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

Prishtina, 17 March 2022
Ref. No.:AGJ 1963/22

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JUDGMENT

in

Case No. KI182/20

Applicant

Sedat Kovaçi, Servet Ergin, Ilirjana Kovaçi and Sabrije Zhubi

Constitutional review of Decision Rev. 54/2020 of the Supreme Court of Kosovo of 6 July 2020

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 Sedat Kovaçi, Servet Ergin, Ilirjana Kovaçi and Sabrije Zhubi, all from Prizren (hereinafter: the Applicants). The Applicants are represented by lawyer Esat Gutaj from Prizren.

Challenged decision

2. The Applicants challenge Decision Rev. 54/2020 of the Supreme Court of 6 July 2020, which rejected the request for revision against Judgment Ac. No. 2792/2014 of the Court of Appeals of 18 September 2019.

3. The challenged decision of the Supreme Court was served on the Applicants on 21 August 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the Decision of the Supreme Court, which allegedly violates the Applicants' rights and freedoms guaranteed by Article 21 [General Principles], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

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 the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 4 December 2020, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 30 December 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban (members).

8. On 12 January 2021, the Court notified the representative of the Applicants about the registration, and at the same time requested them to submit to the Court the power of attorney for their representation.

9. On 29 January 2021, the legal representative of the Applicants submitted the power of attorney to the Court.

10. On 10 February 2021, the Court notified the Supreme Court about the registration of the Referral.

11. On the same date, the Court also sent a notification to the Basic Court about the registration of the Referral and requested it to submit evidence of service of the challenged decision of the Supreme Court.

12. On 1 March 2021, the Basic Court sent the acknowledgment of receipt as an evidence that the challenged decision of the Supreme Court was served on the Applicants' representative on 21 August 2020.

13. On 17 May 2021, based on paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Court Decision KK-SP 71--2/21, it was determined that Judge Gresa Caka-Nimani will assume the position of President of the Court after the end of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 25 June 2021.

14. On 26 June 2021, pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.

15. On 6 September 2021, the Court sent an additional letter to the Applicants' representative, requesting him to provide additional information and the court decisions.

16. On the same date, the Court requested the Basic Court to submit the original case file.

17. The Applicants' representative did not respond to the the subsequent letter of the Court within the stipulated deadline, therefore, on 26 October 2021, the Court sent the same letter to the representative of the Applicants.

18. The Basic Court did not respond to the Court's request that all the original case documents be submitted to it, therefore, on 26 October 2021, the Court sent a new request to the Basic Court asking that the Basic Court submit the original case file.

19. On 2 November 2021, the representative of the Applicants responded to the Court's request and sent the requested information and court decisions.

20. On 17 December 2021, the Basic Court submitted the original documents of the case to the Court.

21. On 20 January 2022, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

Summary of facts

22. Based on the case file, the Court notes that the Applicants have initiated a contested procedure in the Basic Court in Prizren against the Municipality of Prizren, and for this purpose they have authorized the lawyer S.R. from Prizren with individual powers to "*represent them before the Court in civil proceedings and take the following procedural and legal actions, take court decisions, appeal against court decisions if necessary and take all necessary legal actions in this contested case until its completion with a final decision, as well as transfer these powers to another lawyer*".

23. By the statement of claim, the Applicants requested to prove that they are *"co-owners of the immovable property recorded as cadastral plot no. 350 on a surface area of 0.69,40 ha, according to the possession list no. 90 CZ Petrovë, in size and borders: from the northern side with a length of 83.36 m, from the southern side with a length of 70.03 m, from the eastern side with a length of 137.93 m, from the western side with a length of 116.88 m , and that the respondent, the Municipality of Prizren is obliged to recognize the right of co-ownership to the claimants and hand it over to*

them for use and possession". They based their statement of claim on the fact "The ancestor of the claimants, now deceased S.I.K., according to the decision of the Council of the place in Prizren with no. 9606 of 17.05.1946 which became effective by the decision of the District Court for Kosovo no. 1817 of 25.05.1946, was declared as an agrarian subject with immovable property".

24. On 14 May 2008, the Municipal Court in Prizren rendered Judgment C. no. 580/2003, by which in point **I,** of the enacting clause, approved the statement of claim of the claimants and found that the claimants are the owners of the cadastral plot no. 350 with a surface area of 0.69.40 ha, according to possession list no. 90 c.z.. the village of Petrovë, and the respondent is obliged to accept this within 15 days after the the judgment becomes final under the threat of enforcement. In point **II** of the enacting clause, the respondent is obliged to hand over possession of the cadastral plot to the claimants, and to allow them to register it in the name of this plot in this zone at the Directorate of Geodesy and Cadastre in Prizren, on behalf of the claimants as co-owners of the latter, each of them 1/5 (one fifth) of the ideal part.

25. In the reasoning of the Judgment, the Municipal Court concluded, "*that the statement of claim of the claimants is grounded, due to the fact that the immovable property in question without a legal basis was registered in the name of the KP of the Municipality of Prizren during the detailed measurement of 1957, and due to the short period of time until 1958, when the measurement entered into force, the predecessor of the claimants could not register the latter in his name, because he did not know that he should, therefore that court assessed that the claimants based on the inheritance after the death of the spouse - the father are the owners of the contested immovable property, then it has decided as in the enacting clause of that judgment".*

26. The respondent submitted a complaint to the District Court in Prizren against Judgment C. no. 580/2003 of the Municipal Court in Prizren, of 14 May 2008, alleging erroneous determination of factual situation and the application of the substantive law.

27. On 18 February 2009, the District Court rendered Judgment Ac. no. 541/2008, by which rejected the complaint of the respondent as ungrounded and upheld the judgment of the Municipal Court in its entirety.

28. The respondent filed a request for revision with the Supreme Court against the judgment of the District Court on the grounds of essential violations of the provisions of the contested procedure and erroneous application of substantive law, with the proposal that the judgments of the lower instances be modified, in order that the statement of claim be rejected as ungrounded or the latter be annulled and the case be remanded to the first instance court for retrial.

29. On 4 June 2012, the Supreme Court rendered Decision Rev. no. 309/2009, by which approved the revision of the respondent and annulled Judgment Ac. no. 541/2008 of 18 February 2009 of the District Court in Prizren, as well as Judgment C. no. 580/2003 of the Basic Court of 14 May 2008, and remanded the case for retrial.

