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

Prishtina, on 12 April 2021
Ref. no.:RK 1747/21

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RESOLUTION ON INADMISSIBILITY

in

case no. KI82/20

Applicant

Jakup Mehmeti

Constitutional review of Decision AC-I-16-0144-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 21 February 2020

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 Jakup Mehmeti (hereinafter: the Applicant), who is represented by Hamdi Podvorica, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of Decision AC-I-16-00144-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court of 21 February 2020 (hereinafter: the Appellate Panel of the SCSC), on the Privatization Agency of Kosovo Related Matters (hereinafter: the PAK).

Subject matter

3. The subject matter is the constitutional review of challenged Decision AC-I-16-0144-A0001 of the Appellate Panel of the SCSC of 21 February 2020, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property], paragraphs 1, 2, 3 and 4 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 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

5. On 29 May 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 June 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding) Bajram Ljatifi and Radomir Laban (members).

7. On 22 June 2020, the Court notified the Applicant about the registration of the Referral. A copy of the Referral was sent to the Appellate Panel of the SCSC and the PAK.

8. On 3 August 2020, the PAK submitted its comments regarding the Applicant's allegations.

9. On 24 February 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously requested that the decision be postponed to another date for additional supplementations.

10. On 3 March 2021, the Court received the complete case file from the SCSC.

11. On 25 March 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

1. Expropriation procedure

12. On 26 April 1982, the Municipality of Ferizaj by Decision no. 03-465-5 has expropriated the immovable property (parcel) no. 111, by culture field of the third class, in a surface area of 0.36,17 hectares, registered in the possession list with no.14-CZ-Talinoc of Jerlive, municipality of Ferizaj (hereinafter: the disputed immovable property), for the needs of the working Organization IMK Factory for the production of pipes. By this Decision, the Directorate for Property, Geodesy and Cadastre has been ordered to make changes in the cadastral books. According to the case file, the disputed immovable property was transferred into the ownership of the SOE Eurometal-MA-Ferizaj. (Law in force OG, KSAK, April 1978)

13. From 1982 to 2002, the Court has no data of what the Applicant took until he was declared the sole heir of the property of his father Sh.M.

2. Inheritance procedure (out of contentious)

14. In 2002, the Applicant filed a request with the Municipal Court in Ferizaj for his declaration as the heir of the entire property of the parent SH.M, who passed away on 2 July 1999.

15. On 12 December 2002, the Municipal Court in Ferizaj, by Decision T. No. 240/02, as a non-contentious court, declares the Applicant the sole heir of the entire property of Sh.M., namely of the cadastral parcels with no. 1, 136, 205, 490, 502/2, 647 and 648, in the place called Oborrishtë with kulture field, meadow, house and yard, in a total area of 1.84,51 hectares, which is located in the village of Talinocë of Jerlive and registered in the possession list no. 14 MA-Ferizaj.

16. On 27 December 2002, the Directorate for Property, Geodesy and Cadastre of the Municipality of Ferizaj, according to the order of 12 December 2002 of the Municipal Court in Ferizaj, found that the legal requirements were met to make the necessary changes in the cadastral register, for the transfer of property, namely the cadastral parcels with no. 1, 136, 205, 490, 502/2, 647 and 648, in the place called Oborrishtë with culture field, meadow, house and yard, in a total surface area of 1.84,51 hectares, according to the possession list no. 14 MA of Ferizaj, from the deceased SH.M to his son, namely the Applicant.

3. Procedure before the municipal authorities

17. On 18 August 2005, the Applicant filed a request with the Municipality of Ferizaj, by which he requested the de-expropriation of the disputed immovable property no. 111, with culture field of the third class in a surface area of

00.36,17 hectares, which was previously registered according to the possession list no. 14 MA-Ferizaj, village Talinocë of Jerlive and the return of the latter in his possession. The request further states: *"The above-mentioned parcel, based on the abovementioned Decision on expropriation, has been expropriated for the needs of the Working Organization IMK - Factory for the production of steel pipes in Ferizaj, for the construction of a new factory for the production of pipes air-cooled heat, according to the foreseen project. The parcel is now registered in the name of SOE "Eurometal", based in Ferizaj."*

18. In October 2005, the Directorate for Property, Geodesy and Cadastre in Ferizaj, by Decision no. 06465-6, rejected the Applicant's request for de-expropriation of the disputed immovable property and its return to the Applicant's possession, on the grounds that the request for de-expropriation and return to possession of the contested immovable property was made after the deadline provided for in Article 21 of the law on expropriation OG-SAPK no. 1978 and 46/86.

