



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

Prishtina, on 26 April 2021
Ref.No:RK 1758/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI10/21

Applicant

D.P.H “DENI” with owner Asdren Salihu

Constitutional review of Decision Ac.no.1129/2019 of the Court of Appeals, of 16 November 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërzhaliu-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 D.P.H "DENI" having its seat in Podujevë, with owner Asdren Salihu, (hereinafter: the Applicant) who according to the authorization is represented by lawyer Gani Asllani from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of the Decision Ac.no. 1129/2019 of the Court of Appeals, of 16 November 2020.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly has violated the Applicant's 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).

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 the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 11 January 2021, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which was received by the latter on 13 January 2021.
6. On 18 January 2021, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 22 January 2021, the Court (i) notified the Applicant's representative about the registration of the Referral; and (ii) requested from the representative the submission of the power of attorney proving that he is representing the Applicant before the Court.
8. On 15 February 2021, the Court received the respective power of attorney from the Applicant's representative.
9. On 18 February 2021, the Court notified the Court of Appeals about the registration of the Referral.
10. On 13 April 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

Loan agreement and its restructuring

11. On 18 September 2007, the Applicant together with two guarantors (B.S. and N.S.), entered into a Loan Agreement no.200631530 (hereinafter: the Loan Agreement) with Raiffeisen Bank (hereinafter: the Creditor) in the amount of 30,000 Euros. According to the case file, the Applicant had also signed Annex 1 on the pledge and an agreement regarding the mortgage.
12. On 27 February 2009, the Applicant and the creditor signed Annex 2 for the loan restructuring, namely the Loan Agreement of 18 September 2007, in the amount of 24,244.49 Euros. In Annex 2, new loan repayment terms as well as a new interest rate were set. Other specific Articles of the Loan Agreement of 18 September 2007 remained unchanged.

Other procedures initiated by the Applicant, according to the case file

13. According to the case file, on 24 June 2015, the Applicant filed a claim for “annulment of non-contracted debt” with the Basic Court in Prishtina-Department for Commercial Matters (case number I.C.no.227/17).
14. On the basis of the case file, on 24 June 2015, the Applicant also addressed the Economic Crimes Unit of the Police regarding the issue of its loan.
15. On 28 August 2017, the Basic Court in Prishtina-Department for Commercial Matters, through a Decision approved the Applicant's proposal to have issued an expertise in this contested matter, in relation to the transactions performed from the loan.
16. The Court has no further information regarding the abovementioned procedures.

Proposal for enforcement and enforcement procedure

17. On 10 July 2017, the Creditor, with the justification that the Applicant did not comply with the above agreements (see paragraphs 11 and 12), submitted a proposal for enforcement to the private enforcement agent for the seizure of collateral as well as the sale, vacation and handover of the ownership and possession of immovable property. The Creditor requested from the Private Enforcement Agent to: (i) allow the enforcement and oblige the Applicant to pay the amount of 29,346.94 Euros; (ii) freeze all accounts in all commercial banks in the name of all debtors by carrying out the payment by cash transfer; (iii) seize the collateral; (iv) allow the enforcement as proposed by the creditor, by the sale, vacation and handover of ownership and possession of the immovable property.
18. On 11 July 2017, the Private Enforcement Agent with the Writ of Enforcement [P.no.313/2017], allowed the enforcement according to the creditor's proposal.

