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

Prishtina, on 19 April 2021
Ref.no.:RK 1753/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI175/20

Applicant

Privatization Agency of Kosovo

Constitutional review of Decision AC-II-15-0042 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 21 July 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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 Privatisation Agency of Kosovo (hereinafter: the Applicant), which is represented by Naser Krasniqi, Senior Legal Officer of the abovementioned Agency.

Challenged decision

2. The Applicant challenges the constitutionality of Decision AC-II-15-0042 of the Appellate Panel of the Special Chamber of the Supreme Court, of 21 July 2020 (hereinafter: the Appellate Panel of the SCSC), on Privatisation Agency of Kosovo Related matters (hereinafter: KPA).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision, AC-II-15-0042, of 21 July 2020, which as alleged by the Applicant has violated its rights guaranteed by Articles 3 [Equality before the Law], 31[Right to Fair and Impartial Trial], 46[Protection of Property], 53 [Interpretation of Human Rights Provisions], 54[Judicial Protection of Rights], 102[General Principles of the Judicial System], 103[Organization and Jurisdiction of Courts], 121[Property] and 159 [Socially Owned Enterprises and Property] 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 for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

4. Moreover, the Applicant requested, "... in this case to have scheduled a hearing for the sole purpose of clarifying the Referral in more detail and presentation of the opinions of some Judges of this Court regarding the subject to review of the PAK Referral, with no. KI175/20."

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], in conjunction with Article 21.4 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law) and Rule 32[Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 17 November 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 30 November 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).

8. On 20 January 2021, the Court notified the Applicant about the registration of the Referral. A copy of the Referral was also sent to the Appellate Panel of the SCSC and other parties to the proceedings.

9. On 5 February 2021, Ismail and Shpëtim Telaku (the claimants) submitted to the Court their comments on the Applicant's allegations and requested the rejection of the Referral.

10. On 5 February 2021, the Applicant, by submission no. 337 requested the holding of the hearing.

11. On 26 March 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously vote made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

Background

12. The Referral concerns a property dispute (immovable property) initiated by Ismajl and Shpetim Telaku, from Banja e Malishevës, against the former OAL, now the Enterprise NB Mirusha-Malishevë (first respondent) and the Municipality of Malishevë (second respondent). The subject of dispute, in this case, is the cadastral parcel no. 55, recorded in the cadastral books under no. 187 CZ-Banjë, Municipality of Malishevë. The immovable property in question before 1952 was recorded under no. 454/1, at the location called "Dubrava", type of land –a forest of the 4th class, covering an area of 40.00,00 while after 1952 it was recorded in the name of the Enterprise NB "Mirusha" under no. 2/2, 4, 12, 13, 45, 50 and 55, type of land-arable land of the 4th class.

Court proceedings

13. On 31 October 2007, the Basic Court in Malisheva, deciding upon the claim submitted by Ismajl and Shpëtim Telaku, against NB Mirusha-Malisheva and the Municipality of Malisheva, rendered the Judgment C.no.29/2007, whereby it recognized the claimants' ownership right over the disputable immovable property. By this decision, the Directorate for Cadastre, Geodesy and Property of the Municipality of Malisheva, was obliged to register the above-mentioned area of the immovable property in the claimants' name, whilst the respondents were to recognize the claimants' right of ownership, within 15 (fifteen) days from the day upon which this decision enters into force.

14. Acting within the legal deadline, the Enterprise NB Mirusha-Malisheva, had filed an appeal with the District Court in Prizren, against the Judgment [C. no. 29/2007] of the Municipal Court in Malisheva, due to substantial violations of the provisions of civil procedure, erroneous and incomplete determination of the factual situation, and erroneous application of the substantive law, by proposing that the challenged judgment be quashed and the case be remanded to the court of first instance for retrial.

15. On 7 April 2008, the District Court in Prizren rendered the Judgment Ac. no. 571/2007, whereby it rejected the appeal of the Enterprise NB Mirusha-Malisheva and confirmed the Judgment C. no. 29/2007 of the Municipal Court

in Malisheva, of 31 October 2007, which from this date took the final form, namely became final.

Enforcement proceedings

16. On 30 April 2008, the claimants submitted to the Municipal Court in Malisheva a proposal for enforcement of the Judgment C. no. 29/2007 of the Municipal Court in Malisheva, of 31 November 2007.

17. On 5 July 2012, the Municipal Court in Malishevë, is declared incompetent in terms of subject matter relating to the enforcement of the Judgment C. no. 29/2007 of the Municipal Court in Malisheva, of 31 November 2007, concerning the legal matter proposed by the creditors Ismajl and Shpëtim Telaku, against the debtor NB Mirusha-Malishevë. According to the case file, it is understood that the case was thereupon sent to the SCSC, where it is recorded as case C-III-12-1340 and is still an active case.

Proceedings before the SCSC

18. On 23 May 2008, the Kosovo Trust Agency (KTA) filed a complaint with the SCSC on behalf of the Enterprise NB Mirusha-Malishevë, seeking the quashing and annulment of the Judgment C. no. 29/2007 of the Municipal Court in Malisheva, and Judgment Ac. no. 571/2007 of the District Court in Prizren, due to erroneous application of substantive law and erroneous application of the provisions of the law on the contested procedure.

19. On 11 September 2009, the Applicant, as the successor of the KTA, , filed another appeal with the Appellate Panel of the SCSC on behalf of the Enterprise NB Mirusha-Malisheva whereby it also requested the annulment of the Judgment C. no. 29/2007 of the Municipal Court in Malishevë and Judgment Ac. no. 571/2007 of the District Court in Prizren, and the approval of the appeal, on the grounds that the socially-owned enterprise in question was in the privatisation phase, and that the regular courts had no jurisdiction to decide on this legal case.

