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

Prishtina, on 19 June 2023
Ref. no.: AGJ 2216/23

This translation is unofficial and serves for informational purposes only.

JUDGMENT
in
case no. KI212/21

Applicant

Behar Emini

Constitutional review of Decision Rev. no. 382/2021, of the Supreme Court of Kosovo of 22 September 2021

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Behar Emini, residing in Gjilan, who is represented by Abdylaziz Sadiku, a lawyer in Gjilan (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Rev. no. 382/2021] of 22 September 2021 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR) and Article 46 [Protection of Property] of the Constitution.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 24 November 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 3 December 2021, the President of the Court by Decision KSH.KI212/21 appointed Judge Bajram Ljatifi as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel, composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Radomir Laban and Remzije Istrefi-Peci.

7. On 2 December 2021, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 11 January 2022, the Court sent to the Applicant's legal representative a request to complete the referral, namely asked him to submit to the Court the official referral form as well as the full copy of the challenged Decision of the Supreme Court and the Decision [No. 119/15] of 24 February 2017 of the Basic Court in Gjilan.

9. On 18 January 2022, the Applicant's legal representative submitted the documents requested by the Court.

10. On 7 April 2022, the Court sent a copy of the referral to the Municipality of Gjilan. On the same date, the Court requested the Basic Court in Gjilan (hereinafter: the Basic Court) to submit the complete case file.

11. On 20 April 2022, the Basic Court submitted the complete case file to the Court.

12. On 18 October 2022, the Review Panel considered the report of the Judge Rapporteur and by majority of votes recommended to the Court the admissibility of the referral. On the same date, the Court in full composition decided to postpone the further consideration of the referral with additional supplementations to the next session.

13. On 1 December 2022, the Court returned the case file to the Basic Court.

14. On 8 December 2022, the Review Panel considered the report of the Judge Rapporteur and by majority recommended to the Court the admissibility of the referral. On the same date, the Court in full composition decided to declare the referral admissible, but to postpone the further consideration of the referral with additional supplementations to the next session.

15. On 16 December 2022, Judge Enver Peci took the oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.

16. On 23 February 2023, the Court in full composition decided to postpone the further consideration of the referral with additional supplementations to the next session.

17. On 30 March 2023, the Applicant requested information as to what stage of the procedure his referral is being handled by the Court.

18. On 22 May 2023, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral. On the same date, the Court decided to: (i) declare, unanimously, the Referral admissible; (ii) to hold, by majority of votes, that the Decision [Rev. no. 382/2021] of the Supreme Court of Kosovo of 22 September 2021 is not in compliance with paragraph 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights; (iii) to hold, by majority of votes, that the Decision [Rev. no. 382/2021] of the Supreme Court of Kosovo of 22 September 2021 is not in compliance with paragraph 3 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights; (iv) to declare, unanimously, invalid the Decision [Rev. no. 382/2021] of the Supreme Court of Kosovo of 22 September 2021; (v) to hold, by majority of votes, that the Decision [Ac. no. 4784/17] of the Court of Appeals, of 24 May 2021 is final and binding; and (vi) to hold that the Judgment is effective on the date of its publication in the Official Gazette, in accordance with paragraph 5 of Article 20 of the Law.

Summary of facts

19. From the case file, it turns out that on 29 June 1995, the Municipal Assembly of Gjilan, specifically the Directorate for Urban Planning, Municipal Housing and Construction, and Property-Legal Affairs (hereinafter: the Municipal Assembly of Gjilan) issued Decision [01-465-3/64] on expropriation with the right to compensation of a property of land with a surface area of 1648 m² for the construction of a circular road in the Municipality of Gjilan.

20. At the time of the expropriation procedure, a part of this immovable property, namely 328 m² (hereinafter: the immovable property), out of 1648 m², was in the possession of the legal predecessor of the applicant S.E., who had purchased this immovable property from K.J. in 1962.

21. On 29 December 2008, the Applicant, within the out contentious procedure at the Basic Court in Gjilan (hereinafter: the Basic Court), submitted a request for compensation for the expropriated immovable property with a surface area of 328 m² by the Municipality of Gjilan (in the capacity of the counter-proposer in this procedure).

22. On 22 May 2012, the Basic Court, by Decision [No. 109/08], decided to terminate the out-contentious procedure in order to determine the issue of ownership of the Applicant in the aforementioned immovable property in the contested procedure.

23. On 25 February 2013, the Basic Court by Judgment [C. No. 11/2009], in the contested procedure, confirmed the right of ownership in favor of the Applicant as the legal successor of S.E. According to the case file, it results that the Applicant withdrew the request for compensation for the expropriated property in this contested procedure.

First out of contentious procedure

24. On 11 March 2014, the Basic Court, in out-contentious procedure by Decision [Case No. 109/2008], determined compensation from the Municipality of Gjilan for the expropriated immovable property in the name of the Applicant, in the amount of 29,520.00 euro.

25. The Court initially found that: "*It is undisputed between the parties that in 1994-95, by the former Municipality of Gjilan - Department of Urbanism, Municipal and Residential Activities, Construction and Legal Property Issues, the complete expropriation of the cadastre plot P-70403013-00214-1, with a surface area of 328m2, was carried out for the needs of the Republican Fund for Main Roads, South Center, for the construction of the circular road in the city of Gjilan. This land area is located in a place called 'Poredin' with agricultural land covering an area of 328 m2, registered at the Directorate for Geodesy, Cadastre, and Property of Gjilan, according to the Certificate on Property Rights UL-70403013-00517, as confirmed by Decision No. 01-465-3/64 dated 29 June 1995.*"
It is undisputed that the expropriated immovable property was not compensated at all by the former Municipality of Gjilan."

26. The Basic Court, by its Decision, emphasized that: *"[...] the Municipality of Gjilan, as the counter-proposing party, has legal subjectivity and passive legitimacy as a party to the procedure, as it is the successor of the former Municipality of Gjilan with all full rights in public assets, such as the case with the Circular Road of the City of Gjilan. It is illogical to assume that the counter-proposer is not the inheritor of the former Municipality of Gjilan when it now administers all the assets and liabilities of its predecessor."*

27. Furthermore, the Basic Court noted that: "*The court also considers that there is no statute of limitation in the proposer's claims, as the statute of limitation is a time determined by law for the exercise of rights in claims within a specified period, and until now, there has been no administrative or court decision determining the value of the expropriated land so that the proposer would lose this right by not realizing the monetary claims within the legal deadline.*"

28. Regarding the withdrawal of the claim for compensation for the expropriation, the Basic Court assessed that: "*The fact that [the Applicant] withdrew the claim for compensation in the contested procedure is due to the fact that [the Applicant], before initiating the lawsuit in court, namely in 2009, in the same court previously, i.e., in 2008, had submitted a proposal for compensation for the expropriated immovable property. Therefore, in the present case, the court considers that it is not a matter that has been adjudicated since, as mentioned above, compensation for the expropriated immovable property is resolved according to the rules of the out-contentious procedure, and these provisions are imperative and cannot be changed by the parties' will.*"

29. Accordingly, the Basic Court, based on Articles 1, 3, 28, 40, 52 of the Law on Expropriation [Law No. 011-3/1-78 of the Republic of Kosovo], in conjunction with Articles 2a, 8, 13, and 24 of the Law on Amending and Supplementing the Law on Expropriation [Law No. 465-2/86], approved the Applicant's proposal and thereby obliged the Municipality of Gjilan to pay the Applicant the amount of 29,520.00 euro

with an interest rate of 4.5% per year, starting from the date of submission of the proposal (29 December 2008) until the final payment. This amount was based on the expertise of an agriculture expert appointed by this court on 18 February 2014, taking into account that at the time of expropriation, the disputed property was agricultural land.

