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

Prishtina, on 7 May 2021
Ref. no.:RK 1770/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI 108/19

Applicant

Artan Kumnova

Constitutional review of Decision AC-I-19-0016 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 28 February 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Artan Kumnova, as owner of the Company "Dielli" in Gjakova.

Challenged decision

2. The Applicant challenges the constitutionality of Decision [AC-I-19-0016] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel of SCSC) of 28 February 2019.

Subject matter

3. The subject matter is the constitutional review of challenged Decision, which allegedly violates the Applicant's rights guaranteed by Article 3 [Equality Before the Law]; Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

5. On 24 June 2019, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 November 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.

7. On 6 November 2019, the Court notified the Applicant about the registration of the Referral and requested that he submits the official form and copies of the court decisions related to his Referral to the Court within fifteen (15) days. Whereas, a copy of the registration of the Referral was sent to the Appellate Panel of the SCSC on the Privatization Agency of Kosovo Related Matters.

8. On 18 November 2019, the Applicant submitted by mail service the referral form and the required documents to the Court.

9. On 10 February 2021, the Court considered the case and decided to adjourn the decision to another hearing in accordance with the required supplementations.

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. Based on the case file and the allegations of the Applicant, it results that the Applicant had in use several cadastral parcels where he conducted his business activity by invoking a contract that he had entered into with the owner of these immovable properties.

12. On 23 April 2018, the Applicant filed a lawsuit with the Basic Court in Gjakova (hereinafter: the Basic Court) on the grounds of obstruction of possession in the free and unimpeded use of cadastral parcels [04341-1; 04341-2; 04342-1; 04346-1; 04347-0 dhe 04348-1].

13. On 7 May 2018, the Basic Court by the Decision [C. No. 210118] declared itself incompetent and referred the case to the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC).

14. On 1 June 2018, the Applicant appealed to the Court of Appeals with a request to issue a Preliminary Injunction and to prevent obstruction of possession in the free and unimpeded use of cadastral parcels [04341-1; 04341-2; 04342-1; 04346-1; 04347-0 and 04348-1].

15. On 10 September 2018, the Court of Appeals by Decision [Ac. No. 3768/18] rejected the claimant's appeal and upheld the Decision of the Basic Court.

16. On 3 October 2018, the Applicant submitted a request for the issuance of a Preliminary Injunction (PI - interim measure) to the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC Specialized Panel).

17. The Applicant alleges that he has the right to use the abovementioned cadastral parcels, since for their use there was a valid contract with the Factory "Ena" as the exclusive owner of the immovable property.

18. On 7 November 2018, the President of the Supreme Court sent a letter to the Kosovo Judicial Council (hereinafter: the KJC) with a proposal to take legal actions to ensure the functioning of the SCSC by an adequate interim act until the existing legal provisions and the election of other judges are modified, since on 15 June 2018, the European Union Rule of Law Mission in Kosovo ended its mandate.

19. On 30 November 2018, the KJC, in the light of finding a solution to unblock the work of the SCSC until the amendment of the existing law, approved the Decision [No. 197/2018] by which instructed the President of the SCSC to form adequate judicial panels in the first and second instance by replacing international judges with local judges and if necessary with the consent of the President of the Supreme Court to complete the Appellate Panel as second instance from the current composition of the SCSC judges.

20. On 18 January 2019, the SCSC Specialized Panel based on the applicable SCSC Law and Decision [No. 197/2018] of the KJC by the Decision [C-III-18-0151]

rejected the Applicant's Referral on the grounds that the Applicant's Referral did not meet the criteria set out in Article 55 of Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the Law on the Special Chamber), namely, the Applicant did not provide credible evidence, which would justify the issuance of a preliminary injunction.

21. On 21 January 2019, the Applicant filed an appeal with the Appellate Panel of the SCSC against the Decision [C-III-18-0151] of the Specialized Panel of the SCSC alleging essential violation of the contested procedure, erroneous and incomplete determination of factual situation as well as erroneous application of substantive law.

