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

Prishtina, on 15 February 2024
Ref. no.: AGJ 2367/24

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JUDGMENT

in

case No. KI186/22

Applicants

Malush, Sejdi, Hysni, Skender, Enver, Sherif, Mehdi, Xhevat, Qemajl and Jakup Berisha

Constitutional review
of Decision Rev. no. 550/2021 of the Supreme Court of the Republic of Kosovo of 6 June 2022

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 Malush, Sejdi, Hysni, Skender, Enver, Sherif, Mehdi, Xhevat, Qemajl, Jakup Berisha, residing in Suhareka, (hereinafter: the Applicants), represented by Arbër Krasniqi, a lawyer in Prishtina.

Challenged decision

2. The Applicants challenge the constitutionality of Decision [Rev. no. 550/2021] of 6 June 2022 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment [Ac. no. 147/19] of 16 September 2021 of the Court of Appeals.

3. The contested Decision was served on the Applicants on 8 September 2022.

Subject matter

4. The subject matter of the Referral is the constitutional review of the contested Decision of the Supreme Court, whereby the Applicants allege that their fundamental rights and freedoms, guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

Legal basis

5. The Referrals are based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 25 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

Proceedings before the Constitutional Court

7. On 30 November 2022, the Applicants submitted the Referral to Court.

8. On 5 December 2022, the President of the Court by Decision [GJR. KI186/22] appointed Judge Remzije Istrefi-Peci, as Judge Rapporteur and by Decision [KSH. KI186/22] appointed the members of the Review Panel composed of Judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Radomir Laban (members).

9. On 9 December 2022, the Court notified the Applicants about the registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court, the decision of which is contested.

10. On 12 May 2023, the Court requested information from the Basic Court in Prishtina about the date when the contested Decision was served on the Applicants.

11. On 23 May 2023, the Basic Court in Prishtina notified the Court that the Applicants were served with the contested Decision on 8 September 2022.

12. On 17 January 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral admissible. On the same date, after deliberation and voting, the Court, with seven (7) votes for and one (1) against, found that in the case of the Applicants there has been a violation of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR .

Summary of facts

Filing of lawsuit

13. On 1 June 2001, as it follows from the case file, the initial claimant E.B., filed a lawsuit with the Municipal Court in Suhareka against the Municipality of Suhareka for certification of ownership of the immovable property, namely cadastral plot no. 797, with the request that the respondent be obliged to hand over the cadastral plot to the possession and ownership, as well as to allow the transfer of the property right in the cadastral books in his name.

14. In the lawsuit, the claimant E.B., emphasized that his father, now deceased B. Berisha, was the legal owner of the immovable property, since he purchased the immovable property in question in 1925, and that "*the respondent by force and illegally removed the former owner from possession and ownership, while he was in prison in 1946, so that in the same year the respondent began the construction of the hotel premise, in a part of his property. Over the following years, the respondent continuously constructed accompanying premises of the hotel, until 1955, when it finally evicted the former owner from his property, which property the respondent now uses illegally".* Further, it is emphasized that the expropriation of the immovable property by the former owner was done arbitrarily and without the implementation of the necessary legal procedures, provided for the construction of buildings of general social interest, and that there was no decision of the authorities at that time or other documentation, which would prove the implementation of the procedures provided by law and the legal basis of the expropriation of immovable property.

Inheritance procedure

15. On 21 November 2001, the Municipal Court in Suhareka, by Decision no. 112/01, interrupted the contested procedure until the end of the inheritance procedure for the brothers Beqir, Nezir and Sylejman Berisha. The inheritance process, according to the case file, was reviewed and regulated by 2009.

Supplementation of lawsuit with other claimants

16. On an unspecified date, the claimant E.B., specified the lawsuit, requesting that the Applicants Malush, Muharrem, Qemajl, Sherif, Sejdi, Hysni, Skender and Enver Berisha join the lawsuit as co-claimants. The Applicants proposed to the Municipal Court to approve the lawsuit in its entirety and to certify that they are co-owners, each in the ideal part of the cadastral plot, and to oblige the respondent Municipality of Suhareka to recognize the right of co-ownership to all of them.

Trial regarding the lawsuit

17. On 14 July 2004, the Municipal Court in Suhareka, by Judgment C. no. 202/2003, approved the lawsuit of the Applicants in entirety and confirmed that the latter are co-owners of the cadastral plots with no. 797-0 and no. 798-0.

Specification of the value of dispute

18. On 9 March 2010, the Municipal Court in Suhareka, in a preparatory session, specified the lawsuit in terms of the value of the dispute, increasing the value of the dispute to the amount of twenty thousand (20,000) euro and ordered the authorized representative of the Applicants that at the next hearing submit evidence for the payment of the court fee for the specified value of the dispute.

19. On 11 March 2010, the claimant E.B., (according to payment order no. 002342) paid the difference of the court fee for the lawsuit in the amount of 87.50 euro.

