



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

Pristina, on 22 February 2021
Ref.No.:RK 1713/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI69/20

Applicant

Gjergj Nikolla

**Constitutional review of Judgment AC. No. 1461/15
of the Court of Appeals of 14 February 2020**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, 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 Gjergj Nikolla, represented by lawyer Teki Bokshi from the Municipality of Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [AC. No. 1461/15] of 14 February 2020 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) in conjunction with the Judgment [C. No. 143/14] of 19 February 2015 of the Basic Court in Gjakova (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Court of Appeals, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR).

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 Court

5. On 24 April 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 May 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.
7. On 27 May 2020, the Court notified the Applicant's representative about the registration of the Referral and requested him to submit the relevant power of attorney to the Court.
8. On 15 June 2020, the Applicant's representative submitted to the Court the power of attorney for representation.
9. On 16 September 2020, the Court sent a copy of the Referral to the Court of Appeals.
10. On 10 November 2020, the Court sent a letter to the Applicant's representative requesting some additional documents as follows: (i) Decision [Ca. No. 4881/2012] of 12 February 2014 of the Court of Appeals; and (ii) Judgment [C. No. 533/05] of 19 April 2012 of the Municipal Court in Gjakova (hereinafter: the Municipal Court).

11. On 19 November 2020, the Applicant's representative submitted to the Court the requested documents.
12. On 10 February 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On an unspecified date, the Applicant filed a claim with the Municipal Court against the respondents, the Municipality of Gjakova and the person N.B. The Applicant requested compensation for damage related to the stolen vehicle in the parking lot of the Municipality of Gjakova. The second respondent, namely N.B., worked as a security guard of this parking lot.
14. On 28 April 2003, the Municipal Court by Judgment [P. No. 465/01], found the person N.B. guilty of the criminal offense of irresponsible work in office established in paragraph 1 of Article 213 of the Criminal Law of Kosovo, sentencing him to a suspended sentence of imprisonment for a period of six (6) months, the execution of which is postponed for two (2) years, provided that within this period he does not commit a new criminal offense.
15. On 19 April 2012, the Municipal Court by Judgment [C. No. 533/15], obliged the respondent, the Municipality of Gjakova and N.B., respectively, to jointly in the name of compensation for damage, pay the Applicant the amount of 2,629.00 euro, with the respective legal interest paid by commercial banks in Kosovo, "*for means deposited for a period of over one year without a definite destination*", starting from 10 February 2011, namely the date of completion of the expertise, and until the final payment.
16. On an unspecified date, the Municipality of Gjakova filed an appeal against the abovementioned Judgment of the Municipal Court, alleging essential violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law, proposing that the appealed Judgment be quashed and the case be remanded for retrial or the Applicant's statement of claim be modified and rejected.
17. On 12 February 2014, the Court of Appeals by Decision [CA. No. 4881/2012] approved as grounded the appeal of the Municipality of Gjakova, and consequently annulled the Judgment of the Municipal Court, remanding the case for retrial.
18. On 19 February 2015, the Basic Court by Judgment [C. No. 143/14] (i) based on Articles 136 (Basis for liability) and 140 (When culpability is given) of Law. No. 04/L-077 for Obligational Relationships (hereinafter: the LOR) and Articles 154 (Foundations of Liability) and 190 (Complete Recovery) of the Law on Obligations of 1978 (hereinafter: the old LOR), in point I of the enacting clause approved the statement of claim of the Applicant regarding the second respondent, namely N.B., obliging the latter to pay to the Applicant in the name of compensation the amount of 2,629.00 euro, determined through the

expertise, with the relevant legal interest paid by commercial banks in Kosovo “for deposited means for a period of over one year without a definite destination”, starting from 10 February 2011, namely the date of the expertise and until the final payment; while (ii) in point II of the enacting clause rejected the statement of claim of the Applicant regarding the Municipality of Gjakova as ungrounded.

19. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against point II of the enacting clause of Judgment [C. No. 143/14] of the Basic Court. An appeal against this Judgment was also filed by the representative of the respondent N.B.
20. On 14 February 2020, the Court of Appeals by the Judgment [Ac. No. 1461/15] (i) approved the appeal of the representative of the respondent N.B. as grounded, modifying the Judgment of the Basic Court in point I of the enacting clause, and consequently rejecting the statement of claim in relation to the respondent N.B.; and (ii) rejected the Applicant's appeal as ungrounded, upholding point II of the enacting clause of the Judgment of the Basic Court.

