REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 2 February 2023
Ref. no.:AGJ 2116/23

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JUDGMENT

in

Case no. KI06/21

Applicant

Dragan Mihajlović

Referral for constitutional review of proceedings before the Court of Appeals of the Republic of Kosovo, regarding the case Ac. no. 3930/2016

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
Nexhmi Rexhepi, Judge, and
Enver Peci, Judge

Applicant

1. The Referral was submitted by Dragan Mihajlović from Prizren, represented by Sezo Veliji, a lawyer from Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the prolongation of the court proceedings in the case Ac. no. 3930/2016 that is being conducted at the Court of Appeals of Kosovo (hereinafter: the Court of Appeals).

Subject matter

3. The subject matter of this referral is the constitutional review of the proceedings in question, whereby the applicant alleges that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 20 [Decisions] and 47 [Individual Requests] of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 59 [Types of Decisions] of the Rules of Procedure No. 01/2018 of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 8 January 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 18 January 2021, the President of the Court by decision [No.GJR.KI06/21] appointed Judge Nexhmi Rexhepi as the Judge Rapporteur and the Review Panel, composed of judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi, members.

7. On 22 January 2021, the Court notified the Applicant's representative of the registration of the referral and requested him to complete the referral form and bring the valid authorization to the Court.

8. On 16 February 2021, the Applicant's representative submitted the requested documents to the Court.

9. The Court also sent a copy of the referral to the Court of Appeals.

10. 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 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 Decision of the Court KK-SP 71-2/21, it was defined that Judge Gresa Caka-Nimani assume the office of President of the Court after the end of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 26 June 2021.

11. On 25 May 2021, based on paragraph 1.1 of Article 9 (Prior Termination of the Mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of Judge at the Constitutional Court.

12. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision KSH. KI06/21, appointed Judge Bajram Ljatifi as a member of the Review Panel in place of Judge Bekim Sejdiu.

13. On 31 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision no. KK160/21 for replacement of presiding judges in reviewing panels, appointed the President-elect of the Court Gresa-Caka Nimani, to be presiding the Panel in the case KI06/21.

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

15. On 28 June 2021, the President of the Court Gresa Caka-Nimani, by Decision KSH. KI06/21, appointed Judge Gresa Caka-Nimani as a member of the Review Panel in place of Judge Arta Rama-Hajrizi.

16. On 19 November 2021, the Court sent a letter to the Court of Appeals and requested from it to inform the Court about the proceedings being conducted regarding the present case.

17. On 1 December 2021, the Court of Appeals submitted to the Court the response requested by the Court, stressing that the case on which the Applicant complains was decided by Resolution [Ac. no. 3930/16], where it approved as grounded the complaint of MA Prizren, and overturned the Judgment [P. no. 1146/15] of the Basic Court of 29 April 2016, and remanded the case for retrial and reconsideration.

18. On 9 March 2022, the Court reviewed the case and unanimously decided to adjourn it for additional supplements, and to review it again at one of the subsequent hearings.

19. On 15 November 2022, the Court reviewed the case and unanimously decided to adjourn it for additional supplements, and to review it again at one of the subsequent hearings.

20. On 16 November 2022, the Court sent a letter to the Basic Court and asked it to inform the Court whether they have yet decided on the case of the Applicant, on the basis of the Resolution [Ac.no.3930/16] of 9 February 2021 of the Court of Appeals, whereby the case had been remanded to retrial and reconsideration.

21. On 21 November 2022, the Basic Court notified the Court that since 30 August 2022, the case has been before the Court of Appeals on the basis of the complaint.

22. On 2 December 2022, the Court sent a letter to the Court of Appeals requesting it to inform the Court of the proceedings being conducted regarding the Applicant's case.

23. On 9 December 2022, the Court of Appeals by letter notified the Court that the Applicant's case had been allocated to the referring judge for review and that it had not yet been decided.

24. On 16 December 2022, Judge Enver Peci was sworn in before the President of the Republic of Kosovo, on which occasion his mandate in the Court commenced.

25. On 22 December 2022, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same day, the Court unanimously held (i) that the Applicant's Referral is admissible; (ii) that there has been a violation of paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, regarding the right to a fair and impartial trial within a reasonable time.

Summary of case facts

26. Based on the case files, on 17 September 2003, the Municipal Court in Prizren (hereinafter: the Municipal Court), by Decision T. no. 68/03 had established that the inheritance of the decedent Toma Mihajlović from Prizren was examined, where the Applicant Dragan Mihajlović was declared the sole lawful heir to the overall property of his father, Toma Mihajlović. Within the left inheritance, which was share of 7/16 of parcel no. 5712 according to the deed no. 154 CZ Prizren. Other legal heirs, Srboljub, Draginja, Miroslav and Branislav, according to this resolution, were not included in the inheritance, as they had declared through their authorized representatives during the inheritance proceedings at the Municipal Court, that they do not accept their legal shares left by the decedent, not denying the right to inherit to the other legal heirs.

