



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

Prishtina, on 28 December 2020
Ref.No:RK 1672/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI138/19

Applicant

Ibish Rraci

Constitutional review of Judgment AA. No. 506/2018 of the Court of Appeals of 16 April 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
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 Ibish Rraci (hereinafter: the Applicant), residing in Klina, who is represented by Law Firm "Sejdiu & Qerkini".

Challenged decision

2. The Applicant challenges the constitutionality of Judgment AA. No. 31/2019 of the Court of Appeals of 16 April 2019, which was served on him on 10 May 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, whereby the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6.1 of the European Convention on Human Rights (hereinafter: the ECHR) have been violated.

Legal basis

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

Proceedings before the Constitutional Court

5. On 4 September 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 September 2019, the President of the Court appointed Judge Selvete Gërzhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
7. On 24 September 2019, the Court notified the Applicant about the registration of the Referral and requested additional documentation from him. On the same date, the Basic Court was requested to provide an acknowledgment of receipt as evidence for the receipt of the challenged Judgment of the Court of Appeals. A copy of the Referral was sent to the latter, in accordance with the law.
8. On 27 September 2019, the Basic Court in Prishtina notified the Court that the challenged Judgment was served on the Applicant on 10 May 2019.
9. On 21 October 2019, Judge Bekim Sejdiu, pursuant to Article 18.1 (1,2) of the Law and Rule (9) of the Rules of Procedure, requested the President of the Court to exclude him from all stages of the review and decision-making of case KI138/19, due to conflict of interest. On 22 October 2019, the President of the Court approved his request, in accordance with the abovementioned provisions of the Law and of the Rules of Procedure.
10. On 27 November 2019, the Review Panel proposed that the review of the Referral be postponed for supplementation with additional information.

11. On 2 December 2019, the Court requested the Basic Court in Prishtina the complete case file.
12. On 4 December 2019, the Basic Court in Prishtina submitted to the Court the complete case file.
13. On 10 November 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously rejected the admissibility and merits of the Referral, and recommended to the full Court to declare the Referral inadmissible, as manifestly ill-founded.

Summary of facts

Administrative procedure

14. Based on the case file, the Court notes that the Applicant is a pensioner who was an education worker in Kosovo for 41 (forty one) years. The Applicant, in addition to the age contribution-payer pension, also realized personal income from the war invalid pension. This fact has subsequently raised dispute between him and the relevant authorities.
15. On 15 September 2016, the Ministry of Labor and Social Welfare - Department of Pensions (hereinafter: MLSW), decided to terminate the age contribution-payer pension, on the grounds that the Applicant was a beneficiary of the war invalid pension, and according to Law No. 04/L-131 on Pension Schemes Financed by the State, cannot be a beneficiary of two pension schemes simultaneously.
16. On an unspecified date, the Applicant filed a complaint with the second instance of MLSW, against the decision of the first instance of MLSW of 15 September 2016, due to lack of reasoning of the decision and violation of his rights protected by the Constitution and international instruments.
17. On 18 December 2016, the second instance of MLSW rejected as ungrounded the Applicant's complaint, by reasoning that pursuant to Article 16 of Law No. 04/L-131 on Pension Schemes Financed by the State, "*the persons who are beneficiaries of any pension of pension Schemes defined with this Law, in no circumstance, can be the beneficiaries of any pension from special pension schemes*".

Court proceedings (administrative conflict)

18. On 25 May 2017, the Applicant filed a statement of claim with the Basic Court in Prishtina, requesting the annulment of the decision of the MLSW, of 15 September 2016, for the following reasons:

"I consider that this decision is unfair, because it violates my constitutional rights, namely: the right to a reasoned decision (Article 31 of the Constitution of the Republic of Kosovo); the right to property (Article 46 of the Constitution of the Republic of Kosovo); the right to non-

discrimination (Articles 3 and 24 of the Constitution of the Republic of Kosovo).

“Denial of the right to enjoy one of these pensions, in this case that of the contribution-paying pension as well as that of old age, deprives me of a legitimate expectation of financial income - which is a fundamental element of property rights.

