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

Prishtina, on 14 June 2021
Ref. no.:RK 1808/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI131/20

Applicant

Arjana Syla

Constitutional review of
Decision Rev. 351/2019 of the Supreme Court of 25 June 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 Arjana Syla from Prishtina, represented by Xhemajl Syla from Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Rev. 351/2019] of 25 June 2020 of the Supreme Court of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter of this Referral is the constitutional review of the challenged Decision, 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).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 59 [Types of Decisions] 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 September 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 24 September 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

7. On 28 September 2020, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 6 October 2020, the Applicant's representative submitted the power of attorney to the Court.

9. On 5 May 2021, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of the facts

10. The Applicant submitted the Referral for the second time to the Court regarding her case, challenging various decisions of regular courts. Before she had submitted Referral with no. KI121/11, whereby she challenged Judgment Rev. 134/2010 of the Supreme Court of Kosovo, of 17 May 2011. The Court will

present the factual situation separately for each case individually, that is: KI121/11 and KI131/20.

Summary of facts regarding Referral KI121/11

11. The contested property, the basement apartment with 73.58 m2 surface area, was given in use to Xh. J. , at that time an employee of the United Labor Organization "Television of Prishtina", through the contract no. 01-2218, of 10 April 1979.

12. Then, on 8 October 1979, Xh. J. signed the contract no. 1193/9287 with the BVI for Housing and Business area in Prishtina, for the permanent use of the apartment, along with his wife who was also an employee of "Television of Prishtina".

13. In 1994, after the expulsion from work, Xh. J. and his wife were expelled even from the apartment.

14. On 15 February 1994, the Secretariat for Urbanism and Housing issues of the Assembly of Prishtina, by decision no. 360-389, gives the mentioned apartment in permanent use to N.V.

15. On 14 May 1997, N.V., who at that time worked in the Municipal Court signed a contract no. 287/1 with the Public Housing Enterprise in Prishtina on leasing of the aforementioned apartment.

16. On 26 March 1999, N.V. signed the purchase contract Vr. No. 107/99, for the aforementioned apartment, and since that time appears as the owner of the apartment.

17. On 28 April 2005, the spouse of Applicant F. S. (now deceased) has signed a purchase contract with N.V. by paying 50.000 € (fifty thousand euro). This contract is certified in the Municipal Court in Prishtina under Vr. No. 4424/2005

18. Meanwhile, at the Housing and Property Directorate- HABITAT, were submitted three requests for review concerning the contested apartment: the one from Xh. J. under no. DS008127, from N. V. no. DS 00419 and from D. P. with no. DS 603193.

19. On 30 April 2005, the HPD by the decision [HPCC/D/181/2005/A & C], the person Xh.J., whose claim was qualified as a claim of category "A", is recognized the right to reside in the apartment and the same is returned to him, while the claims of N.V. and D.P. qualified as Category "C" claims including F.S. claims relating to this apartment were rejected.

20. After the final decision of the Commission, Xh. J. requested repossession of property, and officials of the Housing Property Directorate- HABITAT, on 7 May 2007, have released the property from people and households, while on 8 May 2007, the apartment keys were handed over to Mr. Xh. J. and thereafter

the Housing Property Directorate- HABITAT had closed all the three claims: DS000419, DS008127 and DS6031 thus ending its jurisdiction over this matter.

21. On an unspecified date, the person F.S. (the Applicant's deceased spouse) filed a claim with the Municipal Court in Prishtina (hereinafter: the Municipal Court) against the person XH.J., requesting that the respondent be obliged to vacate the disputed apartment from all people and the items and hand it over to the claimant, alleging that he was the owner on the basis of the sale-purchase contract (Vr. No. 4424/2005) of 22 June 2005.

22. On 28 May 2009, the Municipal Court by the Judgment [C. No. 1185/2007] rejected as ungrounded the claim of the claimant F.S., whereby it requested to oblige the respondent XH.J. to vacate the apartment from people and property and hand it over to the claimant.

23. Against the Judgment of the Municipal Court [C. No. 1185/2007], F.S. filed an appeal with the District Court in Prishtina (hereinafter: the District Court), proposing that the appealing judgment be modified or quashed and that the case be remanded to the first instance court for retrial.