27. According to the case files, on 3 October 2003, acting according to Resolution [T. no. 68/03] of the Municipal Court in Prizren, the Municipal Assembly - Prizren – Directorate for Property and Legal Affairs (hereinafter: MA Prizren) had issued Resolution no. 027-825 whereby: (i) allowed the change of owner in the cadastral operation MA Prizren for immovable property registered in the deed no. 154 in the name of Trajko Mihajlović 9/16 and Toma Mihajlović 7/16 from Prizren and specifically cad. parcel no. 57/12 in the area of 1 ha 93 ares and 85m^2, arable land culture of class 3; (ii) Immovables from point I of the enacting clause of this resolution shall be registered in the deed no. 154 on behalf of Trajko Mihajlović 9/16 and Dragan Mihajlović 7/16 from Prizren, with unchanged notes regarding the number of parcel, surface, culture, and class.

28. On 9 March 2004, MA Prizren by Resolution no. 02-583/1 annulled and declared null: (i) the Resolution of MA Prizren 027-583 of 7 July 2003, on the change of owner in the cadastral operation of MA Prizren for immovable property registered in the deed no. 154 in the name of P.SH. KBI "Progress" from Prizren, 7/16 and only in terms of cadastral parcel no. 57/12 in area 1 ha 93 ares 85 m^2, arable culture of class 3, transferred and registered to the deed no. 154 in the name of Toma Mihajlović 7/16 ideal share with other unchanged entries as null; and the Resolution of the Directorate for Property and Legal Affairs no. 027-825 of 3 October 2003 on the change of owner (user) in the cadastral operation of MA Prizren for the same immovable property, evidenced in the name of Toma Mihajlović from 7/16 ideal share, with the other notes unchanged and transferred to the heir Dragan T. Mihajlović; and (ii) immovability from point I of the enacting clause of this decision shall be de-registered from Toma Mihajlović respectively from his heir Dragan Mihajlović and returned to deed no. 154 on behalf of MA Prizren – Directorate for Education and Science, with unchanged notes regarding the number of parcel, area, culture, and class according to Construction reg. no. 50/2000. This decision was justified by MA Prizren on the grounds that "*after the verification of the cadastral books, this body has come to the conclusion that it has made an omission when it has mistakenly made the registration-change in the cadastral operation of this parcel no. 5712 for the ideal share of 7/16 or 85 ares, because this change could not be executed as previously by Resolution no. 011-28 of 30 May 2000 of MA Prizren, the administrative transfer of this cadastral parcel from the KBI "Progress" to the Municipality of Prizren – Directorate for Education and Science, with the purpose of building the primary*

school which is already under construction and completion, and these changes are evidenced in the cadastre in the registration of constructions no. 50/2000';

29. On 27 December 2004, the Applicant filed a lawsuit with the Municipal Court in Prizren (hereinafter: the Municipal Court) against MA Prizren, claiming compensation for the confiscation of the land by MA Prizren.

30. On 26 March 2013, the Basic Court in Prizren (hereinafter: the Basic Court) by Judgment [P. no. 2231/04] approved the Applicant's claim and obliged MA Prizren to pay the Applicant in the name of compensation for the unlawful confiscation of 7/16 of the ideal share of the cadastral parcel no. 5712 according to the deed no. 154 CZ Prizren, in the amount of 554,320 (five hundred and fifty-four thousand three hundred and twenty) euros with legal interest from the day of the judgment.

31. On 10 September 2013, MA Prizren filed an appeal with the Court of Appeals against the Judgment of the Basic Court, due to the violation of the provisions of the contested procedure, the erroneous and incomplete verification of the factual situation, and the erroneous application of the substantive law, with the proposal to change the judgment and remand the case to the first instance for retrial.

32. On 6 May 2015, the Court of Appeals by Decision [CA. no. 3132/2013] overturned the Judgment of the Basic Court [P. no. 2231/04] of 26 March 2013, and remanded the case for retrial.

33. On 29 April 2016, the Basic Court, by Judgment [P. no. 1146/15] approved as grounded the claim of the Applicant, thus obliging MA Prizren to pay the Applicant, as co-owner of the 7/16 share, in the area of 8528 m2 of cadastral parcel no. 57/12, the place called "Atmejdan", with a total area of 19385 m2, CZ Prizren on the eastern borders in length of 165.97 m, on the west in length of 174.49 m, on the north in length of 49.28 m and on the south in length of 50.43 m, in the name of compensation for obtaining the 7/16 (8528) m2 share of the ideal share of the cadastral parcel no. 57/12, the amount of €643,693, with legal interest starting from the day of receipt of the judgment until the final payment, within 15 days from the day of the enactment of the final judgment under the threat of compulsory enforcement.