19. On 19 July 2017, the Applicant filed an objection against the Writ of Enforcement [P.no. 313/2017], which he supplemented with the submission of 4 December 2017. In the objection, the Applicant stated that: (i) it has fulfilled all the loan obligations, on which occasion he provided the court with the statement of bank account payments; (ii) alleged that the creditor had unlawfully exercised the amount of 29,346.94 euros, and had deceived the Applicant with an *“unlawful amortization plan based on a so-called “Balloon payment” product*; and (iii) stated that according to Article 262 paragraph 4 of the Law on Contested Procedure (hereinafter: LCP), the enforcement case cannot continue because there exists litispence in this civil-legal matter, and moreover stated that in this case, an investigation procedure for economic offence is ongoing.
20. On an unspecified date, also the Creditor submitted a response to the objection and stated, among other things, that (i) the loan restructuring is always carried out at the request of the debtors and where the borrower and the lender agree to the new terms; (ii) considers that there have been fulfilled the legal conditions to continue with the enforcement proceedings, and the debtor's intention is only to delay the case.
21. On 15 January 2019, the Basic Court in Prishtina – Branch in Podujevë (hereinafter: the Basic Court), by Decision [PPP.no.62/2017], rejected as ungrounded the objection submitted by the Applicant. The Basic Court initially stated that as regards the Applicant's allegation that the enforcement case cannot continue because there exists litispence, it does not stand, and refers to Article 35 paragraph 1 of the Law on Enforcement Procedure (hereinafter: the LEP) which stipulates *“The enforcement authority may not interrupt the enforcement procedure in order to wait for the decision of the competent court, or other body, regarding the previous matter.”* The Basic Court also reasoned that no evidence as required by Article 69 paragraph 4 of the LEP has been submitted and that the Decision on the registration of the mortgage of 18 August 2007 is an enforcement document as provided for by Article 22 paragraph 1 point 1.7 of the LEP. The Basic Court also refers to Article 27 paragraph 1 whereby it is determined what is meant by an enforcement document.
22. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against Decision [PPP.no.62/2017] of the Basic Court, alleging: (i) violation of legal provisions; (ii) erroneous and incomplete determination of the factual situation; and (iii) erroneous application of substantive law. The Applicant in his appeal first considers that he has provided relevant evidence to the court, namely 1. The statement of account on the payments made; 2. Bank's amortization plan; 3. Official documents addressed to the creditor and 4. The request addressed to the Economic Crimes Unit of the Police, of 24 June 2015. The submitter of the second request states that according to Article 352 of the Law on Obligational Relationships (hereinafter: the LOR), the request for execution is statute-barred according to the 5-year period, because the loan was concluded in 2007 and according to Article 379 of the LOR, the interest on interest is prohibited.

23. On 16 November 2020, the Court of Appeals through Decision [Ac.no.1129/2019], rejected as ungrounded the Applicant's appeal. The Court of Appeals stated: (i) in relation to the appeal claim that all liabilities to the creditor have been settled, it considered it ungrounded because even though the Applicant has carried out some payments, and the fact that the balance at the end of the bank account statement issued on March 22, 2015 turns out to be 0.00 euros, it does not mean that the loan has been repaid in full, and this according to the Court of Appeals is because the statement of account contains every banking operation, including payments, deposits and withdrawals, which do not concern the loan in question; (ii) as regards the prescription of the claim related to Article 352 of the LOR, the Court of Appeals stated that it could not review this claim in conformity with Article 17 of the LEP, because based on the case file it is concluded that the debtor has submitted the objection regarding the statute of limitations only to the filed appeal; and (iii) as to the allegation that the interest on interest was applied in the present case, the Court of Appeals reasoned that the regular interest rate contracted in the loan agreement consisted of 14%, whilst upon the loan restructuring it was contracted at 16%, and according to Article 4 paragraph 1, item e) of the basic loan contract, which is valid also for the loan restructuring, there was contracted also the payment of the penalty interest. Finally, as regards the issue relating to the contested case, IC227/2017, the Court of Appeals stated that it could not consider it in this procedure, however, if those Applicant's allegations are confirmed by a final decision, he is entitled to initiate enforcement proceedings in conformity with Article 54 of the LEP.

Applicant's allegations

24. The Applicant alleges that the challenged decision, respectively the Decision Ac.no. 1129/2019 of the Court of Appeals, of 16 November 2020, has violated its fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution.
25. The Applicant states: *"Despite the full payment of the contractual debt, the creditor [...] has exercised a proposal for enforcement in the amount of 29,346. 94 euros. [...] According to the bank account statement of 20.03.2015 it is seen that the debtor D.P.H "Deni" has paid all loan instalments in the amount of 402-3 euros per month, for 72 months as per the reprogramming agreement."*
26. The Applicant considers that it *"has fully completed the obligations towards the creditor [...] according to the loan reprogramming agreement and considers that the decisions of the courts in the enforcement procedure are biased and to the detriment of the debtor, therefore it considers that the constitutional principle of a fair and reasonable trial has been violated"*.
27. Finally, the Applicant requests from the Court to *"confirm that there has been a violation of the principle of a fair and reasonable trial to the detriment of the debtor [the Applicant]"*.

