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

Prishtina, on 8 December 2020
Ref.No:RK 1660/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI202/19

Applicant

Demir Krasniqi

Constitutional review of Decision Rev. no. 263/2019 of the Supreme Court, of 26 September 2019, and Decision C.1265/2013 of the Basic Court in Prishtina, of 30 July 2014

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 Demir Krasniqi, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision Rev. no. 263/2019 of the Supreme Court, of 26 September 2019, and Decision C.1265/2013 of the Basic Court in Prishtina, of 30 July 2014.

Subject matter

3. The subject matter of the Referrals is the constitutional review of Decision Rev. 263/2019 of the Supreme Court, of 26 September 2019, and Decision C.1265/2013 of the Basic Court in Prishtina, of 30 July 2014, which as alleged by the Applicant have violated his rights guaranteed by Article 46 [Protection of Property], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 1 of Protocol no. 1 [Protection of property] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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

5. On 11 November 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 November 2019, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and Safet Hoxha (members).

7. On 12 November 2019, the Applicant submitted additional documentation to the Court.

8. On 4 December 2019, the Court notified the Applicant of the registration of Referral KI202/19. On the same day, a copy of the Referral was submitted to the Supreme Court.

9. On 11 November 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

10. On 28 September 2011, the Applicant (buyer) entered into a contract on sale with D.Zh., M.Zh., G.Zh. and M.Zh., (sellers), where the subject matter of the

contract was the cadastral parcel no. 251-1, an arable land, located at the place called "Selishte", covering an area of 0.57.9 hectares, Cadastral Zone Preocë. The Applicant alleges that on 28 May 2011, the amount of 14,000.00 Euros was paid by him into the bank account of the sellers, via the Raiffeisen bank.

11. On 24 May 2013, the Applicant filed a claim with the Basic Court in Prishtina, against D.Zh., for the certification of the contract on sale and registration of immovable property no. 251-1 in his name, in the cadastral books. The content of the claim states: *"Even though the Claimant has paid the entire sale price of this immovable property, the Respondent, despite the claimant's allegations, has not yet enabled him to certify the contract on sale, in order to have this property registered in his name, whereas the claimant is the factual owner of the said property from the day of signing the contract, which means that the respondent did not enable the claimant to transfer the immovable property in his name, and have it registered in the cadastral register."*

Procedure in relation to the motion for imposing a preliminary injunction

12. On 28 May 2013, the Applicant submitted to the Basic Court in Prishtina a motion for imposing a preliminary injunction of 24 May 2013, against D.Zh., because of the risk of alienation or changing of the existing condition of the aforementioned immovable property.

13. On 30 July 2013, the Basic Court in Prishtina, by Decision C.1265 / 2013, rejected the Applicant's motion for preliminary injunction as unfounded, on the grounds that: *"... in the present case, the claimant has signed the contract on sale with the opponent of the preliminary injunction, and has paid the sale price for the disputable parcel, the opponent of the preliminary injunction and his family members as: G, M, and M, have given to the claimant the authorizations certified at the Basic Court in Jagodina, Rep. of Serbia, as vr. 2294/2012, of 16 March 2012 and vr. 3429/2012, of 12 April 2012, according to which authorizations, the claimant is authorized by the authorizers to possess the disputable parcel, hence in this case the claimant has not made credible the risk of preliminary injunction, which is one of the cumulative conditions to impose the preliminary injunction in the sense of the provision of article 297 of the LCP, this is because the claimant is provided with an authorization. In addition, in this case, the motion was addressed only to D, so he lacks the full passive legitimacy and therefore the motion to impose a preliminary injunction was rejected".* The court's instruction provides that the dissatisfied party may file an appeal with the second instance within 7 (seven) days.

Procedure in relation to the expropriation and compensation of damage

14. On 7 February 2014, acting upon request of the Ministry of Environment and Spatial Planning (hereinafter: MESP), company Imobilia-shpk, had made the valuation of the expropriation price of the disputable immovable property, by setting a price of 15 euros per square meter, of the area of 4905 m2, which amounted to the total value of the payment consisting of 73,575.00 euros. The

purpose of the expropriation by MESP was the implementation of the road project, Segment 7.3 of the highway Morinë - Merdare, connection with the highway M2 and the highway Prishtina - Skopje R6. According to the submission, D.Zh., M.Zh., G.zh. and M.Zh stand as the owners by ¼ of the immovable property no. 251-1.

