



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

Prishtina, 23 December 2024
Ref. no.: AGJ 2592/24

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JUDGMENT

in

case KI118/23

Applicant

Shehide Muhadri

**Constitutional review of Judgment Ac. no. 530/2016 of 30 March 2023 of the
Court of Appeals of the Republic of Kosovo**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The referral was submitted by Shehide Muhadri from the municipality of Lipjan (hereinafter: the Applicant), represented by Sabri Kryeziu, a lawyer from Lipjan.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment (Ac. no. 530/2016] of 30 March 2023 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals).
3. The challenged judgment was served on the Applicant on 4 May 2023.

Subject matter

4. The subject matter of this referral is the constitutional review of Judgment (Ac. no. 530/2016] of 30 March 2023 of the Court of Appeals, whereby it is claimed that the Applicant's rights guaranteed by Article 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with paragraph 1 of Article 6 of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals) and 47 (Individual Requests) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
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 of the Republic of Kosovo (hereinafter: the 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 6 June 2023, the Applicant submitted the Referral to the Court.
8. On 8 June 2023, the President of the Court by Decision [GJR. KI118/23] appointed Judge Nexhmi Rexhepi as Judge Rapporteur and by Decision [KSH. KI118/23] appointed the members of the Review Panel, composed of judges: Bajram Ljatifi (Presiding), Safet Hoxha and Remzije Istrefi-Peci (members).
9. On 11 March 2024, Judge Jeton Bytyqi took the oath before the President of the Republic of Kosovo, thereby commencing his mandate at the Court.
10. On 5 November 2024, the Review Panel considered the report of Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court, after deliberation and voting, found that the challenged Judgment is in compliance with the provisions of Article 31 of the Constitution, as well as with paragraph 1 of Article 6 of the ECHR.

Summary of facts of the case

First referral KI145/20

11. The Court recalls that the Applicant submits the referral to the Court for the third time. First referral [KI145/18], the Applicant submitted together with M.M. and S.I, whereby they challenged the constitutionality of Judgment [Ac. no. 530/2016] of 18 June 2018, of the Court of Appeals. In this case, on 19 July 2018, the Court found a violation 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, on the grounds of the lack of reasoning of the court decision regarding the failure to address the allegation of violation of Article 24 of the Constitution by the Court of Appeals. As a result, on 10 December 2019, the Court of Appeals in the repeated procedure and pursuant to the Judgment of the Court in case KI145/18, rendered Judgment [Ac. no. 530/2016], whereby it (i) rejected, as ungrounded, the Applicant's appeal, and (ii) upheld Judgment [C. no. 19/2015] of 11 November 2015 of the Basic Court in Prishtina - branch in Lipjan - General Department.

Second referral KI49/20

12. The applicant regarding Judgment [Ac. no. 530/2016], of 10 December 2019 of the Court of Appeals, submitted the second referral KI49/20, by which it challenged the constitutionality of the aforementioned judgment. The Court, regarding the second referral KI49/20, decided on 20 January 2022 and found again a violation 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, because the Judgment of 10 December 2019 of the Court of Appeals did not meet the standard guaranteeing the individual (s) “a fair trial” in accordance with Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, namely the right to a reasoned and reasonable court decision.

Third (present) referral KI183/23

13. On 30 March 2023, the Court of Appeals, in the repeated procedure and taking into account the Judgment of the Court in case KI49/20, rendered a new Judgment [Ac. no. 530/2016], whereby (i) it rejected the Applicant's appeal and (ii) upheld Judgment [C. no. 19/2015] of 11 November 2015 of the Basic Court in Prishtina - branch in Lipjan.
14. In the reasoning part of the Judgment, the Court of Appeals, among others, emphasized: *“From the above, the Court of Appeals accepts the legal assessment and conclusion of the first instance court as fair and lawful, due to the fact that it has not found that there have been violations of the provisions of the contested procedure, the factual situation has been determined in a correct and complete manner and the substantive law has been correctly applied. The Court of Appeals assesses that so far, not only for the case of the claimants but also for other cases where the ownership with an acquisition by prescription in the social property is sought, it is the position expressed in the decisions of the Supreme Court that the right of ownership with an acquisition by prescription cannot be acquired in the social property.*
15. On 12 May 2023, the applicant proposed to the State Prosecutor's Office to file with the Supreme Court “request for protection of legality”, against Judgment [Ac. no. 530/2016], of 30 March 2023 of the Court of Appeals, on the grounds of erroneous application of substantive law.