Applicant's allegations

21. The Applicant challenges the Judgment [Ac. No. 1461/15] of 14 February 2020 of the Court of Appeals alleging that the latter was rendered in violation of his fundamental rights and freedoms guaranteed by Article 3 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 46 [Protection of Property] of the Constitution and Article 6 (Right to a fair trial) of the ECHR.
22. With regard to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant essentially states that the Judgment of the Court of Appeals was rendered in violation of (i) Article 154 of the LOR because, in the circumstances of the present case, by Judgment [P. No. 465/01] of 28 April 2003 of the Municipal Court the guilt of the person N.B. was established, and consequently there have been “*anti-legal action, causal link and guilt*”, these cumulative terms as defined in this article; and (ii) Article 14 [no title] of Law no. 03/L-006 on Contested Procedure (hereinafter: the LCP), because “*The civil court is related to the subjective liability of the perpetrator of the criminal offense adjudicated by the criminal judgment*”. The Applicant also states that “*the reasoning of the second instance court that none of the respondents bear legal responsibility for causing the damage makes no sense at all*”, and consequently, the regular courts have not ensured a fair and impartial trial in his circumstances.
23. The Applicant also alleges a violation of Articles 3, 32 and 46 of the Constitution. Regarding the first, among other things, states that “*a rude and partial application of the substantive law was made by the court and thus the respondent was privileged to the detriment of the claimant*”. With regard to the second and third, in addition to the fact that it refers to the content of Articles 32 and 46, he does not justify his claims.

24. Finally, the Applicant requests the Court that his Referral (i) be declared admissible; (ii) to find a violation of Articles 3, 31, 32 and 46 of the Constitution and Article 6 of the ECHR; (iii) to declare the Judgment [Ac. No. 1461/15] of 14 February 2020 of the Court of Appeals invalid; and (iv) to remand the case to the Basic Court for retrial.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

[...]

Chapter II Fundamental Rights and Freedoms

[...]

Article 31 [Right to Fair and Impartial Trial]

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

[...]

European Convention on Human Rights

Section I Rights and Freedoms

Article 6 (Right to a fair trial)

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

[...]

LAW No. 29/78 ON OBLIGATIONS OF 1978

CAUSE OF DAMAGE Subsection 1

GENERAL PRINCIPLES

Foundations of liability

Article 154

Whoever causes injury or loss to another shall be liable to redress it, unless he proves that the damage was caused without his fault. Liability shall ensue regardless of fault for injury or loss caused by objects of property or activities generating increased danger for the environment. Liability for injury or loss regardless of fault shall ensue also in other cases specified by law.

LAW No. 03/ L-006 ON CONTESTED PROCEDURE

PART ONE

BASIC PROVISIONS CHAPTER I

Article 14 [no title]

*In the contentious procedure, regarding the existence of criminal act and criminal responsibility, the court is bound to the effective judgment of the criminal court by which the defendant has been found guilty.
[...]*

Admissibility of the Referral

25. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
26. 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”.*
27. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed 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 establish:

Article 47 [Individual Requests]

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

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

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

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

28. As regards the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging the act of the public authority, namely Judgment [Ac. No. 1461/15] of 14 February 2020 of the Court of Appeals, after having exhausted all legal remedies provided by law. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
29. In addition, the Court examines whether the Applicant has met the admissibility criteria set out in paragraph (2) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria according to which the Court may examine the Referral, including the criterion that the Referral is not manifestly ill-founded. More precisely, Rule 39 (2) stipulates that:

Rule 39
(Admissibility Criteria)

“(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”.

30. The Court first notes the above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and the Court, enabling the latter to declare the referrals inadmissible regarding the merits of a case. More specifically, under this rule, the Court may declare a referral inadmissible on the basis of and after assessing its merits, namely if it considers that the

content of the referral is manifestly ill-founded on constitutional basis, as stipulated in paragraph 2 of Rule 39 of the Rules of Procedure.