Furthermore, I consider that this legal situation puts me in an unequal position, namely discriminates me against in relation to other citizens of the Republic of Kosovo. This discriminatory treatment extends in two directions; First, I am discriminated against compared to other citizens of the Republic of Kosovo who continue to benefit from both pension schemes in question. Secondly, this decision, namely this treatment by the Government of the Republic of Kosovo, puts me in a discriminatory position by other state officials of the Republic of Kosovo who continue to receive personal income from two or more contracts/jobs, which as a financial source they have the budget of the Republic of Kosovo ... It is a generally accepted standard that unequal treatment of individuals, in the same circumstances, without any objective reason and without any proportionate measure, constitutes discrimination. Prohibition of discrimination is one of the basic norms of the Constitution of the Republic of Kosovo (Articles 3 and 24).

Based on these facts, by this lawsuit I request the Basic Court in Prishtina-Department for Administrative Matters to annul the decision of the Ministerial Commission for my case, of 28.12.2016, because that decision is not reasoned in a sufficient manner and in accordance with the right to a reasoned decision, guaranteed by Article 31 of the Constitution.

If the Basic Court does not find reasonable the approval of my request for annulment of the abovementioned decision, I request this Court to assess the constitutionality of Law No. 04/L-131 and to refer it to the Constitutional Court to declare it unconstitutional, because it violates the right to non-discrimination (Articles 3 and 24 of the Constitution)”.

19. On 26 November 2018, the Basic Court in Prishtina, Department for Administrative Matters, by Judgment A. No. 829/2017, rejected as ungrounded the statement of claim of the Applicant and confirmed the legality of the decision of MLSW, of 15 September 2016, reasoning that:

“...the challenged decision is fair and based on law and that the responding body has correctly applied the provisions of the Law on Administrative Procedure, has correctly determined the factual situation and has correctly applied the substantive law. For these reasons, the claimant’s statement of claim was not approved, because it considers that the law has not been violated to his detriment.”

20. On 14 December 2018, the Applicant filed an appeal with the Court of Appeals, alleging that:

“...The Basic Court has completely ignored my basic claim, dealing only with the way the MLSW has implemented the Law in question. Therefore, instead of assessing the constitutionality of the Law in question, in particular Article 16 thereof, or sending this to the Constitutional Court, ... This constitutes a violation of the right to fair and impartial trial, which is guaranteed by Article 31 of the Constitution of the Republic of Kosovo, due to the fact that a decision which does not address at all the main claim of the lawsuit cannot be a fair decision in the constitutional sense. For these reasons, I request the Court of Appeals to approve my appeal and annul the decision of the Basic Court”.

21. On 16 April 2019, the Court of Appeals, by Judgment AA. No. 506/2018, rejected as ungrounded the Applicant’s appeal and upheld the Judgment of the first instance court. The Court of Appeals, against the Applicant’s allegation raised in the appeal that the Basic Court in Prishtina has violated Article 31 of the Constitution, for the fact that it did not address at all his main claim, regarding the unconstitutionality of Article 16 of Law No. 04/L-131 on Pension Schemes Financed by the State, reasoned as follows:

“...the panel of this court finds that these allegations are ungrounded due to the fact that the first instance court in reviewing the lawsuit of the claimant presented sufficient evidence which proves that the allegations of the claimant are ungrounded, because they are contrary to the factual situation determined by the first instance court and contrary to the evidence in the case file, as the judgment of the first instance court is in accordance with legal provisions”.

Applicant’s allegations

22. The Applicant alleges that the challenged Judgment of the Court of Appeals violates his rights guaranteed by Article 31 of the Constitution, namely the right of access to a court and a reasoned court decision, because the regular courts did not address his substantive allegation of the constitutionality of Article 16 of Law No. 04/L-131 on Pension Schemes Financed by the State, claiming that this Article is contrary to Articles 3, 24 and 46 of the Constitution.
23. The Applicant, regarding the right to exercise the request for constitutional review of Article 16 of the Law on Pension Schemes Financed by the State, through incidental control of constitutionality, reasons as follows:

“...Article 113.8 [Jurisdiction and Authorized Parties], provides as follows: “The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court’s decision on that case depends on the compatibility of the law at issue.

The Law on the Constitutional Court has regulated this issue in more detail, providing in the Article, I quote: “A referral pursuant to Article 113, Paragraph 8 of the Constitution shall be filed by a court only if the

contested law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court. 2. A referral shall specify which provisions of the law are considered incompatible with the Constitution”.

(...)