16. On 29 May 2023, the Office of the Chief State Prosecutor, by Notification KMLC. no. 60/23, notified the Applicant that it has not found sufficient legal grounds to submit a request for protection of legality to the Supreme Court.

Applicant's allegations

17. The Applicant alleges that the new Judgment (Ac. no. 530/2016] of 30 March 2023 of the Court of Appeals, violates her rights guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.
18. The Applicant specifically claims: *“By this decision of the of first and second instance courts, the Constitution of the Republic of Kosovo has been violated, namely the right to a fair and impartial trial by Article 31.1 and equality before the law by Article 24 of the Constitution and Article 6 of the European Convention on Human Rights, and Article 2 par. 1 point a) of the Anti-Discrimination Law, because the claimants belong to an Ashkali minority, while from the same (identical) legal basis - as refugees of the Republic of Albania, at the same time they were granted immovable property (house and land) and by the same court the right of ownership was recognized to the F.I. family from the village of Babush of Muhaxherëve, from the same basis and from the same court the right of ownership was recognized to the family E.M., A.M., A.M., A.M. and F.D., all from the village of Bregu i Zi M. of Lipjan, on the same basis and by the same court the right of ownership to the Bresa family from Gracka e Vogël M. of Lipjan was recognized, and on identical basis for the factual and legal situation, by a final decision, the right of ownership was recognized to the claimant Xh.H., from village Babush i Muhaxherëve, which judgments were attached to the previous referral sent to the Constitutional Court (case no. KI145/18 no. Ref. AGJ1408/14 Prishtina on 13 August 2019) and case KI49/20 ref. no. AGJ 1962/22 Prishtina 17 March 2022). [...].”*
19. The Applicant claims that in the new Judgment, the Court of Appeals made an erroneous assessment. More specifically, she claims that the Constitutional Court has analyzed that the Court of Appeals, in its previous decisions, has recognized to other claimants the right of ownership, in cases identical to the factual and legal circumstances, while in her case it has decided differently from the case law.
20. Claiming a violation in the new judgment of the Court of Appeals, the Applicant states that: *“The Court of Appeals failed to eliminate the violations found by the Constitutional Court, and again rendered a rejecting decision in this case, acting again contrary to the remarks given by the Constitutional Court, and by repeating the violations found [...]. The Court of Appeals erroneously considers that the previous decisions do not constitute case law solely by the fact that the Supreme Court has not decided, and that such an assessment is wrong due to the fact that those decisions are final, and the final decision represents case law regardless of which court instance issued it, and regardless of whether the legality of those decisions has or has not been assessed by the Supreme Court”.*

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 24 [Equality Before the Law]

1. *“All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*

2. No one shall be discriminated against on grounds of race, colour, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

Article 31
[Right to Fair and Impartial trial]

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

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

European Convention on Human Rights

Article 6
(Right to a fair trial)

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

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”.

LAW ON BASIC PROPERTY RELATIONS (applicable from 8 February 1980 to 26 June 1996)

Article 20

The property right can be acquired by law itself, based on legal affairs and by inheritance. The ownership right can also be acquired by decision of the government authorities in a way and under conditions determined by law.

Article 28

The conscientious and legal holder of the private property, over which somebody else holds the property right, shall acquire the property right over such object through adverse possession after expiration of three years. The conscientious and legal holder of the real estate, over which somebody else disposes of the property right, shall acquire the property right over such object through adverse possession after expiration of ten years. 12 The conscientious holder of the private property, over which somebody else has the property right, shall acquire the property right by adverse possession after expiration of ten years. The conscientious holder of the real estate, over which somebody else disposes of the property right, shall acquire the property right over such an object by adverse possession after expiration of 20 years. The heir shall become the conscientious holder from the moment of opening

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

Article 29
[Deleted]

Article 33

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

Admissibility of the Referral

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

22. In this regard, the Court initially refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

“ 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.”