31. 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 constitute. In this respect, it is more accurate to refer to the latter as “*manifestly ill-founded*” claims. The latter, based on the case law of the ECtHR, may be categorized into four separate groups: (i) claims that qualify as claims of “*fourth instance*”; (ii) claims that are categorized as “*clear or apparent absence of a violation*”; (iii) “*unsubstantiated or unsupported*” claims; and finally, (iv) “*confused or far-fetched*” claims. (See, more precisely, the concept of inadmissibility on the basis of a referral assessed as “*manifestly ill-founded*”, and the specifics of the four above-mentioned categories of claims qualified as “*manifestly ill-founded*”, The Practical Guide to the ECtHR on Admissibility Criteria of 30 April 2020; Part III. Inadmissibility Based on Merit; A. Manifestly ill-founded applications, paragraphs 275 to 304).
32. In the context of assessing the admissibility of the Referral, namely, in assessing whether it is manifestly ill-founded on constitutional basis, 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.
33. In this context, the Court first recalls that the circumstances of the case relate to the stolen vehicle of the Applicant in the parking lot of the Municipality of Gjakova, which employee was N.B. The Applicant filed a claim for compensation of damage by suing the Municipality of Gjakova and the person N.B. The latter, in relation to the same issue, in 2003 was found guilty of the criminal offense of irresponsible work in office defined by the Criminal Law of Kosovo. Whereas, in 2012, the Basic Court, by the relevant Judgment, decided that the Municipality of Gjakova and N.B., should jointly compensate the Applicant. This Judgment, however, was remanded by the Court of Appeals. In the retrial procedure, the Basic Court acquitted the Municipality of Gjakova of this obligation, while it determined the person N.B., as responsible for the compensation of damage. Acting on the respective appeals, the Court of Appeals acquitted N.B. of this obligation, and consequently rejected all the allegations of the Applicant.
34. The Applicant challenges the finding of the Court of Appeals before the Court, raising allegations that relate, in essence, to the procedural guarantees guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In this regard, the Applicant, *inter alia*, emphasizes the erroneous interpretation of (i) Article 154 of the LOR; and (i) Article 14 of the LCP, also stating that “*the reasoning of the second instance court that none of the respondents bear legal responsibility for causing the damage makes no sense at all*”.

35. In considering these allegations, the Court initially notes that the latter are essentially related to the erroneous application of the law applicable by the Court of Appeals and the Supreme Court, the allegations which, in accordance with its case-law and that of the ECtHR, are considered as “*claims of fourth instance*”.
36. In the context of this category of claims, the Court emphasizes that based on the case law of the ECtHR, but also taking into account its peculiarities, as are determined through the ECHR (see in this context, clarification in the Practical Guide of the ECtHR of 30 April 2020 on Admissibility Criteria; part I. Admissibility Based on Merit; A. Manifestly ill-founded claims; 2. “Fourth instance” paragraphs 281 to 288), the principle of subsidiarity and the fourth instance doctrine it has consistently emphasized the difference between “*constitutionality*” and “*legality*” and has asserted that it is not its duty to deal with errors of facts or erroneous interpretation and erroneous application of the law, allegedly made by a regular court, unless and insofar such errors may have violated the rights and freedoms protected by the Constitution and/or the ECHR. (See, in this context, *inter alia*, the cases of Court KI179/18, Applicant *Belgjyzar Latifi*, Resolution on Inadmissibility of 23 July 2020, paragraph 68; KI49/19, Applicant *Limak Kosovo Joint Stock Company International Airport JSC, “Adem Jashari”*, Resolution of 31 October 2019, paragraph 47; KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company “Barbas”*, Resolution on Inadmissibility, of 12 August 2019, paragraph 60).
37. The Court has also consistently reiterated that it is not the role of this Court to review the conclusions of the regular courts in relation to the factual situation and the application of substantive law and that it cannot assess the facts which have led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of “*fourth instance*”, which would result in the neglect of the limits set in its jurisdiction. (See, in this context, the case of the ECtHR *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and references used therein; and see, also the cases of the Court, KI49/19, cited above, paragraph 48; and KI154/17 and KI05/18, cited above, paragraph 61).
38. The Court, however, emphasizes that the case law of the ECtHR and of the Court also determine circumstances under which exceptions to this stance should be made. As noted above, while the primary duty of the regular courts is to resolve problems relating to the interpretation of applicable law, the role of the Court is to ensure or verify that the effects of this interpretation are in compliance with the Constitution and the ECHR (see the ECtHR case, *Miragall Escolano et al. v. Spain*, Judgment of 25 May 2000, paragraphs 33-39; and see also the case of the Court KI154/17 and KI05/18, cited above, paragraph 63). In principle, such an exception relates to cases which result to be apparently arbitrary, including those in which a court has “*applied the law manifestly erroneously*” in a particular case and which may have resulted in “*arbitrary conclusions*” or “*manifestly unreasoned*” for the respective applicant. (For a more detailed explanation regarding the concept of “*application of law in a*

manifestly erroneous manner”, see, *inter alia*, ECtHR Guide on Article 6 of the ECHR (civil limb), 31 August 2020, part IV. Procedural requirements; 3. Fourth instance; b. Scope and limits of the Court’s supervision, paragraphs 329-333; and the case of Court KI154/17 and KI05/18, cited above, paragraphs 60 to 65 and the references used therein).

