



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

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Prishtina, on 8 November 2021  
Ref. no.: RK1888/21

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI117/21**

Applicant

**Shefqet Nikqi**

**Constitutional review**  
**of Judgment Rev. No. 360/2020 of the Supreme Court**  
**of 2 April 2021**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by Shefqet Nikqi, residing in Peja, represented with power of attorney by Agim Shala, a lawyer in Peja (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Judgment [Rev. No. 360/2020] of 2 April 2021 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [Ac. No. 2837/15] of 29 January 2020 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [C. No. 561/12] of 17 June 2015 of the Basic Court in Peja (hereinafter: the Basic Court).
3. The Applicant was served with the challenged Judgment of the Supreme Court on 19 April 2021.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged Judgment, whereby the Applicant alleges that his fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law]; 46 [Protection of Property] paragraph 1; and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

## **Legal basis**

5. 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 Court**

6. On 28 June 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral.
7. On 8 July 2021, the President of the Court Gresa Caka-Nimani appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 22 July 2021, the Court notified the legal representative about the registration of the Referral and requested him to submit the power of attorney for representation of the Applicant before the Constitutional Court.
9. On 5 August 2021, the Applicant's legal representative submitted the power of attorney requested by the Court.
10. On 13 August 2021, the Court submitted a copy of the Referral to the Supreme Court. On the same date, the Court sent to the Basic Court in Prishtina a

request to submit the acknowledgment of receipt, which proves the date when the Applicant was served with the challenged Judgment of the Supreme Court.

11. On 24 August 2021, the Basic Court submitted to the Court the acknowledgment of receipt, which proves that the Applicant was served with the challenged Decision of the Supreme Court on 19 April 2021.
12. On 21 October 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**

13. On 12 July 2012, the Applicant filed a claim with the Municipal Court in Peja for the return of the property occupied by J.N. and D.N. In his statement of claim, the Applicant specified that after the engagement of the surveyor in 2007, it was ascertained that the border or the defining line between the immovable property, namely the plots [320/1 and 321/1] registered in the name of the Applicant and the immovable property of the respondents is not where it is recorded in the cadastral registers but it is a few meters deep in the immovable property of the respondents on the east side of the immovable property of the Applicant. Consequently, the Applicant requested the Municipal Court in Peja to find that the respondents have usurped a part of cadastral plots no. 320/1 and 321/1 registered and evidenced in the certificate of ownership in the name of the Applicant.
14. On 24 May 2013, J.N and D.N filed a counterclaim with the Basic Court in Peja by which they requested that the Applicant's statement of claim be rejected in its entirety and that it be confirmed that J.N is the owner on the basis of the adverse possession. According to J.N and D.N the boundary line between their immovable properties and of the Applicant was determined with the consent of their distant predecessors. According to them, the registration in the cadastral registers cannot change the factual situation, which according to them, was set many years ago.
15. On 11 February 2015, the Applicant submitted the specification of his statement of claim to the Basic Court in Peja, whereby he specified that the disputed immovable property for which he filed a statement of claim covered a surface area of 1670 m<sup>2</sup>.
16. On 17 June 2015, the Basic Court in Peja, by Judgment C. No. 561/12 (i) rejected the Applicant's statement of claim as ungrounded in its entirety; (ii) approved the statement of claim of the respondent J.N as partially grounded and confirmed that J.N is the owner on the basis of adverse possession of the immovable property of 1670 m<sup>2</sup> between plot 320/1 and 320/2; (iii) rejected the statement of claim of the respondent J.N. by which he claimed to be the owner based on the holding by adverse possession of the part of plot 320/2 in a surface area of 200m<sup>2</sup> as partly ungrounded; (iv) obliged the Applicant to recognize the property right to J.N, according to item II of the enacting clause

and also to allow the registration of the property in the cadastral books; and (iv) ordered the Applicant to pay to J.N and D.N. the costs of proceedings.