34. On an unspecified date, MA Prizren filed a complaint with the Court of Appeals against the Judgment [P. no. 1146/15] of the Basic Court of 29 April 2016.

35. On an unspecified date, the Applicant filed a complaint with the Ombudsperson Institution (hereinafter: Ombudsperson) regarding the prolongation of the decision-making proceedings regarding his case before the Court of Appeals.

36. On 7 March 2019, the Ombudsperson, by Decision 361/2019, responded to the Applicant and emphasized that the Ombudsperson has recommended that the courts without delay take all relevant legal actions to review and adjudicate the case for which it has been established that there are delays in judicial proceedings, and through its report had also recommended to the Government to establish mechanisms for the prevention of violations of rights to trial in reasonable time.

37. On 9 February 2021, the Court of Appeals by Decision [Ac. no. 3930/16] approved as grounded the complaint of MA Prizren, and overturned the Judgment [P. no. 1146/15] of the Basic Court of 29 April 2016.

Applicant's allegations

38. The Applicant challenges the prolongation of the proceedings before the Court of Appeals, alleging that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution have been violated.

39. The Applicant further underlines that "*the case sent now for the second time to the Court of Appeals of Kosovo on 14.09.2016, regarding the decision according to the filed appeal and the same is sent to the Court of Appeals under the reference AC. no. 3939/2016, which until today, even though four (4) full years have passed and has now entered the fifth (5) year, from the day of sending, has not been decided.*" In this regard, the Applicant alleges that he was denied the right guaranteed by the Constitution.

40. According to the Applicant: "*With Article 10 of the Law on Contested Procedure, it is* provided *that the court shall be bound to carry out proceedings without delay and minimize costs as well as to make impossible any misuse of the procedural rights set for the parties, while this contested procedure was initiated on 27.12.2004, that is, nearly twenty (20) years ago, twice it was decided in the court of first instance, both times it was decided in his favour, and now for the second time in the second instance body, respectively in the Court of Appeals, no decision has been taken on the legal matter for four (4) whole years, respectively the fifth (5) year has started.*

41. Finally, the Applicant requests from the Court: (i) to approve the complaint and ascertain the violation of the rights guaranteed by the Constitution; (ii) to order the Court of Appeals to immediately decide on the case AC. no. 3939/2016 and in this way to remove the violation of the rights to a fair trial and a reasonable period of time, and to remove the consequences of not deciding in a reasonable period of time, guaranteed by the Constitution of the Republic of Kosovo.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Article 31
[Right to Fair and Impartial Trial]

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

2. 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.

[...]

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.
[...]

Assessment of the admissibility of the referral

42. The Court initially examines whether the Applicant has met the admissibility criteria set out in the Constitution and further provided in the Law and the Rules of Procedure.

43. In this regard, the Court first refers to Articles 113.1 and 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

Article 113

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

[...]

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

44. The Court further refers to Articles 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. [...]

45. With regard to the fulfilment of these criteria, the Court finds that the Applicant is an authorized party who disputes an act of a public authority; has specified the rights and freedoms he alleges to have been violated; and has submitted the Referral within the defined legal deadline.

46. The Court also finds that the Applicant's Referral meets the admissibility criteria set out in paragraph (1) of Rule 39 of the Rules of Procedure and that it cannot be declared inadmissible based on the conditions set out in paragraph (3) of Rule 39 of the Rules of Procedure. The Court also emphasizes that the Referral is not manifestly ill-founded on constitutional grounds, as set out in paragraph (2) of Rule 39 of the Rules of Procedure, therefore it must be declared admissible and its merits must be examined.

Merits

47. The Court recalls that the essence of the present case derives from the property dispute that the Applicant has with MA Prizren, due to taking of his property by MA Prizren, a property which was used for the construction of a school by MA Prizren. Consequently, the Applicant filed a lawsuit with the Basic Court, requesting to be compensated for the property taken from MA Prizren. The Basic Court had approved the Applicant's claim and obliged MA Prizren to pay the Applicant in the name of compensation for the unlawful confiscation of 7/16 of the ideal share of the cadastral parcel no. 5712 according to the deed no. 154 CZ Prizren, in the amount of 554,320 (five hundred and fifty-four thousand three hundred and twenty) euros with legal interest from the day of the judgment. MA Prizren filed a complaint with the Court of Appeals, where the latter approved the appeal and remanded the case for retrial. Basic Court, in retrial proceedings, on 29 April 2016, by Judgment [P. no. 1146/15] approved as grounded the claim of the Applicant, thus obliging MA Prizren to pay the Applicant, as co-owner in the share of 7/16, in the area of 8528 m2 of cadastral parcel no. 57/12, the place called "Atmejdan", with a total area of 19385 m2, CZ Prizren on the eastern borders in length of 165.97 m, on the west in length of 174.49 m, on the north in length of 49.28 m and on the south in length of 50.43 m, in the name of compensation for obtaining the 7/16 (8528) m2 share of the ideal share of the cadastral parcel no. 57/12, the amount of €643,693, with legal interest starting from the day of receipt of the judgment until the final payment, within 15 days from the day of the enactment of the final judgment under the threat of compulsory enforcement. MA Prizren again filed an appeal to the Court of Appeals, where again the Court of Appeals approved the appeal of MA Prizren and overturned the decision of the Basic Court and remanded the case for retrial.