20. On 7 August 2012, the claimants Ismajl and Shpëtim Telaku filed a response with the SCSC, stating that the Municipal Court in Malishevë has acted within its jurisdiction and that this is proved also by the Judgment of the District Court in Prizren, which has confirmed the judgment of the court of the first instance. The Claimants further stated that the decision is now final and that the Law on the SCSC of 1 January 2012 has no retroactive effect, hence the appeal of PAK must be rejected as ungrounded.

21. On 3 December 2015, the SCSC reporting judge, having reviewed the appeal SCA-08-0064, filed by the KTA and the Applicant, issues an Order to the Registry Office, requesting that the case be recorded for the SCSC Appellate Panel as AC-II-15-0042.

22. On 9 December 2016, the Applicant submits a counter-response to the response of the claimants Ismajl and Shpëtim Telaku, by proposing that the claimant's claim be rejected as being not based upon the law.

23. On 21 October 2020, the Appellate Panel of the SCSC, by Decision AC-II-15-0042, dismissed as inadmissible the appeal filed by the KTA and the Applicant (KPA) against the Judgment C.no.29/2007 of the Municipal Court in Malishevë, of 31 October 2007 and the Judgment Ac.no.571/07 of the District Court in Prizren, of 7 April 2008.

24. Relevant parts from the reasoning of the Decision of the Appellate Panel of the SCSC:

a) Reasoning in relation to the implementation of the relevant provisions of applicable laws;

"The appeal of the PAK seeking the annulment of the Judgment C. no. 29/2007 of the Municipal Court in Malishevë, of 31 October 2007 and the Judgment Ac. no. 571/07 of the District Court in Prizren, of 07 April 2008, is not admissible, because both judgments are final and binding.

Judgments or final decisions according to the applicable law may be challenged only by extraordinary legal remedies. In the present case, the appeal of the KTA-PAK cannot be interpreted as any extraordinary admissible remedy, based on its content, as it does not have the proper content required for such a striking remedy.

This appeal cannot be treated as a request for protection of legality, because such a request, according to applicable laws, can be raised only by the State Prosecutor (Article 245 of the LCP).

This appeal cannot be considered a request for repeating proceedings in the absence of the basis provided for by Article 232 of the LCP. Finally, the PAK submission/appeal cannot be considered as a revision having any prospect of success because the basis mentioned in Article 214.4 in relation to Articles 194 and 182 of the LCP are not provided."

b) Reasoning in relation to the allegation for the lack of subject matter jurisdiction of the regular courts;

"Despite the fact that the PAK, in its appeal before the SCSC, has raised the issue of lack of jurisdiction of the regular courts for rendering the appealed judgments, when the subject matter of the dispute falls within the jurisdiction of the SCSC (Article 4), and the respondent party is the Socially Owned Enterprise (Article 5). The Appellate Panel considers that Article 4.4 of the Law on Special Chamber (LSC) which entered into force on 01.01.2012 has no retroactive effect on judgments or final judgments issued before the date of entry into force of this Law.

This mentioned legal situation is similarly regulated by article 5.4 of the LSC, no. 06/L-086, which law is already in force. The case in question is such. Therefore as already decided, by the jurisprudence of the Appellate Panel (AC-II-14-0015) this appeal must be dismissed as inadmissible.

Judgments and final decisions issued before the entry into force of Article 4.5.1 of the LSC, of 2012, should not be considered null and void and without legal effects, even if they are issued for the cases that fall within the jurisdiction of the Special Chamber. The same solution is provided by the new Law no. 06/L-086 applicable from 17 July 2019."

c) *Reasoning in respect of the res judicata principle;*

"Regarding the issue of decisions issued by the competent courts, legal systems generally respond by calling upon the principle of legal certainty with confirmation of finality of the Judgment ("res judicata"), which covers and regulates all forms of irregularities caused as a result of the lack of jurisdiction.
Also the jurisprudence of the European Court of Human Rights has incorporated this reasoning into the concept of the right to a fair trial. In the judgment of the case XHERAJ v. ALBANIA (Application no. 37959), of 29.07.2008, is stated as follows: The Court reiterates that in the light of the preamble to the Convention, the rule of law is part of the common heritage of the Contracting States, one of the fundamental aspects of which is the principle of legal certainty, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question (see Brumarescu v. Romania [GC], no.28342/95, paragraph 61, ECHR 1999 VII)".

d) *Reasoning in relation to the allegation for non-participation of the Applicant in the proceedings before the regular courts*

"However, the Appellate Panel has noted that the SOE has appeared in the proceedings conducted before the Municipal Court in Malishevë, and filed an appeal against the Judgment C. no. 29/2007 of the Municipal Court in Malishevë, of 31 October 2007, which appeal was rejected by the District Court in Prizren by Judgment Ac. no. 571/07 of 07 April 2008, whilst the Judgment of the Municipal Court in Malisheva was confirmed.

This outcome reached by the regular courts is already final. The former KTA was nevertheless a party to the proceedings at the appeal stage, but however did not have success with its appeal. Therefore, the Judgment of the District Court in Prizren is already final and binding on the parties involved in the proceedings.
(...)
Consequently, the relationship between the SOE and the Agency should be considered as internal. The Agency and the SOE are two sides of the same coin. Therefore, the participation of one of them in the court proceedings is sufficient to be taken into consideration under the right to be heard, the right to a fair trial. The Agency's failure to intervene does not call into question the finality of the Judgment.

A final judgment in the event when only the SOE or the Agency has been a party is a binding Judgment for both the SOE and the Agency. This has been the conclusion of the court also in some other judgments, namely in the judgments of 20.09.2012 (case SCPL-10-0001), 7.03.2013 (case AC-II-12-0212) and 28.06.2013 (cases SCA-08-0040 and SCA-08- 0038)".