24. As to the importance of examining the Applicant's allegation that the adjudication of the merits of his case depended on the constitutional review of the norm, he argues:

“...I have raised both in the Basic Court and in the Court of Appeals the issue of unconstitutionality of Article 16 of Law No. 04/L-131, on Pension Schemes Financed by the State. I have argued that this article is unconstitutional, because it causes inequality between categories of beneficiaries of the public budget (pensioners), in relation to other public servants of the Republic of Kosovo. It is also very obvious that the trial of my case depends on the constitutionality of the challenged law”.

25. With regard to the non-reasoning of court decisions by the regular courts, the Applicant reasons, as follows:

“The Basic Court and the Court of Appeals have violated my right guaranteed by Article 31 of the Constitution of Kosovo and Article 6 of the European Convention on Human Rights, namely the right to a fair and impartial trial. This is due to the fact that these courts in their decisions have not addressed at all my main claim against the constitutionality of Article 16 of Law No. 04/L-131 on Pension Schemes Financed by State. These courts have neither reasoned that the law in question is constitutional nor have they referred the case to the Constitutional Court, as obliged by the Constitution. They have without any reason avoided addressing the main issue raised by me, both in the statement of claim filed in the Basic Court and in the appeal filed in the Court of Appeals.

The Court of Appeals, by its Judgment, approved a decision of the Basic Court which was taken referring to a completely erroneous legal basis. I do not challenge that the courts have correctly determined the factual situation, when they have proved that I am a contribution-payer pensioner (as a teacher for more than 4 decades), a veteran and war invalid and that according to the Law in question, I cannot take advantage of all pension schemes. But, what I have raised as a major issue throughout the trial, in the first and second instance, is the violation of my constitutional rights by Article 16 of that Law, because that article is unconstitutional”.

26. In this regard, the Applicant further states that:

“Failure to review my main argument explicitly submitted to the Basic Court and the Court of Appeals renders the decisions in question inconsistent with the standard of a fair and impartial trial guaranteed by

Article 31 of the Constitution of Kosovo and Article 6 of the European Convention on Human Rights.

Based on the interpretations of the Constitutional Court of the Republic of Kosovo and the European Court of Human Rights, the standard of fair and impartial trial requires the courts to reason their decisions. Reasoning of decisions is a fundamental element of a fair trial. As the European Court of Human Rights has pointed out in case H. v. Belgium (1987), a reasoned court decision shows the parties that their case has been duly examined”.

27. The Applicant bases his allegations of non-reasoning of the court decision on the case law of the Constitutional Court and the ECtHR, arguing that:

“While the Constitutional Court of Kosovo, in its Judgment in case KI135/14 (IKK Classic) reasoned that “Although the courts are not obliged to address all claims submitted by the Applicants - they must however - address claims that are central to their cases and which are raised in all stages of the proceedings. The Court reiterates that the right to obtain a court decision in conformity with the law includes the obligation for the courts to provide reasons for their rulings with reasonable grounds at both procedural and substantive level”. The Constitutional Court has reiterated in other decisions that the standard of a reasoned decision, in accordance with the case law of the ECtHR, also requires that a national court which has given sparse reasons for its decisions did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court (case Helle v. Finland, 19 December 1997). In addition, the Court refers to its case law where it determines that the justification of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on the one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them. (the Constitutional Court, cases: No. K172/12, Veton Berisha and Ilfete Haziri, Judgment of 17 December 2012, paragraph 61; no. KI35/14, IKK Classic, Judgment of 9 February 2016, paragraph 58, and KI96/16 IKK Classic, Judgment of 8 December 2017).”

28. In sum, the Applicant alleges that:

“...The Basic Court in its decision in my case has totally ignored and without any explanation the essence of my lawsuit, which is related to the unconstitutionality of Law No. 04/L-131 on Pension Schemes Financed by State (Article 16). The Court of Appeals did not correct this violation of the Basic Court, but upheld the decision of the lower court, ignoring my main claim filed in the appeal. Consequently, this rendered the Judgment of the Court of Appeals unconstitutional because it dealt with a violation of the principle of reasoned decision as an integral element of the constitutional

right to a fair and impartial trial, guaranteed by Article 31 of the Constitution.

The Court of Appeals has not taken any legal position on whether the challenged norm in terms of its constitutionality is really unconstitutional, thus denying the Applicants the right of access to a court which should not only be formal but should also be substantial”.

