulled the

Decision [KB-86/2012], of 20 November 2013 of the PAK Board of Directors; and (iv) approved H.H.'s claim as grounded, recognizing him the right to purchase the apartment.

50. The SCSC Appellate Panel, initially regarding the substantive competence to decide on the case, found the following:

*'Since the claimant in the case in question is a private person while the respondent is the Socially Owned Enterprise, KBI Suhareka, which was administered by the KTA, now the Privatization Agency of Kosovo, pursuant to Section 4.1 (d) of UNMIK Regulation no. 2002/13, of 13 June 2002 (amended by Regulations no.2008/04 and 2008/19), was under the primary jurisdiction of the Special Chamber, now under the exclusive jurisdiction of the Special Chamber (Article 4.1.1.4 of Law no. 04/L-033 on the Special Chamber), the Appellate Panel considers that the Special Chamber is competent to adjudicate this case in accordance with Article 4.1.5 of the Law on the Special Chamber.*

*Also, the Appellate Panel considers that Article 7.4 of the Law on the sale of apartments for which there is a housing right no. 04/L-0247 (amended) does not exclude the jurisdiction of the SCSC. This article authorizes the buyer that in case of refusal by the seller to enter into a Contract, they may address to the competent Court in out-of-court procedure.*

*The Appellate Panel concludes that in such a situation there can be no question of out-of-court proceedings for the fact that the buyer has been rejected by a Decision. In such a situation a dispute arises and from this moment we are dealing with contentious procedures. Therefore, the Appellate Panel based on Article 4.1.5 of the Law on the Special Chamber is competent to adjudicate the case in question."*

51. Regarding the merits of the appeal, the SCSC Appellate Panel reasoned as follows:

*"Since the claimant is the holder of the right to the apartment, because the same apartment was allocated to him, the same apartment was given to him for use indefinitely and he entered into a contract for the use of the apartment, just as he had requested from the PAK to buy the apartment. But the PAK has rejected the claim for the purchase of the apartment. From this it is noticed that the claimant has exhausted all the necessary possibilities for the purchase of the apartment, therefore after all this he addresses the Special Chamber to render a Decision that replaces the contract.*

*The court took into consideration: Decision no. 221 of 22.11.1999, the Contract concluded between the contracting parties of 05.01.2000, Claim for purchase of the apartment 1704200, Notice for refusal to purchase the apartment of 20.11.2016. The statements of the parties to the proceedings during the main trial session as well as the provisions of the Law on the purchase of the above mentioned apartments, were argued in the main trial session for which the Appellate Panel concluded that the claimant's claim should be approved as grounded.*

*PAK's claims, that the apartment was allocated according to the Law on Housing Relations no. 11/83029/86 and 42/86 since it had been suspended by Section 3 of UNMIK Regulation 2006/60, do not stand. This Regulation has no retroactive effect therefore, for this reason, the allocation of the apartment according to the Law in force at the time of the allocation of the apartment cannot be considered unlawful. The apartment was allocated by Decision of 22.11.1999 while the Regulation entered into force later on 31.10.2000, as well as the Regulation does not state anything about the annulment of previous contracts related to the allocation of apartments."*

52. On 12 November 2019, the PAK, in the capacity of seller and H.H., in the capacity of buyer had entered into a contract for the sale of the apartment, in the amount of 755.76 euros.

### **Applicant's allegations**

53. The Applicant alleges that the challenged Judgment of the SCSC Appellate Panel has violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, Article 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 13 (Right to an effective remedy) of the ECHR, paragraph 1 of Article 3 [Equality before the Law] of the Constitution, Article 7 [Values] and Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

### *Alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR*

54. The Applicant states that the challenged Judgment violated his rights guaranteed by Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR *"without offering him access to a trial and the right to a fair trial in proceedings before the Special Chamber, which preceded the rendering of the Challenged Judgment."*
55. According to the Applicant, the SCSC denied him *"the right to submit arguments in court proceedings, which preceded the rendering of the challenged Judgment and this despite the fact that the Special Chamber had at its disposal, indisputable facts which have proved that the Applicant has legal rights and legitimate interests over the property which the Special Chamber has transferred to [H.H.]"*.
56. In the context of this allegation, the Applicant states that he had filed an appeal with the SCSC on 17 November 2014 against the Decision [No. Ref BD-68/8], of 23 July 2014, and to this date the SCSC has not ruled on his appeal, while taking action and conducting legal proceedings regarding H.H.'s appeal against [KB-86/2012], of 20 November 2013 of the PAK Board of Directors.
57. In this regard, the Applicant states that *"The Special Chamber has been obliged to join the proceedings in the legal case AC-I-17-0003 with the legal case which was initiated with the appeal of 17.11.2014 [Applicant's appeal] addressed against the decision of the PAK Board of Directors, Ref. no. BD-68/8, of*



23.07.2014, since in these two cases different persons have submitted claims for the same property”.