22. On 28 February 2019, the Appellate Panel of the SCSC based on Law No. 04/L-033, amended by Article 6 of Law No. 04/L-273 and Article 10 of Law No. 05/L-103 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo (hereinafter: the applicable Law to the SCSC) and the Decision [No. 197/2018] of the KJC by the Decision [AC-I-19-0016] rejected the Applicant's appeal and upheld Decision [C-III-18-0151] of the Specialized Panel of the SCSC. Among other things, the Appellate Panel of the SCSC, in rejecting the Applicant's claim, reasoned that the latter had not proved that his alleged right exists and that an immediate damage could occur if a preliminary injunction is not issued.

23. On 21 June 2019, the President of the Republic of Kosovo by the decree [No. DL-127-2019], announced the new Law No. 06 / l-086 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the new Law on SCSC), which, unlike previous Laws, determines the composition of the SCSC by only judges who are citizens of the Republic of Kosovo.

Applicant's allegations

24. In his Referral, the Applicant alleges that the Decision of the Appellate Panel of the SCSC violated his rights guaranteed by Article 3 [Equality Before the Law], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution, as well as its rights guaranteed by Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

25. The Applicant alleges that the composition of the SCSC Appellate Panel was in violation of Article 3 [Composition, Organization and Appointment] of Law No. 04/L-033, amended by Article 6, paragraph 12 of Law No. 04/L-273 and finally by Article 10 of Law No. 05/L-103 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo, because the Appellate Panel of the SCSC in the consideration of its case was not composed of international judges].

26. In this regard, the Applicant alleges *"It is evident that in the trial panels, there were no international judges in the panels. Improvisations with decisions of the Kosovo Judicial Council that has found "solutions" to avoid legal*

obligation is an unconstitutional and illegal action of the KJC and the Special Chamber of the Supreme Court on PAK Related Matters. The Kosovo Parliament can change the law. Neither the KJC nor the Special Chamber can do that. Such action is arbitrariness".

27. In the course of his allegations, the Applicant alleges, *inter alia "The entire Chamber has been blocked since 14 June last year when the EULEX mandate ended. The Special Chamber is not adjudicating cases, and now a way to adjudicate cases like this has been "discovered". Therefore, this violation alone was sufficient for this Referral to be approved by the Constitutional Court because the case was not processed by a court of legal and constitutional composition".*

28. The Applicant further alleges that the SCSC denied him access to justice and at the same time to a fair and impartial trial.

29. The Applicant further alleges that the request for the issuance of a Preliminary Injunction met the criteria of Article 55 of the Law on the SCSC, but was unjustly rejected by the Appellate Panel of the SCSC.

30. Finally, the Applicant requests the Constitutional Court to approve the Referral as admissible and declare a violation of Article 31 [Right to Fair and Impartial Trial] and Article 46 [Protection of Property] of the Constitution, as well as to annul the challenged decision of the Appellate Panel of the SCSC, remanding the case for retrial.

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31
[Right to Fair and Impartial Trial]

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

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6
(Right to a fair trial)

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

Article 46
[Protection of Property]

1. *The right to own property is guaranteed.*

2. *Use of property is regulated by law in accordance with the public interest.*

3. *No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*

Article 1 of Protocol No. 1 of the European Convention on Human Rights

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters

CHAPTER II
COMPOSITION AND ORGANIZATION OF THE SPECIAL CHAMBER

Article 3
Composition, Organization and Appointment

[...]

10. Each specialized panel shall be composed of one international judge and two judges who are citizens of Kosovo. For each specialized panel, the President of the Special Chamber shall, after consultation with the President of Kosovo and the European Security and Defence Policy Mission, appoint one judge to serve as its presiding judge. Any such presiding judge may, with the consent of the Presidium, temporarily delegate such function to another judge of the concerned specialized panel.