Applicant's allegations

25. The Applicant alleges that the challenged Decision of the Appellate Panel of the SCSC, has violated its rights guaranteed by Articles 3, 31, 46, 53, 54, 102.3, 103.7, 121 and 159 of the Constitution, because the said panel, according to the Applicant, did not apply in this case the Article 4.4 of the Regulation No. 2002/13 of 13 June 2002, Article 4, paragraph 5, points 1, 2 and 3 of the Law No.04/L-033 on the SCSC, as well as Article 5, paragraphs 6 and 7.1 of the Law No.06/L-086 on the SCSC, published in the Official Gazette on 27 June 2020.

26. In support of its allegations, the Applicant has enclosed to the Referral several decisions issued by the SCSC, such as: SCA-08-00S8, SCA-1O-037, SCA-07-0030, ASC-09-0043, AC-II-15-0004, AC-II-14-0048, SCA-08-009, alleging that in these cases the Appellate Panel of the SCSC had annulled the decisions of the regular courts due to subject matter jurisdiction.

27. Further, the Applicant adds that: *"In the reasoning of the case ... SCA-10-037 of 2013 related to the Judgment of MC in Lipjan, it is stated that this provision by the Law on the Special Chamber No.04/L-033, article 4.5.1 is only supplemented to be made more convincing also for the fact that the SC must act ex officio (on its own). According to Decision AC-II-15-0004, of 16.01.2020 whereby it is annulled the judgment of the MC in Prishtina-Branch in Graçanicë bearing the mark C. no. 206/08 of 12.02.2009 based on article 5. paragraph 7 of Law No.06/L-086 on SC currently in force, from 01.01.2012, which means that there has been applied the legal provision for which the same panel in the decision AC-II-15-0042, of 21.07.2020 challenged by a Referral to the Constitutional Court, on page no. 5, in the second last paragraph, line 4 it is stated: "The Appellate Panel of the SC assesses that Article 4.4 of the Law No. 06/L-086 on SC in force from 01.01.2012, has no retroactive effect to final judgments and decisions issued before the date of entry into force of this law". Also by the Decision AC-II-14-0048 of 29.11.2019, the Appellate Panel of the SCSC has annulled the Judgment of the MC in Prizren with mark C. no. 879/97, of 03.06.2011 based on the same provision for which it has stated to have no retroactive effect".*

28. On this basis, the Applicant alleges: *"By analyzing these cases, it is noticed the difference between the work of SC before 2009 and after 2009. Changing the practice of adjudication of cases and the manner of implementation of applicable laws without having regard to the consequences caused by this approach and violations of legal provisions, etc. (...) based on these as well as many others evidence can be noticed the practice of the Special Chamber in relation to its jurisdiction. But, as regards the case for which we are submitting a Referral to the Constitutional Court, it is noticed that the Special Chamber has not complied with these practices and legal provisions on which*

occasion there have been violated the rights of workers for benefiting from the 20% of assets of the Agricultural Enterprise "Mirusha" in Malisheva and the damage of the fund of 80% dedicated to potential creditors and the Kosovo budget dedicated to the fund for economic recovery as a primary function of the PAK."

29. Finally, the Applicant requests the Court: to accept the Referral as grounded, to quash the challenged Decision of the SCSC, to accept the appeal of the KTA and the KPA, to annul the appealed judgments of the courts of regular, C. no. 29/2007 and Ac. no. 571/07, and return the case for retrial and reinstatement before the SCSC in Prishtina.

Assessment of the admissibility of Referral

30. 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.

31. 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".*
>
> *[...]*

32. The Court also 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."*

33. In this respect, the Court notes that the Applicant has the right to file a constitutional complaint, by calling upon alleged violations of its fundamental rights and freedoms, which are valid for individuals as well as legal persons to the extent applicable (see, the case of Court no. KI118/18, Applicant: *Eco Construction sh.p.k.,* Resolution on Inadmissibility, of 10 October 2019, paragraph 29 and references used therein).

34. Moreover, the Court also refers to 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..."

35. As to the fulfilment of the admissibility criteria, as mentioned above, the Court finds that the Applicant is an authorized party for submitting a Referral under Articles 21.4 and 113.7 of the Constitution, which is challenging an act of a public authority, respectively the Decision AC-II-15-0042 of the Appellate Panel the SCSC, of 21 July 2020, after having exhausted all available legal remedies. The Applicant has also clarified the fundamental rights and freedoms which it alleges to have been violated and has submitted the Referral within the deadline provided for by Article 49 of the Law.

36. In addition, the Court takes into consideration Rule 39 [Admissibility Criteria], paragraph (2) of the Rules of Procedure, which established:

"(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. The Court initially notes that the abovementioned rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons relating to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as provided for in paragraph 2 of Rule 39 of the Rules of Procedure.

38. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "manifestly ill-founded" in its entirety or only with respect to any specific claim that a referral may 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 unsupported" claims; and finally, (iv) "confused or far-fetched" claims. (See, more precisely, the concept of inadmissibility on the basis of a referral assessed as "manifestly ill-founded", and the specifics of the four above-mentioned categories of claims qualified as "manifestly ill founded", The Practical Guide to the ECtHR on Admissibility Criteria of 31 August 2019; part III. Inadmissibility Based on Merits; A. Manifestly ill-founded applications, paragraphs 255 to 284).

39. The Court recalls that the Applicant alleges that the challenged Decision of the Appellate Panel of the SCSC violates its rights guaranteed by Articles 3, 31, 46, 53, 54, 102.3, 103.7, 121 and 159 of the Constitution, because the said panel did not apply the Article 4.4 of Regulation No. 2002/13 of 13 June 2002, Article 4, paragraph 5, points 1, 2 and 3 of the Law No. 04/L-033 on the SCSC and Article 5, paragraphs 6 and 7.1 of the Law No. 06/L-086 on the SCSC, published in the Official Gazette on 27 June 2020.

