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

Prishtina, 29 April 2021
Ref. no.:RK 1761/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case no. KI130/20

Applicant

Xhevrije Hasani

Constitutional Review
of the Judgment UZPV-ARJ.no.21/2020 of the Supreme Court of the Republic of Kosovo, of 6 February 2020

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 Xhevrije Hasani from the Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment UZPV-ARJ.no.21/2020 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 6 February 2020.

3. The Applicant received the challenged Judgment on 8 June 2020.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment by which have allegedly been violated the Applicant's fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 53 [Interpretation of Human Rights Provisions], 101 [Civil Service] and 102 [General Principles of the Judicial System], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

5. The Referral is based on paragraph 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 Court

6. On 3 September 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 9 September 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).

8. On 10 September 2020, the Court notified the Supreme Court of the registration of the Referral and provided it with a copy of the Referral.

9. On 14 September 2020, the Court notified the Applicant of the registration of the Referral.

10. On 12 April 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. On 8 October 2008, the Government of Kosovo, by Decision no. 02/39, approved the list of positions and salary allowances, for special categories of deficient professions in the field of information technology and engineering, in all budget organizations of the Republic of Kosovo. Point II of the Decision stated that the

implementation of Annex I must be done in accordance with the Government Decision, no. 07/29, of 31 July 2008, which stipulated, inter alia, that: (i) all budget organizations proposals for salary allowances for specific deficit categories and special staff are made to the Ministry of Public Services/DCSA; (ii) proposals are initiated by the chief administrative officer of the respective budget organization [...];

12. The Applicant, in the capacity of the Head of the Post Division of the former Ministry of Transport and Post Telecommunication (hereinafter: MTPT), had submitted a request to the Ministry of Public Services-Department of Civil Service Administration (in the text in following: MPS/DCSA), to receive salary allowances for specific categories of deficit professions in MTPT.

13. On 30 April 2009, MPA/DCSA approved the position of the Applicant "Head of the Post Division", for salary allowance as a category of deficient profession. Also, this approval stated that *"The realization of this allowance can be done only if your institution has previously provided budget funds in accordance with point 3 of the Government Decision."* This point of the Decision in question defined the following: iii) The financial means necessary for the implementation of the list of allowances according to Annex I are provided by the budget organizations themselves from their savings in the category of goods and services.

14. On 18 May 2010, the Applicant filed a complaint with the Complaints Commission of the MTPT, against the inaction of the MTPT for not approving the allowance for deficit staff, based on Government Decision no. 02/39. The Applicant stated that the approval received from the MPS/DCSA should be approved by the MTPT, as well as the budget for the payment of the allowance be allocated.

15. On 7 June 2010, the Complaints Commission of MPTP, by Decision no. 1524, rejected as ungrounded the Applicant's appeal. The Commission found that the procedure for approving such an allowance did not go through the Permanent Secretary of the MTPT in order to ensure in advance whether there were financial means for the realization of such a request, which the Applicant had not done.

16. On 30 June 2010, the Applicant filed a complaint with the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: IOBCSK), against Decision no. 1524, of 7 June 2010, of the MTPT Appeals Commission, requesting the annulment of the decision of the MTPT Appeals Commission as unfair and to oblige the employment body to enable the compensation of the allowance in accordance with the decision of the Government and the decision on the approval of the allowance by MAPS/DCSA.

17. On 9 August 2010, the IOBCSK, by Decision A 02(165) 2010, rejected as ungrounded the Applicant's appeal and upheld the Decision of the MTPT Appeals Commission of 7 June 2010. The IOBCSK stated that: (i) the employment body did not treat the Applicant as an individual deficient staff, therefore she was not proposed for staffing allowance; (ii) The proposal regarding these allowances based on the procedure set out in the Government Decision, was submitted by the Permanent Secretary, a proposal that was approved by DCSA/MPA for specific deficit categories of MTPT; (iii) the Applicant's reliance on the decision of

DCSA/MPA, no. 2744, of 30 April 2009, on the recognition of the right to an allowance, is ungrounded, because she had no right to make a request but it should have been made by the Permanent Secretary, and such a possibility had been conditioned on the budgetary possibilities of the employment body.

18. On an unspecified date, the Applicant filed a claim with the Basic Court in Prishtina, Department of Administrative Affairs (hereinafter: the Basic Court), against the above-mentioned Decision of the IOBCSK, requesting the approval of the allowance payment based on the decision of the Government 02/39, of 8 October 2010 and the decision of 30 April 2009, of DCSA/MPA.

