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

Prishtina, on 6 April 2020
Ref. no.:RK 1539/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI85/19

Applicant

Bujar Shabani

Constitutional review of Judgment E. Rev. no. 6/2019 of the Supreme Court of Kosovo, of 15 April 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 submitted by Bujar Shabani residing in the Municipality of Ferizaj, represented by Muhamet Shala, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [E. Rev. no. 6/2019] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 15 April 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment, which, according to the Applicant's allegation, violated his rights guaranteed by Articles: 3 [Equality before the Law], 21 [General Principles] , 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 (Right to a fair trial) and Article 1 of Protocol 1 (Protection of property) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

4. The subject matter of the Referral is also the request for interim measures and the request for holding a hearing session.

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] of the 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 31 May 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 5 June 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gerxhaliu Krasniqi (presiding), Bajram Ljatifi and Radomir Laban (members).

8. On 18 June 2019, the Applicant submitted to the Court a supplement to the Referral, alleging that the challenged Judgment had also violated his right to Property.

9. On 26 June 2019, the Applicant submitted to the Court the second supplement to the Referral.

10. On 1 July 2019, the Court notified the Applicant about the registration of the Referral.

11. On July 1, 2019, the Court notified the Supreme Court about the challenging of the Judgment [E. Rev. no. 6/2019] of April 15, 2019 and provided it with a copy of the Referral.

12. On 1 July 2019, the Court notified the interested party C.P. about the registration of the Referral by giving it the opportunity to submit comments within 7 days.

13. On 11 July 2019, the lawyer of the interested party F.L submitted to the Court the comments regarding the case.

14. On 25 November 2019, the lawyer of the interested party F.L. submitted to the Court a request to expedite the decision-making of the Court, since the Basic Court in Prishtina-Branch in Lipjan by conclusion [PPP.no.40/19] of 28 August 2019 had decided to postpone the enforcement of the creditor's claim for a period of 3 months, respectively until 27 November 2019. According to the interested party, there is a risk of postponing the enforcement procedure for another 3 months, which would seriously harm the interests of the creditor C.P. and, thus, the damages would be irreparable.

15. On 17 December 2019, the Applicant submitted to the Court the next supplement to the Referral wherein he stated that the Regular Courts had not dealt at all with the financial expertise of Sh.S. as regards the ratio of damage pertaining to the lost profits as well as to the reputation of the enterprise NTSH "Kosova Asphalt".

16. On 5 February 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

17. On 8 January 2005, the Applicant and C.P (interested party) entered into a Co-ownership and Co-operation Contract on the basis of which they had established a joint company of the general partnership type under the name NTSH "Kosovo Asphalt", based in Lipjan. For the purposes of this business the parties had also purchased asphalt production machinery (hereinafter: the Plant). In 2005 the company started its economic activity, namely the production and sale of asphalt. In the meantime the relations between the parties deteriorated to the extent that the activity of the joint company was rendered impossible and, thus, on 29 August 2005 the Applicant removed the interested party from the worksite, whilst the Applicant continued to operate the business on his own. August 29, 2005 was regarded as an important date by the courts in the subsequent handling of this litigation, namely as the date of factual separation of the partners

18. On 6 September 2005, the Company-interested party C.P party filed a claim with the Municipal Court in Lipjan against the Applicant. The interested party by the claim sought (i) obliging of the Applicant to hand over the Plant to it, and (ii) in the event of damages to it to be paid adequate compensation for the purposes of repair.

19. On 30 March 2006, the Applicant filed a counterclaim alleging that the interested party purchased the cadastral parcel [no. 72/8] in the cadastral zone of Lipjan, with an area of 1 hectare and 27 ares*, for what the interested party owed him the sum of 70,000.00 Euros. Consequently, the Applicant requested that: (i) the claim of interested party be rejected; (ii) the interested party be obliged to pay him the sum of 52,000.00 Euros, due to the failure to fulfil the obligation resulting from the purchase the immovable property; and (iii) the interested party be obliged to pay him an amount of € 140,000 in the name of the lost profit due to the non-operation of the asphalt Plant.

20. On 28 October 2008, the Municipal Court in Lipjan by Judgment [C. no. 364/2005], decided to: (I) Dissolute the Cooperation Contract between the interested party and the Applicant, concluded on 8 January 2005; (II) Confirmed that the Applicant is the owner of the "Bernardi" factory in Lipjan (Asphalt Production Plant) located on the cadastral parcel [no. 72/8] in the area of 1.27.91 ha, at a location called Gladnica, CZ Lipjan (III) Ordered the Applicant to compensate the interested party in the amount of 117,170.03 Euros, with an interest of 3.5% from 30 January 2008 when the financial expertise on the time deposited amount for more than 1 year without destination was submitted, until the definitive payment(i) rejected the part of the claim of the interested party for compensation over the estimated amount of 117,170.03 Euros to 730,000.00 Euros for the Plant due to the dissolution of the contract dated 8 January 2005; V) Ordered the litigants to jointly pay a sum of 100 Euros to the Court for the costs of proceedings.

21. On an unspecified date, the interested party submitted a complaint against the Judgment [C. no. 364/2005] of the Municipal Court in Lipjan, of 28 October 2008.

22. On 31 October 2012, the District Court in Prishtina by Judgment [AC. no. 83/2009] quashed the judgment of the first instance court and remanded the case for retrial.

23. On 21 September 2015, the Basic Court in Prishtina - Branch in Lipjan by Decision [C-No. 295/12] appointed the financial expert Sh.S., for (a) calculating the material loss in the form of loss of profit due to the non-operation of the Asphalt Production Plant, which according to the assessment of this court was intentionally disrupted by the claimant in the course of the worsening of the relationships between them, specifically between June 2006 and October 2007, when the damage caused to the Applicant due to the failure of implementation of contracts with other business partners was to be calculated; and (b) the expert had also to report on the damage caused to the image, prestige, trust of the enterprise NTSH "Kosovo Asphalt", due to the non-operation of the Plant for the above period.