58. Further, the Applicant reiterates that “[...] the documents which were administered by the Special Chamber in court proceedings AC-I7-0003 [Challenged Judgment of the SCSC Appellate Panel], contained the indisputable facts which show that the Applicant enjoyed the housing right and legitimate interests over the property which has been transferred to a third party. These facts were sufficient to understand that pursuant to Article 31 of the Constitution in conjunction with Article 6 (1) of the European Convention on Human Rights, the court had no right to grant a third person the right to purchase the apartment on the basis of the claim which was not addressed also against the Applicant, as a person who has enjoyed the right of housing over the property that has been the subject of the challenged judgment”.

#### *Allegations regarding the violation of the right to property*

59. The Applicant states that the challenged Judgment of the SCSC Appellate Panel is contrary to Article 46 of the Constitution, in conjunction with Article 1 of the ECHR, violating “the principle of legal certainty or legality because the Special Chamber in the challenged judgment has recognized to the third person the right to purchase the apartment over which the Applicant has the right to housing, despite the fact that the third person has not fulfilled any of legal conditions to be a holder of the housing right according to the Law on Housing Relations (Official Gazette of SAPK, no. 11183.29/86.42/86)”.
60. In the context of this allegation, the Applicant alleges that “[...] according to the Law on Housing Relations (Official Gazette of SAPK, no. 11183, 29/86, 42/86) in order to acquire the right of residence over an apartment, the Decision on the Allocation of the apartment from the Holder of the right of Allocation (Article 33), the Contract on the Use of the Apartment, in written form, is required, concluded between the person to whom the apartment has been allocated for use and the Self-Governing Community of Housing Interest on the basis of the Decision on Allocation of the Apartment (Article 37) and the settlement in the apartment (Article 11) see the Judgment of the PAK Appellate Panel of the Supreme Court of Kosovo GSK-KP AA-006/15 of 3 August 2016 [...]”.
61. Further, the Applicant regarding the reasoning of the PAK that “the allocation of the apartment is done according to the Law on Housing Relations no. 11/183029/42/86 which was suspended by Section 3 of UNMIK Regulation no. 2006/60 does not stand. This Regulation has no retroactive effect, therefore the allocation of the apartment at the time of the allocation of the apartment cannot be considered unlawful. The apartment was allocated by Decision of 22.11.1999, while the Regulation entered into force later on 31.10.2006 and the Regulation does not say anything about the annulment of previous contracts related to the allocation of apartments”.
62. The Applicant considers that the challenged Judgment of the Appellate Panel is “[...] contrary to the principle of legal certainty or legality, firstly because the third person to whom the Special Chamber has recognized the right to purchase the apartment has not fulfilled any of the conditions to acquire the right of

*residence according to the Law on Housing Relations [...] because he has never been settled in the contested apartment as required by Article 11 of the Law on Housing Relations, and because the third person has not entered into any Contract for the Use of Apartment, with the Self-Governing Community of Housing Interest as required by Article 37 of the Law on Housing Relations and secondly because the Decision of SOE "IGK Balkan" in Suhareka no. 221 of 22.11.1999 "whereby [H.H.] was allocated the disputed apartment, was rendered by SOE "IGK Balkan" in Suhareka or its bodies in violation of UNMIK Regulation 1999/1, as well as in violation of jurisprudence the Supreme Court of Kosovo, as well as the jurisprudence of the Kosovo Property Claims Commission at the Kosovo Property Agency and the Housing and Property Claims Commission at the Housing and Property Directorate".*

63. In the context of his allegation regarding the case law of the Supreme Court, the Applicant states that *"The Supreme Court of Kosovo has rejected the appeals (claims) for recognition of the right to housing filed by different persons for identical situations as in the case of the challenged judgment, respectively the Supreme Court of Kosovo has rejected the appeals filed by different persons in the cases when these persons have claimed that they have acquired housing rights based on the decisions on the apartment allocation issued after the entry into force of UNMIK Regulation 1999/1"*.
64. In this regard, the Applicant, referring to a Judgment of the Appellate Panel of the Supreme Court on the Kosovo Property Agency Related Matters, states that this Panel *"with Judgment GSK-KPA-A-3/0912, of 19 May 2011, has determined that: "Decision no. 4466, of 12 June 1999, of the Military Command in Ferizaj whereby the Applicant was rented out the apartment, as well as the contract of the Military Command in Nis, of 18 June 1999, in the capacity of landlord or seller of the apartment, was made by the FRY or its military structures in violation of UNMIK Regulation 1999/1. Section 6 of this Regulation expressly provides that after 10 June 1999, movable and immovable property registered in the name of FRY and RS will be administered by UNMIK. Therefore, both resolutions rendered after 10 June 1999 were rendered by an organization which did not have the authority to take valid legal action for the purpose of leasing or entering the sales contract. Consequently, these contracts or resolutions are legally invalid and without legal effect. Given the fact that both the resolution and the contract are illegal, they do not result in legal or material obligations"*.
65. In this context, the Applicant alleges that the SCSC Appellate Panel, by not following the case law of the Supreme Court (Appellate Panel on the Kosovo Property Agency Related Matters) for the same cases (formerly the Supreme Court and the jurisprudence of the Kosovo Property Claims Commission and the Housing and Property Claims Commission (HPCC)), has violated the principle of legal certainty.
66. Finally, the Applicant requests the Court to (i) declare his Referral admissible; (ii) find a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, and Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR (iii) declare invalid the challenged Judgment of the