19. On 20 October 2005, the Applicant, against the decision of the Directorate of Property, Geodesy and Cadastre in Ferizaj, filed a complaint with the Chief Executive Officer of the Municipality of Ferizaj, by which, *inter alia*, he requested: *"We ask the Chief Executive Officer to take into account the fact that the political circumstances - the discriminatory laws of Serbia of that time were a factor that the request was not made according to the deadline provided in Article 21 of the Law on Expropriation and to render a decision. annulling the Expropriation Decision of 23 April 1982."* However, in relation to this submission, the Applicant did not provide evidence of how it was decided further.

20. On 8 August 2006, the Applicant addressed a request to the Kosovo Cadastral Agency, by which he again requested de-expropriation and return to possession of the disputed immovable property. However, even in relation to this complaint, the Applicant did not provide evidence of how it was decided further.

4. Procedure before the SCSC

21. On 4 July 2005, the Applicant filed a lawsuit with the SCSC, requesting the de-expropriation of the disputed immovable property and its return to his possession.

22. On 27 July 2005, the SCSC, by Decision SCC-005-0209, rejected the claim of the Applicant, stating that he has no jurisdiction to decide on this issue, on the grounds that the decision on the expropriation proposal is taken by the municipal body of the administration, competent for property-legal affairs in the territory of which the immovable property is located based on the provisions of the Law on General Administrative Procedure (Article 15 of the Law on Expropriation).

5. Liquidation procedure of the enterprise SOE Eurometal

23. On 17 March 2006, the socially-owned enterprise SOE Eurometal-Ferizaj, was subject to the liquidation procedure by the Liquidation Authority of the Kosovo Trust Agency (hereinafter: the KTA).

24. On 5 June 2006, the KTA notified the Applicant that on 24 August 2005 the decision of the KTA Board to liquidate the enterprise SOE Eurometal-Ferizaj entered into force. By this notification the Applicant was given a deadline until 12 June 2006 to file a complaint with the KTA.

25. On 12 June 2006, the Applicant filed a complaint with the KTA, requesting the return of the disputed immovable property, referring to the discriminatory laws and repression exercised on the Albanian property by the then regime.

6. Lawsuit before the Municipal Court in Ferizaj

26. On 1 August 2006, the Applicant filed a lawsuit with the Municipal Court in Ferizaj on confirmation of ownership of the disputed immovable property, on the grounds that he is the sole legitimate owner of parcel no. 111 in a surface area of 00.36.17 hectares.

27. On 3 May 2012, the Municipal Court in Ferizaj declared itself incompetent to decide on the Applicant's legal case, on the grounds that: "*After reviewing the lawsuit within the meaning of Article 389 in conjunction with Article 392 point (b) of the Law on Contested Procedure of the Republic of Kosovo, the Court found that it has no jurisdiction to decide on this legal issue. That this legal issue from a material point of view is within the competence of the Special Chamber of the Supreme Court of Kosovo, pursuant to Article 4.4 of the Law on the Special Chamber of the Supreme Court of Kosovo, no. 04/L-033, published in the Official Gazette of the Republic of Kosovo, which law entered into force on 01.01.2012*".

7. Procedure before the liquidation authority of the PAK

28. On 21 May 2013, the Liquidation Authority of the former KTA, now the PAK, requested from the Applicant additional information and evidence, as follows: 1) certificate of compensation of immovable property; 2) copy of the appeal against Decision no. 03-465-5, of 26 April 1982, issued by the MA in Ferizaj; 3) a copy of the list of cadastral books proving that the parcel was registered in the name of the Applicant; 4) possession list no. 14; 5) evidence whether the Applicant has requested legal protection of his rights; and 6) any other document or evidence in support of his request.

29. On 16 July 2013, the PAK, by Decision GJI057-0163, rejected the Applicant's complaint as invalid, considering that the information submitted by the Applicant was insufficient to enable his inclusion in any distribution of income from the liquidation of the enterprise the SOE Eurometal-Ferizaj.

8. Final procedure before the SCSC

30. On 13 August 2013, the Applicant filed an appeal with the SCSC, against the Decision [GJI057-0163] of the Liquidation Authority of the PAK, of 17 July 2013, requesting the annulment of the decision in question, the return of the disputed immovable property in possession and the recognition of the ownership right over the disputed immovable property, as well as the registration of the latter in the cadastral books.