29. Finally, the Applicant requests the Court:

“To declare the Applicant’s Referral admissible; To hold a violation of the Applicant’s individual rights guaranteed by Article 31 of the Constitution of the Republic of Kosovo, Article 6 of the European Convention, as a result of violations by the Court of Appeals of a number of rights guaranteed to the Applicant by these instruments and the Law on Contested Procedure; to declare the Judgment of the Court of Appeals challenged by this Referral invalid; To order the remand of the case for retrial. To determine any other legal measure that this honorable Court deems to be legally grounded and reasonable”.

Admissibility of the Referral

30. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.

31. 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.

[...].”

32. The Court also examines whether the Applicant has fulfilled the admissibility requirements as required by 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...”.

33. With regard to the fulfillment of the abovementioned criteria, the Court finds that the Applicant is an authorized party; has exhausted the available legal remedies; has clarified the act of the public authority, which constitutionality he challenges and the constitutional rights which he claims to have been violated, as well as has submitted the referral in time.
34. However, in addition, the Court examines whether the Applicant also met the admissibility criteria set out in Rule 39 [Admissibility Criteria], subparagraph (2) of Rule 39 of the Rules of Procedure, which establishes:
- 2) *“The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*
35. The Court first recalls that Article 53 of the Constitution obliges the Constitutional Court that: *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”.*
36. The Court notes that the Applicant alleges that the judgments of the regular courts violate his rights guaranteed by Article 31 of the Constitution, in conjunction with Article 6.1 of the Convention, due to the failure to address his allegation of unconstitutionality of Article 16 of Law No. 04/L-131 on Pension Schemes Financed by State, with Articles 3, 24 and 46 of the Constitution.
37. Based on the case file, the Court notes that the Applicant does not request the Court to assess the compatibility with the Constitution of Article 16 of Law No. 04/L-131 on Pension Schemes Financed by State with Articles 24 and 46 of the Constitution, but to find a violation of his rights to a fair trial, guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR, due to failure to address his allegation regarding the unconstitutionality of the norm of the aforementioned law.

38. Therefore, in the circumstances of this case, the Court will assess whether the Applicant's allegation regarding the unconstitutionality of Article 16 of Law No. 04/L-131, was addressed by the regular courts in accordance with the right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6.1 of the Convention.
39. In this regard, the Court recalls that Article 31 of the Constitution and Article 6.1 of the ECHR establish:

Article 31 [Right to Fair and Impartial Trial] of the Constitution

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

Article 6.1 [Right to a fair trial] of the Convention

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.”*

General principles on the right to a reasoned decision developed by ECtHR case law

40. The Court recalls, first of all, that the guarantees contained in Article 6 paragraph 1 of the Convention include the obligation of the courts to provide reasoning for their decisions. The reasoned court decision, shows to the parties, that their case has really been examined (see Judgment of the ECtHR *H. v. Belgium*, application 8950/80, paragraph 53, of 30 November 1987).
41. The Court also states that, according to the ECtHR case law, Article 6 paragraph 1 obliges the courts to give reasons for their decision, but this cannot be understood as requiring a detailed answer to every argument (see ECtHR cases *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, paragraph 26, *Jahnke and Lenoble v. France*, paragraph 81).
42. In this regard, the Court adds that the domestic court has a certain margin of appreciation when choosing arguments and admitting evidence, but it is also obliged to justify its proceedings by giving reasons for its decisions (see ECtHR Judgment *Suominen v. Finland*, Application 37801/97, of 1 July 2003, paragraph 36).
43. The Court also states that, in accordance with the ECtHR case law, when examining whether the reasoning of a court decision meets the standards of the

right to a fair trial, the circumstances of the particular case should be taken into account. The court decision cannot be without any reasoning, nor will the reasoning be unclear. This applies in particular to the reasoning of the court decision deciding upon the legal remedy in which the legal position presented in the lower instance court decision has been changed (see: case of ECtHR *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, paragraph 61).

44. The Court wishes to emphasize that the notion of a fair procedure, according to the ECtHR case law, requires that a national court which has given sparse reasons for its decisions, did in fact address the essential issues, which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court. This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings. (See ECtHR Judgment *Helle v. Finland*, application 157/1996/776/977, of 19 December 1997, paragraph 60).
45. In addition, the Court refers to its case law where it is established that the reasoning of the decision must state the relationship between the merit findings and reflections when considering the proposed evidence on the one hand, and the legal conclusions of the court on the other. A judgment of a court will violate the constitutional principle of a ban on arbitrariness in decision making, if the justification given fails to contain the established facts, the legal provisions and the logical relationship between them (the Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; br. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58, and KI96/16 *IKK Classic* Judgment of 8 December 2017).

