



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

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Prishtina, 31 May 2021  
Ref.No: RK1791/21

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI120/20**

Applicant

**N.T.SH. “Virtuo”**

**Constitutional review of Judgment E. Rev.no.23/2020 of the Supreme  
Court of the Republic of Kosovo, of 27 April 2020,**

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

composed of:

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

#### **Applicant**

1. The Referral was submitted by the Company N.T.SH. Virtuo having its seat in Prishtina, represented by lawyer Albert Islami from Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment [E. Rev. no. 23/2020] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 27 April 2020.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's fundamental rights and freedoms guaranteed by Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on paragraph 4 of Article 21 [General Principles], paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 28 July 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 August 2020, the President of the Court appointed Judge Remzije Istrefi Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu Krasniqi (members).
7. On 17 August 2020, the Court notified the Applicant about the registration of the Referral.
8. On 17 August 2020, the Court notified the Supreme Court about the registration of the Referral and provided a copy thereof to it.
9. On 5 May 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

10. On 18 April 2012, the Applicant and the Company "Printec" L.L.C. had signed a joint venture agreement on which occasion both parties had exchanged information about their businesses. The joint enterprise was named "*Printec L.L.C. & NT SH Virtuo*". The main purpose of cooperation was the preparation of a bid and participation in the tender announced by Lux Development, on behalf of

the Ministry of Health of the Republic of Kosovo (hereinafter: MoH). The parties had agreed that the leader of the entrepreneurship was "Printec" L.L.C., whilst the Applicant, namely N.T.SH "Virtuo" was a member of the entrepreneurship. The contract was signed by Y. Sh, on behalf of "Printec" L.L.C. and Glauk Hoxha, on behalf of N.T.SH "Virtuo", which is proved by the joint venture agreement of 18 April 2012.

11. On 18 April 2012 and 20 November 2012, the Applicant N.T.SH "Virtuo" and "Printec" L.L.C. had authorized Y.Sh. in writing to undertake all activities on behalf of the enterprise including the preparation of documents, submission of the bid and execution of the contract. Consequently, the authorized Y. Sh. had prepared the documentation and submitted the bid on behalf of the Company "Printec L.L.C. & N.T.SH Virtuo", which was thereupon, announced the winner of the tender.
12. On 10 March 2014, the supply contract [KSV/014.12.051] was concluded between the MoH as the contracting authority, and the enterprise "Printec L.L.C. & N.T.SH Virtuo", as the economic operator. On behalf of the enterprise or grouping, as it was called in the tender, the contract was signed by Y.Sh as the authorized person of this grouping. The parties had accepted the representation as regular and had started fulfilling the contractual commitments. Also, the regular courts had found that at the time of the conclusion of the contract, Y.Sh. was the general manager of "Printec" L.L.C., while on 18 July 2014, at the meeting of shareholders of the party "Printec" L.L.C he was appointed second managing director. On the same date, the shareholders of "Printec" L.L.C unanimously and unconditionally had confirmed and accepted all transactions performed by Y.Sh. on behalf of "Printec" L.L.C. including the contract with the MoH. Also, based on the minutes of the meeting of the shareholders of "Printec" L.L.C, of 18 July 2014, the regular courts had concluded that the shareholders of this company have confirmed that Y.Sh. had acted as an authorized person in the conclusion of the above-mentioned contract.
13. On 11 August 2014, the Applicant filed a claim against the respondent "Printec" L.L.C., for partial cancellation of the contract and compensation of damages. The Applicant requested the cancellation of the above contract, specifically, only in respect of the respondent party, alleging that the signatory of the contract Y.Sh, was not the General Director of the respondent party and he did not possess the authorization to sign the contract. The Applicant alleged that Y.Sh. due to his illegitimate and unauthorized appearance, had behaved irresponsibly, thus causing to the Applicant real damage of 30,000.00 € and a lost profit of 830,000.00 €.
14. On the other hand, the respondent party "Printec" L.L.C., challenged the allegations of the Applicant, by holding the position that Y.Sh. was the general manager of the respondent and that he was authorized by both parties to sign the contract with the MoH.
15. On 10 March 2017, the Basic Court in Prishtina, Department for Commercial Matters (hereinafter: the Basic Court) by Judgment [I.C.no.435/2014]: (I) Rejected the Applicant's statement of claim filed against the respondent "Printec"