31. On 18 March 2014, the SCSC informed the PAK regarding the complaint filed by the Applicant.

32. On 29 April 2014, the PAK submitted its response to the SCSC, proposing that the SCSC reject the Applicant's appeal and uphold the Decision [GJI057-0163] of the PAK Liquidation Authority, because pursuant to Article 21 of the Law on Expropriation (Official Gazette no. 21/1978) provides that *"After ten yeawrs from the day the decision on expropriation became powerful the claim for annulment of that decision cannot be submitted"*, and that there is no evidence that the Applicant has requested the annulment of Decision no. 03-465-5, of 26 April 1982 in the SCSC, until 2005.

33. On 11 June 2014, the Applicant submitted a response to the SCSC in response to the allegations of the PAK, stating that the arguments of the PAK are completely unlawful, therefore to be rejected by the SCSC as ungrounded.

34. On 19 May 2016, the Specialized Panel of the SCSC, by Decision C-IV-13-1528, rejected as ungrounded the Applicant's appeal and upheld the Decision [GJI057-0163] of the PAK Liquidation Authority , of 16 July 2013, as fair and based on law, with the reasoning that the Applicant for annulment of the Decision on Expropriation has not addressed the administrative bodies of the respective municipality, which has made the expropriation of the disputed immovable property.

35. Further, in the reasoning it is emphasized: *"Furthermore, the Special Chamber considers that before initiating the procedures for the return of the expropriated immovable property, the complainant should have initially addressed the administrative bodies. In accordance with Article 39 of the Law on Expropriation (037/L-139) it follows that this issue must be resolved by the administrative bodies and according to the procedure mentioned in this Law. The request for judicial review of such a decision is based on Article 27.2 of this Law which means that such a decision can be appealed only within the department for administrative matters before the Basic Court of Prishtina, in accordance with the Law (no. 03/L-202) on administrative conflicts. Without eliminating the legal effects of the expropriation decision taken in 1982, the complainant cannot be considered the owner of the immovable property and consequently he is not able to claim the return of the immovable property which was taken from him by this decision"*.

36. On 27 June 2016, the Applicant filed an appeal with the SCSC Appellate Panel against the decision of the Specialized Panel of 19 May 2016, on the grounds of erroneous determination of the factual situation and violation of the substantive and procedural law, with the proposal that the appeal be approved

as grounded and Judgment C-IV-13-1528 of the Specialized Panel of 19 May 2016 be modified.

37. On 21 February 2020, the SCSC Appellate Panel, by Decision AC-II-16-0144-A0001, rejected the Applicant's appeal and upheld Judgment [C-IV-13-1528] of the Specialized Panel of 6 June 2016.

38. Relevant parts of the reasoning of the Decision of the SCSC Appellate Panel:

> *"The Appellate Panel after reviewing the appealing allegations, after assessing the legality of the appealed judgment, as well as based on the evidence in the case file found that the impugned judgment is fair, well-founded and well-reasoned. The claimant failed to initiate the administrative proceedings on the contested issue, to challenge this decision. Pursuant to Article 17 of the Law on Expropriation, an appeal may be filed with the competent body in the second instance against the decision of the municipal body that made the expropriation. From the evidence in the case file, there is no indication that this decision was challenged by the claimant.*
> *In accordance with Article 21, paragraph 4 of this law, the decision on expropriation will be annulled based on the request of the previous owner of the expropriated property, if the expropriation user within 3 years from the finality of this decision, has not performed, according to the nature of the building necessary works on that building. Paragraph 5 of this article stipulates that after 10 years from the day when such a decision has become final, no request for annulment can be submitted. The Appellate Panel finds that the lawsuit for annulment of this decision was first filed on 12 June 2006 with the Privatization Agency of Kosovo, which means, out of all deadlines established by law".*

Applicant's allegations

39. The Applicant alleges that the challenged Decision of the SCSC Appellate Panel violated his rights guaranteed by Articles 31 and 46, paragraphs 1, 2, 3 and 4 of the Constitution and Article 1 of Protocol No. 1 of the ECHR, alleging that the disputed immovable property was expropriated without giving him security as an owner.