Appellate Panel [AC-I-17-003] of 17 October 2019; and (iv) remand the matter for retrial to the SCSC Specialized Panel.

### **Assessment of the admissibility of the Referral**

67. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and further specified by the Law and the Rules of Procedure.
68. In this regard, the Court, initially, 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.”*

69. In addition, the Court also examines whether the Applicant has met the admissibility criteria as set out in the Law and the Rules of Procedure. In this regard, the Court first refers to Article 47 [Individual Requests] of the Law, which stipulates:

#### 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.”*

70. Whereas Rule 39 (1) (a) of the Rules of Procedure stipulates that:

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

*(a) the referral is filed by an authorized party,  
[...],”*

71. Consequently, the Court must first determine whether the Applicant is an authorized party to file his Referral within the meaning of the above provisions of the Constitution, the Law and the Rules of Procedure.
72. The Court recalls that the circumstances of the present case relate to four different court proceedings, initiated in 2001 and concluded with the rendering of the challenged Judgment [AC-I-0003] of 18 October 2019 of the SCSC Appellate Panel. Initially, the Court recalls that according to the case file the

Applicant had used the apartment during the period 1989-1992, and then settled in the same apartment in June 1999, which he declares to have used until the submission of his Referral to the Court on 18 February 2020. As a result of Decision [No. 221], of 22 November 1999, of the enterprise SOE "IGK Balkan", the apartment, in which the Applicant was settled, was allocated to the employee of this enterprise H.H. Consequently, on 5 January 2000, SOE "IGK Balkan" and H.H. had entered into a contract for the use of the apartment.

73. According to the case file, the first court procedure was initiated as a result of the claim of SOE "IGK Balkan" with the request on the obligation of the Applicant to vacate the apartment. By three court decisions, respectively by Judgment [C.nr. 134/01] of 3 March 2003 of the former Municipal Court in Suhareka, Judgment [AC.nr.170/03] of 2 October 2003 of the former District Court in Prizren, and Judgment [Rev. no. 22/04] of 25 May 2004 of the Supreme Court, it was concluded that the apartment is the property of the enterprise SOE "IGK Balkan", and consequently the Applicant in his capacity as the respondent was obliged to vacate the apartment.
74. Whereas, the second court procedure was initiated in 2006 by H.H., in the capacity of the claimant, in the former Municipal Court in Suhareka with his claim on the Applicant's obligation to vacate the apartment. This procedure, as a result of retrial and Judgment proceedings [CA. no. 3073/12] of 10 October 2013 of the Court of Appeals, was confirmed for the case to be sent to the SCSC as the competent court to decide on this case. H.H., in the capacity of claimant, had filed a request to withdraw from the claim, which was approved by the SCSC Specialized Panel and consequently this procedure was terminated.
75. Third, on 12 April 2014, the Applicant submitted a claim to the PAK for the right to purchase the apartment based on the right of residence. On 26 September 2014, the PAK Board of Directors, by Decision [No. 7367] had rejected the Applicant's claim for the purchase of the apartment. On 17 November 2014, the Applicant, in his capacity as claimant, filed an appeal against the above Decision of the PAK Board of Directors with the SCSC Specialized Panel. According to the Applicant, the SCSC has not decided on his appeal to this date.
76. Finally, the Court recalls that on 17 April 2012, H.H. also filed a claim with the PAK for the right to purchase the apartment based on the right of residence. The PAK Board of Directors, by Decision [KB-86/2012] of 20 November 2012, had rejected H.H.'s claim to purchase the apartment. On 16 December 2016, as a result of H.H.'s appeal, the Specialized Panel by Resolution [C-II-14-0041] found that the SCSC "has no jurisdiction" to adjudicate this civil case and remanded the case for Jurisdiction of the Basic Court in Prizren, Suhareka branch. As a result of the PAK appeal and the response to H.H.'s appeal, on 17 October 2019, the SCSC Appellate Panel, by Judgment [AC-I-17-0003], approved the PAK appeal as grounded recognizing to H.H. the right for the purchase of the apartment. As a result of the Judgment of the SCSC Appellate Panel, the PAK in the capacity of seller and H.H. in the capacity of buyer had entered into a contract for the sale of the apartment.
77. The Court recalls that the Applicant in his Referral to the Court specifically challenges Judgment [AC-I-0003] of 18 October 2019 of the SCSC Appellate



Panel, rendered in the last procedure mentioned above through which H.H. was granted the right to purchase the apartment.