24. On 4 March 2010, the District Court by the Judgment [Ac. No. 1412/2009] (i) approved the appeal of claimant F.S. as grounded; (ii) modified the Judgment of the Municipal Court [C. No. 1185/2007] of 28 May 2009; (iii) obliged the respondent XH.J. to vacate it from people and items and to hand over to the claimant the two-room apartment-basement which is located in Prishtina in the neighborhood "Ulpiana" C-2/1 in a surface area of 52.00 m².

25. On an unspecified date, the person XH.J. filed revision against the Judgment of the District Court with the Supreme Court, on the grounds of essential violations of the provisions of the contested procedure and erroneous application of the substantive law, with the proposal that the judgment of the second instance court be modified, so that the claim be dismissed as inadmissible.

26. On 17 May 2011, the Supreme Court by the Judgment [Rev. No. 134/2010] approved the request for revision as grounded, deciding to modify the Judgment [Ac. No. 1412/2009] of 4 March 2010 of the District Court, while the Judgment [C. No. 1185/2007] of 28 May 2009 of the Municipal Court was upheld. Among other things the Supreme Court emphasized:

> *"According to the assessment of the Supreme Court, the legal position of the first instance court is fair and based on law, because the decision of the Council of Employees of the OBPB "Television of Prishtina" approved on 2.10.1973, on the basis of which the respondent has entered into a contract for its use with the relevant BVI, has never been annulled by any eventual act or eventual procedure, therefore as such remains with full legal effect. HABITAT has also recognized the right to use the respondent in the subject apartment according to his request no. DS 008127 with the decision of the Commission for property-housing issues no. HPCC/D/181/2005/A."*
>
> Stating further that:

"Article 37 of the Law on Legal-Property Relations, stipulates that the owner may request by a lawsuit from the holder the return of the specified item individually. The owner must prove that he has the right of ownership over the item which return he requests and that the item is under the factual possession of the claimant, therefore the judgment of the second instance court was modified due to erroneous application of the substantive law, so that the judgment of the first instance court remained in force which correctly applied the substantive law when it found that the claimant's claim is ungrounded".

27. On 13 September 2011, the Applicant submitted Referral KI121/11 to the Court requesting the constitutional review of Judgment Rev. No. 134/2010 of the Supreme Court of Kosovo, of 17 May 2011.

28. On 18 October 2012, the Court rendered the Resolution on Inadmissibility in case KI121/11, whereby it declared the Applicant's Referral inadmissible.

Summary of facts regarding current Referral KI131/20

29. XH.J in inability to use the apartment, where the right to the apartment was recognized by the decision of the HPD [HPCC/D/181/2005/A&C] of 30 April 2005, and based on this decision the claimant XH.J. had also entered into a contract for the purchase of a subject apartment with the Privatization Agency of Kosovo, filed a claim with the Basic Court in Prishtina (hereinafter: the Basic Court) against the Applicant (the widow of person F.S.) with the request that: (i) the immovable property - the apartment in Prishtina, Ulpiana neighborhood be handed over to the claimant and vacated from the people and items; (ii) to oblige the Applicant to compensate the material damage from the inability to use the apartment; (iii) that the contract on the sale-purchase of immovable property –apartment, entered into between N.V. as a seller and F.S. as a buyer, be declared null and to not produce legal effect in the future.

30. The Applicant filed a counter-statement of claim with the Basic Court, against the person XH.J. and requested to be confirmed that she is the owner of the apartment in question.

31. On 11 July 2014, the Basic Court by the Judgment [C. No. 2136/11]: (i) partially approved the statement of claim of the claimant XH.J. as follows: (ii) obliged the Applicant and NTP "LedriCollection" in Prishtina, to hand over to the claimant and vacate from people and items, the immovable property in Prishtina neighborhood Ulpiana, C-2, entrance 1 apartment no. 17-basement; (iii) the Applicant was obliged to compensate the claimant XH.J. for the material damage from the impossibility of using the apartment for the period from 24.09.2008 to 31.07.2014 in the amount of 49.215.04 euro, while in the future from 01.08.2014, onwards until the apartment is handed over, for each month to pay 650 (six hundred and fifty) euro, interest from the date of receiving the judgment, according to the funds deposited in the banks over one year, as well as both respondents to pay the costs of the proceedings; (iv) rejected as ungrounded the remainder of the claim of claimant XH.J., by which he requested to establish that the contract on the sale - purchase of immovable

property- for the purchase of the apartment entered into between N.V. as a seller and F.S. as a buyer certified in the Municipal Court in Prishtina, no. Vr. 4424/2005, of 22.06.2005 with the ownership certificate of the unit 0-71714059-07435-1-Bl = 0, CZ Prishtina, cadastral office in Prishtina with all the effects they have produced so far are null and void and as such will not produce legal effect in the future; (v) rejected as ungrounded the counter-statement of claim of the Applicant who had requested to be proved that she is the owner of the apartment in question.