39. In this context, the Court recalls that in the circumstances of the present case, the Applicant’s main allegations relate to the to the erroneous interpretation of Article 154 of the LOR and Article 14 of the LCP by the Court of Appeals. In essence, the Applicant alleges that the regular courts throughout the contested proceedings are related to the criminal liability of the person N.B, who was found guilty by Judgment [P. No. 465/01] of 28 April 2003 of the Municipal Court, and that consequently, the latter should be liable for compensation of damage to the Applicant in the circumstances of the present case.
40. The Court notes, however, that the Court of Appeals dealt with the criminal liability of N.B., and also considered both of the above articles, Article 154 of the LOR and Article 14 of the LCP.
41. With regard to the former, namely the application and interpretation of Article 154 of the LOR, the Court of Appeals, by Judgment [Ac. No. 1461/15] of 14 February 2020, *inter alia*, stated the following:

“The conclusion of the first instance court that from the administered evidence it is indisputable that the second respondent is responsible for the damage suffered by the claimant, according to the basis of subjective responsibility, emphasizing that in order for subjective responsibility to exist the following conditions must be met: damage is caused, there is an unlawful action, there is a causal link and there is guilt, assessing that in the present case all the conditions are met cumulatively and the responsibility of the second respondent derives based on Article 154 of the LOR (old law which was in force when the case occurred). This conclusion of the first instance court is completely wrong, the claimant but also the court during the administration of evidence did not prove the fact that there was any legal relationship between the claimant and the second respondent, although it is a condition that the subjects of the relationship exist and liability for the damage caused-the cause of the damage and the injured party, in this case the legal relationship between the claimant and the second respondent is missing, the second respondent has not taken responsibility to keep the claimant’s vehicle parked in the parking lot of the Municipality of Gjakova, although the second respondent was a security guard, but the fact that he was a security guard did not make him responsible for the property of third parties, unless the second respondent by his actions entered into liabilities in relation to third parties in the present case with the claimant. The claimant did not prove the fact that the second respondent undertook to protect his vehicle, the fact that the claimant parked the vehicle in the parking lot of the Municipality, with the consent of the second respondent or that he was right and parking permit in the closed type parking lot, which in such a case would create the obligation to respond to the eventual damage of the second respondent, but also of the first respondent, but until this fact is proven, the second

respondent cannot be obliged to compensate the damage that the claimant has suffered from third parties with the theft of the vehicle”.

42. Whereas, regarding the second, namely the application and interpretation of Article 14 of the LCP, based on which, the court in contested procedure is related to the final judgment of the criminal court, by which the defendant, in this case, the person N.B., was found guilty, the Court of Appeals by its Judgment, *inter alia*, reasoned as follows:

“The fact that the second respondent was found guilty, by Judgment P. No. 465/01 of 28.04.2003, for the criminal offense of irresponsible work in office, and found guilty under this criminal offense, would be the basis for compensation of the eventual damage caused to the employer, while it does not imply the right of the claimant to be compensated in relation to the second respondent, only for the fact that he was found guilty of this criminal offense, this right would belong to the claimant only if the second respondent would be found guilty of the criminal offense of vehicle theft. The fact that the second respondent did not perform his job duties, made him responsible in relation to the employer, and is the basis for disciplinary liability but also for compensation of eventual damage suffered by the employer, but under no circumstances can be obliged to third parties, nor to the claimant, until it is proven that the claimant has acted with concrete actions in causing the damage, or that within his duties was to protect the property of third parties, so the subjective element must be fulfilled - the guilt of the second respondent in relation to the claimant in causing the damage, an element that could not be proved even with finding guilty by Judgment P. No. 465/01 of 28.04.2003, for the criminal offense of irresponsible work in office. So in this case the guilt of the second respondent in causing the damage - the theft of the vehicle is missing, as the stolen vehicle was not proven to have had a parking permit in the closed parking lot of the municipality”.