24. On 22 February 2016, the Basic Court in Prishtina - Branch in Lipjan by Decision [C.no.295 / 2012] was declared incompetent and the case was referred to the Basic Court in Prishtina - Department for Commercial Matters (hereinafter: the Basic Court).

25. On 1 February 2016, the interested party amended the claim, by proposing to the Basic Court to decide as follows: (i) to allow the withdrawal of the interested party C.P. from the Company NTSH "Kosovo Asphalt"; (ii) oblige the Applicant to compensate the interested party in the value of the investment in the Plant, an amount which would be specified by the expertise; and (iii) to oblige the Applicant to compensate the Claimant in the amount of 50% of the profit realized during 2005 -2016.

26. On 23 May 2017, the Applicant submitted his comments on the allegations of the interested party and proposed to the Basic Court to render a Judgment by whereby: (i) the cooperation contract between the Applicant and the interested party is dissolved; (ii) the interested party as a partner of Company NTSH "Kosovo Asphalt" is deleted; (iii) the Applicant is confirmed to be the sole owner of the immovable property of the cadastral parcel [no. 72/8] and of the Plant located on the said cadastral parcel; (iv) the statement of claim of the interested party seeking compensation for the value of the Plant is rejected; (v) the interested party is obliged to pay to the Applicant the amount of 37,500.00 Euros in the name of damage compensation; and (vi) the interested party is obliged to compensate the Applicant in the amount of 117,170.03 Euros in name of the principal debt.

27. At the request of the Basic Court, the expert R.B. was hired to determine the relevant facts of this disputable matter such as: investments of partners for the opening and operation of the business, the purchase price of the Plant, profits realized prior to the actual dissolution of the partnership, profits realized after the expulsion of the partner C.P. from the worksite, the mutual obligations of the parties. The said expert had prepared the expertise report on 30 January 2008 and supplemented it with 2 submissions made on 22 November 2017 and 18 December 2017.

28. On 5 March 2018, the Basic Court by Judgment [EK.no.585/16] partially upheld the statement of claim of the counter-sued claimant (the interested party C.P.), against the Applicant, thus: I (A) dissolving the partnership agreement entered between the parties, and allowing the withdrawal of the counter- sued claimant 'Italbeton Balkan Middle EAST', with C.P. as legal representative, from the general partnership Company NTSH 'Kosova Asphalt'; (B) the Applicant remains the sole owner of the NTSH 'Kosova Asphalt', a general partnership, with all the assets in possession of the said company: raw materials, working tools, including the Plant, above all investments up to that moment, including the immovable property and he remains the sole authorized and responsible person for the entire assets and liabilities of the company; (C) The Applicant is obliged to pay 80,000 (eighty thousand Euros) to 'Italbeton Balkan Middle EAST' in the name of one half of the value of the Plant; (D) the counter-sued claimant 'ltalbeton Balkan Middle EAST' is acknowledged the right to 50% of the profit realized in the period 2006-2016, amounting to 383,497.83 Euros and the right to difference realized from the sale of the produced asphalt amounting to 88,455.40 Euros, namely the aggregate amount of 471,952.40 Euros; (E) finding that the counter-sued claimant 'ltalbeton Balkan Middle EAST' had a backlog of investments towards the Applicant while it was a part of the active partnership (until 29.08.2005) in a difference of 382,570.75 Euros; (F) deciding to be carried out the compensation of the claim as set forth under paragraph I

(D) and paragraph I (E) of this judgment; out of the legitimate amount of 471.952.40 Euros that would belong to the partner 'ltalbeton Balkan Middle EAST' , to be deducted the investment difference of EUR 382.570.75, which would belong to the partner (the Applicant). For this reason, the Applicant is obliged to compensate the counter-sued claimant in the amount of 89,000 Euros within 7 days of the receipt of this Judgment.

29. On an unspecified date, the interested party filed an appeal against the Judgment [EK. no. 585/16] of 5 March 2018, due to: (i) substantial violations of the provisions of the contested procedure; (ii) erroneous or incomplete determination of the factual situation; and (iii) erroneous application of substantive law, with the proposal of having the Judgment of the Basic Court quashed and the case remanded for retrial.

30. On an unspecified date, also the Applicant filed an appeal against the Judgment [EK. no. 585/16] of 5 March 2018, due to: (i) substantial violations of the provisions of the contested procedure; (ii) erroneous or incomplete determination of the factual situation; and (iii) erroneous application of substantive law, with the proposal of having the challenged judgment amended or annulled and the case remanded to the first instance court for retrial.

31. On an unspecified date, the interested party filed a response to the appeal with a request to reject the appeal of the Applicant as ungrounded and to dismiss it, whereas his appeal to be confirmed as grounded its entirety.

32. On 22 November 2018, the Court of Appeals by Judgment [Ae.no.103/2018] initially stated that the judgment of first instance has erroneously recorded 'ltalbeton Balkan Middle EAST' as the claimant because based on all the submissions it resulted that the C.P (interested party) was the claimant. Consequently, the Court of Appeals as resulting from the business registration certificate recognized the rights as a joint owner of the General Partnership NTSH "Kosovo Asphalt", to the partner C.P. In addition, the Court of Appeals partially upheld the statement of claim of the counter-sued claimant (interested party - C.P), only with regard to the liabilities and rights of the parties set forth under item I of the enacting clause of the Basic Court Judgment [EK.no.585 / 16] of 5 March 2018 so that the items (A, B, C, D, E, F) of the enacting clause of this judgment are amended in its entirety and under Count. The judgment was as follows: 1.1 The statements of claim of the Interested party C.P. and of the Applicant, both of them partners in NTSH "Kosova Asphalt" General Partnership are partially approved and the following adjudication is made: [1.1.1] The withdrawal of C.P. from the trade Company NTSH "Kosova Asphalt" General Partnership based in Lipjan is hereby permitted, the said partner(C.P.) has the right to withdraw its interest from the general partnership, as determined by this judgment, whilst the other partner, Bujar Shabani, is personally responsible to the interested party for the fulfillment of the obligations arising from this judgment; [1.1.2] It is confirmed that Bujar Shabani is the sole owner of NTSH "Kosova Asphalt", with all the assets and all capital in possession of this company: raw materials, working tools including the Plant and all movable and immovable property of the company along with the investments made as well as the cash and as the sole owner he is from now on the sole responsible person for all claims and liabilities of the general

