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

Prishtina, on 26 May 2020
Ref. no.:RK 1571/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI127/19

Applicant

Benizar Berisha

Constitutional review of Decision Ac. No. 4988/18 of the Court of Appeals, of 13 March 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 Benizar Berisha (hereinafter: the Applicant), who is represented by lawyers Arianit Koci and Nora Veliu.

Challenged decision

2. The Applicant challenges the constitutionality of Decision [Ac. No. 4988/18] of the Court of Appeals of 13 March 2019 (hereinafter: the challenged Judgment), which was served on her on 3 April 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial), of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

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

Proceedings before the Constitutional Court

5. On 2 August 2019, the Referral was submitted by mail service and on 14 August 2019, it was registered in the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 20 August 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).

7. On 2 September 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of it to the Court of Appeals, in accordance with law.

8. On 13 May 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

Regarding the case before us, two groups of proceedings were conducted

Contested procedure

9. On 16 June 2015, the Applicant filed the statement of claim with the Basic Court in Prishtina, requesting: (i) the entrustment, care and education of the child O.M, and (ii) awarding the alimony, with the proposal that the monthly

amount of payment, on behalf of alimony be € 300 (three hundred euro), until the existence of legal conditions.

10. On 2 October 2017, the Basic Court in Prishtina, by Judgment [C. No. 1395/15], approved partly the Applicant's statement of claim and decided: (i) to entrust the child O.M in care and education to the Applicant (his mother), and (ii) obliged the respondent (the ex-spouse), that in the name of alimony pay the Applicant the monthly amount of 200 € (two hundred euro), starting from the day of submitting the statement of claim on 16 June 2015, until the existence of legal requirements. Against this Judgment, the Applicant's ex-spouse filed an appeal with the Court of Appeals within the legal time limit, through which he challenged the amount of the payment of the monthly alimony.

11. On 11 June 2018, the Court of Appeals, by Judgment [AC. No. 1302/2018], modified the Judgment [C. No. 1395/15] of the Basic Court in Prishtina of 2 October 2017, reducing the amount of monthly payment of alimony, from 200 € (two hundred euro), to 150 € (one hundred and fifty euro) starting from the day of submitting the statement of claim on 16.06.2015 onwards until the legal conditions exist.

Enforcement procedure

12. On 1 August 2018, based on the Judgment of the Court of Appeals [Ac. No. 1302/2018] of 11 June 2018, the Applicant with the Basic Court in Prizren, filed a request for the execution of the collected amount of alimony in the amount of € 5,500 (five thousand five hundred euro) (subject of enforcement).

13. On 28 July 2018, the Basic Court in Prizren, branch in Suhareka, by Decision [Cp. No. 82/2018], approved the request of the Applicant for the enforcement of the total amount of 5500 € (five thousand five hundred euro).

14. On 6 September 2018, the ex-spouse of the Applicant filed objection with the Basic Court in Prizren, branch in Suhareka, against the Decision [Cp. No. 82/2018] of 28 July 2018, claiming that part of the obligation from the amount of the total alimony was paid by the latter over the years 2015-2017.

15. On 21 September 2018, the Applicant submitted a response to the objection, requesting the rejection of the objection filed by her ex-spouse and the upholding the Judgment [Cp. No. 82/2018] of the Basic Court in Prizren, branch in Suhareka, of 28 July 2018.

16. On 1 October 2018, the Basic Court in Prizren, branch in Suhareka, by Decision [Cp. No. 82/2018], partially approved as grounded, the objection of the ex-spouse of the Applicant and decided the amount of the general obligation in the amount of € 4,700 (four thousand seven hundred euro).

17. On 17 October 2018, the Basic Court in Prizren, branch in Suhareka, decided to correct its Decision [Cp. No. 82/2018], of 1 October 2018, modifying the amount of debt from € 4700 (four thousand seven hundred euro) to a total amount of € 2800 (two thousand eight hundred euro), on the grounds that part of the obligation in the amount of 2750 € (two thousand seven hundred

and fifty euro), was fulfilled by the ex-spouse of the Applicant, over the years 2015-2017.

18. On 18 October 2018, the Applicant filed an appeal with the Court of Appeals against the decisions of the Basic Court in Prizren, branch in Suhareka, of 1 and 17 October 2018, due to alleged violations of the provisions of the Law on Enforcement Procedure (LEP).

