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

Prishtina,on 23 March 2020
Nr. Ref.:RK 1533/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI130/19

Applicant

Fahri Mati

Constitutional review of decision [E.Rev.no.19/2019] of the Supreme Court of Kosovo, of 8 May 2019

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 submitt by Fahri Mati, owner of the Company "Silver-Co-TermoClimo" from Prizren (hereinafter: the Applicant), represented by Miftar Qelaj, a lawyer from Prizren.

Challenged decision

2. The Applicant challenges the decision E.Rev.no.19/2019 of the Supreme Court of 8 May 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged decision of the Supreme Court, which allegedly violates the Applicant's 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), as well as Article 6 (Right to a fair trial) and Article 13. (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: (ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, 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

5. On 16 August 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 August 2019, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.

7. On 28 August 2019, the Court notified the Applicant's legal representative about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 27 November 2019, after having considered the report of the Judge Rapporteur the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. On the basis of the case file, it results that the Applicant, as the owner of Company "Silver-Co –TermoClimo" based in Prizren, entered into an oral agreement with the company Getoari, which is registered in the Republic of Albania, under which his company was required to do certain construction works on a part of the highway that runs through the Republic of Albania. According to the Applicant, the value of the orally contracted works that Getoari had to pay to his company "Silver - Co –

TermoClimo" was 53,872.03 Euros. However, Getoari paid only 5,027.10 Euros to the Applicant.

10. The Applicant initiated a litigation before the Basic Court in Prishtina - Department for Commercial Matters (hereinafter: the Basic Court) against the respondent, the Getoari enterprise having its office in Prizren, for the remaining debt not paid to "Silver-Co-TermoClimo" Company for the works carried out on highway extending over the Republic of Albania. The amount of the dispute value stated by the Applicant before the Basic Court - Department for Economic Affairs consists of 3100 Euros.

11. The responding Company "Getoari", office in Prizren has challenged the claim before the Basic Court in its entirety, claiming *that "it does not have the respondent's legitimacy, that the Court has no jurisdiction to deal with this claim, namely that the contractual relationship between "BechtelEnka" and "Getoari", having its headquarters in Albania, was concluded in the Republic of Albania and the works under this contract have been carried out in the territory of Albania, for which it has submitted to the Basic Court a business registration certificate and a copy of the above contract".* Also, the respondent stated that the orally contracted value of the works performed by the Applicant instead of "Getoari" LLC. based in Albania, was fully paid at the location of the oral contract, that is, in the Republic of Albania.

12. On 25 October 2018, the Basic Court issued a decision EC No.299 / 2016 declaring itself incompetent to decide on this legal matter, while dismissing the Applicant's claim against the "Getoari" Company, office in Prizren as inadmissible in this legal matter.

13. By the same decision, the Court of First Instance declared invalid also all the actions taken by this court in this legal matter.

14. In the reasoning of Decision EK.no.299/2016, the Basic Court stated:

> *"Based on this state of affairs, the court assesses that the case initiated by the claim does not fall within the jurisdiction of the domestic court (Republic of Kosovo) to decide on the claimant's claim, which implies the fact that the Basic Court in Prishtina - Department for Commercial Matters is not competent to decide on this legal matter.*
>
> *Having an insight into the case files and explanations of the parties, more specifically of the respondent who consistently challenged his legitimacy in the procedure, emphasizing that the contractual relationship on the basis of which the claimant has performed works on the Kukes Highway was contracted between "Getoari" LLC. having its headquarters in Albania and the respondent, and not the "Getoari" with its headquarters in Prizren.*

So, on the basis of the registration status issued by the Ministry of Finance and Economy, National Business Center, it is stated that "Getoari" LTD. with unique entity identification number K78410201A, and administrator Naim Besimi, is based in Albania, Kukes, "Rr. e Tregut" Street, near the Public Services Company. Also, "Getoari" LLC. based in Kukes, Albania, in the capacity of the subcontractor, on 21.10.2008 concluded a contract with Bechtel International, Inc. and Enka Insaat ve Sanayi A.S on the completion of works of the Albanian Highway Project.