40. The Applicant relates the violation of Articles 31 and 46 of the Constitution to the conclusion of the SCSC Panels, which according to him have erroneously found that *"The law on expropriation provides that such a claim can not be filed after the expiration of 10 years, it is wrong because it legitimizes the arbitrary deprivation of the owner of the property and the constitutional provisions by which the right to property is guaranteed".*

41. On this basis the Applicant adds that, *"According to Article 49.1. of the Law on Expropriation, applicable at the time of expropriation (Official Gazette of SAPK, no. 21/1978), "after the decision on expropriation became final, the municipal administration body, competent for legal-property issues is obligated to assign and hold without delay the process for determination of*

compensation on the basis of agreement for expropriated real estate. According to Article 140.1 of the LPJK, the procedure of expropriation of expropriated property begins and takes place ex officio, but this finding also results from the provision of Article 217.1 of the LPJK. , ... In this case, the competent body has not initiated the compensation procedure by agreement nor has it sent the case file to the competent court...".

42. The Applicant further adds that: "*The statute of limitations for the request for fair compensation for immovable property which is transferred into social ownership on the basis of expropriation, or other legal basis, where the compensation is determined ex officio, starts from the first day, after the date when the previous owner of the immovable property had the right to claim the fair compensation determined by agreement or by court decision. Due to the fact that such compensation was not assigned to the claimant either by an agreement reached with the administrative body or by a court decision, therefore, the statute of limitations for such a request could not begin to run here, therefore the Specialized Panel of the SCSC and the Appellate Panel of the SCSC have erroneously applied the legal provisions referred to in their judgments when they found that the claimant's claim was ungrounded.*

43. Furthermore, the Applicant states that: "*The situation is the same with regard to the return of the expropriated property of the previous owner. According to par. four of Article 21 of the Law on Expropriation which was in force at the time of expropriation, the final decision on expropriation will be annulled, if the user of the expropriation within 3 years from the decision has become final has not performed, according to the nature of the object the necessary works in that object. The user of the expropriation has not done the necessary works in that facility in the foreseen period of 3 years, but even today they have not been done. The owner of the expropriated immovable property has repeatedly made verbal requests for annulment of the expropriation decision but his requests have not been taken into account. For this reason, the owner of the immovable property has also addressed the court with a lawsuit for the exercise of his undisputed right to immovable property, but the court has not yet decided in favor of the owner of the expropriated immovable property, because it has been declared incompetent".*

44. Finally, the Applicant requests the Court: "*I. To declare the referral admissible for review on merits: II. To find that there has been a violation of Article 31 (Right to Fair and Impartial Trial) and Article 46 of the Constitution of the Republic of Kosovo and Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. III. To repeal as incompatible with the Constitution of the Republic of Kosovo, Judgment C-IV-13-1528 of the Specialized Panel of the Special Chamber of the Supreme Court of 06 April 2016 and Judgment AC-I-16-0144A0001 of the Appellate Panel of the Special Chamber of the Supreme Court, of 21 February 2020. IV. To remand Judgment C-IV-131528 of the Specialized Panel of the Special Chamber of the Supreme Court, of 06 April 2016 and Judgment AC-I-16-Q144-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court, of 21 February 2020, for reconsideration in accordance with the judgment of this court. V. To order the Special Chamber of the Supreme Court*

of Kosovo on Privatization Agency of Kosovo Related Matters, that in accordance with Rule 66 (5) of the Rules of Procedure, to notify the court within 6 months of the publication of this Judgment, regarding the measures taken to enforce the judgment of this court".

Admissibility of the Referral

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

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

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".

[...]

47. In addition, the Court also refers to the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests] 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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...".

48. As regards the fulfillment of the admissibility requirements, the Court finds that the Applicant is an authorized party, challenging the act of the public authority, namely Decision AC-II-16-0144-A0001 of the Appellate Panel of the SCSC, of 21 July 2020, after the exhaustion of all available legal remedies. The Applicant also clarified the rights and freedoms he claims to have been violated and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

49. However, in addition, the Court examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria], namely paragraph (2) of Rule 39 of the Rules of Procedure, which establishes:

(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."