20. On 7 December 2010, the District Court, deciding according to the complaint of the respondent, rendered Decision Ac. no. 292/2004, by which (i) annulled the aforementioned Judgment of the Municipal Court in Suhareka, and (ii) remanded the case for retrial at first instance.

Retrial (first time)

21. On 11 October 2010, the Municipal Court in Suhareka, by Judgment C. no. 16/2010, approved again the lawsuit of the Applicants in its entirety and confirmed that the latter are co-owners of the cadastral plots no. 797-0 and no. 798-0.

22. In August 2012, the District Court in Prizren, deciding on the complaint of the respondent, rendered Decision Ac. no. 4/11, in which again (i) quashed the aforementioned Judgment of the Municipal Court in Suhareka, and (ii) remanded the case for retrial at first instance.

Retrial (second time)

23. On 4 October 2013, the Basic Court in Prizren - Branch in Suhareka (hereinafter: the Basic Court), in retrial, rendered Judgment C. no. 441/2012, which approved the Applicants' lawsuit and confirmed that the latter are co-owners of cadastral plots no. 797-0 and no. 798-0, obliging the respondent to recognize the right of ownership for these immovable properties.

24. On 26 March 2018, the Court of Appeals, by Decision Ac. no. 3741/2013, approved as grounded the appeal of the respondent Municipality of Suhareka and quashed the Judgment [C. no. 441/18] of 4 October 2013 of the Basic Court in Prizren-Branch in Suhareka and remanded the case retrial and reconsideration.

Retrial (third time)

25. On 23 November 2018, the Basic Court, in retrial, rendered the Judgment [C. no. 224/18], whereby it approved the lawsuit of the Applicants as grounded in entirety and confirmed that the latter are co-owners, each in the ideal part of cadastral parcels no. 797-0 and 798-0, (house-yard, on an area of 0.18,29 hectares, recorded according to the possession list no. 409, CZ-Suhareka) and the Applicant Malush Berisha to the extent of 1/3, Sejdi, Hysni , Skender and Enver Berisha each to the extent of 1/12, Qemajl and Sherif Berisha to the extent of 1/9 and Jakup, Mehdi and Xhevat Berisha, each to the extent of 1/7, and forced the respondent Municipality of Suhareka to recognize the right of co-ownership in the ideal parts specified as above and to hand over the same plots to them in free possession and use and the immovable property to be registered in the cadastral books, in their name. In the reasoning of this Judgment, the Basic Court emphasized that according to Article 20 of the Law on Legal-Property Relations, there

is no legal action or legal basis for the transfer of ownership in the name of the respondent Municipality of Suhareka, except by unilateral registration as social property, adding that in the cadastral registers there is no act or legal decision that would justify this registration and that "*the possession list is not proof of ownership*". Further, he emphasized that from the statements of the witnesses it can be seen that the predecessor of the Applicants was the owner of the contested immovable property which he had purchased from H. (R.) G. from Suhareka in 1936 according to the verbal agreement (contract) which as such was executed in its entirety without notice from the contracting parties, and that in accordance with Article 73 of Law No. 04/L-077 on Obligation Relations (hereinafter: LOR), even though the same contract lacks a written form, it has been fulfilled in full by both parties, both from the seller and from the buyer and as such the court considered that the contract is valid. Regarding the respondent's statement that the claimants did not file a lawsuit at the time of their unlawful removal from the property, the Basic Court emphasized that the claimants' predecessor at that time was deprived of his liberty, while his descendants - the claimants - were excluded from the then Socialist League and as such have been in an unenviable position to take legal action *"for the protection of the injustices caused to them during the monist era"*. In addition, the court emphasized that *"Social relations and requirements change, but one must always look at the norms of behavior that are opposed to moral norms, and non-compliance with them means an attack on legal security"*. In the end, the Basic Court considered that the improvement of the mistakes in the transitional period is especially important, especially the return of the property taken by the institutions unjustly. In the end, the court concluded that injustice was done to the claimants, in which case all the imperative national and international norms that regulate the right to property were violated, and as a result, it concluded that the respondent "*without any legal basis has arbitrarily deprived the predecessor of the claimants of the right of free use and possession of his property"*.

26. On 17 December 2018, the respondent Municipality of Suhareka filed an appeal against the Judgment [C. no. 224/18] of 23 November 2018 of the Basic Court on the grounds: (i) essential violations of the provisions of the civil procedure, (ii) incomplete and erroneous determination of factual situation and (iii) erroneous application of substantive law , with a proposal that the Judgment of the Basic Court be quashed in its entirety and the case be remanded for retrial, or reject the lawsuit in its entirety as ungrounded. In the appeal, the Municipality of Suhareka emphasized that the first instance court did not act in accordance with the remarks submitted by the Judgment [Ac. no. 3741/13] of 26 March 2018, according to which the first instance court was instructed to avoid the violations that the Court of Appeals encountered in the Judgment [C. no. 441/12] of 4 October 2013, but approved the lawsuit again, based on the same reasoning and contrary to the evidence presented and administered, including violation of Article 199 of the LCP. Regarding the appealing allegations of the Municipality of Suhareka for erroneous determination of factual situation, the latter emphasized that based on the documents and evidence administered, as well as from the statements of the Applicants-claimants, it can be seen it can not be proved and argued by any single material evidence that the disputed parcels previously belonged to the Applicants.