Application of the abovementioned principles to the right to a reasoned decision on this case

46. The Court recalls that when reviewing the allegations of a violation of the right to fair and impartial trial, the Court assesses whether the proceedings in its entirety were fair and impartial, as required by Article 31 of the Constitution and Article 6.1 of the ECHR (see, *inter alia*, *mutatis mutandis*, *Edwards v. United Kingdom*, 16 December 1992, p 34, Series A No. 247, and *B. Vidal v. Belgium*, 22 April 1992, p. 33, Series A. no. 235).
47. In this regard, the Court notes that the Applicant initially raised the allegation of unconstitutionality of Article 16 of Law No. 04/L-131 on Pension Schemes Financed by State, before the Basic Court in Prishtina, which by Judgment A. No. 829/2017, of 26 October 2018 rejected his statement of claim as ungrounded, with the reasoning:

“From these circumstances, the court finds that the challenged decision is fair and based on law and that the responding body has correctly applied the provisions of the Law on Administrative Procedure, has correctly determined the factual situation and has correctly applied the substantive law. For these reasons, the claimant’s statement of claim was not approved, because it considers that the law has not been violated to his detriment”.

48. The Court further notes that the Court of Appeals, in the challenged Judgment AA. No. 506/2018, of 16 April 2019, reasoned:

“...this court considers that the conclusion and the position of the first instance court is fair and lawful, because it considers that the factual situation has been correctly and completely determined, because the law has not been violated to the detriment of the claimant. Therefore, the appealing allegations that in this case the right to fair and impartial trial, which is guaranteed by Article 31 of the Constitution of the Republic of Kosovo, has been violated, due to the fact that a decision which does not address the main allegation of the lawsuit at all, cannot to be a fair decision, this panel did not approve, because it assessed that they are ungrounded and unsubstantiated to approve the complaint”.

49. In this regard, the Court considers that the Court of Appeals has responded to the Applicant’s allegation regarding the violation of the rights guaranteed by Article 31 of the Constitution, stating that such an allegation of the Applicant is ungrounded for the reason that the latter was not supported and substantiated in a convincing manner. The Court further considers that the Applicant had sufficient opportunity to present to the Court of Appeals all allegations of violation of his rights. Moreover, his arguments have been duly heard and duly examined by the Court of Appeals.
50. 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*, Resolution on Inadmissibility of 10 September 2019, paragraph 48; and KI49/19, Applicant: *Limak Kosovo International Airport J.S.C.*, “*Adem Jashari*”, Resolution on Inadmissibility of 8 January 2020, paragraph 55).
51. The Court 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 Court to challenge the application of substantive law by the regular courts of a civil dispute, where often one of the parties wins and the other loses (See in this regard, cases of the Court KI118/17, *Şani Kervan and others*, Resolution on Inadmissibility, paragraph 36; and KI142/15 Applicant: *Habib Makiqi*, Resolution on Inadmissibility of 1 November 2016, paragraph 43).
52. The Court has consistently reiterated that it is not its task to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court

would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction.

53. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, ECtHR case *Perlala v. Greece*, paragraph 25 and *Khan v. the United Kingdom*, paragraph 34, and see, also, cases: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011; and KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 41). The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments.
54. In this regard, the Court notes that the Applicant is merely dissatisfied with the outcome of the proceedings by the regular courts, so his dissatisfaction cannot in itself raise a substantiated allegation of a violation of the fundamental rights and freedoms guaranteed by the Constitution (See, the case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).
55. Therefore, the Court notes that the proceedings before the Court of Appeals, viewed in their entirety, were not in any way unfair or arbitrary which would have rendered the proceedings irregular within the meaning of Article 31 of the Constitution and Article 6.1 of the ECHR (see the case of the ECtHR *Shub v. Lithuania*, No. 17064/06, Judgment of 30 June 2009).
56. In this context, the Court finds that the Applicant’s Referral should be declared inadmissible as manifestly ill-founded, as the Applicant has not substantiated on constitutional basis his allegation of a violation of his rights guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR.
57. Therefore, the Applicant’s Referral is declared inadmissible as manifestly ill-founded on constitutional basis, in accordance with 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 10 November 2020, by majority of votes:

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

Kopje e vërtetuar
Overena kopija

Selvete Gërxhaliu-Krasniqi **Certified Copy** Arta Rama-Hajrizi

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