50. The Court recalls that the Applicant alleges that the challenged Decision of the Appellate Panel of the SCSC violates his rights guaranteed by Articles 31 and 46, paragraphs 1, 2, 3 and 4 of the Constitution, as well as Article 1 of the Protocol no. 1 of the ECHR, relating his allegations to the manner of application of the law in force at the time of the expropriation of the disputed immovable property. Therefore, the Court will examine and assess the Applicant's allegations in accordance with the requirements of Article 53 of the Constitution, which stipulates: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

i. Regarding the allegation of violation of "fair trial" as a result of erroneous application of applicable law

51. With regard to the Applicant's allegation that the challenged Decision of the Appellate Panel of the SCSC violates his rights guaranteed by Article 31 of the Constitution, because the relevant provisions of the applicable law were erroneously applied (Official Gazette, no. 21/1978), The Court considers that such allegations raise issues of the law (legality) and not constitutional issues (constitutionality). In this regard, the Court has consistently reiterated that, as a general rule, the allegations of erroneous interpretation and application of law, allegedly committed by the regular courts, relate to the scope of legality and as such, are not in the jurisdiction of the Constitutional Court, and therefore, in principle, the Court cannot review them. (See cases of the Court No. KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 36; case KI122/16, Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; and case of the Court KI154/17 and KI05/18, Applicant, *Basri Deva, Afërdita Deva and Limited liability company "Barbas"*, Resolution on Inadmissibility of 28 August 2019, paragraph 60).

52. The Court has reiterated that it is not the role of this Court to deal with errors of fact or law allegedly committed by the regular courts (*legality*), unless and insofar as they may have violated the rights and freedoms protected by the Constitution (*constitutionality)*. It may not itself assess the law which has led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of "*fourth instance*", which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (See, ECtHR case *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, also cases of the Court: KI06/17, cited above, paragraph 37; and KI122/16, cited above, paragraph 57; and KI154/17 and 05/18, cited above, paragraph 61).

53. The Court has consistently held this view based on the ECtHR case law, which clearly states that it is not the role of this Court to review the findings of the regular courts as to the factual situation and the application of substantive law (see ECtHR case *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and cases of the Court KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58 and KI154/17 and 05/18, cited above, paragraph 62).

54. However, the Court recalls the case law of the ECtHR and of the Court, also provide for the circumstances under which exceptions from this principle can be made. The ECtHR reiterated that while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of legislation, the role of the Court is to ensure or verify whether the effects of such interpretation are compatible with the ECHR (See the ECtHR case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

55. Therefore, even though the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take measures where it observes that a court has "*applied the law manifestly erroneously*" in a particular case or so as to reach "*arbitrary conclusions*" or "*manifestly unreasoned*" for the Applicant (regarding the basic principles on the manifestly erroneous interpretation and application of the law, see, *inter alia*, the case of the Court KI154/17 and KI05/18, cited above, paragraphs 60 - 65 and the references used therein).

56. In this regard, the Court should state that the Applicant has not argued before the Court (i) the reasons which could substantiate the allegation that in the circumstances of the present case, the relevant articles of the applicable law have been interpreted by the Appellate Panel of SCSC in "*a manifestly erroneous manner*"; and (ii) that such an interpretation, has resulted in "*arbitrary conclusions*" or "*manifestly unreasoned*" to the Applicant.

57. The Court further notes that the Applicant's allegations regarding the erroneous application of the provisions of Law no. 21/1978, were initially addressed by the Specialized Panel of the SCSC, stating that: *"The expropriation procedure was implemented based on the Law on Expropriation O.G, of SAPK, April 1978, which was then in force and this is an administrative procedure and not a judicial procedure. The expropriation*

procedure, the manner, the obligations of the expropriation user and the rights of the owner whose property is being expropriated are regulated by the provisions of the Law on Expropriation, so for the exercise of any of his rights the owner of the expropriated property must exercise these rights in that procedure and with the administrative bodies, which conduct this procedure".

58. The Specialized Panel further reasoned that: *"The decision-making, appeal and annulment of the decision on expropriation is the exclusive competence of the state administration bodies and this whole procedure is regulated by the Law on Expropriation, the cleared text (Articles 15, 17 and 21 par. 6 of this Law). Article 21 par. 6 of the same law stipulates that: "about the claim for annulment of the decision on expropriation and the withdraw from the proposal for expropriation, shall decide the body which decided on the proposal for expropriation in the first instance". Based on the provisions of the Law on Expropriation, the only issue for which the courts have jurisdiction is the issue of fair compensation - determination of the amount of compensation, but this issue was not raised by the complainant".*

