



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 28 December 2020

Ref. no.:AGJ 1677/20

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case No. KI224/19

Applicant

Islam Krasniqi

**Constitutional review
of Decision AC-I-19-0114 of the Appellate Panel of the Special Chamber of
the Supreme Court on the Privatization Agency of Kosovo Related
Matters of 19 September 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 is submitted by Islam Krasniqi, residing in the village of Grashtica, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision AC-I-19-0114 of the Appellate Panel of the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters, of 19 September 2019 (hereinafter: the Appellate Panel of the SCSC).

Subject matter

3. The subject matter is the constitutional review of the challenged Decision AC-I-19-0114, of the Appellate Panel of the SCSC, which allegedly violates the Applicant's rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

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 13 December 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 December 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
7. On 20 January 2020, the Court notified the Applicant about the registration of the Referral KI224/19. On the same date, a copy of the Referral was submitted to the Appellate Panel of the SCSC.
8. On 21 October 2020, the Court requested additional information from the Appellate Panel of the SCSC regarding the Applicant's allegations.
9. On 23 October 2020, the SCSC submitted its response to the Court, stating that: *"...after checking the file of the first instance C-III-14-0151, it was found that the complainant on 08 August 2019, submitted to the SCSC a request form for exemption from payment of court fees, the request for exemption from court fees dated 11.07.2019, together with the decision of the Agency for Free Legal Aid, A. No. 133/19-01 of 11.05.2019, but that these documents from the registration office were incorrectly entered in the file of first instance, C-III-14-0151, and these documents were not noticed by the Appellate Panel when reviewing the complainant's complaint"*.

10. On 10 December 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously/with majority recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 16 June 2017, the Applicant submitted a proposal to the SCSC for the issuance of the preliminary injunction against SOE "Urata" requesting a ban on the sale or alienation, by the Privatization Agency of Kosovo (hereinafter: the PAK), of the superstructure (residential building) located above the business premises no. 98, with a surface area of 111 m² (square meters), "Edmond Hoxha" Street - Prishtina, claiming that the latter is his private property, which was used for the residential building by the person Sh.R.P, and was subsequently purchased from him in 2002 in the amount of 15,000 (fifteen thousand) euro.
12. On 18 July 2019, the judge of the Specialized Panel of the SCSC forwarded the Applicant's submission of 16 June 2017 to the Privatization Agency of Kosovo. On the same day, the Applicant was sent the order to file a lawsuit with this panel.
13. On 25 July 2017, the PAK, in the Specialized Panel of the SCSC, submitted its response, proposing that the proposal for the issuance of the order be rejected as ungrounded, within the meaning of Article 399.2 of the LCP, because the latter is contrary to Article 27.2.4 of the Annex to the SCSC Law.
14. On 4 July 2019, the Specialized Panel of the SCSC, by Decision C-III-17-0151, rejected as inadmissible the Applicant's submission for the issuance of a preliminary injunction (interim measure), reasoning that the document regarding a preliminary injunction should be submitted together with the lawsuit, or if such a request is submitted after the submission of a request, then it should refer to the same request, concluding that in this case no lawsuit was filed.
15. On 26 July 2019, the Applicant filed an appeal with the Appellate Panel of the SCSC against the Decision of the Specialized Panel of the SCSC of 4 July 2019, proposing that the Decision be quashed and the case be remanded for retrial, or return his right to file lawsuit, as the postal service and the court couriers are responsible for failing to deliver the order of the SCSC Specialized Panel of 18 July 2017 to his address. Further, the Applicant by the complaint reasoned that the panel in question had wrong approach when rendering decision on his request, because he did not request the prohibition of the sale of premises no. 98 with a surface area of 111 m², which is owned by the SOE "Urata" in Prishtina, located on "Edmond Hoxha" Street but requested the ban on the sale of the superstructure built before the war above the premise no. 98.
16. On 29 July 2019, the Appellate Panel of the SCSC, by a letter/order requested the Applicant to pay the court fee in the amount of 100 euro within 15 days, or to submit a request for tax exemption, if he met the legal requirements.