48. The Court notes that the essence of the Referral is related to the allegation of violation of the right to a fair trial, namely violation of the right to a final trial, within a reasonable time limit by the regular judiciary, highlighting "the *case sent now for the second time to the Kosovo Court of Appeals on 14.09.2016, regarding the decision according to the filed appeal and the same is sent to the Court of Appeals under the reference AC. no. 3930/2016, which until today, even though four (4) full years have passed and has already entered the fifth (5) year, from the day of sending, has not been decided."*

49. Regarding this, the Court refers to Article 31, paragraph 2, of the Constitution, in conjunction with Article 6, paragraph 1, of the European Convention on Human Rights (hereinafter: the ECHR), which stipulate:

Article 31. 2 of the Constitution

2. 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 6.1 of the Convention
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.
[...]

50. In the present case, the Court, in order to verify the merits of the Applicant's allegations regarding violations of constitutional rights and freedoms related to taking of decisions within a reasonable time, shall deal with: (i) ascertaining the period of duration of court proceedings; *(ii)* relevant principles regarding the duration of proceedings; and *(iii)* reasonableness of the duration of proceedings before the regular courts.

(i) Period to be taken into account

51. Referring to its practice and to the case law of the ECtHR, the Court has established that the calculation of the timeliness of proceedings begins at the moment when the competent court is set in motion at the request of the parties for the establishment of an alleged right or legitimate interest (see ECtHR case, Erkner *and Hofauer v. Austria*, 23 April 1987, paragraph 64, see also ECtHR case, Poiss *v. Austria*, 23 April 1987, paragraph 50, and Constitutional Court case no. KI127/15, with Applicant Mile Vasovič, Resolution on Inadmissibility of 15 June 2015, paragraph 43; KI19/17, Resolution on Inadmissibility of 21 February 2018, paragraph 50). A process is considered to have been completed by the issuance of a final judgment by a final competent judicial instance (see ECtHR case *Eckle v. Federal Republic of Germany* 8130/78, Judgment of 15 July 1982, paragraph 74; as well as Court case KI177/19, Applicant NNT "Sokoli", Judgment of 29 March 2021, paragraph 98). Therefore, the request for a trial within a reasonable time applies to all stages of the litigation aimed at resolving the dispute, while not excluding the stages after the trial on the merits (see ECtHR case, *Robins v. United Kingdom*, Judgment of 23 September 1997, paragraphs 28-29).

52. In the present case, the Applicant, as explained above, had filed the lawsuit in 2004. The Basic Court decided on the Applicant's lawsuit in 2013. The case was remanded for retrial by the Court of Appeals on the basis of MA Prizren's appeal. The Basic Court had again ruled on the case by the judgment of 29 April 2016. Whereas the Court of Appeals by decision [Ac.no.3930/16] of 9 February 2021, had annulled the judgment of the Basic Court [C.no.1146/13] of 29 April 2016 and had the case remanded for retrial and reconsideration. Referring to the case files, the Court notes that the Applicant's case has been in judicial proceedings since 2004.

53. Consequently, the Court finds that the period to be taken into account in relation to the Applicant's allegation of violation of the right to a fair trial, pursuant to paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, in the present case is calculated from the date of filing the lawsuit with the Basic Court, respectively the date of 27 December 2004 until the decision regarding the lawsuit of the Applicant, namely Resolution [Ac. 3930/16] of 9 February 2021 of the Court of Appeals, which in its entirety is a period of 16 years, 1 month, and 13 days (sixteen years, one month, and thirteen days).