27. On 16 September 2021, the Court of Appeals, by the Judgment [Ac. no. 147/19], approved the appeal of the respondent Municipality of Suhareka, modified the Judgment [C. no. 224/2018] of 23 November 2018 of the Basic Court, rejecting in its entirety the Applicants' lawsuit as ungrounded. In the reasoning of its judgment, the Court of Appeals emphasized that the factual situation determined by the first instance court does not exactly correspond to the evidence from the case file and that consequently there has been an erroneous application of substantive law. In this respect, he reasoned that the fact has been proven that in the case of the Applicants, the

legal requirements from Article 20 of the Law on Basic Legal-Property Relations of 1980 are not met in order to establish that they have acquired the right of ownership over the disputed plots of land recorded as social property in the name of the respondent Municipality of Suhareka. The Court of Appeals concluded that the claimants have not proven with no single evidence before the court that they have acquired the right of ownership over the contested plots, namely that *"in the present case, none of the conditions or legal bases provided for in Article 20 of the Law on Basic Legal - Property Relations (LBPR-OG SFRY 6/80), which was in force at the time when it is claimed that the civil legal relationship was realized, while the legal conditions have not been met even from Article 28 of this law (with acquisition by prescription) in order that the claimants be recognized with the right of ownership over the disputed plot. This is due to the fact that from the evidence administered by the first instance court, which has been elaborated above (reports of geodesy experts, etc.), it turned out that cadastral plots... no. 797-0 and 798-0, the ownership of which the claimants claim by a lawsuit, have continuously been and are evidenced as ownership in the name of the respondent, the Municipality of Suhareka (since 1959) and have been and are in the possession and use of the latter".*

28. On 5 November 2021, the Applicants submitted a request for revision to the Supreme Court, against the Judgment [Ac. no. 147/19] of the Court of Appeals of 16 September 2021, on the grounds of (i) violation of the provisions of the contested procedure and (ii) erroneous application of the substantive law, proposing to the Supreme Court to annul the judgment of the second instance court, and remand the case to the latter for retrial or approve the submitted revision and modify the contested judgment, rejecting the appeal of the respondent Municipality of Suhareka, as ungrounded. In the revision, the Applicants emphasized that the judgment of the second instance court , contrary to the factual situation determined by the first instance court , did not assess the evidence correctly and therefore there has been a violation of the provisions of the contested procedure .

29. On 6 June 2022, the Supreme Court, by the Decision [Rev. no. 550/2021], rejected as ungrounded the revision of the Applicants, filed against the Judgment [Ac. no. 147/19] of the Court of Appeals, of 16 September 2021 emphasizing that "*The lawsuit in this dispute was filed on 01.06.2001, where at that time, according to UNMIK Regulation number 1999/24 of 12.12.1999, the Law on Contested Procedure SFRY was in force (SFRY Official Gazette 4176 (with subsequent amendments). The mentioned Law on Contested Procedure in Article 382, paragraph 3, provides that: "Revision is not admissible in legal-property disputes wherein the statement of claim is not related to monetary claims, handing over of items, or performance of any other action, in case the contest value mentioned in the claimant's claim does not exceed the amount of 8,000 dinars". UNMIK Regulation 1999/4 of 02.09.1999 and Administrative Direction number 2001/10 for the implementation of UNMIK Regulation number 199/4 in article 2. paragraph 1, subparagraph (i) point (j) amends article 382 paragraph 3 of the LCP, namely the conversion of 8,000 dinars to DM 1600. Therefore, in accordance with what was said, revision is allowed in property-legal disputes that are not related to monetary claims if the value of the dispute highlighted in the lawsuit exceeds the amount of DM 1600. The claimant in the lawsuit has emphasized the value of the dispute in the amount of 500 DM, that is, below the amount defined as the lower limit of the value of the dispute in which the revision is allowed. Since the claimant during the entire course of the procedure has not changed the value of the dispute, nor has adjusted the claim in that sense, for this reason the Supreme Court, applying Article 221 of the LCP, has decided as in the enacting clause".*

Applicants' allegations

30. The Court recalls that the Applicants allege that the contested Decision violated their fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of Constitution.

31. The Applicants emphasize that the Supreme Court did not handle the case fairly and correctly, together with the evidence that was found in the case file, when it decided to reject their revision, as inadmissible, due to the value of the dispute, since the court in question has not addressed the fact and evidence where the Applicants specified the value of the dispute (Minutes of 9 March 2010 of the Municipal Court in Suhareka), increasing the value of the dispute to the amount of twenty thousand (20,000) euro, where the court obliged the Applicants (claimants) to pay the additional court fee for the lawsuit. Further, the Applicants add that the claimant E.B., made the payment of the court fee difference for the lawsuit in the amount of eighty seven, point fifty (87.50) euro, on 11 March 2010 according to Payment Order no. 002342, which was evidence in the case file and was administered in the judgment.

