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

Prishtina, on 17 August 2020
Ref.No.:RK 1602/20

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RESOLUTION ON INADMISSIBILITY

in

Case No.KI121/19

Applicant

Ipko Telecomunications

Constitutional review of Judgment ERev. No. 14/2019 of the Supreme Court of Kosovo, of 30 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 Ipko Telecomunications, represented by the Law Firm "Sejdiu & Qerkini" l.l.c., (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment, ERev. No. 14/2019, of 30 April 2019, of the Supreme Court of Kosovo (hereinafter: the Supreme Court).

Subject matter

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

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 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 Court

5. On 24 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 31 July 2019, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).

7. On 19 August 2019, the Court notified the Applicant's representative about the registration of the Referral and requested from them some additional documents.

8. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 26 August 2019, the Applicant's representative submitted the requested documents to the Court.

10. On 29 July 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 12 March 2008, the Applicant and the respondent, Dukagjini Telecomunications l.l.c., (hereinafter: Dukagjini l.l.c.), entered into a contract for the provision of mobile services in the virtual network. Dukagjini l.l.c. has

used these services continuously and paid the price agreed between the parties. Regarding this contract between the litigants was not disputed the fact that the total debt of Dukagjini l.l.c., to the Applicant, on behalf of the contract in question, was 223,139.47 €.

12. According to the case file it results that, on 2 September 2008, the Applicant made an offer to Dukagjini l.l.c., for the creation of infrastructure, system and maintenance of the virtual mobile network, as well as the installation and use of software. This offer to Dukagjini l.l.c., had not expressly accepted and paid none of the invoices sent by the Applicant.

13. On 28 January 2011, the Applicant submitted a proposal to allow the execution of the debt for the provided telephone services, at the District Commercial Court in Prishtina (hereinafter: the Commercial Court), against Dukagjini l.l.c.

14. On 2 February 2011, the Commercial Court, by Decision E. No. 30/11, allowed the enforcement, obliging the debtor, namely Dukagjini l.l.c., to repay the debt in the amount of € 1,853,268.88, with interest of 3.5 %, from the day of receipt of payment of each invoice until the final payment, for the use of mobile services in the virtual network, of the virtual Mobile operator (MVNO).

15. On an unspecified date, Dukagjini l.l.c., filed an objection against Decision E. No. 30/11, of 2 February 2011 of the Commercial Court, challenging in particular the part of the debt for the start up (starting work) and the monthly payments in the amount of € 44,000.00, for the use of IPKO equipment. Dukagjini l.l.c.., reasoned that it had accepted the offer for the MVNO infrastructure, due to very high prices.

16. Through the submissions of 21 September 2011, 10 May 2012 and 31 May 2012, after sending other invoices up to these dates, the Applicant specified his claim, requesting that Dukagjini l.l.c. be obliged to pay the debt in the total amount of € 2,965,625.60. At the hearing held on 8 June 2012, the Applicant corrected a technical error of the submission of 31 May 2012, so that the total amount of the debt for infrastructure was specified in 2.518.307,73 €.

17. On 8 June 2012, the Commercial Court, by Judgment II. C. No. 37/2011, decided as follows: *(i) the decision on allowing the enforcement E. No. 30/2011, of 2 February 2011 is annulled, this decision is annulled in the part of the debt, interest and enforcement costs, while the creditor's proposal for allowing the enforcement is considered a lawsuit, and (ii) the Applicant's (IPKO Telecomunications) statement of claim is approved as grounded and the respondent, Dukagjini Telekomunications l.l.c., is obliged to pay the debtor in the amount of € 2,518,307.73, with interest at the rate of 3.5%, starting from 8 June 2012.*

18. On an unspecified date, the respondent, Dukagjini l.l.c., filed an appeal with the Court of Appeals, against Judgment C. No. 37/2011, of 8 June 2011, of the Commercial Court, due to: (i) violation of provisions of the contested procedure; (ii) erroneous and incomplete determination of factual situation and (iii) erroneous application of the substantive law, with a proposal that the challenged judgment be quashed and the case be remanded for retrial, or that

this judgment be modified and the Applicant's statement of claim be rejected as ungrounded.

