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

Pristina, on 1 March 2021
Ref. no.:RK 1720/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

case no. KI116/20

Applicant

N.T.Sh. "Edita-S.O.K"

Constitutional review of
Judgment E. Rev. No. 13/2020 of the Supreme Court of Kosovo of 6 April 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 N.T.Sh. "Edita-S.O.K", based in the village of Greikoc, Municipality of Suhareka, which is represented by its owner, Samir Kurtishaj (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is the Judgment [E. Rev. No. 13/2020] of 6 April 2020 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [Ae. No. 186/2018] of 21 October 2019 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and the Judgment [IV. EK. C. No. 105/16] of 8 June 2018 of the Department for Commercial Matters of the Basic Court in Prishtina (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, whereby the Applicant alleges that his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and 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 22 July 2020, the Applicant submitted the Referral to the Court.

6. On 3 August 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Safet Hoxha and Remzije Istrefi-Peci.

7. On 26 August 2020, the Court notified the Applicant and the Supreme Court about the registration of the Referral.

8. On 7 December 2020, the Court requested the Applicant to clarify before the Court whether he had submitted his Referral as an individual or on behalf of N.T.Sh. "Edita-S.O.K", and in accordance with Article 21 (Representation) of the Law and item c) of paragraph (2) of Rule 32 of the Rules of Procedure, to submit to the Court the power of attorney for representation.

9. On 22 December 2020, the Applicant (i) clarified before the Court that the Referral was filed on behalf of N.T.Sh. "Edita-S.O.K"; (ii) submitted the Business Registration Certificate, based on which it turns out that the Applicant is the sole owner of N.T.Sh. "Edita-S.O.K"; and (iii) submitted the decisions of the regular courts, which it also submitted in his initial referral before the Court.

10. 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

11. Based on the case file, it results that on 30 September 2009, the Applicant entered into a Contract with "ARS Beton" l.l.c., for the sale and purchase of a 912 excavator (hereinafter: the Contract). Under contract, "ARS Beton" l.l.c., was obliged to reimburse the Applicant the amount of 24,700.00 euro by 15 December 2009. As this amount had not been paid until the above mentioned date, the parties agreed that the payment deadline be extended until 24 December 2012. According to the Applicant, on this date, the amount of 300 euro was paid.

12. On 2 February 2016, the Applicant filed a lawsuit with the Basic Court against "ARS Beton" l.l.c., for the compensation of the aforementioned debt. The Applicant, *inter alia*, alleged that in this case the lawsuit was not statute-barred, because on 24 December 2012, a part of the payment was made and consequently, the statute of limitations was interrupted.

13. On 8 June 2018, the Basic Court by Judgment [IV. EK. C. No. 105/16], rejected the Applicant's lawsuit as ungrounded, stating that (i) based on paragraph 1 of Article 374 (Mutual Contractual Claims in the Sphere of Sale of Goods and Services) of the Law on Obligations of 1978 (hereinafter: the old LOR), the claims of this nature are statute-barred after three (3) years, and that in this case the parties entered into the Contract on 30 September 2009, while the Applicant filed the lawsuit on 2 February 2016; and (ii) even if the fact were accepted as true that a part of the payment was made on 24 December 2012, despite the fact that this fact has not been proven, the lawsuit is still statute barred, because from 24 December 2012, when it is claimed that a part of payment was made, until 2 February 2016, when the lawsuit was filed, more than three (3) years have passed.

14. On 21 June 2018, against the abovementioned Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, alleging essential violation of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law, with a proposal that the latter be remanded for retrial.

15. On 2 July 2018, the Applicant submitted to the Court of Appeals another submission for completion of the appeal, presenting new evidence related to the case, namely a statement of the respondent, based on which the latter, "*acknowledged the debt and promises to fulfill the obligation by July*". Based on this statement, the Applicant alleges that based on Article 387 (Acknowledging a Debt) of the old LOR, the statute of limitations has been terminated.

16. On 21 October 2019, the Court of Appeals by Judgment [Ae. No. 186/2018], rejected the Applicant's appeal as ungrounded and upheld the abovementioned Judgment of the Basic Court. The Court of Appeals, in its reasoning, stated,

inter alia, that (i) the Basic Court rightly found that the lawsuit was statute barred based on paragraph 1 of Article 374 of the old LOR; and (ii) evidence submitted through the submission of 2 July 2018, has not been submitted in accordance with the requirements of paragraph 1 of Article 180 [No title] of Law No. 03/L-006 on Contested Procedure (hereinafter: the LCP), because "*it has not provided evidence that through no fault of his own he could not present*" this evidence before the court of first instance, moreover the latter, is "*disputable*" and "*are not clear*".

17. On an unspecified date, against the abovementioned Judgment of the Court of Appeals, the Applicant filed a revision with the Supreme Court, alleging essential violations of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law.