30. In the reasoning of the decision, the Supreme Court emphasized,

> *"Essential violations of the provisions of the contested procedure exist in the fact that the enacting clause of the judgment of the first instance court is contradictory to the reasons of the judgment. This is due to the fact that the enacting clause of the judgment does not state at all on what basis it was proven*

that the claimants are the owners of the cadastral plot no. 350 on a surface area of 0.69.40 ha, while the reasoning of the judgment reads that: "From all this it follows that the claimants are the owners of the cadastral plot no. 350 in total surface area, according to the possession list no. 90 c.z.. Petrovo selo, based on the inheritance after the death of their husband and father...".

In the judgments of the lower instance courts, the reasons for the decisive facts were not shown at all, because, according to the assessment of the Supreme Court of Kosovo, the history of the contested plot was not proven, while the finding in the reasoning of the judgment that erroneously and without legal basis the contested plot is recorded in the name of the respondent, is unclear. The judgment must be based on concrete evidence and the findings of the court must have legal support".

31. According to the conclusion, the Supreme Court ordered that "*The first instance court is obliged to correct the above-mentioned flaws in the retrial, to prove the legal basis of the acquisition of ownership. From the decision of the former District Court for Kosmet, it appears that the claimant has been designated as an agrarian entity on a surface area of 0.50,00 ha, in the place called "„Jaglenica", while the court has confirmed that the claimant is the owner of the cadastral parcel no. 350 on a surface area of 0.69,40 ha, according to the possession list no. 90 of c. z. Petrovë, while the first instance court did not present relevant evidence to prove that we are dealing with the plot for which the claimant's ancestor was declared an agrarian entity, and the latter constitutes basis for acquiring the ownership of the claimant's ancestor, and with this, a basis for the inheritance of the claimants. To prove whether the predecessor of the claimants since 1957 (detailed measurements) until 19.2.2003 (the date he died), has submitted a request in the administrative procedure for the return of the contested property, and if so, on what basis".*

The repeated court procedure in accordance with Decision Rev. no. 309/2009 of the Supreme Court

32. In the repeated procedure, the Basic Court held review sessions, during which the Applicants and the respondent presented their views on the statement of claim. The Applicants stated "*The predecessor of the claimants, the now deceased former S. I.K from Prizren according to the decision of the District Council in Prizren with no. 9606 of 17.05.1946 which has become effective by the decision of the District Court for Kosovo with no. 1817 of 25.05.1946, was announced as an agrarian entity with immovable property".* The respondent denied the allegations of the Applicants stating "[...] therefore *the claimant's statement of claim is rejected as ungrounded, because the latter was not its owner and that the claimants have no legal basis for the reasoning of this statement of claim..."*

33. On 10 April 2014, the Basic Court rendered Judgment C. no. 681/12, by which rejected the request of the Applicants in its entirety with the reasoning:

"The court in the present case notes the fact that by the decision of the District Court for Kosovo with no. 1817 of 25.05.1946, the predecessor of the claimants, Sylejman Kovaqi, was declared as an agrarian entity, so it cannot be implied that he was declared the owner of the property with notes given in this decision. Therefore, in the present case, since it has not been argued that the claimants' predecessor has acquired ownership of this property, the question arises as to how his heirs - the claimants in this case can claim co-ownership based on inheritance, the ownership that their predecessor did not have.

Based on the legal provisions provided for in Article 33 of the LBPR- the right to ownership of immovable property is acquired by registration in the public books, in the case of acquiring the right to ownership in addition to the legal basis - justus titulus, Modus aquirendi is also required and that in the present case, the claimants have not argued with any evidence that their late predecessor Sylejman Kovaqi has this property registered in the cadastral books, or that the latter afterwards- these heirs have registered this property in the cadastral books, that is, the claimants have not argued these important facts to decide on this statement of claim of the claimants and that only the claim of the claimants that their predecessor, the now deceased Sylejman Ibish Kovaqi, was declared an agrarian entity, for the court cannot be a legal basis that the latter has also acquired the ownership of this disputed immovable property".

34. The authorized representative of the Applicants submitted an appeal to the Court of Appeals against the judgment of the Basic Court, claiming, a) violation of Article 181.1 of the Law on Contested Procedure (hereinafter: LCP), b) erroneous and incomplete determination of factual situation and c) erroneous application of the substantive law.

35. On 18 October 2019, the Court of Appeals rendered Judgment Ac. no. 2792/14, by which rejected the appeal of the representatives of the Applicants as ungrounded, while upholding Judgment C. No. 681/12 of the Basic Court in Prizren of 10.04.2014 in its entirety.

36. The reasoning of the Judgment of the Basic Court, *inter alia*, provides:

"[...] the first instance court correctly and completely determined the factual situation. From the case file, it found that the claimants are not the owners of the contested cadastral plot, and in the present case, from the detailed sketch, it is seen that cadastral plot no. 349 is in the name of three owners, being divided into plots no. 349/1 registered in the name of Neshat Dorambari, cadastral plot no. 349/1 registered in the name of Qerim Gjinovci and cadastral plot no. 350 on a surface area of 4 are and surface area of 65.40 are- meadow registered in the name of the People' s Council of the Municipality of Prizren.

Likewise, the litigants have not provided any evidence before the first instance court to prove that their legal predecessor has acquired the ownership on legal grounds, as well as based on the provisions of Article 33 of the LBPR, the right of ownership is acquired by registration in the public books and in the present case the claimants have not managed to argue with any evidence that their legal predecessor had the contested immovable property registered in the cadastral registers.

The first instance court based on the correct and complete determination of factual situation has applied the substantive law, because in the present case the provisions of Article 20 of the LBPR must be applied, which requires the legal basis of the ownership acquisition to be proven and that in the present case the claimants have not argued that their legal predecessor acquired the ownership on legal grounds, as well as based on the provisions of Article 33 of the LBPR, the right of ownership is acquired by registration in the public books and in this case the claimants have not managed to argue with any evidence that their legal predecessor had the contested real estate registered in the cadastral registers.

37. On 2 December 2019, the lawyer who represented the Applicants in the current part of the court proceedings of S.R., in accordance with the authorizations he had, which provided for the possibility of "*transfer of power of attorney to another lawyer*",

transferred the authorization for the representation of the Applicants to the lawyer Esat Gutaj (hereinafter: E.G.) from Prizren.