19. On an unspecified date, the Applicant filed a response to the appeal, proposing that the appeal of the respondent (Dukagjini l.l.c.) be rejected as ungrounded, while the challenged judgment be upheld.

20. On 8 June 2015, the Court of Appeals, by Decision Ae. No. 416/2012, approved the appeal of the respondent Dukagjini l.l.c. and quashed the judgment of the Commercial Court, C. No. 37/2011, of 8 June 2012, ordering that the case be remanded for retrial and reconsideration before the first instance court.

21. On 20 June 2016, the Basic Court in Prishtina, Department for Commercial Matters (hereinafter: the Basic Court), by Judgment I. C. No. 278/2015, decided to: I. Approved in part as grounded the statement of claim of the Applicant, where he obliged the respondent Dukagjini l.l.c., to pay the debt of 223,139.47 euro, while II. Rejected in part as ungrounded the Applicant's statement of claim regarding the amount requested by it for the provision of infrastructure services and the establishment of the network maintenance system (installation and use of software), in the amount of 2,366.675.60 euro.

22. On an unspecified date, the Applicant filed an appeal with the Court of Appeals, against Judgment C. No. 278/2015, of 20 June 2016, of the Basic Court, due to: (i) essential violation of the provisions of the contested procedure; (ii) erroneous determination of factual situation and (iii) erroneous application of substantive law. The Applicant by appeal requested the Court of Appeals to approve the statement of claim of the Applicant as grounded and the respondent "Dukagjini l.l.c. is obliged that within 7 days from the finality of this Judgment, on behalf of the main debt, pay him the amount in the amount of € 2,366,675.60 and the annual interest of 3.5%, from the day of filing the lawsuit until the full realization of the obligations from this decision.

23. On 26 December 2018, the Court of Appeals, by Judgment Ae. No. 189/2016, rejected as ungrounded the Applicant's appeal and upheld Judgment I. C. No. 278/2015 of the Basic Court, of 20 June 2016.

24. Against Judgment Ae. No. 189/2016 of the Court of Appeals, the Applicant filed a revision with the Supreme Court, alleging: (i) essential violation of the provisions of the contested procedure and (ii) erroneous application of the substantive law, with the proposal that the judgments of both courts be modified and the respondent (Dukagjini l.l.c.) be obliged to pay the debt to the claimant in the amount of € 2,366,678.60, with an annual interest of 3.5%, from the day the lawsuit was filed until the full realization as well as the costs of the proceedings.

25. On 30 April 2019, the Supreme Court, by Judgment ERev. No. 14/2019, rejected as ungrounded the revision submitted by the Applicant, against Judgment Ae. No. 189/2016, of 26 December 2018.

Applicant's allegations

26. The Applicant challenges Judgment REv. No. 14/2019, of 30 April 2019, alleging that it was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], of Constitution, in conjunction with Article 6 [Right to a fair trial], of the ECHR.

27. With regard to the alleged violations of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Applicant states that "he is a victim of an in(justice) which puts him in an unequal position before the law, violating his uncontested right which has to do with the non-provision of reasoning regarding the establishment of the subjective right by the regular courts and the arbitrary application of the law in relation to his right. Therefore, the Applicant alleges that Dukagjini l.l.c., owes the amount of € 2,366,675.47, which stemmed from the creation of infrastructure, system and maintenance of the virtual network (software deployment). According to the Applicant, Dukagjini l.l.c., has accepted the offer by the very fact of accepting all services in the offer. On the other hand, Dukagjini l.l.c., stated that it did not accept the above mentioned offer, since the services which were specified in the offer were services related to the contract of 12 March 2008, for the provision of mobile telephony services.

28. In this regard, the Applicant alleges that in his case the Supreme Court has not assessed his allegations. According to the Applicant, his main allegation in all court instances was that *"the respondent accepted the offer of the claimant with the conclusive actions, because it used all the services provided in the offer of 02.09.2008"*. It emphasizes that the Supreme Court has not shown what legal effect they have*: "the use of services by the respondent described in the offer and the acceptance of the debt by the financial director of the respondent, that the services provided in the offer are not included in the contract"*.