19. On 13 March 2019, the Court of Appeals by the Decision, [Ac. No. 4988/18], rejected as ungrounded the Applicant's appeal and upheld the Decisions of the Basic Court in Prizren, branch in Suhareka, of 1 and 17 October 2018, as fair, on the grounds that: *"The application of the substantive law in this disputed matter, in addition to being applied correctly in terms of the debtor's obligation to collect alimony, in relation to the creditor, the latter has been applied correctly in terms of amount"*.

20. On 7 May 2019, the Applicant filed a proposal against the Judgment of the Court of Appeals [Ac. No. 4988/18] of 13 March 2019 with the Office of the State Prosecutor for the exercise of the request for protection of legality in the Supreme Court, on the grounds of essential violations of procedural law.

21. On 15 May 2019, the Office of the State Prosecutor, by Notification KMLC. No. 83/2019 informs the Applicant that her proposal to file the request for protection of legality was not approved with the reasoning: *"because the allegations mentioned in your proposal are not sufficient for the submission of the request for protection of legality according to Article 247.1 item a) and b) of the Law on Contested Procedure"*.

Applicant's allegations

22. The Applicant alleges that the challenged Decision violated her rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

23. The Applicant specifically alleges that:

> *"...The Court of Appeals, as the enforcement court of second instance, has violated the principle Res Judicata and the principle of legal certainty, as it has reopened the case decided by Judgment Ac. No. 1302/2018 of the Court of Appeals of 11.06.2018, final and enforceable - referred to in this appeal as a decision of the contested court of second instance or Decision Res Judicata. Consequently, this violates the right of the Applicant to Fair and Impartial Trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR"*.

24. The Applicant further states that:

> *"...the enforcement court of the first and second instance have violated her constitutional right guaranteed by Article 31 of the Constitution, when entering the review of the amount of debt decided by Judgment C. No. 1395/2015 of the Basic Court in Prishtina of 02.10.2017, modified by*

Judgment Ac. No. 1302/2018 of the Court of Appeals of 11.06.2018, which has become final and enforceable (Decision Res Judicata).

The enforcement court of the first and second instance have been tasked with enforcing the final and enforceable decision in accordance with the provisions of the LEP, and not to enter the review of the amount of debt by setting for the applicant another epilogue which differs from the content of the Judgment of the contested court, which was required to be enforced (Decision Res Judicata).
(...)."

25. With regard to the modification pf the total amount of the enforcement, the Applicant states: *"the court of second instance and the court of first instance, as executive bodies, base on the grounds that the debtor -B.M. has fulfilled a part of the debt that he was obliged to fulfill based on the Judgment of the Basic Court in Prishtina C. No. 1395/2015 of 02.10.2017, modified by Judgment Ac. No. 1302/2018 of the Court of Appeals of 11.06.2018. The enforcement court of second instance stated that from the transcript of the transactions presented by the debtor -B.M. it is seen that the latter has fulfilled a part of the obligation from 18.08.2015 until 04.07.2017."*

26. The Applicant states that *"she has consistently emphasized and emphasizes that the monetary contribution by the debtor -B.M., for maintenance of the minor child of the litigating parties dates before rendering the judgments, the enforcement of which the creditor has requested. The Applicant states that the periodic contribution of the debtor to the maintenance of the minor child was made in the time period from 18.08.2015 until 04.07.2017, whereas two (2) judgments the enforcement of which is required are of 02.10.2017 and 11.06.2018. Therefore, the debtor was not able to fulfill the "obligation for alimony" before this obligation was assigned to him by the contested court by Judgment Ac. No. 1302/2018 of the Court of Appeals of 11.06.2018, by which Judgment C. No. 1395/2015 of the Basic Court in Prishtina of 02.10.2017 was modified".*

27. The Applicant further adds that *"the evidence that the debtor-B.M. has offered to dispute the amount of debt is irrelevant, as no evidence relates to the reasons of the objection explicitly set forth in Article 71 of the LEP. As stated above, the periodic contribution of debtor-B.M., for the maintenance of the minor child is done in the time period from 18.08.2015 until 04.07.2017, so this contribution dates back to the date when the obligation on alimony arose by the decision of the contested court (Judgment of the Court of Appeals Ac. No. 1302/2018 of 11.06.2018, which modified Judgment C. No. 1395/2015 of the Basic Court in Prishtina of 02.10.2017)".*

28. The Applicant pertaining to her allegation refers to several cases of the Court, and alleges that the latter are applicable in her case. In this regard, she emphasizes that:

"The Constitutional Court, in its Judgment in case Vasilije Antovic (KI 25/18) stated that "the right to fair and impartial trial also requires that a final and binding decision (res judicata) must be regarded as irreversible".