[...]

23. The Court also examines whether the Applicant has met the admissibility criteria required by Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadline) of the Law, which stipulate:

Article 47
(Individual Requests)

“ 1 . Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

Article 48
(Accuracy of the Referral)

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

Article 49
(Deadline)

“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 [...]”.

24. With regard to the fulfilment of these criteria, the Court finds that: (i) the Applicant is an authorized party within the meaning of paragraph 7 of Article 113 of the Constitution; (ii) she challenges the Judgment [Ac. no. 530/2016] of 30 March 2023 of the Court of Appeals. The Applicant has also specified the fundamental rights and freedoms that she claims to have been violated by the Court of Appeals, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.
25. In addition to the above criteria, the Court also examines whether the Applicant has met the admissibility criteria set out in paragraphs (1) and (2) of Rule 34 (Admissibility Criteria) of the Rules of Procedure, which establish:

Rule 34
(Admissibility Criteria)

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

[...]

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

(2) The Court may consider a referral as inadmissible if the referral is intrinsically unreliable when the applicant has not sufficiently proved and substantiated his/her allegations.”

26. Based on the circumstances of the present case, the Court considers that the referral cannot be considered as manifestly ill-founded on constitutional basis, as provided for in paragraph (2) of Rule 34 of the Rules of Procedure, and consequently, the Referral may be declared admissible for consideration on the merits (see also the ECtHR case [Alimucaj v. Albania](#), no. 20134/05, Judgment of 9 July 2012, paragraph 144, and the cases of the Court [KI75/21](#), Applicant “*Abrazen LLC*”, “*Energy Development Group Kosova LLC*”, “*Alsi&Co. Kosovo LLC*” and “*BuildingConstruction LLC*”, Judgment of 19 January 2022, paragraph 64; [KI27/20](#), Applicant, *VETËVENDOSJE Movement!*, Judgment of 22 July 2020, paragraph 43, and recently [KI82/22](#), Applicant *Valon Loxhaj*, Judgment of 7 June 2023, paragraph 59).
27. Consequently, the Court considers that the applicant’s referral meets the criteria for consideration on merits.

Merits of the referral

28. The Court recalls that the Applicant's present Referral KI118/23 relates to the repeated allegation that the Court of Appeals did not take into account the findings of the Constitutional Court in case KI49/20, expressed by its Judgment of 20 January 2022, to eliminate and redress violations of her rights guaranteed by the Constitution.
29. Given the nature of the present referral, namely the essence of the constitutional complaint, the Court considers that the Applicant's claims should be assessed within the framework of the right to a reasoned and reasonable court decision, as guaranteed by 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, based on the fact that the

previous judgments of the Court of Appeals have been declared invalid specifically on this basis.

30. In the context of assessing the Applicant's allegations, the Court will apply the standards of the ECtHR case law, in harmony with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