partnership created until the moment of this judgment being rendered and those that will be created in the future; [1.1.3] The Applicant personally, namely NTSH "Kosova Asphalt" General Partnership based in Lipjan is obliged to pay to the interested party C.P. the amount of 360,716.43 Euros in the name of investments in the company, the amount of 88,455.40 Euros in the name of difference realized from asphalt sale during 2005 , and in the name of 50% of profit realized during 2006-2016 the amount of 383,497.83 Euros, that add up to a total of 832,668.83 Euros, with legal interest of 8%, from the date of receipt of this judgment until the definitive payment, all this within 7 days of the receipt of this judgment; [II] The appeal of the Applicant is confirmed to be fully ungrounded whilst the appeal of the interested party is confirmed as partially ungrounded, whereas the Judgment of the Basic Court in Prishtina [EK. no. 585/16] of 5 March 2018, under points II, III, IV, V and VI of the enacting clause is confirmed.

33. On an unspecified date, the Applicant submitted a revision and supplementary revision due to: (i) a substantial violation of the provisions of the contested procedure and (ii) erroneous application of substantive law, with proposal to have both judgments of the lower instance courts quashed and the case remanded to the first instance court for retrial.

34. On an unspecified date, the interested party filed a response to the revision, challenging the allegations therein and proposing to have the revision rejected as completely ungrounded and the second-instance judgment upheld.

35. On 15 April 2019, the Supreme Court of Kosovo (hereinafter: the Supreme Court) by Judgment [E. Rev. no. 6/2019] rejected as unfounded the Applicant's revision filed against the Judgment of the Court of Appeals [Ae.no.103/2018] of 22 November 2018.

Applicant's allegations

36. The Applicant alleges that the Supreme Court by Judgment [E. Rev. no. 6/2019], whereby it rejected as unfounded his request for protection of legality, has violated his rights guaranteed by Articles: 3 [Equality before the Law], 21 [General Principles], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 53 [Interpretation of Human Rights Provisions] of the Constitution and Article 6 (Right to a fair trial) and Article 1 of Protocol 1 (Protection of Property) of the ECHR.

37. The Applicant builds the case on the allegation for a violation of his right to a fair and impartial trial as the Judgment of the Supreme Court [E. Rev. no. 6/2019] of 15 April 2019 did not meet the criteria for a *"fair trial"* pursuant to Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the ECHR due to: (i) the extreme lack of reasoning of the judicial decision; (ii) arbitrary adjudication contrary to all findings of judicial financial expertise deciding on the amount of the claim of the interested party; (iii) failure to provide information on the Revision review session and also the lack of information by the judicial expert of the commercial and financial field who could provide clarifications with respect to his findings.

38. Furthermore, the Applicant argues that the case law of ECtHR acknowledges the right to have a reasoned decision by citing the case of *Garcia Ruiz v. Spain*, *Pronia v. Ukraine* and *Nechiporuk and Tonkalo v. Ukraine*. He also alleges that the *Malta v. Ukraine* case cites earlier precedents and reinforces the importance for the court to provide detailed and convincing reasons when rejecting to consider an allegation or evidence put forward by a litigant.

39. In the end, the Applicant states that also the Court's case law in the case KI72/12 refers to ECtHR precedents, namely *Hadjianastassiou v. Greece* and *Tatishvili v. Russia*, and has found that "the right to a fair hearing(trial) also includes the right to a reasoned judgment."

40. The Applicant also mentions the case of Court KI78/12 in support of his argument as regards the reasoning of the judicial decision.

41. The Applicant states that the constitutional principle provided for in Article 24 of the Constitution - Equality before the Law has also been violated because of an arbitrary assessment which is in contradiction with the legal principle that profits and losses are distributed equally between partners on the basis of the value of their respective contributions. Consequently, the Applicant relates the discrimination aspect to the non-fulfillment of the criteria for a fair trial.

42. The Applicant also alleges that the right set out in Article 1 of Protocol 1 to the ECHR (Property Right) has been violated by grossly violating the Applicant Bujar Shabani's property rights by having failed to respect the principle – of equal distribution of profits and losses between the partners on the basis of the value of their respective contributions. Consequently, according to the Applicant, this constitutional violation is related to Article 31 of the Constitution because the judicial decisions challenged by this request for protection of constitutionality have not met the criteria for a "Fair Trial".

43. On this basis, the Applicant proposes to hold a hearing session in the Court in which it is foreseen to be summoned the Judicial Financial Expert Mr. Riza Blakaj in order to provide relevant professional clarifications on the findings of the expertise.

44. The Applicant is also submitting a request for interim measures in order to stay the enforcement procedure pending the resolution of the constitutional referral, since the decision has become final and can be enforced at any time and thus cause him irreparable damage.

45. Finally, the Applicant states that the regular courts have failed to provide any reason with respect to the judicial expertise by the expert of the financial field Sh.S. as regards (a) the calculation of material damage in the form of loss of profit due to the non-operation of the Plant between the period June 2006 - October 2007, and (b) the damage caused to the image, prestige and trust of the NTSH "Kosovo Asphalt" Company, due to the non-operation of the Plant during the above period.