32. The Applicants consider that based on the omissions made by the Supreme Court, they have been denied an elementary right which is protected by the Constitution, more specifically, they emphasize that they have been denied the right to review the merits of the revision because the Supreme Court rejected the latter as impermissible due to the value of the dispute, which value it did not determine correctly and fairly as it coincides with the real situation in the case file, since the value of the dispute increased during the procedure in the amount of twenty thousand (20,000) euro.

33. In the end, the Applicants ask the Court to enable them to consider the extraordinary remedy (revision) submitted to the Supreme Court, against the Judgment of the Court of Appeals, since the latter was rejected as impermissible with a reasoning which does not coincide with the real state of the documents found in the case file. The Applicants request the Court to oblige the Supreme Court to deal with their revision and to render a decision based on merits regarding the material right presented as in the revision.

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.

Article 32
[Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

LAW NO. 4/46 ON CONTESTED PROCEDURE
(entered into force on 1 July 1997)

Article 40

[...]
2. In other cases, when the claim does not refer to a monetary amount, the value of the object of dispute indicated by the claimant in the claim is valid.

3. If, in the case referred to in paragraph 2 of this Article, the claimant has clearly indicated the value of the subject of the dispute too high or too low to, thus raising the issue of subject matter jurisdiction, the composition of the court or the right to file a revision, the court will, at the latest at the preparatory hearing, or if the preparatory hearing was not held then at the main hearing before the beginning of the review on the main matter, to quickly and conveniently verify the accuracy of the indicated value.

Article 43

1. The sole judge adjudicates disputes regarding property claims if the value of the disputed object does not exceed 8,000 dinars, as well as disputes due to possession concerns.

EXTRAORDINARY LEGAL REMEDIES

Revision

Article 382

1. Against the legally binding judgment rendered at the second instance, the parties may appeal within 30 days from the date of delivery of the transcripts of the judgment.
[...]
3. Revision is not admissible in legal-property contests wherein the statement of claim is not related to monetary claims, handing over of items, or fulfillment of any other promise, in case the contest value mentioned in the claimant's claim does not exceed the amount of 8,000 dinars.

Admissibility of the Referral

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

35. 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."

[...]

36. In addition, the Court also examines whether the Applicants have fulfilled the admissibility requirements as provided by the Law. In this regard, the Court 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."

Neni 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...".

37. Regarding the fulfillment of these criteria, the Court finds that the Applicants are authorized party and challenge an act of a public authority, namely the Decision [Rev. no. 550/2021] of the Supreme Court of 6 June 2022, after exhausting all legal remedies established by law. The Applicants have also clarified the fundamental rights and freedoms that they claim to have been violated in accordance with the requirements of Article 48 of the Law, and based on the response submitted to the Court by the Basic Court, it follows that the Applicants have submitted the referral in accordance with the deadlines established in Article 49 of the Law.

38. However, the Court considers whether the Applicants have met the admissibility criteria established in Rule 34 [Admissibility Criteria], respectively provisions (1) (d) and (2) of Rule 34 of the Rules of Procedure, which establish:

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

(...)

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

(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim."

39. The Court considers that the Referral raises serious reasoned constitutional allegations and that it is not *"manifestly ill founded"* within the meaning of subrule (2) of Rule 34 of the Rules of Procedure. Therefore, the Court considers that the Applicants' Referral meets the requirements for review on merits.

Merits of the Referral

40. The Court recalls that on 1 June 2001, initially the first claimant E.B., filed a lawsuit with the Municipal Court in Suhareka, against the respondent Municipality of Suhareka for confirmation of the property right of an immovable property (with a total surface area of 0.18,29 hectares), proposing the Municipal Court in Suhareka to approve the lawsuit and oblige the Municipality of Suhareka to hand over the contested immovable property to the latter in possession and ownership. In the meantime, the claimant E.B., supplemented the lawsuit, where, as the co-claimants, the other claimants joined the lawsuit, namely the Applicants Malush, Muharrem, Qemajl, Sherif, Sejdi, Hysni, Skender and Enver Berisha. On 9 March 2010, the Municipal Court in Suhareka (minutes of 9 March 2010), in the preparatory session, specified the lawsuit in terms of the value of the dispute, increasing the value of the dispute to the amount of twenty thousand (20,000) euro, ordering the authorized representative of the Applicants to present evidence for the payment of the court fee difference, according to the determined value of the dispute, at the next hearing. From 2004 to 2018, the case was remanded for retrial several times. On 23 November 2018, the Basic Court, in retrial, rendered Judgment C. no. 224/18, by which it approved the lawsuit of the Applicants in entirety and confirmed that the latter are co-owners of the cadastral plots, each to the ideal [art, obliging the respondent, namely the Municipality of Suhareka, to recognize them the right to co-ownership. On 17 December 2018, the Municipality of Suhareka, against the Judgment [C. no. 224/18] of 23 November 2018 of the Basic Court, submitted an appeal to the Court of Appeals, which regarding the appeal, on 16 September 2021, rendered the Judgment [Ac. no. 147/19], whereby it (i) approved the appeal of the respondent, (ii) modified the Judgment [C. no. 224/2018] of the Basic Court and (iii) rejected the Applicants' lawsuit in its entirety. In this case, the Court of Appeals concluded that, with no single evidence, the Applicants (claimants) have not proven before the court that they have acquired the right of ownership in relation to the contested plots. Dissatisfied with the decision of the Court of Appeals, the Applicants, on 5 November 2021, submitted a request for revision to the Supreme Court, and the latter by the Decision [Rev. br. 550/2021], rejected, as inadmissible, their revision, on the grounds that the latter "*…in the lawsuit, the latter presented the value of the dispute in the amount of DM 500, defined as the lower limit of the value of the dispute in which the revision is allowed. Since the claimants during the entire course of the procedure have not changed the value of the dispute, nor has adjusted the claim in that sense, for this reason the Supreme Court, applying Article 221 of the LCP, has decided as in the enacting clause".*