11. The Special Chamber shall have a Presidium. The Presidium shall be comprised of the President and the presiding judges of the five specialized panels. The Presidium shall assign the other members of each specialized panel.

12. The appellate panel shall be composed of five (5) judges, three (3) of whom must be international judges and two (2) shall be citizens of Kosovo. The President of the Special Chamber shall serve as the presiding judge of the appellate panel. The four (4) other members of the appellate panel shall be assigned by the President of the Special Chamber after consultation with the President of Kosovo and the European Security and Defence Policy Mission.

13. The President of the Special Chamber shall act as the presiding judge of the appellate panel. The President of the Special Chamber may temporarily delegate such function to another judge.

14. The appellate panel shall have final and exclusive appellate jurisdiction over all appeals from Decisions or Judgments of a specialized panel or any court with respect to matters or cases that have previously been referred to such court by the Special Chamber.

15. If a judge fails or is unable to regularly discharge his duties, the President of the Special Chamber shall immediately inform the President of Kosovo, the European Security and Defence Policy Mission and the Kosovo Judicial Council.

Law No. 04/L -273 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo

Article 6

[Amending and Supplementing the Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (Law]

[...]

10. Each specialized panel shall be composed of one (1) EULEX/international judge and to (2) Kosovo judges presided by a Kosovo judge. The President of Kosovo Judicial Council shall appoint one judge to serve as its presiding judge. The presiding judge may, with the consent of the Presidium, temporarily delegate such function to another judge of the concerned specialized panel.

12. The appellate panel shall be composed of five (5) judges, two (2) of whom shall be EULEX/international judges. Upon the reasoned request of the EULEX competent authority Kosovo Judicial Council will decide that the panel be composed of majority of EULEX/international judges. The President of the Special Chamber shall serve as the presiding judge of the

appellate panel. The four (4) other members of the appellate panel shall be assigned by the President of the Special Chamber after consultation with the President of Kosovo Judicial Council.

Law No. 05/L-103 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo

Article 10

In Article 3 of the Law No.04/L-033, as amended by Article 6 of the Law No.04/L-273, paragraph 12. of the Law is reworded as following:

12. The appellate panel shall be composed of five (5) judges, two (2) of whom shall be EULEX/international judges. In extraordinary circumstances, upon reasoned request of the President of the Supreme Court or request of the EULEX competent authority, and through the Chairman of the Judicial Council, the Judicial Council may decide that the panel be composed of majority of EULEX judges. The President of the Special Chamber shall serve as the presiding judge of the appellate panel. The four (4) other members of the appellate panel shall be assigned by the President of the Special Chamber after consultation with the President of Kosovo Judicial Council.

Law No. 06/l-086 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters

Article 4
Composition, Organization and Appointment

1. The Special Chamber is a two-tier court and it has jurisdiction on the whole territory of Kosovo.

2. The Special Chamber is composed of judges, nationals of the Republic of Kosovo, and it reflects the ethnical composition of the population in Kosovo, whereby at least two (2) judges shall be amongst the non-majority communities in Kosovo.

Law no. 03/L-223 on the Kosovo Judicial Council

Article 4
Competencies and Responsibilities

[...]

1.15. administering the judiciary and its personnel and issuing regulations and sub-legal acts in accordance with its competencies;

Admissibility of the Referral

31. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.

32. 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.*

33. In addition, the Court examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests] 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

> *Article 47*
> *[Individual Requests]*
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
>
> *Article 48*
> *[Accuracy of the Referral]*
>
> *"In his/her referral, the claimant should accurately clarify what rights 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 [...]".*

34. As regards the fulfillment of the abovementioned requirements, the Court finds that the Applicant submitted the Referral in the capacity of an authorized party, challenging the act of the public authority, namely Decision [AC-I-19-

0016] of 28 February 2019 of the Appellate Panel of SCSC, after the exhaustion of all legal remedies provided by Law. The Applicant also clarified the fundamental rights and freedoms he claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