Interested party comments

46. The interested party emphasizes that the Applicant's allegation is unfounded as the Supreme Court in its Judgment has provided full and clear reasoning as to the evidence, facts and legal basis of the dispute which has been ongoing for 14 years now.

47. The interested party also states that the allegation that the parties were not heard when the judgment of the Supreme Court was rendered does not constitute a violation of the right to a fair and impartial trial, because the Supreme Court decides on revision out of session and this is in accordance with provisions of the Law on Contested Procedure.

48. The interested party also objects the request for interim measures considering it to be unfounded because first of all the "anti-constitutionality" alleged by the Applicant is not at all credible, and this can be easily seen by reading the judgments in this commercial-legal dispute. Finally, the interested party states that the Constitutional Court is neither a court of fourth instance nor a court of fact regulating the contractual relations between the parties and therefore the Applicant's proposal for a hearing of the financial expert cannot be approved.

Relevant legal provisions

Law No. 02/L-123 on Business Organizations

Article 50 Nature of a General Partnership Partners

A general partner's interest in a general partnership: (i) includes the right to share in its profits and distributions and the other rights of a general partner stated in this Part IV, and (ii) carries the obligations and liability of a general partner stated in this Part IV.

Article 56 Profits, Losses, Allocations and Distribuions

56.1 Unless a general partnership agreement provides otherwise, all general partners are entitled to an equal share of all profits, losses, allocations and distributions of the general partnership.

56.2 Within sixty (60) days from the end of each calendar year, a general partnership shall formally calculate and record the profit or loss for such year and allocate the appropriate percentage of such profit or loss to the accounts of the general partners.

Article 63 Withdrawal of a partner

63.1 A general partner may withdraw from a general partnership at any time by giving written notice to the other general partners, but if the withdrawal violates the general partnership agreement, the general partnership may recover damages from the withdrawing partner for breach of the general partnership agreement.

63.2 A general partner who withdraws from a general partnership without violating the general partnership agreement is entitled to receive any distribution to which he is entitled under the general partnership agreement. If the general partnership agreement does not provide otherwise, the withdrawing general partner is entitled to receive from the general partnership, within ninety (90) days from the withdrawal, the fair value of his interest in the general partnership. This obligation is an obligation owed by the general partnership to the withdrawing general partner; and the other general partners are, as with other obligations of the general partnership, also jointly and severally liable therefore.

Law No. 03/L006 on Contested procedure
Article 220

The Supreme Court decides about the revision in a session of the judging body, only based on the official documents of the case.

Admissibility of the Referral

49. 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.

50. 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".

51. In the following, the Court also examined whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accurracy of the Referral] and 49 [Deadlines], 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...."

52. As to the fulfillment of these criteria, the Court notes that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment[E. Rev. no. 6/2019] of the Supreme Court, of 15 April 2019 and has exhausted all legal remedies provided by law. The Applicant has also specified the fundamental rights and freedoms which he alleges to have been violated 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.

53. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in paragraph (2) of Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure defines the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. In particular ,Rule 39 (2) provides that:

Rule 39
[Admissibility Criteria]

"(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."

54. The Court first notes that based on paragraph (2) of Rule 39 of the Rules of Procedure, it may consider a Referral inadmissible if the Referral is manifestly ill-founded because the Applicant does not prove and substantiate his claim. In this respect, the Court recalls the essence of the case raised by the Applicant and the relevant allegations.

55. As regards the present case, the Court considers that the Applicant's allegations can be reduced to: (A) a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, (B) a violation of Article 24 of the Constitution; and (C) a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 to the ECHR.

(A) Applicant's allegations for a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

56. In dealing with the Applicant's allegations, the Court recalls that the Applicant's substantive allegations concern the alleged violations of procedural guarantees of *"fair trial"* guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR based on(i) the extreme lack of reasoning of the judicial decision; (ii) arbitrary adjudication contrary to all findings of judicial financial expertise when deciding with regard the amount of the claim of the interested party; (iii) failure to provide information on the Revision review session and also the lack of information by the judicial expert of the commercial and financial field who could provide clarifications with respect to his findings.

57. In dealing with the Applicant's first allegation relating to the *right to fair and impartial trial*, the Court will apply the case law of the European Court of Human Rights (hereinafter: ECtHR), based on which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

58. Therefore, the Court will first determine whether Article 6 of the Convention applies in the case of the Applicant in conjunction with Article 31 of the Constitution. Consequently, in the circumstances of the present case, the Court will determine the application of the procedural guarantees of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, relying on the case-law of this Court and the ECtHR.

59. The Court first notes that the scope of Article 6 of the ECHR extends to the proceedings determining "civil rights or obligations" (See ECtHR case: *Ringeisen v. Austria*, Application no. 2614/65, Judgment of 22 June 1972). The ECtHR held that in order for Article 6 to be applicable in civil proceedings, "(i) there must be a dispute concerning a 'civil right' which can be said, at least on arguable basis, to be recognized under the domestic law, regardless whether it is protected by Convention or not (ii) The dispute must be genuine and serious; it may relate not only to the very existence of the law but also to the scope and manner of its exercise; and finally, (iii) the result of the proceedings must be directly decisive for the right in question; tenous connections or remote consequences are not sufficient to bring Article 6 paragraph 1 into play" (See ECtHR cases). : *Ivan Atanasov v. Bulgaria*, Application no. 12853/03, Judgment of 2 December 2010, paragraph 90; *Mennitto v. Italy*, Application no. 33804/96, Judgment of 5 October 2000, paragraph 23; *Giilmez v. Turkey*, Application no. 16330/02, Judgment of 20 May 2008, paragraph 28; and *Micallef v. Malta*, Application no. 17056/06, Judgment of 15 October 2009, paragraph 74).

