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

Prishtina, 22. February 2021
Ref. no.:RK1712/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 204/19

Applicant:

Zejnepe Buzhala

Constitutional review of Resolution Rev. no. 175/2019 of the Supreme Court of 12 June 2019

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 Zejnepe Buzhala from Gllogovc (hereinafter: the Applicant), represented by Ibrahim Dobruna, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of the Resolution [Rev. no. 175/2019] of the Supreme Court of 12 June 2019, which she received on 25 July 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which, according to the Applicant's referral, allegedly violates her rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) and Article 5 (Right to liberty and security) of the European Convention on Human Rights (hereinafter: ECHR), as well as Article 14 of International Covenant on Civil and Political Rights (hereinafter: ICCPR).

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 15 November 2019, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 26 November 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges Bekim Sejdiu (Presiding), Selvete Gërxhaliu Krasniqi and Gresa Caka Nimani (members).

7. On 12 December 2019, the Court notified the Applicant of the registration of the Referral, with this notification the Court requested the Applicant to submit the power of attorney.

8. On 12 December 2019, the Court sent a copy of the Referral to the Supreme Court in accordance with the law.

9. On 26 December 2019, the Applicant submitted to the Court the requested power of attorney.

10. On 20 January 2021, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

Administrative procedure

11. On 18 July 1994, by decision [no. 11] the Centre for Preschool Education "Ardhmeria" at the Municipality of Gllogovc (hereinafter: the preschool institution) allocated to the Applicant for a certain period of time an apartment located in Gllogovc, block I/2, on the ground floor, entrance I, no. 1, with an area of 49.86 m2 (hereinafter: the disputed apartment).

12. On 19 July 1994, the Applicant entered into a contract [no. 126/94] with the public housing company of the Municipality of Gllogovc and the preschool institution on the use of the disputed apartment for a certain period of time.

13. On 20 July 2004, by decision [no. 85/04], the preschool institution annulled its decision [no. 11 of 18 July 1994] on allocation of the disputed apartment to the Applicant for a certain period of time on the grounds that the Applicant had permanently resolved the housing issue by building a family house and that the Applicant had not used the same apartment for the last five years.

14. On 1 March 2012, the Applicant submitted a request to the Municipality of Gllogovc for the purchase of the disputed apartment.

Administrative dispute

15. On 1 June 2012, as she had not received a reply to her request of 1 March 2012, the Applicant submitted a petition to the Basic Court in Prishtina, Gllogovc Branch, for recognition of the right to purchase the disputed apartment.

16. On 2 November 2012, the Basic Court in Prishtina, Gllogovc Branch, by Resolution [no. 14/2012] approved the Applicant's petition to purchase the disputed apartment.

17. On an unspecified date, the Municipality of Gllogovc appealed to the Court of Appeals against the Resolution [no. 14/2012] of the Basic Court in Prishtina of 2 November 2012 *"for substantial violation of the provisions of the law, incomplete and erroneous determination of the factual situation and erroneous application of substantive law"*.

18. On 3 September 2013, the Court of Appeals, by Resolution [AC.no. 4744/2012] approved the appeal of the Municipality of Gllogovc nullifying the Resolution of the Basic Court in Pristina, Gllogovc Branch [no. 14/12 of 02.11.2012] and remanded the case to the same for retrial.

19. On 30 January 2014, the Basic Court in Prishtina, Gllogovc Branch, in a renewed procedure by Resolution [CN.no. 59/13] rejected, as ungrounded, the Applicant's petition to determine the right to purchase the disputed apartment. The explanation of the decision states, *"Starting from the fact that in order to buy a socially or publicly owned apartment, as in this case and for which there is an occupancy right or the right to use indefinite lending,*

this fact is not fulfilled in this case because the apartment is allocated for a certain time and that the same decision is annulled by the same body, the court determines that the petition for the purchase of the apartment by a resolution that replaces the contract, must be rejected as ungrounded in law."