30. On an unspecified date, the Municipality of Gjilan filed an appeal against the Decision [Case no. 109/08] of the Basic Court issued of 11 March 2014, citing of the grounds of essential violations of the provisions of the contentious and out-contentious procedure, respectively erroneous and incomplete determination of the factual situation and erroneous application of substantive law.

31. In its appeal, the Municipality of Gjilan, among other things, emphasized that: (i) this municipality is not the inheritor of the expropriation project in 1995 and therefore does not have passive legitimacy to be a party in this procedure; (ii) there is a statute of limitation to this procedure; and (iii) the Applicant in the contested procedure waived the right to compensation for the expropriated property.

32. On 5 January 2015, the Court of Appeals, by its Decision [Ac. No. 1715/2014], rejected the appeal of the Municipality of Gjilan and upheld the Decision of the Basic Court.

33. The Court of Appeals, among other things, assessed that the claim of the Municipality of Gjilan regarding the lack of passive legitimacy of this municipality is unfounded. In this regard, the Court of Appeals upheld the stance of the Basic Court and added: "*Since the Municipality of Gjilan is the legal successor of the former municipality in the 1995 period and has inherited all its public assets and liabilities, there is no doubt that this municipality also has the obligation to compensate the inherited debts created in Kosovo, as the circular road built through the expropriation is used by the citizens of the Municipality of Gjilan, and there is no logic in denying this compensation to the [Applicant]. The other appealing allegation that the Municipality of Gjilan is not the legal successor of the former municipalities of Yugoslavia is also unfounded. This is a fact, as the Municipality is the successor of the municipalities that have existed and still exist in the territory of the former APK, now the Republic of Kosovo.*

34. Regarding the allegation of the Municipality of Gjilan of the statute of limitation of the claim, the Court of Appeals upheld the position of the Basic Court.

35. On 19 February 2015, against the Decisions of the Basic Court and the Court of Appeals, the Municipality of Gjilan submitted a revision to the Supreme Court on the grounds of essential violations of the provisions of the contested procedure and erroneous application of substantive law. In its revision, the Municipality of Gjilan, among other things: (i) claimed that the Applicant in the contested procedure had waived the right to compensation for the expropriated immovable property; (ii) disputed the expertise and the report of the expertise, which the Basic Court had trusted and on the basis of which it had determined the compensation amount; (iii) claimed that this municipality is not the bearer of the expropriation project in 1995, and therefore has no passive legitimacy to be a party to this procedure; (iv) clarified that he has requested the Government to compensate the expropriation of properties for the construction of this road since it is a regional road that connects the road with the municipalities of Vitia, Kamenica, Prishtina, Ferizaj and Bujanovci; and (v) referring to the provisions of the applicable Law on Obligations that in this procedure there is a statute of limitations of the claim.

36. On 20 April 2015, the Supreme Court by the Decision [Rev. no. 73/2015] approved the revision of the Municipality of Gjilan as grounded and annulled the Decision [No. 109/08] of 11 March 2014 of the Basic Court and the Decision [Ac. no. 1715/2014] of 5

January 2015 of the Court of Appeals and remanded the case to the Basic Court for retrial.

37. The Supreme Court concluded that the issue of determining the amount of compensation was not done in accordance with paragraph 2 of Article 13 of the Law on Amendments and Supplements to the Law on Expropriation [Official Gazette SAPK no. 46/1986]. In this regard, the Supreme Court asked the Basic Court that: *"[...] in retrial in this legal matter, [...] to administer the evidence with the same experts and the financial expert will determine the market price of the expropriated land in accordance with article 13 par. 2 of the Law on Amendments and Supplements to the Law on Expropriation or Article 14, which is applicable according to UNMIK Regulation no. 1999/24 and then determine the real compensation for the expropriated land of the proposer. The first instance court must verify the fact of who is the last user of the expropriated plot and based on this, will verify the passive legitimacy of the party to the proceedings".*

Enforcement procedure

38. On an unspecified date, the Applicant initiated the procedure for the enforcement of the Decision [N. no. 109/08] of 11 March 2014 of the Basic Court.

39. On 19 March 2015, the private enforcement agent by Order P. no. 168/2015 allowed the enforcement of the Decision [N. no. 109/08] of 11 March 2014 of the Basic Court. Against this Order, the Municipality of Gjilan submitted an appeal to the Basic Court.

40. On 1 April 2015, the Basic Court by the Decision [CPK. no. 34/2015 rejected the objection of the Municipality of Gjilan. Against this Decision, the Municipality of Gjilan submitted an appeal to the Court of Appeals.

41. On 7 June 2017, the Court of Appeals by the Decision [AC. no. 1230/16] rejected the appeal of the Municipality of Gjilan and upheld the Decision [CPK. no. 34/2015] of 1 April,2015 of the Basic Court. On an unspecified date, the Municipality of Gjilan through the State Prosecutor initiated the proposal for a request for protection of legality against the Decision of the Court of Appeals claiming that the latter upheld the Decision of the Basic Court for the enforcement of the Decision [No. 109/2008] of the Basic Court of 11 March 2014, which Decision was annulled by the Decision of the Supreme Court and at that time the case was in the procedure of retrial in the Court of Appeals.

42. On 6 September 2017, the State Prosecutor in the Supreme Court initiated the request [KMLC. no. 86/2017] against the Decision [Ac. no. 1230/2016] of 7 June 2017.

43. On 26 October 2017, the Supreme Court by the Decision [CML. no. 11/2017] approved the State Prosecutor's request as grounded and annulled the Decision [Ac. no. 1230/2016] of 7 June 2017 of the Court of Appeals and remanded the case to the same court for retrial.

44. From the complete case file, it does not appear that in the meantime a decision was rendered by the regular courts in the enforcement procedure.

Retrial procedure in out-contentious procedure

45. On 24 February 2017, the Basic Court, in the retrial procedure by the Decision [Cn. no. 119/2015] partially approved the proposal of the Applicant for compensation of the expropriated immovable property and consequently set the compensation value in the amount: *"[...] of 39,360.00 euro, minus 10% of the total amount with interest as paid by the banks of Kosovo, starting from [29 December 2008] until the final payment".*

46. On an unspecified date, the Municipality of Gjilan submitted an appeal to the Court of Appeals against the Decision of the Basic Court of 24 February 2017.

47. On 24 May 2021, the Court of Appeals by the Decision [Ac. no. 4784/17] upheld the Decision of the Basic Court.

48. The Court of Appeals assessed that the Decision of the Basic Court, rendered after the administration of the evidence in the procedure, is fair and based on the law, and that the latter also provided specific reasoning for the decisive facts. Subsequently, the Court of Appeals confirmed that the Decision of the Basic Court does not contain essential violations of the provisions of the contested procedure and has correctly applied the substantive law.

49. The Court of Appeals basically confirmed that the Municipality of Gjilan has passive legitimacy to be a party to this procedure: *"[...] since it is the successor of the former Municipality of Gjilan with all full rights in the public property as is the case with the Circular Road of the city of Gjilan".*

50. Further, regarding the claim of the Municipality of Gjilan that the Applicant's request was statute-barred, the Court of Appeals assessed that: *"[the applicant] has proven that he was never compensated for the immovable property involved in the expropriation process and since the rights derived from the right of ownership are absolute rights, the latter are not statute-barred".*

51. On 28 June 2021, against the above-mentioned Decisions of the Basic Court and Court of Appeals, the Municipality of Gjilan submitted a revision to the Supreme Court on the grounds of essential violations of the contested provisions and erroneous application of substantive law.

