



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

Prishtina, on 27 May 2021  
Ref.No:RK 1788/21

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI183/20**

Applicant

Naser Husaj

**Constitutional review of Decision AC. no. 4568/17 of the Court of Appeals, of 18 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 Naser Husaj, residing in Peja (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Decision AC.no.4568/17 of the Court of Appeals, of 18 June 2020, which was served on him on 31 August 2020.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Decision, AC. no. 4568/17 of 18 June 2020, which as alleged by the Applicant has violated his rights, guaranteed by Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution of Republic of Kosovo (hereinafter: the Constitution).

## **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 (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 16 December 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 30 December 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding) Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
7. On 11 January 2021, the Court notified the Applicant about the registration of the Referral. A copy of the Referral was sent to the Court of Appeals, pursuant to the Law.
8. On 18 January 2021, the Court requested from the Basic Court in Peja information regarding the date of receipt of the challenged Decision by the Applicant.
9. On 26 January 2021, the Basic Court in Peja informed the Court that the challenged Decision was served on the Applicant on 31 August 2020.
10. On 27 January 2021, the Applicant submitted additional information to the Court.
11. On 13 April 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## Summary of facts

### *Introduction*

12. The Applicant, in his capacity as Applicant, is submitting a Referral to the Court for the fifth time. Previously he had submitted the Referrals KI22/16, KI128 /17, KI146 /19, KI08 /20, KI178 /20. However, in the current Referral KI183 / 20, the subject matter of challenge is the Decision AC.no.456/17 of the Court of Appeals, of 18 June 2020, which has not been a subject to review in the above Referrals.

### *The course of the court proceedings*

13. On 6 July 2006, the claimants S.S. and N.SH., from Peja, filed a claim with the Municipal Court in Peja against the Applicant, due to obstruction of the peaceful possession of the immovable property, respectively the basement space, in an area of 16 m2 (square meters), in the building which is built on the cadastral parcel no. 245/14-1610-CZ in Peja, the immovable property is located at the former "Mosha Pijade", now "Bill Clinton" street, entrance III, no. 21/9.
14. On 5 September 2013, the Basic Court in Peja issued Decision C. no. 526/06, whereby it approved the claim of the claimants S.S and N. Sh. from Peja and confirmed that the Applicant has obstructed the claimants in the peaceful use of the immovable property in question.
15. The Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court in Peja, due to incomplete determination of the factual situation and erroneous application of the substantive and procedural law.
16. On 12 March 2014, the Court of Appeals, by Decision AC. no. 3152/13, quashed the Decision C. no. 526/06 of the Basic Court in Peja, of 5 September 2013, by remanding it for retrial. In this case, the Court of Appeals instructed the court of the first instance to visit the scene and verify which one is the basement no.9 (nine), where the alleged obstruction of possession has taken place, adding that the verification should be carried out in the presence of witnesses or with the engagement of the relevant expert.
17. On 21 May 2015, the Basic Court in Peja, by deciding in the re-proceedings issued Decision C. no. 368/14, whereby it approved the claim of the claimants S.S. and N. Sh. from Peja and confirmed that they were prevented by the Applicant from using the immovable property in question in a peaceful manner.
18. The Applicant had filed an appeal with the Court of Appeals against this decision, due to incomplete determination of the factual situation, essential violation of the provisions of the contested procedure and erroneous application of the substantive and procedural law.
19. On 25 January 2016, the Court of Appeals, deciding on the Applicant's appeal, issued Decision Ac.no.255/15, whereby it approved the Applicant's appeal and

quashed the Decision of the Basic Court in Peja, of 21 May 2015, by finding that the court of the first instance did not comply with the findings of this court in Decision Ac. no. 3152/13 of 12 March 2014.

20. On 8 February 2017, the claimant N. Sh. had specified his claim filed on 6 July 2006.
21. On 14 September 2017, in the third repeated procedure, the Basic Court in Peja, by Decision C. no. 175/16 approved the claim of the claimant N. Sh. from Peja, and confirmed that the Applicant has prevented him from using the above-mentioned immovable property peacefully and factually, by demolishing the inner walls of the basement in order to turn it into a business premise. The Applicant, in this case, was obliged to pay to the claimant the costs of the proceedings in the amount of 3,174.00 Euros, once the Decision would become final.
22. On 12 October 2017, the Applicant filed an appeal with the Court of Appeals, against the Decision of the Basic Court in Peja, of 14 September 2017, due to incomplete determination of the factual situation, essential violation of the provisions of the contested procedure and erroneous application of the substantive law.
23. On 18 June 2020, the Court of Appeals, by the challenged Decision Ac. no. 4568/2017, rejected the Applicant's appeal as ungrounded and upheld the Decision of the Basic Court C.no.175/16, of 14 September 2017, with the following reasoning:

*“After having looked into the case file and reviewed the proceedings conducted by the court of the first instance, the Court of Appeals has found that the court has acted in accordance with the remarks given by the Court of Appeals in the decision Ac. no. 2555/15, of 25.01.2016, whereby the case was remanded for retrial to the court of the first instance. The first reason for remanding the case is the first instance court's action in non-compliance with the legal provisions, by having examined the right of ownership over the disputable property, even though in fact no claim for confirmation of ownership had been filed, as the claim was filed for obstruction of possession, in accordance with the Law on Basic Property Relations (LBPR), as well as the Law on Contested Procedure. As stated by the Court of Appeals in the abovementioned rendered Decision, Article 480 of the LCP states that: “Contentious procedures because of possession refusal charge has its limits only in the verification of the latest evidences and what kind of refusal is done. Exempt is the possibility on the examination of the property right, legal base, consciousness or unconsciousness of the possession”. Pursuant to what is stipulated by this provision, the court of the first instance, having received the case under review, has reviewed and established the last situation of possession and obstruction made, wherefore also all other claims of the respondent party regarding the case that go beyond the limits stipulated in Article 480 of the LCP, as above are rejected as unsustainable. Consequently, the Court of Appeals found that the court of the first instance had correctly and lawfully*

*decided on this contested matter, by strictly applying the provisions of Articles 75 and 77 of the Law on Basic Property Relations (LBPR) of 1980, which were in force at the time of the creation of the legal relationship, but also of Articles 113.2 in conjunction with Article 114 of the Law on Property and Other Real Rights (LPORR) which is currently in force.*

*The deficiencies of the decision quashed by the Court of Appeals, through the abovementioned decision, were eliminated in accordance with the remarks of the latter by the court of the first instance on the occasion of assigning the geodesy expertise and visiting the scene. (...)."*

24. On 2 September 2020, the Applicant submitted a request for revision to the Supreme Court, against the decisions of the court of the first instance and the court of the second instance C.no.175/16 and Ac.no.4468/2017, due to incomplete determination of the factual situation, essential violation of the provisions of the contested procedure and erroneous application of the substantive law.
25. On 3 November 2020, the Supreme Court by Decision Rev.no. 553/2020 dismissed the Applicant's request for revision as inadmissible, with the reasoning that: *"On the basis of Article 483.4 of the Law on Contested Procedure (No.03/L-006) it is provided that no revision is allowed against decisions in disputes concerning the obstruction of possession"* Therefore by dismissing the revision as inadmissible, and upon application of Article 221, in conjunction with Article 230 of the LCP, it was decided as in the enacting clause of this decision.

### **Applicant's allegations**

26. The Applicant alleges that the challenged Decision [Ac.no.4468/17], of 18 June 2020, has violated his constitutional rights guaranteed by Articles 53 and 54 of the Constitution, emphasizing that *"The Court of the first instance in Peja by decision C.no.175/16 of 14.9.2017 failed to act in accordance with the instructions of the Decision AC-no-3152/13 of the Court of Appeals, of 12.3.2014, seeking to verify where is basement no.9 located, and it did not establish who was the last one to possess this basement. The court did not visit the scene, it is only the geodesy expert that showed up there, hence it has not been established..."*
27. Further, the Applicant adds that besides this the claimant N. Sh. did not possess authorization to file a claim to the court on behalf of the S.S. and that the court of the first instance court has not taken into consideration the testimony of the witness.
28. Finally, the Applicant requests from the Court: to declare the Decision C.no.175/2016 of the Basic Court in Peja as well the challenged Decision AC.no.4468/17 of the Court of Appeals, of 6 June 2020, invalid.

## Admissibility of the Referral

29. 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.
30. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], 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.”*

*[...]*

31. Moreover, 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 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...”*

32. As to the fulfilment of the admissibility criteria, as mentioned above, the Court considers that the Applicant is an authorized party to file a Referral under Article 113.7 of the Constitution, who is challenging an act of a public authority, namely the Decision AC.no. 4468/17 of 6 June 2020, after having exhausted all



available legal remedies. The Applicant has also clarified the fundamental rights and freedoms which he claims to have been violated by the act of the public authority and has submitted the Referral within the deadline stipulated by Article 49 of the Law.