(A.i) Application of aforementioned principles in the present case

60. The Court notes that the content of the alleged right in the present case, namely the request for annulment of the Judgment [E.Rev.no.6/2019] of the Supreme Court, of 15 April 2019, concerns the annulment of the ownership dispute decision and the value of the debt of litigants of the General Partnership NTSH

"Kosovo Asphalt". Consequently, this is a right of civil character established by the legislation in force in the Republic of Kosovo.

61. The Court also notes that the dispute in the present case is serious, genuine and involves disputing the investments made, sharing of profits and liabilities of the NTSH Kosovo Asphalt General Partnership. Consequently, the Court considers that even this criterion of ECtHR case law is met in the present case.

62. Lastly, the Court finds that the result of the proceedings is directly determinant with respect to: (i) who remains the legal representative of the General Partnership NTSH Kosovo Asphalt; (ii) the payment of the amounts invested in the General Partnership; (iii) the division of the property of the company including: immovable property, raw materials, working tools including Plant; (iv) the sharing of the Company's profits during the period of operation of the General Partnership. Therefore, the Court considers that this condition also applies; therefore Article 6 of the ECHR is applicable in this case.

63. In this regard, the Court will consider the Applicant's allegations which concern the alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, initially as regards the allegations for a violation of the right to: ***(i) a reasoned court decision***. The Court will consider these allegations on the basis of its respective case law and the ECtHR case law and apply them in the circumstances of the present case.

64. The Court notes that it already has a consolidated practice as regards the right to a reasoned judicial decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. This practice was built on the basis of the ECtHR case law, including but not limited to the cases *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina against Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. Moreover, the fundamental principles regarding the right to a reasoned judicial decision have also been elaborated in the cases of this Court, including but not limited to KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, *Naser Husaj*, Judgment of 9 June 2017; KI143/16, *Muharrem Blaku and Others*, Resolution on Inadmissibility of 13 June 2018; and KI97/ 16, Applicant *"IKK Classic"*, Judgment of 9 January 2018.

65. In principle, the case law of the ECtHR and the Court emphasizes that the right to a fair trial includes the right to a reasoned decision and that the courts must *"clearly indicate the reasons on which they based their decision."* However, this obligation of the courts cannot be understood as requiring a detailed answer to every argument. (see the case of Court: KI91/18, Applicants *Njazi Gashi, Lirije Sadikaj, Nazife Hajdini-Ahmetaj and Adriana Rexhepi*, Resolution on Inadmissibility of 30 September 2019, paragraph 64; see also ECtHR cases: *Van de Hurk v. the Netherlands*, Application no. 16034/90, Judgment of 19 April 1994, paragraph 61; *Garcia Ruiz v. Spain*, Application no. 30544/96, Judgment

of 21 January 1999, paragraph 26). The extent to which the obligation to provide reasons applies may vary depending on the nature of the decision and should be determined in the light of the circumstances of the case (See the case of Court: KI97/17, Applicants *Gëzim Sadrijaj, Gazmend Sadrijaj and Hidajete Sadrijaj*, Resolution on inadmissibility of 21 October 2019, paragraph 41; see also ECtHR cases: *Ruiz Torija v. Spain*, Application no. 18390/91, Judgment of 9 December 1994, paragraph 29; *Hiro Balani v. Spain*, Application no. 18064/91 , Judgment of 9 December 1994, paragraph 27). It is the Applicants' substantive arguments that must be addressed and the reasons given must be based upon the applicable law.

66. Even though the courts are not required to address all of the allegations put forward by the Applicants - they should however address the allegations that are essential to their cases and which arise at all stages of the proceedings (See the case of Court: KI135/14, Applicant *IKK Classic*, Judgment of 9 February 2016, paragraph 53).

67. Finally, the reasons given should be such as to enable the parties to exercise effectively any existing right of appeal (See the ECtHR case: *Hirvisaari v. Finland*, Application no.49684/99, Judgment of 27 September 2001, paragraph 30).

68. In this respect, the Court will consider whether the Applicant's allegations for the lack of a reasoned judicial decision namely Judgment [E. Rev. no. 6/2019] of the Supreme Court, of 15 April 2019 in the circumstances of the present case, are consistent with the procedural guarantees enshrined in Article 31 of the Constitution and Article 6 of the ECHR.

69. The Court recalls that the Basic Court by Judgment [EK.no. 585/16] of 5 March 2018, had received the interested party's claim against the Applicant in which was: (i) dissolved the partnership agreement entered into between the parties, allowing the withdrawal from the general partnership partnership of the interested party; (ii) the sole owner of the General Partnership NTSH 'Kosovo Asphalt', remained the Applicant with all the assets in possession of this company; (iii) the Applicant was obliged to pay the interested party in the amount of 89,381,65 Euros within a period of 7 days, counting from the date of delivery of this judgment.

70. The Court of Appeals had amended the Judgment of the Basic Court in the part which concerned the determination of the amount of compensation which the Applicant owed to the interested party. The reasoning of the Court of Appeal states that: *"the court of first instance has erroneously found that the partner is entitled only to the amount of difference of 89,381.65 Euros, stating that the compensation could be just, if the C.P. would still be the owner of 50% of the company and in this case it would be reasonable to equate the investments with the other partner Bujar Shabani. But, the partner Bujar Shabani, after this judgment, becomes the exclusive owner of the company as well as the investments made by the other partner C.P."*. Further, the Judgment in question states as follows: "*it would be totally illogical for the excluded partner to continue to invest in order to reconcile with the other partner's investments, even though he would no longer be the owner of that company, respectively,*

for the time the sole owner will remain Bujar Shabani. In this regard, the Court of Appeals amended the challenged judgment under paragraph I of the enacting clause, by fully acknowledging the financial expertise, but not the interpretation of the court of first instance concerning the rights and obligations between the partners."

71. Finally, the Supreme Court also dealt with the Applicant's allegations, raised through revision, as to the allegation of (i) substantial violation of the provisions of the contested procedure; and (ii) erroneous application of substantive law.