52. In its revision, the Municipality of Gjilan claimed, among other things, that: (i) by the Decision of the Basic Court, the Applicant was recognized with the right to compensation for the cadastral parcel no. 214/23 on a surface area of 328 m², while the expropriation decision shows that plot no. 214/3 on a surface area of 0.16.48 ha; (ii) the Applicant lacks legal legitimacy for the reason that at the time of expropriation, the property was registered in the name of K.U.J., respectively, he was not the legal or actual owner of the expropriated plot; (iii) contested the expertise and the report of the expertise, which the Basic Court had trusted and on the basis of which it had determined the compensation amount; (iv) claimed that this municipality is not the bearer of the expropriation project in 1995, and therefore has no passive legitimacy to be a party to this procedure; (v) clarified that he has asked the Government to compensate the expropriation of properties for the construction of this road since it is a regional road that connects the road with the municipalities of Vitia, Kamenica, Prishtina, Ferizaj and Bujanovci; and (v) referring to the provisions of the Law on Obligations, claimed that in this procedure there is a statute of limitations on the claim. In its revision, the Municipality of Gjilan also attached a Decision of the Supreme Court regarding a case of expropriation, namely the Decision [Rev. no. 630/20] of 17 March 2021, by which he had rejected the request of a proposer for compensation of expropriated property due to the statute of limitation. In the end, the Municipality of Gjilan claimed that the courts, as a result of erroneous determination of factual situation, have erroneously applied the substantive law.

53. On 12 July 2021, the Applicant submitted a response to the revision of the Municipality of Gjilan, by which he responded to all the claims filed in the revision. In relation to the claim for the prescription of the request, the Applicant in his response to the revision emphasized that: *"[...] the counter-proposer [Municipality of Gjilan] does not make a distinction between the fact that the statute of limitations applies to obligations*

relationships, while it does not apply to the right to property, because it has never become statute-barred until now, that is, neither with the previous nor the current laws, although the right on the property is an absolute right. Even the Law on expropriation no. 21/1978 and the Law on amendments and supplements to the law on expropriation no. 46/86 of SAPK is a special law and does not provide provisions for the prescription of the property right and its compensation". To his response in the revision, the Applicant attached the copy of the Decision [Rev. no. 266/2016] of 18 October 2016 of the Supreme Court regarding the expropriated cadastral plot 214/1 [property of S.E.], by which it was emphasized that*: "While the objections of the revision for the lack of passive legitimacy of the counter-proposer and for the statute of limitation of the request for compensation, the revision court rejects them as unfounded and for the same reasons and reasons given by two lower instance courts which are also admissible for the revision court, so it is unnecessary that they repeated here".*

54. On 22 September 2021, the Supreme Court by the Decision [Rev. no. 382/2021]: (i) approved the revision of the Municipality of Gjilan; (ii) modified the Decision of the Basic Court and the Decision of the Court of Appeals; and (iii) rejected the Applicant's proposal for compensation of the expropriated immovable property.

55. Based on the Decision of the Supreme Court, the latter based its decision to quash the two Decisions of the Basic Court and the Court of Appeals on the fact that the Applicant's request for compensation for the expropriated immovable property was statute-barred. The Supreme Court supported this finding by also applying the provisions of the Law on Obligations [Official Gazette of the SFRY, no. 29/78, 39/85 and 57/89].

56. The Supreme Court reasoned that: *"The fair compensation for the immovable property that is transferred into social ownership, based on the Expropriation Law, which was in force at the time of the expropriation of the subject immovable property, must be determined either by an agreement reached between the litigants, or ex-officio by the former Municipal Court in Gjilan. In Article 52 paragraph 1 of the Law on Expropriation (SAPK Official Gazette No. 21 of 28 April 1978 amended by the Law on Amendments and Supplements to this Law published in the SAPK Official Gazette No. 46/November 22, 1986) it was provided that, as long as the agreement on compensation is not reached within 3 months from the date the decision on expropriation becomes final, the competent body for property-legal affairs of the counter-proposer - here the municipality of Gjilan, was obliged to, according to its official duty, to send the decision on expropriation with all the documents of the case to the competent court to determine the compensation for expropriation. Paragraph 3 of this article stipulates that if the municipal administration body competent for legal property affairs does not act according to the provision from paragraph 1 of this article, the owner and the previous user of the direct expropriation can turn to the court for the determination of compensation, which means that the previous owner cannot bear any consequences due to the eventual failure of the state body, so the party himself has the opportunity to turn to the court to determine the compensation from the date the decision on expropriation becomes final".*

57. Furthermore, the Supreme Court reasoned that: *"But until the party has a legal deadline to turn to the court to determine the reward from the date of the finality of the decision on expropriation, we must refer to the provisions of the LOR [Law on Obligations Relationship] since this deadline is not provided by provisions of the Law on Expropriation, and since now, between the parties, we have a legally binding relationship that may be regulated by the provisions of the LOR, such as the present case of the prescription of claims, as the institution of the right of obligation ".*

58. The Supreme Court, applying this position to the Applicant's circumstances, considered that: *„[The applicant] submitted for the determination of this compensation on 29.12.2008, while as stated above, the subject plot was expropriated in 1995, which means 13 years after the expropriation of this plot. In Article 371 of the Law on Obligations, which was in force until the entry into force of the Law on Obligations of the Republic of Kosovo in 2012, it is provided that the claims are prescribed for 10 years, unless it is provided by law any other limitation period. This means that this provision provides for the general limitation period for claims. In the present case, the right to submit a claim for compensation is limited in time by the prescription of such a claim, so the former owner of the expropriated property cannot be protected from the consequences of such failure, which for a very long period as in the present case, a period of 13 years, not to ask for the determination of fair compensation, while the law has given him the opportunity to go to court himself after the three-month period during which the expropriating body has not sent the documents of the case to the court for determining compensation for expropriation. In this case, we are dealing with the loss of the right to obligatorily request compensation when the statute of limitations expires to request from the counter-proposer the fulfillment of its obligations regarding the compensation of the expropriated* immovable property *".*

Applicant's allegation

59. The Applicant claims that the challenged Decision of the Supreme Court violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], in conjunction with Article 6 (Right to a fair trial) of the ECHR and Article 46 [Protection of Property] of the Constitution.

60. The Applicant, referring to the chronology of the procedures followed before the regular courts, states that in: Decision [N. no. 109/2009] of the Basic Court of 11 March 2014; Decision [Ac. no. 1715/2014] of the Court of Appeals of 5 January 2015; and the Decision [Rev. no. 73/2015] of the Supreme Court of 20 April 2015, it was not established that there is a statute of limitations for the request.

61. In relation to the challenged Decision of the Supreme Court, the Applicant claims that in another case analogous to his case, namely in relation to the case of expropriation of S.E.'s immovable property, the immovable property adjacent to that of the applicant, The Supreme Court by the Decision [Rev. no. 266/2016] of 18 October 2016, did not establish a statute of limitations for the request.