17. On 8 August 2019, the Applicant submitted again to the SCSC, the request for exemption from the court fees and Decision A. No. 133/19-01 of the Agency for Free Legal Aid, as evidence that he meets the requirements for exemption from court fees.
18. On 19 September 2019, the SCSC Appellate Panel considered the Applicant's appeal withdrawn, arguing that the Applicant had not paid the court fee, according to the order of 29 July 2019, nor had he filed a request for tax exemption. Furthermore, in a relevant part of the reasoning of the Decision of the Appellate Panel it is emphasized:

“After the appellant has not paid the court fee as requested by him by the notice (remark) of 29 July 2019, which was submitted to the appellant on 13 August 2019, and has not submitted a request for exemption from court fees, the Appellate Panel considers that the appeal has been withdrawn. According to Article 12 of the SCSC Law, the unsuccessful party pays the procedural costs, including the court fees of the other party. The appellant is an unsuccessful party in this case therefore the court costs are his burden.”

Relevant provisions

ADMINISTRATIVE INSTRUCTION NO. 01/2017 ON UNIFICATION OF COURT TAXES, entered into force on 1 May 2017

Article 8 Exemption from tax payment

*8.1 The following categories of persons are exempt from tax payment
[...]*

*8.1.2 A person in difficult economic situation, if the payment of tax directly affects the endangerment of his/her existence, namely, his/her family members or other dependents;
[...]*

8.3 The categories of persons referred to in Article 8.1, to be exempt from taxes, must provide the following evidence:

*[...]
8.3.2 Proof that he/she is receiving legal assistance from the Office for Free Legal Aid;
[...]*

Applicant's allegations

19. The Applicant alleges that by their decisions, the SCSC instances violated his rights guaranteed by Articles 24, 31, 46 and 54 of the Constitution, because: i) the first Decision (order) of the SCSC, as he calls it, of 18 July 2017 has never reached his address, due to the irresponsibility of the Post of Kosovo; and ii) that the Appellate Panel of the SCSC did not review and administer the submissions submitted by him, which were attached to the appeal filed with this panel on 26 July 2019, such as: 1) decision of the Agency for Free Legal

Aid, and 2) request for exemption from payment of court fees. As a result, he alleges that he was denied the right to a fair trial.

20. The Applicant further adds that: *"We consider the decision of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo to be a violation of the Law and the Constitution of the Republic of Kosovo and a scandalous decision by which no evidence has been administered that proves the opposite of my request and appeal with legal protection and-constitutional protection for the exercise of my right by this Judicial institution. Referring to the case file, the responsibility for the violation lies with the Administration of the SCSC, which has not submitted the Decision of the Agency for Legal Aid, which proves that I am exempt from court fees"*.
21. Finally, the Applicant requests the Court: 1) to find violation of the Constitution by the SCSC, namely the above-mentioned articles; 2) to prohibit the PAK from usurping the superstructure which was purchased from Sh.R.P .; and 3) to oblige the Basic Court in Prishtina for the verification of ownership in relation to the superstructure (residential building) above the premise no. 98, owned by the SOE "Urata" in the street "Edmond Hoxha" in Prishtina.

Admissibility of the Referral

22. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, foreseen by the Law and further specified by the Rules of Procedure.
23. 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".

24. In addition, the Court also refers to the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47 [Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. *The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision..."

25. With regard to the fulfillment of the admissibility criteria, as mentioned above, the Court finds that the Applicant is an authorized party and challenges an act of public authority, namely Judgment AC-I-19-0114, of 19 September, after having exhausted the legal remedies in the formal sense. The Applicant also clarified the fundamental rights and freedoms that he claims to have been violated, in accordance with Article 48 of the Law, and submitted the Referral within the time limit set out in Article 49 of the Law.
26. However, the Court shall consider whether the Referral meets the admissibility criteria set out in Rule 39 (1) (d) and (2) of the Rules of Procedure, which establishes:

Rule 39
[Admissibility Criteria]

(1) *"The Court may consider a referral as admissible if:*

[...]

(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

(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."

27. The Court considers that the Referral raises a *prima facie* reasoned constitutional allegation, while it is not manifestly ill-founded within the meaning of Rule 39 (2) of the Rules of Procedure.
28. Therefore, the Court considers that the Referral meets the requirements for review on merits.