72. Supreme Court by Judgment [E. Rev. no. 6/2019] of 15 April 2019, in this respect among other things stated*: "In fact, both courts have fully accepted the finding of the financial expert, all of the individually determined values of the obligations and rights of expressed in money. Acknowledging the balance made by the expert, the Court of Appeals, pursuant to the provision of Article 56.1 of the Law on Business Organizations (LBO), according to which all general partners are entitled to an equal share of all profits, losses, allocations (50:50), unless otherwise provided by the general partnership agreement and on the basis of the fact that Bujar Shabani becomes the sole owner of 'company', has concluded that there can be no reconciliation of investments and that it is not possible to deduct from the determined amount of Bujar Shabani's debt to partner C.P. which consists of 471.952,40 Euros, the difference in investments in the amount of 382.570,75 euros, according to which he would owe to it only the amount of 89.381,65 Euros. The partner who remains sole onwer of the company becomes the owner of all of its capital, including investments made by the other partner, so the partner that is leaving the company has no obligation to invest any additional money in the company. The court of second instance, by acknowledging the expert's findings and the amounts determined by him through calculation process, has correctly determined that to the counter-sued claimant, pursuant to Article 56 of the LOB belongs: the amount of 360,716.43 Euros in the name of the invested-investment capital, the amount of 88,455.40 Euros in the name of the equal share of profit, which includes the difference(in profit) realized from the sale of asphalt during 2005, as well 50% from the profit realized during the period 2006-2016 that amounts to 383,497,83 Euros, which add up to a toal of 832,668.83 Euros. For these reasons, the allegations raised in the revision that the second instance court has arbitrarily determined the amounts and assumed the role of expert are unfounded."*

73. In this regard, the Court notes that the Applicant's allegations that the Supreme Court***: ii) had decided in arbitrary manner contrary to all findings of judicial financial expertise which concern the amount of the claim of interested party***; are inconsistent. This is because, as stated above, the regular courts have continuosly dealt with and justified his allegations with sufficient reasons within a fair trial. In relation to this allegation, the Judgment of the Supreme Court further states that: *"[...] the allegations raised in the revision that the court of second instance has arbitrarily determined the amounts and assumed the role of expert are unfounded. The second instance court has justified its legal point of view by referring to the legal provisions in force. Article 63 of LOB regulates the issue of withdrawal of a partner. According to Article 63.2 of this Law 'A general partner who withdraws from*

a general partnership without violating the general partnership agreement is entitled to receive any distribution to which he is entitled under the general partnership agreement. If the general partnership agreement does not provide otherwise, the withdrawing general partner is entitled to receive from the general partnership, within ninety (90) days from the withdrawal, the fair value of his interest in the general partnership. This obligation is an obligation owed by the general partnership to the withdrawing general partner; and the other general partners are, as with other obligations of the general partnership, also jointly and severally liable therefore'.

74. Finally, the Supreme Court stated that: *"Based on what is submitted it results that the lower instance courts have referred to substantive law in accordance with the provisions of Articles 50, 56 and 63 of the LCT, applying the provisions of joint liability in the sharing of profits, of losses, allocations as well as consequences, rights and obligations in the event of withdrawal from a partner's 'company'. In all other respects, the Supreme Court acknowledges the reasoning of the Court of Appeal of Kosovo as being just and lawful."*

75. The Court also notes that the Applicant had an effective opportunity to challenge the truthfulness of the evidence as well as its use and that he did use this opportunity during the proceedings before the first instance court, in his appeal to the Court of Appeals and in the revision before the Supreme Court. The regular courts considered his arguments based on the merits and provided reasons for their decisions (see the ECtHR case: *Dragojević v. Croatia*, Application no. 68955/11, Judgment of 15 January 2015, paragraph 132). The fact that the Applicant was unsuccessful in each step does not change the fact that he had an effective opportunity to challenge the evidence and their use.

76. The Court also notes that as regards the Applicant's allegation for the failure to address the issue of the judicial financial expertise report (which included the issue of lost profits and damage to the reputation and image of NTSH Kosovo Asphalt during the period June 2006 to October 2007), the regular courts had concluded that (i) 29 August 2005 was the date of factual separation of the partners and (ii) after that date the Applicant continued to operate and manage the business on his own.

77. The Court considers that the regular courts, respectively the Supreme Court, as the final instance of the regular judiciary, have provided comprehensive and detailed reasons and responded individually to each allegation raised by the Applicant in the revision.

78. Therefore, as stated above, the Court considers that the Applicant has had sufficient opportunity to present before the regular courts all the allegations for violation of his rights. Moreover, the Court considers that his arguments have been properly heard and reviewed by the regular courts. The Court considers that the decisions of the regular courts are reasoned and that the proceedings, viewed in their entirety, have not been in any way unfair or arbitrary (See the Court cases: KI24/19, Applicant *Valon Miftari*, Resolution on Inadmissibility, of 11 October 2019, paragraph 34; KI88 / 18, Applicant *Hysnije Dedinca*, Resolution on Inadmissibility of 28 October 2019, see also the ECtHR case: *Shub v Lithuania*, Application no. 17064/06, Judgment of 30 June 2009).

79. In line with its consolidated case-law, the Court reiterates that it is not the duty of the Constitutional Court to deal with the alleged errors in the application of the relevant laws alleged to have been made by the regular courts, if this application did not violate the rights and freedoms protected by the Constitution and the ECHR. The Court cannot itself assess the law that has led a regular court to adopt a decision rather than another. If it were 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 Court Case: KI24/19, Applicant *Valon Miftari*, Resolution on Inadmissibility of 11 October 2019, paragraphs 31 and 33, see also the ECHR case: *Garcia Ruiz v. Spain*, Application no. 30544/96, Judgment of 21 January 1999, paragraph 28).