35. In addition, the Court examines whether the Applicant has met the admissibility criteria established in Rule 39 (Admissibility Criteria) of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a Referral including the criterion that the referral is not manifestly ill-founded. Rule 39 (2) of the Rules of Procedure establishes that:

> *"(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".*

36. The Court first recalls that in substance the Applicant's main allegation is a violation of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, because according to the Applicant, the composition of the Appellate Panel of the SCSC was not in accordance with Article 3 [Composition, Organization and Appointment] of Law No. 04/L-033, which was subsequently amended by Article 6 of Law No. 04/l-273 and by Article 10 of Law No. 05/l-103 on the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, because the judicial panel during the review of his case did not consist of international judges but only local judges.

37. The Applicant also alleges a violation of the right to property guaranteed by Article 46 [Protection of Property] of the Constitution on the grounds that the rejection of the request for the issuance of a Preliminary Injunction was contrary to Article 55 of the Law on the SCSC.

38. In this context, the Court will assess the constitutionality of the Decision [AC-I-19-0016] of the Appellate Panel of the SCSC concerning the alleged violations of Articles 31 and 46 of the Constitution, as well as Article 6 of the ECHR, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution.

39. The Court also reiterates that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution "[Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights]".

40. In this regard, the Court initially notes that the ECtHR case law establishes that the fairness of a proceeding is assessed based on the proceeding as a whole (see, in this regard, the ECtHR case *Barbera, Messeque and Jabardo v. Spain,* Judgment of 6 December 1988, no. 146, paragraph 68). Therefore, in assessing the Applicant's allegations, the Court shall also adhere to these principles.

41. The Court notes that the Applicant mainly challenges the composition of the Appellate Panel of the SCSC by referring to the applicable Law on the SCSC, which during the examination of the Applicant's case, the applicable law required that the Specialized Panel and the Appellate Panel of the SCSC, be composed of international judges.

42. The Court notes that Article 3 of Law No. 04/L-033 which regulated the composition of panels within the SCSC, had undergone changes by Article 6 of Law No. 04/L-273 and then by Article 10 of Law No. 05/l-103 on Amending and Supplementing Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo.

43. However, the new legal changes did not exclude the participation of international judges in the Specialized Panel and the Appellate Panel of the SCSC. More precisely, the Law applicable to the SCSC in the Applicant's case required the Appellate Panel to consist of five (5) judges, two (2) of whom should be EULEX/international judges, which in the situation of the Applicant was not this case.

44. In this context, the Court notes that the Applicant specifically alleges that the judicial panel when reviewing his case consisted only of local judges, but not of international judges as defined by the applicable law on the SCSC.

45. In this regard, the Court notes that on 15 June 2018, the European Union Rule of Law Mission in Kosovo ended its mandate, which resulted in the end of the mandate of international judges in the SCSC.

46. The Court notes that on 30 November 2018, the SCSC, in order to ensure the functioning of the SCSC, managed to make the panels functional with local judges based on Decision [KJC. No. 1977/2018] of the KJC, which instructed the SCSC to complete the Specialized Panel and the Appellate Panel from the current composition of the judges of the Special Chamber of the Supreme Court.

47. The Court also notes that the Applicant's case was referred to the SCSC on 3 October 2018, after the end of the mandate of the European Union Rule of Law Mission in Kosovo and before the entry into force of Decision [No. 1977/2018] of KJC for the functioning of the SCSC with local judges.

48. In this regard, the Court notes that the Applicant considers that the non-composition of the Appellate Panel with international judges and the functioning of the Specialized Panel and the Appellate Panel through decisions of the KJC, without changing the legal provisions in force by the Assembly of the Republic of Kosovo, consists of the illegal composition of the trial panel and consequently constitutes a violation of Article 31 of the Constitution.

49. The Court first notes that the Applicant is challenging the constitutionality of the Decision [AC-I-19-0016] of the Appellate Panel of the SCSC, of 28 February 2019, but not the constitutionality of the Decision [No. 197/2018] of the KJC on which is based and reasoned the functioning of panels in the SCSC in light of the created circumstances.