Merits of the Referral

29. The Court recalls that the Applicant challenges the constitutionality of the Decision [AC.-I-19-0114, of 19 September 2019] of the Appellate Panel of the SCSC, by which his appeal was considered withdrawn due to non-payment of the court fee. He alleges that this decision has resulted in a violation of his rights guaranteed by the Constitution, namely Articles 24, 31, 46 and 54 of the Constitution.
30. Related to this case, the Court notes that the substance of the Applicant's allegations of violation of his constitutional rights relates to the fact that the Appellate Panel of the SCSC did not administer and address at all the following submissions: 1) The decision of the Agency for Free Legal Aid; and 2) His request for exemption from court fees, which he had attached to his appeal submitted to this panel, on 26 July 2019.
31. As the Applicant's substantive allegation relates to a fair trial, namely the right of access to justice, the Court will further assess whether the challenged Decision of the Appellate Panel of the SCSC is in accordance with standards required by Article 31 of the Constitution and Article 6 of the ECHR.
32. 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."*

[...]

33. In order to determine the applicability of the guarantees set out in the provisions of Article 31 of the Constitution and Article 6 of the ECHR in the circumstances of the present case, the Court will further elaborate on the general principles deriving from the case law of the European Court of Human Rights (hereinafter: the ECtHR). The following analysis will be made in accordance with the requirements of Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

General principles regarding the right of “access to justice”

34. The right of access to court for the purposes of Article 6 of the ECHR is defined in case *Golder v. the United Kingdom*. Judgment of 21 February 1975, paragraphs 28-36. Referring to the principle of the rule of law and the avoidance of arbitrary power, the ECtHR found that the “*right of access to court*” is an essential aspect of the procedural guarantees enshrined in Article 6 of the ECHR (on the general principles of right to a court, see also ECtHR Guide of 31 December 2018 to Article 6 of the ECHR, Right to Fair and Impartial Trial, Civil Aspects, Part II, Right to a court and also, the case of the ECtHR, *Zubac v. Croatia*, Judgment of 5 April 2018, paragraph 76). According to the ECtHR, this right provides everyone with the right to address respective issue related to “civil rights and obligations” before a court. (See ECtHR case, *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 84 and references therein).
35. The Court in this regard notes that “the right to a court”, as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, provides that all litigants should have an effective judicial remedy enabling them to assert their civil rights (See cases of the ECHR, *Běleš and Others v. the Czech Republic*, Judgment of 12 November 2002, paragraph 49; and *Naït-Liman v. Switzerland*, Judgment of 15 March 2018, paragraph 112).
36. Therefore, based on the case law of the ECtHR, everyone has the right to file a 'lawsuit' related to their respective “civil rights and obligations” with a court. Article 31 of the Constitution in conjunction with Article 6 of the ECHR embody the “right to a court”, that is, “the right of access to a court”, which implies the right to institute proceedings before the courts in civil matters (see ECtHR case *Golder v. the United Kingdom*, cited above, paragraph 36). Therefore, anyone who considers that there has been unlawful interference with the exercise of his/her civil rights and claims to have been denied the opportunity to challenge such a claim before a court may refer to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, invoking the relevant right of access to a court.
37. More specifically, according to the ECtHR case law, there must first be “a civil right” and second, a “dispute” as to the legality of an interference that affects the very existence or scope of “a civil right” protected. The definition of both of these concepts should be substantial and informal (See, in this regard, the cases of ECtHR *Le Compte, Van Leuven and De Meyere v. Belgium*, Judgment of 23 June 1981, paragraph 45; *Moreira de Azevedo v. Portugal*, Judgment of 23 October 1990, paragraph 66; *Gorou v. Greece* (no. 2), Judgment of 20 March 2009, paragraph 29; and *Boulois v. Luxembourg*, Judgment of 3 April 2012, paragraph 92). The “dispute”, however, based on the ECtHR case law, must be (i) “genuine and serious” (see, in this context, the ECtHR cases *Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982, paragraph 81; and *Cipolletta v. Italy*, Judgment of 11 January 2018, paragraph 31); and (ii) the outcome of the proceedings before the courts must be “decisive” for the civil right in question. (See, in this context, the case of the ECtHR, *Ulyanov v. Ukraine*, Judgment of 5 October 2010). According to the

ECtHR case law, the “tenuous links” or “remote consequences” between the civil right in question and the outcome of these proceedings are not sufficient to fall within the scope of Article 6 of the ECHR (see, in this context, ECtHR cases, *Lovrić v. Croatia*, Judgment of 4 April 2017, paragraph 51 and *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 71 and references therein).