The court also assessed the claimant's claim stating it had concluded the contract for performing works on the Kukes Highway in Albania with the "Getoari" based in Prizren, but the claimant failed to provide evidence to the court to prove this fact.

By the provision of Article 18.1 of the LCP it is stipulated that the court by its official duty, during the entire procedure safeguards whether the settlement of the dispute is within the court jurisdiction or not , while the provision of Article 18.3 provides that if the court during all stages of proceeding determines that the local court is not competent, it will be declared incompetent".

15. As regards the instruction on the legal remedy, the Court notes that the Basic Court in stated: *"An appeal against this decision may be filed to the Court of Appeals within 15 days from receipt thereof".*

16. On 27 November 2018, the Applicant filed an appeal with the Court of Appeals due to substantial violations of the provisions of the civil procedure, with a proposal to quash the challenged decision.

17. On 30 January 2019, the Court of Appeals issued the decision AE.no.5/2019, whereby the Applicant's appeal filed against the decision of the Basic Court in Prishtina - Department for Commercial, EK.no.299/2016 of 25 October 2018, was dismissed as out of time.

18. The reasoning of the decision AE.no.5/2019, the Court of Appeal reads:

"...the deadline for appeal under the provision of Article 509, item (c) of the LCP is 7 days from the date of receipt of the decision, and consequently, the appeal is filed after the expiry of the legal deadline of 7. Considering the fact, that the deadline starts to run from 15.11.2018, when the 7 day deadline starts to count, then the last day for filing the appeal was 21.11.2018. Given that the claimant has filed the appeal on 11/27/2018, it results that the appeal was filed with a delay of 6 days.

Although the Court of First Instance, in the instruction on the legal remedy of the challenged decision, instructed the dissatisfied party regarding the right of appeal and mistakenly wrote the 15-day deadline for filing the appeal, this

circumstance, according to the assessment of the second instance court, cannot affect the extension of deadline for appeal against this decision for which, Article 509 (c) of the LCP, has set a deadline of 7 days from the date of receipt of the decision. The appeal deadline represents a legal time limit that cannot be modified by any court decision while the claimant's representative is a lawyer and is presumed to have knowledge of the law, respectively he was obliged to comply with the provisions of the LCP."

19. The Applicant filed with the Supreme Court a request for revision of the Decision AE.no.5 2019 of the Court of Appeals, due to substantial violations of the provisions of the civil procedure and erroneous application of substantive law, with the proposal that the revision be approved and the decision of the second instance court annulled.

20. On 8 May 2019, the Supreme Court issued the Decision E.Rev.no.19/2019, dismissing the Applicant's appeal against the decision of the Court of Appeals of Kosovo, AE.No.5 / 2019 of 30 January 2019 as inadmissible.

21. The reasoning of the decision E.Rev.no.19 / 2019 the Supreme Court reads:

"In the present case, this litigation matter is a commercial - economic dispute, since it is a misunderstanding between two business entities that was decided by the Department for Commercial Matters of the Basic Court in Prishtina. The value of the dispute object as determined by the claim is 3,100 Euros. The provision of Article 508 of the LCP stipulates that revision in trade economic disputes shall not be allowed if the value of the object of the dispute in the challenged part of the final form judgment does not exceed 10,000.00 Euro, therefore, pursuant to the above provision, the Supreme Court of Kosovo finds that the revision is inadmissible since the value of the dispute object does not exceed 10,000.00 Euros.

Since the Court of First Instance did not dismiss the claimant's claim as inadmissible, as provided for in Article 218 of the LCP, then the Supreme Court dismissed it as inadmissible under Article 221 of the LCP, since it is a dispute between economic entities involving a monetary claim that does not exceed the amount of 10,000.00 Euros, as stipulated by the provision of Article 508 of the LCP.