20. On an unspecified date, the Applicant appealed to the Court of Appeals against the Resolution [CN.no. 59/13] of the Basic Court in Prishtina, Gllogovc Branch of 30 January 2014, *"for violation of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law".*

21. On 21 February 2019, the Court of Appeals, by Resolution [Ac.no. 1060/2014] rejected, as ungrounded, the Applicant's appeal and upheld the judgment of the Basic Court, reasoning, *"the first instance court has clearly and fully established the factual situation relevant to the decision in this dispute, since in this case it has been established that the decision to allocate the disputed apartment into use is for a certain time, respectively temporary until she finds a solution for housing and her family, therefore it has rightly concluded that to her does not belong the right for the purchase of an apartment by a resolution which replaces the contract for the purchase of an apartment, in accordance with Article 1 of Law no. 04/L-061 on the sale of apartments for which there is a right to housing, to which in this case the petitioner does not have the right to housing because it was given to her temporarily until the resolution of her housing issue".*

22. On an unspecified date, the Applicant submitted to the Supreme Court a petition for review of the Resolution [Ac.no. 1060/2014] of the Court of Appeals of 21 February 2019, *"for substantial violation of the provisions of the contested procedure and erroneous application of the substantive law".*

23. On 12 June 2019, the Supreme Court by Resolution [Rev. no. 175/2019] rejected as ungrounded the Applicant's petition for review and fully upheld the resolutions of the Basic Court and the Court of Appeals.

Applicant's allegations

24. The Applicant alleges that the challenged judgment of the Supreme Court violated her rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] of the Constitution in conjunction with Article 6 (Right to a fair trial) and Article 5 (Right to liberty and security) of the ECHR, as well as Article 14 of ICCPR.

25. The applicant alleges that she, *"was denied the exercise of her right to a court proceeding due to the omissions made by the courts in making decisions on aspects of a LACK OF REASONING FOR SELECTIVE RESOLUTIONS MADE (always according to their claims), and above all, the circumvention of the decisive material evidence, the Contract on the use of the apartment, contract registered by no. 126/94 of 19 July 1994, on the one hand, and the administration of a non-existent Decision related to the allocation of the*

apartment. With those the opportunity for a fair, speedy and efficient trial was lost".

26. The applicant also states that, *"in assessing the findings of the respective courts, neither the proposers nor their authorized representative can agree with the legal position of the first, second and third instance, because these positions are not based on law and are included in substantial violation of the provisions of the contentious procedure, for which even the rejection decision cannot stand due to the erroneous application of the substantive law".*

27. The Applicant mentions in her Referral the case P.no. 2463/13 of the Court of Appeals of 23 February 2015 relating this case to the challenged decision.

28. The Applicant alleges that due to the wrong application of the law and the erroneously established factual situation, her rights guaranteed by Articles 31 and 32 of the Constitution have been violated.

29. The Applicant substantially gives reasons for the violation of the above-mentioned articles of the Constitution, alleging a violation of "*Law no. 04/L-061 on Sale of Apartments for which there is a right to housing, Law on Housing Relations no. 11/83, 29/86 and 42/86 as well as the Law on Contested Procedure".*

30. Finally, the Applicant requests the Court to declare the Referral admissible and to find that the decisions of the regular courts as well as of the Supreme Court violate the Applicant's rights guaranteed by Articles 22 and 53 of the Constitution of the Republic of Kosovo and Articles 5.3 and 5.4 of the European Convention for the Protection of Fundamental Human Rights and Freedoms and their Protocols as well as Article 14.1 of the International Covenant on Civil and Political Rights and to annul the disputed judgments accordingly and remand them for retrial.

Relevant legal provisions

Law no. 04/L-061
ON THE SALE OF APARTMENTS IN WHICH THERE IS TENURE RIGHT
of 21 December 2011

CHAPTER I
GENERAL PROVISIONS

Article 1
Purpose

This Law regulates the conditions and manner of sale of public and socially owned apartments in which there is a tenure right or the rent right indefinitely, along with common parts and building equipment, and ways determining the selling price of the apartment and termination of tenure rights.

[...]

