



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

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Prishtina, on 5 March 2021  
Ref.No:RK 1722/21

*This translation is unofficial and serves for information purposes only*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI163/20**

Applicant

**“Inter-Eminex”**

**Constitutional review of Judgment no. AC-I-16-02560A001 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 21 May 2020**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by the Company “Inter-Eminex”, which is represented by one of its owners, namely, Izet Limani, residing in the Municipality of Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment [no. AC-I-16-02560A001] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: The Appellate Panel), of 21 May 2020, in conjunction with Judgement [C-IV-16-0328] of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: The Specialized Panel), of 31 October 2016.
3. The Applicant has received the challenged Judgment on 2 June 2020.

## **Subject matter**

4. The subject matter of the Referral is the constitutional review of the challenged Judgment which is alleged to have violated Applicant's fundamental rights and freedoms guaranteed by Articles 21 [General Principles] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR).
5. The Applicant also requested the return to the previous situation regarding the deadline for submitting the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), pursuant to Article 50 (Return to the Previous Situation) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), stating that due to "*health reasons*" he was not able to submit the Referral within the deadline of four (4) months, as defined in Article 49 (Deadlines) of the Law.

## **Legal basis**

6. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, and Articles 22 (Processing Referrals), 47 (Individual Requests) and 50 (Return to the Previous Situation) of 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**

7. On 19 October 2020, the Applicant submitted the request for returning to previous situation to the Court, as he had missed the deadline to challenge the Judgment [no. AC-I-16-02560A001] of the Appellate Panel, of 21 May 2020, in conjunction with Judgment [C-IV-16-0328] of the Specialized Panel, of 31 October 2016.
8. On 23 October 2020, the Applicant submitted to the Court additional documents, including the Referral Form.
9. On 2 November 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.

10. On 17 November 2020, the Court (i) notified the Applicant's representative on the registration of the Referral, requesting clarification whether he had submitted the Referral as an individual or on behalf of the "Inter-Eminex" Company; and (ii) pursuant to Article 21 (Representation) of the Law and Rule 32 (2) (c) of the Rules of Procedure, requested the Applicant that if he had submitted the Referral on behalf of the "Inter-Eminex" Company, to submit the authorization for representation or evidence on his status at the "Inter-Eminex" Company".
11. On 1 December 2020, the Court received additional documents from the Applicant's representative, stating, inter alia, that he is a co-owner of the "Inter-Eminex" Company and that he submits his Referral on behalf of the co-owners of the Company. In this context, he submitted an authorization letter of 2008.
12. On 8 December 2020, the Court notified the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: SCSC) about the registration of the Referral and requested from the same to submit the acknowledgment of receipt indicating when was the challenged Judgment served on the Applicant.
13. On 15 December 2020, the Court received the acknowledgment of receipt from the SCSC indicating that the Applicant's representative has received the challenged Judgment on 2 June 2020.
14. On 11 January 2021, the Court once again addressed the Applicant with a request to clarify (i) whether he submitted his Referral to the Court in his capacity as an individual or as the representative of the "Inter-Eminex" Company; and (ii) if the Referral is submitted on behalf of a legal person, then to submit to the Court the power of attorney or evidence regarding his relevant status at the "Inter-Eminex" Company.
15. On 19 January 2021, the Court received from the Applicant's representative a notarized authorization based on which it results that (i) "Inter-Eminex" Company has four co-owners, namely, I.L., E.L., M.L., and Xh.L.; and (ii) the Applicant has been authorized by E.L., M.L., and Xh.L., inter alia, to "*represent them at the Constitutional Court [...] in relation to the case No.Kl163/20*".
16. On 18 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**

17. On an unspecified date, the Applicant filed a claim with the SCSC against the socially-owned enterprise "Urata" former socially-owned enterprise "VOQAR" (hereinafter: SOE "Urata"), seeking compensation on behalf of the debt in the amount of 275,034.84 Euros (hereinafter: the disputed amount), alleging that the Applicant has delivered goods to the SOE "Urata", and for the same was never compensated. The Applicant and the SOE "Urata" did not have a signed contract but based on the allegation, the representatives of the SOE "Urata", have signed the invoices of the Applicant regarding the goods delivered.