32. Against the Judgment [C. No. 2136/11] of 11 July 2014 of the Basic Court, an appeal was filed by: (i) the Applicant on the grounds of essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, erroneous application of the substantive law, and proposed that the judgment of the first instance court in the approving and binding part as under I, II and IV of the enacting clause be modified, and her claim be approved and the case be remanded for retrial; (ii) claimant XH.J. who challenged the judgment under point III of the enacting clause, on the grounds of essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, and erroneous application of the substantive law, with the proposal to approve the appeal as grounded, while the challenged judgment be modified.

33. On 22 July 2019, the Court of Appeals by the Judgment [Ac. No. 4715/2014]: (i) approved the appeal of the claimant XH.J., and quashed part III of Judgment C. No. 2136/2011 of 11 July 2014 of the Basic Court, which has to do with the rejection as ungrounded of the rest of the statement of claim of the claimant whereby he sought to be confirmed that the contract on the sale-purchase of the immovable - for the purchase of the apartment concluded between N.V. as a seller and F.S. as a buyer certified in the Municipal Court in Prishtina, no. Vr. 4424/2005, of 22.06.2005 with the ownership certificate of the unit 0-71714059-07435-1-Bl = 0, CZ Prishtina, cadastral office in Prishtina with all the effects they have produced so far are null and void and as such will not produce legal effect in the future, and in this part the case is remanded to the first instance court for retrial; and (ii) rejected the appeal of the Applicant and of NTP "LedriCollection" XH.S as ungrounded.

34. Against the Judgment of the Court of Appeals, the Applicant filed a revision with the Supreme Court, on the grounds of essential violations of the provisions of the contested procedure and erroneous application of the substantive law, with a proposal to quash the judgments of the lower instance courts and the case be remanded to the first instance court for retrial.

35. On 25 June 2020, the Supreme Court by the Judgment [Rev. No. 351/2019] rejected the Applicant's revision filed against Judgment Ac. No. 4715/2014 of the Court of Appeals of 22 July 2019 as ungrounded.

Applicant's allegations

36. The Applicant challenges Judgment [Rev. 351/2019] of 25 June 2020 of the Supreme Court, alleging that the latter was found in violation of her fundamental rights and freedoms 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.

37. The Applicant alleges that the regular courts, by not approving her claim, violated the equality before the law guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, because in the reasoning of the judgments of the regular courts no comprehensible reasons are presented, and that the reasons presented are contradictory, and according to her, the courts have adjudicated an adjudicated matter.

38. The Applicant further states that the Supreme Court, by not properly reviewing her revision, violated the provisions of the Constitution and the ECHR. The Applicant further states that "*the contract for the sale-purchase of the immovable property on the basis of which the deceased spouse F.S. as owner has entered into possession and use of this immovable property on the basis of the sale-purchase contract which has not yet been annulled as invalid, therefore, until this contract is annulled by final judgment in accordance with the provisions of Article 20 paragraph 1 in conjunction with Article 3 paragraph 1 of the Law on Basic Legal Property Relations, which was a law applicable in Kosovo at the time of entering into the contract, this contract is legally valid and creates legal effects between the contracting parties*".

39. The Applicant states that in accordance with the case law of the ECtHR, when considering a disputed case, the court decision must have a comprehensible reasoning in accordance with the standards of the right to a fair trial. She further states that "*the reasoning of the court decision is understandable only when the facts of crucial importance for a fair and legal trial as well as the circumstances of the present case are justified, and the reasons presented for each contested fact must be in full accordance with the true content of the evidence examined, the enacting clause and the reasoning of the court decisions must be comprehensible, with full and suitable reasoning for enforcement-execution, namely as such they must not be unclear and unsuitable for enforcement*". In this regard, the Applicant states that the enacting clause of the Judgment of the Supreme Court is incomprehensible because it is not known in which part of the enacting clause the judgment of the Court of Appeals and the Basic Court was upheld. The Applicant refers to the case of the ECtHR *Van De Hurk v. the Netherlands*.

40. Finally, the Applicant requests the Court to: (i) approve her Referral as grounded; (ii) to find violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR; and (iii) to annul the judgments of the regular courts and declare them invalid.

