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

Prishtina, 21 April 2020
Ref. no.: RK 1549/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI131/19

Applicant

Sylë Hoxha

Constitutional review of Judgment AML No. 1/2019 of the Supreme Court of 16 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 Sylë Hoxha from the Municipality of Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [AML No. 1/2019] of 16 April 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [AA. No. 333/2018] of 31 October 2018 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [A. No. 1750/15] of 16 April 2018 of the Department for Administrative Matters of the Basic Court in Prishtina (hereinafter: the Basic Court).

3. The challenged Judgment of the Supreme Court was served on the Applicant on 13 May 2019.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

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] 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

6. On 19 August 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 20 August 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (presiding), Safet Hoxha and Radomir Laban.

8. On 2 September 2019, the Applicant was notified about the registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court, the Kosovo Prosecutorial Council (hereinafter: the KPC) and the Basic Court with the request to submit the acknowledgment of receipt indicating the date when the Applicant was served with the challenged decision.

9. On 10 September 2019, the Basic Court submitted the abovementioned document to the Court.

10. On 11 March 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

11. From the documents included in the Referral, it results that the KPC by Decision [No. 833/2014] of 29 July 2014, had appointed the Applicant in the position of Chief State Prosecutor. The Applicant had exercised this position until 21 April 2015, when Aleksandër Lumezi was decreed as the Chief State Prosecutor by the President of the Republic of Kosovo.

12. On 19 May 2015, the Applicant addressed the Chief State Prosecutor, as well as the Chair of the KPC in order to acquire the rights arising from Law No. 03/L-001 on Benefits to Former High Officials and Law No. 04/L-038 on Amending the Law No. 03/L-001 on Benefits to Former High Officials (hereinafter: the Law on Benefits of Former High Officials), based on Article 3 (Monetary Allowance, Support Staff, and Office Premises) of which "*former high officials*" are considered the former Prime Minister, former Chief State Prosecutor and former Presidents of the Assembly, the Constitutional Court and the Supreme Court.

13. Based on the case file and as the KPC has not issued any decision regarding the abovementioned submission, the Applicant submitted to the KPC a new submission, but with the same content, requesting that he be recognized the right to certain benefits by the Law on Benefits to Former High Officials in the capacity of "*former senior official*", namely the former acting State Prosecutor. The Applicant held that he meets all the legal requirements for the recognition of rights as a "*former senior official*" because during the exercise of the function of Acting Chief State Prosecutor for more than six (6) months, he fulfilled all his obligations and responsibilities and exercised his rights as if he had been appointed Chief State Prosecutor by the presidential decree.

14. On 11 September 2015, the KPC by the Decision [KPK/No. 258/2015] rejected the request of the Applicant. The KPC reasoned that the Applicant was appointed Acting Chief State Prosecutor by the Decision of the KPC and was not appointed by the President of the Republic of Kosovo in accordance with paragraph 7 of Article 109 [State Prosecutor] of the Constitution, and accordingly did not acquire the status of a former senior official, as stipulated in Article 3 of the Law on Benefits to Former High Officials.

15. On 13 October 2015, the Applicant filed a claim with the Basic Court, requesting the approval of his claim and the annulment of the challenged Decision of the KPC. The Applicant before the Basic Court stated that (i) taking into consideration that he had exercised the function of the Chief State Prosecutor for more than six (6) months, he met the criteria established in Article 3 of the Law on Benefits to Former High Officials and consequently had earned the right to realize a monthly salary of seventy percent (70%) of the current salary in the respective function as well as other benefits provided by this law; and (ii) despite the KPC reasoning, Article 3 of the Law on Benefits to Former High Officials only defines the requirement of "*exercising*" the duty of

acting Chief State Prosecutor for six (6) months and not that of "*appointment*" in accordance with paragraph 7 of Article 109 of the Constitution. In the end, the Applicant stated that as an official acting in that position he exercised all the functions of Chief State Prosecutor, supervised the work of all basic prosecutions, issued various regulations, decisions and instructions, and received the salary of the Chief State Prosecutor as long as he was acting in the position in question.