38. In such cases, when it is found that there is a “civil right” and a “dispute”, Article 31 of the Constitution in conjunction with Article 6 of the ECHR guarantee to the affected individual the right “to have the question determined by a tribunal, namely the court” (See ECtHR case, *Z and Others v. the United Kingdom*, Judgment of 10 May 2001, paragraph 92). A court’s refusal to consider the parties’ claims as to the compatibility of a procedure with the basic procedural guarantees of fair and impartial trial, limits their access to the court (See the case of ECtHR *Al Dulimi and Montana Management Inc. v. Switzerland*, Judgment of 21 June 2016, paragraph 131).
39. Moreover, according to the ECtHR case law, the ECHR does not aim at guaranteeing the rights that are “*theoretical and false*”, but the rights that are “*practical and effective*” (see, for more on “practical and effective” rights, ECtHR Guide of 31 December 2018 to Article 6 of the ECHR, The Right to Fair and Impartial Trial, Civil Aspects, Part II. Right to Court, A. Right and Access to Court, 1. A practical and effective right; and the ECHR cases *Kutić v. Croatia*, cited above, paragraph 25 and the references cited therein; and *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein).
40. Therefore, within the meaning of these rights, Article 31 of the Constitution in conjunction with Article 6 of the ECHR, guarantee not only the right to institute proceedings but also the right to obtain a determination of the “dispute” by a court. (See ECHR cases, *Kutić v. Croatia*, Judgment of 1 March 2002, paragraphs 25-32; *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein; *Aćimović v. Croatia*, Judgment of 9 October 2003, paragraph 41; and *Beneficio Cappella Paolini v. San Marino*, Judgment of 13 July 2004, paragraph 29).
41. The abovementioned principles, however, do not imply that the right to court and the right of access to court are absolute rights. They may be subject to limitations, which are clearly defined by the ECtHR case law. (See ECHR Guide of 31 December 2018, Article 6 of the ECHR, Right to Fair and Impartial Trial, Civil Aspects, and specifically with respect to limitations on the right to court, Part II. Right to Court, A. Right and Access to Court 2. Limitations). However, these limitations cannot go so far as to restrict the individual’s access so as to impair the very essence of the right. (see, in this context, ECtHR case, *Baka v. Hungary*, Judgment of 23 June 2016, paragraph 120; and *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 89 and references therein). Whenever access to the court is limited by the relevant law or respective case law, the Court examines whether the limitations touches on the essence of the law and, in particular, whether that limitation has pursued a “legitimate aim” and whether there is “a reasonable

relationship of proportionality between the means employed and the aim sought to be achieved” (see ECHR cases, *Ashingdane v. the United Kingdom*, Judgment of 28 May 1985, paragraph 57; *Lupeni Greek Catholic Parish v. Romania*, cited above, paragraph 89; *Nait-Liman v. Switzerland*, cited above, paragraph 115; *Fayed v. the United Kingdom*, Judgment of 21 September 1990, paragraph 65; and *Marković and Others v. Italy*, Judgment of 14 December 2006, paragraph 99).