18. On 6 April 2020, the Supreme Court, by Judgment [E. Rev. No. 13/2020] also rejected the revision filed against the Judgment of the Court of Appeals as ungrounded and, consequently, upheld the latter.

Applicant's allegations

19. The Applicant alleges that the Judgment [E. Rev. No. 13/2020] of 6 April 2020 of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution.

20. Regarding the Judgment [Ac. No. 186/2018] of 21 October 2019 of the Court of Appeals, the Applicant alleges that the latter was rendered "*on the basis of finding that the supplementation of the appeal is out of time*", this finding, according to him, is without legal basis and "*contrary to the provision of Article 180 of the LCP. Because this provision allows new facts to be presented in the procedure according to the appeal*".

21. Finally, the Applicant requests the Court to (i) declare his Referral admissible; (ii) decide that the Judgment [E. Rev. No. 13/2020] of 6 April 2020 of the Supreme Court in conjunction with the Judgment [Ae. No. 186/2018] of 21 October 2019 of the Court of Appeals and the Judgment [IV. EK. C. No. 105/16] of 8 June 2018 of the Basic Court, are in violation of Article 31 of the Constitution; and (iii) declare the latter invalid and remand its case for retrial to the Basic Court.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Article 31
[Right to Fair and Impartial Trial]

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

European Convention on Human Rights

Article 6

(Right to a fair trial)

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

Law on Obligations on 30 March 1978

Mutual Contractual Claims in the Sphere of Sale of Goods and Services

Article 374

Mutual contractual claims of legal persons (corporate bodies) in the sphere of sale of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statute of limitations after a three year period. The period of such unenforceability shall run separately for each supply of goods and work or service effected

Acknowledging a Debt

Article 387

Running of the limitation period shall be interrupted when a debtor acknowledges the debt

The acknowledgment of debt may be effected not only by a declaration to the creditor, but also in an indirect way, such as by an installment payment, payment of interest due, or providing security.

Law No. 03/L-006 on Contested Procedure

Article 180
[No title]

180.1 New facts cannot be presented through the complaint, or new proof, except when the complainer presents new proofs which couldn't be presented by no fault of the complainer, specifically they should be presented until the main hearing of the first level court.
180.2 By presenting new facts, the complainer should mention proofs through which such facts could be verified, while by presenting new proof, the complainer should mention facts which could be verified through those proofs.
180.3 Rejection of the prescription and rejection with aim of compensation which are not presented in the court of first level cannot be presented through a complaint.
180.4 If by presenting new facts, and by proposing new proof there are procedure expenses made during the complaint procedure that those expenses will be charged to the party which presented new fact respectively the party which presented new proofs.

Admissibility of the Referral

22. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and 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. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes:

> *"4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".*

25. In this regard, the Court notes that the Applicant has the right to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms applicable both to individuals and to legal persons (See, *inter alia*, case of Court KI118/18, with Applicants, *Eco Construction l.l.c.*, Resolution on Inadmissibility, of 10 October 2019, paragraph 29 and the references used therein).

26. 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 andfreedoms 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 [...]."

27. As regards the fulfillment of these requirements, the Court finds that the Applicant filed the Referral in the capacity of an authorized party, challenging the act of the public authority, namely Judgment [E. Rev. No. 13/20] of 6 April 2020 of the Supreme Court, after the exhaustion of all legal remedies prescribed 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.

28. 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".

29. This rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) but also of the Court, enables the latter to declare inadmissible as "*manifestly ill-founded*" a referral in its entirety or only with respect to any specific claim that a referral may constitute. Based on the case law of the ECtHR, the "*manifestly ill-founded*" claims can 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).

30. In the context of the assessment of the admissibility of the referral, namely, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the merits of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant 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.

31. The Court recalls that the circumstances of the present case relate to a Contract which the Applicant had entered into with "ARS Beton" l.l.c, for the sale and purchase of a vehicle/excavator. Based on this Contract, "ARS Beton" l.l.c., was obliged to initially, by 15 December, 2009, and then, according to the agreement between the parties, by 24 December 2012, to compensate the Applicant the contracted amount. Considering that this had not happened, the Applicant filed a lawsuit for debt payment with the Basic Court. The latter rejected the lawsuit of the Applicant, on the grounds that it was statute-barred. By the appeal to the Court of Appeals, *inter alia*, the Applicant alleged that the statute of limitations in this case was interrupted, given the fact that part of the payment was made on 24 December 2012, while on 2 July 2018, the Applicant through a statement acknowledged the debt. This statement was submitted by the Applicant to the Court of Appeals, by a submission at the time the appeal was being considered. The Court of Appeals rejected the Applicant's appeal, stating also that the deadlines for filing his lawsuit were statute-barred, moreover that the relevant statement of acknowledgment of the debt submitted to the Court of Appeals did not meet the requirements set out in Article 180 of the LCP, to be admitted as evidence. The Supreme Court upheld the Judgment of the Court of Appeals, rejecting the Applicant's request for revision as ungrounded. The Applicant challenges the findings of the regular courts before the Court, alleging a violation of Article 31 of the Constitution and stating that the Court of Appeals rejected the supplementation to his appeal, contrary to Article 180 of the LCP, otherwise it would be proved that running of the statute of limitations based on Article 387 of the old LOR has been terminated, and consequently, his lawsuit should be considered on its merits.