(ii) Relevant principles

54. The Court first of all emphasizes that, according to the consistent practice of the ECtHR, which is also reflected in the practice of the Court, the reasonableness of the duration of the proceedings should be assessed in the light of the circumstances of the case, taking into account the criteria established by the ECtHR's case practice, namely: (a) the complexity of the case; (b) the conduct of the parties to the proceedings; (c) the conduct of the competent court or other public authorities; and (d) the importance of what is at stake for the Applicant in the dispute (see ECtHR cases *Mesić v Croatia*, no. 19362/18, Judgment of 5 May 2022, paragraph 127; *Bara and Kola v. Albania*, no. 43391/18 17766/19, Judgment of 12 October 2021, paragraph 63; *Mishgjoni v. Albania*, no. 18381/05, Judgment of 7 December 2010, paragraph 44; *Gjonboçari and others v. Albania*, no. 10508/02, Judgment of 23 October 2007, paragraph 61; *Mikulić v. Croatia,* no. 53176/99, no. 35382/97, Judgment of 7 February 2002, paragraph 38; *Comingersoll S.A. v. Portugal*, Judgment of 6 April 2000; *Frydlender v France,* no. 30979/96, Judgment of 27 June 2000, paragraph 43; *Sürmeli v. Germany*, no. 75529/01 Judgment of 8 June 2006, paragraph 128; *Lupeni Greek-Catholic Parish and Others v. Romania*, no. 76943/11, Judgment of 29 November 2016, paragraph 143; *Nicolae Virgiliu Tănase v. Romania*, no. 41720/13, Judgment of 25 June 2019, paragraph 209; see, also, Court cases: KI177/19, Applicant *NNT "Sokoli*", Judgment of 16 April 2019, paragraphs 96-106; KI19/21, Applicant Sadik Pllana, Judgment of 11 August 2022, paragraph 85).

(iii) Analysis of the reasonableness of the duration of the proceedings

55. The Court notes that the Applicant's case has arisen as a result of a property dispute between the Applicant and MA Prizren. He had filed a lawsuit for compensation of the property, for the first time in 2004, requesting the cash compensation of the property which he had been taken by MA Prizren.

56. As elaborated above, in order to ascertain whether the duration of the proceedings was reasonable, the Court must take into account the following factors: (a) the complexity of the case; (b) the conduct of the Applicant; (c) the conduct of the relevant judicial authorities; and (d) the importance of what is at stake for the Applicant in the dispute.

(a) Case complexity

57. Regarding the complexity of the case, the Court refers to the practice of the ECtHR and that of the Court through which it was emphasized that the complexity of the case can be related to factual and legal issues, but it can also be related to the involvement of some parties in the proceedings or to a certain number of evidence to be dealt with before regular courts (see, mutatis mutandis, ECtHR cases, *Lupeni Greek-Catholic Parish and Others v. Romania*, cited above paragraph 150; *Nicolae Virgiliu Tănase v. Romania*, cited above paragraph 210; *Katte Klitsche de la Grange v. Italy*, no. 12539/86, Judgment of 19 September 1994, paragraph 55; *Humen v Poland*, no. 26614/95, Judgment of 15 October 1999, paragraph 63 and *Cipolleta v Italy*, no. 38259/09, Judgment of 11 January 2018, paragraph 44 where, despite the complexity of the insolvency proceedings, the ECtHR found that the same had been delayed contrary to the criterion of fair trial "within a reasonable time" as guaranteed by Article 6 (1) of the ECHR; see also the Court's cases KI18/18, Applicant Isuf Musliu, cited above, paragraph 45; and KI104/20, Applicant Ejup Koci, cited above, paragraph 48).

58. In the present case, the Court notes that the case of the Applicant relates to property matters, for which the Applicant alleges that the property belongs to him on the basis of the inheritance inherited from his father.

59. In the context of the complexity of the case, as well as the obligation to comply with all procedural requirements, the Court notes that the case was initially decided by the Basic Court by Judgment [P.no.2231/04] of 26 March 2013, where MA Prizren had filed an appeal against this judgment by presenting new evidence, which the Court of Appeals had approved and overturned the judgment of the Basic Court and remanded the case for retrial. The Court further notes that the Basic Court in retrial by Judgment [P.no.1146/15] had again ruled in favour of the Applicant, where MA Prizren had not agreed with the judgment of the Basic Court and had filed an appeal with the Court of Appeals. The Court notes that the Court of Appeals issued Judgment Ac.3930/2016 of 9 February 2021, whereby it confirmed as grounded the appeal of MA Prizren and overturned the Judgment [P.no.1146/15] of the Basic Court of 29 April 2016, and remanded the case to the court of first instance for reconsideration.

60. The Court notes that the Applicant's case concerns 3 (three) different parties that are involved in the proceedings. In these circumstances, the Court, referring also to the factual circumstances of the case related to property matters, notes that the case does not appear to be of such a complex nature, which could justify that the judicial proceedings for the resolution of the claim regarding the alleged civil rights of the Applicant of this constitutional complaint should last over sixteen years.