Application of these general principles to the circumstances of the present case

42. The Court recalls that the Applicant initially filed a request with the SCSC for a “preliminary injunction” to prevent the sale or alienation by the PAK of the immovable property located on “Edmond Hoxha” Street. On 18 July 2019, the Specialized Panel of the SCSC sent an order to the Applicant to file a lawsuit with this Panel. Further, the Specialized Panel of the SCSC, on 4 July 2019, by Decision C-III-17-0151, rejected as inadmissible the Applicant’s request for a “preliminary injunction” (interim measure), on the grounds that a request relating to a “preliminary injunction” must be filed together with a “lawsuit”, or if it is filed after the filing of a request, then it must refer to the same request, finding that in this case no lawsuit was filed by the Applicant.
43. As a result, the Court notes that the Applicant, on 26 July 2019, filed an appeal with the Appellate Panel of the SCSC against the Decision of the Specialized Panel of the SCSC of 4 July 2019, proposing that the Decision be quashed and the case be remanded for retrial, or to return his right to file a lawsuit, since according to him, the postal service and the court senders are responsible for not having brought the order of the Specialized Panel of the SCSC, of 18 July 2017, at his address.
44. Subsequently on 29 July 2019, the Appellate Panel of the SCSC, deciding on the Applicant’s appeal of 26 July 2019, issued an order, by which it requested the Applicant, to pay within 15 days the court fee in the amount of 100 euro, or to apply for tax exemption, if he did not have sufficient financial means to pay the court fee. On 8 August 2019, the Applicant again made available to the SCSC Appellate Panel the submissions submitted together with the appeal of 26 July 2019. Finally, on 19 September 2019, the Appellate Panel of the SCSC considered the Applicant’s appeal withdrawn, on the grounds that the Applicant had not paid the court fee, according to the order of 29 July 2019, nor had he applied for tax exemption.
45. In addition, the Court, based on the general principles regarding the right of access to justice, as established by the ECtHR, recalls that everyone has the right to file a “lawsuit” concerning “civil rights and obligations”, if he/she considers that there has been an unlawful interference with the exercise of his/her civil rights and claims that he/she has been deprived of the opportunity to challenge such a claim before a court, and in this regard refers to Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR.
46. In this context, as mentioned above, the right of access to justice is guaranteed in relation to a “dispute” over a “civil right”. In this regard, the Court considers

that in the circumstances of the present case, both of the abovementioned components have been met, as we are dealing with a “civil right” and the existence of a “dispute” of a civil-property nature, between the Applicant and PAK regarding the disputed immovable property, the residential building, built on the business premises no. 98, in the street “Edmond Hoxha” -Prishtina and with the allegation that regarding the disputed immovable property a considerable amount of money was paid by the Applicant. Therefore, the requested right of the Applicant falls under the right guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR, namely the right of access to justice.

47. As the Applicant’s allegation relates to the “fair trial” respectively to the failure to review and administer the Applicant’s submissions submitted to the Appellate Panel of the SCSC on 26 July 2019 and 8 August 2019, the Court on 21 October 2020, requested additional information from the Appellate Panel of the SCSC regarding the Applicant’s allegations. On 23 October 2020, the SCSC informed the Court as follows:

“Consequently, since in the file AC-I-19-0114, there was no request for exemption from the payment of court fee, the Appellate Panel did not administer decision A. No. 133/19-01 of the Agency for Free Legal Aid, of 11.05.2019. However, after checking the file of the first instance C-III-14-0151, it was found that the complainant on 08 August 2019, submitted to the SCSC a request form for exemption from payment of court fees, the request for exemption from court fees dated 11.07.2019, together with the decision of the Agency for Free Legal Aid, A. No. 133/19-01 of 11.05.2019, but that these documents from the registration office were incorrectly entered in the file of first instance, C-III-14-0151, and these documents were not noticed by the Appellate Panel when reviewing the complainant’s complaint”

48. Based on the relevant provisions in force, the Court finds that the right of the Applicant to exercise the right to file a “Request for exemption from payment of court fees” derives from Article 8 of Administrative Instruction no. unification of court fee, where it is established:

Article 8

Exemption from tax payment

8.1 The following categories of persons are exempt from tax payment

[...]

8.1.2 A person in difficult economic situation, if the payment of tax directly affects the endangerment of his/her existence, namely, his/her family members or other dependents.;

[...]

8.3 The categories of persons referred to in Article 8.1, to be exempt from taxes, must provide the following evidence:

[...]

8.3.2 Proof that he/she is receiving legal assistance from the Office for Free Legal Aid;

[...]