L.L.C. as ungrounded, by requesting: - To cancel the supply contract [KSV/O 14.12 051], concluded between the Applicant and the Respondent, with the MoH, a project of the Government of the Netherlands and Luxembourg - in the part which referred to the respondent "Printec" L.L.C.;-whilst in respect of the Applicant, the above-mentioned contract to remain in force; the respondent "Printec" L.L.C. to be obliged to pay to the Applicant the amount of 30,000.00 €, while in the name of the missing profit to pay to him the amount of 830,000.00 € ; (II) The Applicant to be obliged to pay to the respondent the amount of 2,215.20 €, in the name of the contested procedure costs, within 7 days from the day of service of this Judgment.

16. Acting within the legal deadline, the Applicant filed an appeal against the above judgment due to essential violations of the provisions of the contested procedure, erroneous or incomplete determination of the factual situation and erroneous application of the substantive law, by proposing to the court to approve the claimant's appeal as grounded, to quash Judgment [I.C.no.435/2014] of the Basic Court, or to alternatively to modify the judgment of the court of the first instance and remand the case for reconsideration and retrial.
17. On an unspecified date, the respondent "Printec" L.L.C. filed a response to the appeal, by proposing to the court of the second instance to reject the claimant's appeal as ungrounded and to uphold Judgment [I.C.no.435/2014] of the Basic Court, of 10 March 2017.
18. On 6 November 2019, the Court of Appeals, General Department, Civil Matters Division (hereinafter: the Court of Appeal) by Judgment [Ae.no.103/2017] rejected the Applicant's appeal as ungrounded and upheld the Judgment [I.C.no.435/2014] of the Basic Court, of 10 March 2017.
19. Against the above Judgment, the Applicant has filed a request for revision due to essential violations of the provisions of the contested procedure and erroneous application of the substantive law, by proposing to have the revision approved as grounded whilst both Judgments, the one of the Basic Court and that of the Court of Appeals to be quashed and the case to be remanded for retrial, or alternatively, the said judgments to be modified by approving the statement of claim as grounded.
20. On an unspecified date, in a response to the revision "Printec" L.L.C. challenged the Applicant's revision claims in their entirety and proposed that the revision be rejected as ungrounded.
21. On 27 April 2020, the Supreme Court through Judgment [E.Rev.no.23/2020] rejected the Applicant's revision filed against the above Judgment of the Court of Appeals, as ungrounded.

### **Applicant's allegations**

22. The Applicant alleges that the challenged Judgment was issued in violation of its fundamental rights and freedoms guaranteed by Articles 24 [Equality before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.