19. On 7 February 2018, the IOBCSK filed a response to the claim requesting the Basic Court to uphold the IOBCSK decision A 02/165/2010, of 10 August 2010, as well as to reject the claim as unfounded.

20. On 6 March 2018, the Basic Court, by Judgment A.no.197/15, rejected as ungrounded the Applicant's claim. Among other things, the Basic Court stated that it is not disputed that the Applicant has proper professional qualification, but it was established that she was not treated as a deficient category by the employment body, as the same did not take into account the professional qualification but job title and job description.

21. On 17 April 2018, the Applicant filed an appeal with the Court of Appeals, against the above-mentioned decision of the Basic Court, due to: (i) violation of the provisions of the administrative procedure; (ii) erroneous and incomplete determination of the factual situation and (iii) erroneous application of substantive law; with the proposal that the Court of Appeals amend the appealed judgment, as well as approve the lawsuit and the claim of the Applicant as grounded; or quash the challenged judgment and remand the case for retrial to the court of first instance.

22. On 5 November 2019, the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), by Judgment AA.no.307/2018, rejected as ungrounded the Applicant's appeal, while upholding Judgment [A.no.197/15] of the Basic Court, of 6 March 2018.

23. On 18 December 2019, the Applicant filed with the Supreme Court of Kosovo (hereinafter: the Supreme Court) a request for extraordinary review of the court decision, due to violation of the provisions of administrative procedure, erroneous and incomplete verification of factual situation and non-application of substantive law, with a proposal that her request be approved or quash the challenged Judgments and the case be remanded for retrial to the court of first instance.

24. On 6 February 2020, the Supreme Court, by Judgment UZPV-ARJ.no.21/2020, rejected as ungrounded the Applicant's request for extraordinary review.

Applicant's allegations

25. The Applicant alleges that the Judgment of the Supreme Court, UZPV-ARJ.no.21/2020, of 6 February 2020, is rendered in violation of her fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial],

53 [[Interpretation of Human Rights Provisions], 101 [Civil Service], 102 [General Principles of the Judicial System] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.

26. The Applicant alleges that the challenged Decision contains a lack of adequate reasoning for a court decision, and that the regular courts have not upheld their decisions in *"concrete legal norms"*, when deciding on the rejection of her claim. She emphasizes that a reasoned court decision is an important aspect of the judicial process, in which case the lack of adequate reasoning of a court decision constitutes a serious violation of Article 31 of the Constitution, as noted also by the current practice of the Constitutional Court which in some cases had declared the decisions of the Supreme Court as *"anti-constitutional"* ordering the fulfilment of the legal standard for the adoption of reasoned decisions in not only formal but also substantive meaning (the Applicant referred, inter alia, to the decision of the Constitutional Court in case KI 55/09)

27. In this regard, the Applicant argues that in her case, it is unclear: "*1. What is the legal basis (concrete reference in the legal provision) on which the Supreme Court but also those of the Court of Appeals and the Basic Court base their decision? 2. The court made it an undeniable and undisputed fact that the claimant-here the Applicant has proper professional qualification, but the same was not treated as a deficient category! 3. What is the reason that the Applicant was not treated as a deficient category as she met the legal requirements such as the professional qualification and position held by the Head of the Postal Services Division, at the Ministry of Transport and Post-Telecom of the Government (MTPT) of the Republic of Kosovo? 4. Why the Court did not treat this fact in detail and fairly, a fact that should have preceded a fair and lawful decision*!"

28. Furthermore, the Applicant alleges that the Supreme Court in its decision violated Article 53 of the Constitution, as it did not give an adequately reasoned decision and did not treat the case in the context of the relevant practice of the ECHR.

29. The Applicant also alleges that she has been discriminated against on the basis of gender "which testifies *"the existence of patriarchy of the opposite sex to her even today in that period of time, but also in our society today, despite public statements."*

30. Based on what was stated, the Applicant alleges that her gender rights have been violated under Article 101 [Civil Service] of the Constitution, and she has been denied a fair and impartial trial under Article 102 [General Principles of the Judicial System] of the Constitution.

31. Finally, the Applicant requests from the Constitutional Court "*to render a final decision in favour of the implementation of legal and legislative acts that have been approved by the relevant legal structures of the country and/or remand the case of this judicial process in the relevant court for resolution suggesting a favourable resolution for the Applicant.*"

Assessment of the admissibility of the Referral

32. The Court initially examines whether the admissibility criteria, defined by the Constitution and further specified by the Law and the Rules of Procedure have been met.