17. The Basic Court in its Judgment stated that in order to fully determine the factual situation on the proposal of the parties and *ex officio* heard the witnesses, appointed a surveyor and also in the presence of the surveyor, the litigating parties and their authorized persons had also realized the site inspection. The Basic Court after assessing the evidence found that the Applicant's statement of claim is ungrounded, and consequently concluded that J.N is the owner based on the holding through adverse possession of the immovable property in a surface area of 1670 m<sup>2</sup> between plot 320/1 and 320/2. In relation to the latter, the Basic Court referred to Article 20 of the Law on Basic Property Relations of the SFRY, 1980 (hereinafter: LBPR) finding that J.N. acquired the right of ownership on the basis of good faith and the adverse possession over a period of twenty (20) years. Consequently, the Basic Court, referring to paragraphs 1 and 2 of Article 37 of the LBPR, found that the Applicant had lost the right to return the immovable property after more than twenty (20) years have passed since J.N started to hold the disputed immovable property.
18. On 10 July 2015, the Applicant filed an appeal with the Court of Appeals against the abovementioned Judgment of the Basic Court on the grounds of essential violations of the contested provisions; erroneous and incomplete determination of the factual situation and erroneous application of the substantive law. In the context of his allegation of erroneous application of the substantive law, the Applicant stated that part of his immovable property was usurped and that the respondents hold this part of the immovable property in bad faith.
19. On 29 January 2020, the Court of Appeals by Judgment [Ac. No. 2837/15] rejected as ungrounded the Applicant's appeal and upheld Judgment [C. No. 561/12] of 17 June 2015, of the Basic Court.
20. The Court of Appeals initially found that the above Judgment of the Basic Court did not contain essential violation of the provisions of the contested procedure, that the Basic Court correctly determined the factual situation and that the latter correctly applied the substantive law.
21. The Court of Appeals held that *"In the present case with the administered evidence, the continuity of possession and expiration of the necessary term for gaining ownership by adverse possession has been proven, as their predecessor but also [J.N and D.N] have held it in unimpeded possession in relation to [the Applicant] since 1973, a fact that has not been contested either by [the Applicant], until the filing of the claim of this case, the latter have not been impeded by the [Applicant]'s predecessors, therefore, the conclusion of the first instance court on the grounds of the statement of claim [J.N and D.N] is in full compliance with the substantive legal provisions, in this case the Law on Basic Legal Property Relations, Article 28, paragraph 4, and that the requirements deriving from the content of the cited provision for the acquisition of property by adverse possession in this disputed case, have been*

*completed cumulatively, therefore, the court of appeals accepts the decision of the first instance court as fair and lawful”.*

22. On 2 April 2020, the Applicant filed a revision with the Supreme Court against the abovementioned Judgment of the Court of Appeals on the grounds of essential violation of the provisions of the contested procedure and erroneous application of the substantive law. The Applicant, *inter alia*, stated that (i) the Basic Court and the Court of Appeals have applied the provisions of the law, namely LBPR, which according to him, is not applicable in the Republic of Kosovo since the entry into force of Law No. 03/L-159 on Property and Other Real Rights in 2009; and also states that (ii) *“in the present case we are not dealing with any acquisition of the ownership of the adverse possession in good faith, because in the present case there is no element of good faith. Also, the Court should have proved that in the present case the relations and family relations between the litigants may be aggravated due to the situation and the reason on which the [Applicant's] predecessor acquired the right of ownership, namely these two plots, plots no. 320/1 and 321 from the possession list no. 78 [...] have been given to the Applicant's predecessor in the name of reconciliation of (blood) entanglement”.*
23. On 2 April 2021, the Supreme Court by Judgment [Rev. No. 360/2020] rejected as ungrounded the Applicant's revision.
24. The Supreme Court initially found that the Judgments of the Basic Court and the Court of Appeals did not contain essential violation of the provisions of the contested procedure or an erroneous application of substantive law.
25. The Supreme Court also found that J.N. was in possession in good faith and unimpeded by others in the disputed immovable property for more than twenty (20) years and consequently, on the basis of the adverse possession, under paragraph 4 of Article 28 of the LBPR has acquired the right of ownership over this immovable property.
26. The Supreme Court further finds that the fact that the disputed immovable property is evidenced in the name of the Applicant does not constitute a legal basis or a way of acquiring property (*iustus titullus-modus aquirendi*).
27. Finally, the Supreme Court reasoned that in the present case the provisions of the LBPR were applied, because the civil-legal relationship between the litigating parties had been established prior to the entry into force of the Law on Property and Other Real Rights.
28. On 26 May 2021, the Applicant filed a proposal with the State Prosecutor's Office to initiate a request for protection of legality against the Judgment of the Basic Court; Judgment of the Court of Appeals and Judgment of the Supreme Court.
29. On 7 June 2021, the State Prosecutor by Notification [KMLC. No. 49/2021] notified the Applicant that in accordance with paragraph 3 of Article 245 of the LCP his proposal to initiate a request for protection of legality is inadmissible.