23. The Applicant alleges that *“by the judgments of the regular courts, the provisions of Article 31 of the Constitution and Article 6 of the ECHR have been infringed, upon essential violation of the constitutional guarantees incorporated in the corpus of this Constitutional provision for a correct, impartial, regular and fair trial.”* Consequently, *“The judgments of the regular courts are not in compliance with the cited constitutional provisions and the challenged Judgment is in substantial contradiction with the facts and legally valid evidence administered by the court of the first instance, which has conditioned in its entirety an irregular, unfair and biased process.”*
24. According to the Applicant, *“the finding of the Supreme Court that Y.Sh. has had the necessary legitimacy and authorization to take action as a person authorized by the parties to the dispute, within the scope of tender and contract execution, is an arbitrary, selective, biased conclusion which does not only find no support in the evidence administered and the facts confirmed but is a fabrication of stereotypical formulations with empty, truncated, arbitrary, confusing and shocking paraphrases, to create quiescence for the Applicant”* and consequently *“its constitutional guarantee for an impartial and fair trial has been violated”*.
25. According to the Applicant, Y.Sh. has signed the supply contract in the capacity of a *“general manager”*, even though he has been authorized neither by the charter of the Company “Printec” L.L.C. nor by the joint venture agreement, nor by the authorization of the Company of 18 April 2012.
26. The Applicant further alleges that based on the certificate of the Business Registration Agency (hereinafter: KBRA) no. 554 of 15 June 2014, it is confirmed that Y.Sh. has never been appointed by the charter of the respondent “Printec” L.L.C. nor has he been registered in the capacity of the so-called “general manager”. Consequently, the finding that Y.Sh. has had the legitimacy and authorization to take action was also reached by an essential violation of the provisions of Article 110 of the Law on Business Organizations (hereinafter: the LBO), since the Shareholders Assembly of the respondent “Printec” L.L.C. has never appointed Y.Sh. in the capacity of General Director by the charter and that, he is not registered in such capacity. Therefore, according to the Applicant, while the supply contract was signed by Y.Sh. who clearly was neither appointed nor registered with KBRA according to the provision of Article 109 (Appointment and Removal of Managing Directors) and 110 (Authority of Managing Director to Act for the Company) of LBO, therefore also the signed contracts are absolutely null and void and produce no legal effect from the very outset (*ex tunc*) and as such must be declared invalid.
27. The Applicant also states that while the joint venture according to the agreement of 12 April 2012, was not registered with the KBRA, it lacks the constitutive element of registration envisaged by the relevant provisions of the LBO. Therefore, this agreement does not produce legal effect and does not enjoy judicial protection.
28. The Applicant also states that the finding of the Supreme Court that *“the actions committed by Y.Sh. were confirmed and accepted by the respondent “Printec” L.L.C. at the shareholders meeting of 18.07.2014 on which occasion, Y.Sh. has*

*been appointed second managing director*” contradicts the provision of Article 33 and 109 paragraph 1 of the LBO. This is because Y.Sh. was not appointed by the charter of the respondent and he was not registered with the KBRA in that capacity. Therefore, appointment by the charter and registration in the capacity of managing director is an essential condition (*conditio sine qua non*) to act in the name and on behalf of the respondent.

29. The Applicant also alleges that the challenged Judgment violated the constitutional guarantee under the provision of Article 24 of the Constitution. According to him, by the challenged judgment, he was not guaranteed equal judicial protection before the law, since the Supreme Court by erroneously applying the substantive law materialized through paragraph 2 of Article 72 (Possibility of representation) of the Law on Obligational Relationships (hereinafter: the LOR) on the basis of negative selection to the detriment of the Applicant *“has created inequality, injustice, arbitrariness, bias and consequently, discrimination.”* Thus, according to the Applicant *“The Supreme Court selectively applies the provision of Article 72, paragraph 1 of the LOR which does not refer to companies or legal persons and deals with natural persons. Whilst, it deliberately does not apply the provision of Article 72, paragraph 2 of the LOR, a provision that refers to companies as is the present case.”*
30. With regard to the allegations of violation of Article 24 of the Constitution, the Applicant further states that *“the Supreme Court has made a selective assessment of the evidence and in their entirety has not taken a fair, regular and impartial judgment. Moreover, by having not assessed all the evidence of the litigants (equality of arms) it did not provide the reasons why it refers to the evidence presented by the claimant - the Applicant as unproven.”*
31. Finally, the Applicant requests from the Court to: (i) declare the Applicant's Referral admissible; (ii) to find that there has been a violation of Articles 24 (Equality before the Law) and 31 (Right to Fair and Impartial Trial) of the Constitution in conjunction with Article 6 of the ECHR (right to a fair trial);
32. To declare the Judgment [E. Rev. no. 23/2020] of the Supreme Court of Kosovo, of 27 April 2020, invalid; (iii) to order the Supreme Court of Kosovo to annul its Judgment [E. Rev. no. 23/2020] and the Judgment [Ae. no. 103/2017] of the Court of Appeals, of 6 November 2019, so that the Court of Appeals decides in a retrial regarding the Judgment [I.c.no.435/14] of the Basic Court - Department for Commercial Matters in Prishtina, of 10 March 2017.