50. With regard to the Applicant's allegation regarding the illegal composition of the SCSC judicial panels, which decided to reject the Applicant's request, the Court notes from the outset that this issue concerns the correct application and interpretation of the law, which is the exclusive competence of the regular courts.

51. Furthermore in this case, as a general rule, the assessment of the facts of the case and the interpretation of the law are matters only for the regular courts, the assessments and conclusions of which in this regard are binding on the Court. However, when a decision of a regular court is manifestly arbitrary, the Court can and should question it (See the case of the ECtHR, *Sisojeva and Others v. Latvia* [GC], Judgment of 15 January 2007, paragraph 89.

52. The Court notes that the KJC in decision [No. 197/2018], has explained the functionality of the SCSC and the composition of judicial panels, taking into account local legal acts, namely Law No. 03/L-223 on the Kosovo Judicial Council and the Regulation on the Organization and Activity of the Kosovo Judicial Council.

53. In this regard, the Court recalls that Article 4, paragraph 1.15 of Law No. 03/L-223 on the Kosovo Judicial Council authorized the KJC to take actions regarding the administration of the judiciary and its staff.

54. The Court also recalls that Article 3A.2. [Transfer of Cases in Courts] of Law No. 03/L-053 on the Jurisdiction, and Competencies of Eulex Judges and Prosecutors in Kosovo, specifies as follows:

> *"Article 3A.2.- All cases will be transferred from EULEX to the local institutions, upon ending of the current mandate of the EULEX mission in Kosovo foreseen in the law."*

55. The Court further notes that the SCSC managed to fairly administer justice and that in the event of a waiver of the review of the Applicant's appeal by the SCSC Appellate Panel, it would be a violation of his right of access to a Court, by denying the Applicant the right to have his case heard by the relevant court in the present case.

56. The Court wishes to reiterate that in a democratic society within the meaning of the ECHR, the right to a fair administration of justice holds such a prominent place that a precise/restrictive interpretation of Article 6 would not correspond to the aim and the purpose of that provision (See *mutatis mutandis* cases of ECtHR: *Ryakib Biryukov v. Russia*, Judgment of 17 January 2018, paragraph 37; *Delcourt v. Belgium*, Judgment of 17 January 1970, paragraph 25; *Wemhoff v. Germany*, Judgment of 27 June 1968, paragraph 8).

57. With regard to the Applicant's allegation of lack of impartiality by the SCSC in his case, the Court considers that to be treated initially as a constitutional issue in relation to Article 31 of the Constitution and Article 6 of the European Convention on Human Rights (ECHR), the composition of the SCSC judicial panel should be a clear indication of bias in the trial. But in this case, the bias of the judicial panel has not been proven by the Applicant, therefore, in these

circumstances there is no factual and legal basis that a violation of Article 31 of the Constitution or Article 6 of the ECHR can be found.

58. In addition, the Court notes: (i) that the KJC based on the law found a solution to the legal gap created by the end of the mandate of EULEX judges by establishing interim trial panels with local judges in order that the court processes are not delayed; (ii) the Applicant lost the case on merits because he has not provided credible evidence for the issuance of a preliminary injunction; (iii) looking at the case file there is no evidence that the local judges lacked both subjective and objective impartiality in general or that there was a lack of express impartiality in relation to the Applicant in particular; and, that (iv) the new Law on the SCSC - which entered into force after the Applicant's case was closed - also provided that the judicial panels be composed of local judges (see paragraphs 22 and 23 of this resolution).

59. With regard to the Applicant's allegation of a violation of the right of access to justice, the Court notes that the Applicant had the opportunity and has already exercised the right to initiate proceedings to challenge a claim before the courts but also the right to receive a resolution of the relevant "*dispute*" by a court.