40. In addition, the Applicant alleges that the decision-making of SCSC since its establishment regarding the assessment of subject matter jurisdiction, in the cases where regular courts have decided on property disputes is inconsistent. Moreover, the Applicant also complains that it had no knowledge about the civil proceedings ongoing before the regular courts which decided to confirm the ownership over the disputable immovable property, between Ismajl and Shpëtim Telaku and OAL Mirusha-Malisheva.

41. In view of the above, the Court notes that the essence of the Applicant's allegations relates mainly to the right to a fair trial which is protected by Article 31 of the Constitution and Article 6 of the ECHR, therefore in this sense the Court will examine the Applicant's allegations, i. with regard to the erroneous application of the provisions of the Law on the SCSC, and ii. inconsistency in decision-making, and the denial of the right to effective participation and protection before the regular courts, by referring to Article 53 of the Constitution, which stipulates: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"*.

i. In relation to the allegation of arbitrary application of the provisions of the Law on SCSC

42. As regards the Applicant's allegation that the Appellate Panel of the SCSC violated its rights guaranteed by the above-mentioned articles of the Constitution, because it failed to apply the relevant provisions of the Law on the SCSC, the Court considers that such an allegation raises issues of legality and not constitutionality. The Court has repeatedly stated that as a general rule, allegations for erroneous interpretation and application of the provisions of the law allegedly committed by the regular courts relate to the scope of legality and as such, do not fall within the jurisdiction of the Constitutional Court, and therefore, in principle, they cannot be examined by the Court (see, in this context and inter alia, the cases of Court KI128/18, Applicant: *Limak*

Kosovo International Airport J.S.C., "Adem Jashari", Resolution of 28 June 2019, paragraph 55; KI62/19, Applicant: *Gani Gashi*, Resolution on Inadmissibility of 19 December 2019, paragraphs 56-57; KI110/19, Applicant: *Fisnik Baftijari*, Resolution on Inadmissibility of 7 November 2019, paragraph 40).

43. The Court has consistently reiterated that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (*legality*), unless and in so far as they may have infringed the rights and freedoms of protected by the Constitution (*constitutionality*). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would act as a court of *"fourth instance"*, which would result in exceeding the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, in this context, the ECtHR case *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28, and references therein; and see also the cases of Court KI128/18, cited above, paragraph 56; and KI62/19, cited above, paragraph 58)).

44. This stance has been consistently held by the Court, on the basis of the caselaw of the ECtHR, which clearly maintains that it is not the role of this Court to review the conclusions of the regular courts in respect of the factual situation and application of the substantive law (se, the ECtHR case, *Pronina v. Russia,* Judgment of 30 June 2005, paragraph 24; and the cases of Court KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58 dhe KI154/17 and 05/18, cited above, paragraph 62).

45. The Court, however, notes that the case-law of the ECtHR and of the Court also provides for the circumstances under which exceptions from this position can be made. The ECtHR reiterated that while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of legislation, the role ofthe Court is to verify whether the effects of such interpretation are compatible with the Convention. (See, the ECtHR case, *Miragall Escolano and others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

46. Consequently, even though the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take measures where it observes that a court has *"applied the law manifestly erroneously"* in a particular case or so as to reach *"arbitrary conclusions"* or *"manifestly unreasoned"* for the Applicant (with respect to the fundamental principles concerning the manifestly erroneous interpretation and application of the law, see, inter alia, the case of Court KI154/17 and 05/18, cited above, paragraphs 60 to 65 and references used therein).

47. In this respect, the Court must emphasize that the Applicant has not argued before the Court (i) the reasons which could support the allegation that in the circumstances of the present case, the relevant articles of the Law on the SCSC were interpreted by the Appellate Panel of the SCSC "manifestly erroneously"; and (ii) how has such an interpretation resulted in *"arbitrary conclusions"* or *"manifestly unreasonable"* for the Applicant.

48. The Court, in this respect, notes that the Applicant's allegations regarding the erroneous application of the above provisions of the Law on the SCSC have been addressed and reasoned by the Appellate Panel of the SCSC, by providing detailed reasons on the refusal of each of the allegations raised by the Applicant (see, in more detail, the reasoning of the Appellate Panel of the SCSC, paragraph 20 of this document).

49. The Court also emphasizes the fact that in the assessment of claims "of the fourth instance" which are related to alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, it has also consistently stated that "fairness" required by the aforementioned articles is not "substantial" fairness but rather "procedural" fairness. This concept in practical terms, and in principle, mainly implies (i) the opportunity for adversarial proceedings; (ii) the opportunity for the parties to present arguments and evidence which they consider relevant to their case at various stages of these proceedings; (iii) the opportunity to effectively challenge arguments and evidence presented by the opposing party; and (iv) the right that their arguments, which viewed objectively, are relevant to the resolution of the case, be properly heard and examined by the courts; and that, consequently, the proceedings, viewed in their entirety, would result to be fair (see, also ECtHR Practical Guide on Admissibility Criteria, of 30 April 2019; Part I. Inadmissibility based on the merits; A. Manifestly ill-founded claims; 2. "Fourth instance", paragraph 264 and references mentioned therein). Moreover, the assessment of the fairness of a procedure as a whole is one of the main premises of the Court's case law and that of the ECtHR (see, in this context, the ECtHR case *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68; and cases of the Court KI128/19, cited above, paragraph 58; and KI22/19, Applicant: *Sabit Ilazi*, Resolution on Inadmissibility of 7 June 2019, paragraph 42).

50. Further and finally, the Court notes that Article 6 of the ECHR, does not guarantee a favorable outcome to anyone in the course of of judicial proceeding, because one party wins and the other loses (see, in this context, the cases of Court KI118/17, *Şani Kervan and others*, Resolution on Inadmissibility, paragraph 36, and KI142/ 15, Applicant *Habib Makiqi*, Resolution on Inadmissibility, of 1 November 2016, paragraph 43).