A. Regarding the right to a reasoned court decision, guaranteed by Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR

i) General principles

31. The guarantees enshrined in Article 6 paragraph 1 of the ECHR also include the obligation for the courts to give sufficient reasons for their decisions (see the case of the ECtHR, [H. v. Belgium](#), no. 8950/80, Judgment of 30 November 1987, paragraph 53). A reasoned court decision shows the parties that their case has really been heard. Despite the fact that the courts have a certain margin of appreciation regarding the selection of arguments and the decision on the admissibility of evidence, they are obliged to justify its actions by giving reasons for all their decisions (see the cases of the ECtHR: [Suominen v. Finland](#), no. 37801/97, Judgment of 24 July 2003, paragraph 36; and case [Carmel Saliba v. Malta](#), no. 24221/13, Judgment of 24 April 2017, paragraph 73).
32. The lower Court or state authority, on the other hand, must give such reasons and justifications which will enable the parties to effectively use any existing right of appeal (see the ECtHR case [Hirvisaari v. Finland](#), no. 49684/99, of 25 December 2001, paragraph 30). Thus, the ECHR case law states that the essential function of a reasoned decision is to show the parties that they have been heard. Moreover, a reasoned decision gives a party the opportunity to appeal against it, as well as the possibility of reviewing the decision by an appeal body. Only by giving a reasoned decision can there be public scrutiny of the administration of justice (see *mutatis mutandis*, ECtHR case [Hirvisaari v. Finland](#), cited above, paragraph 30, [Tatishvili v. Russia](#), n. 1509/02, Judgment of 22 February 2007, paragraph 58 and [Suominen v. Finland](#), cited above, paragraph 37).
33. Article 6 of the ECHR, by its paragraph 1, obliges the courts to give reasons for their decisions, but this does not mean that a detailed answer is required for each argument (see the ECtHR cases, [Van de Hurk v. the Netherlands](#), no. 16034/90, Judgment of 19 April 1994, paragraph 61; [García Ruiz v. Spain](#), no. 30544/96, Judgment of 29 January 1999, paragraph 26; [Perez v. France](#), no. 47287/99, Judgment of 12 February 2004, paragraph 81). Whether the Court is obliged to give reasons depends on the nature of the decision taken by the court, and this can only be decided in the light of the circumstances of the case in question: it is necessary to take into account, among other things, the different types of submissions that a party can submit to the court, as well as the differences that exist between the legal systems of the countries in relation to legal provisions, customary rules, legal positions and the submission and drafting of judgments (see the cases of the ECtHR [Ruiz Torija v. Spain](#), no. 18390/91, Judgment of 9 December 1994, paragraph 29; [Hiro Balani v. Spain](#), no. 18064/91, Judgment of 9 December 1994, paragraph 27).
34. However, if a party's submission is decisive for the outcome of the proceedings, it requires that it be answered specifically and without delay (see ECtHR cases [Ruiz Torija v. Spain](#), cited above, paragraph 30; [Hiro Balani v. Spain](#), cited above, paragraph 28). Therefore, according to the case law of the ECtHR, national courts are obliged to: a)

examine the main arguments of the parties (see ECtHR cases, [Buzescu v. Romania](#), no. 61302/00, Judgment of 24 August 2005, paragraph 67; [Donadze v. Georgia](#), no. 74644/01, Judgment of 7 June 2006, paragraph 35); b) examine with particular rigor and care the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: [Fabris v. France](#), cited above, paragraph 72; [Wagner and JMWL c. Luxemburg](#), no. 76240/01, Judgment of 28 June 2007, paragraph 96).

35. Similarly, in a case where there is a request to allow the filing of an appeal, which is a prerequisite for the procedure of a higher court, as well as for a possible decision, Article 6, paragraph 1 cannot be interpreted in such a sense as to order a detailed reasoning of the decision rejecting the request to file an appeal (see ECtHR cases, [Kukkonen v. Finland](#) (no. 2) no. 47628/06, Judgment of 13 April 2009,) paragraph 24; [Bufferne v. France](#), no. 54367/00, Decision of 26 February 2002).
36. In addition, when rejecting an appeal, the Court of Appeals can, in principle, simply accept the reasoning of the lower court's decision (see the ECtHR case, [García Ruiz v. Spain](#), cited above, paragraph 26; see, contrary to this, [Tatishvili v. Russia](#), no. 1509/02, Judgment of 9 July 2007, paragraph 62). However, the concept of fair procedure implies that the domestic court that has provided a close explanation for its decisions, whether by repeating the reasoning previously given by a lower court or in any other way, was in fact dealing with important issues within its jurisdiction, which means that it did not simply and without additional effort accept the conclusions reached by the lower court (see case [Helle v. Finland](#), no. (157/1996/776/977), Judgment of 19 December 1997, paragraph 60). This requirement is all the more important if the contesting party has not been able to present its arguments orally in the proceedings before the domestic court.
37. However, the courts of appeal (in the second instance) which have jurisdiction to dismiss ungrounded appeals and to resolve factual and legal issues in the contested procedure are obliged to justify why they refused to rule on the appeal (see, ECtHR case, [Hansen v. Norway](#), no. 15319/09, Judgment of 2 January 2015, paragraphs 77–83).
38. Finally, the Court also refers to its case law where it finds that the reasoning of the decision should emphasize the relationship between the findings of merit and the reflections when considering the evidence proposed on the one hand, and the legal conclusions of the court on the other. The judgment of the court shall violate the constitutional principle of prohibition of arbitrariness in decision-making, if the reasoning given does not contain substantiated facts, relevant legal provisions and the logical relationship between them (Constitutional Court, cases: no. [KI72/12](#), [Veton Berisha and Ifete Haziri](#), Judgment of 17 December 2012, paragraph 61; and no. [KI135/14](#), [IKK Classic](#), Judgment of 9 February 2016, paragraph 58).