78. Whereas, regarding the procedure initiated on 12 April 2014 by the Applicant in the PAK for granting the right to purchase the apartment based on the right of residence, which had resulted in Decision [No. 7367] of 26 September 2014] of the PAK Board of Directors, whereby his claim was rejected and on his appeal against this decision of the PAK, filed with the SCSC, the Court notes that the Applicant only states that to this date, the SCSC has not rendered a decision regarding the procedure. In this context, the Court notes that the Applicant does not specifically challenge or present any reasoning that not rendering of a decision by the SCSC has violated his rights guaranteed by the Constitution.
79. Therefore, in the context of the Applicant's Referral whereby he challenged Judgment [AC-I-0003] of 18 October 2019 of the SCSC Appellate Panel, the Court reiterates that the parties in this proceeding were H.H., in the capacity of claimant and the PAK, in the capacity of respondent. Based on the case file, the Court also notes that following the rendering of the challenged Judgment of the SCSC Appellate Panel, the same Judgment was communicated to H.H., the PAK and the SCSC Specialized Panel. Consequently, the Court finds that the Applicant was not a party to the proceedings before the Specialized Panel and the SCSC Appellate Panel, in the Judgment of the latter, which he specifically challenges before the Court. Furthermore, the Court notes that the Applicant does not enjoy the property right over the apartment, since in the first procedure completed by Judgment [Rev. no. No. 22/04] of 25 May 2004 of the Supreme Court, it was found that the owner of the apartment was the enterprise SOE "IGK Balkan".
80. In this context, the Court also refers to the case law of the European Court of Human Rights (hereinafter: ECtHR) which found that "*the word victim, in the context of Article 34 of the ECHR, denotes the person or persons directly or indirectly affected by the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing the violation brought to an end*" (see case *Vallianatos and others against Greece* [GC], Application no. 29381/09 and 32684/09, Judgment, of 7 November 2013, paragraph 47). According to the ECtHR "*the notion of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act* (see case *Gorraiz Lizarraga and others against Spain*, Application no. 62543/00, Judgment of 27 April 2004, paragraph 35) *although the Court must take into account the fact that the Applicant was a party to the proceedings in the domestic courts*" (see case *Aksu v. Turkey* [GC], Application no. 4149/04 and 41029/04, Judgment of 15 July 2012, paragraph 52; *Micallef v. Malta* [GC], Application no. 17056/06, Judgment of 15 October 2009, paragraph 48; *Bursa Barosu Başkanlığı and others v. Turkey*, Application no. 25680/05, Judgment of 19 June 2018, paragraphs 109-117).
81. Consequently, based on the above, the Court recalls that the Applicant in his Referral, in essence, has alleged a violation of Article 31 of the Constitution and a violation of his right to property guaranteed by Article 46 of the Constitution. In this context, the Court recalls that in the court proceedings concluded before the regular courts it was not ascertained or established that the Applicant was the



owner of the apartment, but he used the same despite the Decision of the company “IGK Balkan” for granting use to H.H. and the conclusion of the contract for use between the company “IGK Balkan” as the owner of the apartment and H.H. The Court also recalls that in the last procedure conducted before the SCSC, specifically by the challenged Judgment of the Appellate Panel, the claim of H.H. for the right to purchase the apartment based on the use was approved.

82. Therefore, based on the above, respectively referring to the case law of the ECtHR and the case law of the Court, the Court finds that the Applicant is not an authorized party as defined in paragraphs 1 and 7 of Article 113 of the Constitution and Rule 39 (1) (a) of the Rules of Procedure to file a claim against a Judgment which has been rendered in proceedings where the Applicant has not been a party to the proceedings or through which no decision has been made on his/her rights (see, *mutatis mutandis*, the Court Case KI74/13, Applicant *Shefqet Hasimi*, Resolution on Inadmissibility, of 13 September 2013, paragraph 25).
83. In conclusion, in accordance with paragraphs 1 and 7 of Article 113 of the Constitution and Rule 39 (1) (a) of the Rules of Procedure, the Court finds that the Applicant’s Referral is to be declared inadmissible.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with paragraphs 1 and 7 of Article 113 of the Constitution, Articles 20, and 47 and 48 of the Law and Rule 39 (1) (a) of the Rules of Procedure, in the session held on 10 November 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**

Safet Hoxha

Arta Rama-Hajrizi



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