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

Prishtina 10 October 2019
Ref. No:RK 1443/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI118/18

Applicant

Eco Construction sh.p.k.

Constitutional review of Decision Ac.no.5706/17 of the Court of Appeals of Kosovo, of 15 March 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by the Company *"EcoConstruction"* sh.pk in Prishtina, represented by Ardi Shita, a lawyer from Pristina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Decision [Ac.no.5706/17] of 15 March 2018 of the Court of Appeals concerning the Writ [P.no.698/16] of 11 December 2017 of the Private Enforcement Agent.

3. The challenged decision was served on the Applicant on 10 April 2018.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which as alleged by the Applicant has violated its fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 of the European Convention on Human Rights (hereinafter: ECHR) and Article 54 [Judicial Protection of Rights] of the Constitution.

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, on Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, no.03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 8 August 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) by mail.

7. On 17 August 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Bajram Ljatifi and Safet Hoxha.

8. On 27 February 2019, the Applicant was notified about the registration of the Referral. On the same date, a copy of the Referral was sent to the Court of Appeals.

9. On 26 March 2019, a copy of the Referral was sent to the Basic Court in Prishtina (hereinafter: the Basic Court) with a request to submit the acknowledgment of receipt indicating the date when the challenged decision was received by the Applicant.

10. On 11 April 2019, the Basic Court submitted the above-mentioned document to the Court.

11. On 10 September 2019, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. According to the case file, it results that on 30 September 2014 *"Eco Construction"* and *"Chelsea Point L.L.C"* had entered into a Construction Contract at the respective Notary Office.

13. On 26 October 2016, the Office of the Private Enforcement Agent in Prishtina, acting pursuant to the proposal of the Applicant, in the capacity of a creditor, issued the Writ [P. No. 698/16] for scheduling the enforcement on the basis of a credible document, obliging the debtor *"Chelsea Point LLC"* to pay the debt in the amount of EUR 387,302.94, with penalty interest at the rate of 8% per annum, from the date when the payment of debt is due until definitive payment, and all costs of enforcement proceedings.

14. The debtor filed an objection with the Basic Court against this writ, stating, inter alia, that the credible document, namely the invoices on the basis of which the enforcement was determined, had no features of enforceability and had not become enforceable. By a response to this objection, the creditor disputed the debtor's claims.

15. On 21 March 2017, the Applicant, in the capacity of the creditor and the relevant debtor, signed the Contract [LRP.2713/17, No.Ref.494/17] on the transfer of immovable property and the compensation/debt repayment, through which, among other things, it was determined that (i) the outstanding debt for payment is EUR 392,302.94; (ii) in the name of this debt, the immovable property owned by the debtor as set forth under point 2 of this Contract is transferred to the creditor; (iii) upon the transfer of the immovable property owned by the creditor, the obligation shall be deemed fulfilled and the debtor's debt shall be deemed repaid/compensated in full; (iv) the enforcement procedure identified as P. no.698/18 shall be suspended provided that all conditions of this Contract have been implemented; and that (v) the Contract in question represents their sole agreement and shall supersede any earlier agreement that might be in contradiction with the provisions of the present Contract. However, Article 6 of this Contract sets forth additional commitments between the parties, including the debtor's commitment, to perform additional construction work on the relevant immovable property within 6 (six) months from the date of signature of this Contract.

16. On 22 June 2017, the Basic Court, by Decision [PPP.no.926/2016]: (i), rejected as unfounded the debtor's objection against the Writ [P.no.689/16] of 27 October 2016 of the Private Enforcement Agent, by confirming the Writ and (ii) determined that if the debtor files an appeal against the respective decision, he will be ordered, within 7 (seven) days, to pay the court guarantee in the amount of EUR 392,304.94 and that in the event of failure to perform the payment of this guarantee, the appeal filed against the respective decision will be considered as not being filed. According to the case file, the debtor did not file an appeal.

17. Based on the case file, it results that *"Chelsea Point L.L.C"*, namely, the debtor, had failed to fulfil in timely manner all the obligations to the Applicant as defined in the said Contract. Consequently, on 17 October 2017, by calling upon the debtor's failure to completely fulfil its obligations, specifically with respect to the obligations set forth in paragraph 3 of Article 6 of the Contract, on the basis of which the debtor was obliged within 6 (six) months to carry out a part of the construction as specified in this article, the creditor proposed to the Private Enforcement Agent to set the expertise (i) to calculate the unfinished works and (ii) to calculate the penalty interest according to the Writ [P. no. 698/16] of 26 October 2016.

