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

Prishtina, on 01 October 2020
Ref. no.: 1623/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI85/20

Applicant

Shpëtim Bokshi

Constitutional review of Decision Ac. No. 4273/19, of the Court of Appeals of Kosovo, of 5 February 2020

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 Shpëtim Bokshi from Gjakova, represented by Ylli Bokshi, a lawyer in Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Ac. No. 4273/19] of the Court of Appeals of Kosovo of 5 February 2020.

Subject matter

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

4. The Applicant requests the Court to impose an interim measure for the suspension of the challenged Decision.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and Article 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 3 June 2020, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 12 June 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzie Istrefi-Peci and Nexhmi Rexhepi (members).

8. On 22 June 2020, the Court notified the Applicant's legal representative about the registration of the Referral and requested him to submit the power of attorney to the Constitutional Court, as well as additional documents and information relating to the Referral.

9. On 30 June 2020, the Applicant's legal representative submitted the requested documents to the Court.

10. On 12 August 2020, a copy of the Referral was sent to the Court of Appeals of Kosovo (hereinafter: the Court of Appeals).

11. On 16 September 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

12. The Applicant conducted three various procedures before the public authorities of the Republic of Kosovo, namely: i) executive procedure, ii) criminal procedure and iii) procedure according to the claim for annulment of the ICMM Decision No. 3777, of 31 August 2017, and consequently the Court will present the factual situation in three separate parts.

i) Summary of facts related to the enforcement procedure

13. On 31 August 2017, the Independent Commission for Mines and Minerals (hereinafter ICMM) by Decision [No. 3777] imposed on the Applicant an administrative fine in the amount of € 9,693.86, for illegal use of mineral resources and conduct of illegal mining activity without possessing a mining license.

14. On 19 March 2019, at the request of the creditor - ICMM, Private Enforcement Agent Gëzim Gjoshi from Gjakova, by the Order [P. No. 114/2019] of 19 March 2019, ordered the enforcement against the Applicant based on the enforcement documents, namely Decision No. 3777, of 31 August 2017, of the ICMM, due to the enforcement of an administrative fine in the amount of € 9,693.86 as well as the costs of proceedings.

15. On an unspecified date, the Applicant filed an objection against the Order [P. No. 114/2019] of 19 March 2019, on the grounds that this case constitutes a litigation, as criminal proceedings are being conducted against the Applicant for the same case. Consequently, the Applicant's request was to repeal the Enforcement Order [P. No. 114/2019], as well as to abrogate all procedural actions.

16. On 12 July 2018, the ICMM, in its capacity as creditor, filed a response to the objection, stating that the Applicant's allegations are ungrounded and that they did not fall within the grounds set out in Article 71 [Reasons for Objections] of Law No. 04/L-139 on Enforcement Procedure, which can be challenged and proposed to the court to reject in its entirety as ungrounded the objection of the Applicant.

17. On 17 July 2019, the Basic Court in Gjakova - General Department - Civil Division (hereinafter: the Basic Court) by Decision [PPP. No. 119/2019]: (i) rejected as ungrounded the Applicant's objection against the Order [P. No. 114/2019] of Private Enforcement Agent Gëzim Gjoshi, of 19 March 2019; and (ii) upheld the Order [P. No. 114/2019] of the Private Enforcement Agent of 19 March 2019. In the reasoning of the Decision it is stated that after examining and reviewing the case file it was found that the objection of the Applicant is ungrounded, because there are no reasons provided by the provision of Article 71 of the Law on Enforcement Procedure, therefore, the Order on allowing the enforcement has an executive title. Finally, the Basic Court states that in the

present case the Applicant could have filed the same allegations in the administrative procedure against the Decision [No. 3777] of 31 July 2017 of the ICMM.