80. In this regard, the Court recalls that in terms of the right to a reasoned judicial decision guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, it is the obligation of the courts to address the Applicants' substantive arguments and the reasons provided to be based upon applicable law. The Court considers that, as regards the concrete allegation, the regular courts and the Supreme Court, whose Judgment is challenged in the Court, have fulfilled this obligation.

81. Finally, the Court will examine the Applicant's allegations concerning the alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR as regards the allegations concerning *(iii) failure to provide information about the Revision hearing session and lack of information by the judicial expert of the commercial and finance filed who could provide clarifications regarding his findings*.

82. The Court notes that while the public hearing constitutes a fundamental principle set out in Article 6 paragraph 1 of the ECHR, the obligation to hold such a hearing is not absolute (ECtHR Case: *De Tommaso v. Italy*, Application no. 43395/09, Judgment of 23 February 2017, paragraph 163). The right to a hearing session is not related only to the question whether the proceedings involve the examination of witnesses who will give their evidence orally (*Ramos Nunes de Carvalho and Sá v. Portugal*, Application no. 55391/13, 57728/13 and 74041/13 , Judgment of 6 November 2018, paragraph 187). In order to determine whether a judgment complies with the requirement of publicity, it is necessary to consider the proceedings in its entirety (*Axen v. Germany*, Application no. 8273/78, Judgment of 8 December 1983, paragraph 28).

83. The absence of a hearing session in the second or third instance may be justified by the specific features of the proceedings in question, provided that the hearing was held in the first instance (*Helmers v. Sweden*, Application no. 11826/85, Judgment of 29 October 1991, paragraph 36; *Salomonsson v. Sweden*, Application no. 38978/97, Judgment of 12 November 2002, paragraph 36). Thus, appellate litigation processes which involve only questions of law, as opposed to factual questions, may comply with the requirements of Article 6 even though the Applicant was not given an opportunity to be heard in person by the Court of Appeals (*Miller v. Sweden* , Application no. 55853/00, Judgment of 8 February 2005, paragraph 30). Therefore, the particularities of the proceedings in the higher courts should be taken into account.

84. Therefore, unless there are exceptional circumstances justifying the exclusion of a hearing session (see the summary of case law in case Ramos *Nunes de Carvalho and Sá v. Portugal*, cited above, paragraph 190), the right to a public hearing under Article 6 paragraph 1 implies a right to a hearing at least at a level of jurisdiction (ECtHR Case: *Fischer v. Austria*, Application no. 16922/90, judgment of 26 April 1995, paragraph 44; *Salomonsson v. Sweden*, Application no. 38978/97, Judgment of 12 November 2002, paragraph 36).

85. In the circumstances of the present case, the Court considers that (iii) the failure to provide information about the Revision hearing session, namely the Supreme Court's decision on the revision, in the hearing of the panel, only on the basis of the case file is in accordance with Article 22 of the Law on Contested Procedure as well as in line with the ECtHR case law which is directly applicable in the Kosovo jurisdiction.

86. Finally, based on the foregoing elaborations, the Court considers that in the circumstances of the present case the proceedings have been fair and did not consist in an unjustified and arbitrary decision being rendered. Consequently, the Court considers that there is no violation of Article 31 of the Constitution and Article 6 of the ECHR.

(B) alleged violations of Article 24 of the Constitution

87. The Applicant also states that the constitutional principle provided for in Article 24 of the Constitution - Equality before the Law has been violated because of the arbitrary assessment which is in contradiction with the legal principle that profits and losses are shared equally between partners on the basis of the value of their respective contributions.

88. In this regard, the Court notes that the Applicant has not presented any facts and has not substantiated his allegation for a violation of his rights guaranteed by Article 24 of the Constitution. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments. (see the case of Court No. Kl198/13, Applicant: Privatization Agency of Kosovo, Resolution on Inadmissibility of 13 March 2014, Case KI136 /16, Applicant: *Ibrahim Svarça*, Resolution on Inadmissibility of 4 November 2016, paragraph 43).

89. In this respect, the Court recalls that treatment is discriminatory if an individual is treated differently from others who are in similar positions or situations and if this change in treatment has no objective and reasonable justification. The Court reiterates that different treatment must pursue a legitimate aim to be justified and must have reasonable relationship proportionality between the means employed and the aim sought to be realised. (See the ECtHR Judgment of 13 June 1979, *Marckx v. Belgium*, Application no. 6833/74, paragraph 33).

90. The Court recalls that the fact that the Applicant does not agree with the outcome of the case cannot raise an argumentative allegation for a violation of the Constitution (see the case *Mezotur - Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECtHR Judgment of 26 July 2005).

91. On the basis of all of the foregoing, the Court finds the Applicant's allegations for discriminatory treatment against him are unfounded.

(C) Alleged violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No.1 of the ECHR

92. The Court recalls that the Applicant also states that the challenged decision was issued contrary to the rights guaranteed by Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1. 1 of the ECHR thus grossly violating his property rights by disregarding the principle that – the profits and losses shall be equally shared between the partners on the basis of the value of their respective contributions.

93. The Court recalls that Article 46 of the Constitution does not guarantee the right to acquire property (see, *Vander Mussele v. Belgium*, ECtHR Judgment of 23 November 1983, paragraph 48; and *Slivenko and Others v. Latvia*, Application no. 73049/01, Judgment of 9 October 2003, paragraph 121).

94. The Court notes that Article 1 of Protocol no. 1 (Protection of Property) of the ECHR applies only to a person's existing "possessions" (see *Marckx v. Belgium*, paragraph 50, Judgment of 13 June 1979; *Anheuser-Busch Inc. v. Portugal*, paragraph 64).

95. The Applicant may further allege a violation of Article 46 of the Constitution only insofar as the challenged decisions relate to his "property"; within the meaning of this provision, "property" may be the "existing possessions", including claims whereby the claimant may allege "legitimate expectations" that he will gain the effective enjoyment of any property right.