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

> "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."*

34. The Court further refers to the admissibility criteria, as specified in the Law. In this regard, the Court initially refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

> Article 47
> (Individual Requests)
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
>
> Article 48
> (Accuracy of the Referral)
>
> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*
>
> Article 49
> (Deadlines)
>
> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision ...".*

35. With regard to the fulfilment of these criteria, the Court first notes that the Applicant is an authorized party, which challenges an act of a public authority, respectively Judgment of the Supreme Court, UZPV-ARJ.no.21/2020, of 6 February 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the rights and freedoms that she alleges to have been

violated, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

36. In addition to these conditions, the Court must examine whether the Applicant has met the admissibility criteria of the constitutional requirements set out in Article 39 of the Rules of Procedure of the Court. In this regard, Rule 39 (2) of the Rules of Procedure 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."

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

38. In this respect, the Court initially recalls that the Applicant alleges that the Supreme Court, by Judgment UZPV-ARJ.no.21/2020, of 6 February 2020, has violated her rights guaranteed by Articles 31, 53, 101, 102 of the Constitution, in conjunction with Article 6 of the ECHR.

39. In this regard, the Court notes that, in essence, the Applicant complains that in her case the regular courts violated her rights guaranteed in Articles 31 and 53 of the Constitution, in conjunction with Article 6 of the ECHR, as they have not sufficiently reasoned the court decisions and have not taken into account the standards set by the case law of the ECtHR. Consequently, according to the Applicant, she was unable to be a beneficiary of the deficit staff allowance which was determined by Government Decision no. 02/39, of 8 October 2008. In this regard, the Applicant states that the regular courts, by completely ignoring the issue of the legal basis for the rejection of her claim, have failed to fulfil the essential premise of a fair trial, which is a reasoned court decision.

40. Regarding the Applicant's allegations related to the non-reasoning of the decisions of the courts in her case, the Court notes that it already has a consolidated practice regarding the right to a reasoned court decision, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. This practice is based on the case law of the ECtHR, including, but not limited to, the following cases: *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, Judgment of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*,

Judgment of 22 February 2007. Furthermore, the basic principles regarding the right to a reasoned court decision have also been elaborated in the cases of the Constitutional Court, including, but not limited to, the following cases: KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; KI72/12, *Veton Berisha and Ilfete Haziri,* Judgment of 17 December 2012; KI22/16, *Naser Husaj,* Judgment of 9 June 2017; and KI143/16, *Muharrem Blaku and others,* Resolution on Inadmissibility of 13 June 2018.

41. In principle, the case law of the ECtHR and of the Constitutional Court emphasize that the right to a fair trial includes the right to a reasoned decision and that the courts should *"show with sufficient clarity the reasons on which they based their decision"*. However, this obligation of the courts cannot be understood as a requirement for a detailed response to every argument. The extent to which the obligation to give reasons applies may vary depending on the nature of the decision and should be determined in the light of the circumstances of the case. It is the essential arguments of the Applicants that need to be addressed and the reasons given must be substantiated on the applicable law (See the Court case KI97, with Applicant *IKK Classic*, cited above, paragraph 45; See also the ECtHR case *Hadjianastassiou v. Greece*, Judgment of 16 December 1992, paragraph 33).

42. In this regard, the Court shall consider whether the Applicant's allegations of lack of a reasoned court decision regarding the Judgment of the Supreme Court, UZVP-ARJ.no.21/2020, of 6 February 2020, are in accordance with the procedural guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR.

43. The Court recalls that in Judgment A.no.197/15, the Basic Court, reasoned as follows:

> *"[...] the court from the case file and the evidence administered has confirmed that the Government with decision no.02/39 of 08.10.2008, has approved the list of positions and salary allowances, for special categories of deficient professions in the field of information technology and engineering, in all budget organizations of the Republic of Kosovo, related to this Ministry of Public Services based on the above mentioned decision recommended the positions for salary allowances, where as positions, according to the above decision of the Government, are defined the following positions: 1) Director of DTI and Communication and 2) Head of Sector for Project Management DTI and Communication which means that the claimant Xhevrije Hasani was not explicitly included in this list according to her position as Head of the Post Division at the Department of Information Technology, therefore, according to this decision, she did not receive any staff allowance. As defined in point 2 of Government decision no. 02/39 of 08.10.2008 stating that "proposals regarding salary allowances for retention of employees are initiated by the Chief Administrative Officer (Permanent Secretary) of the relevant budget organization, within 15 days from the entry into force of this decision", the court considers that the claim of the claimant based on the letter of MPS/DCSA no. 348 of 30.04.2009 with which the request for allowance was approved, is unfounded, the same did not have the right to submit such a request, which request, according to point 2 of the decision,*

had to be submitted by the Chief Administrative Officer - Permanent Secretary of the Budget Organization."