62. The Applicant, after submitting his request to the Court, on 18 January 2022 submitted the completed referral form requested by the Court. In his completed referral, the Applicant supplemented his allegation in relation to Article 31 of the Constitution with the following reasoning:

63. First, the Applicant specifies that: "*That a fair trial was not held by the [Supreme Court] in accordance with the provisions of Article 31 of the Constitution of the Republic of Kosovo by Decision Rev. Decision. 266/2016 [of the Supreme Court] of 18.10.2016, we consider that it is necessary to emphasize that in both cases, the Supreme Court of Kosovo did not enter decision making regarding the Revision against the proposer because by the Law on amending and supplementing the Law on expropriation official gazette no. 46/86 of 02. 11. 1986 article 2b par. 4 which is added to article 1 of the Law on expropriation, expressly states that "Against a final decision on the determination of compensation is not permitted revision".*

64. Secondly, the Applicant also specifies that*: "The reason for not allowing the Revision as an extraordinary remedy is also supported by the provisions of Article 2b paragraph*

3 of the Law on Amendments and Supplements to the Law on Expropriation, which states that procedure for determination of compensation for expropriated real estate is an urgent procedure".

65. The Applicant further states that the Supreme Court: "[...] *does not respect the provisions of Article 1 of the Law on Expropriation, but it respects the provisions of Article 211 of the LCP".*

66. In light of his claim that the revision in the Supreme Court was not allowed, the Applicant specifies that: *"In the Response to the Revision filed by the counter-proposer, in the present case I did not refer to the aforementioned legal provisions which prohibit the exercise of the right to Revision, taking into account the practice of the [Supreme Court] for such cases, but this in no way justifies and legitimizes Decision Rev. no. 382/2021 of 22.09.2021 rendered by the [Supreme Court] when it approves the Revision of the counter proposer and denies the property right to the proposer for the expropriated [immovable property]".*

67. Regarding his allegation of violation of Article 46 of the Constitution, the Applicant states that: *"[...] the right [...] to property was violated by the Supreme Court Decision [...] when the Applicant was denied the right to enjoy his own property, respectively compensation with adequate property or monetary compensation".*

68. The Applicant requests the Court to declare the Decision [Rev. no. 382/2021] of 22 September 2021 of the Supreme Court unconstitutional and: "*...to uphold the Decision of the Court of Appeals [Ac. No. 4784] of 24.05.2021 and Decision [of the Basic Court] Cn. No. 119/2015 of 24.02.2017 for the compensation of expropriated immovable property."*

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.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.
5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.
6. Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.
7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.

Article 46
[Protection of Property]

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

[...]

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.
[...]

Article 1 of Protocol No. 1 to the EHCR
(Protection of property)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

LAW NO. 03/L-007 ON OUT CONTENTIOUS PROCEDURE
[Published in the Official Gazette on 12 January 2009]

Article 27

Judgment strike with revision

27.1 In contentious procedure in which it is decided for dwelling matters and related with compensation for expropriated real asset, can be use revision against second step judgment which has taken final form.

27.2 In mentioned juridical matters in paragraph 1 of this article revision is permitted under determined conditions with law for contentious procedure, if it is not foreseen differently by law.

LAW NO. Nr. 03/L-006 ON CONTESTED PROCEDURE
[Published in the Official Gazette on 20 September 2008]

Article 221
(no title)

A later revision, an incomplete or not allowed one will be rejected by the court of revision, if it wasn't done by the court of the first instance within its authorizing boundaries (article 218 of this law).

LAW ON EXPROPRIATION

(Official Gazette of SAPK No. 21/78)

Article 52
(no title)

If the agreement on total compensation cannot be reached within 3 months from the day when the decision on expropriation became final, the municipal body competent for legal property affairs will delivery, without delay, all the acts to the municipal court in which territory is placed expropriated real estate, in order to determinate compensation.
The administrative municipal body may also delivery to the court the final decision on expropriation with added acts before the expiration of the term from paragraph 1 of this article, if it is evident that the agreement on compensation will not be reached.
If the municipal body does not act in accordance with the provision from paragraph 1 of this article, the former owner of expropriated real estate may directly ask from the court to determine the compensation.

Article 2b of Law Amendments and Supplements of Law on Expropriation, Official Gazette SAPK, no. 46/86), of 22 November 1986

Agreement on compensation of expropriated real estate will be concluded before the administrative municipal body competent for legal-property affairs.
If the agreement on compensation will not be reached, the compensation will be determined by court in undisputed procedure.
The procedure for determination of compensation for expropriated real estate is an urgent procedure.
Against a final decision on the determination of compensation is not permitted revision.

Article 13 of Law Amendments and Supplements of Law on Expropriation, Official Gazette SAPK, no. 46/86), of 22 November 1986 by which Article 28 was amended

[...]
2) "The market price for the expropriated agrarian land shall be determined on the basis of the data on turnover value which are provided by the social income service and the data on the amount from agreements concluded for determination of the just compensation for the expropriated land in that area".

Article 24 of Law Amendments and Supplements of Law on Expropriation, Official Gazette SAPK, no. 46/86), of 22 November 1986 by which paragraph 3 of Article 52 was amended

If municipal administrative body competent for legal-property affairs does not act according to the provision of paragraph 1 of this article, the former owner and user of expropriation may directly require from court determination of compensation.

LAW ON CONTRACTS AND TORTS OD SFRY (PUBLISHED ON 30 MARCH 1978)

Subsection 2

TIME NECESSARY FOR UNENFORCEABILITY DUE TO STATUTE OF LIMITATIONS

General Time Limit for Unenforceability due to Statute of Limitations

Article 371
(no title)

Claims shall become unenforceable after a five year period, unless some other unenforceability time limit be provided by statute.

Claims Determined by Court or Other Competent Agencies

Article 379
(no title)

All claims determined by a final court decision or decision of other competent agency, or by settlement at court, or at some other competent body, shall expire after a ten year period, including ones which are subjected by statute to a shorter limitation period due to the statute of limitations.
However, all periodical claims resulting from such decisions or settlements, and becoming due in the future, shall expire within the time limit otherwise provided for the expiration of periodical claims due to the statute of limitations.

Admissibility of the Referral

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

70. 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."*

71. The Court further refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

> Article 47
> [Individual Requests]
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
>
> Article 48
> [Accuracy of the Referral]
>
> *In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*
>
> Article 49
> [Deadlines]
>
> *The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. [...]*

72. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; challenges an act of a public authority, namely the Decision [Rev. no. 382/2021] of 22 September 2021; has specified the rights and freedoms he alleges to have been violated; have exhausted all legal remedies provided by law and submitted the Referral within the legal deadlines specified by law.

73. The Court also finds that the Applicant's Referral 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.

74. Furthermore, and finally, the Court notes that the Referral is not manifestly ill-founded, as established in paragraph (2) of Rule 39 of the Rules of Procedure, therefore it must be declared admissible and its merits must be examined.