18. On 31 January 2007, the SCSC by Decision [SCC-06-0404] decided to refer the Applicant's case to the District Commercial Court in Prishtina (hereinafter: the District Court) for adjudication.
19. On 24 April 2007, the District Court by Judgment [II.C.nr.79/2007], approved the Applicant's summary-claim and obliged the SOE "Urata" to pay to the Applicant the disputed amount with annual interest of three percent (3%), from 1 August 1999 until the final payment.
20. On an unspecified date, the Kosovo Trust Agency (hereinafter: KTA) filed an appeal against the aforementioned Judgment of the District Court. However, since the liquidation procedure against the SOE "Urata" was initiated by the KTA, based on the case file, the above mentioned court proceeding regarding the Applicant's claim has been suspended.
21. On 10 October 2007, the Applicant filed a request with the KTA, requesting *"to take into account the amount of the debt which by the Judgment of the First Instance [Commercial Court] was acknowledged to the Claimant, based on the original invoices submitted by [the Applicant], and to separate this amount from the liquidation measure, and in order to meet the requirements of [the Applicant]"*.
22. On 23 June 2011, the Liquidation Authority of the SOE "Urata", through Decision [No. LPRN103-520], had rejected the Applicant's request for compensation of the disputed amount, with the reasoning that (i) the contract based on which the Applicant requested the payment of the disputed amount, has not been found in the archive; and (ii) there was no evidence that the goods in question have been received by the SOE "Urata".
23. On 18 October 2011, the Applicant filed a complaint with the SCSC, against the above mentioned Decision of the Liquidation Authority. On 14 July 2014, the Privatization Agency of Kosovo (hereinafter: KPA), filed a response to the Applicant's complaint, proposing that the respective claim be rejected as ungrounded. The KPA specifically alleged that the Applicant's claim was statute-barred under Article 374 (Reciprocal Claims from the Contract for the Movement of Goods and Services) of the Law of Contract and Torts of 1978 (hereinafter: the old LCT).
24. On 6 July 2015, the Specialized Panel by Judgment [SCL-11-0022], rejected the Applicant's complaint and upheld the Decision [No. LPRN103-520] of the Liquidation Authority, of 23 June 2011.
25. On an unspecified date, the Applicant filed an appeal with the Appellate Panel against the above-mentioned Judgment of the Specialized Panel, alleging essential violations of the contested procedure, erroneous determination of the factual situation and violation of the substantive law. The Applicant, in essence, stated that the Specialized Panel had erroneously and contrary to the evidence, found that there was no valid contract between the parties, emphasizing (i) the *"signed and stamped"* invoices, which should be considered as reliable documents and moreover, on the basis of which, pursuant to Article 29 (Reliable Documents) of Law No. 04/L-139 on Enforcement Procedure (hereinafter: LEP) the same have *"legal force as a final court decision"*; (ii) the fact that based on Article 67

(Informality of the contract) of the old LCT, a contract must necessarily have a written form in order to be considered valid; and (iii) the “suspicious” testimony of Sh.S. and Xh.M.