29. In support of his allegations, the Applicant refers to the case law of the Constitutional Court (cases: KI 72/12, KI 35/14, KI 96 / 16), as well as the case law of the European Court of Human Rights (hereinafter: the ECHR), where these courts have found violations of the right to fair and impartial trial, due to lack of reasoning of the court decisions.

30. According to the Applicant, in a situation similar to the abovementioned cases, the Supreme Court did not give any reason for his main allegations at all, but only agreed with the findings of the Court of Appeals, not assessing at all the Applicant's allegations presented in the revision.

31. In this regard, the Applicant states that *"the Supreme Court did not address at all the main arguments of the Applicant that: a) - The services provided in the Bid are different from the services which are defined by the Contract; b) - The services specified in the Bid are being used by the respondent; c) - The financial director of the respondent through the letter sent to the Applicant of this Referral has accepted the obligations deriving from the Bid etc.."*

32. The Applicant further alleges that the Supreme Court held a contradictory position in its decision, on the grounds that: (i) has not given any reason why in the present case Article 28 of the LOR, of 1978, according to which "*intention to enter into a contract may be expressed by words, usual signs or other conduct, on the grounds of which one may safely conclude of its existence*"; Also, the Supreme Court did not provide any reasoning why in this case Article 39.2 of the LOT does not apply, according to which *An offer shall also be accepted when the offeree delivers the goods or subject of the contract or pays the price, or does anything else which on the grounds of the offer, or former practice between the interested parties, or usage, may be construed as a statement of acceptance*"; and (ii) The Supreme Court arbitrarily and without giving any reasoning found that the claimant did not provide any evidence based on the mentioned article, which argues the fact that the respondent has accepted the offer.

33. Further, the Applicant states that the express declaration of the offeree is not required for the acceptance of the bid. He also states that based on the expertise, the fact is confirmed that "*the respondent with conclusive actions accepted the bid which was the subject of dispute in the contested procedure*".

34. Finally, the Applicant requests the Court to approve his Referral and find that in this case there has been a violation of the constitutional rights and freedoms guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, and declare invalid Decision ERev. No. 14/2019, of the Supreme Court, of 30 April 2019 and remand the case for retrial.

Relevant legal provisions

Law on Obligational Relationship, 1978

Expression of Will
Article 28

Intention to enter into a contract may be expressed by words, usual signs or other conduct, on the grounds of which one may safely conclude of its existence.

Expression of will (volition) shall be made freely and seriously.

Acceptance of Offer
Article 39

An offer shall be accepted when the offerer receives a statement from the offeree that he accepts the offer.

An offer shall also be accepted when the offeree delivers the goods or subject of the contract or pays the price, or does anything else which on the grounds of the offer, or former practice between the interested parties, or usage, may be construed as a statement of acceptance.

Acceptance may be revoked if the offeree acknowledges a statement of revocation prior to the statement of acceptance, or simultaneously with it.

Silence of the Person Offered
Article 42

Silence of the person offered shall not mean the acceptance of an offer.

A provision in an offer according to which silence of the person offered, or other omission on his part (for instance, failure to refuse the offer within the indicated time limit, or to restitute delivered goods or the subject of the contract offered to be entered into within the indicated time limit, and the like) can be considered as acceptance, shall not be effective.

However, if the person offered is in permanent business relations with the offerer in the line of specific merchandise, he shall be considered to have accepted the offer concerning such merchandise, unless he immediately, or within the indicated time limit, rejects it.

If the addressee fails to reject the offer in the period stipulated or if the sent material for which the offer was made is not returned in the time specified) will apply as acceptance of the offer shall be without effect.

However if in respect of specific goods the addressee is in a constant commercial link with the offeror an offer relating to such goods shall be deemed to have been accepted if it is not rejected immediately or within the period stipulated.

Similarly, a person offering to carry out another's orders concerning the performance of specific transactions, as well as a person whose professional activity includes carrying out such orders, shall be bound to carry out the orders received, unless he has immediately refused to do so.