38. On 9 December 2019, on behalf of the Applicants, the revision to the Supreme Court was submitted by the Applicants' new lawyer E.G., on the grounds of essential violations of the provisions of the contested procedure and erroneous application of substantive law, proposing that the revision should be approved as grounded and the judgments of both courts should be modified and the claim of the Applicants should be approved as grounded in its entirety.

39. On 6 July 2020, the Supreme Court rendered Decision Rev. no. 54/2020, whereby the revision of lawyer E.G., from Prizren, submitted on behalf of the Applicants was rejected as ungrounded, stating that:

> *"based on the authorizations found in the case file, all the claimants have authorized the lawyer Sh. R. from Prizren, to represent the claimants in this dispute. From the case file, it does not appear that the claimants have revoked the authorization of the lawyer Sh. R.. The revision against the judgment of the second instance court on behalf of the claimants, was submitted by lawyer E.G. from Prizren, while in the case file there is no authorization proving that the claimants have authorized the lawyer in question to file the revision on their behalf.*
>
> *According to Article 89 of the LCP, the party can authorize its representative to perform only some certain actions or all actions in a procedure, while Article 90.1 of the same Law provides that the volume of authorizations of the representative with power of attorney is set by the party itself, which gives the authorization for representation in written form or orally in minutes in the court.*
>
> *E. G, a lawyer from Prizren, in the revision procedure is identified as a representative of the claimants. The representative with a power of attorney must have the authorization given by the party and the name of the party he represents, his consent, and the volume of the power of attorney must be identified in the authorization, or all these parties giving the authorization must be confirmed orally in the court record. In the case file, there is no authorization that proves that the claimants have authorized the lawyer in question to file the revision on their behalf.*
>
> *The provision of Article 218.2. point a) of the LCP, provides that: "The revision is not permissible if it is presented by an unauthorized person". The Supreme Court of Kosovo has assessed that E. G, a lawyer from Prizren, does not have authorization from the claimant to represent him in this legal matter and, therefore, not even submit a revision against the judgment of the second instance court. Therefore, the revision in this case, within the meaning of Article 8.2 point a) of the LCP, is dismissed as inadmissible".*

40. On 8 September 2020, lawyer E.G. submitted to the Office of the Chief State Prosecutor a proposal for the protection of legality against the judgment of the Basic Court in Prizren, C. no. 681/12, of 10 April 2014, Judgment of the Court of Appeals Ac. no. 2792/14 of 18 October 2019 and against the Decision of the Supreme Court of Kosovo, Rev. no. 54/2020 of 6 July 2020 "*on the grounds of erroneous application of the substantive law in the procedure of proving the right of co-ownership over the plot in question".*

41. On 8 October 2020, the State Prosecutor's Office sent the notice KMCL. no. 126/2020 to the representative of the Applicants, in which it is stated,

> *"Given the provision of Article 245 par. 245.1 and par. 245.2 of the Law on Contested Procedure, in which it is provided that the state prosecutor can raise the request for the protection of legality within three months from the date of receipt of the final court decision as well as the decision taken in the second instance, and against the decision received in the first instance, against which no appeal has been made since the day when this decision could no longer be challenged by appeal, but, as regulated by paragraph-245.2 of the mentioned article of the Law on Contested Procedure, the state prosecutor may raise the request for the protection of legality only within thirty days from the date when the revision of that party was sent to him, therefore, taking into account the above provisions of the law as well as an indisputable fact that the authorized representative of the claimants was lawyer Shaip Ramadani, who was served with Judgment Ac. No. 2792/14 of the Court of Appeals of Kosovo in Prishtina dated 18.10.2019 on 18.11.2019, which is confirmed by the delivery note for personal delivery, which was transferred to him on 02.12.2019, which is confirmed by a copy of the said authorization, while you submitted the proposal for initiation of the request for the protection of legality in the Office of the Chief State Prosecutor on 17.09.2020, namely, after the expiration of the legal term of three months, thus in the above context as well as the provisions of article in question of the Law on Contested Procedure, with this, we inform you that you have missed the legal deadline for submitting the proposal for initiating the request for the protection of legality, because you submitted the proposal after the expiration of the legal deadline of three months.*
>
> *Regarding Decision Rev. no. 54/2020 of the Supreme Court of Kosovo of 06.07.2020, namely your proposal for filing a request for the protection of legality in the mentioned decision of the Supreme Court of Kosovo according to the stated revision, your proposal is unfounded, because Article 245 of the Law on Contested Procedure expressly states against which court decisions a proposal can be submitted for initiation of the request for the protection of legality. Namely, Article 245, par. 245.3 of the Law on Contested Procedure provides that the proposal for initiation of the request for the protection of legality is not allowed because, as with the request for the protection of legality, also in the case of revision, the competent court is the Supreme Court, and from this it follows that, your proposal for the initiation of the request for the protection of legality against the decision taken for revision by the Supreme Court of Kosovo, is ungrounded."*

Applicant's allegations

42. The Applicants allege that the challenged decision of the Supreme Court violated their rights guaranteed by Article 21 [General Principles], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights].

43. However, the Applicants in the foreground of the alleged violations of the articles of the Constitution emphasize the fact that the Supreme Court rejected the request for revision submitted by the lawyer E.G., stating that the case files do not contain his authorization to represent the parties in the court proceedings .

44. The Applicants claim that the lawyer S.R., based on the legal provision, transferred the authorization to the lawyer E.G., who, together with the request for revision,

submitted the authorization to the Basic Court, "*but on the part of the administration of the Basic Court knowingly or unknowingly the latter was not submitted together with the revision to the Supreme Court*".

45. Accordingly, the Applicants claim that in this case the fundamental human rights of the claimants (the applicants) were violated when, due to the authorization, which was not submitted by the Administration of the Basic Court, their revision was rejected and their request was not taken into account and not even read on the essence of the issue which was relevant throughout the trial procedure.