18. In its reasoning, the Basic Court, *inter alia*, stated the following:

> *"The court analyzed one by one the allegations of the debtor filed in the objection submitted against the order of the private enforcement agent and found that the debtor's allegations regarding the issue of litigation in this enforcement case is ungrounded. Since the Criminal Proceedings conducted against the accused Shpejtim Bokshi from Gjakova does not represent litigation, as the latter in criminal proceedings is being conducted for the criminal offence committed under Article 80 of the Law on Mines and Minerals and Article 49 of the Law on amending and supplementing the law on Mines and Minerals, while in the enforcement procedure a procedure for the enforcement of the enforcement document Decision no. 3777 dated 31.08.2017 is being conducted, which decision is final and enforceable and these procedures are divided among themselves."*

19. The Basic Court stated, *inter alia*, that the Applicant's allegations submitted through the objection do not fall within the scope of Article 71 of the Law on Contested Procedure, therefore the Order on allowing enforcement has an executive title. Finally, it states that in the present case the Applicant could have presented the same allegations in the administrative procedure against the Decision [no. 3777] of 31 July 2017 of the ICMM.

20. On an unspecified date, the Applicant files a complaint on the grounds of *essential violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law,* with the proposal that (i) the appeal be upheld as grounded and the challenged decision be quashed and the case be remanded to the first instance court for retrial, or that (ii) the enforcement order be dismissed as inadmissible and all enforcement actions be abrogated.

21. On 5 February 2020, the Court of Appeals by Decision [Ac. No. 4273/19] rejected as ungrounded the Applicant's appeal and upheld the Decision [PPP. No. 119/19] of 17 July 2019, of the Basic Court.

22. On 24 March 2020, the Applicant requests the Office of the Chief State Prosecutor to initiate the request for protection of legality against the Decision [Ac. No. 4273 / 19] of 5 February 2020, of the Court of Appeals.

23. On 22 April 2020, the Office of the Chief State Prosecutor by Notification [KMLC. No. 51 / 2020], notified the Applicant that the request for protection of legality was not approved. Also, in this letter it is stated that: *"We inform you that contested issues between the parties can be resolved in another legal procedure and not in the enforcement procedure."*

ii) Summary of facts related to criminal proceedings

24. On 26 December 2017, the Basic Prosecution in Gjakova filed an indictment [PP/II. No. 1319/17] against the Applicant due to reasonable suspicion that the Applicant had committed the criminal offense under Article 80 [Criminal Penalties for Illegal Mining Activities] of Law No. 03/L-163 on Mines and Minerals and Article 49 of Law No. 04/L-158 on Amending and Supplementing Law no. 03/L-163 on Mines and Minerals.

25. On 9 November 2018, the Basic Prosecution in Gjakova supplemented the Indictment [PP/II. No. 1319/17], which it had previously filed against the Applicant.

26. On 14 June 2019, the Basic Court in Gjakova-General Department by Judgment [P. No. 922/17] acquitted the Applicant of the charges, while the ICMM in the capacity of the injured party is instructed in a civil dispute for the realization of the property-legal claim.

iii) Summary of facts related to the procedure according to the lawsuit for annulment of Decision No. ICMM 3777, of 31 August 2017

27. On an unspecified date, the Applicant filed a lawsuit with the Department of Administrative Matters of the Basic Court in Gjakova, with the aim of annulling Decision No. ICMM 3777, of 31 August 2017, evidenced under the number [A. No. 1991/17].

28. On 8 April 2019, the Department for Administrative Matters of the Basic Court in Gjakova, based on the request of the Applicant, terminated the proceedings regarding this case, as the criminal proceedings were pending in the Basic Court in Gjakova. Consequently, as the criminal proceedings were presented as preliminary case and these two cases are interrelated, the Applicant proposed the termination of this procedure until the completion of the criminal proceedings in the Basic Court in Gjakova.

Applicant's allegations

29. In his Referral, the Applicant alleges that the challenged Decision violated his right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.

30. The Applicant considers that while by the Judgment [P. No. 922/17] of 14 June 2019 of the Basic Court he was acquitted of the charge, by analogy it results that the Decision [No. 3777] of 31 August 2017 of the ICMM, pursuant to sub-paragraph 1.2, paragraph 1, of Article 71 [Reasons for objections] of the Law on Enforcement Procedure, has lost its legal effect and as such may not have the effects of the enforcement title.