Similarly, the European Court of Human Rights (ECtHR) in case Brumarescu v. Rumana, application no. 28342/95, Judgment of 28 October 1999, par. 61, states that "one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question".

In cases Ryabykh v. Russia, no. 52854/99, ECtHR, *Judgment of 24 July 2003, par. 52, and Sovtransavto Holding v. Ukraine, application no. 48553/99, paragraphs 72, the ECtHR reiterates that "no party is entitled to seek a review of a final and binding decision merely for the purpose of obtaining a rehearing and a fresh determination of the case". "If this was not the case, then reversing the final decisions would lead to a general uncertain legal climate, diminishing thereby the public trust in the judicial system", as the Constitutional Court found in case Rexhep Rahimaj (K151/11), Judgment of 2 July 2012, paragraph 22. Other issues that may help the court resolve this issue, which refer to the Res Judicata principle, are: K194/13, Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj, Judgment of 14 April 2014; K155/n, Fatmir Pirreci, Judgment of 16 July 2012; KI132/15, Decani Monastery, Judgment of 20 May 2016, KI150/16, Mark Frrok Gjokaj, Judgment of 31 December 2018; KI122/17".*

29. Finally, the Applicant requests the Court to declare the Referral admissible; to hold a violation of Article 31 of the Constitution, in conjunction with Article 6 of the Convention; to declare invalid the challenged Judgment of the Court of Appeals [Ac. No. 4988/18], of 13 March 2019; and remand the latter for reconsideration.

Admissibility of the Referral

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

31. In this respect, the Court initially 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."

[...]

32. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first

refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

[…]
"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… ."

33. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, has exhausted available legal remedies, has specified an act of a public authority, which she challenges before the Court namely Decision [Ac. No. 4988/18] of the Court of Appeals, of 13 March 2019, and also clarified the rights and freedoms she claims to have been violated by the challenged act, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

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

"(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".

35. Based on the case file, the Court notes that the Applicant challenged the constitutionality of Decision of the Court of Appeals [Ac. No. 4988/18] of 13 March 2019, which decided her appeal as ungrounded in the enforcement procedure and upheld Decisions of the Basic Court in Prizren, branch in Suhareka, of 1 and 17 October 2018 to reduce the amount of debt from € 5,500 (five thousand five hundred euro), to 4700 € (four thousand seven hundred euro), namely 2800 € (two thousand and eight hundred euro). The Court recalls that the total amount of the obligation in the amount of 5500 € (five

thousand five hundred euro) (subject of enforcement), was determined by the Judgment of the Court of Appeals [AC. No. 1302/2018] of 11 June 2018, in the contested procedure.

36. The Court further recalls that the regular courts in the contested proceedings, initially decided in relation to civil rights and obligations, as follows: (i) for the entrustment and care of the child O.M., and (ii) for determining the monthly amount of alimony (nutrition). The Court of Appeals by Judgment [AC. No. 1302/2018] of 11 June 2018, upheld the first instance decision, regarding (i) the child's entrustment in care and education, and (ii) modified the decision of the first instance regarding the monthly amount of the obligation for alimony, reducing the monthly obligation from 200 € (two hundred euro), to 150 € (one hundred and fifty euro). In this case, the decision of the Court of Appeals is final.

37. From the above, the Court finds that the substance of the Applicant's allegations relate to the fact that the enforcement courts have interfered with the substance of the "adjudicated matter" and in this case have violated her right guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 6 [Right to a fair trial] of the Convention. In the circumstances of this case, the Court shall assess whether the allegation of the Applicant, "*that the decisions of the enforcement courts have affected the substance of the "adjudicated matter*" which is guaranteed by the abovementioned provisions, is grounded.