16. On an unspecified date, the KPC filed a response to the Applicant's claim, stating that the Applicant was appointed to act in that position by Decision of the KPC and not in accordance with paragraph 7 of Article 109 of the Constitution, and consequently he may not be recognized the right to acquire the status of senior official based on Article 3 of the Law on Benefits to Former High Officials.

17. On 16 April 2018, the Basic Court by Judgment [A. No. 1750/15] rejected the Applicant's statement of claim as ungrounded. The Basic Court assessed that the KPC had decided correctly when rejecting as ungrounded the statement of claim of the Applicant, taking into account that he was not decreed by the President of the Republic of Kosovo under the procedure laid down in paragraph 7 of Article 109 of the Constitution; and accordingly, he had not gained the status of a former senior official based on paragraph 7 of Article 109 of the Constitution and Article 3 of the Law on Benefits to Former High Officials.

18. On 23 May 2018, the Applicant filed an appeal against the abovementioned Judgment with the Court of Appeals, alleging erroneous application of substantive law and erroneous and incomplete determination of the factual situation, proposing that the challenged Judgment be quashed and he be recognized the right to the relevant benefit under the Law on Benefits to Former High Officials. In his appeal, the Applicant specifically claimed that (i) the Law on Benefits to Former High Officials "*in an explicit manner*" stipulates that former officials who have exercised for at least six (6) months one of the functions defined by this law gain the status of former senior official to realize a monthly salary in the amount of seventy percent (70%) of the current salary of the respective position; and (ii) the Basic Court when rendering the challenged Judgment did not challenge the fact that the claimant, namely the Applicant, met the legal criteria set out in the Law on Benefits to Former High Officials, and consequently, as long as the factual situation was determined correctly, it was the substantive law that was erroneously applied in the circumstances of his case.

19. On 31 October 2018, the Court of Appeals, by Judgment [AA. No. 333/2018], rejected as ungrounded the appeal of the Applicant and upheld the abovementioned Judgment of the Basic Court.

20. On 14 January 2019, the Applicant, referring to violation of the provisions of the procedure and violation of substantive law, proposed to the Office of the Chief State Prosecutor to file the request for protection of legality against the abovementioned decisions of the Basic Court and the Court of Appeals.

21. On 5 February 2019, the Office of the Chief State Prosecutor notified the Applicant that it approved his proposal to file a request for protection of legality. On the same date, the Office of the Chief State Prosecutor submitted the request [KMLA. No. 1/2019] for the protection of legality to the Supreme Court against the Judgment [AA. No. 333/2018] of 31 October 2018 of the Court of Appeals in conjunction with Judgment [A. No. 1750/15] of the Basic Court, of 16 April 2018, alleging erroneous application of substantive law in the context of item b) of paragraph 1 of Article 247 of Law No. 03/L-006 on Contested Procedure (hereinafter: the LCP) in conjunction with paragraph 1 of Article 3 of the Law on Benefits to Former High Officials.

22. The Office of the Chief State Prosecutor emphasized that the lower instance courts have erroneously applied Article 3 of the Law on Benefits to Former High Officials, because the Applicant for the period from August 2014 to April 2015 as an official acting in that position had performed all the actions and taken all decisions that were in the competence of the Chief State Prosecutor, based on the Law on the State Prosecutor and the relevant amendments and supplementations, emphasizing that this factual situation "*leads to the legal and logical conclusion that the Applicant gained the status of former high official, because otherwise, any action and decision of the Applicant for the period during which he was acting Chief State Prosecutor would be unlawful*".

23. On 16 April 2019, the Supreme Court, by its Judgment [AML. No. 1/2019], rejected as ungrounded the request for protection of legality of the Office of the Chief State Prosecutor. The Supreme Court emphasized that the appointment of the Applicant as an official acting in that position was made through the decision of the KPC, but the latter was not decreed by the President of the Republic of Kosovo and, accordingly, the Applicant did not gain the status of former senior official, as defined by paragraph 7 of Article 109 of the Constitution and Article 3 of the Law on Benefits to Former High Officials.

Applicant's allegations

24. The Applicant alleges violation of his fundamental rights and freedoms guaranteed by Articles 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR and Article 54 [Judicial Protection of Rights] of the Constitution.