15. On 29 May 2015, the Applicant, having learned about the expropriation process of the disputable immovable property, filed a claim with the Basic Court in Prishtina, against the Ministry of Environment and Spatial Planning, for expropriation and compensation of damage in the amount of 73,575.00 euro, caused by the MESP act on expropriation of the aforementioned immovable property.

16. On 13 April 2018, the Basic Court in Prishtina, through Decision C.no.2099/ 15, considered the Applicant's claim as withdrawn, because neither the Applicant nor his defence counsel appeared at the main hearing , furthermore they did not justify their absence at the main hearing.

17. In the Decision of the Basic Court C.nr.2099/15, of 13 April 2018, it is stated: *"The court has scheduled the main hearing session for 13.04.2018, to which the claimant and his authorized person have been duly summoned, and this circumstance is corroborated by the minutes of the session of 19.03.2018, but they were absent, and failed to justify the absence, whereas the authorized person of the respondent proposed to the court to act in accordance with the law. Since the claimant and his authorized representative did not attend the main hearing session and did not justify their absence, the court acting pursuant to Article 423.3 of the LCP considers the claim withdrawn".*

18. On 13 August 2018, the Applicant filed an appeal with the Court of Appeals, because of the erroneous and incomplete determination of the factual situation, by proposing to the Court of Appeals to amend the decision of the first instance and remand the case for retrial.

19. On 5 February 2019, the Court of Appeals, by Decision Ac.3443/2018, rejected the Applicant's appeal as unfounded and upheld the Decision of the Basic Court in Prishtina, of 13 April 2018, by reasoning: "The Court of Appeals assesses that the conclusion of the court of first instance is correct and lawful, and as such it has been issued upon correct application of Article 423.3 of the LCP, which states, that *"If the plaintiff does not come to the main hearing session even though he's been summoned regularly, it is considered that he/she has dropped the charges except if the plaintiff declares that he/she requests the process to continue in his/her absence".*

20. On an unspecified date, the Applicant filed a request for revision with the Supreme Court, against the Decision Ac.no.3443/ 2028 of the Court of Appeals, of 5 February 2019, due to violations of the provisions of the contested procedure and the erroneous application of the substantive law with the proposal to have the challenged decisions quashed and the case remanded to the court of first instance for reconsideration.

21. On 26 September 2019, the Supreme Court, by Decision Rev. no. 263/2019, rejected the request for revision submitted by the Applicant as unfounded and upheld both Decisions of the lower courts, by reasoning that the allegations of the Applicant himself and of and his representative on non-participation in the main hearing session related to the statement of claim for expropriation and compensation of damages were unfounded because there is no factual evidence about them.

Applicant's allegations

22. As regards the rejection of his motion for imposing the preliminary injunction, the Applicant alleges: *"... had the request for the preliminary injunction been APPROVED, it would have not been possible to have the funds withdrawn using a falsified authorization, I consider that by the Law on Expropriation, my right as a FACTUAL person has been violated, since as an interested party I have not been notified at all regarding the expropriation."*

23. Whereas with regard to the statement of claim for expropriation and compensation of damage, the Applicant alleges that the regular courts have violated his property rights, because: *"By the decision on expropriation, the area of 4905 m2 was expropriated from me by the Expropriating Authority out of the total area of 5794 m2 of the property no. 251-1 which I have bought from D. Zh from village Dobreve e Epërme, while the area consisting of 889 m2 remained; the price per m2 was 15 €, which amounted to a total of 73,575 €. This property was still in the name of D. Zh, M.Zh, M.Zh and G.Zh, even though the claimant Demir Krasniqi had bought this property prior to its expropriation on 28.9.2011, and, under free will, the contract on sale was signed with D.Zh."*

24. Further, the Applicant states that: *"The Claimant had an authorization from the seller to withdraw the funds from the expropriation... In the Ministry of Environment and Spatial Planning, the amount of 73,575 Euros was withdrawn using a falsified authorization by M. B , even though the MESP was aware that I used to have an original authorization for this property, MESP did not take this into account and by filling out the application for withdrawal of funds using a falsified authorization, ... even though as the injured party, I have asked for the payment to be made to me, I have up to the present not faced understanding."*

25. The Applicant alleges that, as a result, the regular courts: *"... have rejected the claim for compensation of damages without any legal basis, and thus have violated my freedoms and rights guaranteed by the Constitution. The right to property - compensation is also guaranteed by the international convention which guarantees the property of the owner, as being sacred."*

26. Finally, the Applicant requests from the Court to approve his Referral and oblige: *Respondent MESP to make the final payment amounting to 73.575 Euros to the Claimant Demir Krasniqi from Prishtina in the name of expropriation of the parcel no. 251-1, namely of the area of 4905 m2 (for a price of x l5 € per m2), according to the possession list no. 218, cadastral zone*

Preocë, along with the legal interest of 8% from the date of the decision becoming final to the day of the payment being completed.