43. In this respect, the Court considers that the Court of Appeals, in the circumstances of the present case, dealt with and substantiated the Applicant’s allegations, including those related to the erroneous interpretation of the provisions of the LOR and the LCP. , and that, in their entirety, the proceedings before the Court of Appeals do not appear to have been unfair or arbitrary.
44. Therefore, taking into account the allegations raised by the Applicant and the facts presented by him, as well as the reasoning of the regular courts elaborated above, the Court considers that the Applicant does not prove or sufficiently substantiate his claim that the regular courts may have “*applied the law manifestly erroneously*”, resulting in “*arbitrary conclusions*” or “*manifestly unreasoned*” for the Applicant, and consequently, his allegations of erroneous interpretation and application of the applicable law, qualify as allegations falling into the category of “*fourth instance*” and as such, reflect allegations at the level of “*legality*” and are not argued at the level of “*constitutionality*”. Therefore, the latter are manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 39 of the Rules of Procedure.

45. In this regard, in order to avoid misunderstandings on the part of applicants, the Court notes that 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, KI131/19, Applicant *Sylë Hoxha*, Resolution on Inadmissibility of 21 April 2020, paragraph 57; and KI49/19, cited above, paragraph 55).
46. This means more precisely that the parties in a course of a fair and impartial trial should: (i) be afforded a conduct of procedure based on adversarial principle; (ii) to be able to adduce the arguments and evidence they consider relevant to their case at the various stages of those proceedings; (iii) to be guaranteed that all the arguments, viewed objectively, relevant for the resolution of their case were heard and reviewed by the regular courts; (iv) to be guaranteed that the factual and legal reasons against the challenged decisions were presented and examined in detail; and that, according to the circumstances of the case, (v) be guaranteed that the proceedings, viewed in entirety, were fair and not arbitrary (See, *inter alia*, case of the ECtHR *Garcia Ruiz v. Spain*, cited above, paragraph 29; and KI131/19, cited above, paragraph 58). The Court states that, in the circumstances of the present case, the Applicant has not substantiated that this is not the case.
47. The Court also reiterates that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the 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, *inter alia*, cases of the Court, KI118/17, Applicant *Şani Kervan and Others*, Resolution on Inadmissibility of 17 January 2018, paragraph 36; KI49/19, cited above, paragraph 54; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility of 19 December 2019, paragraph 48).
48. Finally, the Court also recalls that the Applicant alleges that in the circumstances of the present case, the challenged Judgment of the Court of Appeals was also rendered in violation of his fundamental rights and freedoms guaranteed by Articles 3, 32 and 46 of the Constitution. In the context of these allegations, the Court notes that the Applicant alleges a violation of the abovementioned provisions of the Constitution, without arguing and reasoning the alleged violation by the challenged Judgment of the Court of Appeals.
49. The Court, in this respect, recalls that it has already a very consolidated case law through which it has consistently emphasized that merely mentioning an article of the Constitution, without a clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the protection machinery provided by the Constitution and the Court, as an institution caring for respect of human rights and freedoms. (See, in this context, the cases of the Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility, of 20 June 2019, paragraph 36; and KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility of 8 October 2019, paragraphs 30-

31; see also ECtHR Guide of 30 April 2020 on Admissibility Criteria; Part I. Admissibility Based on Merit; A. Manifestly ill-founded claims; 4. Unsubstantiated complaints: lack of evidence, paragraphs 300 to 303).

50. In the circumstances of the present case, the Applicant, beyond the reference to certain articles of the Constitution, has not clearly and adequately reasoned how these Articles may have been violated by the challenged Judgment of the Court of Appeals. Therefore, the Court considers that the Applicant's allegations of violation of the above articles of the Constitution fall into the category of "*unsubstantiated or unsupported*" claims. In the context of this category of allegations, the Court, based on paragraphs (1) (d) and (2) of Rule 39 of its Rules of Procedure and its case law, has consistently emphasized that (i) the parties have an obligation to accurately clarify and adequately present facts and allegations; and also (ii) to prove and sufficiently substantiate their allegations of violation of constitutional rights or provisions.
51. In these circumstances, based on the above and taking into account the allegations raised by the Applicant and the facts presented by him, the Court notes that his allegations of violation of Articles 3, 32 and 46 of the Constitution constitute "*unsubstantiated or unreasoned claims*", and as such, they are manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 39 of the Rules of Procedure.
52. Finally, the Court also notes that the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot in itself raise a substantiated allegation of a violation of the fundamental rights and freedoms guaranteed by the Constitution. (See ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).
53. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with paragraph 7 of Article 113 of the Constitution 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, 47 and 48 of the Law and Rule 39 (2) of the Rules of Procedure, in its session held on 10 February 2021, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Gresa Caka-Nimani

Arta Rama-Hajrizi

**Kopje e vërtetuar
Overena kopija
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