41. The Court recalls that the Applicants, by this referral, challenge the conclusions of the Supreme Court, claiming a violation of Articles 31 and 32 of the Constitution, alleging that "*". The Supreme Court did not handle the case fairly and correctly, together with the evidence that was found in the case file, when it decided to reject the Revision, as inadmissible, due to the value of the dispute, since the latter has not addressed the fact and evidence where the Applicants specified the value of the dispute in the Minutes of 9 March 2010 of the Municipal Court, increasing the value of the dispute to the amount of twenty thousand (20,000) euro, where the same court obliged the claimants to pay*

the additional court fee for the lawsuit in the amount of 87.50 euro, on 11 March 2010 according to Payment Order with Serial no. 002342, which was evidence in the case file and was administered in the judgment

42. The Court, initially notes that in reviewing the claims of the Applicants, which raise a violation of their individual rights, it takes into account the case law of the ECtHR and its case law, which establishes that the complaint is characterised by the facts contained therein, and not only by the legal basis and the arguments in which the parties expressly invoke on (see ECtHR case: *Talpis v. Italy*, no. 41237/14, Judgment of 18 September 2017, paragraph 77 and references cited therein).

43. The Court, based on the case law, notes that the essence of the allegations, raised and argued in the Referral by the Applicants, mainly concerns the denial of their right to effectively challenge the Judgment of 16 September 2021 of the Court of Appeals in the Supreme Court, by a request for revision, reasoning that the violation of their rights occurred because the Supreme Court had not examined the merits of their request for revision, but dismissed it as impermissible, on the grounds that the value of the dispute, according to the applicable law, was below the value required to effectively exercise this remedy.

44. From the above, the Court notes that the essence of the issue that this Referral entails raises the issue of the right to a "*fair trial*", respectively. the denial of the right to have "*access to the court and justice*", which is guaranteed by Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR. Therefore, the Court will continue to consider the claims of the Applicant from the point of view of the rights guaranteed by Article 31 of the Constitution in conjunction to Article 6.1 of the ECHR, applying the principles established through the ECtHR case law, based on which the Court pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged as follows: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"*.

45. In this regard, the Court refers to the case law of the ECtHR and its case law, which establishes that the fairness of the procedure is assessed on the basis of the procedure as a whole (see Court cases KI62/17, Applicant *Emine Simnica*, Judgment of 29 May 2018; paragraph 41 and KI20/21, Applicant *Violeta Todorović*, Judgment of 13 April 2021, paragraph 38; see also ECtHR Judgment *Barbera, Messeque and Jabardo v. Spain*, no.10590/83, Judgment of 6 October 1988, paragraph 68). Therefore, the Court will adhere to these principles in the procedure of assessing the merits of the Applicant's claims.

46. In this regard, and in order to examine the claims of the Applicant, the Court will elaborate on the general principles regarding the right to *"access to the court and justice"*, to the extent related to the circumstances of the present case, in order to assess the applicability of Article 31 of the Constitution, in conjunction to Article 6.1 of the ECHR, in light of the circumstances of the present case.

I. The Court's assessment, regarding the right to "access to court and justice" guaranteed by Article 31 of the Constitution

a) General principles

47. In this context, the Court recalls that the right to have an "*access to justice*" for the purposes of paragraph 1 of Article 6 of the ECHR is clarified in ECtHR case *Golder v. United Kingdom*, no. 4451/70 Judgment of 21 February 1975, paragraphs 28-36. With

reference to the principle of the rule of law and the avoidance of arbitrary power, the ECtHR has found that "*the right to access to justice*" is an essential aspect of the procedural guarantees embodied in paragraph 1 of Article 6 of the ECHR (see, *inter alia*, pertaining to the right to access to justice, the ECtHR case *Zubac v. Croatia*, no. 40160/12, Judgment of 5 April 2018, paragraph 76). Moreover, according to the ECtHR, this right provides everyone with the right to address the relevant issue related to "*his/her civil rights and obligations*" before a national court established by law (see, in this connection, the ECtHR case *Lupeni Greek Catholic Parish and others v. Romania*, no. 76943/11, Judgment of 29 November 2016, paragraph 84 and references thereto, as well as the Court case *KI214/21*, Applicant *Avni Kastrati,* Judgment of 7 December 2022, paragraph 79).