Assessment of the admissibility of the Referral

27. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which provide:

> *"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."*

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

> Article 47
> [Individual Requests]
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
>
> Article 48
> [Accuracy of the Referral]
>
> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*
>
> Article 49
> [Deadlines]
>
> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...".*

30. As to the fulfillment of the admissibility criteria, as stated above, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely Decision Rev. no. 263/2019 of the Supreme Court, of 26 September 2019, after having exhausted all legal remedies in the formal sense. The Applicant has also clarified the rights and freedoms which he claims to have been violated, in accordance with Article 48 of the Law, and has submitted the Referral in accordance with the deadline established in Article 49 of the Law.

31. However, in addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria], respectively in paragraphs (1) (b) and 2 of Rule 39 of the Rules of procedure, which establish:

> *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 ;*
> *[...]*
>
> *2) "The Court may consider a referral as inadmissible if the referral is manifestly ill-founded because the Applicant has not sufficiently proved and substantiated the claim."*

32. The Court recalls that the Applicant alleges that the challenged Decisions violate his rights guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR.

33. Initially, the Court recalls that the Applicant's allegations for violation of the aforementioned rights are related to two sets of proceedings, namely 1) the motion for imposing the preliminary injunction, filed with the Basic Court in Prishtina on 24 May 2013, and filing of another statement of claim with respect to the expropriation and compensation of damage, filed with the Basic Court in Prishtina on 29 May 2015.

34. In this context, the Court will review the constitutionality of: **i.** the Decision [C.1265/2013] of the Basic Court in Prishtina, of 30 July 2014, and **ii.** the Decision [Rev.no.263/2019] of the Supreme Court, of 26 September 2019, concerning the alleged violations of Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR, on the basis of Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

(i) In relation to the allegations concerning the Decision C.1265/2013 of the Basic Court in Prishtina, for imposing the preliminary injunction

35. In regard to these allegations concerning the procedure for imposing the preliminary injunction, the Court recalls that the Applicant complains about the violation of the right to property, by reasoning that had the motion for imposing the preliminary injunction been approved the possibility of alienation

or changing of the existing condition of the disputable immovable property by the seller, as a signatory of the contract on sale, would have been avoided.

36. The Court initially recalls that any allegation raised in the Referral by the Applicants requires a concrete response from the Court, provided that the Applicant/s has/have met the procedural criteria of admissibility as established in the Constitution, Law and Rules of Procedure. One of these criteria is the exhaustion of effective legal remedies. The Court recalls that the assessment criteria, whether this obligation has been met, are well defined in the case law of the Court and that of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which the Court, pursuant to Article 53[Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

37. In this context, the Court notes that the Applicant on 24 May 2013 has filed with the Basic Court in Prishtina, a motion for imposing the preliminary injunction but it was rejected by the Basic Court by Decision C.1265/2013, of 30 July 2013.

38. The Court notes from the case file that the Applicant according to the court's instruction was entitled to file an appeal with the Court of Appeals against the Decision of the Basic Court, within 7 (seven) days from the day of receipt of the decision. Yet he does not indicate and prove to have done such a thing.

39. Therefore, pursuant to the principle of subsidiarity, the Court cannot consider the Applicant's claim for violation of the right to property, because he has lost the opportunity to file an appeal and have his claim assessed in the regular procedure (see, analogically, the case of Constitutional Court KI41/19 Applicant: *Ramadan Koçinaj*, Resolution on Inadmissibility of 15 January 2020, paragraphs 64-66, and the cases cited therein).

40. The principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in the regular proceedings, in order to prevent the violation of the Constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have his/her case declared inadmissible by the Constitutional Court, when failing to exhaust all available legal remedies before the administrative bodies or regular court (see, the Resolution in Case KI139/12, *Resnik Asllani*, Review of Supreme Court Judgment PKL No. 111/2012, of 30 November 2012, paragraph 45; Resolution in Case No. KI07/09, *Deme Kurbogaj and Resnik Kurbogaj*, Review of Supreme Court Judgment Pkl.no.61/17, of 24 November 2008, paragraph 18; Resolution in Case No. KI89/15, *Fatmir Koci*, Review of Court of Appeals Judgment, PAKR No-473/2014 of 21 November 2014, paragraph 35).