CHAPTER II
THE RIGHT TO BUY AN APARTMENT

Article 7

1. Each holder of tenure right, namely user of the public or socially owned apartment, except in cases of Article 11 of this Law, shall submit a written request for purchasing an apartment.

2. Request for buying an apartment is submitted to:
2.1. Kosovo Privatization Agency on apartments whose holder of tenure right is socially owned;
2.2. a public institution that has given the apartment, respectively who is the bearer of the tenure right to the public owned apartments.

3. The application from paragraph 1. of this Article, shall be submitted within two (2) years from the date of entry into force of this Law, and the apartment sales contract must be entered within three (3) months from the date of application for purchasing the apartment.

4. If the seller, contrary to the request of the occupancy right holder, i.e. the authorized buyer who If the seller, despite the request of the holder of tenure rights respectively authorized purchaser who has the right to buy the apartment, refuses or does not enter into a contract within the time specified in paragraph 3. of this Article, the buyer acquires the right in the contentious proceedings requires from the competent court to issue a decision that replaces the contract.

5. The term for the contract to purchase an apartment for which at the time of application for purchase, all relevant facts that are essential to selling are not known, a new term will start from the day when these facts are known.

6. Facts known to the apartment market are estimated at the time of contract.

7. The seller is obliged within three (3) months after entry into force of this Law, to inform the tenure right holder, namely the user of the apartment to its rights stipulated by this Article.

LAW ON HOUSING RELATIONS
no. 11/83, 29/86 and 42/86

[...]

Article 2

The citizen who moved into a socially owned apartment on the basis of the contract on apartment usage shall acquire the right to use that apartment permanently in order to satisfy his/her personal or family needs, under the conditions stipulated by this Law, as well as the right to participate in residential building management according to a special law (occupancy right).

The citizen who moved into an apartment owned by a citizen on the basis of the contract on lease, shall acquire the right to use that apartment, under the conditions stipulated by this Law and the contract on lease of the apartment.
[...]

II OCCUPANCY RIGHT

1. Acquisition of occupancy right

Article 11

The citizen shall acquire occupancy right as of the day of lawful moving into the apartment.

[...]

Article 17

The apartment users who live together with the occupancy right holders have the right to use the apartment permanently under the conditions referred to in this Law.

The family household members are entitled to the right referred to in paragraph 1 of this Article even after the death of the occupancy right holder, as well as when he/she ceases to use the apartment permanently for other reasons, except when he/she ceased to use the apartment on the basis of cancellation of the contract on apartment usage, termination of the contract on the basis of the contract on apartment exchange or if he/she acquired occupancy right to another apartment that was allocated to him/her and the family household members who live with him/her.

The family household members, who resolved their housing needs on any ground, are not entitled to continue to use the apartment after the death of the occupancy right holder according to the provisions of paragraph 2 of this Article, nor when he/she ceased to permanently use the apartment for other reasons.

Assessment of the admissibility of the Referral

31. The Court initially examines whether the Referral has met the admissibility conditions which are set out in the Constitution, specified by the Law and further provided by the Rules of Procedure.

32. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], which stipulate:

Article 113 of the Constitution
[Jurisdiction and Authorized Parties]

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

33. The Court further considers whether the Applicant has met the admissibility requirements, as required by 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..."

34. With regard to the fulfilment of these conditions, the Court finds that the Applicant submitted the Referral in the capacity of an authorized party, challenging the act of the public authority, i.e. Resolution [Rev.no. 175/2019] of the Supreme Court of 12 June 2019, clearly stating the articles of the Constitution which she considers to have been violated, after the exhaustion of all legal remedies prescribed by law. The Applicant also submitted the Referral in accordance with the deadline prescribed in Article 49 of the Law.

35. However, the Court also considers whether the Applicant has fulfilled the admissibility requirement set out in Rule 39 (2) of the Rules of Procedure, which provides:

> *"(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."*

36. The Court first notes the above rule, based on the case law of the European Court of Human Rights ("the ECtHR") and the Court, enabling the latter to declare the referrals inadmissible on the merits of the case. More specifically, under this rule, the Court may declare a referral inadmissible on the basis of and after assessing its merits, i.e. if it considers that the content of the referral is manifestly ill-founded on constitutional grounds, as stipulated in paragraph 2 of Rule 39 of the Rules of Procedure.