48. The Court in this context reiterates that the right to a court, as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, stipulates that the parties (litigants) must have an effective legal remedy that enables them to protect their civil rights (see, ECtHR cases *Běleš and others v. Czech Republic* , no. 47273/99, Judgment of 12 November 2002, paragraph 49; and *Naït-Liman v. Switzerland*, no.51357/07, Judgment of 15 March 2018, paragraph 112, KI214/21, cited above, paragraph 80).

49. Furthermore, the ECtHR in the above case, *Lupeni Greek Catholic Parish and others v. Romania,* (paragraph 85), highlights that *"anyone may rely on Article 6.1 of the ECHR, when he or she considers that there is an unlawful interference in the exercise of one of his or her (civil) rights and he or she complains that he or she has not had the opportunity to submit his or her claim to the court, in accordance with the requirements of Article 6.1 of the ECHR. Where there is a serious and genuine dispute as to the legality of such an intervention, Article 6.1 entitles the individual concerned to have the questions of law (legality) decided by a local court" (see, in ECtHR case, Z and others v. United Kingdom* no.29392/95, Judgment of 10 May 2001, paragraph 92; see also case *Markovic and others v. Italy*, [GC], no. 1398/03, Judgment of 14 December 2006, paragraph 98).

50. Therefore, based on the ECtHR case law, everyone has the right to file a "*lawsuit*" regarding their respective "*civil rights and obligations*" with a court. Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR enshrines the "*right to a court*", namely the "*right of access to a court*", which means the right to initiate proceedings before the courts in civil matters (see ECtHR case *Golder v. United Kingdom*, cited above, paragraph 36). Therefore, anyone who considers that there has been unlawful interference in the exercise of his/her civil rights and claims that he/she has been restricted the possibility to challenge such a claim before a court may refer to Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, being called upon to the relevant right of access to the court.

51. More specifically, according to the case law of the ECtHR, there must first be a "*civil right*" and secondly, there must be a "*dispute*" regarding the legality of an intervention, which affects the very existence or scope of the protected "*civil right*". The definition of both of these concepts should be substantial and informal (see, inter alia, ECtHR cases *Le Compte, Van Leuven and De Meyere v. Belgium*, no. 6878/75, 7238/75, Judgment of 23 June 1981, paragraph 45; *Moreira de Azevedo v. Portugal*, no. 11296/84, Judgment of 23 October 1990, paragraph 66; *Gorou v. Greece* (no.2), no. 12686/03, Judgment of 20 March 2009, paragraph 29; and *Boulois v. Luxemburg*, no. 37575/04, Judgment of 3 April 2012, paragraph 92). The "*dispute*", however, based on the ECtHR case law, should be: (i) "*true and serious*" (see, in this context, ECtHR cases *Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982, paragraph 81; and *Cipolletta v. Italy*, Judgment of 11 January 2018, paragraph 31); and (ii) the results of

the proceedings before the courts should be "*decisive*" for the civil right in question (see, in this context, ECtHR case *Ulyanov v. Ukraine*, no.16742/04, Decision of 5 October 2010). According to the ECtHR case law, "*unstable links*" or "*distant consequences*" between the civil right in question and the outcome of these proceedings are not sufficient to fall within the scope of Article 6 of the ECHR (see, in this context, ECHR cases *Lovrić v. Croatia*, Judgment of 4 April 2017, paragraph 51, and *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 71 and references thereto, and the case of the Court KI214/21, cited above, paragraph 83).

52. In such cases, when it has been found that there is a "civil *right*" and a "*dispute*", Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR guarantee the individual the right "*to have the case resolved by a tribunal*" (see ECtHR case *Z and others v. United Kingdom*, cited above, paragraph 92). The refusal of a court to review the claims of the parties regarding the compliance of a procedure with the basic procedural guarantees of fair and impartial trial limits their access to the court (see ECtHR case *Al Dulimi and Montana Management Inc v. Switzerland*, no. 5809/08, Judgment of 21 June 2016, paragraph 131).

53. Moreover, according to the ECtHR case law, the Convention is not intended to guarantee rights that are "*theoretical and false*", but rights that are "*practical and effective*" (see, moreover, about the "*practical and effective*" rights in the cases of ECtHR *Kutić v. Croatia*, cited above, paragraph 25 and references cited therein; and *Lupeni Greek Catholic Parish and others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein).

54. Therefore, within the meaning of these rights, Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, guarantees not only the right to initiate proceedings, but also the right to get a resolution of the relevant "*dispute*" from a court (see ECtHR cases *Kutić v. Croatia*, no. 48778/99, Judgment of 1 March 2002, paragraphs 25-32; *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 86 and references therein; *Aćimović v. Croatia*, no. 61237/00, Judgment of 9 October 2003, paragraph 41; and *Beneficio Cappella Paolini v. San Marinos*, no. 40786/98, Judgment of 13 July 2004, paragraph 29).