Admissibility of the Referral

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

42. The Court recalls that the Applicant has submitted two Referrals to the Court regarding the same issue. The first Referral KI121/11 was declared inadmissible through the Resolution on Inadmissibility in case KI121/11.

43. With respect to the present Referral KI131/20, where the Applicant challenges Judgment [Rev. No. 351/2019] of 25 June 2020 of the Supreme Court, the Court will be limited only to the assessment of regular court decisions related to Referral KI131/20.

44. In this respect, the Court initially refers to Articles 113.1 and 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

Article 113

"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."

45. The Court further 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 [...]

46. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; challenges an act of a public authority, namely the Judgment [Rev. 351/2019] of 25 June 2020 of the Supreme Court; has clarified the rights and freedoms she claims to have been violated; has exhausted all legal remedies provided by law, and has submitted the referral within the legal deadline.

47. However, in addition to these criteria, the Court must also examine whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) stipulates that:

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

48. The Court notes that, in essence, all allegations of the Applicant are mainly related to violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. In this regard, the Applicant complains that in her case the regular courts have erroneously determined the facts, and have not sufficiently reasoned their decisions.

49. With regard to these allegations, the Court first notes that as a general rule, the allegations of erroneous determination of factual situation and erroneous interpretation of the law, allegedly made by the regular courts, are related to the scope of legality and, as such, do not fall under the jurisdiction of the Court, therefore, in principle, the Court cannot consider them (See, the case of 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 KI49/19 Applicant *Limak Kosovo International Airport J.S.C. "Adem Jashari"* , Resolution on Inadmissibility of 10 October 2019, paragraph 47).

50. The Court has consistently reiterated that it is not its duty to deal with errors of fact and law allegedly committed by the regular courts (*legality*), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (*constitutionality*). The Constitutional Court may not itself assess the reason which has led a regular court to adopt one decision rather than another. If it were otherwise, the Constitutional 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, case of the ECtHR, *Garcia Ruiz v. Spain,* Judgment of 21 January 1999, paragraph 28; and see, also, cases of the Court: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 29; KI06/17, cited above, paragraph 37; KI122/16, cited above, paragraph 57; and KI49/16, cited above, paragraph 48).

51. The Court has consistently held this view, based on the case law of the ECtHR, and has clearly stated 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 case of the ECtHR, *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 KI49/19, cited above, paragraph 49).

52. The Court, however, emphasizes that the case law of the ECtHR and of the Court also determine circumstances under which exceptions to this stance should be made. The ECtHR states that while the domestic authorities, namely the courts, have primary duty to resolve problems relating to the interpretation of legislation, the role of the Court is to ensure or verify that the effects of this interpretation are in compliance with the Constitution and the ECHR (see the ECtHR case, *Miragall Escolano et al. v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

53. Therefore, although the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take action when it observes that a regular court has "*applied the law manifestly erroneously*", in a particular case and which may have resulted in "*arbitrary conclusions*" or "*manifestly unreasoned*" for the Applicant (as to the basic principles regarding manifestly erroneous interpretation and application of the law see, *inter alia*, the case of Court KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and limited liability company "Barbas",* Resolution on Inadmissibility, of 28 August 2019, paragraphs 60 to 65 and references used therein).

54. In the present case, the Court notes that in the circumstances of the present case, the essential issue relates to the Applicant's allegation in respect of the apartment which she claims belongs to her, pursuant to the contract of sale-purchase which her deceased husband F.S. as a buyer has concluded with N.V. as a seller. The apartment in question was in property dispute between N.V. and Xh.J., where the ownership of the apartment in question was acquired by the person Xh.J. pursuant to the decision of the HPD [HPCC/D/181/2005/A&C] of 30 April 2005, and with this decision the parties were notified, so that the right to the apartment was recognized to the claimant XH.J., while based on of this decision the contract for the purchase of the apartment where the seller is the Privatization Agency of Kosovo and the buyer is XH.J. is concluded, on 14 May 2014, it is confirmed that the claimant XH.J. after he was recognized the right to the apartment, was enabled to purchase the apartment and thus he became the owner of the apartment in question. The regular courts have decided that the apartment belongs to the person Xh.J. based on the decision of the HPD, which decision is final and that the decisions of the HPCC are not subject to review by any court.

55. Furthermore, the Court notes that the regular courts addressed all of the Applicant's allegations, and reasoned their decisions based on the facts and evidence relevant to the case.