38. In this regard, the Court, based on the essence of the Applicant's allegations of violation of the right to a fair trial, recalls the content of Article 31 of the Constitution and Article 6.1 of the ECHR, which stipulate:

Article 31 of the Constitution

"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law."

Article 6. 1 of the ECHR

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

39. In this regard, the Court emphasizes that the issues of final decisions *res judicata*, within the meaning of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, have been interpreted in a detailed manner through the ECtHR case law in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

40. The Court also points out that the standards and principles established in the case law of the ECtHR as regards the respect or repeal of a final decision, *res judicata*, have already been confirmed and decided also by the court decisions of the Constitutional Court (see, *inter alia*, cases, case No. KI94/13, Applicants *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 14 April 2014, case No. KI132/15, *Deçani Monastery*, Judgment of 20 May 2016, case No. KI150/16, Applicant *Mark Frrok Gjokaj*, Judgment of 31 December 2018).

41. Therefore, in light of the review of the allegations of violation of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, the Court shall first consider the general principles relating to the right to "legal certainty" and the respect of a final decision "*res judicata"*, based on the standards and principles established in the Court's case law and that of the ECtHR, which will subsequently apply in the circumstances of the present case.

General principles regarding the right to legal certainty and observance of a final court decision (res judicata)

42. The Court initially recalls that the right to fair and impartial trial also requires that an issue that has become *res judicata* must be regarded as irreversible, in accordance with a principle of legal certainty (see case of ECtHR *Brumărescu v. Romania*. application no. 28342/95, Judgment of 28 October 1999, paragraph 61; see, also, case of the Court KI 122/17, Applicant: *Ceska Exportni Banka A.S.,* Judgment of 30 April 2018, paragraph 149, and case KI67/16, Applicant: *Lumturije Voca,* Resolution on Inadmissibility of 4 January 2017, paragraph 87)·

43. The ECtHR, regarding the importance of respecting the principle of legal certainty found that "*one of the fundamental principles of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally decided a case, their decision should not be called into question"* (see, *mutatis mutandis*, case of the ECtHR, *Brumarescu v. Romania*, application no. 28342/95, Judgment of 28 October 1999, paragraph 61, see, also cases of the Constitutional Court, KI89/13, Applicant: *Arbresha Januzi*, Judgment of 12 March 2014, paragraph 83, KI122/17, Applicant: *Ceska Exportni Banka A. S.,* Judgment of 30 April 2018, paragraph 149, case KI67/16, Applicant: *Lumturije Voca*, Resolution on Inadmissibility, of 4 January 2017, paragraph 87, and case KI94/13, Applicant: *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 14 April 2014).

44. In this regard, the Court finds that its case law as well as the case law of the ECtHR mentioned above, clearly and explicitly, state that the right to a fair trial, according to Article 31 of the Constitution and Article 6 of the ECHR

includes the principle of legal certainty, which includes the principle that final court decisions which have become *res judicata* must be respected and cannot be reopened or become the subject of appeals.

45. Therefore, in the case law of the Court and of the ECtHR, it has been emphasized one of the fundamental principles of the rule of law is the principle of legal certainty, which assumes *the respect of judicial decisions that have become*, *res judicata*. (see case *Brumarescu v. Romania*, application no. 28342/95, Judgment of 28 October 1999, paragraph 62). According to the ECtHR "*no party is entitled to seek a review of a final and binding decision merely for the purpose of obtaining a rehearing and a fresh determination of the case (*see, *inter alia*, ECtHR cases *Ryabykh v. Russia*, no. 52854/99, ECtHR, Judgment of 24 July 2003, paragraph 52, and *Sovtransavto Holding v. Ukraine*, application no. 48553/99, paragraphs 72; see also cases of the Court case no. KI55/11, Applicant *Fatmir Pirreci*, the Constitutional Court, Judgment of 16 July 2012, paragraph 42 and case no. KI94/13, Applicant *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 14 April 2014).

Application of the abovementioned principles in the circumstances of the present case

46. In this regard, in the case of the Applicant, the Court will assess whether the challenged Decision of the Court of Appeals [Ac. No. 4988/18] of 13 March 2019, which upheld Decisions of the Basic Court in Prizren, branch in Suhareka, of 1 and 17 October 2018, which reduced the total amount of the enforcement (i) have violated the principle of the "adjudicated matter" as it was decided by Judgment [AC. No. 1302/2018] of the Court of Appeals of 11 June 2018; if (ii) the issue finally decided by Judgment [AC. No. 1302/2018] of the Court of Appeals of 11 June 2018 has been questioned, and if (iii) the final court decision in the contested procedure, namely Judgment [AC. No. 1302/2018] of the Court of Appeals of 11 June 2018, which has become *res judicata,* was reopened by the challenged Judgment, in the enforcement procedure.