60. In this regard, the Court notes that the Appellate Panel of the SCSC reviewed the Applicant's appeal and provided the legal reasoning regarding his allegations. Therefore, the Court considers that in such circumstances the Applicant has not been denied or limited the opportunity to challenge an allegation before the courts.

61. The Court therefore considers that the Applicant's allegation of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR is manifestly ill-founded on constitutional basis.

62. The Court will also refer to the Applicant's last allegation of violation of Article 46 of the Constitution on the grounds that the Specialized Panel by Decision [C-III-18-0151] of 18 January 2019 and the Appellate Panel by the Decision [AC-I-19-0016] rejected to issue a preliminary injunction.

63. In the present case, the Court notes that the Applicant is not a property right holder; on the contrary, he requested that an interim measure be imposed on a property he was only using, thus initiating a legal dispute in the Specialized Panel of the SCSC.

64. The Court also notes that the Applicant does not claim to be the owner of the property but only states that for the use of the cadastral parcels there was a valid contract with the "Ena" Factory as the exclusive owner of the immovable property.

65. The Court in this respect and initially recalls that the allegations of obstruction of possession in the respective properties, the Applicant had also submitted to the Specialized Panel of the SCSC, and which had emphasized this fact by its Decision [C-III-18- 0151] of 18 January 2019, noting as follows:

"The party must provide credible evidence that it will result in immediate and financially irreparable damage if the request is not granted. These criteria are defined in such a way that if any of the above is missing, the request will be rejected. The burden of proof falls on the claimants".

66. The Court notes that the Specialized Panel of the SCSC by Decision [C-III-18-0151], of 18 January 2019, when rejecting the Applicant's request for the issuance of an interim measure had stated: *"the claimant, did not provide credible evidence, which would justify the issuance of the PI. The claimant has not submitted any evidence of the existence of a risk of damage and moreover has submitted any evidence that would substantiate that immediate and irreparable damage would have been caused if the PI had not been issued".*

67. In addition, the Specialized Panel of the SCSC, in its decision as above, stated that: *"the request for the issuance of a preliminary injunction does not meet the legal criteria as provided by Article 55.1 of the Annex to the Law on the Special Chamber (LSC)."*

68. The Court also recalls that the allegation of obstruction-possession, requesting the issuance of a court order, the Applicant had also submitted to the Appellate Panel of the SCSC, and which had stated this fact by its Decision [AC-19-0016] of 28 February 2019, noting as follows:

"The Appellate Panel finds that the Specialized Panel of the SCSC has decided correctly that the requirements set out in Article 55.1 of the Annex to the LSC have not been met in this present case, therefore the appeal should be rejected and the Decision of the Specialized Panel should be upheld".

69. Despite this finding, the Appellate Panel of the SCSC had in fact substantiated in detail the Applicant's allegation regarding the non-issuance of the preliminary injunction and the Applicant's alleged right to use the abovementioned cadastral parcels. In this regard, the Appellate Panel of the SCSC, by its Decision of 28 February 2019, *inter alia*, reasoned as follows:

"The claimant who requests a Preliminary Injunction must prove the probability that the right he claims exists and that this right is at immediate risk of irreparable loss or damage if the Preliminary Injunction is not approved. The probability of the claimed right was not given by the complainant, as it was also found by the Specialized Panel of the SCSC. Lease contracts dated 17/05/2017 which was signed by the President of the Trade Union, according to the Law of the PAK is not a person competent to lease the assets of the SOE. Property, cadastral parcel, disputed 206/1 is in the name of the SOE "Ena" Gjakova, according to the Law on PAK is administered by PAK. Therefore, the Appellate Panel considers that in the present case, the claimant/appellant has not proved that his alleged right exists and that an immediate and irreparable damage of their rights may occur if Preliminary Injunction is not issued. Neither with the request for Preliminary Injunction nor with the complaint does he provide, documents or evidence in support of his request in order to prove that the claimed right and the direct risk of

irreparable loss or damage exists, if the requested Preliminary Injunction is not approved."