25. Regarding the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant alleges that the decisions of the regular courts were not sufficiently reasoned because they did not show the difference between the appointment of the acting Chief State Prosecutor through the KPC decisions and the appointment of the Chief State Prosecutor by the President of the Republic of Kosovo in accordance with paragraph 7 of Article 109 of the Constitution. More specifically, according to the Applicant, while the regular courts reasoned the legality of the rejection of the Applicant's right to be recognized the status of the former senior public official, with the lack of a presidential decree, they failed to justify the only requirement set by the Law on Benefits to Former High Officials, namely "*exercising at least six months of one of the functions defined in Article 2 item 3 of this law*" in the

circumstances of the present case. The Applicant emphasizes the difference between "*exercise*" and "*appointment*" in the function of Chief State Prosecutor, a distinction which, according to him, was not reasoned by the regular courts. In support of his allegations of the lack of a reasoned court decision, the Applicant referred to the case law of the European Court of Human Rights (hereinafter: the ECHR), namely cases *Suominem v. Finland*, Judgment of 1 July 2003; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hiro Balani v. Spain*, Judgment of 9 December 1999; *Higgings and others v. the United Kingdom*, Judgment of 19 February 1998; *H. v. Belgium*, Judgment of 30 November 1987 and cases of the Court KI99/14 and KI100/14, Applicants *Shyqyri Syla and Laura Pula*, Judgment of 8 July 2014 (hereinafter: cases KI99/14 and KI100/14); KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; and KI87/18, Applicant *"IF Skadeforsikring"*, Judgment of 15 April 2019.

26. The Applicant states that the regular courts have failed to take into consideration the particular circumstances of his case, and in particular the fact that (i) he was appointed Acting Chief State Prosecutor by decision of the KPC in an emergent situation when the Republic of Kosovo was left without a Chief State Prosecutor and held this position from 5 August 2014 to 21 April 2015; (ii) the appointment of the new Chief State Prosecutor would be subject to a lengthy procedure when announcing the public vacancy which could jeopardize the administration of justice and in support of the urgency of the appointment of the Chief State Prosecutor, the Applicant refers to the case law of this Court in cases No. KI99/14 and KI100/14; (iii) during the exercise of his duties, he had exercised all competencies of the Chief State Prosecutor established in the applicable laws in the Republic of Kosovo; and (iv) through non-recognition of the status of former senior official acting as Chief State Prosecutor, the issue of the legal status of decisions taken during this period of time "*calls into question the principle of legal certainty*".

27. The Applicant also alleges violations of fundamental rights and freedoms guaranteed by Articles 24 and 54 of the Constitution.

28. Regarding the former, namely Article 24 of the Constitution, the Applicant states that "*The Supreme Court and the courts of other instances, through the denial of the legal right, which derives from Article 3.1 of the Law No. 03/L-001 ON BENEFITS TO FORMER HIGH OFFICIALS, as the Applicant has exercised the function of a Chief State Prosecutor for more than eight (8) months, have violated the right to equality before the law*".

29. As for the second, namely Article 54 of the Constitution, the Applicant alleges that "*The Supreme Court and the courts of other instances, by failing to reason their decision, failed to guarantee a legal right of the Applicant, which derives from Article 3.1 of the Law No. 03/L-001 ON BENEFITS TO FORMER HIGH OFFICIALS and, thus violated Article 54 of the Constitution*".

30. Finally, the Applicant requests from the Court (i) to declare his Referral admissible; (ii) to hold that in rendering the challenged Judgment, the Supreme Court violated Articles 24, 31 and 54 of the Constitution and Article 6

of the ECHR; and (iii) declare invalid the Judgment [AML. No. 1/2019] of 16 April 2019 of the Supreme Court and remand the latter for retrial.

Relevant Constitutional and Legal Provisions

The Constitution of the Republic of Kosovo

Article 16
[Supremacy of the Constitution]

1. The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution.
2. The power to govern stems from the Constitution.
3. The Republic of Kosovo shall respect international law.
4. Every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution.

Article 24
[Equality before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

Article 109
[State Prosecutor]

1. The State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law.
[...]
7. The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.