37. Based on the case law of the ECtHR, but also of the Court, a referral may be declared inadmissible as "manifestly ill-founded" in its entirety or only with respect to any specific claim that a referral may contain. In this regard, it is more accurate to call them "manifestly ill-founded claims". The latter, based on the case law of the ECtHR, can be classified into four distinct groups: (i) claims that qualify as claims *"of the fourth degree"*; (ii) claims categorized by *"apparent or obvious absence of violation"*; (iii) *"unsupported or unreasonable"* claims; and finally, (iv) *"confusing and vague"* claims. (See more precisely for the concept of inadmissibility on the basis of a claim assessed as *"manifestly ill-founded"*, and the specifics of the above four categories of claims qualified as *"manifestly ill-founded"*, ECtHR Practical Guide on Admissibility Criteria of 31 August 2019; part III. Inadmissibility based on merit; A. Manifestly ill-founded claims, paragraphs 255 to 284).

38. In the context of assessing the admissibility of the Referral, respectively, in assessing whether it is manifestly ill-founded on constitutional grounds, the Court will first recall the essence of the case contained in this Referral and the respective allegations of the Applicant, in the assessment of which, the Court will apply the standards of case law of the ECtHR, in accordance with which, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

39. The Court recalls that the Applicant alleges that by the challenged decision she has been violated, (i) Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 of ECHR due to unreasonableness of court decisions, (ii) Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 of ECHR with regard to erroneous facts and erroneous application and interpretation of law and (iii) Articles 32 [Right to Legal Remedies] of the Constitution, Article 6 (Right to a fair trial) and Article 5 (Right to liberty and security) of the ECHR, as well as Article 14 of ICCPR.

40. The Court notes that the Applicant reiterates the same arguments that she presented in the regular court proceedings, and that the Supreme Court has

dealt with this issue, so the Court will further elaborate in the following paragraphs the proceedings before the regular courts.

(i) With regard to allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR in relation to unreasonable court decisions

41. In the Applicant's case, the Court recalls that the Applicant alleges, inter alia, a violation of her right to a reasoned court decision, noting that the Supreme Court and the regular courts have failed to provide reasons for their decisions.

42. In this connection, the Court first notes that it already has a consolidated case law on the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. This practice is based on the case law of the ECHR, including but not limited to the cases of *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006, and *Tatishvili v. Russia*, Judgment of 22 February 2007.

43. In addition, the basic principles regarding the right to a reasoned court decision have been elaborated in the cases of this Court, including, but not limited to, cases KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; KI143/16, *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018 and KI49/19, Applicant *Limak International Airport Kosova Sh.A. "Adem Jashari"*, Resolution on Inadmissibility of 10 September 2019, paragraph 37.

44. In principle, the case law of the ECtHR and the case law of the Court emphasize that the right to a fair trial includes the right to a reasoned decision and that courts should *"establish with sufficient clarity the reasons on which they based their decisions"*. However, this obligation of the courts cannot be understood as a requirement to respond in detail to every argument. The extent to which this duty to state reasons applies 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 those that must be resolved, and the stated reasons must be based on the applicable law. (see Court case KI49/19, cited in paragraph 38 above).

45. Based on the above, the Court emphasizes that the Municipality of Gllogovc issued a decision [No. 85/04 of 20 July 2004] annulling its decision, [no. 11. Of 18 June 1994], on granting the temporary use of the disputed apartment, determining that the Applicant (i) was given the temporary use of the disputed apartment, relying on the fact that she did not have a resolved housing issue at that time, (ii) however, now the Applicant has resolved the housing issue and

(iii) does not use the disputed apartment because she has left, respectively lives with her family abroad.