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 NO. 04/L-139 ON ENFORCEMENT PROCEDURE

Article 22 Enforcement Document

1. Enforcement documents are:

[...]

1.7. mortgage agreements certified by the competent body and registered in the public registry in accordance with law; [...]

Article 27 Eligibility of enforcement document

1. Enforcement document shall be eligible for enforcement if it shows the creditor, the debtor, the object, means, amount, and deadline for settling the obligation.[...]

*Article 35
Interruption of the procedure*

1. The enforcement authority may not interrupt the enforcement procedure in order to wait for the decision of the competent court, or other body, regarding the previous matter. [...]

*Article 54
Reasons for counter-enforcement*

1. Debtor is entitled during same enforcement procedure, and after the end of enforcement procedure, to request the court the issuance of a decision ordering the enforcement creditor to return the items taken based on enforcement procedure, if:

1.1. enforcement document by a final decision is overruled, amended, annulled, dismissed or was concluded in another way that it is without legal effect;

1.2. enforcement decision or enforcement writ by a final decision is annulled or amended;

1.3. During the conduct of execution proceedings, the creditor has got under possession more items than the value of the credit, including costs of enforcement and interest charges;

1.4. The enforcement carried out on a specific object of enforcement shall be impermissible.

2. If creditor through enforcement has realized an amount of money, the debtor in the proposal for counter-enforcement may demand payment of interest-delay, starting from the day of the payment of such amount.

3. Proposal for counter-enforcement from paragraph 1 of this article may be presented in fifteen (15) days from the day when the debtor became aware for the reason of counter-enforcement, but not later than one (1) year from the completion of enforcement procedure.

4. After the expiration of the deadline from paragraph 3 of this Article, the debtor may not initiate counter-execution, but must instead initiate a contested procedure over its claim.

*Article 69
Objection against decision on enforcement*

[...]

4. The basis for the objection must be stated and supported by appropriate evidence. Evidence for objection must be submitted in written otherwise the objection shall be rejected. [...]

LAW NO. 04/L-077 ON OBLIGATIONAL RELATIONSHIPS

*Article 352
General statute-barring period*

Claims shall become statute-barred after five (5) years, unless a different period is stipulated by the statute of limitations.

*Article 379
Prohibition of interest on interest*

- 1. No penalty interest shall run on interest that has fallen due for payment but has not been paid, unless stipulated otherwise by law.*
- 2. contractual provision that interest shall run on interest that has fallen due for payment but has not been paid shall be null and void.*
- 3. However it may be agreed in advance in a contract that the interest rate will be higher if the debtor fails to pay the interest that has fallen due on time.*
- 4. Penalty interest may be requested on the unpaid amount of interest only from the date when the request for its payment has been submitted to court.*

LAW No. 03/L-006 ON CONTESTED PROCEDURE

Existence of Litispendence

Article 262

- 262.1 Litispendence is created at the moment when the charged party was handed the charge.*
- 262.2 With regard to the request presented by the party during the proceedings, the litispence is created at the moment when the opposing party is informed for a request of the kind.*
- 262.3 During the existence of litispence for the same claim charge a new trial between the same parties can not be initiated. And in case it happens than the court will reject the charge.*
- 262.4 The court during the procedure will look into the existence of a trial on the same claim charge between the same parties, as required by the official role.*

Assessment of the admissibility of Referral

28. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
29. 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.”

30. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which states: *“Fundamental rights and freedoms set forth in the Constitution are also valid to legal persons to the extent applicable.”*
31. In this respect, the Court notes that the Applicant is entitled to file a constitutional complaint, by calling upon alleged violations of its fundamental rights and freedoms, which are valid for individuals as well as for legal persons (see the case of Court KI41/09, Applicant University AAB-RIINVEST L.L.C., Resolution on Inadmissibility of 3 February 2010, paragraph 14; and see the case KI26/19, Applicant *Xhavit Thaqi* Owner of the company “NTP INTERBAJ”, Resolution on Inadmissibility of 7 October 2020, paragraph 56).
32. The Court also examines whether the Applicant has fulfilled the admissibility criteria, as provided by Law. In this respect, 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...”