Law no. 03/l-001 on Benefits to Former High Officials

Article 2
Definitions

When used in this law, the following words and phrases shall have the following meaning:
"Benefit" means monetary payments due to the benefit of, a former High Official from the Consolidated Kosovo Budget;

"A Former High Official" according to this law High Officials of Republic of Kosovo are considered: a former President of the Assembly, a former Prime Minister and a former President of the Supreme Court;
"Responsible Institution" means the Office of the Prime Minister of Kosovo, the Assembly of Kosovo, or the Supreme Court of Kosovo.

Article 3
Monetary Allowance, Support Staff, and Office Premises

3.1 Former High Officials who have performed for at least six months one of the functions defined in Article 2, point 3 of this Law, shall be entitled the status of the former High Official to receive a monthly payment in amount of 70% of the actual salary of respective function.

Law No. 04/l-038 on Amending and Supplementing the Law No. 03/l-001 on Benefits to Former High Officials

Article 3

Article 2 of the basic law, definition 2 and 3 shall be amended and reworded as follows:

"Former High Official" according to this law are considered: former President of the Assembly, former Prime Minister, former President of the Constitutional Court, former Chief State Prosecutor and former President of the Supreme Court.

"Responsible Institutions" shall mean the Assembly of Kosovo, Office of the Prime Minister, Constitutional Court of Kosovo, State Prosecutor and Supreme Court of Kosovo.

Admissibility of the Referral

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

32. 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".

33. In addition, the Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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...".

34. As to the fulfillment of the admissibility criteria, as stated above, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment [AML. No. 1/2019] of 16 April 2019 of the Supreme Court, after having exhausted all legal remedies prescribed by law. The Applicant has also clarified all rights and freedoms which he claims to have been violated, in accordance with Article 48 of the Law and submitted the Referral in accordance with the deadline established in Article 49 of the Law.

35. However, in addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be 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".

36. In this regard, the Court recalls that the Applicant after the relevant decision of the KPC exercised the function of Chief State Prosecutor from 5 August 2014 to 21 April 2015, after the retirement of the previous Chief Prosecutor and until

the election of the new Chief Prosecutor by the KPC and his decreeing by the President of the Republic. After the beginning of the exercise of the function of the latter, the Applicant addressed the KPC with the request for recognition of the rights defined by the Law on Benefits to Former High Officials, based on which (i) former Senior Officials are considered the former President of the Assembly, the former Prime Minister, the former President of the Constitutional Court, the former Chief State Prosecutor and the former President of the Supreme Court; and (ii) the same acquire this status and have the right to realize a monthly salary in the amount of seventy percent (70%) of the current salary of the respective function, provided that they have exercised one of these functions for at least six (6) months. The request of the Applicant was initially rejected by the KPC, by the Decision [KPK/No. 258/2015] of 11 September 2015, and the latter was subsequently upheld by all regular courts. All, in essence, had emphasized the difference between the two "*exercise*" of this function and "*appointment*" or "*decreeing*" in this function based on the relevant constitutional provisions of the following exercise of the latter for at least six (6) months. All instances, including the Supreme Court, stated that (i) the Applicant exercised this function in accordance with the decision of the KPC, and was not elected on the basis of the procedure laid down in paragraph 7 of Article 109 of the Constitution; and (ii) as a result, may not gain the status of former senior official under the Law on Benefits to Former High Officials.

37. The Applicant challenges this finding of the regular courts before the Court, alleging a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and Articles 24 and 54 of the Constitution. The former, namely the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as explained above, the Applicant alleges due to lack of a reasoned court decision and more precisely the lack of logical connection between the conclusions of courts and the KPC on the one hand and the evidence and facts and circumstances of his case on the other hand, specifically with regard to the difference between "*exercise*" of a function and "*the appointment*" in a function, with only the first requirement, namely *the* "*exercise*" for the period of six (6) months specified in the Law on Benefits to Former High Officials and necessary according to the Applicant, for the recognition of the status of the former Senior Official, and consequently the acquisition of the right to the respective benefits.

38. The Court will further address the Applicant's allegations regarding (i) the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as to the lack of reasoning of the court decision; and (ii) the violation of Articles 24 and 54 of the Constitution, by applying the case law of the ECtHR, on the basis of which the Court, 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.