31. The Applicant further alleges that the Court of Appeals did not enter at all the assessment of his appealing allegations and that its Decision is totally unreasoned, namely the reasoning is generalized. Also, the Applicant further states that the reasoning of the decision states in entirety out of the context of

the present case as follows: (i) "*The first instance court, by deciding as in the enacting clause of the challenged decision, has correctly ascertained the fact that the final decision of the Labor Inspectorate in Prizren no. 376/18, of 12.09.2018… "*, while this issue had nothing to do with the Labor Inspectorate, nor with Prizren; (ii) while on page 3, the Applicant is referred to as the debtor, therefore, given that the debtor here is male, it is clear that the reasoning was copied from another case and is not relevant to the Applicant's case; and (iii) the Court of Appeals of Kosovo does not describe what were the allegations, what evidence was presented by the Applicant, and what impact they had on the decision.

32. In addition, the Applicant requested the imposition of an interim measure, as *"the execution of the fine causes irreparable damage to property and ownership as a result of the continuous violation of the right to a fair and impartial trial"*

33. Finally, the Applicant requests the Court that by Judgment (i) declares the Referral admissible; (ii) find that the Decision [Ac. No. 4273/19] of the Court of Appeals of 5 February 2020, is not in accordance with Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the ECHR.

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 31 [Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.

4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.

5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.

6. Free legal assistance shall be provided to those without sufficient

financial means if such assistance is necessary to ensure effective access to justice.

7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.

European Convention on Human Rights

Article 6 (Right to a fair trial)

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

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

LAW NO. 03/L-163 ON MINES AND MINERALS

Article 80
Criminal Penalties for Illegal Mining Activities

1. Any physical person who engages, or who encourages or employs others to engage, in mining or exploration activities and who does not hold a License or Permit from the ICMM shall be subject to the administrative fine provided for in paragraph 2, subparagraph 2.1, of Article 79 of this law and imprisonment for a period of up to six (6) months.

2. Any Undertaking that employs or encourages physical persons to engage in mining or exploration activities shall, if such Undertaking does not hold a License or Permit from the ICMM, be subject to the administrative fine provided for in paragraph 2, subparagraph 2.2, of Article 79 of this law. In addition, any senior manager of the Undertaking who knew – or in the exercise of reasonable managerial oversight and diligence – should have known of such mining or exploration activities, shall be subject to the criminal and administrative penalties specified in paragraph 1 of this article.

LAW No. 04/L-158 ON AMENDING AND SUPPLEMNTING THE LAW No.03/L-163 ON MINES AND MINERALS

Article 49

Article 80 of the basic law, paragraph 1., after the word „minerals" the phrase „permits for special activities" shall be added".

LAW NO. 04/L-139 ON ENFORCEMENT PROCEDURE

Article 71
Reasons for objection

1. Objection under article 69 of this Law may be based only on findings that:
1.1. the document, based on which the enforcement decision or enforcement writ has been issued, does not have an executive title, or if it does not have any feature of enforceability;
1.2. the enforcement, based on which the enforcement decision or enforcement writ has been issued, is overruled, annulled, amended or in other way invalidated, respectively if in other way has lost its effect or it is concluded that it is without legal effect;
1.3. parties, through the public document or certified document according to the law drafted after the creation of enforcement document, have agreed not to require, for a limited time or permanently, the enforcement based on enforcement document;
1.4. deadline by when, according to the law the enforcement may be requested, has expired;
1.5. the enforcement is assigned for items which are excluded from compulsory enforcement, and as a result of that exclusion the possibilities for enforcement are limited;
1.6. enforcement creditor is not authorized to request enforcement on the basis of enforcement document, respectively he is not authorized to request the enforcement against the debtor;
1.7. the condition given in the enforcement document has not been met, unless otherwise foreseen by the law;
1.8. the credit ceases to exist as a result of a fact that occurred at a time when debtor could no longer submit evidence of such fact in the procedure from which the decision has derived, that is, after the conclusion or a court settlement or an administrative settlement or in some other way; 1.9. the settlement of the credit is postponed, prohibited, altered, or in some other

way prevented, whether permanently or for a limited time, as the result of an event that occurred at a time when the enforcement debtor could no longer made it known in the procedure rendering the decision, that is, after the conclusion of a court or administrative settlement or in some other way;
1.10. the claim from the enforcement document is barred by a statute of limitations;
1.11. if the court that issued the enforcement decision is not competent;
1.12. if the private enforcement agent who issued the enforcement writ is not competent.