55. The aforementioned principles, however, do not imply that the right to a court and the right of access to a court are absolute rights. They may be subject to limitations, which are clearly defined by the ECtHR case law. However, these limitations cannot go so far as to restrict the individual's access by undermining the very essence of the right (see, in this context, the ECtHR case *Baka v. Hungary*, no. 20261/12, Judgment of 23 June 2016, paragraph 120; and *Lupeni Greek Catholic Parish and others v. Romania*, Judgment of 29 November 2016, paragraph 89 and references therein). Whenever access to the court is limited by the relevant law or case law, the Court examines whether the limitation affects the essence of the right and, in particular, whether this limitation has pursued a "*legitimate purpose*" and whether there is "*a reasonable relation of proportionality between the means used and the purpose intended to be achieved*" (see ECtHR cases *Ashingdane v. United Kingdom*, no.8225/78, Judgment of 28 May 1985, paragraph 57; *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 89; *Naït-Liman v. Switzerland*, cited above, paragraph 115; *Fayed v. United Kingdom*, no. 17101/03, Judgment of 21 September 1990, paragraph 65; and *Marković and others v. Italy*, no. 1398/03, Judgment of 14 December 2006, paragraph 99; and case of the Court KI214/21, cited above, paragraph 87).

b) Application of the above principles in the circumstances of the present case

56. The Court, based on the case law of the ECtHR and its own, reiterates that anyone who considers that there has been unlawful interference with the exercise of his/her civil rights and claims that the opportunity to challenge a specific claim before a court has been restricted, may refer to Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, invoking the relevant right of access to justice (court).

57. Based on the above, and as far as it is relevant to the circumstances of the present case, the Court emphasizes that the right of access to justice is, in principle, guaranteed in relation to "*disputes*" related to a "*civil right*". In this line, the Court assesses that in order to determine the applicability of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, it should be taken into account that we are dealing with two essential issues, the first is related to the existence of a "*dispute*" or real dispute, while the second that the nature of the object of the dispute falls under "*civil right*".

58. Regarding the existence of a "*dispute*". the Court notes that the Applicants are in dispute with the respondent Municipality of Suhareka, regarding an immovable property (plot), which they claim was taken from them by the latter in an illegal manner. In this sense, the existence of a dispute between the litigants, namely between the Applicants and the Municipality of Suhareka, led to the initiation of the lawsuit in the Municipal Court of Suhareka by the Applicants.

59. Whereas, with regard to the other criterion, if the nature of the object of the dispute falls under "*civil law*", the Court recalls that the object of the lawsuit, which the Applicants have raised in the lawsuit, is the request for confirmation of the right of ownership over the disputed immovable property. Therefore, in the light of the circumstances of the present case, the Court assesses that the object requested by the lawsuit by the applicants falls within the framework of civil rights.

60. Having said that, the Court considers that in the case before us, both criteria have been met in terms of the issue of whether we are dealing with a real "*dispute"* or real dispute and with "*civil rights*", in the sense of paragraph 1 of Article 6 of ECHR.

61. In addition, the Court reiterates that it is not its duty to assess whether the regular courts have correctly interpreted and applied the relevant rules of substantive and procedural law. However, in cases where a substantiated claim raises constitutional issues, namely procedural irregularities, the Court is obliged to intervene and remedy the violation caused by the regular courts to ensure the Applicants a fair trial in accordance with the requirements of the provisions of Article 31 of the Constitution, in conjunction with the requirements of paragraph 1 of Article 6 of the ECHR.

62. Returning to the Applicants' allegations, the Court recalls that the reason for the non-consideration of their request for revision on merits by the Supreme Court was the value of the dispute which, according to the latter, was declared in the amount of DM 500, at the time of filing the lawsuit, in 2001 by the claimant E. B., where the applicable law was the Law on Contested Procedure, of the SFRY, of 1997.

63. In this regard, the Supreme Court reasoned that "*The lawsuit in this dispute was filed on 01.06.2001, where at that time, according to UNMIK Regulation number 1999/24 of 12.12.1999, the Law on Contested Procedure SFRY was in force (SFRY Official Gazette 4176 (with subsequent amendments). The mentioned Law on Contested Procedure in Article 382, paragraph 3, provides that: "Revision is not admissible in legal-property disputes wherein the statement of claim is not related to monetary claims, handing over of items, or performance of any other action, in case the contest*

value mentioned in the claimant's claim does not exceed the amount of 8,000 dinars". UNMIK Regulation 1999/4 of 02.09.1999 and Administrative Direction number 2001/10 for the implementation of UNMIK Regulation number 199/4 in article 2. paragraph 1, subparagraph (i) point (j) amends article 382 paragraph 3 of the LCP, namely the conversion of 8,000 dinars to DM 1600. Therefore, in accordance with what was said, revision is allowed in property-legal disputes that are not related to monetary claims if the value of the dispute highlighted in the lawsuit exceeds the amount of DM 1600. The claimant in the lawsuit has emphasized the value of the dispute in the amount of 500 DM, that is, below the amount defined as the lower limit of the value of the dispute in which the revision is allowed. Since the claimant during the entire course of the procedure has not changed the value of the dispute, nor has adjusted the claim in that sense, for this reason the Supreme Court, applying Article 221 of the LCP, has decided as in the enacting clause".