33. As to the fulfilment of these criteria, the Court finds that the Applicant is an authorized party, which is challenging an act of a public authority, namely the Decision Ac.no.1129/2019 of the Court of Appeals, of 16 November 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which it alleges to have been violated pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
34. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the

Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

“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.”

35. The Court first notes that the above rule, based on the case-law of the European Court of Human Rights (hereinafter: the ECtHR) and the Court, the latter is enabled to declare inadmissible referrals for reasons related to the merits of a case. Consequently, based on the specifics of the present case, 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.
36. On the basis of the case law of the ECtHR, but also of the Court, a referral may be declared inadmissible as *“manifestly ill-founded”* in its entirety or only with respect to any specific claim that a referral may contain. In this respect, it is more accurate to refer to the same as *“manifestly ill-founded claims”*. The latter, based on the case law of the ECtHR, 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 unjustified”* claims; and finally, (iv) *“confused and far-fetched”* claims (see, more specifically, on the concept of inadmissibility on the basis of a claim assessed as *“manifestly ill-founded”*, and the specifics of the above four categories of claims qualified as *“manifestly Ill-founded”*, the ECtHR Practical Guide on Admissibility Criteria of 30 April 2020; part III. Inadmissibility based on merits; A. Manifestly ill-founded claims, paragraphs 275 to 304).
37. The Court first recalls that the Applicant has signed the Loan Agreement with Raiffeisen Bank. On the occasion of loan restructuring, the Applicant entered into a new agreement with the bank (Annex 2) which provided for new interest and deadline conditions. Due to the non-compliance with the agreements, the bank, namely the Creditor, had requested from the Private Enforcement Agent to allow the respective enforcement against the Applicant. The Private Enforcement Agent by the Writ of Enforcement [P.no. 313/2017] had allowed the enforcement which was challenged by objection by the Applicant. The Applicant, among other things, through his objection had presented the issue of the bank account statement, the balance of which on 25 March 2015 had turned out to be 0.00 euros. The Basic Court reasoned to the Applicant that failed to attach evidence, while following the appeal proceedings, the Court of Appeals stated that the fact that the bank statement is presented at 0.00 euros, does not mean that the loan has been repaid in full. Consequently, the latter is also the essence of the Applicant's allegations before the Court.
38. In regard to the present case, the Court has learned from the case file that the Applicant had initiated also other proceedings with respect to his loan (See

paragraphs 13-16 above). However, the Court takes into consideration that the Applicant before us is only challenging the enforcement procedure, hence the subject of evaluation are only the decisions issued by the regular courts in this procedure. The court will not further elaborate on other procedures followed by the Applicant.

39. In this respect, the Court first recalls that the Applicant before the regular courts had made various allegations relating to the above-mentioned procedures, however, before the Court he has a single allegation. The Applicant considers that *“the decisions of the courts in the enforcement procedure are biased and to the detriment of the debtor, therefore it considers that the constitutional principle of a fair and reasonable trial has been violated”* because he considers that *“he has fully completed the obligations towards the creditor”*, based on the bank account statement of 20 March 2015. In this regard, the Court notes that, in essence, the Applicant complains that in his case the regular courts have violated his rights guaranteed by Article 31 of the Constitution, as they have not correctly determined the factual situation.
40. The Court initially states its consistent position that it is not the duty of the Constitutional Court to deal with the way in which the regular courts have reached their findings in respect of factual situation and made relevant legal interpretations (legality) unless and in so far as such interpretations may have infringed fundamental rights and freedoms protected by the Constitution (constitutionality). It cannot assess the reason which had led a regular court to adopt one decision rather than another. If it were otherwise, the Constitutional Court would act as a court of the “fourth instance”, which would result in exceeding the limits imposed on its jurisdiction. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis* cases of Court KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 12 December 2011; and see KI144 / 18, Applicant: *Jashar Krasniqi*, Resolution on Inadmissibility of 9 December 2020).
41. With regard to the present allegation of the Applicant before the Court, concerning the fact of the bank account statement, the Court recalls that the Basic Court through Decision PPP.no.62/2017 of 15 January 2019, had clarified to the Applicant the following:

“Having looked into and following the assessment of the case file, the Court found that the debtor's objection filed on 19.07.2017, against the Writ of Enforcement P.no.313/17 of 11.07.2017, is ungrounded, because it did not provide any evidence based on article 69 para.4 of the LEP which stipulates that: “The basis for the objection must be stated and supported by appropriate evidence. Evidence for objection must be submitted in writing otherwise the objection shall be rejected”, had there been submitted any evidence as required by the above cited article, the court would have decided the opposite of what it has decided in the enacting clause of this decision.”
42. Moreover, also the Court of Appeals in its Decision Ac.no. 1129/2019 of 16 November 2020 had reasoned that:

“In relation to the debtor’s appeal claim that all liabilities to the creditor have been settled, which can be seen from the account statement on the payments performed by the debtor, this Court considers that such a claim is ungrounded, because on the basis of the case file it can be noticed that the debtor has indeed carried out some payments related to the loan taken, however the fact that the balance at the end of the account statement, specifically on 20.03. 2015, turns out to be 0.00 euros it does not mean that the loan has been repaid in full, and given the fact that the account statement contains every banking operation, including payments, deposits and withdrawals, which do not concern the loan in question.”

43. The Court notes that the appeal claim regarding the bank account statement which reflected the Applicant's payments in the capacity of a debtor was addressed by the Basic Court and the Court of Appeals. First, the Basic Court reasoned to the Applicant that the objection is not allowed because according to the LEP, specifically Article 69 paragraph 4, the basis for the objection must be stated and supported by appropriate evidence, which the Applicant had failed to submit. Secondly, the Court of Appeals clarified that the fact that the balance at the bottom of the bank account statement turns out to be 0.00 euros, does not mean that the loan obligations have been performed, and this is because the bank account statement contains other banking operations.

44. The Court further recalls that the Applicant raised the issue of enforcement proceedings before the regular courts and the issue of the implementation of the contested procedure between him and the Bank, for which he argued that the enforcement proceedings could not proceed because of it. Whilst this allegation is not raised by the Applicant before us, the Court considers it important to address this issue as it relates to the Applicant's allegation that he has *“Completed the obligations towards the creditor in their entirety [...]”*.

45. In regard to this point, the Court recalls that the Court of Appeals in its Decision Ac.no.1129/2019, had answered as follows:

“As to the allegations relating to the disputable case that is being conducted between the parties under the mark IC.no.227/2017, and the expertise performed in this procedure, on 14.07.2017 by the financial expert [...] appointed by the Basic Court [...] by the decision of 28.08.2017, this court considers that as long as there is no final decision in the contested procedure, these allegations can not be taken into consideration in this procedure, and in case the debtor’s allegations are successfully confirmed by a final decision, he is entitled to initiate enforcement proceedings in accordance with article 54 of the LEP.”

46. In this case, the Court considers that the Applicant has the opportunity of counter-enforcement, in case there is a final decision in the contested procedure, and which allows it.

47. Consequently, based on the foregoing, the Court considers that the Applicant's allegations relate to the field of legality and as such do not fall within the jurisdiction of the Court, and therefore, in principle, they cannot be considered by the Court(see, the cases of the Court: KI101/19, Applicant *Ljubiša Trajković*,

Resolution on Inadmissibility of 4 December 2020, paragraph 43; KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35).

48. The Court notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim for a violation of constitutional rights. (See, the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, judgment of 26 July 2005, paragraph 21).
49. In view of the foregoing, the Court considers that the decisions of the regular courts have sufficiently addressed the Applicant's allegations and have not violated the Applicant's fundamental rights and freedoms guaranteed by Article 31 of the Constitution. Consequently, taking into consideration the allegations raised by the Applicant for erroneous determination of facts in respect of the bank statement, the Court qualifies them as claims that fall into the category of “*clear or apparent absence of a violation*”, and considers them as manifestly ill-founded on constitutional basis.
50. Finally, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is therefore declared inadmissible pursuant to paragraph 4 of Article 21 and paragraph 7 of Article 113 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 21.4 and 113.7 of the Constitution, Article 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 13 April 2021, unanimously

DECIDES

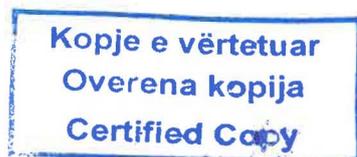
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bajram Ljatifi

Arta Rama-Hajrizi



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