39. In this regard, the Court initially notes that the ECtHR case law establishes that the fairness of a proceeding is assessed based on the proceeding as a whole (See, in this regard, the ECtHR case *Barbera, Messeque and Jabardo v. Spain,* Judgment of 6 December 1988, paragraph 68). Therefore, in assessing the Applicant's allegations, the Court shall also adhere to this principle (See cases of the Court, KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017,

paragraph 38; and KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility, of 13 June 2018, paragraph 31).

40. With regard to the allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court will first focus on the allegations of the lack of the reasoning of the court decision by the Supreme Court. In this respect, the Court first notes that it already has a consolidated practice 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 practice was built based on the ECtHR case law, including, but not limited to 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 v. 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; KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; and KI143/16, *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018; KI24/17 Applicant *Bedri Salihu*, Judgment of 24 July 2019; and KI49/19, Applicant *Limak Kosovo International Airport*, Resolution on Inadmissibility of 21 October 2019.

41. In principle, the case-law of the ECtHR and that of the Court point out that the right to a fair trial includes the right to a reasoned decision and that the courts must "*indicate with sufficient clarity the reasons on which they base their decision*". However, this obligation of the courts cannot be understood as a requirement for a detailed answer to each 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 Applicant are to be addressed and the reasons given must be based on the applicable law.

42. The Court recalls that the Applicant's allegations of lack of a reasoned court decision are related to the challenged Judgment of the Supreme Court, which was rendered as a result of a request for protection of legality filed by the State Prosecutor against the Judgment of the Court of Appeals. The latter, namely the State Prosecutor before the Supreme Court alleged a violation of item b) of paragraph 1 of Article 247 of the LCP, namely erroneous application of the substantive law, and specifically, the erroneous application of Article 3 of the Law on Benefits to Former High Officials. According to the State Prosecutor, the fact that the Applicant has "*exercised*" the function of the Chief State Prosecutor for more than six (6) months, as defined in Article 3 of the Law on Benefits to Former High Officials, and which based on the latter is the only criterion for obtaining the status of former senior official, is sufficient for the approval of the request of the Applicant for the benefit of the rights arising from the recognition of the status of former senior official. The allegations of

the State Prosecutor before the Supreme Court, in essence, include and reflect the essential allegations of the Applicant during the proceedings in the regular courts.

43. In this regard, the Court recalls that the KPC by the Decision [KPK/No. 258/2015] of 11 September 2015 and the Basic Court and the Court of the Appeals, through the relevant Judgments, clarified: (i) the difference between the appointment as the acting Chief State Prosecutor by decision of the KPC and the appointment of the Chief State Prosecutor by presidential decree in accordance with paragraph 7 of Article 109 of the Constitution; and (ii) the requirements to be met in order to realize the benefits of the former high official in accordance with the laws on the benefits of the former high officials. In principle, in the rejection of the request, claim and appeal of the Applicant, the regular courts, emphasizing the manner of the "*appointment*" of the high official, namely in the circumstances of the present case, the Chief Prosecutor, had clarified that the "*exercise*" of the relevant function defined in the Law on Benefits to Former High Officials is conditional on the manner of his "*appointment*" provided by paragraph 7 of Article 109 of the Constitution. The Supreme Court upheld such an attitude of the lower instances. By addressing the allegations of the State Prosecutor, it also pointed out that the Applicant was not appointed to the position of the Chief State Prosecutor as set out in the Constitution, but was appointed as acting official by the decision of the KPC for a temporary period of time.

44. In this regard, the Court points out the relevant part of the reasoning of the Supreme Court, which determines:

> *"Article 109, paragraph 7 of the Constitution of the Republic of Kosovo stipulates that the Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment. Further, Article 3 of Law No. 04/L-038 on Amending and Supplementing the Law on Benefits to Former High Officials establishes that Former High Official according to this law are considered: former President of the Assembly, former Prime Minister, former President of the Constitutional Court, former Chief State Prosecutor and former President of the Supreme Court.*
>
> *From what was stated above, it results that the appointment of the claimant Sylë Hoxha, as acting Chief State Prosecutor, was made by a decision of the Prosecutorial Council of the Republic of Kosovo, and not by a decree of the President of the Republic of Kosovo, which means that the claimant has not acquired the status of a former high official as established in Article 3 of Law No. 04/L-038 on Amending and Supplementing the Law on Benefits to Former High Officials and Article 109, paragraph 7 of Constitution of the Republic of Kosovo.*
>
> *Based on the above, the Supreme Court found that in this administrative-legal matter, the second instance court has correctly applied the provisions of the administrative conflict, the provision of Law No. 04/L-038 on Amending and Supplementing the Law on Benefits to Former High*