## **Applicant's allegations**

30. The Applicant alleges that the challenged Judgment of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law]; 46 [Protection of Property] paragraph 1; and 54 [Judicial Protection of Rights] of the Constitution.
31. With regard to Article 24 of the Constitution, the Applicant only states that *"These judgments violate the provision of Article 24 of the Constitution of the Republic of Kosovo, because I think that equality of the parties did not exist in the present case."*
32. Secondly, with regard to paragraph 1 of Article 46 of the Constitution, the Applicant alleges that *"There has also been a violation of the provision of Article 46 par. 1 of the Constitution of the Republic of Kosovo, regarding the protection of the right to property, by rejecting the right to the property where I am a legitimate and lawful owner and the property registered in my name"*.
33. Thirdly, in relation to Article 54 of the Constitution, the Applicant only states that *"There has been a [violation] of the provision of Article 54 of the Constitution of the Republic of Kosovo, regarding the judicial protection of rights, here human rights related to property have been violated"*.
34. The Applicant in the context of his abovementioned allegations also specifies that in his case Article 18 of the Law on Property and Other Real Rights has been violated, as well as paragraph 1 of Article 20 and paragraph 1 of Article 33 of the LBPR have been violated. Also, the Applicant alleges that in his case the provisions of the contested procedure have been violated, namely paragraph 2 of Article 182 of the LCP.
35. Finally, the Applicant requests the Court to find:

*"-Has the Basic Court in Peja decided correctly by Judgment C. No. 561/12 when it rejected my claim in its entirety, when I was in the occupied property when I am a legitimate and lawful owner, I had the property registered in my name as a legitimate heir and this property belongs to my predecessors as compensation for blood feud reconciliation - murder. How can the right of ownership be recognized to a person who is an usurper and possessor in bad faith of the property in question in this legal-civil dispute, when the Law on Property and Other Real Rights states in an explicit manner that the usurper-possessor in bad faith cannot become owner of the immovable property he has in possessions, and this issue has been regulated by both the previous law on LBPR and the current LPORR law.*

*- Has the Basic Court in Peja decided correctly, by its Judgment C. No. 561/12, only for the first respondent - counterclaimant [J.N], bypassing the second respondent - counterclaimant [D.M], and by not justifying at*

*all why it has not been decided in relation to the latter and what is the fate of the usurped property, has it remained in the ownership of the legitimate and lawful owner - claimant, or the usurper.*

*[...]*

*- Has the second instance court (the Court of Appeals of Kosovo) decided correctly according to the law, when it rejected my appeal and upheld in entirety the judgment of the first instance court and the Supreme Court of Kosovo, has it decided according to the law regarding the revision filed by the claimant, as well as the Office of the State Prosecutor, whether it has decided correctly regarding the Request for Protection of Legality.*

*- Is there an excess of jurisdiction by the court?*

*- By these court acts, is there an incentive to renew the murders? (This was mentioned as a sensitive case in the present case, not a threat)."*

## **Relevant constitutional and legal provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 24**

#### **[Equality Before the Law]**

*All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination. 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status. 3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

#### **Article 46**

#### **[Protection of Property]**

*1. The right to own property is guaranteed.*

*[...]*

#### **Article 54**

#### **[Judicial Protection of Rights]**

*Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.*

## **LAW ON BASIC PROPERTY RELATIONS**

**[promulgated on 30 January 1980]**

## **Article 28**

*The conscientious and legal holder of the private property, over which somebody else holds the property right, shall acquire the property right over such object through adverse possession after expiration of three years.*

*The conscientious and legal holder of the real estate, over which somebody else disposes of the property right, shall acquire the property right over such object through adverse possession after the expiration of ten years.*

*The conscientious holder of the private property, over which somebody else disposes of the property right over such object by adverse possession after expiration of ten years.*

*The conscientious holder of the real estate, over which somebody else disposes of the property right over such object by adverse possession after expiration of 20 years.*

*The heir shall become the conscientious holder from the moment of opening the inheritance even in the case when the testator was non- conscientious holder and the heir didn't know nor could have known for that, and the time for adverse possession start to run from the moment of opening the inheritance .*