(b) Applicant's conduct

61. The Court underlines that the applicants in principle have the right to follow all procedural steps made available by the applicable laws. However, applicants should also take into account the consequences if the legal remedies used can affect the duration of their case. The Court considers that the conduct of the applicants constitutes an objective fact which cannot be attributed to the courts and which must be taken into account in the finding whether the proceedings continued longer than the reasonable time limit guaranteed by paragraph 2 of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR (see the ECtHR cases, *McFarlane v. Ireland*, no. 31333/06, Judgment of 10 September 2010, paragraph 148; *Eckle v. Germany*, cited above, paragraph 82; see also, the Court case KI07/15, Applicant Shefki Zogiani, cited above, paragraph 55).

62. Regarding the procedural actions of the Applicant, the Court refers to the practice of the ECtHR where the same had clarified that the applicant is required to exercise caution in taking procedural steps and to refrain from the use of delaying tactics in reviewing his case (see ECtHR case, *Bara and Kola v. Albania*, cited above, paragraph 91 where the ECtHR found that based on the complainant's conduct there is no indication that he has caused or contributed to the delay of proceedings; *Union Alimentaria Sanders S.A. v. Spain*, no. 11681/85, Judgment of 7 July 1989, paragraph 35).

63. Further, and based on the above actions of the Applicant, the Court, stressing out his conduct since the date of filing of the lawsuit on 27 December 2004, highlights that it does not note any indication of the actions of the Applicant that would prove that he has caused or contributed to the delay of proceedings or that in any other way may have influenced the merits of review and ruling of his case.

(c) Conduct of relevant judicial authorities

64. The Court first notes the ECtHR's principled position that paragraph 1 of Article 6 of the ECHR requires contracting States to organise their legal systems in such a way that the competent authorities comply with the requirements of the said Article, including the obligation to review cases within a reasonable time (see ECtHR cases: *Comingersoll*

S.A. v. Portugal, Judgment of the Grand Chamber of 6 April 2000, paragraph 24; *Luli and others v. Albania*, no. 64480/09 64482/09 12874/10 56935/10 3129/12, Judgment of 1 April 2014, paragraph 91; *Kaçiu and Kotorri v. Albania*, no. 33192/07 33194/07, Judgment of 25 June 2013; and *Abdoella v. Netherlands*, no. 12728/87, Judgment of 25 November 1992, paragraph 24).

65. In this context and in the circumstances of the present case, the Court draws attention to the fact that the ECtHR has emphasized that the reasoning of the courts for the overload with outstanding cases cannot be taken into account as a justification for prolonged proceedings (see ECtHR cases, *Bara and Kola v. Albania*, cited above, paragraphs 70-71 and 94-96; *Krastanov v. Bulgaria*, no. 50222/99, Judgment of 30 September 2004, paragraph 74; *Vocaturo v. Italy*, no. 11891/85, Judgment of 1 April 1989, paragraph 17; and *Cappello v. Italy*, no. 12783/87, Judgment of 24 January 1992, paragraph 17).

66. However, in ECtHR case, *Buchholz v. Germany*, regarding the allegation of the German Government that as a result of the economic recession there has been a significant increase in the volume of litigation in the area of employment, resulting in overload of unresolved cases before the courts, including the Hamburg courts, the ECtHR has clarified that: "[...] The Convention imposes an obligation on Contracting States to organise their legal systems in such a way as to enable the courts to meet the requirements of Article 6, paragraph 1, including that of a trial within a "reasonable period of time". However, temporary overloading with unresolved cases does not attribute responsibility to the Contracting States provided that they have taken immediate and reasonable remedial action to deal with an emergency of this kind" (see ECtHR case *Buchholz v. Germany*, no. 7759/77, Judgment of 6 May 1981, paragraph 51).

67. In line with the purpose of the abovementioned position of the ECtHR, the Court in its judicial practice has emphasized that the regular courts have taken into account the constitutional and legal obligation to finalize the cases within a reasonable time, so that the prolonged delays do not cause confusion and uncertainty to the parties. Thus, the regular courts must take into account these obligations and cannot allow the case to be moved indefinitely from one judicial instance to another. On the contrary, public confidence in the entire legal order would be undermined (see in this connection the Court's reasoning in case KI104/20, Applicant Ejup Koci, cited above, paragraph 62 and KI19/21, Applicant Sadik Pllana, Judgment of 11 August 2022, paragraph 98).

68. The ECtHR has also emphasized that while it is not the function of the Court to analyse the manner in which the regular courts have interpreted and applied the law, it nevertheless considers that judgments annulling previous findings and restoring the case for reconsideration are usually due to errors committed by lower courts and that the repetition of such judgments may indicate shortcomings in the justice system (see, mutatis mutandis, the ECtHR case, *Lupeni Greek-Catholic Parish and Others v. Romania*, cited above, paragraph 147).