46. The Court notes that despite the Applicant's allegations that the court decision was unreasonable, there is no claim that the regular courts and the Supreme Court issued a decision that only supported the decision of the Municipality of Gllogovc. In its decision, the Supreme Court declared the Applicant's appeal inadmissible and examined the merits of the case, focusing on her essential allegations, respectively violations of the applicable law.

47. In its decision, the Supreme Court stated the following:

> *"the conclusion of the lower courts is fair when they found that the petitioners did not meet the conditions for the purchase of an apartment in terms of the Law on Sale of Apartments for which there is an occupancy right, because the apartment allocated to them for temporary use cannot be acquired permanently, respectively the acquisition of housing on the basis of Article 17 of the Law on Housing Relations is not possible.*

48. In the conclusion of the reasoning, the Supreme Court stated the following:

> *"Article 7 of the Law on the Sale of Apartments for which there is an occupancy right also stipulates in paragraph 1 that every occupancy right holder, respectively the user of a socially or publicly owned apartment, must submit a written request for the purchase of an apartment. According to the provisions of Article 11 of the Law on Tenancy Relations, it is determined that the citizen acquires the occupancy right on the day of legal settlement in the apartment. Pursuant to Article 39, paragraph 1 of the respective Law, it is determined that if the occupancy right holder must use the apartment temporarily, the contract on the use of this apartment is concluded for a certain period of time.*
> *The provisions in question conclude that the petitioners do not have the right to purchase the apartment, despite the fact that they concluded a contract for the use of the apartment for an indefinite period as they could not acquire more than determined by the decision on allocating the apartment for use and this could not be transferred to the status of the occupancy right holder only due to the fact that the contract concluded on the use of the apartment determined the use of the apartment for an indefinite period of time."*

49. In this context, the Court reiterates that the Supreme Court, despite the allegations of the Applicant for lack of reasoning in the court decision, respectively in the challenged decision, has clarified in detail, in support of the decision of the Municipality of Gllogovc, that in the circumstances of Applicant and according to the legal rules the Applicant has not met the conditions for the purchase of the contested apartment. In this context, the Court also notes that the Supreme Court has examined and substantiated the Applicant's allegations regarding substantial violations of the law and the allegations that the pronouncement of the ruling was contrary to the evidence found in the case file, finding that there was no possibility of concluding a

contract for sale and purchase of the disputed apartment due to non-fulfilment of legal conditions.

50. The Court, based on the above explanations and its case law and the case law of the ECHR, considers that in the circumstances of the present case the Applicant's substantive allegations in the regular court decisions were, as a whole, sufficiently substantiated. In this regard, the Court also notes that the courts are obliged to substantiate the substantive allegations of the Applicants, but this task does not imply that the courts must respond to any arguments presented by the Applicants in question.

(ii) With regard to the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR with regard to the erroneous determination of the factual situation and the erroneous application and interpretation of the law

51. In the present case, the Court notes that the Applicant's allegations concerning the violation of Article 31 of the Constitution also refer to the erroneous determination of the factual situation and the erroneous application and interpretation of the law by the regular courts as well as by the Supreme Court, which raised the issue of misapplication and misinterpretation of legal provisions. The Applicant alleges before the Court that, *assessing the conclusions of the respective courts, neither the petitioners nor their authorized representative can agree with the legal position of the first, second and third instance, because these positions are not based on law and are involved in substantial violation of the provisions of the contested procedure [...] , [...] They lost the opportunity for a fair, prompt and efficient trial,* analysis of these allegations falls exclusively within the jurisdiction of the regular courts (legality).

52. In this sense, the Court reiterates that the full determination of the factual situation, as well as the interpretation and application of the law are within the full competence of the regular courts and that the role of the Constitutional Court is only to ensure respect for the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a "fourth instance" court (see: ECtHR case, *Garcia Ruiz v. Spain* [GC], no. 30544/96, *Judgment of 21 January 1999, paragraph 28*).

53. Therefore, in these circumstances, and on the basis of the above and taking into account the allegations made by the Applicant and the facts presented by her, the Court, relying also on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not sufficiently proved and substantiated her allegation of a violation of the fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of ECHR (see in this context, inter alia, the Court case KI49/19, cited in paragraph 53 above).