41. Therefore, the Court considers that the Applicant has not exhausted the effective legal remedies available to him in respect of the allegations concerning his right to property, in conjunction with the refusal of the motion for imposing the preliminary injunction.

(ii) In relation to the allegations concerning the Decision [Rev.no.263/2019] of the Supreme Court on the expropriation and compensation of damage

42. As to the procedure of expropriation and compensation of damage, the Court recalls that the Applicant also alleges a violation of his property rights, by linking this to the fact that the regular courts have considered his claim, filed on 29 May 2015, withdrawn, due to his absence and the absence of his defence counsel in the main hearing session.

43. The Court first recalls the content of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the Convention, which provide as follows, in relation to the property rights:

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.
[...]

ECHR
Protocol no. 1 Article 1 [Mbrojtja e Pronës]

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

General principles

44. As regards the rights guaranteed and protected by Article 46 of the Constitution, the Court first notes that paragraph 1 of Article 46 of the Constitution guarantees the right to property; paragraph 2 of Article 46 of the Constitution defines the method of use of property, by clearly specifying that its use is regulated by law and in accordance with the public interest while paragraph 3 of Article 46 of the Constitution guarantees that no one may be deprived of property arbitrarily , by also defining the conditions under which the property can be expropriated (see, *mutatis mutandis*, the Case KI50/16, Applicant *Veli Berisha and others*, Resolution on Inadmissibility, of 10 March 2017, paragraph 31).

45. As regards the rights guaranteed and protected by Article 1 of Protocol No. 1 to the ECHR, the Court reiterates that Article 1 of Protocol No. 1 to the ECHR. 1 of the ECHR comprises of three distinct and interrelated rules: the first rule expresses the principle of peaceful enjoyment of property; the second rule

covers the deprivation of possessions and subjects it to certain conditions; and, the third rule, recognizes the States are entitled to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose (see *mutatis mutandis*, the ECtHR cases: *Sporrong and Lonnrot v. Sweden*, Judgment of 23 September 1982, Application no. 7151/75; 7152/75, paragraph 61; *James, Wells and Lee v. the United Kingdom*, Applications no. 25119/09, 57715/09 and 57877/09, of 18 September 2012; *Sargsyan v. Azerbaijan*, Application no. 40167/06, 16 June 2015; and *Belane Nagy v. Hungary*, Application no. 53080/13, of 13 December 2016).

46. The Court recalls that the three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (See, mutatis mutandis, ECHR Judgment of 21 February 1986, *James and Others v. United Kingdom*, no. 8793/79, para.37).

47. As to the first rule, the ECtHR has consistently held that the concept of "possession" which is included in the first part of Article 1 of Protocol no. 1 of the ECHR is an autonomous concept, which includes both "existing possessions" as well as claims, in respect of which an applicant can argue that he/she has at least a "legitimate expectation". "Possessions" under this concept include "in rem" and "in personam" rights, such as immovable, movable property and other property interests.

48. The autonomous concept of "possessions" within the meaning of Article 1 of Protocol no. 1 of the ECHR is independent from the formal classification in domestic law and is not limited to the ownership of material goods: certain other rights and interests constituting "assets" can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the Applicant title to a substantive interest protected by Article 1 of Protocol No. 1 of the ECHR (see, *Depalle v. France* [GC], para.62; *Anheuser-Busch Inc. v. Portugal* [DHM], para.63; *Öneryıldız v. Turkey* [DHM], para.124; *Broniowski v. Poland* [DHM], para.129; *Beyeler v. Italy* [DHM], paragraph 100; *Iatridis v. Greece* [DHM], paragraph 54; *Centro Europa 7 SRL and di Stefano v. Italy* [DHM], paragraph 171; *Fabris v. France* [DHM], paragraphs 49 and 51; *Parrillo v. Italy* [DHM], para.211; *Béláné Nagy v. Hungary* [DHM], para.76).

a) Legitimate expectations

49. The concept of "possessions" and "legitimate expectations" have a central place in the interpretation of property rights guaranteed by the ECHR and further developed by the ECtHR case law. On the other hand, the "legitimate expectations may give rise to possessions". Although Article 1 of Protocol no. 1 of the ECHR applies only to person's existing possessions and does not create a right to acquire property, in certain circumstances, a "legitimate expectation" of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 of the ECHR (see, the Judgment of ECtHR of 13 December 2016, *Béláné Nagy*

v. Hungary, no. 53080/13, para.73 and 75; Judgment of ECtHR of 22 June 2004, *Broniowski v. Poland*, no. 34443/96 paragraph 129).