46. The Applicants consider [...] "*that the Supreme Court had to render a decision by which it would instruct the claiming party (the applicants) or would order the latter that regarding this revision filed against court decisions, is it true that the lawyer in question has the right to representation or right to file extraordinary legal remedy, which the Supreme Court has not even look at these or to render this above mentioned decision".*

47. In addition, the Applicants add that there has been a violation of constitutional rights by the Chief Prosecutor, who stated in the notification that he approves the decision of the Supreme Court, and thus rejected as ungrounded their proposal for the protection of legality, while he has not taken into account the legality of the challenged decision.

48. The Applicants address the Court with the following request; *"to remand the contested case for reconsideration and decision to the first instance court, annulling all other decisions, in order to emphasize the right of the claimants, which is guaranteed by the Constitution".*

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 21
General principles:

1. Human rghts and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.
3. Everyone must respect the human rights and fundamental freedoms of others.
4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

Article 31
[Right to Fair and Impartial Trial]

"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

Article 24

Article 24 [Equality Before the Law]

1. *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 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.

European Convention on Human Rights

Article 6
(Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Law No. 03/L-006 on Contested Procedure

CHAPTER IV
PARTIES AND THEIR REPRESENTATIVES

Article 90

90.1 "The scope of authorizations of the representative by proxy is determined by the party itself.

Article 93
[...]
93.2 The court may allow temporary conduction of actions for the party in the procedure by the person that did not present the authorization but at the same time shall order him or her to present authorization or the

consent of the party for the conducted actions within a specified period of time.
[…]

93.4 The court is bound to verify during the entire proceeding the authorization for representation. If the court determines that the person that claimed authorization is not authorized by the party for such an action, it shall annul of the procedural actions conducted by such person if the party did not accept such actions at a later stage."

Admissibility of the Referral

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

50. 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."

51. In addition, the Court also examines whether the Applicant has fulfilled the

admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47 [Individual Requests] , 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
(Individual Requests)

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.
2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.

Article 48
(Accuracy of the Referral)

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

Article 49
(Deadlines)

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision…".

52. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, which is challenging an act of a public authority, namely Decision Rev. 54/2020 of the Supreme Court of 6 July 2020, after having exhausted all legal remedies provided by law. The Applicants have also specified the rights and freedoms which they to have been violated, pursuant to the requirements of Article 48 of the Law and have submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

53. The Court finds that the Referral of the Applicants meets the admissibility criteria set out in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements established in paragraph (3) of Rule 39 of the Rules of Procedure.

54. In the end, the Court considers that this referral is not manifestly ill-founded, as defined in paragraph (2) of Rule 39 of the Rules of Procedure and, therefore, it is to be declared admissible and its merits examined.

Merits of the Referral

55. The Court recalls that the Applicants have initiated a contested procedure in the Basic Court in Prizren against the Municipality of Prizren, in which they sought to prove that they were co-owners of the immovable property - cadastral plot no. 350 on a surface area of 0.69.40 ha, according to the possession list with no. 90 CZ Petrovë in extent and boundaries: on the north side in length 63.36 m, in the south side in length 70.03 m, in the east side in length 137.93 m and in the west side in length 116.88 m, and that the respondent, the Municipality of Prizren, undertakes to recognize this right of co-ownership to them as claimants and hand it over to them for unhindered use at the same time. For this purpose, they authorized lawyers S.R. from Prizren, with individual authorizations, in this contested procedure; **i)** to represent them, **ii)** to receive court decisions, **iii)** file appeals against court decisions, **iv)** if it is necessary to take all the necessary legal actions in this contested matter until its completion with a final decision, and **c)** that can transfer the authorizations to another lawyer.

56. Lawyer S.R. as an authorized representative of the Applicants, conducted a contested procedure before the Municipal Court, the District Court and the Supreme Court, acting exclusively on the basis of his representation authorizations. However, on 4 June 2012, the Supreme Court rendered Decision Rev. no. 309/2009, by which it approved the revision of the respondent (Municipality of Prizren) and annulled Judgment Ac. no. 541/2008 of the District Court of 18 February 2009, as well as Judgment C. no. 580/2003 of the Basic Court of 14 May 2008, and remanded the case to retrial.

57. In the repeated procedure in the Basic Court and the Court of Appeals, the lawyer S.R. appears again as a representative of the Applicants. However, after Judgment C. no. 681/12 of the Basic Court in Prizren of 10 April 2014 and Judgment Ac. no. 2792/14, of the Court of Appeals of 18 October 2019 were rendered, the lawyer S.R., on 2 December 2019, transferred the authorization for representation of the Applicants to another lawyer E.G., in order to continue the contested procedure at the request of the Applicants .

58. On 9 December 2019, lawyer E,G., presenting himself as the new lawyer of the Applicants, acting on the basis of the transfer of authorizations, submitted a request for revision to the Supreme Court, through the Basic Court, as required by the procedure. The Supreme Court by its decision, rejected the request for revision of the lawyer E.G. as an unauthorized request, emphasizing that "*The revision against the*

judgment of the second instance court on behalf of the claimants was filed by E.G., a lawyer from Prizren, while in the case file there is no authorization proving that the claimants have authorized the lawyer in question to file the revision on their behalf".

59. According to the Applicants' allegations, this very position and conclusion of the Supreme Court violates Article 21 [General Principles], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 31 [Right to Fair Trial and Impartial] and Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 6 of the ECHR. More specifically, the Applicants claim that their fundamental human rights were violated when, due to an authorization which, according to the Applicants, was not submitted by the administration of the Basic Court, their request for revision was rejected on the purely formal grounds, in which case their requests in the revision were not taken into account. Moreover, they consider that even assuming that the authorization was not in the case file, the Supreme Court had the obligation to ask them, "*if the lawyer in question has the right of representation or the right to file the extraordinary legal remedy".*

60. The Applicants challenge the above conclusions in the Supreme Court's decision regarding the reasons for the rejection of the revision, claiming a violation of Articles 21, 23, 24, 31 and 54 of the Constitution. The Court notes that the Applicants did not specifically explain the allegations of violation of their rights. However, based on the factual and legal circumstances of the case, the Court notes that the Applicants' claims indirectly show that the Applicants' claims presented in the referral contain elements of the right to "access to court" as an integral part of the rights guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

61. In the procedure for examining the Applicants' allegations within the scope of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court, referring to its case law and the case law of the ECtHR, emphasizes that it is not conditioned by characterization of the violations claimed by the Applicant. In the spirit of the principle *jury novit curia*, the Court is itself responsible for the characterization of constitutional issues that may be contained in a particular case and may voluntarily examine the relevant appeals, based on provisions or positions that are not expressly invoked by the parties (see, in this regard, the Court case: KI58 /18, Applicant: *Ahmet Frangu*, Judgment of 22 July 2020, paragraph 81).