## **Relevant Constitutional and Legal Provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 24 [Equality before the Law]**

*1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*



2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

**Article 31**  
**[Right to Fair and Impartial Trial]**

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.

**Law No. 03/L-006 on Contested Procedure**

**Article 321**

321.4 The facts whose existence is assumed by law should not be proven, but their inexistence can be proven if something else is not determined by law.

[...]

**Law No. 02/L-123 on Business Organizations**

**Article 33**  
**Registration and Establishment of a Limited Liability Company**

33.1 To register and establish a limited liability company, a founder shall sign and submit to the Registry the charter of the limited liability company, which must contain the following information:

a) the official name of the company, which must include at the end the abbreviation "LLC" or its equivalent in one of the languages specified in paragraph 5 of Article 13 of this Law;

b) the address in Kosovo at which the company will have its principal place of business;

c) the address of the company's registered office and the name of the company's registered agent at that address,

d) the business purpose of the company, which may be described as “any Lawful business purpose”;

e) the name and address of each founder of the company; if a founder is a natural person, his/her full name and the address of his/her permanent place of residence, which may be in Kosovo or outside Kosovo, shall be provided, if a founder is a Kosovo business organization, its official name and the address of its registered office in Kosovo shall be provided; if a founder is a foreign business organization, its official name and the address of its principal place of business outside Kosovo shall be provided;

f) the number of persons who will serve as the company's Directors, and the name and address of each of the persons who will serve as the initial Directors of the company. If such a Director is resident in Kosovo, the address of his/her residence in Kosovo shall be provided; if such a Director is not resident in Kosovo, the address of his/her residence outside of Kosovo shall be provided;

g) the latest date, if any, on which the company is to dissolve;

h) the amount of the company's charter capital, which must be at least 1,000 Euros;

i) the amount of the company's charter capital that has been paid in at the time of the company's registration;

j) the amount (if any) of the company's charter capital that has been subscribed but that has not been paid in at the time of the company's registration;

k) the names and addresses of the owners and their respective ownership interests; and

l) a statement affirming that the person signing and submitting such charter is an “authorized person” as defined in the present Law and that such person has the authority to sign and submit the charter to the Registry.

33.2 The person signing and submitting the charter must attach the written consent of the registered agent indicating the registered agent's consent to serve in such capacity. Such written consent must be signed by 24 the registered agent. If the registered agent is a business organization, it must be signed an authorized person of such business organization.

33.3 The person signing and submitting the charter must also attach a copy of the company agreement required by Article 86 signed by the owners specified in the original charter. It is specifically provided, however, that (i) the requirement of this Article is for public information purposes only, (ii) the Registry shall have no authority to review a company agreement for legal or formal sufficiency, (iii) the Registry shall have no authority to refuse to register a limited liability company for any reason that relates to the form or content of the ByLaws, and (iv) registration of a company agreement does not signify or imply that such agreement, or any provision thereof, complies with the charter or the requirements of the present Law.

## **Article 109**

### **Appointment and Removal of Managing Director**



109.1 A company's owners shall designate in the charter, or an amendment to the charter or in the company agreement, the specific person or persons holding the position of managing director. Such person(s) shall have the authority stated in Article 110 of this Law. If there is more than one managing director, the company agreement shall specify the respective title, duties and authority of each. A managing director may only be designated, removed or replaced by a vote of the owners. A managing director need not be an owner. A managing director must be a natural person.

109.2 Unless otherwise provided in the company agreement, a managing director who has been elected shall continue to be a managing director until removed or replaced by a vote of the owners or until he resigns, whichever occurs first.