56. With respect to the Applicant's allegations, the Basic Court, by its Judgment [C. No. 2136/11] of 11 July 2014, among others, stated:

> *"The Court, after determination of this factual situation, considers that the decision of the HPCC (Property and Housing Directorate) REC 76/2006,*

dated 16 October 2006, by which the request for reconsideration submitted by Mr. Syla, is rejected and the decision of the first instance HPCC/D, 181/2005, A&C of 30 April 2005 remains in force and with this decision the parties were notified, so that the right of apartment was recognized to the claimant XH.J, while based on this decision the contract has been concluded for the purchase of the apartment in question, where the seller is the Privatization Agency of Kosovo and the buyer is XH.J, on 14.05.2014, it is confirmed that the claimant, after being recognized the right to the apartment, was also enabled to purchase the apartment, so according to the assessment of the first instance court, he also became the owner of the apartment in question. The court finds that the decision of the HPCC of 30 April, 2005 is a formal legal act because it is final, from the moment it was upheld, by the decision of 16 October 2006, and is a substantive legal act because the claimant has been recognized the right to the apartment, so the HPCC decisions are decisions that are not subject to the assessment of this court and are binding on this court.

The court finds that the HPCC when rendering its decision, on 30 April 2005, recognized the right of apartment to the claimant, and this circumstance was notified to the seller, as well as the now deceased buyer F.S., with the conclusion of the contract certified in the Municipal Court in Prishtina, number Vr. 4424/2005, dated 22.06.2005, almost two months after the decision of the HPCC, have endangered themselves and both contracting parties are parties in bad faith. This court does not have the legal authority to assess the legality of the decision of 30 April 2005, but in this case according to the assessment of this court, the decision in question is final and binding on the parties who had a request and on the parties who have entered into a contract after this date. Thus, the court considers that the decision of the HPCC is binding on this court as well, and this decision is a material legal act, because it recognizes the right of possession to the claimant XH.J, and based on this act the claimant has purchased the apartment from the PAK, therefore, due to these circumstances, this court considers that there is no legal basis for the claim against the claimant regarding the acquisition of property according to the strongest legal basis, within the meaning of Article 41 of the LBPR, and therefore rejected the claim of claimant A.S."

57. Addressing the same allegations, the Court of Appeals, by its Judgment [Ac. No. 4715/2014] of 22 July 2019, *inter alia*, stated:

"With a fair assessment of the evidence administered, the first instance court has convincingly and completely established the factual situation relevant to the decision in this dispute, correctly determining that the claimant is the owner of the disputed immovable property and since he is the owner, then has rightly established that the obligation of the respondents to hand over to the claimant and vacate the disputed immovable property from people and items is grounded, and has rightly obliged the first respondent A.S. to compensate the claimant for the material damage from the impossibility of using the apartment for the period from 24.09.2008 until 31.07.2014, in the amount of 49,215.04 euro, while in the future from 01.08.2014 onwards until the f the apartment is

handed over, for each month to pay 650 euro, the interest and costs of the proceedings in the amount of 1,664 euro. At the same time, this court finds that the first instance court, by correctly assessing the administered evidence has correctly determined the factual situation regarding the claim against the claimant A.S. and by correctly applying the substantive law has rightly rejected the counter-claim to prove that she is owner of the disputed immovable according to the strongest legal basis and in this regard has given sufficient reasons, which are also accepted by this court".

58. The Supreme Court by the Judgment [Rev. No. 351/2019] rejected the Applicant's revision, where among other things, it stated:

"The Supreme Court of Kosovo has assessed as ungrounded the allegations of the revision that the challenged judgment was rendered with essential violation of the provisions of the contested procedure under Article 182 (n) of the LCP, because as stated, the enacting clause of the judgment is incomprehensible and contrary to the reasons given in it and that the reasoning does not contain reasons on the decisive facts. In the assessment of this Court, the challenged judgment does not contain such violations of the procedure, because the enacting clause of the judgment contains individually determined item, the delivery of which is required and with all the records for the contested apartment, therefore the claims in the revision that there are no records of the disputed apartment are ungrounded.