44. The Court further notes that regarding the professional qualification of the Applicant to be a beneficiary of the allowance for deficient staff, as determined by Government Decision no. 02/39, of 8 October 2008, the Basic Court had no doubts and that this case was not contentious, consequently the Basic Court had underlined that:

"[...] *for the court it is not disputed that the claimant has proper professional qualification, however from the above it has been proved that the same has not been treated as a deficit category by the body of employment since the same has not taken into account the professional qualification of the same but from the job title and job description the same did not meet the criteria for the right to allowances for specific deficit categories."*

45. The Court also notes that the Court of Appeals, by Judgment AA.no.307/2018, of 5 November 2019, had addressed the issue of establishing the factual situation and the application of substantive law, reasoning as follows:

"The Panel considers that in this administrative legal case in administrative procedure by the administrative body IOBCSK, and in court proceedings in the court of first instance the factual situation has been correctly established, as well as the substantive law has been correctly applied. In this case we are dealing with the payment of salary allowances, where the respondent and the court of first instance rightly decided when they rejected the claim of the claimant, due to the fact that the employment body did not treat the claimant as an individual deficient staff and the same is not proposed for staffing, where with the decision of the Government no.07/29 of 31.07.2008 in point I it is stated that: All budget organizations make proposals for salary allowances for special deficit categories and for special employees in the Ministry of Public Services/DCSA. Whereas, based on the proposal sent to MPA/DCSA-Commission for Review of requests of institutions for allowances with its decision no. 778 of 05.12.2008 it has approved salary allowances for special deficit categories of MTPT only for Director of DTI and Communications and Head of Sector for DTI Project Management and Communications. Point II of decision no. 07/29 states that: "Proposals regarding salary allowances for retention of employees are initiated by the chief administrative officer of the relevant budget organization within 15 days from the entry into force of this decision" and such a proposal has not been made for the claimant."

46. On this line of argument, the Court also emphasizes the reasoning of the challenged Judgment of the Supreme Court, which rejected the Applicant's request for extraordinary review, as follows:

"In fact, with the decision of the Government no. 02/39 of 28.10.2008, regarding salary allowances for special categories for deficient professions in the field of information technology and engineering, salary allowances for specific categories of deficit professions have been determined. From the evidence in the case file it has been confirmed without any dispute that the

employment body has not treated the claimant as an individual deficient staff and she has not been proposed for allowance to special staff. With the decision of the Government no. 07/29 of 31.07.2008, it is provided that all budget planning organizations submit their proposals for salary allowances for special deficit staff and special employees to the Ministry of Public Services/DCSA. Based on the proposal which was sent to the Ministry of Public Services/DCSA - Commission for review of requests of institutions for allowances in its decision no. 778 of 05.12.2008 has approved its proposal for salary allowances for the special deficient staff of MTPT, and that only for the Directorate of DTI and Communications and the Head of the sector for project management of DTI and Communications. Under point 2 of Government Decision no. 07/29 of 31.07.2008, it is provided that the proposals regarding the salary allowances for the retention of the staff are initiated by the chief administrative officer of the respective organization for budget planning within 15 days from the day of entry into force of the mentioned decision, but such a proposal for the claimant has not been submitted. From what was submitted, it results that the employment body did not treat the claimant as an individual deficient staff and the same was not proposed for salary allowances as a special staff."

47. As mentioned above, the Court notes that Article 31 of the Constitution and Article 6 of the ECHR oblige courts to give reasons for their decisions, but this does not imply a detailed response to every claim and argument of the parties (See ECtHR cases: *Van de Hurk v. Holland,* application no. 16034/90, Judgment of 19 April 1994, paragraph 61; *García Ruiz v. Spain* [GC], cited above, paragraph 26; *Jahnke and Lenoble v. France*, application no. 40490/98, Decision on admissibility of 29 August 2000; *Perez v. France* [GC], application no. 47287/99, Judgment of 12 February 2004, paragraph 81). This position has been consistently maintained by the Constitutional Court (See Court cases KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58; and KI49/19, cited above, paragraph 49).