Applicant's allegation

22. The Applicant alleges that the judgments against which he has submitted the request for protection of constitutionality have shortcomings, which clearly indicates a violation of the principles of Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution, as well as Article 6 and 13 of the ECHR.

23. According to the Applicant's , these constitutional guarantees were ignored by the regular courts in all three instances because of the fact that *"the Court of First Instance instructed the dissatisfied party on the right of appeal as a legal remedy and mistakenly wrote a 15-day deadline for filing an appeal to the Court of Appeals."*

24. Such a legal position of the Basic Court violates the constitutional provision of Article 32 [Right to Legal Remedies] and consequently violates the constitutional provisions of Articles 31 and 22 (Direct Applicability of International Agreements and Instruments) of the Constitution, which is in conjunction with Articles 6 and 13 of the ECHR.

25. The Applicant further states that he has acted exactly according to the instruction on the remedy stated by the Basic Court in its decision, therefore all the rights enjoyed by the party in the court proceedings, which were ignored by the regular courts, constitute a violation of the constitutionally guaranteed rights, and consequently, the entire court process has at all stages manifested violations of the Applicant's right to legal remedies.

26. The Applicant is addressing the Court with a request to ascertain that there has been a violation of the rights guaranteed by Article 32 of the [Right to Legal Remedies] of the Constitution, to declare invalid the decision of AE.no.5 / 2019 of the Court of Appeals of Kosovo in Prishtina, of 30 January 2019, and remand the case to the Supreme Court for reconsideration according to the appeal.

Admissibility of the Referral

27. 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.

28. 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.*

29. Moreover, the Court also refers to admissibility requirements, as laid down in the Act. In this regard, 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"

Article48
[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..."

30. As to the fulfillment of these requirements, the Court finds that the Applicant has filed the Referral in the capacity of an authorized party challenging an act of a public authority, namely the Decision E.Rev.no. 19/2019 of the Supreme Court, of 8 May 2019, after having exhausted all the legal remedies provided by the law. The Applicant has also stated the rights and freedoms he claims to have been violated, in accordance with Article 48 of the Law, and has also submitted the Referral in accordance with the deadline provided for by Article 49 of the Law.

31. In addition, the Court takes into account also the Rule 39[Admissibility Criteria] of the Rules of Procedure, which provides as follows:

"(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."*

32. The Court notes that the Applicant considers that the instruction on the legal remedy provided by the Basic Court in Decision EK. no. 299/2016 violated his rights and freedoms guaranteed by Article 32 of the Constitution, which has directly led to a situation in which he did not have fair and impartial trial, as provided for in Article 31 of the Constitution.

33. More specifically, acting pursuant to the instruction on the legal remedy of the Basic Court as stated in the decision EK. no.299/2016, the Applicant filed an appeal with the Court of Appeals, but the Court of Appeals dismissed the said as out of time,

since according to Article 509, item (c) of the LCP, the deadline for filing an appeal is 7 days, not 15 days as stated in the decision of the Basic Court.

34. Thus, according to the Applicant, *"the entire court process at all stages was manifested by violations of his rights to legal remedies, which prevented him from having a fair and impartial trial."*

35. Having looked into the Applicant's Referral, his allegations as well as the decisions of the regular courts, the Court notes that the entire court process initiated by the Applicant's statement of claim submitted to the Basic Court is characterized by certain specificity. That specificity is reflected in the fact that all proceedings before the regular courts differ procedurally and materially from one another, moreover, the issues that regular courts have dealt with are different in themselves, and accordingly the legal basis on which the courts dismissed the claimant's statement of claim are different.

36. Accordingly, the Court finds it necessary to specifically analyse the entire court process that was concluded by the challenged decision of the Supreme Court, and to determine whether, as claimed by the Applicant, the fact that the incorrect instruction on the legal remedy stated by the Basic Court has led to a violation of the right to a judicial remedy and consequently to a violation of the right to fair and impartial trial, which is also in line with the case-law of the European Court of Human Rights (hereinafter: ECtHR), which states that *"it is the duty of the Court to review the proceedings in its whole, which in the present case includes also the decisions of the Courts of Appeals"* (see, inter alia, the case of ECtHR, Judgment *Helmers v. Sweden*, of 29 October 1991, Series A no. 212, pg. 15, paragraph 31).