Should, in the case specified in the preceding paragraph, the offer, namely the order, not be refused, the contract shall be considered to have been entered into after the offer, namely the order, has reached the offeree.

Admissibility of the Referral

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

36. In this respect, the Court refers to Articles 21.4 [General Principles] and 113.1 and 113.7 [Jurisdiction and Authorized Parties] of the Constitution which establish:

Article 21

"[...]
4. Fundamental rights and freedoms set forth for in the Constitution are also valid for legal persons, to the extent applicable.

[...]"

Article 113

"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".

37. In addition, the Court also examines whether the Applicant has met the admissibility criteria as set out in Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.
2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."

Article 48
[Accuracy of the Referral]

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

Article 49
[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...".

38. In this regard, the Court notes that in accordance with Article 21.4 of the Constitution, the Applicant has the right to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms, applicable both to individuals and to legal persons (Constitutional Court of the Republic of Kosovo: Case No. KI41/09, Applicant: *AAB-RIINVEST University L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

39. As to the fulfillment of the requirements mentioned above, the Court finds that the Applicant challenges an act of a public authority, namely Judgment ERev. No. 14/2019 of 30 April 2019, of the Supreme Court and has exhausted all legal

remedies provided by law. The Applicant also clarified the fundamental rights and freedoms claimed to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

40. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

> *"The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".*

41. In the light of this normative background, the Court notes that, in the circumstances of the present case, the substantive issues relate to the allegation of a contractual obligation, namely a debt, which the Applicant alleges has not been paid by the responding party, Dukagjini l.l.c. The Applicant alleges that this debt should be paid to Dukagjini l.l.c, because the latter derives from the bid made by the Applicant to the company Dukagjini l.l.c., through which the Applicant offered to build the infrastructure, system and virtual network maintenance. The offer in question was never accepted, expressly, by the company Dukagjini l.l.c. In this regard, the Applicant alleges that the company Dukagjini l.l.c., through conclusive actions - specifically accepting invoices and not responding to the Applicant's offer, namely in silence - has accepted the offer in question and is therefore obliged to pay the debt in the amount of € 2,366,675.47. In view of this, the Applicant alleges that the Supreme Court has erroneously interpreted the law, namely Article 39.2 of the Law on Obligational Relationships (hereinafter: the LMD), on the grounds that *"exactly this article determines the possibility of concluding the contract with conclusive actions and does not require the express declaration of the offeree for the acceptance of the bid"*.

42. In this regard, the Applicant alleges that the challenged Decision of the Supreme Court violates his 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, where he mainly states that the Supreme Court has not sufficiently reasoned its decision and made arbitrary legal interpretations.

43. With regard to the Applicant's allegations concerning the lack of reasoning of the court decisions in his case, the Court notes that it already has a consolidated case law with regard to the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. This case law was built based on the ECtHR case law, including, but not limited to cases: *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*, Judgment of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*,

Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. In addition, the fundamental principles regarding the right to a reasoned court decision have also been elaborated in the cases of this Court, including but not limited to cases KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, *Naser Husaj*, Judgment of 9 June 2017; and KII43/16, *Muharrem Blaku and Others*, Resolution on Inadmissibility of 13 June 2018.

44. In principle, the case law of the ECtHR and that of the Constitutional Court emphasize that the right to a fair trial includes the right to a reasoned decision and that the courts must *"show with sufficient clarity the grounds on which they based their decision"*. However, this obligation of the courts cannot be understood as a requirement for a detailed answer to any argument. The extent to which the obligation to give reasons may vary depending on the nature of the decision and must be determined in the light of the circumstances of the case. The essential arguments of the Applicants are to be addressed and the reasons given must be based on the applicable law.

45. In this regard, the Court will consider whether the Applicant's allegations of lack of a reasoned court decision, regarding the Judgment of the Supreme Court, ERev. No. 14/2019, of 30 April 2019, are in accordance with procedural guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR.