59. With regard to the return of the disputed expropriated immovable property, the Court also notes that the Specialized Panel of the SCSC reasoned: *"The complainant had requested the return of the expropriated property on the grounds that it had not been used for the purpose set out in the expropriation decision. In this regard, the Special Chamber notes that the complainant has invoked Article 21 of the Law on Expropriation under which the previous owner seeks the return of the expropriated immovable property if the expropriation beneficiary within three years, from the date when the decision has become final has not performed, according to the nature of the object, the necessary works in that facility. The next paragraph of this article stipulates that such a request may not be submitted after the expiration of a period of 10 years. Similarly this issue is regulated by the provisions of the current Law on Expropriation (no. 03/L-139) in Article 27. Since the expropriation in question took place in 1982, the possibility to invoke this legal remedy has passed in -1992".*

60. Finally, the SCSC Specialized Panel concludes: *"Furthermore, the Special Chamber considers that before initiating the procedures for the return of the expropriated immovable property, the complainant should have initially addressed the administrative bodies. In accordance with Article 39 of the Law on Expropriation (037/L-139) it follows that this issue must be resolved by the administrative bodies and according to the procedure mentioned in this Law. The request for judicial review of such a decision is based on Article 27.2 of this Law which means that such a decision can be appealed only within the department for administrative matters before the Basic Court of Prishtina, in accordance with the Law (no. 03/L-202) on administrative conflicts. Without eliminating the legal effects of the expropriation decision taken in 1982, the complainant cannot be considered the owner of the immovable property and consequently he is not able to claim the return of the immovable property which was taken from him by this decision".*

61. The Court notes that the Applicant's repeated allegations were also answered by the Appellate Panel of the SCSC, emphasizing that: *"The Appellate Panel after reviewing the appealing allegations, after assessing the legality of the appealed judgment, as well as based on the evidence in the case file found that the impugned judgment is fair, well-founded and well-reasoned. The claimant failed to initiate the administrative proceedings on the contested issue, to challenge this decision. Pursuant to Article 17 of the Law on Expropriation, an appeal may be filed with the competent body in the second instance against the decision of the municipal body that made the expropriation. From the evidence in the case file, there is no indication that this decision was challenged by the claimant".*

62. Furthermore, the Appellate Panel of the SCSC reasoned that: *"In accordance with Article 21, paragraph 4 of this law, the decision on expropriation will be annulled based on the request of the previous owner of the expropriated property, if the expropriation user within 3 years from the finality of this decision, has not performed, according to the nature of the building necessary works on that building. Paragraph 5 of this article stipulates that after 10 years from the day when such a decision has become final, no request for annulment can be submitted".*

63. Finally, the Appellate Panel of the SCSC found *"the lawsuit for annulment of this decision was first filed on 12 June 2006 with the Privatization Agency of Kosovo, which means, out of all deadlines established by law".*

64. The Court further reiterates that, in principle, the *"fairness'"* required by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is not *"substantive"* fairness, but *"procedural"* fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (see, in this regard, cases of the Court No. KI42/16 Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November, paragraph 41 and other references therein; KI118/18, Applicant *Eco Construction l.l.c.*, Resolution on Inadmissibility of 10 September 2019, paragraph 48; and KI49/19, Applicant: *Limak Kosovo International Airport J.S.C.., "Adem Jashari"*, Resolution on Inadmissibility of 8 January 2020, paragraph 55).

65. This means that the parties should be enabled to conduct proceedings based on the principle of equality of arms and adversarial proceedings; the possibility should be granted that during the various stages of the proceedings the parties present arguments and evidence that they consider relevant to the respective case; that all arguments, viewed objectively, that are relevant to the resolution of the case have been duly heard and reviewed by the courts; that the factual and legal reasons for the challenged decisions were laid down and reasoned in detail and that, according to the circumstances of the case, the proceedings, viewed in their entirety, were fair (see, *inter alia*, the case of Court KI118/17, Applicant *Şani Kervan and others*, Resolution on Inadmissibility, of 16 February 2018, paragraph 35; see also, *mutatis mutandis, Garcia Ruiz v. Spain*, cited above, paragraph 29). The Court considers that in the

circumstances of the present case, the Applicant has not argued that this is not the case.

66. Further and finally, the Court reiterates that Article 6 of the ECHR, in a judicial process, does not guarantee anyone a favorable outcome, where often one of the parties wins and the other loses (see in this regard, cases of the Court KI118/17, *Şani Kervan and others,* Resolution on Inadmissibility, paragraph 36; and KI142/15, Applicant *Habib Makiqi,* Resolution on Inadmissibility of 1 November 2016, paragraph 43).