Officials and the provision of the Constitution of the Republic of Kosovo, and that the allegations of the State Prosecutor in the request for the protection of legality are ungrounded, because they do not affect the determination of another factual situation than what the court of second instance determined. According to the assessment of this Court, the challenged judgment of the second instance court is clear and understandable. In the reasoning of the challenged judgment, sufficient reasons have been given for the decisive facts, which also this court accepts. The court considers that the substantive law has been applied correctly and that the law has not been violated to the detriment of the claimant".

45. The Court, in this context, notes that the Supreme Court has interpreted Article 3 of the Law on Benefits to Former High Officials (i) recognizing the right to benefit from the status of former senior official and consequently the right to relevant benefits, only to former senior state officials appointed through the procedures set out in the Constitution and the applicable laws, under the condition that they have exercised the respective function for at least six (6) months; and (ii) determining that the benefits determined by this law do not belong to other officials and who may have "*exercised*" this function, but have not been "*appointed*" in the manner prescribed by the Constitution and the relevant applicable laws, regardless of whether they have exercised this function for six (6) months and have exercised the full competencies of the respective function during this period of time.

46. The Court notes that the conditioning of the "*exercise*" of the respective function with the manner of the "*appointment*", namely the appointment according to the procedure determined by paragraph 7 of Article 109 of the Constitution, is in compliance with (i) the hierarchy of norms and the supremacy of the Constitution; and (ii) Article 3 of the Law on Benefits to Former High Officials.

47. Regarding the former, the Court emphasizes that in the present case, the regular courts and the KPC have respected the hierarchy of legal norms and the supremacy of the Constitution established in Article 16 [Supremacy of the Constitution], based on the wording of paragraph 7 of Article 109 of the Constitution to emphasize the distinction between "*acting*" of the Chief State Prosecutor by decision of the KPC and the "*appointment*" of the Chief State Prosecutor by the President of the Republic, following the proposal by the KPC.

48. While as regards the second, the Court emphasizes that despite the fact that Article 3 of the Law on Benefits to Former High Officials refers only to two conditions for the benefit of the rights arising from this law, namely the "*exercise*" of the function and that for a period of (6) six months, these conditions must be interpreted in conjunction with Article 2 and the relevant amendments to the same law , and according to which this right, have only a very limited number of former public officials, namely the former President of the Assembly, of the Constitutional Court, and the Supreme Court, and the former Prime Minister and former Chief Prosecutor.

49. Recognizing this right of such a narrow and specific list of officials means their "*appointment*" in accordance with the relevant constitutional and legal provisions, and then also the requirement of exercising this function for at least six (6) months. Therefore, the right to benefit from the status of "*former high official*" have only five (5) categories of positions specifically referred to in Article 2 of the abovementioned law, provided that beyond the "*appointment*" based on the constitutional and legal provisions, they meet the requirement of the "*exercise*" of this function for at least six (6) months. On the contrary, the rights deriving from the recognition of the status of the "*former high official*", they will not belong even to the five (5) categories specifically mentioned in Article 2 of the Law on Benefits to Former High Officials, if the latter have not "*exercised*" this function for at least six (6) months. Therefore, the "*appointment*" does not automatically result in the acquisition of these rights, but is also conditioned by the "*exercise*" for at least a period of six (6) months.

50. In this regard, the Court notes that the distinction between the "*election*" and "*exercise*" of the function was also done in the case of the President of the Republic, through the applicable law, namely Law No.03/L-094 on the President of the Republic of Kosovo and Law no.06/L-004 on Amending and Supplementing the Law No. 03/L-094 on the President of the Republic of Kosovo (hereinafter: the Law on the President) and the case law of the Court in case no. KO97/10, Applicant *Jakup Krasniqi*, Judgment of 28 December 2010 (hereinafter: the case of Court no. KO97/10).