50. In order for an "expectation" to be "legitimate", it must be of a nature more concrete than a mere hope and be based on a legal provision or legal act such as a judicial decision, which represents an interest of the property in question (see, *Kopecký v. Slovakia* [DHM], para.49-50; *Centro Europa 7 SRL and di Stefano v. Italy* [DHM], para.173; *Saghinadze and Others v. Georgia*, para.103; *Ceni v. Italy*, para.39 *and Béláné Nagy v. Hungary* [DHM], para.75). On the contrary, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and when the applicants' submissions are subsequently rejected by the national courts (see *Anheuser-Busch Inc. v. Portugal* [GC], paragraph 65; *Centro Europa 7 SRL and di Stefano v. Italy* [DHM], paragraph 173; *Béláné Nagy v. Hungary* [DHM], paragraph 75; *Karachalios v. Greece* (decision), para.46; *Radomilja and Others v. Croatia* [DHM], paragraph 149).

Application of general principles in the circumstances of the present case

51. The Court, based on the general principles of property right and after having analysed the Applicant's allegations regarding the violation of this right, considers that the above principles are not applicable in the Applicant's case for the following reasons.

52. Initially, prior to reaching the conclusion, the Court refers to the relevant parts of the challenged Decision, and notes that the Supreme Court responded to the Applicant's allegations as follows:

> *"The Supreme Court of Kosovo reviewed the claimant's revision allegations stating that due to illness the claimant was not able to be present at the hearing session as he was for treatment in the USA, but this court treats such allegations as unfounded because he had his representative Shefki Syla, the lawyer from Prishtina, who was also duly summoned but did not respond to the court summons. At the same time, this court could not accept as founded the allegation in the revision that on the mentioned day the claimant's attorney, as well, has been at the emergency ward and therefore could not attend the hearing session, because according to the case file no arguments are provided for such allegations by any evidence. On the other hand, the claimant, in the sense of Article 130.2 of the LCP, could have submitted a proposal for return to previous situation, within a certain period of time, which he did not do, and such a proposal is not contained in the case file, therefore such allegations by the plaintiff, are considered to be unfounded by this Court."*

53. On the basis of the above, the Court notes that the response of the Supreme Court concerns the reasons for the announcement of the statement of claim filed on 29 May 2015 with the Basic Court in Prishtina, as being withdrawn by the Applicant. From this point of view, the Court notes that the subject of the Applicant's dispute before the regular courts, respectively before the Court of Appeals and the Supreme Court was the "withdrawal of the claim" and no

longer the basis of the statement of claim where the subject of review was the expropriation of the disputable immovable property by the MESP (respondent) and compensation of damages by the latter.

54. Based on the foregoing, the Court finds that in the circumstances of the present case we are not dealing with a property right acquired by a final judicial decision nor with a legitimate expectation, because the Applicant does not have an assertive right, proving that his property right over the disputed immovable property in question has been established (see, analogically, the ECtHR case *Kopecký v. Slovakia* [DHM], principle set out in paragraph 52). In this circumstance, the Applicant cannot allege violations of his property rights, since the regular courts, in his case, have reviewed only the procedural aspects of the statement of claim and not the merits of the case, where it could have been decided with regard to 1) the process of expropriation of the disputable immovable property, and 2) compensation of damage by the MESP.

55. The Court further notes that the Applicant is simply dissatisfied with the outcome of the proceedings before the regular courts, however his dissatisfaction cannot of itself raise an argumentative allegation for a violation of the fundamental rights and freedoms guaranteed by the Constitution (see, the case of the ECHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

56. In this context, the Court finds that the Applicant's allegation regarding the violation of the right to property is clearly unfounded for the reasons stated above.

57. In sum, regarding the allegations for violation of the rights guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR, by the public authorities, the Court finds that the Referral:

i. in relation to the procedure for imposition of the preliminary injunction, is declared inadmissible, due to the non-exhaustion of effective legal remedies, in accordance with the requirements of Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 39 (1) (b) of Rules of Procedure;

ii. in relation to the procedure of filing a statement of claim for expropriation and compensation for damage, is also declared inadmissible as manifestly ill-founded, pursuant to Rule 39 (2) of the Rules of Procedure, because the Applicant has not sufficiently proved his allegation for violation of the right to property.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (1) (b), 39 (2), and 59 (2) of the Rules of Procedure, on 11 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**

Selvete Gerxhaliu-Krasniqi Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.