51. In view of what is stated above, the Court finds that the Appellate Panel of the SCSC has complied with the requirements of Article 31 of the Constitution and Article 6 of the ECHR, by giving the opportunity to the Applicant, as well as other parties, to submit their objections regarding the legal matter submitted to the SCSC. Moreover, all the arguments that were relevant to the resolution of the Applicant's case have been duly heard and considered by the panel in question; the factual and legal reasons for the challenged decision were laid down and reasoned in detail, as well as the proceedings, viewed in their entirety, were not unfair.

52. In this sense, the Court considers that there is nothing that indicates that the Appellate Panel of the SCSC has "applied the law manifestly erronesously", an

application which could result in "arbitrary conclusions" or "manifestly unreasonable" for the Applicant.

53. Therefore, the Applicant's allegations for erroneous determination of facts and erroneous interpretation and application of the applicable law qualify as allegations falling into the category of "fourth instance" and as such, reflect allegations at the level of "legality", ad have not been argued at the level of "constitutionality". Consequently, they are manifestly ill founded on constitutional basis, as stipulated in paragraph (2) of Rule 39 of the Rules of Procedure.

ii. In relation to inconsistency in decision making

General principles

54. With regard to the fundamental principles concerning the consistency of the case-law, the Court recalls that the case-law of the ECtHR has resulted in four fundamental principles that characterize the analysis regarding the consistency of the case-law, as follows: (i) legal certainty; (ii) there isn't an acquired right to consistency of case law; (iii) divergence is not necessarily in contradiction with the ECHR; and (iv) the exclusion of apparent arbitrariness.

55. With respect to the first principle, the ECtHR is focused on the principle of legal certainty, which in this context is implicit in all the articles of the ECHR and constitutes one of the fundamental aspects of the rule of law (see, the ECtHR case, *Nejdet Şahin and Perihan Şahin v. Turkey*, Judgment of 20 October 2011, paragraph 56). This principle guarantees certain stability in legal situations and contributes to public confidence in the courts. Continuity of divergence in the case law can create situations of legal uncertainty resulting in a decrease of public confidence in the judicial system, whereas this confidence is clearly one of the essential elements of a State based on the rule of law (see, in this context the ECtHR case *Hayati Çelebi and Others v. Turkey*, Judgment of 9 February 2016, paragraph 52; and *Ferreira Santos Pardal v. Portugal*, Judgment of 30 July 2015, paragraph 42; see also the case of Court, KI42/ 2017, Applicant *Kushtrim Ibraj* , Resolution on Inadmissibility of 25 January 2018, paragraph 33).

56. With respect to the second principle, the ECtHR found that the requirements of legal certainty and the protection of the legitimate confidence of the public, however, do not guarantee an acquired right to consistency of case law. The development of case law is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or continuous improvement (see, inter alia, the ECtHR cases, *Nejdet Şahin of Perihan Şahin v. Turkey*, cited above, paragraph 58; and the *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 116; and see also the case of Court KI42/17, Applicant *Kushtrim Ibraj*, cited above, paragraph 34).

57. With respect to the third principle, the ECtHR found that the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of

thri territorial jurisdiction. Such divergences may also arise within the same court. This, in itself, cannot be considered contrary to the ECHR (see, the ECtHR cases, *Nejdet Şahin and Perihan Şahin v. Turkey*, cited above, paragraph 51; *Albu and others v. Romania and 63 (sixty e three) other claims*, Judgment of 10 May 2012, paragraph 34; Santo Pinto v. Portugal, Judgment of 20 May 2008, paragraph 41; and *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 122; of the Court, KI42 / 17, with Applicant Kushtrim Ibraj, cited above, paragraph 35).

58. Last and with respect to the fourth principle, the ECtHR has consistently emphasized that, except in cases of evident arbitrariness, it is not its duty to question the interpretation of domestic law by national courts (see, for example, the ECtHR cases *Ādamsons v. Latvia*, Judgment of 24 June 2008, paragraph 118; and *Nejdet Şahin and Perihan Şahin v. Turkey*, cited above, paragraph 50), and in principle, it is not its function to compare different decisions of national courts, even if given in apparently similar proceedings. It must respect the independence of those courts. Furthermore, the ECtHR has emphasized that it cannot be considered to be a divergence in the case law when the facts of the case are objectively different (see, in this context, the ECtHR case *Uçar v. Turkey*, Judgment of 29 September 2009). Equally, giving two disputes different treatment cannot be considered to create divergence in the case law when this is justified by a change in the factual situations at issue (see, the ECtHR cases, *Hayati Çelebi and others*, Judgment of 9 February 2016, paragraph 52; and *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 116).

59. The Court also notes that the ECtHR's approach to the analysis of divergences in case law varies depending on the fact whether the (i) divergences exist within the same branch of the courts; or (ii) between two different branches of the courts which are completely independent of each other. The second situation concerns the judicial systems which consist of more than one branch of the judicial system, where each of them has the respective and independent supreme court and which is not subject to any common judicial hierarchy. The main case of the ECtHR relating to the lack of consistency, namely the divergence of case law, *Nejdet Şahin and Perihan Şahin v. Turkey*, falls within this category. However, the basic principles established through this case are also used in the assessment of divergences relating to the case law, even in cases which pertain to the first category, namely, those with a unique judicial system, which would be the case in the context of the legal system of the Republic of Kosovo.

60. By referring to the defined above, the Court further notes that the ECtHR uses three basic criteria to determine whether an alleged divergence constitutes a violation of Article 6 of the ECHR, as follows: (i) whether the divergences in case law are *"profound and long standing differencies"*; (ii) whether the domestic law provides for mechanisms capable of overcoming such divergences; and (iii) whether those mechanisms have been implemented and if so, with what effect (in this context, see the ECtHR cases, *Beian v. Romania* (no. 1), Judgment of 6 December 2007, paragraphs 37-39; *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraphs 116-135;

Iordan Iordanov and others v. Bulgaria, Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Şahin and Perihan Şahin v. Turkey*, cited above, paragraph 53; and *Hayati Çelebi and others,* cited above, paragraph 52*;* and see also the case of Court KI42/17, Applicant *Kushtrim Ibraj,* cited above, paragraph 39).