37. In this respect, the Court recalls in the light of the Applicant's allegations that Article 32 [Right to Legal Remedies] of the Constitution in the relevant part reads as follows:

> *"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."*

38. The Court also recalls Article 13 (Right to an effective remedy) of the ECHR, which in its relevant part reads as follows:

> *"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."*

Applicant's allegations for a violation of Articles 32 and 31 of the Constitution in conjunction with Articles 13 and 6 of the ECHR before the Basic Court

39. The Court notes that the Applicant initiated civil proceedings before the Basic Court regarding the outstanding monetary obligations arising from an oral agreement which he concluded with the "Getoari" Company, registered in the town of Kukes in the Republic of Albania, which involved performing of construction works on the Highway segment that extends across the Republic of Albania.

40. However, the Applicant sued the "Getoari" Company- the office in Prizren, Republic of Kosovo, as a party to the proceedings before the Basic Court.

41. The Court further notes that in order to establish the merits of the Applicant's allegations, the Basic Court conducted several legal actions in order to establish the facts and circumstances which would lead to a determination of the existence of jurisdiction for the court to deal with the case proceedings as the competent court that has the jurisdiction over the case at issue.

42. Accordingly, upon finding the facts, the Basic Court concluded that, pursuant to Article 18.3. LCP, it has no jurisdiction in the matter in question, given that the Applicant concluded an oral agreement with a company registered in the territory of another state and not with the company stated by him in the claim, also that the construction works were performed in the territory of another State, which led to the conclusion that, under its territorial jurisdiction, the court was incompetent to deal with the case at issue.

43. In this respect, the Court, having regard to the facts of the concrete case as well as the decision of the Basic Court, finds that the Basic Court has directly applied the provision of Article 18.3 of the LCP, which provides that *"If the court during all stages of proceeding determines that the local court is not competent, it will be declared incompetent, all the proceeding will be nullified and the claim will be dropped".*

44. However, the Court notes that the regular courts will not act so if the jurisdiction of the local court depends on the consent of the respondent, and the respondent, in this case, is the "Getoari" Company in Prizren. In its response to the Applicant's claim, "Getoari" Company in Prizren did not recognize its passive legitimacy as a respondent. Therefore, the Basic Court concluded that the matter in the submitted claim does not fall within the jurisdiction of the local court, hence, the Basic Court was declared incompetent and the Applicant's claim was dismissed.

45. The Court recalls that the applicable law of the Republic of Kosovo, respectively Article 37.1 and 38 of the LCP, provide for the general territorial jurisdiction of the court where the respondent's permanent or temporary residence is located when the respondent is a natural/legal person. Article 39.2 of the LCP, provides that in adjudication of the disputes against other legal persons, the general territorial jurisdiction is vested in the court within whose territory their headquarters is registered.

46. The Court also recalls that the provision of Article 54.1 of the Law on Resolution of Conflicts of Law with the Provisions of Other States stipulates that in property disputes, the jurisdiction of a local court exists if the property of the respondent or the objects sought by the claim is located in the territory of the Republic of Kosovo. Bearing in mind the above provisions, as well as the fact that the Applicant **a)** entered into an oral agreement for the performance of construction works in the territory of another State, **b)** with a company also registered in the territory of another State **c)** on which occasion the contracted works were performed in the territory of another State, it results that we are dealing with a legal –property dispute with a legal entity of another State, hence the domestic court, that is, the Basic Court is not competent to decide in this matter.

47. Accordingly, the Court concludes that the Court of First Instance, Department for Commercial Matters, taking into account all findings and facts, has correctly applied the provisions of Article 18.3 and Article 39.2 of the LCP, while in relation to the jurisdiction of the court, it does not deal with the concrete proceedings, which does not raise the question of violation of Applicant's guarantees envisaged by Articles 32 and 31 of the Constitution.