33. However, in addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria], namely in paragraph (2) of Rule 39 of the Rules of Procedure, which provides:

*(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."*

34. The Court initially states that the above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) as well as of the Court, enables the latter to declare inadmissible referrals for reasons relating to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in paragraph (2) of Rule 39 of the Rules of Procedure.
35. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "*manifestly ill-founded*" in its entirety or only with respect to any specific claim that a referral may contain. In this regard, it is more accurate to refer to the same as "*manifestly ill-founded claims*". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of "*fourth instance*"; (ii) claims that are categorized as "*clear or apparent absence of a violation*"; (iii) "*unsubstantiated or unjustified*" claims; and finally, (iv) "*confused or far - fetched*" claims. (see, more precisely, on the concept of inadmissibility on the basis of a referral assessed as "*manifestly ill-founded*", and the specifics of the four above-mentioned categories of claims qualified as "*manifestly ill-founded*", the Practical Guide to the ECtHR on Admissibility Criteria of 31 August 2019; part III. Inadmissibility Based on the Merits; A. Manifestly ill-founded applications, paragraphs 255 to 284).
36. In the context of the assessment of the admissibility of the Referral, namely, in assessing whether the Referral is manifestly ill-founded on constitutional grounds, the Court will first recall the essence of the case contained in this Referral and the respective allegations of the Applicant, in the assessment of which the Court will apply the standards of case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution.
37. As regards the present case, the Court notes that the essence of the allegations for violation of guaranteed rights relates to Article 53 [Interpretation of Human Rights Provisions] and Article 54 [Judicial Protection of Rights] of the Constitution, which the Applicant does not further either explain or justify.

38. As regards the above violations of the rights guaranteed by Article 53 and Article 54 of the Constitution, the Court recalls that according to the established case law of the ECtHR, the Court declares the Referral inadmissible as manifestly ill-founded under criterion (iii) “*unsubstantiated or unjustified*” claims when one of the two characteristic requirements is met, respectively;
- a) when the applicant merely cites one or several provisions of the Convention or the Constitution, without explaining how they have been violated, unless this is clearly evident on the basis of the facts and circumstances of the case (See: in this regard, the ECtHR case *Trofimchuk v. Ukraine* (decision) no. 4241/03 of 31 May 2005, see also *Baillard v. France* (decision) no. 6032/04 of 25 September 2008);
  - b) when the applicant omits or refuses to produce documentary evidence whereby he would support his allegations (this applies, in particular, to the decisions of the courts or other domestic authorities), unless there are exceptional circumstances beyond his control which prevent him from doing so (for instance, when the prison authorities refuses to forward documents from a prisoner’s case file to the Court) or unless the Court itself determines otherwise (see, the case KI166/20, Applicant, *Ministry of Labour and Social Welfare*, Resolution on Inadmissibility, of 5 January 2021, paragraph 42)
39. In the present case, the Applicant only alleges the violation of Articles 53 and 54 of the Constitution, but does not justify or explain how has the violation of these Articles occurred, he alleges that his right was violated because “...*the Court of the first instance in Peja by decision C.no.175/16 of 14.9.2017 failed to act in accordance with the instructions of the Decision AC-no-3152/13 of the Court of Appeals, of 12.3. 2014, seeking to verify where is basement no.9 located, and it did not establish who was the last one to possess this basement. The court did not visit the scene, it is only the geodesy expert that showed up there, hence it has not been established...*”
40. In regard to these allegations, the Court notes that the Applicant only mentions the relevant articles, but does not further elaborate on how and why have these relevant Articles of the Constitution been violated. The Court recalls that it has consistently reiterated that the mere reference to the Articles of the Constitution and the ECHR is not sufficient to build a substantiated claim for constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, the cases of the Constitutional Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, paragraph 33; KI187/18 and KI 11/19, Applicant: *Muhamet Idrizi*, Resolution on Inadmissibility, of 29 July 2019, paragraph 73, and most recently the case KI125/19 Applicant: *Ismajl Bajgora*, Resolution on Inadmissibility, of 11 March 2020, paragraph 63).
41. Therefore, the Court finds that as regards the Applicant's allegations for violation of the rights guaranteed by Article 53 and Article 54 of the Constitution, the Court concludes that the Referral must be declared inadmissible as manifestly ill-founded, since these allegations are considered



as allegations pertaining to the category of (iii) “*unsubstantiated or unjustified*” claims because the Applicant has merely cited one or more provisions of the Convention or the Constitution, without explaining how they have been violated. Therefore, they are manifestly ill-founded on constitutional basis, as provided for by paragraph (2) of Rule 39 of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (b) of the Rules of Procedure, on 13 April 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**

Radomir Laban

Arta Rama-Hajrizi



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