69. The Court notes that in the present case, there have been two decisions of the Basic Court, two decisions of the Court of Appeals, of which two have decided on the merits of the Applicant's civil rights, while two have remanded the case for retrial.

70. From the case files it is noted that it took the Court of Appeals 5 years to decide to remand the case for retrial by Resolution [Ac. no. 3930/16] of 9 February 2021. The same had remanded the case for retrial by Resolution [CA. no. 3132/2013] of 6 May 2015.

71. The Court considers that the Court of Appeals had jurisdiction to rule on factual and legal matters, and that it could have decided on the merits of the case. In this regard, the Court considers that the repetition of such trials may indicate shortcomings in the justice system, and that the delays of the proceedings in the present case are mainly attributed to the regular courts, since they took more than 16 years to adjudicate a non-complicated case, but did not even decide on the merits of the civil lawsuit of the Applicant.

(d) Importance of what is at stake for the Applicant in the dispute

72. Regarding the criterion of what is at stake for the Applicant in the dispute, the Court refers to the ECtHR case law, which clarifies that a category of cases requires a special expeditionary resolution. According to this practice, examples that require special care and priority resolutions are cases related to civil status and capacity, cases about child custody and parent-child relationship, disputes from the employment relationship, cases of applicants suffering from "incurable diseases" and having "reduced life expectancy", as well as cases about the right to education (see ECtHR cases, *Bock v. Germany*, no. 11118/84, Judgment of 21 February 1989, paragraph 49; *Laino v. Italy*, no. 33158/96, Judgment of 18 February 1999, paragraph 18, *Mikulić v. Croatia*, cited above, paragraph 44; *Hokkanen v. Finland*, no. 19823/92, Judgment of 23 September 1994, paragraph 72; *Niederböster v. Germany*, no. 39547/98, Judgment of 27 May 2003, paragraph 39; *Frydlender v. France*, cited above, paragraph 45; Vocaturo *v. Italy*, cited above, paragraph 17; *X v. France*, no. 18020/91, Judgment of 31 March 1992, paragraph 47; *A. and others v. Denmark*, no. 20826/92, Judgment of 22 January 1996, paragraphs 78-81; *Oršuš and others v. Croatia*, no. 15766/03, Judgment of 16 March 2010, paragraph 109; and *Sailing Club of Chalkidiki "I Kelyfos" v. Greece*, no. 6978/18 8547/18, Judgment of 21 November 2019, paragraph 60 where the ECtHR, among others, had pointed out that the unjustified absence of a decision within a particularly long period by a court examining the case can be considered a denial of justice).

73. The Court recalls that the Applicant's claim relates to his compensation for the property that was taken by the Municipality of Prizren for the construction of a school. The court in the present case, taking into account that the Applicant sought his right to compensation for the property he had inherited, considers that the regular courts should have decided faster regarding the Applicant's case.

74. The Court considers that the regular courts should have taken into account, in the circumstances of the present case, the respect of the principle of the fair administration of justice, namely the obligation of the latter to deal properly with the cases before them (see Court case: KI19/21, Applicant Sadik Pllana, cited above, paragraph 105).

75. In this regard, the Court has held that cases in the regular courts cannot take place without a set deadline for their finalization as it has happened in the present case where the proceedings have lasted for more than sixteen (16) years for a straightforward case such as ascertaining in regard to the claim of the Applicant (see, mutatis mutandis, KI19/21, Applicant Sadik Pllana, cited above, paragraph 106).

Conclusion regarding the prolongation of the proceedings

76. In conclusion, the Court considers that since in the case of the Applicant the regular courts had applied the provisions governing the property case, they as such, were not so complicated to such an extent that the entire process, from the beginning of the lawsuit until the last decision of the Court of Appeals which had remanded the case for retrial and reconsideration at the Basic Court, would last 16 years, 1 month, and 13

days, and still there be no final decision on this case, since according to the latest information, the case was remanded to the Court of Appeals on the basis of the appeal.

77. The Court considers that the present case was not complicated because (i) the regular courts had the duty to ascertain whether the Applicant's claim for compensation was in his favour or not; (ii) the proceedings were not further complicated by the actions of the Applicant who only followed the procedural steps for the realization of his right to compensation for what he had gone through after the property was taken; whereas, (iii) it took the regular courts more than 16 years to decide, and not on merit, but by remanding the case for retrial and reconsideration to the first instance. The Court reiterates that failure to resolve the Applicant's case within a reasonable time not only is an unjustified prolongation of proceedings but it may also be considered a denial of justice (see ECtHR case, *Sailing Club of Chalkidiki "I Kelyfos" v. Greece*, cited above, paragraph 60).

78. Consequently, the Court finds that the duration of the proceedings as a whole, of 16 years, 1 month, and 13 days, in the circumstances of the present case, cannot be considered justified.