The revision allegations that the first instance court rejects the claim from the respondents' counter-claim, merely for the fact that the originals of the evidence relating to the provision of the apartment were not submitted, are ungrounded because the decision of HPCC Rec. nr. 76/2006 of 16 October 2006, rejecting the request submitted by F.S. as ungrounded and the decision of the first instance HPCC D181/2005 of 30 April 2005 is upheld , by which the right of residence was recognized to the claimant, as well that HPCC decisions are decisions that are not subject to judicial review and are binding on the court pursuant to Section 2.7 of UNMIK Regulation 1999/23. Section 2.2 of UNMIK Regulation 2000/60 provides: "Any person whose property right was lost between 23 March 1989 and 24 March 1999 as a result of discrimination has a right to restitution in accordance with the present regulation. Restitution may take the form of restoration of the property right or compensation". The claimant who lost the right to use the apartment as a result of discrimination, the latter won the right to restitution by the decision of the HPCC of 30.04.2005 and based on this decision gained the right to purchase the apartment based on the Law on the Sale of Apartments in which there is tenure right (04/L-061), and any contract of sale, after the HPCC decision pursuant to Section 5.2 of UNMIK Regulation 2000/60 is invalid and has no legal force. Therefore, the allegations of the respondent that the claimant could not enter into a sale contract with the PAK are ungrounded as the apartment was registered in the name of the claimant".

59. Consequently, and as elaborated above, the Court notes that all the regular courts had concluded that the decisions of the HPCC were final and cannot be

reviewed by any other administrative or judicial instance. Regarding the same issues, the Court has decided in other cases, where it has concluded that the decisions of the HPCC are final decisions - *res judicata* (see Cases of the Court: KI104/10, Applicant *Draža Arsić*, Judgment of 23 April 2012; KI44/20, KI83/20 and KI102/20, Applicant *Besnik Kavaja*, Resolution on Inadmissibility of 22 February 2021, paragraph 83).

60. Therefore, the Court notes that one of the fundamental principles of the rule of law in a democratic society is the principle of legal certainty. Particularly, this applies to the judicial decisions that have become *res judicata*. No party is entitled to seek for a review, revocation, reconsideration or the abrogation of a final and binding decision merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, *mutatis mutandis*, case *Sovtransavto Holding v. Ukraine*, no. 48553/99, paragraph 72, ECtHR 2002-VII, si dhe *Ryabykh v. Russia*, no. 52854/99, § 52, ECtHR 2003-IX).

61. In fact, the Court considers that the review, revocation, reconsideration or abrogation of a final and binding decision would lead to a general legal uncertainty, which would be contrary to the fundamental principles of the rule of law. In other words, the reversal of final decisions would result in a general climate of legal uncertainty which would make the legal order completely ineffective. As a result, public confidence in the judiciary and the rule of law itself would be significantly reduced.

62. In light of the above, the Court considers that the regular courts addressed and reasoned in their entirety the allegations of the Applicant and that the proceedings before the regular courts, in their entirety, do not result in any way to have been unfair or arbitrary.

63. In this respect, in order to avoid misunderstanding among the applicants, it must be borne in mind that the "*fairness*" required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not a "*substantive*" but rather a "*procedural*" fairness. This translates in practical terms and in principle, into adversarial proceedings, in which parties are heard and placed on an equal footing before the Court (see, in this regard, cases of the Court KI42/16 Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and other references therein; and KI49/19, cited above, paragraph 55).

64. The Court also reiterates that Article 31 of Constitution in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Court, to challenge the application of substantive law by the regular courts of a civil dispute, where often one of the parties wins and the other loses (see, cases of the Court KI118/17 Applicant *Şani Kervan and others,* Resolution on Inadmissibility of 17 January 2018, paragraph 36; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility of 19 December 2019, paragraph 48).

65. Therefore in these circumstances, based on the above and taking into account the allegation raised by the Applicant and the facts presented by her, the Court, relying also on the standards set in its case law in similar cases and case law of

the ECtHR, finds that the Applicant does not prove and does not sufficiently substantiate her allegation of violation of fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

66. In line with its consolidated case law, the Court further notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts, namely with the decisions of the Supreme Court, the Court of Appeals and the Basic Court, or mere mentioning of the Articles of the Constitution, cannot of itself raise an arguable claim of constitutional violation. When alleging such violations of the Constitution, the Applicants should provide substantiated allegations and convincing arguments (See, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; and see also, case Kl56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 42).

67. Therefore, the Court considers that the Applicant has not substantiated the allegations that the relevant proceedings were in any way unfair or arbitrary, and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR.

68. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 5 May 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**
Selvete Gërxhaliu-Krasniqi	Arta Rama-Hajrizi