26. On 26 May 2016, the Appellate Panel by Judgment [AC-I-15-0196-A0001], approved the Applicant’s appeal and remanded the case for reconsideration to the Specialized Panel, requesting, inter alia, that in the review procedure to be heard also witnesses Sh.S. and Xh.M.
27. On 31 October 2016, the Specialized Panel by Judgment [C-IV-16-0328], rejected the Applicant’s complaint and upheld the Decision [No. LPRN103-520] of the Liquidation Authority. Regarding the disputed issue related to the signed invoices, as well as whether in this respective case there is a valid or fictitious contract between the Applicant and the SOE “Urata”, the Specialized Panel, inter alia, reasoned that (i ) based on Article 66 (Fictitious contract) of the old LCT, the contract between the parties, results to have been fictitious and consequently invalid; (ii) invoices related to the goods delivered were signed by the General Director of the SOE “Urata”, but this *“does not exclude the possibility that the contract was actually executed in bad faith [...] that one party would not perform it at all and the other party’s representative is fully aware of this, but acts to the detriment of the SOE it represents”*; (iii) the fact that such contract has not been made in writing and has not been recorded in the books of the SOE “Urata”, proves that the General Director of the SOE “Urata”, *“did not intend to enter into a normal commercial transaction, but planned to abuse with the position of manager”*; (iv) invoices *“were issued contrary to all applicable internal procedures of the respondent SOE and were not recorded in its books”*; (v) no evidence has been provided that the disputed goods were received by the SOE “Urata”; and (vi) the testimonies of Sh.S. and Xh.M. are *“credible and convincing”*.
28. On 21 November 2016, the Applicant filed an appeal with the Appellate Panel against the aforementioned Judgment of the Specialized Panel, alleging essential violations of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law. The Applicant also alleged violation of Article 6 of the ECHR. Through this appeal, inter alia, the Applicant stated that (i) contrary to paragraph 1 of Article 9 (Conduct of Proceedings By a Sub-Panel or Single Judge) of Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Law on the SCSC), the main trial held on 19 September 2016, was presided by the single judge, while the relevant Judgment is *“signed by all members of the trial panel”*; (ii) based on Articles 66 and 67 of the old LCT, the reasoning of the Specialized Panel regarding the validity of the contract is contradictory; (iii) the testimonies of Sh.S. and Xh.M. are not credible; and also proposed (iv) that four other witnesses be heard.
29. On 21 May 2020, the Appellate Panel by Judgment [AC-I-16-02560A001], rejected the Applicant’s appeal as ungrounded and upheld the Judgment [C-IV-16-0328] of the Specialized Panel, of 21 May 2020. In rejecting the relevant appeal, the Appellate Panel, inter alia, reasoned that (i) based on paragraph 1 of Article 11 (Sub-panels and Single Judges) of the Annex to the Law on the SCSC and paragraph 1 of Article 9 (Conduct of Proceedings By a Sub-Panel or Single Judge) of the Law on SCSC, only one judge was present at the hearing, with authority delegated by the



Specialized Panel, whilst the Judgment was signed by the Panel of Judges, who had decided in full composition; (ii) The Specialized Panel made a “*correct and legal*” conclusion regarding the validity of the contract and that in this case there was no “*creation of a legal norm*”, as alleged by the Applicant’s appeal; and (iii) with regard to the reliability of the testimony of witnesses, stated that the burden of proof falls on the Claimant, respectively the Applicant, whilst the latter had not managed to refute with any argument or proofs such pieces of evidence, which are in full compliance with the material evidence of the case.

### **Request for return to previous situation**

30. The Applicant initially requests the return to previous situation regarding the deadline for submitting the Referral to the Court, as defined by Article 50 (Return to the Previous Situation) of the Law.
31. The Applicant justifies the non-submission of his constitutional appeal within the deadlines prescribed by Article 49 of the Law, stating that “*due to illness/infection with Covid -19, with very severe symptoms and serious health risk, I was recommended by the doctor [...] to bed rest for 2 months and staying at high altitudes (Prevalla) for health recovery*”.
32. Whereas, he justifies his request for return to previous situation by stating that (i) his lawyer received the challenged Judgment on 2 June 2020; (ii) on 10 October 2020, “*I have returned from Prevalla and upon checking the e-mail, I have been notified by the lawyer*” regarding the challenged Judgment; whereas (iii) as defined in Article 50 of the Law, he submitted his request for return to previous situation on 19 October 2020, “*which means within 15 days from the removal of the obstacle, such as recovery from the infectious disease Covid 19 and my permission to private and public free movement without fear of infecting any natural person with Covid-19 disease*”.