18. On 11 December 2017, the Office of the Private Enforcement Agent, by Writ [P.no.698/16] (i) determined the conclusion of the enforcement procedure as a result of determining the value of unfinished work and the realization of this debt and (ii) rejected the claim of the Applicant, namely the creditor, in relation to the calculation of the penalty interest according to the proposal for enforcement. Concerning the proposal, the Private Enforcement Agent held that the penalty interest was not defined in the Contract on the Transfer of Immovable Property and the Debt Compensation/Repayment of 21 March 2017.

19. On 19 December 2017, the Applicant, alleging a substantial violation of the procedural provisions, proposed to the Court of Appeals to annul the aforementioned Writ of the Private Enforcement Agent. The Applicant in its appeal alleged that the reasoning of the challenged Writ of the Private Enforcement Agent concerning the refusal to determine the financial expertise for the calculation and compensation of penalty interest was issued in violation of Article 382 (Penalty interest) and Article 384 (Right to full compensation) of Law No. 04/L-077 on Obligational Relationships (hereinafter: LOR) in conjunction with paragraph 2 of Article 29 (Authentic document) of Law No. 04/L-139 on Enforcement Procedure (hereinafter: LEP).

20. On 15 March 2018, the Court of Appeals, by Decision [Ac.no.5706/17], rejected the Applicant's appeal as unfounded and confirmed the aforementioned Writ of the Private Enforcement Agent. The Court of Appeals, among other things, reasoned that pursuant to paragraph 1 of Article 289 (Substitutional performance) of the LOR, by the signing of the Contract of 21 March 2017, other debtor's obligations to the creditor, including the penalty interest, which was not specifically defined in the Second Contract signed by the parties in this enforcement case, have been terminated.

Applicant's allegations

21. The Applicant alleges that the Decision [Ac.no.5706/17] of the Court of Appeals of 15 March 2018 was rendered in violation of its fundamental rights and freedoms provided by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR and Article 54 [Judicial Protection of Rights] of the Constitution.

22. As regards the allegations for a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant alleges that the Court of Appeals (i) when issuing the challenged decision *"has neglected the evidence presented by the Applicant during the enforcement procedure, including the main evidence whereby it was clearly demonstrated the demand for penalty interest and expertise on the penalty interest"*; and (ii) misinterpreted the law, specifically in relation to paragraph 1 of Article 289 of the LOR; paragraph 2 of Article 29 of the LEP, according to which the calculation of interest is considered as part of the authentic document; and paragraph 3 of Article 43 (Enforcement decision and writ) of the LEP according to which, and insofar as relevant to the circumstances of the present case, if payment of interest is determined by the writ, then their calculation is made by the enforcement authority.

23. As to the alleged violations of Article 54 of the Constitution, the Applicant alleges that *"because it is precisely the Applicant's right to penalty interest that has been violated by the Court of Appeals itself, initially by the Private Enforcement Agent, and this constitutes a violation of Article 54 of the Constitution ..."*

24. Finally, the Applicant requests from the Court to (i) declare its Referral admissible; (ii) to find that the Court of Appeals has violated Article 31 of the Constitution in conjunction with Article 6 of the ECHR; (iii) declare invalid the Decision of the Court of Appeals [Ac. no. 5706/2017] of 15 October 2018 and (iv) oblige the Court of Appeals to "take into account all evidence submitted by the Applicant and respect its constitutionally guaranteed rights" in the proceedings for the issuance of a new decision.

Admissibility of the Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.

26. 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."*

27. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which states: *"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."*

28. Moreover, the Court also refers to the admissibility criteria as set out in the Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

Article 47
[Individual Requests]

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

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

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

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

29. In assessing the fulfillment of the admissibility requirements as mentioned above, the Court initially notes that the Applicant has the right to submit a constitutional complaint, by calling upon alleged violations of its fundamental rights and freedoms, which are valid for individuals as well as legal entities (see, the Court Case No. KI41/09, Applicant *AAB-RIINVEST University L.L.C.*, Ruling on Inadmissibility of 3 February 2010, para.14). Consequently, the Court finds that the Applicant is an authorized party challenging an act of public authority, namely Decision [Ac.no.5706/17] of the Court of Appeals of 15 March 2018, after having exhausted all the legal remedies provided by law.