67. As mentioned above, the Court finds that the Appellate Panel of the SCSC has complied with the requirements of Article 31 of the Constitution and Article 6 of the ECHR, enabling the Applicant and the other parties in the procedure, to present his objections regarding the case submitted before the SCSC. Furthermore, all the arguments, which were relevant to the resolution of the Applicant's case, have been duly heard and considered by the panel in question; that the factual and legal reasons for the challenged decision were presented and reasoned in detail and that the proceedings, viewed in their entirety, were not unfair and clearly arbitrary.

68. In this regard, the Court considers that there is nothing to indicate that the Appellate Panel of the SCSC has "*applied the law in a manifestly erroneous manner",* which application could have resulted in "*arbitrary conclusions*" or "*manifestly unreasoned*" to the Applicant.

ii. Regarding the allegation of violation of the property rights

69. With regard to the Applicant's allegation of violation of the right to property, the Court notes that the Applicant also relates this allegation to the manner of application of the law, OG. No. 21/1978, which was in force at the time of the expropriation of the disputed immovable property.

70. In addition, the Applicant alleges that *"The law on expropriation provides that such a claim can not be filed after the expiration of 10 years, it is wrong because it legitimizes the arbitrary deprivation of the owner of the property and the constitutional provisions by which the right to property is guaranteed".*

71. The Court first recalls the content of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, which in relation to property rights establish:

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.
[...]"

ECHR
Protocol no. 1 of Article 1 [Protection of proprety]

"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

72. As it pertains to the rights guaranteed and protected by Article 46 of the Constitution, the Court first notes that the right to property under paragraph 1 Article 46 of the Constitution guarantees the right to own property; paragraph 2 of Article 46 of the Constitution defines the method of use of the property, by clearly specifying that it's use is regulated by law and in accordance with the public interest and in paragraph 3 of Article 46 of the Constitution, it guarantees that no one can be deprived of property in an arbitrary manner, while also determining the conditions under which property can be expropriated. (see, *mutatis mutandis*, case KI50/16, Applicant *Veli Berisha and others*, Resolution on Inadmissibility of 10 March 2017, paragraph 31).

73. As to the rights guaranteed and protected by Article 1 of Protocol No. 1 of the ECHR, the Court notes that the Article 1 of Protocol No. 1 of the ECHR comprises three distinct and interrelated rules: the first rule, enounces the principle of peaceful enjoyment of property; the second rule covers deprivation of possessions and subjects it to certain conditions; and the third rule recognizes that 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*, ECtHR cases: *Sporrong and Lonnrot v. Sweden*, Judgment of 23 September 1982, appeal no. 7151/75; 7152/75, paragraph 61; *James, Wells and Lee v. the United Kingdom*, complaints no. 25119/09, 57715/09 and 57877/09, 18 September 2012; *Sargsyan v. Azerbaijan*, complaint no. 40167/06, 16 June 2015; and *Belane Nagy v. Hungary*, complaint no. 53080/13, dated 13 December 2016).

74. 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*, Judgment of the ECtHR of 21 February 1986, *James and others v. United Kingdom*, no. 8793/79, paragraph 37).

75. With regard to the first rule, the ECtHR has consistently found that the concept of "possessions" which is included in the first part of Article 1 of Protocol No. 1 of the ECHR is an autonomous concept, encompassing both "existing possessions" and claimed possessions, in respect of which an applicant may argue that he or 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.

76. The autonomous concept of "possessions" referred to 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 physical goods from the formal classification in domestic law: certain other rights and interests constituting "assets" can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. In each case the issue that needs to be examined 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], paragraph 62; *Anheuser-Busch Inc. v. Portugal* [GC], paragraph 63; *Öneryıldız v. Turkey* [GC], paragraph 124; *Broniowski v. Poland* [GC], paragraph 129; *Beyeler v. Italy* [GC], paragraph 100; *Iatridis v. Greece* [GC], paragraph 54; *Centro Europa 7 SRL and di Stefano v. Italy* [GC], paragraph 171; *Fabris v. France*[GC], paragraphs 49 and 51; *Parrillo v. Italy* [GC], paragraph 211; *Béláné Nagy v. Hungary* [GC], paragraph 76).