70. The Court also finds that the Appellate Panel of the SCSC in its decision stated that *"This decision does not in any way prejudice the resolution of the merits of the lawsuit."*

71. The Court notes that the decisions of the Specialized Panel and the Appellate Panel of the SCSC addressed the Applicant's appeal and finally explained why his request was rejected in relation to his allegations, which mainly concerned the non-provision of evidence and credible facts about the existence of the claimed right and the existence of an immediate and irreparable damage.

72. The Court notes that in its case law it has found in many cases that the issues of fact and issues of interpretation and application of the law are within the scope of the regular courts and other public authorities, within the meaning of Article 113.7 of the Constitution and as such are issues of legality, unless and insofar as such issues result in violation of fundamental human rights and freedoms or create an unconstitutional situation (see, *inter alia*, Constitutional Court Case No. KI33/16, Applicant *Minire Zeka*, Judgment of 4 August 2018, paragraph 91; See, *mutatis mutandis*, the case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012; Case KI122/18, Applicant *Limak Kosovo International Airport JSC "Adem Jashari"*, Resolution on Inadmissibility of 6 November 2019, paragraph 56; case KI128/19, Applicant *Artan Mala*, Resolution on inadmissibility of 20 January 2021, paragraph 40).

73. The Constitutional Court intervenes only when, by their actions, the regular courts violate constitutional rights and standards. In these cases, the Court does not re-assess the facts and circumstances, or reinterpret the laws, but an assessment of a constitutional nature, distinct from that of the courts of regular jurisdiction.

74. Therefore, the role of the Constitutional 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 (as to the basic principles regarding the manifestly erroneous interpretation and application of the law, see, *inter alia*, the case of the Court KI154/17 and KI05/18, Applicant, *Basri Deva, Afërdita Deva and Limited liability company "Barbas"*, Resolution on Inadmissibility of 28 August 2019, paragraphs 60 - 65 and the references used therein). (See, in this context, also the case of the ECHR, *Anheuser-Busch Inc. v. Portugal*, Judgment of 11 January 2007, paragraph 83; and also the cases of Court KI06/17, Applicant *L. G. and five others*, cited above, paragraph 40; and KI122/16, cited above, paragraph 59).

75. The Court further considers that all arguments of the Applicant that were relevant to the resolution of the dispute, were heard, carefully reviewed by the Appellate Panel of the SCSC. Therefore, viewed in entirety, the Court concludes that the proceedings before the regular courts, were constitutionally fair (See,

mutatis mutandis, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraphs 29 and 30)

76. In light of this, the Court does not find that the reasoning of the Appellate Panel of SCSC resulted in a violation of Articles 31 and 46 of the Constitution, because the final decision of the SCSC has concluded the assessment of both the factual situation and the application of legality, and the Applicant has not in any way proved that the challenged Judgment is indicative of any apparent arbitrariness seeking its annulment on constitutional basis.

77. The Court notes that the Applicant does not agree with the outcome of his case. However, his dissatisfaction with the outcome of the proceedings by the regular courts, cannot of itself raise an arguable claim of violation of the right to fair and impartial trial (see, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 20 December 2017, paragraph 42).

78. Accordingly, the Court considers that the Applicant has not substantiated his allegations that the relevant proceedings were in any way unfair or arbitrary and that the challenged Decision violated his constitutional rights and freedoms, guaranteed by the Constitution and by the ECHR (see, *mutatis mutandis, Shub case v. Lithuania*, no. 17064/06, ECtHR, Decision of 30 June 2009).

79. In this context, the Court finds that the Applicant's allegation regarding the violation of the right to property is manifestly ill-founded for the reasons above.

80. Therefore, the Court rejects the Referral as manifestly ill-founded, in accordance with paragraph 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Articles 20 and 27.1 of the Law and Rule 39 (2) of the Rules of Procedure, on 12 April 2021, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. This Decision is effective immediately.

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

Bajram Ljatifi | Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only