51. The Court emphasizes that Chapter II concerning the rights of the President of the Republic of Kosovo after the end of the term of the Law on the President, determines, *inter alia*, the right of the President to a pension, the amount of which is seventy percent (70%) of the salary, which is received by the President of the Republic of Kosovo. But the exercise of these rights is conditional on Article 18 of this Law, namely "*at the end of the term for which he was elected*". The abovementioned article, consequently, conditions the benefit of these rights by the President on the condition that (i) he is "*elected*" the President of the Republic based on the relevant provisions of the Constitution; and (ii) has completed his term, unless this term has ended as a result of the dismissal as defined in Article 10 (Dismissal of the President) of the Law on the President.

52. Furthermore, the Court also emphasizes that Article 90 [Temporary Absence of the President] of the Constitution defines the conditions under which the Acting President of the Republic of Kosovo may be the President of the Assembly, for no more than six (6) months and that the Court through its case law, namely case no. KO97/10, has emphasized the difference between election/appointment to a position and appointment to the exercise of this function, maintaining the position that the "*acting*" President is not an elected President of the Republic of Kosovo (See the case of Court no. KO97/10, paragraphs 23-25).

53. Consequently, and in this context, the Court reiterates that despite the allegations of the Applicant for the lack of reasoning for the court decision, namely the challenged Judgment, the Court considers that based on its case law and that of the ECtHR, the Applicant's allegations and those of the State

Prosecutor have been addressed and reasoned by the Supreme Court. The Court considers that in the circumstances of the present case, the substantive allegations of the Applicant before the regular courts regarding the erroneous interpretation of Article 3 of the Law on Benefits to Former High Officials, were sufficiently reasoned by the latter, thus resulting in a procedure which, in its entirety and with respect to the allegations of lack of a reasoned court decision, meets the criteria set out in the relevant case law in interpreting Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

54. The Court also recalls that the Applicant, in support of his allegation of lack of reasoned court decision, referred to a number of cases of the ECtHR and the Court. The Court, in this respect, states that all general principles regarding the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, have already been included in the practice of the Court as reflected in paragraph 40 of this Resolution and have been applied in the circumstances of the present case.

55. The only case referred by the Applicant and which is not related to the right to a reasoned court decision is the case of the Court KI99/14 and KI100/14. In this context, the Court emphasizes that in addition to the fact that the Applicant referred to this decision, he did not elaborate on its factual and legal connection with the circumstances of the present case, a task which, based on the case law of the Court, belongs to the Applicant. The Court has consistently emphasized that the reasoning of other court decisions must be interpreted in the context and in light of the factual circumstances in which they were rendered (see, *inter alia* in this context the Judgment in Case KI48/18 of 4 February 2019, Applicants *Arban Abrashi and the Democratic League of Kosovo (LDK),* paragraph 275; and case KI 119/17, Applicant *Gentian Rexhepi*, Resolution on Inadmissibility, of 3 May 2019, paragraph 80). However, and regardless of the fact that the Applicant did not substantiate the connection of his case with that of KI99/14 and KI100/14, the Court emphasizes the fact that the relevant cases have no similarity and that the "*importance*" or "*urgency*" of the election of the Chief State Prosecutor and to whom the Applicant refers, in case KI99/14 and KI100/14 has been applied in the context of the assessment of the exhaustion of legal remedies which are not disputed in the circumstances of the present case (See paragraphs 50 to 54 of the Court case KI99/14 and KI100/14).

56. Therefore, in these circumstances, based on the foregoing and having regard to the allegations raised by the Applicant and the facts presented by him, the Court also based on the standards established in its own case law in similar cases and the case law of the ECtHR, finds that the Applicant does not prove and sufficiently substantiate his allegation of a violation of fundamental rights and freedoms with regard to the reasoned court decision, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

57. The Court further reiterates that, in principle, the "*fairness*"' required 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; KI118/18, Applicant *Eco Construction l.l.c,* cited above, paragraph 48; and KI49/19, cited above, paragraph 55).