61. In this context, the Court also reiterates that it is not its function to compare different decisions of the regular courts, even if given in apparently similar proceedings. It must respect the independence of the courts. Moreover, in such cases, namely allegations for constitutional violations of fundamental rights and freedoms as a result of divergences in the case law, the applicants must submit to the Court relevant arguments regarding the factual and legal similarity of the cases for which they allege to have been resolved differently by the regular courts, thus resulting in a divergence in the case law and which may have resulted in a violation of their constitutional rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

Application of the above principles to the cricumstances of the present case

62. The Court recalls that the Applicant alleges that in its case, the SCSC has decided differently regarding the subject matter jurisdiction, thus acting contrary to its case law. In this context, the Applicant refers to two time periods, before 2009 and after 2009, only in respect of the application of the applicable law, by stating that: "By analyzing these cases, is noticed the difference between the work of SC before 2009 and after 2009. Changing the practice of adjudication of cases and the manner of implementation of applicable laws without having regard to the consequences caused by this approach and violations of legal provisions, etc. (...) based on these as well as many others evidence can be noticed the practice of the Special Chamber in relation to its jurisdiction. Further, the Applicant states that, "... *as regards the case for which we are submitting a Referral to the Constitutional Court, it is noticed that the Special Chamber has not complied with these practices and legal provisions on which occasion there have been violated the rights of workers for benefiting from the 20% of assets of the Agricultural Enterprise "Mirusha" in Malisheva and the damage of the fund of 80% dedicated to potential creditors and the Kosovo budget dedicated to the fund for economic recovery as a primary function of the PAK".*

63. The Court states that it assesses the consistency of the case law of the Appellate Panel of the SCSC only in respect of the violations alleged by the Applicant. Consequently, the lack of consistency in the case law must have resulted in a violation of the Applicant's fundamental rights and freedoms. To find such a violation, and to find that the Applicant's fundamental rights and freedoms have been violated as a result of *"profound and long-standing differences"* in the relevant case law, the factual and legal circumstances of the Applicant's case must be completely identical to those referred by it.

64. In support of its allegations, the Applicant has enclosed to the Referral the decisions of the SCSC: [SCA-07-0030], [SCA-08-0058], [ASC-09-0043], [SCA-10-0037], [AC-II-14-0043] and [AC-II-15-0004], stating that in these cases the

SCSC had annulled, quashed and declared invalid the decisions of the regular courts due to lack of subject matter jurisdiction. Referring to the said decisions the Court notes that:

-Decision [SCA-07-0030] of the SCSC, has quashed the Judgment [C.no.47 /3007] of the Municipal Court in Mitrovica and Judgment [AC.no.195 / 2007] of the District Court in Mitrovica, where the subject matter of the case was the confirmation of ownership. In this case, "the Chamber forwarded the case to the Municipal Court of Mitrovica, to which it transferred the jurisdiction." (Implies that the matter was not concluded);

-Decision [SCA-08-0058] of the SCSC, has abrogated the Judgment [C.no.26/2008] of the Municipal Court in Podujeva, where the subject matter of the case was the contract on sale/purchase of a cadastral parcel. In this case, the case was remanded for retrial to the Municipal Court in Podujeva (implies that the case was not concluded);

-Decision [ASC-09-0043] of the SCSC, has declared invalid the Judgment [C.no.450/2004] of the Municipal Court in Prizren and the Decision [Ac.no.281 / 2005] of the District Court in Prizren, where the subject matter of the case was the confirmation of the employment relationship and the compensation of unpaid salaries. In this case, the case was sent for retrial to the first instance of the SCSC (implies that the case was not concluded);

-Decision [SCA-10-0037] of the SCSC has declared invalid the Judgments [C.no.74/2005] and [C.no.282/2005] of the Municipal Court in Lipjan, where the subject matter of the case was the returning of employees to their job positions and compensation of unpaid wages. In this case the case was remanded for retrial to the Basic Court in Prishtina- Branch in Lipjan (implies that the case was not concluded);

-Decision [AC-II-14-0048] of the SCSC has annulled the Judgment [C.no.879 / 97] of the Municipal Court in Prizren, where the subject matter of the case was the annulment of the contract on sale/purchase of a cadastral parcel. Also in this case, the case was sent for retrial to the first instance of the SCSC (implies that the case was not concluded);

-Decision [AC-II-15-0004] of the SCSC has annulled the Judgment [C.no.206/08] of the Municipal Court in Prishtina, where the subject matter of the case was the payment of unpaid salaries and in this case the case was sent for retrial of the first instance of the SCSC (implies that the case was not concluded);

65. Based on the above references, the Court considers that the Applicant has failed to argue that the "profound and long standing differences" in the case law of the SCSC, apart from the legal circumstances, are completely identical also in respect of factual circumstances of the cases which it has referred to. In

this context, the Court emphasizes that no allegation for inconsistency in decision-making can be built, solely on the basis of similarities of the case from the legal circumstances point of view, respectively based on the application of the same legal provisions of the Law on the SCSC and the Law on Contested Procedure.

66. In addition, the Court recalls that the case law of the ECtHR has emphasized that the divergence in the case law is not necessarily contrary to the ECHR because the dynamic and evolutive approach of courts to the interpretation of the applicable law, development of the case law is important for maintaining the proper dynamics of continuous improvement of administration of justice.

67. The Court does not deny the fact that there may have been inconsistencies in the case law of the SCSC, however, it is extremely important to take into consideration whether those inconsistencies are the result of improved dynamics of the administration of justice, decision-making and compliance with conventions and the Constitution, which has entered into force on 15 June 2008, which means that the ECHR is already part of the domestic legal order in the Republic of Kosovo and takes precedence over the domestic law when it comes to the interpretation of human rights, which includes the natural as well as legal persons such as the Applicant.