54. The Court also notes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR does not guarantee anyone a favourable outcome in court proceedings, nor does it stipulate that the Court will question the application of substantive law by regular courts in contentious proceedings;

where usually one party wins and the other loses (see Court cases KI118/17, *Şani Kervan and others,* Resolution on Inadmissibility of 17 January 2018, paragraph 36; KI142/15, Applicant *Habib Makiqi*, Resolution on Inadmissibility of 1 November 2016, paragraph 43 and KI49/19, cited above, paragraph 54).

55. In this regard, in order to avoid misunderstandings among the applicants, it should be borne in mind that the "fairness" required by Article 31 of the Constitution in conjunction with Article 6 of the ECtHR is not "substantial" fairness but "procedural" fairness. In practical terms, and in principle, this ends in a contradictory procedure in which the parties are heard and found to be in the same circumstances before the Court (see also Case no. KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and other references cited therein and KI49/19, cited above, paragraph 55).

56. The Court further notes that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot in itself raise a well-founded allegation of a violation of the right to a fair and impartial trial (see, in this context, the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21, and see also the Court cases KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraphs 42 and KI49/19, cited above, paragraph 56).

(iii) ***With regard to the allegations of violation of Article 32 [Right to Legal Remedies] of the Constitution, Article 5 (Right to liberty and security) of the ECHR, as well as Article 14 of ICCPR***

57. Finally, with regard to the allegations of violation of Article 32 [Right to Remedies] of the Constitution, Article 5 (Right to liberty and security) of the ECHR, and Article 14 of the ICCRP, the Court notes that the Applicant alleges violation of these articles without arguing or justifying their violation by the challenged Judgment of the Supreme Court. The Applicant's allegations are essentially based on a violation of Article 31 and Article 6 of the ECHR, and these allegations have already been assessed by the Court as manifestly ill-founded on constitutional grounds.

58. The Court recalls its case law according to which merely mentioning a particular article of the Constitution or international conventions and treaties, without a clear and relevant explanation of how this right has been violated, is not sufficient as an argument for activating protection mechanism provided by the Constitution and the Court with respect to human rights and freedoms (see, in this context, the Court cases KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility of 8 October.

59. Such a position of the Court is based on the case law of the ECtHR, based on which the allegations or appeals that are unsubstantiated and unsupported by the arguments and evidence were declared inadmissible as manifestly ill-founded (see ECtHR Guideline of 30 April 2019 on conditions of admissibility; Part I. Inadmissibility on merit A. Manifestly ill-founded claim 4. Unsubstantiated complaints: lack of evidence, paragraphs 280 to 283). Furthermore, such allegations which do not adequately substantiate the alleged violation are also inadmissible under Article 48 of the Law in conjunction with point d) of paragraph 1 of Rule 39 of the Rules of Procedure, pursuant to which the Applicants are obliged to clarify accurately and adequately the facts and allegations of violation of fundamental rights and freedoms allegedly violated.

60. Regarding the Applicant's allegations regarding the relevance of the case P.nr. 2463/13 of 23 February 2015 of the Court of Appeals with the challenged decision, the Court concludes that this part of the Referral should be declared inadmissible as manifestly ill-founded, because these allegations qualify as claims that fall into the category of claims (iii) "*Unsubstantiated* or unsupported" as the Applicant only cited a decision of the regular courts, without explaining how the Applicant's rights were violated, and without presenting the decision in question or any material evidence to support her allegation of possible violation.

61. In the circumstances of the present case, the Court considers that the Applicant has not clearly clarified the facts and allegations of violation of the above Articles of the Constitution and as a result, those allegations must be declared inadmissible as manifestly ill-founded, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.

62. Accordingly, the Court finds that the Referral is manifestly ill-founded on constitutional grounds and declares it inadmissible pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, on 20 January 2021, unanimously

DECIDES:

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Resolution to the parties;

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

IV. This Resolution is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Bajram Ljatifi

Arta Rama-Hajrizi

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