96. In certain circumstances, a "legitimate expectation" to acquire a property may also enjoy protection under Article 1 of Protocol No. 1 of the ECHR (*Pressos Compania Naviera SA and Others v. Belgium*, Application no. 17849/91, Judgment of 20 November 1995, paragraph 31; *Grazinger and Gratzingerova v. Czech Republic*, Application no. 39794/98, Decision on Inadmissibility of 10 July 2002, paragraph 73).

97. But, according to ECtHR case law, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law (in relation to property disputes) and where the Applicant's submissions are subsequently dismissed by the national courts (see: *Kopecky v. Slovakia*, paragraph 50 of the ECtHR Judgment of 28 September 2004).

98. Proceedings in relation to a civil dispute between private parties do not themselves assume the responsibility of the State under Article 1 of Protocol No. 1. of the Convention (See ECtHR cases: *Ruiz Mateos v. The United Kingdom*, Application no. 13021/87, Commission Decision of 8 September 1988, pgs. 268 and 275; *Gustafsson v. Sweden*, Application no. 15573/89, Judgment of 25 April 1996, paragraph 60; *Skowroński v. Poland*, Application no. 52595/99, Judgment of 17 February 2004; *Kranz v. Poland*, Application no. 6214/02, Judgment of 17 February 2004; *Eskelinen v. Finland*, Application no. 7274/02,

Decision on Inadmissibility of 3 February 2004; *Tormala v. Finland*, Application no. 41258/98, Decision on Inadmissibility of 16 March 2004; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, Application no. 16812/17, Judgment of 18 July 2019, paragraph 310).

99. According to ECtHR case law, the mere fact that the State, through its judicial system, provides a forum for the determination of a private law dispute is not qualified as State interference with property rights under Article 1 of Protocol No. 1. 1 (See case: *Kuchař and Štis v. Czech Republic*, Application no. 37527/97, Commission decision of 21 October 1998), even if the substantive outcome of a judgment rendered by a civil court results in the loss of certain "possessions". However, it is part of the duties of States under Article 1 of Protocol No. 1, to create at least a minimum legislative framework, including a proper forum, allowing those who claim that their right has been violated to seek their rights in effective manner and have them enforced. By failing to do so, a State would seriously fall short of its obligation to protect the rule of law and prevent arbitrariness (see the ECtHR case: *Kotov v. Russia*, Application no. 54522/00, Judgment of 3 April 2012, paragraph 117).

(C. i) application of the principles mentioned in the present case

100. The Court, by addressing the Applicant's allegations in respect of the above principles, notes that the Applicant did not specifically justify the violation of the right to property and does not specifically refer to any of the principles contained in Article 46 of the Constitution, but considers that this right was violated because the Supreme Court has erroneously determined the factual situation and erroneously applied the substantive law and thus did not decide in favor of his statement of claim.

101. However, when examining these allegations within Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the ECHR, the Court has already come to the conclusion that these allegations are manifestly ill-founded. Therefore, the Court considers that in the present case it is not proved that the Applicant has a reasoned claim regarding the violation of the right to property under Article 46 of the Constitution, namely that the challenged Judgment denied the Applicant to exercise his right.

102. In conclusion, the Court considers that the Applicant has not provided facts that would show that the decisions of the regular courts have in any way casued a constitutional violation of his constitutionally guaranteed rights.

103. Therefore, the Referral is manifestly ill-founded on constitutional basis and must be declared inadmissible pursuant to Rule 39 paragraph (2) of the Rules of Procedure.

Request for holding a hearing

104. The Court recalls that the Applicant also requested the Court to hold a hearing.

105. In this regard, the Court recalls that pursuant to paragraph 1 of Rule 42 of the Rules of Procedure, "Only referrals determined to be admissible may be granted

a hearing before the Court, unless the Court by majority vite decides otherwise for good cause shown" whereas, pursuant to paragraph 2 of the same rule, "The Court may order a hearing if it believes a hearing is necessary to clarify issues of fact or of law."

106. The Court notes that the aforesaid rule of the Rules of Procedure is of discretionary character. Furthermore, the Court notes that, on the basis of the above-mentioned rule, only the cases which are declared admissible and the merits of which are examined may be heard before the Court through a hearing. The Rules of Procedure enable the Court to do so exclusively even in cases where a referral is not admissible, such as in the circumstances of the present case. However, the Court recalls that on the basis of paragraph 2 of Rule 42 of the Rules of Procedure, it may order that a hearing be held where it believes it is necessary to clarify issues of fact or of law. In the circumstances of the present case, this is not the case because the Court does not consider that there is any uncertainty about "the facts or the law" and therefore does not find it necessary to hold a hearing. The documents contained in this Referral are sufficient to rule on this case (See the Court Case: KI147/18, Applicant *Arber Hadri*, Resolution on Inadmissibility of 11 October 2019, paragraph 64).

107. Consequently, the Applicant's request for holding a hearing is rejected as unfounded.

Request for interim measures

108. The Court recalls that the Applicant requested the imposition of an interim measure preventing the payment of the sum owed pending the merited resolution of the case by this Court.

109. The Court has already ascertained that the Applicant's Referral must be declared inadmissible on constitutional basis.

110. Therefore, pursuant to Article 27.1 of the Law and Rule 57 (4) (a) of the Rules of Procedure, the Applicant's request for interim measures must be rejected, as the same cannot be the subject of review as the Referral is declared inadmissible (See in this context the case of the Court: KI19/19 and KI20/19, Applicants *Muhamed Thaqi* and *Egzon Keka*, Resolution on Inadmissibility of 26 August 2019, paragraphs 53-55).

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Articles 20 and 27 of the Law and Rules 39 (2) , 42,57 and 59 (2) of the Rules of Procedure, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measures;

III. TO REJECT the request for a hearing;

IV. TO NOTIFY this Decision to the Parties;

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

VI. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only