30. The Applicant also clarified the fundamental rights and freedoms which he alleges to have been violated in accordance with the provisions of Article 48 of the Law and submitted the Referral in accordance within the time limit provided by Article 49 of the Law.

31. However, in addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph (2) of Rule 39 of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral be not manifestly ill-founded. Specifically, Rule 39 (2) provides that:

"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."

32. In this respect, the Court first recalls that the Applicant, namely *"Eco Construction"* and *"Chelsea Point LLC"*, had entered into a Construction Contract in 2014. In October 2016, taking into account that *"Chelsea Point LLC"*, in context of the enforcement proceedings, the debtor failed to fulfil its obligations set forth in the original contract, the enforcement proceedings had been initiated and the Writ [P. No. 698/16] was issued on the determination of the enforcement in the amount of EUR 387,302.94, including the penalty interest of 8% per annum. The debtor filed an objection with the Basic Court against this writ. However, while the case was pending before the Basic Court, the Applicant and the debtor had signed a Second Contract, namely the Contract [LRP.2713/17, Ref. No.494/17] of 21 March 2017, whereby, among other things, and as stated above, there was reached an agreement on the debt between the parties, which would terminate the debt in its entirety, upon the transfer of certain immovable property of the debtor in the ownership of the creditor. This Contract, however, had specified a number of other tasks which were the obligation of the debtor, as specifically provided for in Article 6 of this Contract, upon the fulfillment of which the debt would be considered paid in its entirety. In exchange thereof, the creditor would suspend the enforcement procedure determined by the Writ [P. no. 698/16] of 26 October 2016.

33. According to the case file, it appears that the debtor failed to comply with its commitments. Consequently, by calling upon Article 10 of the Contract, on the basis of which the Applicant had agreed to suspend the enforcement proceedings on the condition that all the Articles of the Contract be implemented, the Applicant again addressed the Private Enforcement Agent, requesting that the enforcement procedure determined by the Writ [P. no. 698/16] of 26 October 2016 and confirmed by the Basic Court through Decision [PPP. no. 926/2016] of 22 June 2017 be continued, by requesting to schedule the expertise for the calculation of unfinished works and penalty interest arising under the first writ of enforcement. According to the case file, the Private Enforcement Agent, through Writ [P. no. 698/16] of 11 December 2017, approved the first one, while rejected the second, considering the enforcement procedure as completed. This Writ was challenged by the Applicant in the Court of Appeals. The Court of Appeals confirmed the Writ of Enforcement, namely the Writ [P. no. 698/16] of 11 December 2017, noting, inter alia, that Agreement [LRP.2713/17, REF. no. 494/17] signed between the parties on 21 March 2017, pursuant to paragraph 1 of Article 289 of the LOR, terminates any prior obligations of the debtor to the creditor, including the penalty interest which was not expressly defined in the second Contract, namely the Contract [LRP. 2713/17, REF. no. 494/17] of 21 March 2017. The Applicant challenges this finding in the Court, alleging, in substance, that taking into account that the debtor had not fulfilled the conditions of this Contract, Article 10 of the same contract which concerns the suspension of the enforcement procedure enables the creditor, respectively the Applicant, to request the execution of the first writ of enforcement, which defines also the penalty interest.

34. The Applicant, as stated above, alleges before the Court that the Decision of the Court of Appeals was issued in violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR because the Court of Appeals had failed to take into account their evidence and had interpreted the law incorrectly, by disapproving the determination of the expertise for calculating the penalty interest, while alleging also a violation of Article 54 of the Constitution, precisely because of the latter.

35. In the following, the Court will address the Applicant's allegations, by applying the ECtHR case law, in accordance with which the Court pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution must interpret the fundamental rights and freedoms guaranteed by the Constitution.

36. In this respect, the Court initially notes that the case law of ECtHR stipulates that the fairness of a proceeding is assessed on the basis of the proceedings as a whole (see, in this context, the ECtHR Case *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68). Consequently, when assessing the Applicant's allegations, the Court will also adhere to this principle (see the cases of Court KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and case KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018, paragraph 31).

37. More specifically and with regard to the Applicant's allegations for a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court emphasizes that the Applicant built its case on the basis of legality, namely, on determination of facts and erroneous interpretation of laws, and specifically LOR and LEP. The Court recalls that these claims relate to the field of legality and as such do not fall under the jurisdiction of the Court, and consequently, in principle, they cannot be examined by the Court (see, inter alia, the Court case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35).