47. With regard to these criteria, the Court refers to the relevant parts of Decision [Cp. No. 82/2018] of the Basic Court in Prizren, branch in Suhareka, of 1 October 2018, in the enforcement procedure, which initially modified the total amount of the obligation for which the Applicant alleges that such an intrference affects the substance of the "adjudicated matter" decided by Judgment [AC. No. 1302/2018], of the Court of Appeals of 11 June 2018. The court in question, by the Decision in question, reasoned:

> *"...in the reasoning of the objection exercised by this Court, against the Decision Cp. No. 82/2018, of 28.08.2018, referred to it that the debtor has fulfilled a part of the amount of debt that he had the obligation to fulfill based on the judgments, this fact was supported by the evidence on transactions - payments made in the bank account of the creditor in ProCredit Bank and that: On 18.08.2015, fulfilling the obligation for 3 months June, July, August in the amount of 350.00 €, on 22-23.09.2015, fulfilling the obligation for September 2015, in the amount of 100.00 €; on*

06.12.2015, fulfilling the obligation in the amount of 100.00 €; On 05.04.2017, fulfilling the obligation in the amount of 100.00 €; on 17.04.2017 - 28.04.2017, the payment (gift for O.M) in the amount of 20.00 €; on 07.05.2017-08.05.2017, fulfilling the obligation in the amount of 100.00 €; on 04.07.2017, fulfilling the obligation in the amount of 100.00 €. The judge assessed this evidence proceeded by the debtor's authorized person, up to the amount of 850.00 € and not in the amount presented as in the reasoning of the debtor's objection in the amount of 2,750.00 €. The court bases the reasoning of this assessment on the fact that, from the date of filing the claim on 16.06.2015, until 31.07.2018, the amount presented as in the enforcement proposal by the creditor has been accumulated, but from the transcript of transactions submitted by the debtor it is seen that he has fulfilled part of the obligation, since 18.08.2015, until 04.07.2017 and, thus, such enforcement against this amount would cause unreasonable benefit for the creditor".

48. The Court also refers to the relevant parts of the Decision [Cp. No. 82/2018] of the Basic Court in Prizren, branch in Suhareka, of 17 October 2018, through which the court in question corrected its Judgment of 1 October 2019, regarding the total amount of the obligation, reasoning that:

"Therefore, as the court examined once again the payment transaction for the debtor, regarding the loans, the latter proved the fact that the debtor has fulfilled a part of the obligation regarding the alimony and that, as follows: on 08.08.2015 the debtor has paid the amount of 350 €, on 22.09.2015 the amount of 100€, on 02.11.2015 the amount of 100 €, for the same date the amount of 100 €, on 03.01.2016 the amount of 100 €, on 07.02.2016 the amount of 100 €, on 07.03.2016 the amount of 100 €, on 02.04.2016 the amount of 100 €, on 03.05.2016 the amount of 100 €, on 09.05.2016, the amount of 150 €, on 05.07.2016, the amount of 100 €, on 31.07.2016, the amount of 100 €, on 03.09.2016 the amount of 150 €, on 02.10.2016 the amount of 150 €, on 02.11.2016 the amount of 100 €, on 01.12.2016 the amount of 100 €, on 05.01.2017 the amount of 100 €, on 04.03.2017 the amount of 100 €, on 05.04.2017 the amount of 100 €, on 08.05.2017 the amount of 100 €, on 01.06.2017 the amount of 150 €, on 04.07.2017 the amount of 100 €:, of all this total amount of 2750,00 €."