### **Applicant’s allegations**

33. The Applicant alleges that Judgment [no. AC-I-16-02560A001] of the Appellate Panel, of 21 May 2020, in conjunction with Judgment [C-IV-16-0328] of the Specialized Panel, of 31 October 2016, have violated his fundamental rights and freedoms guaranteed by Articles 21 [General Principles] and 31 [Right to Fair and Impartial Trial] of the Constitution and Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.
34. With regard to the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant states that (i) the procedure which resulted with issuance of Judgment [C-IV-16-0328] of the Specialized Panel, “*was conducted by the single judge without the presence of other judges of the Panel [...], while the judgment was signed by all judges of the Panel [...] and by the judges who were not present at the main hearing*” and, consequently, the relevant Judgment was issued contrary to paragraph 4 of Article 14 (Repeal of Prior Legislation; Conflicts; Interpretation) of the Law on the SCSC, which stipulates that the SCSC will apply *mutatis mutandis* relevant provisions of Law. No. 03/L-066 on Contested Procedure (hereinafter: LCP), while point a) of paragraph 2 of Article 182 [without title] of the Law on LCP, stipulates that substantial violation of the

provisions of contested procedure always exists when the court is not composed based on provisions or when during the issuance of the judgment has taken part a judge who did not take part in the main trial; (ii) contrary to Article 67 of the LCP, *“in the same legal matter to participate also a judge who has already participated in another panel of another instance for the same matter; because in this trial has taken part also the judge who necessarily should have dismissed himself”* without providing an explanation for the judge who took part in two instances regarding his legal case; (iii) despite the fact that the SCSC found that the contract is fictitious, based on paragraph 1 of Article 66 of the LCT, because the relevant contract should have been in writing and recorded in the books of the SOE “Urata”, paragraph 1 of Article 67 of the same law stipulates that for the circulation of goods and services it is not necessary to enter into a formal contract; (iv) contrary to paragraph 2 of Article 339 [no title] and 349 [no title] of the LCP, the testimonies of witnesses Sh.S. and Xh.M. were approved, despite the fact that none of them had any knowledge for the disputed goods, because Sh.S. was not employed at the SOE “Urata” during 1998-1999, whereas Xh.M., was not responsible for receiving food goods; (v) the four witnesses proposed by him were not allowed to testify before the court; and (vi) the challenged Judgments are contradictory because on one hand they conclude that *“the person who signed and stamped the invoices is an unknown person and the stamp is unknown as well”*, while on the other hand, they state that *“the signature is signed by the Director General of the SOE “Urata” and that the stamp with which they are stamped belongs to the SOE “Urata”*.

35. With regard to the alleged violations of Article 21 of the Constitution and Article 13 of the ECHR, beyond the reference to the content of these Articles, the Applicant has not substantiated nor has presented any arguments regarding those violations.
36. Finally, the Applicant requests the Court to (i) approve his Referral and allow the return to the previous situation under Article 50 of the Law; (ii) declare his Referral admissible; and (iii) find that Judgment [AC-I-16-02560A001] of the Appellate Panel, of 21 May 2016, in conjunction with Judgment [C-IV-16-0328] of the Specialized Panel, of 31 October 2016, were issued in violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR; and (iv) annul the same and remand the case for reconsideration.

### **Assessment of the admissibility of Referral**

37. 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.
38. In this respect, the Court first refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which provides:
 

*“4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”*
39. In addition, the Court also 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.”*

40. Furthermore, the Court also refers to the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which provide:

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 [...].”*

41. As to the fulfillment of the foregoing admissibility criteria, the Court first notes that that the Applicant has the right to file a constitutional appeal, referring to the alleged violations of his fundamental rights and freedoms, valid for individuals and legal persons. (See, inter alia, Court’s Case No. KI41/09, Applicant, *AAB-RIINVEST University L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14; and KI35/18, Applicant *“Bayerische Versicherungsverband”*, Judgment of 11 December 2019, paragraph 40).
42. In addition, the Court also notes that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment [no. AC-I-16-02560A001] of the Appellate Panel, of 21 May 2020, after having exhausted all legal remedies prescribed by law. The Applicant also has clarified rights and freedoms which he claims to have been violated, in accordance with Article 48 of the Law. However, the Court should also examine whether the Referral has been submitted in the Court within the deadline of four (4) months established in Article 49 of the Law.