46. The Court recalls that in Judgment I.C. No. 278/2015, of the Basic Court, regarding the Applicant's allegation that a binding relationship has been established between the parties, based on the bid of 20 September 2008, the Basic Court stated the following: *"The court accepted as correct the finding of the TRA expert that the implementation of the contract of 12.03.2008 could not be realized without the installation of the software in question, because the latter was necessary for the recording of calls and SMS provided by the respondent to its clients. Also, the recording and billing of calls and SMS, is done using the software in question"*.

47. The Basic Court, regarding the application of certain provisions of the LOR, namely Articles 39.1 and 39.2, reasoned that: *"In this case, these legal criteria on the acceptance of the bid have not been met. The respondent did not give an express statement that he accepts the bid and has not taken any action that may fall within the scope of legal regulation from Article 39.2 of the LOR. It only accepted services which he considered as part of the basic contract. Therefore, the respondent's silence did not imply acceptance of the bid either. Moreover, no legal provision defines the obligation of the offeree that in case of silence or rejection of the bid, to reject the goods or services that have been served.*

48. Further, with regard to the silence of the offeree, the Basic Court found that: *"Article 40.3 of the LOR stipulates that the silence of the bidder should be understood as the tacit acceptance of the bid, only in cases where there is a permanent business relationship between the bidder and the offeree, in relation to certain goods, within the meaning of this provision is considered*

that the offeree has accepted the bid related to such goods if he has not rejected the offer immediately or within the deadline. In the present case, the criteria of this legal provision have not been met either, as the claimant and the respondent have not previously been in a permanent business relationship in providing the Software services. Thus, this is not a factual continuation of a previously created legal relationship."

49. The Court notes that the Court of Appeals, by Judgment Ae. No. 189/2016, of 26 December 2018, also addressed the issue of the bid and its acceptance, in the context of the allegation of creating a legal relationship through the bid of 20 September 2008, made by the Applicant to Dukagjini l.l.c., stating as follows: *"This court [...] found that the court of first instance has correctly applied the substantive law because Article 39.1 of the LOR, stipulates that: "An offer shall be accepted when the offerer receives a statement from the offeree that he accepts the offer". Whereas with Article 42. par 1 of the LOR, it is established that: "Silence of the person offered shall not mean the acceptance of an offer". It follows from the cited provisions that in order to be considered an acceptance of the offer, there must be a statement of the offeree on the acceptance of the will and a clearly expressed will to enter into a contract under the conditions set out in the offer. In the present case, from the evidence found in the case file, it results that the parties have entered into a contract dated 12.03.2008, and have agreed on its essential elements. Both parties as specialized entities had clear contractual obligations. The fact ascertained by the expert that the software was used only by the respondent after the claimant has switched to another platform, and does not use the software for its own needs, but the software is used only for the needs of the respondent, does not create an obligation for the respondent because he could not determine the manner of use of the software by the claimant, while on the other hand the same expert concluded that, communication traffic services could not be realized without the provision of software services. It follows that the software used by the respondent was used to fulfill the contracted services because the services are interconnected because the traffic services cannot be used without those of the infrastructure".*

50. Also, the Court of Appeals through the abovementioned Judgment responded to the appealing allegation that the bid was accepted through conclusive actions, reasoning as follows: *"The appealing allegation that the bid was accepted with conclusive actions, the Court of Appeals considers as ungrounded because according to Article 42.3 of the LOR, if the person offered is in permanent business relations with the offerer in the line of specific merchandise, he shall be considered to have accepted the offer concerning such merchandise, unless he immediately, or within the indicated time limit, rejects it. In this case this provision cannot be applied because it refers to the quantity of goods and not the type or quality of services provided.*

51. The Court notes that the Supreme Court rejected as ungrounded the Applicant's revision and held that the challenged judgment of the Court of Appeals did not contain any flaws that had affected its legality regarding the erroneous application of substantive law and the second instance court has rightly assessed that the obligatory contractual relations between the parties

have not been created, from the offer based on the provisions that refer to the offer.