38. The Court has consistently reiterated that it is not its duty to deal with errors of facts or of law allegedly committed by the regular courts (*legality*), unless and insofar that they may have violated the rights and freedoms protected by the Constitution (*constitutionality*). It may not itself assess the law which has led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of *"fourth instance"*, which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (see, the ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see also, inter alia, Court cases: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Ruling on Inadmissibility of 16 December 2011, paragraph 29; KI06/17, Applicant *L.G. and five others*, Resolution on Inadmissibility, of 20 December 2017, paragraph 37; and KI122/16, Applicant *Riza Dembogaj*, Resolution on Inadmissibility, of 19 June 2018, paragraph 57).

39. This stance has been consistently held by the Court, on the basis of the ECtHR case law, which clearly emphasizes that it is not the role of this Court to review the conclusions of regular courts in respect of the factual situation and the

application of substantive law (see, the ECtHR case, *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and the cases of Court KI06/17, Applicant *LG and five others*, cited above, paragraph 38; and KI122/16, cited above, paragraph 58).

40. The Court, however, states that the case law of the ECtHR and the Court also provide for the circumstances under which exceptions from this position must be made. The ECtHR reiterated that while it is the primary duty of the national authorities, respectively the courts, to resolve problems of interpretation of domestic legislation, the role of the Court is to ensure or verify whether the effects of such interpretation are compatible with the Convention (see the ECtHR case, *Miragall Escolano and others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

41. Consequently, even though the role of the Court is limited in terms of assessing the interpretation of the law, it must ensure and take measures where it observes that a court has *"applied the law in manifestly erroneous manner"* in a specific case which may have resulted in *"arbitrary conclusions"* (see, in this context, the case of the ECtHR, *Anheuser-Busch Inc. V. Portugal*, Judgment of 11 January 2007, paragraph 83; and also the Court cases KI06/17, Applicant *LG and five others*, cited above, paragraph 40; and KI122/16, cited above, paragraph 59).

42. In the circumstances of the present case, according to the Applicant, the Private Enforcement Agent and the Court of Appeals misinterpreted the provisions of the LOR and the LEP relating to the penalty interest.

43. In this respect, the Court first refers to the Writ of the Private Enforcement Agent, namely the Writ [P. no. 698/16] of 11 December 2017, which initially rejected the Applicant's request for determining the expertise to calculate the penalty interest. The relevant part of the Writ of Private Enforcement Agent establishes:

> *"The Enforcement Agent finds that this request is unfounded for the fact that the parties during the enforcement procedure concluded a Notary Contract bearing the LRP number 2713/17 and Ref. No. 494/2017 where they agreed on the manner how to pay the debt by a specified compensation according to Article 3 and Article 6 of this Contract while the application of the requested penalty interest could not be ascertained under the conditions of this Contract on the payment of debt."*

44. Moreover, the Court also recalls the Decision of the Court of Appeals, namely Decision [Ac.no.5706/17] of 15 March 2018, which confirmed the aforementioned Writ of the Private Enforcement Agent. In this decision and in this context, it is stated, among other things:

> *"According to Article 289, paragraph 1 of the LOR, it is stipulated that: "the obligation shall terminate if in agreement with the debtor the creditor accepts anything else in place of that which was owed thereto", in the present case the creditor and the debtor have signed the contract on the transfer of immovable property and debt compensation(termination) no.*

LRP.2713/17, Ref.No.494/17 dated 21.03.2017, where the obligation is considered fulfilled at the moment when the creditor has accepted the object of the obligation substitution on the basis of the contract concluded between the creditor and the debtor. On the basis of this contract entered into between the parties, in Article 11, it is agreed that: the parties to this contract confirm that what is recorded in this contract constitutes their sole agreement with respect to the subject matter of this contract, thereby invalidating any earlier agreement that could be in contradiction with the provisions of this contract. Given that under the contract on the transfer of immovable property and debt repayment, the parties have agreed to invalidate any agreement whilst in the contract they have not foreseen the penalty interest, the decision to reject the creditor's request for calculation of the penalty interest was correct. Since the obligation has been fulfilled by the debtor, the Court of Appeals finds that the enforcement authority has acted correctly when it completed the procedure in accordance with the provisions of the LEP."