B. Court's assessment

Application of abovementioned principles in the circumstances of the present case

39. The Court recalls that in cases [KI145/18](#) and [KI49/20](#) it had already ruled twice on the same allegations of the Applicant, finding violations of the right to a fair trial, because the judgments of the Court of Appeals did not meet the standards of a reasoned and reasonable court decision. Therefore, considering the fact that the Applicant files the same claims against the challenged Judgment [Ac. 530/2016] of 30 March 2023 of the Court of Appeals, the Court will refer to the relevant parts of this judgment and will

assess whether the procedural violations found by the Court in case KI49/20 have been eliminated.

40. The Court recalls that by Judgment [KI49/20](#), it found a violation of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, focusing on the principle of unreasoned court decision, because the Court of Appeals upheld the Judgment of the Basic Court in Prishtina - branch in Lipjan [C. no. 19/2015], of 11 November 2015, without addressing the Applicant's claims at all. The Court in case [KI49/20](#) concluded: *"The Court of Appeals in Judgment Ac. no. 530/2016, once again completely ignored the main issue on which it should have provided reasoning, although it was specific, relevant and important for the Applicant. In the given circumstances, it can be said that this kind of reasoning, as drafted in the new judgment, was not drafted primarily in accordance with the findings from the Judgment KI145/18, and therefore, as such, it is not in accordance with the obligations from 18 Article 6, paragraph 1 of the ECHR in terms of the right to a reasoned court decision.[...]"*.
41. Based on its findings in case [KI49/20](#), the Court notes that the Court of Appeals in the challenged Judgment [Ac. no. 530/2016] of 30 March 2023, among other things, reasoned: *"This court clarifies for the claimant that the decisions taken by the first instance court cannot be considered a deviation from the case law, because the first instance court does not create a case law in any way, the decisions of the first instance court are also assessed by two higher instances, the Court of Appeals and the Supreme Court, in the first instance the case is decided by the individual judge, while its decision is assessed by the panel of three judges in the second instance and the Supreme Court. The case law is established only by the Supreme Court of Kosovo. In the present case, the Court of Appeals cannot accept as a deviation from its previous practice the decision of the claimants in relation to the decision by which the claimants under that case have acquired the right of ownership with an acquisition by prescription in social property, because it is clear to this court that the same decision has not gone through the three instances, namely in the Supreme Court of Kosovo. The first instance court in this case had initially approved as grounded the claimants' statement of claim recognizing the right of ownership in social property with the acquisition by prescription, but almost in the same factual and legal circumstances as in the case which the claimants refer to, but that the same decision was annulled and remanded to retrial according to the decision of the Court of Appeals Ac. no. 1855/12 of 14.11.2014, while after remanding to retrial and reconsideration the first instance court by the challenged judgment, and acting according to the remarks of the second instance court rejected as ungrounded the claimants' statement of claim, which means that it was decided differently from the Basic Court, therefore even this cannot be accepted as a deviation from its previous practice in similar factual and legal circumstances, because the first instance court does not create the case law.*
42. From the above, the Court clarifies that by its Judgment [KI49/20](#), of 20 January 2022, it had not recommended changing the decision-making of the Court of Appeals, regarding the issues of acquisition of ownership by prescription, but the redress and elimination of procedural violations found by the judgment in question, because the preliminary judgments of the Court of Appeals did not meet the standard of a reasoned and reasonable court decision, within the meaning of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR, because the Court of Appeals did not sufficiently address and substantiate relevant allegations of the Applicant regarding equal treatment before the law and consistency in decision-making. The Court recalls that it only finds violations of constitutional rights and does not require the regular courts to decide differently on the merits of a case, because it is not entitled to do so. That competence still belongs to the regular courts.