62. In addition, according to the case law of the ECtHR, the complaint is characterized by the facts included in it, and not only by the legal basis and the arguments that the parties expressly invoke (see the case of the ECtHR: *Talpis v. Italy*, Judgment of 18 September 2017, paragraph 77 and references cited therein).

63. Therefore, the Court will continue to examine the Applicants' allegations from the point of view of the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, applying the principles established through the case law of the ECtHR, on the basis of which the Court in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged as follows: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.".*

64. In this regard, the Court first notes that the case law of the ECtHR and of the Court has consistently considered that the fairness of the proceedings is assessed based on the proceedings as a whole (see case of the Court KI62/17, Applicant: *Emine Simnica,* Judgment of 29 May 2018, paragraph 41; and KI20/21, Applicant *Violeta Todorovic,* Judgment of 13 April 2021, paragraph 38; see also, ECtHR Judgment, *Barbera,*

Messeque and Jabardo v. Spain, Judgment of 6 October 1988, paragraph 68). Therefore, in the procedure of assessing the grounds of the Applicant's allegations, the Court will adhere to these principles.

65. In this regard and in order to address the Applicant's allegations, the Court will elaborate on the general principles regarding the right of "access to a court" guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, insofar as they are relevant to the circumstances of the present case, in order to assess the applicability of these Articles, and then to proceed with the application of these general principles, in the circumstances of the present case.

General principles regarding the right to "access to court" guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as relevant case law

General principles:

66. With regard to the right of "access to a court", a right guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, the Court first notes that it already has a case law, which is built on the principles established by the case law of the ECtHR (including but not limited to cases *Golder v. The United Kingdom*, Judgment of 21 February 1975; *Běleš and Others v. Czech Republic*, Judgment of 12 November 2002; *Miragall Escolano and Others v. Spain,* Judgment, 25 January 2000; and *Nait-Liman v. Switzerland*, Judgment of 15 March 2018.) Having said that, the cases of the Court in which the Court has affirmed the principles established by the ECtHR and has applied the same in the cases before it, including but not limited to cases KI62/17, Applicant *Emine Simnica* [Judgment of 29 May 2018]; KI224/19 Applicant *Islam Krasniqi* [Judgment of 10 December 2020] and KI20/21 Applicant *Violeta Todorović* [Judgment of 13 April 2021].

67. In this regard, the Court first refers to the case law of the ECtHR, respectively case *Golder v. the United Kingdom*, where was emphasized that "*the right of access to the court constitutes an element which is inherent in the right stated by Article 6 paragraph 1. Article 6 paragraph 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way this Article embodies the "right to a court", of which the right of access, respectively the right to institute proceedings before courts in civil matters, constitutes one aspect of this right only*". (See the case of the ECtHR, *Golder v. the United Kingdom*, cited above, paragraphs 28-36).

68. The court in this context emphasizes that the "right to court", as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR, determines that the parties to the proceedings must have an effective legal remedy that enables them to protect their civil rights (see the aforementioned K224/19, Applicant *Islam Krasniqi,* paragraph 35; and KI20/21, with the aforementioned Applicant *Violeta Todorović*, paragraph 41, see in this context the aforementioned cases of the ECtHR, *Běleš and others v Czech Republic*, paragraph 49, and the aforementioned case *Nait-Liman v. Switzerland*, paragraph 112).

69. Therefore, in accordance with the case law of the Court and the ECtHR, the right of access to a court does not only mean the right to initiate proceedings before a court, but, in order for the right of access to court to be effective, the individual must also have a clear and real opportunity to challenge the decision that violates his/her rights. More specifically, the right of access to the court is not only limited to the right to

initiate court proceedings, but its meaning is much broader as it includes the right to "resolve" the dispute by the competent court (see the aforementioned case KI62/17 with Applicant *Emine Simnica*, paragraph 55, the aforementioned case KI 224/19, with Applicant *Islam Krasniqi,* cited above, paragraph 39 and KI20/21, with Applicant *Violeta Todorović*, cited above, paragraph 43).

70. The Court further notes that the right to access to the court is not absolute, but it can be subject restrictions, since by its very nature it requires regulation by the state, which enjoys a certain margin of appreciation in this regard (see in this regard the aforementioned case of the Court KI 20/21, with the Applicant *Violeta Todorović*, paragraph 44).

71. However, any limitations on the right of access to a court must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the "right to a court" is impaired. Such limitations will not be compatible if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see the aforementioned case of the Court KI20/21, Applicant *Violeta Todorović* cited above, paragraph 45, and the ECtHR cases: *Sotiris and Nikos Koutras ATTEE v. Greece*, Judgment of 16 November 2000, paragraph 15, and B*eles and Others v. the Czech Republic*, Judgment of 12 November 2002, paragraph, 61).

Case law of the ECtHR

72. The Court, based on the circumstances of the present case, also refers to the relevant case law of the ECtHR, which refers to the right of access to a court, from the point of view of guaranteeing the principle of legal certainty and proper administration of justice, as basic principles of rule of law in a democratic society.

73. In its case law the ECtHR had specified that the rules which set out the formal steps to be taken and the time limit to be observed in filing a complaint were intended to ensure a proper administration of justice and were to be examined accordingly, and in particular the principles of legal certainty (see *Canete de Goni v. Spain,* Judgment of 15 October 2002, paragraph 36). That being so, the ECtHR had specified that rules in question, or their application, should not prevent litigants from using an available legal remedy (see in this context the case of the ECtHR *Miragall Escolano and Others v. Spain*, Judgment of 25 January 2000, paragraph 36). The ECtHR also noted that each case should be considered in the light of the circumstances and specific elements of the proceedings in that case (see case *Kurşun v. Turkey*, Judgment of 30 October 2018, paragraphs 103-104). In this context, the ECtHR further emphasized that in applying the procedural rules, the courts should avoid both excessive formalism that would preclude fair process and excessive flexibility that would make the procedural criteria set by law as invalid (see the case of *Hasan Tunç and Others v. Turkey*, Judgment of 31 January 2017, paragraphs 32-33).