77. 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 case law of the ECtHR. On the other hand, "legitimate expectations" can result in "possessions". Although Article 1 of Protocol No. 1 of the ECHR applies only to a person's existing property and does not create the right to acquire property. In certain circumstances, a "legitimate expectation" of acquiring a property may also enjoy the protection of Article 1 of Protocol No. 1. 1 of the ECHR. (See ECtHR Judgment of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, paras. 73 and 75, ECtHR Judgment of 22 June 2004, *Broniowski v. Poland*, no. 34443/96, para. 129).

78. In order for an "expectation" to be "legitimate", it must be of a more concrete nature than merely a hope and be based on a legal provision or legal act such as a court decision, which is in the interest of the property in question (see, *Kopecký v. Slovakia* [GC], paras. 49-50; *Centro Europa 7 SRL and di Stefano v. Italy* [GC], para. 173; *Saghinadze and others v. Georgia*, para. 103; *Ceni v. Italy*, para. 39 ; and *Béláné Nagy v. Hungary* [GC], para 75). Otherwise, no "*legitimate expectation*" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and where the Applicant's 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* [GC], paragraph 173; *Béláné Nagy v. Hungary* [GC], paragraph 75; *Karachalios v. Greece* (dec), paragraph 46; *Radomilja and Others v. Croatia* [GC], paragraph 149).

Application of general principles in the circumstances of the present case

79. The Court first recalls that it found no violation of the right to a fair trial with regard to the Applicant's allegations of erroneous and arbitrary application of the applicable law. The Court, based on the general principles of the right to property and after analyzing the allegations of the Applicant regarding the violation of this right, notes that the aforementioned principles are not applicable in the case of the Applicant, for the reasons that it will furthert elaborate.

80. The Court notes that the Applicant's appeals/requests were rejected by the SCSC panels for purely procedural reasons, because the Applicant did not use the opportunity to challenge the decision [no. 03-465-5] of the MA of Ferizaj, of 26 April 1982 within the legal deadlines, by which the disputed immovable property was expropriated (expropriated) by the MA of Ferizaj and did not even file a claim with the SCSC for fair compensation, to benefit from the liquidation of the SOE Eurometal-Ferizaj (see, paragraph 28 of this document).

81. In this regard, the Court notes that the SCSC Specialized Panel noted that: "*Without eliminating the legal effects of the expropriation decision taken in 1982, the complainant cannot be considered the owner of the immovable property and consequently he is not able to claim the return of the immovable property which was taken from him by this decision*". This conclusion was also accepted by the Appellate Panel of the SCSC.

82. From the above, the Court finds that in the circumstances of the present case we are not dealing with a property right acquired by a final court decision nor with a legitimate expectation, because the Applicant does not have an affirmative right, by which he proves and substantiates that he enjoys the right for returning the right to the disputed immovable property. Moreover all his requests for de-expropriation and return to possession of the disputed immovable property were unsuccessful (see, similarly, ECtHR case *Kopecký v. Slovakia* [GC], principle set out in paragraph 52). In this circumstance, the Applicant cannot allege a violation of his property rights, as long as the SCSC Panels, in his case, considered only the procedural aspects of his complaint/claim, regarding the requests for de-expropriation and return in possession of the disputed immovable property.

83. In this context, the Court recalls that it itself cannot become a court of fact, and decide on the return of possession of an expropriated property or the confirmation of ownership, because such a jurisdiction, as a rule, belongs to the regular courts. Furthermore, no court decision confirms that the Decision [no.03-465-5] of the MA of Ferizaj, of 26 April 1982, by which the expropriation of the disputed immovable property was done, was annulled or declared invalid. The Court recalls that it can interfere only when the Applicants have been recognized the right of ownership by a final court decision or by law and the implementation of an acquired right has not been applied in practice. (see, above, the general principles in paragraph 77 of this document).

84. Therefore, the Court notes that the Applicant is merely dissatisfied with the outcome of the proceedings before the regular courts, therefore, his dissatisfaction cannot in itself raise an arguable claim of violation of the

fundamental rights and freedoms guaranteed by the Constitution (see, case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

85. In this context, the Court finds that the Applicant's allegation of violation of the right to property is manifestly ill-founded based on the reasons above.

Conclusion

86. In sum, the Court, based on the standards established in its case law and the case law of the ECtHR, finds that the Applicant has not in any way proved and sufficiently substantiated his allegations of violation of the rights guaranteed by 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.

87. Therefore, the Applicant's Referral on constitutional basis is manifestly ill-founded, therefore in accordance with Rule 39 (2) of the Rules of Procedure, it must be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 25 March 2021, 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