49. In the Court's assessment, the provisions of Article 8 of Administrative Instruction No. 01/2017, clearly stipulate the procedural steps that the party must take to exercise the right to "exemption from the payment of court fees", if he/she considers that he/she meets the criteria according to the above-mentioned provisions. Meeting the criteria required above is a precondition for the submissions submitted by the parties to be considered in substance by the courts in accordance with the right of "access to court". Otherwise, the inclusion of such legal arrangements would have no effect and would in itself make the norm meaningless. (see, in this connection, the Constitutional Court, case KI80/19 Applicant: *Radomir Dimitrijević*, Judgment of 10 November 2020, paragraph 56)
50. The Court reiterates that it is not its role to assess whether the regular courts have correctly interpreted and applied the relevant rules of substantive and procedural law. However, in cases where a claim raises constitutional issues, namely irregularities in the judicial process, the Court is obliged to intervene and remedy the violations caused by the regular courts, in order to ensure the individual a fair trial in accordance with Article 31 of the Constitution and Article 6 of the ECHR.
51. Referring to the present case, the Court finds that the Applicant, faced with such factual and legal circumstances, from 26 July 2019 was awaiting the review of merits of his appeal, to which he had attached as evidence: 1) The decision of the Agency for the benefit of free legal aid, as required by Article 8.3.2 of the above Administrative Instruction; and 2) the request for exemption from the payment of court fee.
52. However, the Court found that the Appellate Panel of the SCSC, in its response submitted to the Court, acknowledges that the Applicant, on 8 August 2019, submitted to the SCSC: 1) the request for exemption from court fees and 2) Decision A . No. 133/19-01 of the Agency for Free Legal Aid, which means that the submissions were submitted before the issuance of the order of the Appellate Panel of the SCSC, to pay the court fee, and after this order. Furthermore, the panel in question acknowledges that the request for exemption from the payment of the court fee was erroneously entered, by the registry office, in the file of the first instance [C-III-14-0151] and this fact was not noticed by the Appellate Panel of the SCSC, when it considered the Applicant's appeal.
53. Setting from such a situation, the Court considers that the burden of responsibility for non-administration of the Applicant's submissions falls on the Appellate Panel of the SCSC, because the Applicant has taken every action required by the applicable legal provisions, to ensure that his appeal against the Decision [C-III-14-0151] of the Specialized Panel is duly considered. However, this did not happen, due to the irresponsibility of the Appellate Panel of the SCSC in administering the Applicant's two submissions, which were relevant to the determination of the merits of the complaint of 26 July 2019. Only after a proper review of the Applicant's submissions, the Court would be able find that the Appellate Panel of the SCSC has respected his right of access to justice, which is guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR.

Conclusion

54. From the abovementioned considerations, the Court finds that the non-review of the Applicant's submissions by the Appellate Panel of the SCSC constitutes an insurmountable procedural flaw which is contrary to the right of access to justice, guaranteed to individuals by Article 31 of the Constitution and Article 6.1 of the ECHR.
55. The Court, finding that the challenged Decision of the Appellate Panel of 21 February 2019 is contrary to Article 31 of the Constitution and Article 6.1 of the ECHR, considers it unnecessary to address at this stage the Applicant's allegations of violation of the rights guaranteed by Article 24, 46 and 54 of the Constitution.
56. In conclusion, the Court finds that the challenged Decision [AC-I-19-0114], of the Appellate Panel, of 19 September 2019, by which the Applicant's appeal was considered as withdrawn, did not respect the Applicant's right of access to court.
57. Therefore, the Court finds that in the present case there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6.1 [Right to a fair trial] of the ECHR.

FOR THESE REASONS

The Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 59 (1) of the Rules of Procedure, in its session held on 10 December 2020, unanimously:

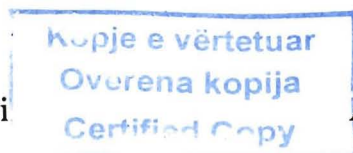
DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a violation of Article 31.1 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6.1 [Right to a fair trial] of the ECHR;
- III. TO DECLARE Decision AC-I-19-0114 of the Appellate Panel of 19 September 2019 invalid and REMANDS the latter for reconsideration, in compliance with the Judgment of the Court;
- IV. TO ORDER the Appellate Panel of the SCSC to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court, not later than 15 June 2021;
- V. TO ORDER that its Judgment KI224/19 be notified to the parties and in accordance with Article 20.4 of the Law, be published in the Official Gazette;
- VI. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi



Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.