Merits of the Referral

75. The Court recalls that the circumstances of the present case are related to the fact that on 29 June 1995, the Assembly of the Municipality of Gjilan decided on the expropriation with the right to compensation of an immovable property with a surface area of 1648 m². This immovable property was expropriated for the construction of a circular road in the Municipality of Gjilan. From the case file it turns out that a part of this immovable property, namely 328 m² was in the possession of the legal predecessor of the Applicant S.E. In 2008, in out contentious procedure at the Basic Court, the Applicant requested compensation for the expropriation of the immovable property. In the meantime, the out contentious procedure was terminated and the Basic Court in the contested procedure by the Judgment [C. no. 11/2009] of 25 February 2013 confirmed the ownership right on behalf of the Applicant. As a result of this, the Basic Court in the resumed out contentious procedure by the Decision [No. 109/2008] of 11 March 2014 had determined the compensation for the already expropriated immovable property in the name of the Applicant in the amount of 29,520. 00 euro. As a result of the appeal of the Municipality of Gjilan in the capacity of the opposing party against the Decision of the Basic Court in the Court of Appeals, the latter by the Decision [Ac. no. 1715/2014] of 5 January 2015 rejected the appeal of the Municipality of Gjilan and upheld the Decision of the Basic Court. Against the Decisions of the Basic Court and the Court of Appeals, the Municipality of Gjilan submitted a revision to the Supreme Court, and the latter by the Decision [Rev. no. 73/2015] of 20 April 2015 approved the revision of the Municipality of Gjilan as grounded and quashed the aforementioned Decisions of the Basic Court and the Court of Appeals, remanding the case to the Basic Court. The Supreme Court, by its Decision, found that the issue of determining the amount of compensation was not done in accordance with paragraph 2 of Article 13 of the Law on Amendments and Supplements to the Law on Expropriation and as a result requested the Basic Court: (i) to administer the evidence with the same experts and with the financial expert will determine the market price of the expropriated land in accordance with Article 13 paragraph 2 of the Law on Amendments and Supplements to the Law on Expropriation; and (ii) to prove the fact of who is the last user of the expropriated plot and based on this to prove the passive legitimacy of the party to the proceedings. As a result of this, the Basic Court in the procedure of retrial by the Decision [Cn. no. 119/2015] of 24 February 2017 had partially approved the Applicant's proposal for compensation of the expropriated immovable property and consequently determined the value of the compensation for the Applicant. This last Decision of the Basic Court was upheld by the Decision [Ac. no. 4784/17] of 24 May 2021 of the Court of Appeals. Against these two last Decisions, of the Basic Court and the Court of Appeals, the Municipality of Gjilan submitted a revision to the Supreme Court. On 22 September 2021, the Supreme Court by the Decision [Rev. no. 382/2021]: (i) approved the revision of the Municipality of Gjilan; (ii) modified the Decision of the Basic Court and the Decision of the Court of Appeals; and (iii) rejected the Applicant's proposal for compensation of the expropriated immovable property. The Supreme Court based its decision to quash the two Decisions of the Basic Court and the Court of Appeals on the fact that the Applicant's request for compensation for the expropriated immovable property was statute-barred. This finding was supported by the Supreme Court by applying the provisions of the LOR.

76. The Court recalls that the subject of review of the Applicant is the Decision [Rev. no. 382/2021] of 22 September 2021, of the Supreme Court, rendered in out contested procedure, which procedure was initiated in 2008 with the submission of his claim for compensation as a result of the expropriated immovable property.

77. The Applicant challenges the finding given by the Supreme Court by its Decision claiming a violation of: (i) Article 31 of the Constitution, in conjunction with Article 6 of the ECHR; and (ii) Article 46 of the Constitution.

78. First, in terms of his allegation of violation of his right to fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant in his referral has specified that based on the Law on Expropriation the revision against the Judgments of the Basic Court and the Court of Appeals was not allowed.

79. From the aforementioned allegations, in terms of his right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, it follows that the Applicant essentially claims that in the present case, the applicable law was the Law on Expropriation [supplemented and amended, SAPK Official Gazette no. 46/86] and based on Article 2b of this law "*Against a final decision on the determination of compensation is not permitted revision*." Following this, the Applicant specifies that the applicable law in the circumstances of his case is the Law on Expropriation, according to which law, the revision in his case was not allowed. From this it follows that the Applicant within the meaning of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR raises a case of the court established by law.

80. Secondly, regarding the right to property, the Applicant states that as a result of the rejection of his request for compensation by the Supreme Court, his right to property guaranteed by Article 46 of the Constitution has been violated. In the following, the Court points out that the Applicant specifies in his request that based on Article 2b of the aforementioned Law on Expropriation, the procedure for determining compensation for the expropriated immovable property is urgent. Having said this, the Court will examine and assess his allegation of violation of the right to property in the context of paragraph 3 of Article 46 of the Constitution.

81. Therefore, and in the following, the Court will deal with the Applicant's allegation from: (i) the point of view of his right to a court established by law, as an integral part of the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR; (ii) as well as his right to compensation for expropriated immovable property, as an integral part of the guarantee defined by Article 46 of the Constitution in conjunction with Protocol no. 1 of the ECHR applying the principles established in the case law of the ECHR, in which case the Court in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to*: "Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"* .

I. Regarding the allegation of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR

82. In light of the Applicant's allegation that the revision in the procedure conducted in connection with the request for compensation of his expropriation was not allowed, the Court will examine and assess this allegation in terms of his right to a court established by law, respectively will examine whether the Supreme Court in accordance with the applicable law had jurisdiction to decide on the revision procedure.

83. Having said that, the Court will first elaborate on the general principles regarding the right to a court established by law, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as far as they are relevant in the circumstances of the present case, to proceed with the application of these general principles in the circumstances of the present case.

A. General principles regarding the right to a "court established by law" guaranteed by Article 31 of the Constitution and Article 6 of the ECHR and the relevant case law

84. Based on the above and with the purpose of examining the Applicant's Referral in terms of his right to a court established by law, as a result of the lack of competence of the Supreme Court to decide on revision, as it is established by Article 2b of the Law on Expropriation, the Court first refers to the general principles established by the case law of the ECtHR.

85. In case *Guðmundur Andri Ástráðsson v. Iceland* [no. 26374/18, Judgment of 1 December 2020], the ECtHR has further developed the general principles for the right of a court established by law, established in its earlier case law.

86. In principle, the ECHR established that: *"[...] a tribunal is characterized in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner*" (see case of the ECtHR *Coëme and others v. Belgium*, no. 32492/96 and four others, Judgment of 22 June 2000, paragraph 99).

87. In this regard, the ECtHR noted that under Article 6, paragraph 1 of the ECtHR, a tribunal must always be "*established by law"* and according to it, this expression reflects the principle of the rule of law, which is inherent in the system of protection established by the Convention and its Protocols (see cases of the ECtHR, *DMD Group, A.S. v. Slovakia*, no. 19334/03, Judgment of 5 October 2010, paragraph 58 and *Richert v, Poland*, no. 54809/07, Judgment of 25 October 2011, paragraph 41).

88. Having said that, the ECtHR has also specified that if a court is not established in accordance with the intention of the legislator, it will necessarily lack the legitimacy required in a democratic society to resolve disputes (see case of the ECtHR *Lavents v. Latvia*, no. 58442/00, Judgment of 28 February 2003, paragraph 114).

89. According to the ECtHR case law, a "Law", according to the meaning of Article 6, paragraph 1 of the ECHR, means not only the legislation on the establishment and competencies of judicial bodies, but any provision of local legislation, which, if violated, would render the participation of one or more judges in the case examination irregular. In other words, the phrase "*established by law*" includes not only the legal basis for the very existence of "a tribunal" but also the observance by the court of the special rules on the basis of which it is governed (shih case of the ECtHR, *DMD Group, A.S. v. Slovakia*, cited above, paragraph 59 and *Sokurenko and Strygun v. Ukraine*, no. 29458/04 and no. 29465/04, Judgment of 20 July 2006, paragraph 24).