## **Article 30**

*The time needed for adverse possession starts to run from the day the holder has entered into the right of possession of the object and it shall be terminated with expiration of the last day of the period needed for adverse possession.*

*In time needed for adverse possession shall also be counted the time during which the predecessors of the present holder have been holding the object conscientious and legal holders, that is conscientious holders.*

*For interruption, that is delay of the adverse possession shall accordingly be applied provisions on interruption, that is delay of the obsolete demand.*

## **Article 33**

*On the basis of the legal work the property right over a real estate shall be acquired by registration into the “public notary book” (cadastral books) or in some other appropriate way that is prescribed by law.*

## **LAW No. 03/L-154 ON PROPERTY AND OTHER REAL RIGHTS**

### **PART III OWNERSHIP CHAPTER I**

## GENERAL PROVISIONS

### Article 18 Ownership

*1. Ownership is the comprehensive right over a thing. The owner of a thing may, unless it is not contrary to the law or the rights of third parties, deal with the thing in any manner he sees fit, in particular possess and use it, dispose of it and exclude others from any interference.*

[...]

### Admissibility of the Referral

36. The Court first examines whether the admissibility requirements established by the Constitution, and further specified by the Law and the Rules of Procedure have been met.
37. 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.”*

38. 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. [...]*

39. With regard to the fulfillment of these requirements, the Court finds that the Applicant is: an authorized party; challenges an act of a public authority, namely Judgment Rev. No. 360/2020 of 2 April 2021 of the Supreme Court; has specified the rights and freedoms he claims to have been violated; has exhausted all legal remedies provided by law, and has submitted the referral within the legal deadline.
40. In addition, the Court also examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. In this regard, the Court will refer to the relevant rules of the Rules of Procedure as follows:

Rule 39  
Admissibility Criteria

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

*(...)*

*(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.*

*(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.”*

41. 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 constitute. 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 unsupported*“ claims; and finally, (iv) „*confused or farfetched*“ claims”. This the Court has also adopted in its case law the concept of inadmissibility on the basis of a claim assessed as “*manifestly ill-founded*”, and the specifics of the above four categories of claims qualified as “*manifestly ill-founded*” developed through the case law of the ECtHR, including but not limited to cases KI40/20 with Applicant *Sadik Gashi*, Resolution on Inadmissibility, of 20 January 2021; KI163/18, Applicant *Kujtim Lleshi*, Resolution on Inadmissibility, of 24 June 2020; and KI21/21, Applicant, *Asllan Meka*, Resolution on Inadmissibility, of 28 April 2021).

42. In the context of the assessment of the admissibility of the Referral, namely, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the 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 the fundamental rights and freedoms guaranteed by the Constitution.
43. In this regard, and initially, the Court recalls that the circumstances of the present case relate to the statement of claim of the Applicant filed with the Municipal Court in Peja whereby he specified that after the engagement of the surveyor in 2007, it was ascertained that the border or the boundary line between the immovable property, namely the plots [320/1 and 321/1] registered in the name of the Applicant and the immovable property of the respondents is not where it is recorded in the cadastral registers but it is a few meters deep in the immovable property of the respondents on the east side of the immovable property of the Applicant. The Applicant's specified statement of claim filed with the Basic Court specified that this disputed immovable property included a surface area of 1670 m<sup>2</sup>. Consequently, the Applicant requested the Basic Court to (i) approve his statement of claim; (ii) to find that the respondents J.N and D.N have usurped the abovementioned immovable property registered in the certificate of ownership on behalf of the Applicant and (iii) to oblige the respondents to return this part of the immovable property. On 24 May 2013, J.N and D.N, in their capacity as respondents - counterclaimants, filed a counterclaim with the Basic Court whereby they requested that the Applicant's statement of claim be rejected in its entirety and to confirm that J.N is the owner on the basis of the adverse possession of the disputed immovable property. On 17 June 2015, the Basic Court by Judgment C. No. 561/12 among other things (i) rejected as ungrounded the Applicant's statement of claim in its entirety; (ii) approved as partially grounded the statement of claim of the respondent-counterclaimant J.N and confirmed that the latter is the owner on the basis of the adverse possession of the immovable property in the surface area of 1670 m<sup>2</sup> between plot 320/1 and 320/2 as well as established in paragraph 4 of Article 28 of the LBPR. Against the Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, and the latter by Judgment [Ac. No. 2837/15], of 29 January 2020, rejected the Applicant's appeal as ungrounded, upholding the finding and position of the Basic Court in entirety. As a result, the Applicant against the aforementioned Judgment of the Court of Appeals filed revision with the Supreme Court. On 2 April 2021, the Supreme Court by Judgment [Rev. No. 360/2020] rejected the Applicant's revision as ungrounded.
44. The Court also notes that after the issuance of the Judgment [Rev. No. 360/2020] of 2 April 2021 of the Supreme Court, namely on 26 May 2021, the Applicant filed a proposal with the State Prosecutor's Office to initiate a request for protection of legality against the Judgments of the Basic Court, the Court of Appeals and the Supreme Court, for which proposal the State Prosecutor by his Notification, of 7 June 2021 notified the Applicant that his proposal is inadmissible.