43. In this context, the Court reiterates that it is not its duty to replace regular courts, which are in a better position to assess the evidence at their disposal, establish the facts and interpret local law (see ECtHR case [Khamidov v. Russia](#), no. 72118/01, Judgment of 15 November 2007, paragraph 170). The Court emphasizes that when it comes to establishing the facts and interpreting the law, it is “sensitive” of the subsidiary nature of its role and that it should be careful in assuming the role of the court of fact, except when such a thing is made unavoidable by the circumstances of the case (see the case of ECtHR, [Bărbulescu v. Romania](#), no. 61496/08, Judgment of 2017, paragraph 129).
44. Furthermore, the Court notes that the Court of Appeals based its conclusions on the principled positions of the Supreme Court, where the latter had decided on cases of the same or similar factual and legal nature, arguing that: “According to Law No. 06/L-054 on Courts, under the jurisdiction of the Supreme Court, in Article 26, par.1, subpar.1.4, it is foreseen that: “establishes principled attitudes and issues legal opinions and guidelines for unique application of laws by the courts in the territory of Kosovo”. The case law is indirectly presented as a source of rights in cases where several court instances, for a longer period of time, in the same or identical cases, render the same decisions. In the case of the claimants, but also in other cases concerning the acquisition of social property by prescription, so far there is not a single decision of the Supreme Court that has been decided in his favour. In the summary of the Supreme Court in property disputes, the Supreme Court by judgment Rev. no. 106/2015 and the judgment Rev. no. 344/2015 has clearly stated that the right of ownership over the social property cannot be acquired by prescription, while as regards the changes of the law that were made in 1996, the deadline of prescription of social property begins to run only once the changes in 1996 enter into force, arguing that the amendments to the Law on Basic Property Relations do not have retroactive effect, so that from 1996 onwards, the legal deadline for the acquisition by prescription over socially owned property can be calculated, but according to the conditions set out in Article 28 of the cited law, for legal and in good faith possession. In addition, the Supreme Court of Kosovo is the one that has the legal competence to determine principled positions, issue legal opinions and guidelines for the unique application of laws by courts in the territory of Kosovo and not courts of lower instances.
45. In this regard, the Court refers to Judgment ([REV. no. 165/2022](#)) of 6 July 2022 of the Supreme Court, the latter in similar cases as the Applicant, reasoned that: “The claims of revision that the claimant is in unimpeded possession of the claimed property and thus has acquired ownership on the basis of the acquisition by prescription were rejected as ungrounded. Regarding the claim of the revision that the claimant has been for a long time in unimpeded possession, the Supreme Court approves the position of the lower courts and the reasoning given in the concrete case that the question of possession does not create a property relationship nor a right of ownership because in the cadastral registers it appears that the property is owned by the Municipality of Lipjan. Article 29 of the LBPR provides that “The right of ownership over immovable property, in socially owned property, cannot be acquired on the basis of the acquisition by prescription”. By Article 16 of the Law on Amending the Law on Basic Legal-Property Relations (Off. Gaz. of Yug. Nr. 29/96) this legal provision has been deleted, namely Article 29 of this Law and the acquisition of ownership by possession has been allowed under the conditions set by law. [...]. According to the assessment of the Supreme Court, the legal norm is made to regulate legal relations in the future, and it is not foreseen that this norm has a retroactive impact” (see case KI187/22, Applicant Elmi Mena, Resolution of 5 November 2024, paragraph 62).
46. From the above, the Court considers that the Court of Appeals, by the challenged Judgment [Ac. no. 530/2016] of 30 March 2023, addressed the essential claims of the Applicant, by responding specifically to the issue related to the consistency in decision-