90. The ECtHR in case *Guðmundur Andri Ástráðsson v. Iceland* in addition to affirming the principles established in relation to the right to a court "established by law" previously established by this court, it also emphasized that the right to a court established by law is also related to the principle of independence and impartiality of the court (see paragraphs 231-234 of the Judgment in this case). The ECtHR further considered it necessary to establish a threshold test with three (3) steps or criteria in order to ascertain whether the right of an established court has been violated in the circumstances of the specific case as defined by Article 6, paragraph 1 of the ECHR. Subsequently, in the same case, the ECtHR emphasized that the right to a fair and impartial trial guaranteed by Article 6 of the ECHR must be interpreted in the light of the preamble of the ECHR, which, in its part relevant, declares that the rule of law is part of the common heritage of the signatory parties. Consequently, according to the ECtHR the right to a court established by law is a reflection of this principle of the rule of law, and, as such, plays an important role in maintaining the separation of powers and the independence and legitimacy of the judiciary as required in a democratic society (paragraph 238 of the Judgment in the case of *Guðmundur Andri Ástráðsson v. Iceland*). The test applied by the Grand Chamber of the ECtHR in this case included: (i) if there is a manifest breach

of the domestic law (see paragraphs 244-245 of the Judgment); (ii) if the breach in question must be assessed in the light of the object and purpose of the requirement of a "tribunal established by law", namely to ensure the ability of the judiciary to perform its duties free of undue interference and thereby to preserve the rule of law and the separation of powers (see paragraphs 246-247 of the Judgment); and (iii) if the violation of the domestic law has created such consequences that have resulted in the violation of the right of the court established by law as established in Article 6, paragraph 1 of the ECHR (see paragraphs 248-252 of the Judgment).

(i) Relevant case law of the ECtHR

91. According to the ECtHR case law, the Court notes that the allegation of the incompatibility with the right to "a tribunal established by law" have been examined and assessed in different contexts, both in the civil and criminal aspects of Article 6, paragraph 1 of the ECHR, including but not limited to the following:

(i) When a court has ruled outside its jurisdiction (see the case *Coëme and others v. Belgium*, cited above, paragraphs 107-109 and *Sokurenko and Strygun v. Ukraine*, cited above, paragraphs 26-28);
(ii) In the case is assigned or reassigned to a specific judge or court (see the case *DMD Group AS v. Slovakia*, cited above, paragraphs 62--72; case *Richert v. Poland*, cited above, paragraphs 41--57);
(iii) In the case a judge is replaced without providing the relevant justification as required by local law (see case *Kontalexis v. Greece*, cited above, no. 59000/08, Judgment, of 28 November 2011 paragraphs 42-44);
(iv) In the event of the tacit renewal of the judge's term for an indefinite period after the expiration of his/her mandate and pending his/her reappointment (see the case *Guroy v. Moldova*, no. 36455/02, Judgment of 11 October 2006, paragraph 37);
(v) In the event of a trial by a court whose members were disqualified from participating in the trial by law (see the case *Lavents v. Latvia*, cited above, paragraphs 114-115);
(vi) If a Judgment is issued by a panel of judges consisted of a smaller number of members than defined by law (see the case *Momčilović v. Serbia*, no. 23103/07, Judgment of 2 April 2019, paragraph 32).

92. In the following, the Court based on the fact that the Applicant's allegation is related to the jurisdiction or competence of the court to decide on revision, will refer to the case of *Sokurenko and Strygun v. Ukraine*, which case is related to the case when the courts have ruled outside their competence or jurisdiction defined by law.

93. In the case *Sokurenko and Strygun v. Ukraine*, the circumstances of which were related to the fact that the Applicants claimed that the Supreme Court of Ukraine was not competent to confirm the decision of the Higher Commercial Court, since according to the Code of Commercial Procedure, this court may, after annulling the decisions of the Higher Commercial Court, remit the case for fresh consideration or cancel all proceedings. According to the ECtHR, there was no other provision extending the jurisdiction of the Supreme Court to render such a decision. The ECtHR further highlighted that in relation to these cases, the Supreme Court had not given any reason for making a decision, exceeding its jurisdiction, which resulted in a deliberate violation of the Code of Commercial Procedure and establishing a case law before the Supreme Court of Ukraine. Finally, the ECtHR found that as a result of the Supreme Court having exceeded the scope of its jurisdiction, clearly defined in the Code of Commercial Procedure, this court could not be considered a "tribunal established by law" pursuant to Article 6, paragraph 1 of the ECHR.

94. The Court also refers to cases *Veritas v. Ukraine*, no. 39157/02, Judgment of 13 November 2008; *Basalt Impeks, TOV v. Ukraine*, no. 39051/07, Judgment of 1 December 2011; and *AVIAKOMPANIYA ATI, ZAT v. Ukraine* no. 1006/07, Judgment of 5 October 2017 whereby it was assessed that the factual and legal circumstances were the same as those in the case *Sokurenko and Stuygun* and consequently it found that Article 6 of the ECHR was violated in both of these cases as a result of the violation of the right to a tribunal established by law.

(ii) Case law of the Constitutional Court

95. The Court, as specified above, has applied the aforementioned principles established in the case law of the ECtHR in its case law (see, among others, cases KI156/20, with the applicant *Raiffeisen Bank J.SC.*, Judgment of 3 March 2022, and KI14/22, with Applicant *Shpresa Gërvalla*, Judgment of 23 February 2023).

96. The Court above also referred to its Judgment in case KI93/16 [Applicants *Maliq Maliqi and Skender Maliqi*, Judgment, of 31 March 2017] by which the issue of not allowing revision in the circumstances of the Applicants' case was addressed in terms of the general principles related to the manifestly arbitrary application of the law.

97. The Court points out that the circumstances of case KI93/16 are related to the fact that in 2004 a decision was issued for the expropriation of the immovable property of the Applicant's predecessor in order to secure land for the International Airport of Prishtina. In 2006, the Applicants in the Municipal Court in Prishtina filed a claim against Prishtina International Airport, JSC "Sllatina" (hereinafter: JSC "Sllatina"), for monetary compensation for the expropriated property. As a result of their claim, the Municipal Court determined the compensation in the name of expropriation. During the court proceedings, the applicable law was the Law on Expropriation (Official Gazette of SAPK no. 46/86). The Municipal Court determined the amount to be paid. As a result of the counter-proposer's appeal, the case was remanded to the Municipal Court for retrial. However, the Municipal Court in the retrial procedure, by the Decision of 28 October 2008, again approved the request of the Applicants for compensation of the expropriated property, determining the compensation amount. This decision of the Municipal Court was upheld by the Decision of the District Court. As a result of this last decision, the counter-proposer [JSC "Sllatina"] submitted a revision to the Supreme Court. The Supreme Court by Decision [Rev. no. 321/2012] approved as grounded the revision of JSC "Sllatina"and annulled the Decisions of the District and Municipal Courts, remanding the case to the first instance court for retrial. The Supreme Court had pointed out that the applicable law is the Law on Expropriation and by applying Article 13 of this law, it remanded the case for retrial. During the proceedings before the Basic Court in retrial, the applicants found out about the existence of the Decision of the Supreme Court. In addition, the Basic Court suspended *sine die* the review of the case, pending additional information from JSC "Sllatina". As a result, on 16 June 2016, the Applicants submitted a referral to the Court, challenging among other things that the revision in the Supreme Court in their case was not allowed.

98. In its Judgment in case KI93/16, the Court noted that: *"[...] the challenged Judgment of the Supreme Court not only did not take into account that "the procedure for determination of compensation for expropriated real estate is an urgent procedure"; but mainly did not pay attention to the fact that "against a final decision on the determination of compensation is not permitted revision."* In the following the Court also noted that: *" the Law on Expropriation is neither vague nor ambiguous regarding revision; on the contrary, the Law on Expropriation specifically, clearly and directly states that the legal remedy of revision is not permitted against final decisions on the determination of compensation for expropriated real estate.. Thus the Supreme Court*

cannot at all admit and consider such a revision. The Court notes that the Supreme Court was aware of the provisions of the Law on Amendments and Supplements to the Law on Expropriation (Official Gazette SAPK no. 46/86) when pointing out to the "social income service" in cases of the determination of compensation for the expropriation of agricultural land. However, the Supreme Court has neither provided any explanation as to why it applied one article of that Law, while disregarding another article of this law which excluded its jurisdiction; nor it has explained why it accepted a revision which is not permitted by the same law".