Admissibility of the Referral

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

35. 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."

36. The Court also examines whether the Applicant has fulfilled the admissibility requirements, which are further prescribed in the Law. In this regard, the Court first refers to Article 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... ."*

37. With regard to the fulfillment of these requirements, the Court first notes that the Applicant does not challenge the outcome of the criminal proceedings and the proceedings under the lawsuit for annulment of Decision No. 3777 of the ICMM, of 31 August 2017, therefore, the Court will not enter the assessment of the constitutionality of these proceedings.

38. The Court further notes that the Applicant challenges the constitutionality of the enforcement procedure and with regard to this procedure, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely the Decision [Ac. No. 4273/19] of the Court of Appeals of 5 February 2020, after having exhausted all legal remedies. The Applicant also clarified the rights and freedoms that he claims to have been violated, in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

39. However, in assessing the admissibility of the Referral, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria 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:

> *"(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".*

40. In light of this normative background, the Court notes that in the circumstances of the present case, the Applicant tries to impose as substantial issue the fact that by the Judgment [P. No. 922/17] of 14 June 2019 of the Basic Court in Gjakova he was acquitted of the charge in the criminal case that the enforcement of the ICMM administrative fine has lost its legal effect and as such, in accordance with Article 71 paragraph 1 subparagraph 1.2 of the LEP, *"it is without legal effect".*

41. In this regard, the Applicant alleges that the challenged Decision violates his fundamental rights and freedoms guaranteed by Article 31 of the Constitution, and Article 6 of the ECHR, where he mainly states that the Court of Appeals has not sufficiently reasoned its decision and made arbitrary legal interpretations.

42. 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.

43. 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.

44. In this regard, the Court will consider whether the Applicant's allegations of lack of a reasoned court decision, pertaining to Decision [Ac. No. 4273/19] of 5 February 2020 of the Court of Appeals, are in accordance with procedural guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR.

45. The Court recalls that in the Judgment [PPP. No. 119/2019] of 17 July 2019, of the Basic Court, regarding the Applicant's allegation that the ICMM administrative fine has lost its legal effect and as such, in accordance wirth Article 71 paragraph 1 subparagraph 1.2 of the LEP, *"cannot have the effect of the enforcement title",* the Basic Court states the following*: "The court analyzed one by one the allegations of the debtor filed in the objection submitted against the order of the private enforcement agent and found that the debtor's allegations regarding the issue of litigation in this enforcement case is ungrounded. Since the Criminal Proceedings conducted against the accused Shpejtim Bokshi from Gjakova does not represent litigation, as the latter in criminal proceedings is being conducted for the criminal offence committed under Article 80 of the Law on Mines and Minerals and Article 49 of the Law on amending and supplementing the law on Mines and Minerals, while in the enforcement procedure a procedure for the enforcement of the enforcement document Decision no. 3777 dated 31.08.2017 is being conducted, which decision is final and enforceable and these procedures are divided among themselves".*

46. The Basic Court stated, *inter alia*, that the Applicant's allegations submitted through the objection do not fall within the scope of Article 71 of the Law on

Contested Procedure, therefore the Enforcement Order has an executive title. Finally, it states that in the present case the Applicant could have presented the same allegations in the administrative procedure against the Decision [No. 3777] of 31 July 2017 of the ICMM.

47. The Court notes that the Court of Appeals, by Decision [Ac. No. 4273/19] of 5 February 2020, also dealt with the above-mentioned allegation of the Applicant, finding the following::

> *"The appealing allegations that the court has made an erroneous finding of the factual situation do not stand, as for these violations the debtor in the appeal mostly referred to the learning in the administrative procedure about the decision (executive title), because the latter cannot be examined in this case, since we are now in the enforcement procedure and these allegations of the debtor cannot be subject to review by the court, much less now at the stage of appeal. Also the appealing allegation regarding the inadequacy of the enforcement document for enforcement is also ungrounded, because the enforcement document is clear and consequently enforceable, where in the latter it is precisely described the debtor's obligation, with content as in the enacting clause of the enforceable decision.*
> *Examining the appealed decision in relation to all the appealing allegations, the Court of Appeals found that they are ungrounded. Article 71 of the LEP, provides the reasons which would make the objection filed against the decision to allow enforcement grounded, therefore given that in the present case there is no reasons provided in the abovementioned articles, the court of the first instance has rightly decided when it has rejected the debtor's objection as ungrounded".*