109.3 Unless otherwise provided in the company agreement, a managing director may be removed by a vote of the owners. The owners are not required to state a reason for such removal, and the removed person has no right to demand or require the owners to state a reason for his/her removal.

### **Article 110** **Authority of Managing Director to Act for the Company**

110.1 Subject to any contrary provision in this Law or the company agreement, a managing director has the authority to represent the company in the conduct of its business activities, including the authority (i) to conduct the normal and customary business activities of the company and (ii) to sign an agreement or other document on behalf of the company and in the company's name if the signing of such agreement or document is reasonably related to or necessary for the conduct of the normal and customary business activities of the company. Any such act by a managing director is binding on the company unless (i) the act is beyond the authority of the managing director as specified in the company agreement and (ii) the person or organization with whom the managing director was dealing knew that the managing director lacked the authority for such act.

110.2 An act of a managing director that is not reasonably related to or necessary for the conduct of the normal and customary business activities of the company is not binding on the company unless the act was specifically authorized (i) by the company agreement or (ii) a special authorization approved by a vote of the owners.

110.3 Any person, including a managing director, who knowingly purports to act for the company without the authority for such act shall be personally liable for all damages caused by such act to the company and any other person or organization with whom the unauthorized person has dealt.

110.4 Unless otherwise provided in the company agreement, each managing director of a company that has two or more managing directors shall have equal authority and rights in the management of the company.

## **Law No. 04/L-077 on Obligational Relationships**

### **Article 72** **Possibility of representation**

1. Contracts and other legal transactions may be concluded via a representative.

2. *The entitlement to representation shall be based on the law, on other legal acts and on the declaration of intention by the person represented (authorization).*

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

33. 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.
34. In this respect, the Court refers to paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

#### *Article 21*

*[...]*

4. *Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

#### *Article 113*

*“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.”*

35. The Court further refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

#### *Article 47 (Individual Requests)*

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”*

#### *Article 48 (Accuracy of the Referral)*

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*



Article 49  
(Deadlines)

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision [...].”*

36. In this regard, the Court notes that, pursuant to Article 21.4 of the Constitution, the Applicant is entitled to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms, which are valid for individuals as well as legal persons (see the cases of the Court, KI10/20, Applicant “*Regional Water Supply Company “Hidroregjioni Jugor” J.S.C. - Unit Malësia e Re Prizren*”, Resolution on Inadmissibility of 5 October 2020, paragraph 35; case KI41/09, Applicant *University AAB-RIINVEST L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).
37. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party which is challenging an act of a public authority, namely the Judgment [E. Rev.no. 23/2020] of the Supreme Court, of 27 April 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which it alleges to have been violated, pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
38. In addition, the Court examines must examine whether the Applicant has fulfilled the admissibility criteria of constitutional referrals, stipulated by Rule 39 of the Rules of Procedure. In this respect, Rule 39 (2) of the Rules of Procedure provides that:

Rule 39  
(Admissibility Criteria)

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*

39. The Court first states that the above 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 defined in paragraph 2 of Rule 39 of the Rules of Procedure.
40. 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 regard, it is more accurate to refer to the same as “manifestly ill-founded claims”. The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of “fourth instance”; (ii) claims that are categorized

as “clear or apparent absence of a violation”; (iii) “unsubstantiated or unjustified” claims; and finally, (iv) “confused or far -fetched” claims. (see, more precisely, on 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 30 April 2020; part III. Inadmissibility based on the merits; A. Manifestly ill-founded applications, paragraphs 275 to 304).