74. Briefly, the ECtHR in the case of *Zubac v. Croatia* stated that "*observance of formalised rules of civil procedure [...] is valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and respect for the court*". (see the case of *Zubac v. Croatia* [GC], Judgment of 5 April 2018, paragraph 96). The ECtHR in this case had also underlined that "*however, the right of access to court is considered to have been violated at the moment when the rules cease to be in the service of legal certainty and proper administration of justice and consequently create a barrier which prevents the litigants from having their case tried on their merits by the competent court*

(paragraph 98 of the Judgment in case *Zubac v. Croatia*). In the context of the latter, the ECtHR noted that in cases where public authorities have provided inaccurate or incomplete information, domestic courts should sufficiently take into account the specific circumstances of the case in order not to apply rules and their practice very rigidly (see in this context also the case of the ECtHR *Clavien v. Switzerland*, Judgment of 12 September 2017, paragraph 27 and *Gajtani v. Switzerland*, Judgment of 9 September 2014, paragraph 75).

75. The ECtHR also in Judgment *Lesjak v. Croatia* (2010), reiterates what constitutes a final access to court or right of access to court: "*35. The court reiterates that Article 6 para. 1 of the Convention ensures everyone the right to submit a request regarding his civil rights and obligations before a court or tribunal. The right of access, namely the right to initiate proceedings before a court in civil matters constitutes an aspect of this "right to court*" (see, in particular, *Golder v United Kingdom*, of 21 February1975, paragraphs 28-36, Series A no. 18). *For the right of access to be effective, the individual must have a clear and practical opportunity to challenge an act that impedes his or her rights* (...).(see: Judgment of the ECtHR *Lesjak v. Croatia*, application no. 25904/06, of 18 February 2010).

76. In addition, the ECtHR has established that the right of access to a court does not only mean the right to initiate proceedings before a court, but, in order for the right of access to court to be effective, the individual must also have a clear and real opportunity to challenge the decision that violates his/her rights. In other words, the right of access to the court is not only limited to the right to initiate court proceedings, but its meaning is much broader as it includes the right to "resolve" the dispute by the competent court.

77. The Court further notes that the right to access to the court is not absolute, but it can be subject of restrictions, since by its very nature it requires regulation by the state, which enjoys a certain margin of appreciation in this regard

78. In light of this, the Court recalls the reasoning of the European Commission on Human Rights (Report of April 5, 1995, *Société Levages Prestations Services v. France*, no. 21920/93, paragraph 40): *"[...] The Commission considers that the decision of the [Supreme Court], which in this case led to the inadmissibility of the appeal on points of law, had disproportionate and inequitable repercussions on the applicant's right of access to a court of and has denied [him] in practice the possibility of exercising the remedy that was open to him in [domestic] law."*

79. In other words, any limitations on the right of access to a court must not

restrict or reduce a person's access in such a way or to such an extent that the very essence of the "right to a court" is impaired. Such limitations will not be compatible if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see cases: *Sotiris and Nikos Koutras, ATTEE v. Greece* (2000), paragraph 15; *Běleš and Others v. the Czech Republic* (2002), paragraph 61)

Case law of the Constitutional Court regarding the right of access to a court

80. The Court, as specified above, has applied the abovementioned principles established by the case law of the ECtHR in its case law. Specifically, the Court, same as above, referred to three cases of the Court, namely cases KI62/17 Applicant *Emine Simnica*, KI224/19 Applicant *Islam Krasniqi,* and KI20/21 Applicant *Violeta Todorović*, in

which cases, the Court found violation of the right of access to a court guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

81. In this regard, the Court refers to the last case decided by it, in which the latter, referring to and applying the above mentioned principles established by the case law of the ECtHR, found violation of the right of access to a court, as one of the principles of a fair trial in accordance with Article 31 of the Constitution and Article 6 of the ECHR. The circumstances of the Applicant's case in case KI20/ 21 are related to the fact that on 21 October 2019, the Applicant filed a request with the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, for the correction of a clear technical error of the Judgment of the Appellate Panel of 4 October 2019, claiming that she received the Judgment of the Specialized Panel of 24 May 2016, on 3 June 2016, whilst she filed the appeal against this Judgment to the Appellate Panel on 15 June 2016, within the timeline of 21 days. On 1 October 2020, the Appellate Panel by the Decision had dismissed the Applicant's request as inadmissible, adding that the Judgment of the Appellate Panel of 4 October 2019 is final, although it concluded that the Applicant's statement that the Applicant received the Judgment of the Specialized Panel on 3 June 2016 was correct. The Court in examining the Applicant's allegation regarding the right of "access to a court" found that the Appellate Panel despite the fact that it found that the Applicant's allegations were correct, and consequently that her appeal has been filed according to the time limits defined by the applicable law , the latter rejected the Applicant's request for the correction of error of the Appellate Panel with the Judgment of 4 October 2019, considering her request as a request for reconsideration of the court decision. As a result, the Constitutional Court found that the challenged Decision of the Appellate Panel made unable for the Applicant from having his appeal against the Judgment of the Specialized Panel handled on the merits despite the fact that his appeal was filed within the legal timeline. Consequently, the Court found that the Appellate Panel had restricted the Applicant's access to a court, which restriction had resulted in violation of Article 31.1 of the Constitution, in conjunction with Article 6.1 of the ECHR.

Application of the above-mentioned principles in the circumstances of the present case

82. The Court recalls that the procedure in this case that was conducted before the regular courts had to do with the issue of the exercise of property rights over certain property. However, the issue raised by the Applicants before this Court was not directly related to the substance of the statement of claim in relation to the exercise of these rights, but to the issue of procedural guarantees provided by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which connects the justice of the court procedure and the very essence of the case as a whole.