48. The Court also notes that the Applicant's allegation that the challenged Decision contains a reference to *"The final decision of the Labor Inspectorate in Prizren No.376/18, of 12.09.2018 on the basis of which the enforcement body has assigned the enforcement, is an enforcement document",* but from the context and content of the challenged Decision it can be clearly concluded that it is a technical error, because from the context of the Decision as a whole it can be seen that the Decision of the Court of Appeals refers to the Applicant, as the whole history of the case is presented in the Decision itself, as well as clear explanations regarding the Applicant.

49. Therefore, regarding only this allegation of the Applicant, the Court finds that this Decision of the Court of Appeals, despite this technical error in the reference, in its reasoning does not contain flaws that affect its constitutionality. (See in this context, the case of Court KI41/19, Applicant: *Ramadan Koçinaj*, Resolution on Inadmissibility of 7 February 2020).

50. 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).

51. 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, Applicant *L. G. and five others*, Resolution on Inadmissibility of 18 December 2017, paragraph 38; KI122/16, *Riza Dembogaj*, Judgment of 6 June 2018, paragraph 58).

52. Therefore, the Court considers that the regular 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.

53. With regard to the Applicant's allegation that the Court of Appeals has made erroneous legal interpretations and violated the principle of legality, 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 ECtHR case: *García Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 28).

54. 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 the ECtHR case *Anheuser-Busch Inc. v. Portugal,* application no. 73049/01, Judgment of 11 January 2007, paragraph 83).

55. 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 Court of Appeals and the first 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.

56. 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 the ECtHR case: *Shub v Lithuania*, application no. 17064/06, Judgment of 30 June 2009).

57. In this regard, the Court considers it necessary to emphasize the principled position that "that the "*fairness*"' which is 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; KI49/19, Applicant *Limak Kosovo International Airport J.S.C., "Adem Jashari"*, Resolution on Inadmissibility of 10 October 2019, paragraph 55).

58. 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, Applicant *Limak Kosovo International Airport J.S.C.*, paragraph 54; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility of 19 December 2019, paragraph 48).

59. The Court at the end emphasizes that the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim for violation of the constitutional rights (see the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

60. 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 Decision the rights and freedoms guaranteed by Article 31 of the Constitution and Article 6 of the ECHR have been violated.

61. In conclusion, the Court considers that the Referral is inadmissible, because the Applicant does not prove or sufficiently substantiate his allegation of a violation of the rights guaranteed by the Constitution and the Convention. Therefore, this 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.

Request for interim measure

62. The Court recalls that the Applicant requested the imposition of the interim measure, as *"the execution of the fine causes irreparable damage to property*

and ownership as a result of the continuous violation of the right to a fair and impartial trial".

63. The Court has now concluded that the Applicant's Referral is to be declared inadmissible on constitutional basis.

64. Therefore, in accordance with paragraph 1 of Article 27 (Interim Measures) of the Law and item a) of paragraph 4 of Rule 57 (Decision on Interim Measures) of the Rules of Procedure, the Applicant's request for interim measure is to be rejected, because the latter cannot be the subject of review, as the referral is declared inadmissible (See, in this regard, the cases of the Court: KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility of 21 April 2020, paragraphs 88-90; KI159/18, Applicant *Azem Duraku*, Resolution on Inadmissibility of 6 May 2019, paragraphs 89-91; KI19/19 and KI20/19, Applicants *Muhamed Thaqi and Egzon Keka,* Resolution on Inadmissibility of 29 July 2019, paragraphs 53- 55).

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.1 and 113.7 of the Constitution, Article 20 and 27 of the Law and Rule 39 (2), 57 and 59 (2) of the Rules of Procedure, on 16 September 2020, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

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

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Radomir Laban Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.