64. However, the Court notes that in relation to this finding, the Applicants proved the opposite, providing evidence and emphasizing that "*The Supreme Court did not handle the case fairly and correctly, together with the evidence that was found in the case file, when it decided to reject the Revision, as inadmissible, due to the value of the dispute, since the latter has not addressed the fact and evidence where the Applicants regulated and specified the value of the dispute in the Minutes of 9 March 2010 of the Municipal Court, increasing the value of the dispute to the amount of 20,000 euro, where the same court obliged the claimants to pay the additional court fee for the lawsuit...t in the amount of 87.50 euro, on 11 March 2010 according to Payment Order with Serial no. 002342, which was evidence in the case file and was administered in the judgment".*

65. The Court, referring to the provisions of the applicable law, notes that in cases where the value of the dispute by the claimant in the lawsuit is set higher or lower than the real one, the court in the preparatory session, and not later than holding the main hearing of the case, must specify the value of the dispute in the lawsuit (see above paragraph 2 of article 40 of the LCP, of 1997). Therefore, in accordance with this provision, the Municipal Court in Suhareka, on 9 March 2010, in the preparatory session, specified the lawsuit of 2001 in terms of determining the value of the dispute, increasing the value of the dispute to the amount of twenty thousand (20,000) euro, for which the authorized representative of the Applicants was ordered to provide evidence at the next hearing for the payment of the court fee difference, which according to the evidence, the authorized representative paid in the amount of eighty-seven, point fifty (87.50) euro, according to the Payment Order [No. 002342], which was in the case file.

66. Based on the above, the Court emphasizes that the Applicants, found in these factual and legal circumstances, had a legitimate expectation that their request for revision would be admitted and their allegations raised in the request, against the Judgment of the Court of Appeals, would be addressed and reviewed on merits by the Supreme Court, but this has not happened.

67. In this context, the Court assesses that, under the circumstances of the present case, the burden of responsibility rests on the Supreme Court, which did not examine the case file with due diligence, in relation to the admissibility criteria, moreover when the examination of the merits of a request/complaint is directly related and dependent on the complete verification of the case file, as a prerequisite for meritorious assessment of the claims. In this case, the Court assesses that the Applicants, in compliance with the requirements of the law, have done everything that was required of them to fulfill the formal-procedural criteria and conditions, in order to effectively use the extraordinary legal remedy against the Judgment of the Court of Appeals, respectively

the request for revision, to receive a meritorious answer from the Supreme Court, regarding the claims raised before it.

68. Therefore, in this context, the Court finds that the Supreme Court's failure to consider the merits of the Applicants' request for revision constitutes an insurmountable procedural flaw which is in violation of the right to access to court and justice (see the case of the Court KI214/21, cited above, paragraph 128).

69. Having said this, and taking into account all the above elaborations, the Court considers that the conclusions of the Supreme Court on the rejection of the request for revision as inadmissible, are clearly unfounded and arbitrary, which have resulted in the impossibility of the Applicants to have "*access to court and justice*", and consequently also in the denial of the right to an effective legal remedy and judicial protection of rights (see, similarly, the Court case KI214/21, cited above, paragraph 126).

Conclusions

70. In sum, the Court, based on the above analysis, concludes that the contested Decision [Rev. no. 550/2021] of the Supreme Court of 6 June 2022, is not in compliance with the constitutional rights of the Applicants guaranteed by paragraph 1 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 ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraphs 1 and 7 of Article 113 and paragraph 1 of Article 116 of the Constitution, articles 20 and 47 of the Law and Rules 34 (1) d) and 48 (1) a) of the Rules of Procedure, on 17 January 2024:

DECIDES

I. TO DECLARE, with seven (7) votes for and one (1) against, the Referral admissible;

II. TO HOLD, with seven (7) votes for and one (1) against, that there has been a violation of paragraph 1 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;

III. TO DECLARE, with seven (7) votes for and one (1) against, Decision [Rev. no. 550/2021] of 6 June 2022 of the Supreme Court, invalid;

IV. TO REMAND, with seven (7) votes for and one (1) against, the case for retrial to the Supreme Court, in accordance with this Judgment;

V. TO ORDER the Supreme Court to notify the Court, in accordance with, paragraph 5 of Rule 60 (Enforcement of Decisions) of the Rules of Procedure, by 17 July 2024, about the measures taken to implement this Judgment;

VI. TO NOTIFY, this Judgment to the parties;

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

VIII. TO HOLD that this Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with Article 20 (5) of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Remzije Istrefi Peci	Gresa Caka-Nimani

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