83. More specifically, the Court notes that for the Applicants, as party to the proceedings before the regular courts, the court proceedings that they have conducted in relation to the property in question are not problematic in which they were represented by the lawyer S.R., nor the court proceedings conducted in the Basic Court and the Court of Appeals in a repeated procedure, in which S.R. also appears as a lawyer. What the Court finds to be a disputed fact on the basis of which the Applicants based their allegations of violation of their rights before this Court is the issue that has to do with the procedure in the Supreme Court, in relation to the request for revision, in which a new lawyer E.G. appears as a representative of the Applicants, to whom the lawyer S.R. transferred the authorization to represent them, in accordance with the authorizations in which they gave such a procedural opportunity to the lawyer S.R.. The Applicants consider that, "*on the part of the administration of the Basic Court, the authorization of the lawyer E.G. was knowingly not submitted to the Supreme*

Court together with the revision, which he submitted at the time of filing the revision with the Basic Court".

84. However, in assessing the grounds of the Applicants' allegations, the Court will not deal with the speculations related to the allegation that the administration of the Basic Court in Prizren deliberately left out of the case file the authorization, which in the case of filing the revision was submitted by lawyer E.G. to represent them. In assessing the grounds of the Applicants' allegations, the Court will adhere exclusively to the facts that emerge from the case file before it.

85. Considering the case file and the appealing allegations, the Court finds that it is not disputable for the Constitutional Court and the Supreme Court, that the lawyer E.G. submitted a request for revision to the Supreme Court on behalf of the Applicants. The Court finds that based on the challenged decision Rev. 54/2020 of the Supreme Court of 6 July 2020, which states "*The revision against the judgment of the second instance court on behalf of the claimants was filed by E.G,, a lawyer from Prizren".* In this regard, the Court recalls that the submission of revision as a form of appeal is regulated by Article 211 (Revision) of the LCP which in the relevant part states:

Article 211

"211.1 Against the decision of the court of second instance, sides can present a revision within a period of thirty (30) days from the day the decision was brought."

86. The Court notes that the simple fact that the Applicants had a legal opportunity to submit a request for revision to the Supreme Court does not necessarily lead to the fulfillment of the requirement of the "right of access to the court" deriving rom Article 31 of the Constitution and Article 6 of the ECHR. Therefore, it remains for the Court to determine whether Decision Rev. 54/2020 of the Supreme Court of 6 July 2020, by which the request for revision was rejected, which was filed by lawyer E.G. on behalf of the Applicants, in accordance with the legal provisions.

87. Therefore, focusing on the main allegation of the Applicants regarding the procedure for submitting the request for revision to the Supreme Court, the Court finds that the Supreme Court rendered decision rejecting the revision submitted by lawyer E.G. as a representative of the Applicants, for purely formal reasons, in which case it concluded that "*in the case file there is no authorization proving that the claimants have authorized the lawyer in question to file the revision on their behalf*".

88. The Court finds that the Supreme Court reasoned this decision, considering that "*E. G, a lawyer from Prizren, in the revision procedure is identified as a representative of the claimants. The representative with a power of attorney must have the authorization given by the party and the name of the party he represents, his consent, and the volume of the power of attorney must be identified in the authorization, or all these parties giving the authorization must be confirmed orally in the court record. In the case file, there is no authorization that proves that the claimants have authorized the lawyer in question to file the revision on their behalf.*"

89. However, considering and assessing this conclusion of the Supreme Court, the Court considers that the latter is legally ungrounded for this Court, for the reason that the Supreme Court has concluded *"that the lawyer E.G. submitted the revision and that he is identified as a representative of the Applicants, but that he does not have authorization for representation".* What this Court considers problematic is the position of the Supreme Court, which first, **i)** concluded that the request for revision

was submitted, **ii)** that it was submitted by lawyer E.G., who represents the Applicants, **iii)** that he has no authorization to represent them and **iv)** to reject the request for revision as ungrounded, finding that it was submitted by a party that does not have authorization. The Court based on the challenged Decision Rev. 54/2020 finds that the Supreme Court reached such a conclusion only on the basis of the documents submitted by the Basic Court during the review of the request for revision submitted by the lawyer E.G., without undertaking any procedural action to ascertain the truth of the facts about the representation on the basis of which it would then be able to draw such a conclusion.

90. In fact, before drawing conclusions about some important facts or actions, it is necessary to undertake all the procedural actions provided for by the legal provisions, so that a conclusion is based on law and as such is legally grounded.

91. In this regard, the Court recalls the relevant provision of Article 93.2 of the LCP, which in the relevant part stipulates:

"Article 93.
[...]

93.2 The court may allow temporary conduction of actions for the party in the procedure by the person that did not present the authorization but at the same time shall order him or her to present authorization or the

consent of the party for the conducted actions within a specified period of time.

92. The Court considers that the aforementioned legal provision of Article 93.2 of the LCP, **a)** is not unclear or ambiguous, **b)** provides sufficient guidance as to what is the duty of regular courts in cases where a person appears as an alleged representative, and **c)** what procedural actions should the court take to prove all the circumstances surrounding the alleged representative.

93. In light of this, the Court reiterates that, in order to conclude something, it is necessary to take in advance all the procedural steps provided by law to determine all the circumstances that will lead to a conclusion. Is it the obligation of the Supreme Court to undertake certain procedural actions in this case to remove doubts as to whether the person E.G. is the true representative of the Applicants or not, is something that is legally regulated and provided for in the relevant provision of Article 93.4 of the LCP, which defines:

"Article 93.4

93.4 The court is bound to verify during the entire proceeding the authorization for representation. If the court determines that the person that claimed authorization is not authorized by the party for such an action, it shall annul of the procedural actions conducted by such person if the party did not accept such actions at a later stage"

94. Accordingly, it is evident that it was the duty of the Supreme Court before rendering a decision by which it rejects the request for revision, in accordance with Article 218.2 point a) of the LCP, where it is emphasized*: "The revision is not permissible f it is presented by an unauthorized person",* to undertake all the necessary procedural actions to determine whether the person who submitted the revision is authorized to do so on behalf of the persons on whose behalf he submits the revision, or whether the Applicants are given the opportunity to clarify, if the lawyer who appears as their representative in the revision, is really so.

95. The Court is of the opinion (considers) that the Supreme Court acted contrary to the actions foreseen by the relevant legal provisions of Articles 93.2 and 93.4 of the LCP, rendering Decision Rev. 54/2020, by which it dismissed in a summary procedure the request for revision of the lawyer E.G., without giving him the opportunity to clarify the claim that he was a representative of the Applicants, moreover, by such a decision and its inaction, the Supreme Court denied the Applicants "access to the court" in the sense of declaring the legitimacy of lawyer E.G., to represent them as a representative in the revision procedure at the Supreme Court.