43. In this regard, the Court notes that in addition to the criterion of four (4) months, which is prescribed under Article 49 of the Law for submission of referrals to the Court, according to the procedure defined in paragraph 7 of Article 113 of the Constitution, respectively individual requests, is also point (c) paragraph (1) of Rule 39 (Eligibility Criteria) of the Rules of Procedure, which provides as follows:

Rule 39  
(Admissibility Criteria)

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

*[...]*

*c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant, and [...].”*

44. In the circumstances of the present case, the Court recalls that the Applicant challenges the Judgment [AC-I-16-02560A001] of the Appellate Panel, of 21 May 2020. The acknowledgment of receipt submitted to the Court by the SCSC, confirms that the Applicant received the challenged Judgment on 2 June 2020. The Applicant submitted his Referral to the Court on 19 October 2020. Consequently, it is not disputed that the Applicant's Referral was submitted after the legal deadline of four (4) months set by the Law and Rules of Procedure.
45. However, the Court recalls that the Applicant requests the Court to return to the previous situation regarding the deadline for submitting the Referral to the Court, as prescribed in Article 50 of the Law.
46. In this context, the Court recalls that the Applicant justifies that he has not submitted the Referral to the Court within the deadline established in Article 49 of the Law, (i) “*due to illness/infection with Covid-19*”; (ii) that within this time, he has been “*in bed rest for 2 months*” on the recommendation of the relevant doctor; (iii) that he was notified by the relevant lawyer with regard to the challenged Judgment, on 10 October 2020; whereas (iv) as required by Article 50 of the Law, he submitted the Referral to the Court within fifteen (15) days from the removal of the obstacle, respectively on 19 October 2020.
47. In the context of the Applicant's request for returning to previous situation, the Court first recalls the content of Article 50 (Return to the Previous Situation) of the Law, which stipulates as follows:

*“If a claimant without his/her fault has not been able to submit the referral within the set deadline, the Constitutional Court, based on such a request, is obliged to return it to previous situation. The claimant should submit the request for returning to previous situation within (15) days from the removal of obstacle and should justify such a request. The return to the previous situation is not permitted if one year or more have passed from the day the deadline set in this Law has expired.”*

48. Based on the content of Article 50 of the Law, in order to approve the request for return to the previous situation, the following requirements: (i) the Applicant must prove that without his/her fault has not been able to submit the referral within the

set deadline, respectively within four (4) months as provided by Article 49 of the Law; (ii) the Applicant must submit the request for returning to previous situation within 15 days from the removal of obstacle; (iii) the Applicant has justified the request in question; and (iv) one year or more have not passed from the day the deadline set in this Law for submitting the referral to the Court has expired. These conditions are cumulative.