99. Therefore, and in implementation of the Court's Judgment, the Supreme Court in the present case by the Decision [Rev. no. 20/2018] of 22 February 2018 also rejected the revision of the counter-proposer [Prishtina Airport] as impermissible based on Article 2b of the aforementioned Law on Expropriation. By this Decision, the Supreme Court found that: "*...in the presence of this legal situation and taking into account the fact that according to the provisions of article 2b, (para. three and four) of the Law on Amendments and Supplements to the Law on Expropriation,* O.G. of SAPK no. 46/86, it is provided that*: "The procedure for determining the compensation for the expropriated real estate is urgent and that "against the final Decision on the determination of the compensation, revision is not allowed". From here, according to the aforementioned legal provision, in relation to the present juridical-civil case, it follows that in the procedure for determining the compensation for the expropriated property, revision is not allowed. Therefore, since the lower instance court did not act in accordance with Article 218 of the LCP, to dismiss the revision as impermissible, the Supreme Court of Kosovo, with the application of Article 221 of the LCP, was able to dismiss the latter as impermissible".*

B. Application of the aforementioned principles in the circumstances of the present case

100. The Court recalls that the challenged Decision of the Supreme Court by the Applicant was issued in out contentious procedure as a result of the revision submitted by the Municipality of Gjilan, in the capacity of a counter-proposer.

101. The Court further points out that the revision was filed against the Decisions of the Basic Court and the Court of Appeals, by which the amount of compensation for the expropriation of the Applicant's immovable property was determined and certified in the retrial procedure.

102. The Court recalls that the Applicant specifies that based on Article 2b of the Law on Expropriation, as the applicable law in the circumstances of his case, the revision against the Decisions of the Basic Court and the Court of Appeals, by which was determined the amount of compensation for expropriation was not allowed.

103. Following this allegation, the Court notes that the regular courts, including the Supreme Court itself, in the out-contentious procedure initiated by the Applicant, applied the provisions of the Law on Expropriation [supplemented and amended, Official Gazette SAPK 46/86].

104. Having said that, based on the fact that the procedure for the request for compensation of the expropriated property was conducted in an out-contentious procedure, the Court also refers to Article 27 [Judgment strike with revision] of the Law on Out Contentious Procedure, by which it is determined that:

"*27.1 In contentious procedure in which it is decided for dwelling matters and related with compensation for expropriated real asset, can be use revision against second step judgment which has taken final form.*
27.2 In mentioned juridical matters in paragraph 1 of this article revision is permitted under determined conditions with law for contentious procedure, if it is not foreseen differently by law."

105. Following this, the Court emphasizes paragraph 2 of Article 27 of the Law on Out Contentious Procedure, by which it is specified that the revision is allowed under the conditions set by the LCP, provided that the law does not provide otherwise. Having said that, the Court considers that the applicable law in the Applicant's circumstances was the Law on Expropriation [supplemented and amended, Official Gazette SAPK 46/86] and that Article 2 b of this Law specifically stipulates that: "*Against a final decision on the determination of compensation is not permitted revision".*

106. The Court in the application of the aforementioned principles and criteria related to the right to a court established by law will examine: (i) whether the decision-making of the Supreme Court in revision has resulted in a clear violation of the provisions of the applicable law in the circumstances of the present case; (ii) following this, in case it is concluded that the provisions of the law have been violated, the latter must be assessed in the light of the purpose of the "court established by law" criterion; and finally (iii) to assess whether the violation of the legal provisions in force related to the permission or not of the revision has resulted in a violation of the right to the court established by law as provided by paragraph 31 of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR.

107. In the light of the above-mentioned elaboration, the Court points out that Article 2b of the Law on Expropriation [Official Gazette SAPK 46/86] stipulates that revision is not allowed against final decisions on the determination of compensation. In this regard, the Court recalls that by the Decision [Ac. no. 4784/17] of the Court of Appeals, of 24 May 2021, the Decision [Cn. no. 119/2015] of the Basic Court, of 24 February 2017 rendered in the retrial procedure by which the amount of compensation for the expropriated immovable property was determined was upheld. Having said that, the Court considers that Article 2b of the Law on Expropriation is neither vague nor ambiguous regarding the impermissibility of revision in the Applicant's circumstances.

108. Based on this assessment, the Court considers that the challenged Decision of the Supreme Court has resulted in a clear violation of Article 2b of the Law on Supplementing and Amending the Law on Expropriation [Official Gazette of SAPK 46/86) through by it was determined that against the decisions of final form on the assignment of compensation, revision is not allowed.

109. Following this finding, the Court will examine whether this violation should be assessed in the light of the purpose of a court established by law. In this regard, the Court, as elaborated above, has specified that the issue of the competence of a court or the granting of a legal remedy in a specific procedure raises issues of the court established by law, as one of the constituent parts of the right to fair and impartial trial. Moreover, the question of whether the revision was or was not allowed in the circumstances of the present case raises issues of the principle of legal certainty, as one of the main components of the rule of law in a democratic society.

110. Following this, the Court recalls that the Applicant, after submitting the revision to the Supreme Court by the counter-proposer, in his response to this revision, did not raise the issue of impermissibility of the revision. The Applicant justifies this by specifying that: "*In the Response to the Revision filed by the counter-proposer, in the present case*

I did not refer to the aforementioned legal provisions which prohibit the exercise of the right to Revision, taking into account the practice of the [Supreme Court] for such cases, but this in no way justifies and legitimizes Decision Rev. no. 382/2021 of 22.09.2021 rendered by the [Supreme Court] when it approves the Revision of the counter proposer and denies the property right to the proposer for the expropriated [immovable property]".

111. However, the Court based on the fact that the issue of whether the revision is allowed or not raises a question of the right to a court established by law, considers that this was within the competence of the Supreme Court itself to declare regarding the lack of its competence to decide on revision, and consequently this burden does not fall on the Applicant. The Court also bases this assessment on Article 221 of the LCP, by which it is determined that: *„A later revision, an incomplete or not allowed one will be rejected by the court of revision, if it wasn't done by the court of the first instance within its authorizing boundaries (article 218 of this law)".*

112. Finally, the Court considers that the violation of Article 2b of the Law on Supplementing and Amending the Law on Expropriation [Official Gazette of SAPK 46/86) is directly related to the lack of jurisdiction or competence of the Supreme Court to decide on revision, which resulted in the violation of the Applicant's right to a court established by law.

113. Therefore, the Supreme Court, in the absence of jurisdiction to decide on this matter, cannot be considered as a court established by law within the meaning of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. Therefore, the Court concludes that the challenged Decision of the Court is not in compliance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

114. The Court further recalls that the Applicant in his referral has also alleged a violation of Article 46 [Protection of Property] of the Constitution. Following this allegation, the Court will proceed with the review of this allegation by referring to the general principles established in the case law of the ECtHR and that of the Court, in order to apply the latter in the circumstances of the present case.

II. Regarding the right to property

115. The Court initially emphasizes that the Applicant's allegation of violation of his right to property, guaranteed by Article 46 of the Constitution, will be reviewed and assessed in the context of the guarantees established in the Constitution and the law, which guarantee the development of an immediate and adequate procedure in case of expropriation of property. Having said that, in dealing with the Applicant's allegation, the Court will refer to the guarantees defined by Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as the principles established in the relevant case law of the ECHR to proceed with the application of these principles in the circumstances of the present case.