96. The Court assesses that the Supreme Court has the right to decide on requests for revision, but only when the Applicants are given the opportunity to clarify the issue of their representation by lawyer E.G., or the lawyer E.G., who presents himself as a representative of the Applicants on whose behalf he submitted the request, is given the opportunity, to bring the evidence of representation of the Applicants within a certain period of time, which is in accordance with the relevant articles 93.2 and 93.4 of the LCP, quoted above.

97. In addition, even if we are dealing with some restrictions on access to the court, which as such are possible in certain circumstances, the Court does not find that the Supreme Court in its decision has given any explanation regarding the reasons why it has limited the Applicants to apply articles 93.2 and 93.4 of the LCP, which directly led to restrictions on their right of access to the court to the extent that it prevented them from continuing the revision procedure (see the case of Court cited above KI 20/21, Applicant *Violeta Todorović*, paragraph 45, and the cases of the ECtHR: *Sotiris and Nikos Koutras ATTEE v. Greece*, *Judgment of 16 November 2000,* paragraph 15, and *Běleš and Others v. Czech Republic,* Judgment of 12 November 2002, paragraph 61).

98. The Court assesses that, under the circumstances of the current case, the existing conclusion of the Supreme Court in Decision Rev. 54/2020, contradicts the legal provisions of Articles 93.2 and 93.4 of the LCP. Moreover, such a conclusion of the Supreme Court is also contrary to the case of the ECtHR, which clearly states that "*the right of access to a court does not only mean the right to initiate proceedings before a court, but, in order for the right of access to court to be effective, the individual must also have a clear and real opportunity to challenge the decision that violates his/her rights.*" In other words, the right of access to the court is not only limited to the right to initiate court proceedings, but its meaning is much broader as it includes the right to "resolve" the dispute by the competent court.

99. Based on the above, it can be noted that the Supreme Court rendered Decision Rev. no. 54/2020, by which it annulled the request for revision with a summary procedure, without taking all the actions foreseen by law to remove the doubt about the legitimacy of the person, namely the lawyer E.G., who appears as a representative of the Applicants. In this way, the Supreme Court restricted the Applicants' access to the court.

100. Therefore, based on the above, the Court considers that the Supreme Court, by rendering Decision Rev. 54/2020, which is based on Article 218.2 point a) of the LCP, denied the Applicants (i) the right of access to the court from "the point of view of the rule of law in a democratic society, within the meaning of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR; and (ii) as a result, they were prevented from pursuing their case on the merits of the lawsuit.

101. The Court finds that the conclusion of the Supreme Court through the above-mentioned decision rejecting the revision of E.G. as ungrounded was rendered in

violation of the Applicants' right of access to the court. Therefore, the Court finds that Decision Rev. 54/2020 of the Supreme Court of 6 July 2020, is not in accordance with paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

102. The Court also points out that this conclusion refers to the alleged constitutional violation. Thus, the Court confirms that the findings contained in this Judgment do not prejudge in any way the outcome of the proceedings regarding the case of the Applicant.

103. The Court further recalls that the Applicants in their referral also alleged violations of Article 21 [General Principles], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 31 [Right to Fair Trial and Impartial] and Article 54 [Judicial Protection of Rights] of the Constitution. In this regard, as elaborated above, the circumstances of the Applicants' case include elements related to the Applicants' right to access to the court, as one of the principles guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR and as a result, after examining their allegations in the light of this right, found that the challenged decision of the Supreme Court violated their right to access to the court, guaranteed by Article 31 of Constitution and Article 6 of the ECHR. Therefore, as a result of this conclusion, the Court does not consider it necessary to examine separately the allegations of violation of the rights guaranteed by Articles 21, 23, 24 and 54 of the Constitution.

Conclusion

104. The Court examined the Applicants' allegations and despite the fact that the Applicants in their referral also alleged violations of articles 21, 23, 24 and 54 of the Constitution, the Court found that the circumstances of this case contain elements related to the alleged violations of their right to access to court as one of the principles guaranteed in paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR. In the following, in order to assess and examine this allegation, the Court, for the purpose of the assessment, applied the case law of the Court as well as the case law of the ECtHR.

105. The Court, after elaborating and examining the procedure and reasoning of the Supreme Court's decision, found that: (i) paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR from the point of view of the principle of right to access to the court, is applicable in the case of Applicants; (ii) that the conclusions and findings of the Supreme Court regarding the legitimacy of lawyer E.G. as a representative of the Applicants, is not in proportion to the aim pursued to guarantee legal certainty and the proper administration of justice, as one of the basic principles of the rule of law in a democratic society; (iii) that as a result of this interpretation and the findings of the Supreme Court, in its challenged decision the Applicants were denied the "right to access to the court" from the point of view of the principle of the rule of law in a democratic society, within the meaning of paragraph 1 of Article 6 of the ECHR; and (v) consequently, they were prevented from proceeding with their case to consider the merits of the request. In the end, the Court concluded that the challenged decision Rev. 54/2020 of the Supreme Court of 6 July 2020, was rendered in violation of the Applicants' right of access to the court, which is guaranteed by Article 31, paragraph 1 of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR.

106. Finally, the Court, as a result of its conclusion on the violation of the Applicants' right to access to the court, guaranteed by Article 31 paragraph 1 of the Constitution, in

conjunction with Article 6 paragraph 1 of the ECHR, does not consider it necessary to examine separately the allegations of violation of the rights guaranteed by Articles 21, 23, 24 and 54 of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 59 (1) of the Rules of Procedure, on 20 January 2022, unanimously

DECIDES

I. TO DECLARE the Referral admissible.

II. TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights.

III. TO DECLARE Decision Rev. 54/2020 of the Supreme Court of Kosovo, of 6 July 2020, invalid.

IV. TO REMAND the case to the Supreme Court for reconsideration in accordance with the Judgment of this Court;

V. TO ORDER the Supreme Court to notify the Court by 1 July 2022, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken in order to implement the Court's judgment.

VI. TO REMAIN seized of the matter pending compliance with the order;

VII. TO NOTIFY this Decision to the parties;

VIII. TO PUBLISH this Decision in the Official Gazette in accordance with

Article 20.4 of the Law;

IX. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.