49. Further, the Court finds that the Court of Appeals, by the challenged Decision [Ac. No. 4988/18], upheld the decision of the first instance, of 17 October 2018, reasoning that:

"The application of the substantive law in this disputed matter, in addition to being correctly applied in terms of the debtor's obligation to collect alimony, in relation to the creditor the latter has been applied correctly in terms of the amount.
Pursuant to the provision of Article 165 par. 1 of the LCP, "Mistakes on the names and numbers as well as other written and calculating mistakes, absence in a aspect of ways of decision and discrepancies of copies with the original are corrected by the court in every time".
The first instance court by Decision Cp. No. 82/18 of 17.10.2018, admitted that it had made a mistake in calculating alimony payments, and

therefore rightly corrected Decision CP. No. 82/18 of 01.10.2018 as regards the amount of 4.700.00 euro where should be the amount of 2. 800 euro, and this part of the enacting clause corresponds to the reasoning part".

50. The Court, based on the above, concluded that the enforcement courts have not in fact affected on the substance of the "adjudicated matter" and did not question the final decision as determined by the Court of Appeals by the final Decision [AC. No. 1302/2018] of 11 June 2018.

51. In fact, the Court notes that the enforcement court of the first instance, by the Decision [Cp. No. 82/2018], of 17 October 2018, deciding on the objection filed by the debtor (ex-spouse), assessed that the total amount of the obligation of 5500 € (five thousand five hundred euro), must be deducted 2750 € (two thousand seven hundred and fifty euro), because it was established that part of the obligation, on behalf of the alimony, had been fulfilled by the ex-spouse of the Applicant, through banking transactions, including the time period, from 8 August 2015 - 4 July 2017. In these circumstances, the Court considers that the enforcement courts have not affected the substance of what was decided, according to the contested procedure, by the final Judgment. [AC. No. 1302/2018] of the Court of Appeals, of 11 June 2018, because the enforcement courts have not reopened or modified the adjudicated cases, nor in terms of: i) the entrustment, care and education of the child O.M. nor in terms of ii) determining the amount of the monthly obligation of € 150 (one hundred and fifty euro), in relation to alimony, but have corrected the total amount of the obligation of 5500 € (five thousand five hundred euro), from the reasons elaborated above in paragraphs 47 and 48 of this decision.

52. With regard to the Applicant's allegations that the enforcement courts should have considered the submissions submitted to them by the litigating parties and should assess whether they had erroneously interpreted or applied the procedural and substantive law. The Court considers that it is not within its jurisdiction as a Court to determine whether the enforcement courts should have considered the submissions submitted to them by the litigants or to assess whether they had erroneously interpreted or applied the procedural and substantive law. In fact, such an allegation, according to the Court, falls into the category of allegations which raise issues of fact and law (legality), which as a rule are the competence of the regular courts, insofar that their decision-making does not lead to apparent arbitrariness.

53. In this regard, the Court reiterates that it is not the role of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts, when assessing evidence or applying the law (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis*, Judgment of the European Court of Human Rights (hereinafter: the ECtHR) of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraph 28).

54. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a "fourth instance court" (See, *mutatis mutandis*, the case of the Court, KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility, of 5 April 2012).

55. The Court notes that the Applicant does not agree with the outcome of the regular proceedings, in this case the enforcement proceedings. However, her dissatisfaction with the outcome of the proceedings by the regular courts, cannot of itself raise an arguable claim for violation of the right to fair and impartial trial (see, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 20 December 2017, paragraph 42).

56. Furthermore, the Applicant pertaining to the allegation of a violation of her rights refers to several cases of this Court and of the ECtHR, and alleges that the same are applicable in her case. However, while the court, as above, assessed that in the present case the substance of the "adjudicated matter" which is guaranteed by Article 31 of the Constitution and Article 6 of the Convention has not been violated, the cases referred to may not apply in this case. Therefore, from the above, the Court considers that the cases, which the Applicant refers to, as above, differ in the factual and legal circumstances from the present case.

Conclusion

57. In sum, the Court considers that the Applicant, on constitutional basis, has not substantiated her claims that the relevant proceedings were in any way unfair or arbitrary and that the challenged Decision violated her constitutional rights and freedoms, guaranteed by the Constitution and by Convention (see, *mutatis mutandis, Shub case v. Lithuania*, no. 17064/06, ECtHR, Decision of 30 June 2009).

58. Therefore, the Court, in accordance with Rule 39 (2) of the Rules of Procedure, concludes that the Applicant's Referral, on constitutional basis, is to be declared inadmissible, as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 13 May 2020, 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**

Remzije Istrefi-Peci | Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only