58. This means that the parties should be afforded a conduct of procedure based on adversarial principle; to be able to adduce the arguments and evidence they consider relevant to their case at the various stages of those proceedings; that all the arguments, viewed objectively, relevant for the resolution of their case were heard and reviewed by the regular courts; that the factual and legal reasons against the challenged decisions were presented and examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in entirety, were fair (see, *inter alia*, case of the Court No. KI118/17, Applicant *Sani Kervan and Others*, Resolution on Inadmissibility of 16 February 2018, paragraph 35; see also *mutatis mutandis*, case *Garcia Ruiz v. Spain*, cited above, paragraph 29). The Court considers that, in the circumstances of the present case, the Applicant has not substantiated that this is not the case.

59. The Court finally reiterates that Article 31 of the Constitution, as well as Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Court to challenge the application of substantive law by the regular courts in a civil dispute, where often one of the parties wins and the other loses (See in this regard, cases of the Court KI118/17, cited above, paragraph 36; and KI142/15 Applicant: *Habib Makiqi*, Resolution on Inadmissibility of 1 November 2016, paragraph 43).

60. The Court finally notes that the dissatisfaction of the Applicant with the outcome of the proceedings by the regular courts and the KPC cannot of itself raise an argumentative allegation for the violation of the fundamental rights and freedoms guaranteed by the Constitution. (See, ECtHR case, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, among others, the case of the Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 20 December 2017, paragraph 42).

61. The Court also recalls that the Applicant alleges violations of Articles 24 and 54 of the Constitution. Regarding these allegations, the Court recalls its case law according to which the mere mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that cares for the respect of human rights and freedoms. (See, in this context, the cases of the Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning],* Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta,* Resolution on Inadmissibility of 8 October 2019, paragraphs 30-31).

62. Such a position of the Court is based on the case law of the ECtHR, on the basis of which, unreasoned allegations or complaints, which are not substantiated with arguments and evidence are declared inadmissible as manifestly ill-founded on constitutional basis. (See, the ECtHR Guide of 30 April 2019 on

Admissibility Criteria; Part I. Procedural Grounds for Inadmissibility; A. Manifestly ill-founded applications; 4. Unreasoned complaints: lack of evidence, paragraphs 280 to 283).

63. However, the Court regarding the allegations relating to (i) Article 24 of the Constitution, states that based on the case law of the ECtHR, in principle, in order for a case to be brought within the framework of Article 24 of the Constitution and Article 14 (Prohibition of discrimination) of the ECHR, there should be a difference in treatment between persons in similar or comparable situations. (See the ECtHR case, *X and others v. Austria,* Judgment of 19 February 2013, paragraph 98). Moreover, not every difference in treatment constitutes a violation of the abovementioned articles. In principle, the difference in treatment will be discriminatory if it lacks objective or reasonable justification; in other words, if it does not pursue a legitimate aim or if the reasonable relationship between the means employed and the aim sought is lacking (See the ECtHR case, *Guberina v. Croatia,* Judgment of 22 March 2016, paragraph 69 and other references stated therein). In the circumstances of the present case, the Applicant did not specify any claim regarding any difference in treatment and consequently did not justify or support his allegations of a violation of Article 24 of the Constitution; and (ii) Article 54 of the Constitution states that they are essentially the same as allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR and do not raise other issues that have not yet been considered by the Court. Consequently, in the circumstances of the present case, the Applicant did not specify any allegation regarding the violation of his right to judicial protection of rights and, consequently, did not reason or substantiate his allegations of violation of Article 54 of the Constitution.

64. In the circumstances of the present case, the Court considers that the Applicant did not accurately clarify the facts and allegations of violation of Articles 24 and 54 of the Constitution and, consequently, these allegations, in the wake of other allegations regarding Article 31 of the Constitution in conjunction with Article 6 of the ECHR and which have been elaborated and clarified above, must be declared inadmissible as manifestly ill-founded on constitutional basis, as established in paragraph 2 of Rule 39 of the Rules of Procedure.

65. Therefore, based on the above and taking into account the special characteristics of the case, the allegations raised by the Applicant and the facts presented by him, the Court, also based on the standards established in its case law in similar cases and the ECtHR case law, finds that the Applicant does not sufficiently substantiate and prove his claim of a violation of his fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Articles 24 and 54 of the Constitution.

66. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 11 March 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**

Gresa Caka-Nimani Arta Rama-Hajrizi

Kopje e vërtetuar
Overena kopija
Certified Copy

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