45. However, the Court recalls that the Applicant in his Referral specifically referred to the Judgment [Rev. No. 360/2020] of 2 April 2021 of the Supreme Court as a final decision, rendered in court proceedings. Having said that, the Court also recalls that the Applicant challenges the findings given by the challenged Judgment of the Supreme Court alleging a violation of his fundamental rights guaranteed by Articles 24 [Equality Before the Law]; 46 [Protection of Property] paragraph 1; and 54 [Judicial Protection of Rights] of the Constitution.
46. The Court will further examine the Applicant's allegation in relation to paragraph 1 of Article 46 of the Constitution to proceed with the examination of his allegations in relation to Articles 24 and 54 of the Constitution.

***I. Regarding the allegation of violation of Article 46 of the Constitution***

47. The Court recalls that the Applicant in his Referral alleges that his property right has been violated, and in this connection, in essence, specifies that he is the legitimate owner of the abovementioned immovable property, which is registered in the cadastral books in his name. In the context of his allegation of violation of his right to property, the Applicant also alleges a violation of Article 18 of the Law on Property and Other Real Rights and paragraph 1 of Article 20 and paragraph 1 of Article 33 of the LBPR, 1980.
48. In this regard, the Court considers that the Applicant's allegation related to the finding of the regular courts that the respondent - counterclaimant J.N acquired his immovable property on the basis of the adverse possessions as established in paragraph 4 of Article 28 of the LBPR falls into the category of "*fourth instance*" allegations, because it includes issues related to the interpretation and application of the law, namely "*legality*" and not "*constitutionality*".
49. The Court has also consistently asserted that it is not the role of this Court to review the findings of the regular courts concerning the factual situation and the application of substantive law, and that it cannot assess itself the facts which have made a regular court to render one decision and not another. Otherwise, the Court would act as a court of "*fourth instance*", which would result in disregard for the boundaries set in its jurisdiction (see, in this context, the ECtHR case, *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and references used therein; and see also the Court cases, KI49/19, Applicant *Joint Stock Company Limak Kosovo International Airport J.S.C.*, "*Adem Jashari*", Resolution of 31 October 2019, paragraph 48; and KI154/17 and KIO5/18, with Applicants, *Basri Deva, Aferdita Deva and the Limited Liability Company "Barbas"* Resolution on Inadmissibility, of 12 August 2019, paragraph 61).
50. In this regard, and in accordance with its case law and that of the ECtHR, the Court may not, as a general rule, question the findings and conclusions of the regular courts relating to: (i) the verification of case facts; (ii) the

interpretation and application of the law; (iii) the admissibility and evaluation of evidence at trial; (iv) substantive justice of the outcome of a civil dispute; (see similarly the case of Court KI163/18, with Applicant *Kujtim Lleshi*, Resolution on Inadmissibility, of 24 June 2020, paragraph 73).