49. In the circumstances of the present case and as explained above, the Court notes that based on the acknowledgment of receipt submitted to the Court by the SCSC, the Applicant received the challenged Judgment of the Court of Appeals, on 2 June 2020. Based on Article 49 of the Law, the Referral to the Court should have been submitted by 2 October 2020. The same was submitted to the Court on 19 October 2020. In this context, the Court notes that not a year or more have passed since the expiry of the deadline defined by the Law on filing a Referral with the Court, and consequently one of the conditions set out in Article 50 of the Law is met. However, the Court also should examine whether the other three conditions set out in Article 50 of the Law are met, namely whether the Applicant (i) has proved that without his fault, he was not able to file the Referral within the prescribed time limit, established in Article 49 of the Law; (ii) has justified his Referral; and (iii) has filed a request for return to previous situation within the deadline of fifteen (15) days from the removal of obstacle.
50. In this context, the Court recalls once again that the Applicant received the challenged Judgment of the Court of Appeals on 2 June 2020. The medical reports which are included in the case file and which are recommended by the Applicant, inter alia, "*staying at high altitudes (Prevalle) for 2 months*", are namely of 4 and 8 August 2020. In the Applicant's request regarding the return to previous situation of the deadline, there is no single reasoning about the impossibility to submit the relevant Referral to the Court from the moment of receipt of the Judgment, namely 2 June 2020 and until the receipt of the first medical report, namely 4 August 2020, subsequently for a period of two months. Moreover, the Referral was submitted to the Court on behalf of a legal person, namely the "Inter-Eminex" Company, and which based on the case file, has three other co-owners. In the Applicant's request for return to previous situation, there is no single reasoning about the impossibility to submit the Referral to the Court by the other co-owners or other authorized persons of the relevant legal person, respectively the lawyer who had received the challenged Judgment of the Appellate Panel on behalf of the Applicant.
51. The Court reiterates that it is its duty to approve or not the return to the previous situation of the deadline, based on its assessment, in each case separately, if the requirements set out in Article 50 of the Law are met, and which are cumulative. In the circumstances of the present case, based on the case file, the Court finds that (i) the Applicant has not proved that without his fault he was not able to file the Referral within the prescribed time limit, namely the four (4) month time limit, established in Article 49 of the Law, because while it is not disputed that the Applicant has been ill with covid-19 since August 2020, in his Referral there is no justification for the impossibility of submitting his Referral to the Court during the months of June and July 2020 and, moreover, no justification for the impossibility to submit the referral to the Court by other co-owners or even other authorized persons of the legal person; (ii) in the same context, the Applicant does not prove that the obstacle was removed on 10 October 2020, the date from which the fifteen

(15) day deadline for submitting the Referral to the Court would begin to run, because there is no justification regarding the existence of any obstacles for submitting the referral to the Court during the months of June and July 2020; and (iii) for the same reasons, the request in question is not reasoned.

52. Consequently, the Court notes that in the circumstances of the present case, only one of the conditions set out in Article 50 of the Law was met, namely the one-year period within which a referral can be submitted to the Court requesting to return to the previous situation, and consequently, the Court should conclude that, in the circumstances of the present case, the requirements foreseen in Article 50 of the Law for return to previous situation have not been met, and to conclude that the Referral was submitted after the deadline established in Article 49 of the Law.
53. The Court recalls that the purpose of the legal deadline of four (4) months, pursuant to Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, is to promote legal certainty by ensuring that cases involving constitutional issues are resolved within a reasonable time and that previous decisions are not permanently open to challenge. (See, inter alia, the case of the ECtHR, *Sabri Gunes v. Turkey*, Judgment of 29 June 2012, paragraph 39 and the references used therein; and see also, inter alia, the cases of the Court KI107/20, with Applicant *Ismail Guri*, Resolution on Inadmissibility of 3 December 2020, paragraph 41; KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility of 17 March 2014, paragraph 24; and KI120/17, Applicant *Hafiz Rizahu*, Resolution on Inadmissibility of 7 December 2017, paragraph 39).
54. In conclusion, on the basis of the foregoing reasons, the Court finds (i) that the Referral does not meet the requirements set out in Article 50 of the Law for return to previous situation; and consequently (ii) the Referral has been filed after the legal deadline set out in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure and accordingly, the Court cannot examine the merits of the case, respectively, whether the challenged Judgment has violated the Applicant's constitutional rights.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Articles 20, 49 and 50 of the Law and in accordance with Rule 39 (1) (c) and 59 (2) of the Rules of Procedure, on 18 February 2021, unanimously

## **DECIDES**

- I. TO REJECT the Applicant's request for return to previous situation regarding the deadline for submitting the Referral at the Constitutional Court;
- II. TO DECLARE the Referral inadmissible;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Gresa Caka-Nimani

Arta Rama-Hajrizi



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