68. The Court would also like to recall the fact that the Appellate Panel of the SCSC, in relation to the Applicant case, has paid special attention to the principle of legal certainty in adjudicated cases *res judicata*. In this context, the challenged Decision states: *"Despite the fact that the KPA, in its appeal before the SCSC, has raised the issue of lack of jurisdiction of the regular courts for issuing challenged judgments, when the subject matter of the dispute is included in the jurisdiction of the SCSC (Article 4), and the respondent party is the Socially Owned Enterprise (Article 5), the Appellate Panel finds that Article 4.4 of the Law on the Special Chamber (LCP) which has entered into force on 01.01.2012, has no retroactive effects on final judgments or decisions issued before the date of entry into force of this Law. This mentioned legal situation is similarly regulated by article 5.4 of the Law on SC No. 06/L-086, which law is already in force. The case in question is such. Therefore as it has already been decided, by the jurisprudence of the Appellate Panel (AC-II-14-0015) this appeal must be rejected as inadmissible."*

69. The Appellate Panel of the SCSC further reasoned that "Final judgments and decisions rendered prior to the entry into force of Article 4.5.1. of the LSC, of 2012, should not be considered null and void and without legal effects, even if they are issued in respect of the cases that fall within the competence of the Special Chamber. The same solution is provided by the new Law No. 06/L-086 in force from July 17, 2019." In this view, the Court recalls that we should not forget the fact that the courts adjudicate case by case based on the specifics, factual and legal circumstances of the cases, to later reach a conclusion where their decision-making must be in accordance with the right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

70. Moreover, the Court notes that the Appellate Panel of the SCSC, in the present case, has applied the Article 6.1 of the ECHR, by having called upon the defense of the adjudicated matter (res judicata), wherein it is stated that: *"Regarding the issue of decisions issued by the competent courts, legal systems generally respond by calling upon the principle of legal certainty with confirmation of finality of the Judgment ("res judicata"), which covers and regulates all forms of irregularities caused as a result of the lack of jurisdiction".*

71. Further, the Appellate Panel of the SCSC reasons that *"Also the jurisprudence of the European Court of Human Rights has incorporated this reasoning into the concept of the right to a fair trial. In the judgment of the case XHERAJ v. ALBANIA (Application no. 37959), of 29.07.2008, is stated as follows: The Court reiterates that in the light of the preamble to the Convention, the rule of law is part of the common heritage of the Contracting States, one of the fundamental aspects of which is the principle of legal certainty, which requires, inter alia, that where the courts have finally determined an issue, their ruling should not be called into question (see Brumarescu v. Romania [GC], no.28342/95, paragraph 61, ECHR 1999 VII".*

72. The Court further recalls that the right to a "fair trial" requires that an issue which has become res judicata must be considered irreversible, in accordance with the principle of legal certainty (see, the ECtHR case *Brumarescu v. Romania*, no. 28342/95, Judgment of 28 October 1999, paragraph 61; see also the case of Court KI122/17, Applicant: *Česká Exportní Banka A.S*, Judgment of 30 April 2018, paragraph 149, and case KI67/16, Applicant: *Lumturije Voca*, Resolution on Inadmissibility, of 4 January 2017, paragraph 87, see also the case KI127/19, Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 42).

73. The ECtHR, regarding the importance of respecting the principle of legal certainty found that *"one of the fundamental principles of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally decided a case, their decision should not be called into question"* (see, *mutatis mutandis*, the ECtHR case, *Brumarescu v. Romania*, Application no. 28342/95, Judgment of 28 October 1999, paragraph 61, see, also the cases of the Constitutional Court, KI89/13, Applicant: *Arbresha Januzi*, Judgment of 12 March 2014, paragraph 83; KI122/17, Applicant: *Česká Exportní Banka A.S.*, Judgment of 30 April 2018, paragraph 149; case KI67/16, Applicant: *Lumturije Voca*, Resolution on Inadmissibility, of 4 January 2017, paragraph 87, and case KI94/13, Applicant: *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 14 April 2014, see also the case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 43).

74. In this regard, the Court finds that its case law as well as the case law of the ECtHR mentioned above, clearly and explicitly, state that the right to a fair trial, according to Article 31 of the Constitution and Article 6 of the ECHR includes the principle of legal certainty, which includes the principle that final court decisions which have become res judicata must be respected and cannot be reopened or become the subject of appeals (see case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 44)·

75. Consequently, in the case law of the Court and of the ECtHR, it has been emphasized that one of the fundamental principles of the rule of law is the principle of legal certainty, which presumes *the respect of judicial decisions that have become, res judicata* (see, the case *Brumarescu v. Romania*, Application no. 28342/95, Judgment of 28 October 1999, paragraph 62). According to the ECtHR, "no party is entitled to seek a review of a final and binding decision merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, inter alia, ECtHR cases *Ryabykh v. Russia*, no. 52854/99, ECtHR, Judgment of 24 July 2003, paragraph 52, and *Sovtransavto Holding v. Ukraine*, Application no. 48553/99, paragraph 72; see also the cases of the Court no. KI55/18, Applicant *Fatmir Pirreci*, Constitutional Court, Judgment of 16 July 2012, paragraph 42 and case no. KI94/13, Applicant *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Os*manaj, Judgment of 14 April 2014, see also the case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 45)·

76. On the basis of the above elaborations, the Court found that the legal framework of the SCSC over the years has undergone changes which have resulted in the evolution and dynamics of improvement of the administration of justice, decision-making and compliance with the requirements of the ECHR and the Constitution (see above paragraph 66 of this document, which states that "...the divergence in the case law is not necessarily contrary to the ECHR because the dynamic and evolutive approach of courts to the interpretation of the applicable law, development of the case law is important for maintaining the proper dynamics of continuous improvement of administration of justice.")