Applicant's allegations for a violation of Article 32 in conjunction with Article 31 of the Constitution, as well as Article 13 in conjunction with Article 6 of the ECHR, in the proceedings before the Court of Appeals and the Supreme Court

48. Bearing in mind the Applicant's allegations that he relates to a violation of Article 32 of the Constitution in conjunction with Article 13 of the ECHR, in the proceedings before the Court of Appeal and the Supreme Court, the Court finds that the primary question to which it should provide its answer in relation to the applicant's allegations, is the question, *"whether the Basic Court's instruction on legal remedy affected or could have violated the applicant's fundamental rights in the proceedings he pursued in relation the claim, for which the Court of First Instance was declared incompetent to deal with for the reasons of having no territorial competence".*

49. Getting back to this case, the Court will first assess whether the instruction on the legal remedy in the Basic Court's decision has in any way prevented the Applicant's from having his appeal reviewed by the Higher Court, in the present case the Court of Appeals and the Supreme Court, where he could realise his rights from the claim, or if the instruction on the legal remedy of the Basic Court directly denied the claimant's right to an effective remedy, thereby directly causing a violation of Article 32 of the Constitution in conjunction with Article 13 of the ECHR as well as a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

50. In this regard, the Court recalls that, in accordance with ECtHR case law, Article 13 of the ECHR requires the existence of a domestic legal remedy that enables the competent authorities deal with an "arguable complaint" within the meaning of the Convention and to provide adequate protection, the scope of the Contracting States'

obligations in that regard depends on the nature of the Applicant's complaint (see the ECtHR Judgment Souza Ribeiro v. France, Application no. 22689/07, of 13 December 2012, para.78).

51. Likewise, the ECtHR in its judgment in *Chahal v. The United Kingdom* stated that *"in accordance with Article 13 of the ECHR, the legal remedy must be such as to enable the competent authority to decide on the merits of a relevant complaint for a violation of the Convention* (see the ECtHR Judgment *Chahal v. The United Kingdom*, Application No. 22414/93, of 15 November 1996, paragraph 145).

52. Finally, the Court recalls that the legal remedy under Article 13 of the ECHR must be "effective" both in theory and in practice and its use cannot be unjustifiably prevented by acts or omissions of State authorities. However, its effectiveness does not depend on the certainty of a favourable outcome for the claimant (see the ECtHR Judgment *Kudla v. Poland*, Application no. 30210/96 of 26 October 2000, paragraph 157).

53. Taking into consideration the circumstances of the case, the Applicant's allegations as well as the ECtHR case law, the Court finds that it is undisputable the fact that the Basic Court in its decision EK.no.299 / 2016 stated that the Applicant has the right to file an appeal with the Court of Appeals within 15 days against the decision whereby the Court was declared incompetent to decide on the case. On the basis of which it results that the Basic Court did not deal with the case on the merits because there was no "arguable complaint" respectively the respondent did not have legal legitimacy.

54. The Court finds, in fact, that the Basic Court decided not to deal with the substance of the claim on the basis of the conclusion that the Applicant had never entered into legal relations with the responding party, which is registered in the territory of the Republic of Kosovo, but with another company having the same name, which is registered in another State and, therefore the Court of First Instance could not, under its jurisdiction, provide *"adequate protection"* to the Applicant.

55. Based on the foregoing it results that the instruction on the legal remedy of the Basic Court concerned the issue of jurisdiction of the court and not the merits of the claim, wherefrom it results that the instruction on the legal remedy of the Basic Court could have not directly affected the reduction or negation of the Applicant's rights from the claim, which he could have realised if the appeal had been filed with the Court of Appeals within the legal deadline.

56. More specifically, if the Applicant had filed an appeal with the Court of Appeals against the decision of the Basic Court within the deadline, it would have certainly been dismissed, as it was an inadmissible claim, *"which the Basic Court should have dismissed as such pursuant to Article 186.1 of the LCP"*.