52. Thus, the Supreme Court, with regard to the issue of accepting the bid through conclusive actions, had stated, *inter alia*, as follows:

> *"The submissions in the revision that the respondent with conclusive actions has accepted the offer and in this regard has the obligation to pay the debt because the respondent has duly presented the invoices and the latter has not challenged it [...] by this Court were assessed as ungrounded. This is due to the fact that the silence of the respondent is not meant as acceptance of the offer. Moreover, no legal provision defines the obligation of the offeree that in case of silence or rejection of the bid, to reject the service goods that have been served. The fact remains that the respondent has received the contested invoices for the payment of services according to the offer and that the same have not been challenged, but this circumstance does not mean accepting the offers in view of Article 39.2 of the LOR, as in this case no legal criteria on acceptance of the bid have been met. The respondent did not give an express statement that he accepts the offer and has not taken any action that may fall within the scope of legal regulation from article 39.2 of the LOR where it is determined that an offer shall also be accepted when the offeree delivers the goods or subject of the contract or pays the price, or does anything else which on the grounds of the offer, or former practice between the interested parties, or usage, may be construed as a statement of acceptance, the respondent in this case has received only services, which he considered as a part of the basic contract".*

53. With regard to the Applicant's allegation that the Supreme Court has not reasoned why in the circumstances of the present case Article 28 of the LOR does not apply, this Court refers to the challenged Judgment of the Supreme Court, which states that:

> *The submissions in the revision are ungrounded, that the court of second instance erroneously applied the provision of Article 42.3 of the LCT, as the plaintiff always referred to Article 28 of the LOR which determines the manner of expression of will for the conclusion of the contract. This is due to the fact that Article 42.3 of the LOR, stipulates that the silence of the offeree should be understood as tacit acceptance of the bid only in cases where there is a permanent business relationship between the bidder and the oferee, related to certain goods, within the meaning of this provision it is considered that the offeree has accepted the offer related to such goods if he has not rejected the offer immediately or within the given deadline. In this case this provision cannot be applied because that provision refers to the quantity of goods and not the type or quality of services provided.*

54. Based on the above, the Court notes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR oblige the courts to give reasons for their decisions, but this obligation cannot be understood as a requirement to provide a detailed response to any argument (See ECtHR cases: *Van de Hurk v. the Netherlands*, application no. 16034/90, Judgment of 19 April 1994,

paragraph 61; *García Ruiz v. Spain* [GC], cited above, paragraph 26; *Jahnke and Lenoble v. France*, application no. 40490/98, Decision on admissibility of 29 August 200; *Perez v. France* [GC], application no. 47287/99, Judgment of 12 February 2004, paragraph 81).

55. This stance has been consistently held by the Constitutional Court, based also on the case law of the ECtHR. In this line, the Constitutional Court has consistently emphasized that it is not the role of the Constitutional Court to review the conclusions of the regular courts in respect of the factual situation and application of the substantive law (See, cases of the Court KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58; and KI49/19, cited above, paragraph 49).

56. Therefore, the Court considers that the courts have fulfilled their constitutional obligation to provide a sufficient legal reasoning with respect to the Applicant's claims and allegations. Consequently, the Court considers that the Applicant has exercised his right to receive reasoned court decisions, in accordance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

57. With regard to the Applicant's allegation that the Supreme Court has made erroneous legal interpretations, the Court reiterates that, in principle, the matters relating to the establishment of facts in the court proceedings and the interpretation of laws are within the jurisdiction of the regular courts. The Court has consistently reiterated that it is not its role to deal with errors of facts or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). lt cannot itself assess the law that lead a regular court to issue one decision instead of another. If it were different, the Court would act as a "*fourth instance*" court which would result in exceeding the limitations provided for by its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law (See the Court cases: KI198/18, Applicant *Osman Mazreku*, Resolution on Inadmissibility of 18 February 2020, paragraph 76; KI122/16, Applicant *Riza Dembogaj,* Judgment of 6 June 2018, paragraph 57; KI70/11, Applicant *Faik Hima, Magbule Hima and Besart Hima,* Resolution on Inadmissibility of 16 December 2011; and KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 37; see also the ECtHR cases: *García Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 28).