51. With regard to this allegation of the Applicant, the Court notes that all decisions of the regular courts, namely of the Basic Court, the Court of Appeals and the Supreme Court provided the relevant reasoning for the rejection of the statement of claim, appeal and revision. The three instances of the regular courts confirmed that J.N. in the capacity of the respondent-counterclaimant acquired his ownership of the disputed immovable property on the basis of the adverse possession in accordance with paragraph 4 of Article 28 of the LBPR.
52. In this regard, the Court first recalls the finding of the Basic Court, which, *inter alia*, stated that: “*The allegation of [the Applicant] that in the present case [the Applicant] has the right of ownership of the disputed immovable property and registered in the public books, and [J.N and D.N] have usurped a part of the immovable property and that part must be handed over to him [the Applicant] because they hold it without legal basis, as such it is ungrounded, because [the Applicant] has lost the right to request the return of the disputed immovable property within the meaning of Article 37.1 and 2. of the LBPR, because according to the provision of article 28.4 of the LBPR, [J.N] has acquired the right of ownership in the part of the immovable property described as in item II, in the enacting clause of this Judgment, with the adverse possession because more than 20 years have passed that [JN] holds this part of the immovable property and has never been disturbed or impeded by [the Applicant] but a claim of a third party, until the moment of filing the claim and that to originally acquire the right of ownership by adverse possession, three conditions must be met cumulatively: that there must be possession of the thing, that the possession of the thing is in good faith and that the thing be kept longer than 20 years uninterruptedly, with a deep conviction that he keeps his property and behaves as the owner of the property, which in this case [J.N] by the evidence administered managed to substantiate these conditions with relevant and necessary facts*”.
53. Furthermore, the Court also refers to Judgment [Ac. No. 2837/15] of 29 January 2020 of the Court of Appeals, by which the latter, *inter alia*, stated that: “*In the present case with the administered evidence, the continuity of possession and expiration of the necessary term for gaining ownership by adverse possession has been proven, as their predecessor but also [J.N and D.N] have held it in unimpeded possession in relation to [the Applicant ] since 1973, a fact that has not been contested either by [the Applicant], until the filing of the claim of this case, the latter have not been impeded by the [Applicant]'s predecessors, therefore, the conclusion of the first instance court on the grounds of the statement of claim [J.N and D.N] is in full compliance with the substantive legal provisions, in this case the Law on Basic Legal Property Relations, Article 28, paragraph 4, and that the requirements deriving from the content of the cited provision for the acquisition of property by adverse possession in this disputed case, have been completed*

*cumulatively, therefore, the appellate court accepts the decision of the first instance court as fair and lawful.”*

54. The Court further recalls that the Supreme Court in addressing the Applicant’s allegations raised in his revision filed with this Court, in essence (i) found that the Judgments of the Basic Court and that of the Court of Appeals do not contain essential violations of the provisions of the contested procedure and erroneous application of substantive law; (ii) confirmed that J.N was in possession in good faith and unhindered by others in the disputed immovable property for more than twenty (20) years and consequently on the basis of adverse possession under paragraph 4 of Article 28 of the LBPR has acquired the right of ownership over this immovable property; (iii) ascertained that the fact that the disputed immovable property is registered in the name of the Applicant does not constitute a legal basis or a way of acquiring ownership; and (iv) reasoned that in the present case the provisions of the LBPR were applied because the civil-legal relationship between the litigating parties was established before the entry into force of Law No. 03/L-154 on Property and Other Real Rights.
55. With regard to the Applicant’s substantive allegation raised in his revision that the respondents - counterclaimants [J.N and D.N] had usurped the disputed immovable property, which was recorded in the cadastral books and according to the ownership certificate that was registered in his name, the Supreme Court reasoned that *“[...] the mere fact that the disputed immovable property was evidenced on behalf of [the Applicant], does not mean that this represents neither the legal basis nor the manner of acquiring ownership (iustus titullus-modus aquirendi), while, on the other hand, as it follows from the case file, this Court considers that [J.N] has acquired ownership over the above stated immovable property, according to the law, namely based on the institute of civil law-adverse possession-holding, namely, based on the legal provisions of Article 20, namely Article 28.4 of the Law on Basic Legal Property Relations [...].”*
56. The Court recalls that the Applicant his allegation of violation of his right to property, as a result of the rejection of his statement of claim and the finding of the regular courts that J.N has acquired ownership on the basis of adverse possession, in essence bases on the fact that the disputed immovable property is registered in his name and that the respondents - counterclaimants have held this part of the immovable property in bad faith.
57. With regards to the latter, the Court recalls that Article 46 of the Constitution does not guarantee the right to acquire property. Such a position is based on the ECtHR case law (See *Van der Mussele v. Belgium*, paragraph 48, ECtHR Judgment, of 23 November 1983; and *Slivenko and Others v. Latvia*, paragraph 121, ECtHR Judgment, of 9 October 2003).
58. The Applicant may allege a violation of Article 46 of the Constitution, only insofar as the challenged decision relates to his “property”. Within the meaning of this provision, “property” may be “existing possessions”, including claims in respect of which the applicants may have “legitimate expectations” that they will acquire an effective enjoyment of any property right (see the cases of the