79. As a result of the abovementioned, the Court finds that there has been a violation of paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

Effects of this Judgment on the Applicant

80. The Court has considered the factual and legal issues on which the proceedings for the Applicant have lasted for 16 years, 1 month, and 13 days, and again its case has remained unresolved, but has been remanded again to the Court of Appeals for decision based on the appeal. In line with this, the Court recalls that it has found a violation of paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

81. The Court notes and finds that Article 41 of the ECHR, which is part of Title II [European Court of Human Rights] of the ECHR, cannot serve as a basis for seeking "fair compensation" or compensation for non-material damage before the Constitutional Court, since this Article refers to the competencies of the ECtHR and not to the competencies of the domestic courts that are members of the defence mechanism guaranteed by the ECHR. The contracting parties are obliged to guarantee the rights and freedoms guaranteed by Title I [Rights and Freedoms] of the ECHR. In this regard, the Court takes into account the fact that the ECtHR awards "fair compensation" or compensation for non-material damage, but does so on the basis of its specific competencies provided in Article 41 of the ECHR and Rule 60 of its Rules of Procedure.

82. Despite the fact that the ECtHR has specific authorization to award a "fair compensation", this Court is bound and conditioned to act only on the basis of the legal and procedural regulations that regulate its work. In none of the documents governing the scope and proceedings before this Court and the actions that the latter may undertake, an equivalent authorization to award "fair compensation" is provided as such competence is clearly ascribed to the ECtHR by the aforementioned provisions.

83. However, this does not imply that individuals have no right to claim compensation from public authorities in case of finding a violation of their rights and freedoms based on the applicable laws in the Republic of Kosovo. On the contrary, the ECtHR itself emphasizes that in order for a right protected by the ECHR to be repaired to the maximum extent possible, the respective applicant must be compensated to the

appropriate extent and in fair compliance with the right which has been violated. (See Court case, KI108/18, Applicant Blerta Morina, cited above, paragraph 197. See, for example, one of the ECtHR cases in this regard: *Gavriliță v. Moldova*, no. 22741/06, Judgment of 22 July 2014). However, there are also cases where, based on the specific circumstances of that case, the ECtHR considers that the very finding of the violation represents a "fair compensation" even for the non-material damage that a claimant may have suffered. (See in this regard the operative part of the ECtHR case, *Roman Zakharov v. Russia*, no. 47143/06, Judgment of 4 December 2015, paragraph 312).

84. The Court clarifies that it has no legal authority to designate any type or manner of compensation for cases where it finds violations of the respective constitutional provisions, such as in the present case of Article 31 of the Constitution and Article 6 (1) of the ECHR (see Court cases, KI10/18, Applicant Fahri Deçani, Judgment of 8 October 2019, paragraph 119; KI108/18, Applicant Blerta Morina, cited above, paragraph 196; and see case, KI113/21, Applicant Bukurije Haxhimurati, Judgment of 20 December 2021, paragraph 148).

85. In this sense, the Court has emphasized that individuals have the right to claim through the initiation of separate proceedings compensation from public authorities in case of finding violations of their rights and freedoms based on the laws applicable in the Republic of Kosovo (see Court cases, KI113/21, Applicant Bukurije Haxhimurati, cited above, paragraph 150; KI10/18, Applicant Fahri Deçani, cited above, paragraph 120; KI108/18, Applicant Blerta Morina, cited above, paragraph 197 and KI19/21, Applicant Sadik Pllana, cited above, paragraph 115).

86. The Court considers that only the finding of a violation for a fair trial within a reasonable time, as guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR, does not constitute a "fair compensation" for the Applicant. Therefore, in cases where only the finding of constitutional violation by the Court may not be sufficient to avoid the consequences of the constitutional violation and where monetary compensation is necessary, it is up to the parties involved in the case to make use of the remedies available under the legislation in force for the further realization of their rights, including the right to claim compensation for material and non-material damage, as a result of violations of rights guaranteed by the Constitution, ascertained by the Court, including the violation of the right to a fair trial within a reasonable time as guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR (see, mutatis mutandis, Court cases, KI113/21, Applicant Bukurije Haxhimurati, cited above, paragraph 151, and KI19/21, Applicant Sadik Pllana, cited above, paragraph 117).

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 22 December 2022, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of paragraph 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights, regarding the right to a fair and impartial trial within a reasonable time;

III. TO ORDER the Court of Appeals to inform the Constitutional Court as soon as possible, but not later than 6 (six) months, respectively by 22 June 2023, regarding the measures taken to implement the Judgment of this Court, in accordance with Rule 63 of the Rules of Procedure;

IV. TO NOTIFY this Judgment to the parties;

V. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law;

VI. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Nexhmi Rexhepi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.