Article 46 of the Constitution

116. Regarding the rights guaranteed and protected by Article 46 of the Constitution, the Court first assesses that the right to property according to paragraph 1 of Article 46 of the Constitution guarantees the right to possess property; paragraph 2 of article 46 of the Constitution defines the way of using the property, clearly specifying that its use is regulated by law and in accordance with the public interest.

117. The Court also recalls that paragraph 3 of Article 46 [Protection of property] of the Constitution, defines:

> *"No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated."*
> *Article 1 of Protocol no. 1 of the ECHR*

118. The Court, further, points out that Article 1 of Protocol no. 1 of the ECHR stipulates that:

> *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

Relevant case law of the ECtHR

119. Whereas, regarding the rights guaranteed and protected by Article 1 of Protocol No. 1 of the ECHR, the Court notes that the ECtHR has found that the right to property comprises of three distinct rules. The first rule, which is set out in the first sentence of the first paragraph is of a general nature, enounces the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph covers deprivation of possessions and subjects it to certain conditions. The third rule, which is contained in the second paragraph, recognizes that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose (see, *mutatis mutandis*, ECtHR Judgment of 23 September 1982, *Sporrong and Lonnrot v. Sweden*, no. 7151/75; 7152/75, paragraph 61; and Court case, KI86/18, Applicant *Slavica Đordević*, Judgment of 3 February 2021, paragraph 140).

120. In the context of the right to compensation as a result of expropriation, the case law of the ECtHR has found that these circumstances are related to paragraph 1 of Protocol No. 1 of the ECHR which defines the principle of peaceful enjoyment of property in general terms (see also the case in this context *Almeida Garret, Mascarenhas Falcao and Others v. Portugal*, no. 29813/96 and 30229/96, Judgment of 11 January 2000, paragraphs 43 and 48, and the case *Yagtzilar and Others v. Greece*, no. 41727/98, Judgment of 6 December 2001, paragraph 37).

121. In the case of *Yagtzilar and others v. Greece*, the ECtHR assessed that*: " [...] an interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights* [see also the other references used in this case, namely the case of *Sporrong and Lönnroth v. Sweden*, cited above, para 69*]. [...] Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on applicants."* [Paragraph 40 of the Judgment in case *Yagtzilar and others v. Greece*]

122. Therefore, the ECtHR in this case concluded that the lack of any compensation for the expropriation in the applicants' case upset, to their detriment, the fair balance that has to be struck between the protection of property and the requirements of the general interest [paragraph 42 of the Judgment in case *Yagtzilar and others v. Greece*].

Case law of the Court

123. Similarly, in case KI93/16, the Court, in the context of examining the claim of the applicants for violation of Article 46 of the Constitution, assessed and therefore concluded that:

> "*Thus, the Court considers that the previous decision of the District Court [Decision Ac. no. 398/2009] of 17 July 2012, on the determination of the amount to be paid in compensation for the expropriation of their property had become final and binding and is, as such, res judicata, since no remedy was legally permitted to challenge that decision. (paragraph 94) [...] The Court notes that so far no compensation was paid for the expropriation of the Applicants' property already decided on 1 June 2004. (paragraph 96) [...] Thus, the Court considers that such a delay, without payment of the compensation for the expropriation, cannot be considered to comply with the requirement of "immediate and adequate" within the meaning of Article 46 (3) of the Constitution*". (Paragraph 97 of Judgment in case KI93/26.)

124. Therefore, the Court in this case held that the Applicants were unjustly deprived of their property due to the delay in providing the immediate and adequate compensation for the expropriation of their property, concluding that their right to the peaceful enjoyment of their property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 to the ECHR, has been violated. (paragraph 98 of Judgment in case KI93/16).

Application of the aforementioned guarantees and principles in the circumstances of the present case

125. The Court first points out that Article 2b of the Law on Supplementing and Amending the Law on Expropriation [Official Gazette of SAPK 46/86) stipulates that: *"...The procedure for determination of compensation for expropriated real estate is an urgent procedure"* while also paragraph 3 of article 46 of the Constitution defines: *"[...] the provision of immediate and adequate compensation*".

126. The Court applying the guarantees embodied in paragraph 3 of Article 46 of the Constitution as well as the aforementioned principles established in the case law of the Court and the ECtHR in the circumstances of the present case points out that:

(i) The Applicant initiated the procedure for determining compensation for expropriation of immovable property on 29 December 2008;
(ii) By the court decision, namely the Decision [C. no. 11/2009] of 25 February 2013, rendered in a contested procedure, it was established that the Applicant is the owner of the immovable property;
(iii) The Basic Court in out-contentious procedure by Decision [No. 109/2008] of 11 March 2014 found that the Applicant did not receive compensation for the expropriation of his immovable property;
(iv) The Basic Court by the Decision [Cn. no. 119/2015] of 24 February 2017, the Applicant was assigned compensation for the expropriation of his property and that this decision of the Basic Court was upheld by the Court of Appeals by the Decision [Ac. no. 4784/17] of 24 May 2021. However, as a result of the challenged Decision of the Supreme Court, the Decisions of the Court of Appeals and the

Basic Court on the determination of compensation were quashed and, therefore, the Applicant's request for compensation of the expropriated immovable property was rejected; and

(v) The procedure for determining the compensation for the expropriation of his immovable property, initiated in out-contentious procedure by the regular courts, including the Supreme Court, was not handled with urgency as provided by paragraph 3 of Article 46 of the Constitution and Article 2b of the Law on Supplementing and Amending the Law on Expropriation [Official Gazette of SAPK 46/86).

127. In the light of the above and based on the fact that as a result of the lapse of a considerable period of the development of the procedures in the out-contentious procedure, the Court assesses that the compensation procedure for the expropriation of the immovable property was not conducted with the urgency required according to paragraph 3 of Article 46 of the Constitution, and Article 2b of the Law on Supplementing and Amending the Law on Expropriation [Official Gazette of SAPK 46/86] which over many years had resulted in a lack of compensation for expropriation to the detriment of the Applicant, being destroyed the right balance between the protection of property and the requirements of the general interest.

128. Having said that, following the above-mentioned finding that the proceedings conducted for determining the compensation for the expropriation of immovable property was not conducted in accordance with the guarantees established in paragraph 3 of Article 46 of the Constitution and Article 2b of the Law on Supplementing and Amending Law on Expropriation [Official Gazette of SAPK 46/86) as a result of the delay in providing immediate and adequate compensation for the expropriation of his immovable property, the Applicant's right to property has also been violated.

129. Therefore, the Court finds that in the case of the Applicant, there has been a violation of his right to property, guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and pursuant to Rule 59 (1) of the Rules of Procedure, on 22 May 2023

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD, by majority of votes, that the Decision [Rev. no. 382/2021] of the Supreme Court of Kosovo of 22 September 2021 is not in compliance with paragraph 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO HOLD, by majority of votes, that the Decision [Rev. no. 382/2021] of the Supreme Court of Kosovo of 22 September 2021 is not in compliance with paragraph 3 of Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the European Convention on Human Rights;

IV. TO DECLARE, unanimously, Decision [Rev. no. 382/2021] of the Supreme Court of Kosovo of 22 September 2021 invalid;

V. TO HOLD, with majority of votes, that Decision [Ac. no. 4784/17] of the Court of Appeals, of 24 May 2021 is final and binding;

VI. TO NOTIFY this Judgment to the parties;

VII. TO HOLD that this Judgment is effective on the date it is published in the Official Gazette, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Bajram Ljatifi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.