Constitutional Court KI26/18, Applicant “*Jugokoka*”, Resolution on Inadmissibility, of 6 November 2018, paragraph 49; and case KI156/18, Applicant *Verica (Aleksić) Vasić and Vojislav Čadenović*, Resolution on Inadmissibility, of 17 July 2019, paragraph 52 and case KI41/19, Applicant *Ramadan Koçinaj*, Resolution on Inadmissibility, of 15 January 2020, paragraph 60).

59. In the light of the abovementioned facts, despite the fact that the Applicant has not expressly raised allegations related to a fair trial (guaranteed by Article 31 of the Constitution), the Court considers it necessary to point out that the Applicant was able to conduct the procedure based on the principle of adversarial proceedings; that he was able to present arguments and evidence he considered relevant to his case during the various stages of the proceedings; and that all the arguments, viewed objectively, which were relevant to the resolution of his case have been duly heard and examined by the courts; that the factual and legal reasons against the challenged decisions were examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in their entirety, were fair.
60. Therefore, based on the above, the Court considers that the Applicant has not substantiated as to how the decision on rejection of his statement of claim by the Basic Court and the finding of the latter that J.N acquired the disputed immovable property, which was evidenced on behalf of the Applicant, on the basis of adverse possession for holding it for more than twenty (20) years, a decision upheld by the Court of Appeals and the Supreme Court, has violated his right to property, guaranteed by paragraph 1 of Article 46 of the Constitution. Consequently, the Court concludes that this allegation of the Applicant of violation of his property rights, guaranteed by paragraph 1 of Article 46 of the Constitution is manifestly ill-founded on constitutional basis as established in Rule 39 (2) of the Rules of Procedure.

### ***I. Regarding Articles 24 and 54 of the Constitution***

61. Based on the above, the Court notes that the Applicant alleges a violation of equality before the law, guaranteed by Article 24 of the Constitution. In this regard, the Applicant only stated that “*I think that equality of the parties did not exist in the present case*” by not elaborating and further reasoning how this right guaranteed by the Constitution has been violated in his case.
62. As to his allegation of a violation of Article 54 of the Constitution, the Applicant states that “*There has been a [violation] of the provision of Article 54 of the Constitution of the Republic of Kosovo, regarding the judicial protection of rights, here, the human rights related to property have been violated.*” In addition, the Court notes that the Applicant has not elaborated and specified at all how this article of the Constitution has been violated in his case, nor does he specify whether this Article has been violated because of a violation of any other right guaranteed by the Constitution.
63. In this context, the Court states that, pursuant to Article 48 of the Law and paragraphs (1) (d) and (2) of Rule 39 of the Rules of Procedure and its case law,

it has consistently stated that (i) the parties have an obligation to accurately clarify and adequately present the facts and allegations; and also (ii) to sufficiently prove and substantiate their allegations of violation of constitutional rights or provisions. (see cases of the Court KI163/18, Applicant *Kujtim Lleshi*, cited above, paragraph 85, and KI124/20 Applicant *Muhamed Ali Ceysülmedine*, Resolution on Inadmissibility, of 20 January 2021, paragraph 42).

64. Based on the above, the Court considers that the Applicant's allegation of violation of Articles 24 and 54 of the Constitution are "*unsubstantiated or unsupported*" claims, and consequently, inadmissible as established in Article 48 of the Law and Rule 39 (1) (d) of the Rules of Procedure.
65. Therefore, and finally, the Court finds that the Applicant's Referral is inadmissible because, the allegation (i) regarding Article 46 of the Constitution is manifestly ill-founded on constitutional basis as established in Rule 39 (2) of the Rules of Procedure; whereas (ii) with regard to Articles 24 and 54 of the Constitution, it is inadmissible as "*unsubstantiated or unsupported*" as established in Article 48 of the Law and Rule 39 (1) (d) and (2) of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rules 39 (1) (d) and (2) and 59 (2) of the Rules of Procedure, in the session held on 21 October 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

Gresa Caka-Nimani