making on issues of acquisition of ownership in good faith through the acquisition by prescription. Based on this, the Court considers that the Court of Appeals in the new judgment has given sufficient, comprehensive and concrete reasoning regarding the allegation of inconsistency in decision-making which in the circumstances of the applicant has consumed in itself also her claim of unequal treatment before the law, within the meaning of Article 24 of the Constitution, which had not previously been properly reviewed and in accordance with the right to a reasoned and reasonable court decision by the Court of Appeals.

47. In view of the above, in assessing the allegations related to the violation of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, the Court considers it important to reiterate the general position that the "fairness" required by the aforementioned articles is not "substantive" fairness, but rather "procedural" fairness. At the practical terms, the concept of "procedural fairness" means: (i) the possibility of adversarial procedures/the principle of procedural adversariality; (ii) the possibility of the parties, at different stages of the procedure, to present arguments and evidence that they consider important for the relevant case; (iii) the possibility of efficient contestation of the arguments and evidence presented by the opposing party; and (iv) the right to have their arguments which, viewed objectively, are important for the resolution of the case, to be heard and examined by the regular courts in an appropriate manner (see, *inter alia*, the case of the ECtHR [Barbera, Messeque and Jabardo v. Spain](#), no. 10590/83, Judgment of 6 December 1988, paragraph 68; and cases of the Constitutional Court: [K128/19](#), applicant *Artan Mala*, Resolution on Inadmissibility, of 25 February 2021, paragraph 58; [K122/19](#), applicant *Sabit Ilazi*, Resolution on Inadmissibility, of 7 June 2019, paragraph 42).
48. In this context, the Court considers that in the case of the Applicant all the above criteria have been respected by the Court of Appeals. The applicant may not be satisfied with the outcome of the adjudication of the case. However, her dissatisfaction cannot raise an arguable claim for violation of the fundamental rights and freedoms guaranteed by the Constitution (see, the case of the ECtHR [Mezotur-Tiszazugi Tarsulat v. Hungary](#), no. 5503/02, Judgment of 26 July 2005, paragraph 21).
49. The Court also wishes to recall that Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR oblige the courts to reason their decisions, however, this cannot be interpreted in such a way that a detailed response to each claim is required from them (see the cases of the ECHR, [Van de Hurk v Netherlands](#), cited above; [Garcia Ruiz v Spain](#), cited above, paragraph 26).

Conclusion

50. In sum, the Court concludes that the Court of Appeals in Judgment [Ac. no. 530/2016] of 30 March 2023: (i) provided the legal basis and explained with clarity why in the case of the Applicant a different outcome could not be expected in terms of the right to acquire ownership with an acquisition by prescription; and (ii) why the cases referred did not constitute case law and source of law in this regard. Furthermore, the challenged judgment of the Court of Appeals contains a logical link between the legal basis, the reasoning and the conclusions, and as such meets the requirements of a reasoned and reasonable court decision.
51. Therefore, the Court concludes that Judgment (Ac. no. 530/2016) of 30 March 2023 of the Court of Appeals is in compliance with the requirements 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 of the Constitution, in accordance with Articles 20 and 47 of the Law and with Rule 48 (1) (a) of the Rules of Procedure, at its session held on 5 November 2024:

DECIDES

- I. TO DECLARE the Referral admissible for review;
- II. TO HOLD, unanimously, that Judgment [Ac. no. 530/2016] of 30 March 2023 of the Court of Appeals of the Republic of Kosovo, is in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and paragraph 1 of Article 6 [Right to a fair trial] of the European Convention on Human Rights;
- III. TO NOTIFY this Judgment to the parties and, in accordance with paragraph 4 of article 20 of the Law, to publish it in the Official Gazette;
- IV. TO HOLD that this Judgment is effective from the date of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.