32. 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"*.

33. 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; 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).

34. 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).

35. 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).

36. In this context, the Court recalls that in the circumstances of the present case, the Applicant's main allegations relate to the erroneous interpretation of Article 180 of the LCP, initially by the Court of Appeals and then by the Supreme Court. In essence, the Applicant alleges that the Court of Appeals rejected the evidence submitted through the submission of 2 July 2018, in an erroneous interpretation of Article 180 of the LCP, and that otherwise, based on this evidence, the Court of Appeals, would certify that based on Article 387 of the old LOR, the running of statute of limitations has been interrupted.

37. The Court notes, however, that the Court of Appeals dealt with its submission of 2 July 2018, and based on Article 180 of the LCP, had rejected it. The Court of Appeals, by Judgment [Ae. No. 186/2018] of 21 October 2019, in this context, stated as follows:

> *"The claimant in the appeal claims the termination of the statute of limitation by referring to some disputed evidence which is not clear and on this basis seeks the annulment of the challenged judgment. But, from the case file it results that the claimant acted in contradiction with the provision of Article 180 paragraph 1 of the LCP, which stipulates that: "New facts cannot be presented through the complaint, or new proof, except when the complainer presents new proofs which couldn't be presented by no fault of the complainer, specifically they should be presented until the main hearing of the first level court, therefore the court of first instance". The claimant did not present this evidence in the proceedings conducted before the first instance, therefore the court based its decision on the evidence administered in the hearing, namely in the evidence presented by the claimant, which in accordance with Article 319 of the LCP, has the duty to prove the facts on which he bases his research and allegations. The claimant submitted the disputed evidence only in the court of second instance and did not provide evidence that through his own fault he could not submit it, namely to propose it until the end of the main trial in the court of first instance. The claimant did not even submit this evidence in the appeal but in its supplementation, after the deadline for appeal".*

38. In this regard, the Court considers that the Court of Appeals, in the circumstances of the present case, had dealt with and reasoned the allegations of the Applicant, including those related to the erroneous interpretation of the provisions of the LOR and the LCP. In the context of Article 180 of the LCP, the violation which the Applicant alleges, the Court of Appeals, *inter alia*, stated that (i) new evidence before the Court of Appeals can be presented only when the complainant, namely the Applicant provides evidence that he could not have presented them to the court of first instance without his fault; (ii) this evidence was not submitted through the appeal of 21 June 2018, but through a submission of 2 July 2018, and consequently out of the deadline for appeal to the Court of Appeals; and (iii) that the latter was " *disputable*" evidence and "*unclear*".

39. Furthermore, and beyond this allegation, the Court notes that all the regular courts dealt with the issue of statute of limitation of the Applicant's lawsuit, noting that (i) the Contract between the parties was concluded on 30 September 2009, whereas the Applicant filed the lawsuit on 2 February 2016, out of the three (3) year deadline established by Article 374 of the old LOR, applicable in the circumstances of the present case; (ii) even if the Applicant's claim that on 24 December 2012, a part of the payment was made was taken into account, and consequently the statute of limitation was interrupted, the lawsuit is again statute-barred, because from 24 December 2012, when it is claimed that a part of the payment was made, until 2 February 2016, when the lawsuit was filed, more than three (3) years have passed; and finally (iii) that the statement for *"acknowledgement of debt"* submitted to the Court of Appeals on 2 July 2018, was not submitted in accordance with the requirements of Article 180 of the LCP and moreover, after the deadline for submission of the appeal.

40. In such circumstances, having regard to the allegations made 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.

41. In this respect, in order to avoid misunderstandings on the part of applicants, it should be borne in mind that the *"fairness"* required by Article 31 of the Constitution in conjunction with Article 6 (Right to a fair trial) 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, *inter alia*, the case of the Court, KI131/19, Applicant *Sylë Hoxha*, Resolution on Inadmissibility of 21 April 2020, paragraph 57; and KI49/19, cited above, paragraph 55).

42. 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 a not arbitrary (See, *inter alia*, case of the ECtHR *Garcia Ruiz v. Spain*, cited above, paragraph 29; and case of the Court, 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.

43. 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).

44. 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).

45. 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 of the Republic of Kosovo, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure, 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

This translation is unofficial and serves for informational purposes only.