45. In this context, the Court notes that, in respect of the penalty interest, the Private Enforcement Agent through the relevant Order and the Court of Appeals through the relevant decision, stated that the Contract [LRP.2713 /17, Ref.No.494/17] of 21 March 2017 had replaced the Contract of 30 September 2014, and pursuant to paragraph 1 of Article 289 of the LOR, was replaced the compensation, namely the debtor's obligation to the creditor. Both had stated that the penalty interest was not determined in the second Contract, consequently it was rejected.

46. The Court further notes that Article 10 of the second Contract, in respect of the suspension of the enforcement procedure, conditioned this suspension on the application of all the conditions of this Contract. The debtor had not fulfilled the obligations set forth in Article 6 of this Contract in a timely manner. As a result, the Private Enforcement Agent, with the agreement of the parties, had determined the expertise to assess and determine the value of the unfinished works and the debtor had fulfilled this obligation as well. Compensation for the value of the unfinished works had resulted in the fulfillment of the obligations set out in the said Contract, and consequently all the conditions laid down therein had been applied, as set forth in Article 10 thereof. Furthermore, Article 11 of the Contract, inter alia, specifically provided that the Contract invalidates any earlier agreement and which might be in contradiction with its provisions.

47. In this context, the Court notes that the Applicant has not provided arguments that this interpretation of the law by the Court of Appeals is manifestly erroneous or arbitrary and has resulted in *"arbitrary conclusions"* or *"manifestly unreasonable"* conclusions for the Applicant.

48. The Court further reiterates that, in principle, the interpretation of the law is a competence of the regular courts. Moreover, the *"fairness"* required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not "substantive" justice but "procedural" fairness. In practical terms, and in principle, this is expressed by adversarial proceedings, in which the parties are heard and placed on the same conditions before the court (see, in this context,

the case of Court No.KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and the other references cited therein).

49. The Court also emphasizes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR does not guarantee anyone a favorable outcome in a judicial process, nor it requires the Court to question the application of substantive law by regular courts in a civil dispute, where mainly one party wins and the other one loses (see, in this context, the Court cases KI118/17, *Şani Kervan and others*, Resolution on Inadmissibility, paragraph 36; and KI142/15, Applicant *Habib Makiqi*, Resolution on Inadmissibility, of 1 November 2016, paragraph 43).

50. The Court recalls that the Applicant also alleges in substance that this loss, namely the refusal of the penalty interest by the Court of Appeals, resulted also in a violation of the right to judicial protection of the rights guaranteed by Article 54 of the Constitution. The Court in this respect notes that the outcome of the judicial proceedings does not necessarily results in a violation of this Article.

51. The Court emphasizes that, in principle and in their entirety, Article 54 of the Constitution on judicial protection of rights, Article 32 of the Constitution on the right to legal remedy and Article 13 of the ECHR on the right to an effective remedy guarantee: (i) the right to judicial protection in the event of a violation or denial of a right guaranteed by the Constitution or by law; (ii) the right to use legal remedies against judicial and administrative decisions which violate the rights guaranteed in the manner as provided by law; (iii) the right to an effective remedy if it is found that a right has been violated and (iv) the right to an effective remedy at local level if a right guaranteed by the ECHR has been violated.

52. In fact, the Applicant does not allege that its rights have been violated in any of the foregoing aspects, which could have resulted in a violation of judicial protection of rights guaranteed by the Constitution.

53. The Court finally points out that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot by itself raise an argumentative allegation for a violation of the right to fair and impartial trial or even a violation of the right to judicial protection of its rights (see the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, inter alia, KI56/17, cited above, paragraph 42).

54. Therefore, in these circumstances, based on the foregoing, and taking into consideration the allegations raised by the Applicant and the facts presented by it, the Court by relying on the standards established in its own case-law in similar cases and on the ECtHR case law, finds that the Applicant has not sufficiently proved and substantiated its allegation for a violation of its fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and by Article 54 of the Constitution.

55. Consequently, the Referral is manifestly ill-founded on constitutional grounds, and must be declared inadmissible pursuant to Articles 113.7 and 21.4 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 and 21.4 of the Constitution, Article 47 of the Law and Rules 39 (2) (d) and 59 (2) of the Rules of Procedure, on 10 September 2019, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

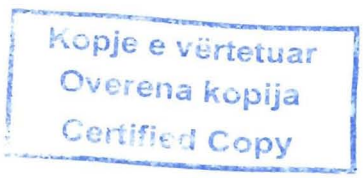
II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Gresa Caka-Nimani Arta Rama-Hajrizi



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