48. Consequently, the Court considers that the regular courts have fulfilled their constitutional obligation to provide a sufficient legal justification with respect to the Applicant's claims and allegations. Therefore, the Court considers that the Applicant has benefited from her right to receive reasoned court decisions, in accordance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

49. Regarding the Applicant's allegation that the Supreme Court has made erroneous legal interpretations, the Court reiterates that, in principle, matters relating to the establishment of facts in court proceedings and the interpretation of laws are within the jurisdiction of the regular courts. The Court has repeatedly stated that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (legality), except and to the extent that they may have violated the rights and freedoms protected by the Constitution. (constitutionality). The Court itself cannot assess the law that has led a regular court adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of *"fourth instance"*, which would result in disregard for the limits imposed on its jurisdiction. Indeed, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law (See Court cases: KI198/18, with

Applicant *Osman Mazreku*, Resolution on Inadmissibility of 18 February 2020, paragraph 76; KI122/16, Applicant *Riza Dembogaj,* Judgment of 6 June 2018, paragraph 57; KI70/11, Applicant *Faik Hima, Magbule Hima and Besart Hima,* Resolution on Inadmissibility, of 16 December 2011; and KI06/17, Applicant *L.G. and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 37; see also the ECtHR case: *García Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 28).

50. In such circumstances, by considering the allegations raised by the Applicant and the facts presented by her, as well as the reasoning of the regular courts discussed above, the Court considers that the Applicant does not prove and does not sufficiently substantiate her claims that the regular courts may have applied the law manifestly erroneously, resulting in arbitrary or manifestly unreasonable conclusions for the Applicant. Consequently, her claims for misinterpretation and misapplication of the applicable law qualify as claims that fall into the category of "fourth instance" and as such, reflect claims at the level of legality and are not argued in the level of constitutionality. Consequently, these allegations of the Applicant are manifestly ill-founded on constitutional grounds, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

51. In this regard, the Court considers it important to emphasize the general principled position that *"fairness"* guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is not "substantial" fairness, but "procedural" fairness. In practical terms, and in principle, this procedural fairness is expressed in a contradictory procedure in which the parties are heard and found to be in the same circumstances before the Court (See, inter alia, the Court case, KI131/19, Applicant *Sylë Hoxha*, Resolution on Inadmissibility of 21 April 2020, paragraph 57; and KI49/19, cited above, paragraph 55).

52. This means more precisely that the parties during a fair and impartial procedure should: (i) be enabled to conduct the procedure based on the principle of procedural contradictory proceedings; (ii) be given the opportunity to present arguments and evidence during the various stages of the proceedings that they consider relevant to the case; (iii) ensure that all arguments and evidence relevant to the resolution of the case in question have been duly heard and reviewed by the relevant courts; (iv) ensure that the facts and legal claims in the court decisions have been examined and reasoned in detail; and that, as the case may be, (v) be assured that the proceedings, in their entirety, were fair and not arbitrary (See, inter alia, the ECtHR case *Garcia Ruiz v. Spain*, cited above, paragraph 29; and the Court case, KI131/19, cited above, paragraph 58).

53. The Court concludes that in the circumstances of the present case, the Applicant has not proven that the above standards and guarantees of Article 31 of the Constitution have not been applied.

54. The Court recalls that the Applicant also alleges: (i) violation of the principle of gender equality and (ii) violation of Articles 101 and 102 of the Constitution.

55. Regarding the allegation of violation of the principle of gender equality and violation of Articles 101 and 102 of the Constitution, the Court recalls that it already has a very consolidated practice through which it has consistently

emphasized that merely mentioning an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as argument to raise a reasoned constitutional request and activate the protection system provided by the Constitution and the Constitutional Court, (See, *mutatis mutandis*, Court cases KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning*], Resolution on Inadmissibility, of 20 June 2019, paragraph 36; and KI95/19, Applicant *Ruzhdi Bejta,* Resolution on Inadmissibility, of 8 October 2019, paragraphs 30-31).

56. In the circumstances of the present case, the Applicant, beyond the reference to the above-mentioned articles of the Constitution and beyond the formulation of the allegations in a generalized form, has not clearly and adequately argued how these Articles may have been violated by the challenged Judgment. Therefore, the Court considers that the Applicant's allegations for violation of the above articles of the Constitution, fall into the category of "unsubstantiated or unreasoned" allegations and as such the same are clearly unfounded on constitutional grounds, as defined by paragraph (2) of Rule 39 of the Rules of Procedure.

57. In view of the above, the Court finds that the Applicant's allegations constitute unsubstantiated allegations and, as such, are manifestly ill-founded on constitutional grounds, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

58. In conclusion, the Court finds that the Applicant's Referral is manifestly ill-founded on constitutional grounds 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 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on xx April 2021, unanimously/by majority:

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Resolution to the parties;

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

IV. This Resolution is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Bekim Sejdiu | Arta Rama-Hajrizi

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