77. In addition, in the light of the circumstances of the present case, the Court found that neither the existence of similarities in the factual circumstances of the present case, to which the Applicant referred, has been confirmed. Among other things, the Court noted that there are no similarities in the factual circumstances even between the referred cases themselves.

78. Moreover, the Court notes that the Appellate Panel of the SCSC has acted pursuant to its own case law, and this can be noticed from the reasoning of the challenged Judgment of the Appellate Panel of the SCSC, which, inter alia, states that: "This has been the conclusion of the court also in some other judgments, namely in the judgments of 20.09.2012 (case SCPL-10-0001), 7.03.2013 (case AC-II-12-0212) and 28.06.2013 (cases SCA-08-0040 and SCA-08- 0038)."

79. Therefore, the Court considers that the Applicant's Referral is manifestly ill founded on constitutional basis, because the Applicant has failed to sufficiently prove and substantiate its allegation for a violation of Article 31 of the Constitution and Article 6 of the ECHR, due to the inconsistency of the case law.

iii. *In relation to allegations for a violation of Articles 3, 46, 54, 102, 103, 121 and 156 of the Constitution*

80. As regards the above violations of the rights guaranteed by Articles 3, 46, 54, 102, 103, 121 and 156 of the Constitution, the Court recalls that according to the well-established case-law of the ECtHR, the Court declares the referrals inadmissible as manifestly ill-founded under the criterion (iii) "unsubstantiated or unsupported" claims when one of the two characteristic requirements is met, respectively:

a) when the Applicant merely cites one or more provisions of the Convention or the Constitution, without explaining how have they been violated, unless this is clearly apparent on the basis of the facts and circumstances of the case (see: in this respect, the ECtHR case *Trofimchuk v. Ukraine (Decision)* No. 4241/03, of 31 May 2005; see also the case *Baillard v. France(Decision)* No. 6032/04 of 25 September 2008);

b) when the Applicant fails or refuses to produce physical evidence in support of his allegations (this applies in particular, to decisions of the courts or other domestic authorities), exept when there are exceptional circumstances beyond his control which prevent him from doing so (for instance, if the prison authorities refuse to forward documents from a prisoner's case file to the Court) or if the Court itself determines otherwise.

81. Moreover, the Court notes that the Applicant alleges that the challenged decision of the Appellate Panel of the SCSC also violates its rights guaranteed by Articles *3, 46, 54, 102, 103, 121 and 156 of the Constitution*. In the present case, the Applicant merely mentions the respective articles but does not further elaborate on why and how has this violation of these relevant articles of the Constitution resulted. The Court recalls that it has consistently reiterated that the mere reference to Articles of the Constitution and the ECHR is not sufficient to build an arguable allegation for a constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, the cases of the Constitutional Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, paragraph 33; KI187/18 and KI11/19, Applicant: *Muhamet Idrizi*, Resolution on Inadmissibility, of 29 July 2019, paragraph 73; and most recently the case KI125/19 Applicant: Ismajl Bajgora, Resolution on Inadmissibility, of 11 March 2020, paragraph 63). Therefore, in relation to these allegations, the Court pursuant to its case law declares the Applicant's Referral as being manifestly ill-founded and consequently inadmissible.

82. Therefore, the Court finds that with respect to these allegations of the Applicant for violation of the rights guaranteed by Articles 3, 46, 54, 102, 103, 121 and 156 of the Constitution, the Court concludes that this part of the Referral must be declared inadmissible as manifestly ill-founded as these allegations qualify as claims pertaining to the category (iii) : "unsubstantiated or unsupported" claims because the Applicant has merely cited one or more provisions of the Convention or the Constitution, without explaining how they were violated. Consequently, they are manifestly ill founded on constitutional basis, as provided for by paragraph (2) of Rule 39 of the Rules of Procedure.

Conclusion

83. In sum, the Court, based on the standards established in its case law and the case law of the ECtHR, finds that the Applicant has not in any way sufficiently proved and substantiated its allegations for a violation of the rights guaranteed by the Constitution and the ECHR, respectively by the above articles.

84. Therefore, the Court concludes that the Referral must be declared inadmissible as manifestly ill-founded in its entirety, because these allegations of the Applicant qualify as claims falling into the category of (i) "fourth instance" claims and category (iii) *"unsubstantiated or unsupported"* claims. Consequently, they are manifestly ill founded constitutional basis, as provided for by paragraph (2) of Rule 39 of the Rules of Procedure.

Request for a hearing session

85. The Court also recalls that the Applicant has requested holding of a hearing session. The Court recalls that Rule 42 [Right to a Hearing and Waiver] paragraph (2) of the Rules of Procedure provides that "The court may order a hearing if it believes a hearing is necessary to clarify issues of fact or of law."

86. The Court notes that the above rule of the Rules of Procedure is of a discretionary nature. As such, this rule only provides for the possibility for the Court to order a hearing in cases where it believes it is necessary to clarify issues of fact or of law. Thus, the Court is not obliged to order a hearing if it considers that the existing data in the case file are sufficient, beyond any doubt, to reach a meritorious decision regarding the case under consideration (see the case of Constitutional Court KI34/17, Applicant Valdete Daka, Judgment of 1 June 2017, paragraphs 108-110 – wherein it is stated that "The Court considers that the documents contained in the Referral are sufficient to decide in the case [...]").

87. The Court has just found that all the allegations of the Applicant for violation of the rights guaranteed by the Constitution and the ECHR are manifestly ill founded; therefore in the light of this, it does not deem it necessary to hold a hearing, since the documents enclosed to the Referral are sufficient to decide on the Applicant's Referral. Consequently, the Court, unanimously, rejects the Applicant's request for a hearing as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 and 21.4 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 26 March 2021, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO unanimously REJECT the Applicant's request for holding a hearing.

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**

Radomir Laban | Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.