58. However, the Court has also consistently reiterated that, even though the role of the Court is limited in terms of assessing the interpretation of the law, it must ensure and take measures where it observes that a court has applied the law in a particular case manifestly erroneously or so as to reach arbitrary conclusions (See also, cases of the Court: KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 40; and KI122 / 16, Applicant *Riza Dembogaj*, Judgment of 6 June 2018, paragraph 59. See also the cases of the ECtHR: *Anheuser-Busch Inc.*, Judgment of 11 January 2007, paragraph 83; *Kuznetsov and Others v. Russia*, Judgment of 11 January 2007, paragraphs 70-74 and 84; *Păduraru v. Romania*, Judgment of 5 December 2005, paragraph 98; *Sovtransavto Holding v. Ukraine*, Judgment

of 25 July 2002, paragraphs 79, 97 and 98; *Beyeler v. Italy* [GC], Judgment of 5 January 2000, paragraph 108; *Koshoglu v. Bulgaria*, Judgment of 10 May 2007, paragraph 50).

59. In the light of the interpretations and reasoning given in the decisions of the regular courts (presented above), the Court considers that the Referral does not prove that the proceedings before the Supreme Court and the lower instance courts were unfair or arbitrary, or that the fundamental rights and freedoms of the Applicant, protected by the Constitution, have been violated as a result of erroneous interpretations of law.

60. In addition, as stated above, the Court considers that the Applicant has had sufficient opportunity to present before the regular courts all the allegations of violation of his rights. His arguments have been properly heard and reviewed by the regular courts, 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 *mutatis mutandis* the Court cases: KI85/19, Applicant *Bujar Shabani*, Resolution on Inadmissibility, of 6 April 2020, paragraph 78; KI24/19 Applicant *Valon Miftari*, Resolution on Inadmissibility of 11 October 2019, paragraph 34; See also the ECtHR case: *Shub v Lithuania*, application no. 17064/06, Judgment of 30 June 2009).

61. In this regard, the Court considers it necessary to emphasize the principled position that "that the "*fairness*"' guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is not "*substantive*" fairness, but "*procedural*" fairness. This translates in practical terms into adversarial proceedings, in which submissions are heard from the parties and they are placed on an equal footing before the Court (See, in this regard, cases of the Court KI42/16 Applicant: *Valdet Sutaj*, Resolution on Inadmissibility of 7 November, paragraph 41 and other references therein; and KI49/19, cited above, paragraph 55).

62. The Court also reiterates that Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Constitutional Court to challenge the application of substantive law by the regular courts of a civil dispute (See the Court cases KI118/17 Applicant *Şani Kervan and others*, Resolution on Inadmissibility of 17 January 2018, paragraph 36; KI49/19, cited above, paragraph 54; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility of 19 December 2019, paragraph 48).

63. The Court notes that the object of the dispute before the regular courts was a contractual relation, namely an alleged debt that Dukagjini l.l.c. owed to the Applicant, Ipko Telecomunications. Based on the case file, the Court notes that in the proceedings before the regular courts it was not challenged that the Applicant performed the services that were included in the bid for which the regular court, based on their legal interpretations, found that was not accepted by Dukagjini. l.l.c. In this regard, the Court wishes to emphasize that its decision is limited to the assessment of the implementation of standards and procedural guarantees provided by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. Consequently, the Court wishes to

emphasize that this Resolution does not prejudice any other eventual proceedings that may take place before the regular courts in relation to the same issue.

64. Therefore, taking into account the circumstances of the case, the allegations raised by the Applicant and the facts presented by him, the Court, also based on the standards set in its case law in similar cases and the case law of the ECtHR- holds that the Applicant has not proved and has not sufficiently substantiated his allegations that the proceedings before the regular courts were in any way unfair or arbitrary and that through the challenged Judgment the rights and freedoms guaranteed by Article 31 of the Constitution and Article 6 of the ECHR have been violated.

65. In conclusion, the Court considers that the Referral, on constitutional basis, is manifestly ill-founded, because the Applicant does not prove or sufficiently substantiate his allegation of a violation of the rights guaranteed by the Constitution and the Convention.

66. Therefore, the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, as established in Article 113.7 of the Constitution and further specified in Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 21.4, 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, in the session held on 29 July 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**
Bekim Sejdiu	Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.