"186.1 The complaint presented after the deadline foreseeable by the court, the incomplete one, or the illegal one the court can reject with a decision of the first degree without setting a court session".

57. On the basis of the foregoing it results that the Court of Appeals, even if the appeal was filed within the deadline, would reject the Applicant's statement of claim for procedural reasons, and thus the appeal submitted to the Court of Appeals could not constitute an adequate remedy *"which would enable the competent authority to decide on the merits of the relevant claim"*, and which is also in line with the ECtHR principles and case law (see the ECtHR Judgment *Chahal v. United Kingdom* mentioned above).

58. Further, the Court notes that the Supreme Court in its decision dealt with procedural issues and not with the substance of the Applicant's claim, and concluded that the Applicant's statement of claim had to be rejected pursuant to Article 508 of the LCP, which reads:

"Article 508. Revision in trade disputes is not allowed if the value of the disputed subject dispute does not exceed 10.000 Euro"

59. It was precisely this procedural failure of the Applicant which in the present case was used by the Supreme Court as the legal basis to reject the Applicant's request for revision as inadmissible, without going into the merits of the claim, the Supreme Court in its decision concluded: *"[...] Article 508 of the LCP provides that a revision in trade- economic disputes shall not be allowed if the value of the disputed subject of the dispute in the challenged part of the final form judgment does not exceed 10,000.00 Euro, therefore, pursuant to the above provision, the Supreme Court of Kosovo finds that the revision is inadmissible since the value of the subject of the dispute does not exceed 10,000.00 Euro".*

60. On this basis, it results that, the failure to fulfil the procedural obligation, has led the Applicant to a situation that his request for revision not considered by the Supreme Court, since the declared value of the dispute consisting of 3,100, which was stated by the Applicant himself at the time of filing the statement of claim with the Basic Court does not correspond to the type of procedure for which, under the law, a revision can be filed to the Supreme Court as legal remedy.

61. On this basis, it results that even on the assumption that the appeal was filed with the Court of Appeals within the deadline, the Supreme Court would, according to its conclusion in the decision, dismiss the Applicant's claim in the revision proceedings for procedural reasons, without prejudice to the merits of the claim.

62. Consequently, the Court concludes that the Basic Court's omission concerning the deadline within which the Applicant may file an appeal with the Court of Appeals becomes irrelevant and would not be considered by the Supreme Court; consequently the appeal could not be an "effective" legal remedy in the present case neither in theory nor in practice.

63. The Court further concludes that an appeal, provided for by law, certainly presents an effective remedy, however, its "efficiency and effectiveness" may depend on the very substance of the case in which it is used. Bearing this in mind, the Court is of the opinion that the appeal in the present case was from the outset of the proceedings a remedy by which the claimant could not exercise his rights referred to in the claim, even if it had been filed within the deadline, precisely because of the specificity of the particular case itself, namely the territorial jurisdiction of the regular courts.

64. The Court, taking into consideration its case-law, the principles of the ECtHR, and after carrying out a comprehensive analysis of the procedural safeguards of Articles 32 and 31 of the Constitution in conjunction with Articles 13 and 6 of the ECHR, concludes that the instruction on the legal remedy of the Basic Court whereby the Applicant was given the opportunity to file an appeal with the Court of Appeals within 15 days, does not constitute a violation of the Applicant's rights guaranteed by Article 32 in conjunction with Article 31 of the Constitution or Article 13 in conjunction with Article 6 of the ECHR.

65. In the light of all what is stated above, the Court emphasizes that it is the Applicant's duty to substantiate his constitutional claims and submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see, the case of the Constitutional Court No. KI19/14 and KI21/14, Applicants: *Tafil Qorri and Mehdi Syla*, of 5 December 2013).

66. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional grounds and should be declared inadmissible pursuant to Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held on 27 November 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**
Selvete Gërxhaliu-Krasniqi	Arta Rama-Hajrizi

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