41. In the context of the assessment of the admissibility of the Referral, namely, in assessing whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the essence of the case contained in this Referral and the respective allegations of the applicants, in the assessment of which the Court will apply the standards of case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution.
42. In this context, the Court initially recalls that the circumstances of the case relate to the Applicant's statement of claim for (i) partial cancellation of the supply contract [KSV/014. 12. 051] between the MoH as the contracting authority and the joint enterprise “*Printec L.L.C. & NTSH Virtuo*”, as an economic operator, only in respect of the respondent party “*Printec*” L.L.C., alleging that the signatory of the contract Y.Sh, was not the General Director of the respondent party and that he did not possess the authority to sign the contract, and (ii) the claim for compensation of damage, due to the illegitimate and unauthorized appearance of Y.Sh on which occasion the Applicant claims that material damage of 30,000.00 € and a lost profit of 830,000.00 € has been caused to him. The Basic Court had rejected the Applicant's statement of claim filed against the respondent “*Printec*” L.L.C., as ungrounded. Acting upon the respective appeal and the request for revision, the Court of Appeals, a decision which is confirmed also by the Supreme Court, rejected the Applicant's statement of claim. The Applicant challenges the findings of the regular courts before the Court, alleging (i) violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous interpretation of the law, respectively Articles 33, 109 and 110 of the LBO; (ii) violation of Article 24 of the Constitution, as a result of erroneous interpretation of the law, namely paragraph 1 of Article 72 of the LOR. In the following, the Court shall review and assess the Applicant's allegations.
43. In this regard, the Court first notes that the Applicant's allegations for violation of Articles 24 and 31 of the Constitution in conjunction with Article 6 of the ECHR as a result of erroneous interpretation of the applicable law constitute claims of the category, which the Court in accordance with its case law and that of the ECtHR, in principle, considers as “*fourth instance claims*”.
44. In the context of this category of claims, the Court emphasizes that based on the case law of the ECtHR, but also taking into account its peculiarities, as are determined through the ECHR (see, in this context, the clarification in the Practical Guide to the ECtHR on Inadmissibility Criteria, of 30 April 2020 part I. Inadmissibility based on the merits; A. Manifestly ill-founded applications; 2. “fourth instance”, paragraphs 275 and 304), the principle of subsidiarity and the



doctrine of the fourth instance, it has consistently emphasized the difference between “*constitutionality*” and “*legality*” and has asserted that it is not its duty to deal with errors of fact or erroneous interpretation and application of law, allegedly made by a regular court, unless and in so far as such errors may have infringed the rights and freedoms protected by the Constitution and/or the ECHRit. (See, in this context, *inter alia*, the cases of Court KI179/18, Applicant *Belgjyzar Latifi*, Resolution on Inadmissibility of 23 July 2020, paragraph 68; KI49/19, Applicant *Limak Kosovo Joint Stock Company International Airport J.S.C., "Adem Jashari"*, Resolution of 31 October 2019, paragraph 47; KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility, of 12 August 2019, paragraph 60).

45. The Court has also consistently reiterated that it is not the role of this Court to review the conclusions of the regular courts in respect of the factual situation and the application of substantive law and that it cannot of itself assess the facts which have led a regular court to adopt one decision rather than another. Otherwise, the Court would act as a court of “*fourth instance*”, which would result in exceeding the limits imposed on its jurisdiction. (See, in this context, the case of the ECtHR *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and the references used therein; and see also the cases of the Court, KI49/19, cited above, paragraph 48; and KI154/17 and KI05/18, cited above, paragraph 61).
46. The Court, however, emphasizes that the case law of the ECtHR and of the Court also provide for circumstances under which exceptions to this position must be made. As noted above, while it is primarily for the regular courts is to resolve problems relating to the interpretation of applicable law, the role of the Court is to make sure or verify whether the effects of this interpretation are compatible with the Constitution and the ECHR (see the ECtHR case, *Miragall Escolano et al. v. Spain*, Judgment of 25 May 2000, paragraphs 33-39; and see also the case of the Court KI 154/17 and KI05/18, cited above, paragraph 63). In principle, such an exception relates to cases which result to be apparently arbitrary, including those in which a court has “*applied the law manifestly erroneously*” in a particular case and which may have resulted in “*arbitrary conclusions*” or “*manifestly unreasoned*” for the respective applicant. (For a more detailed explanation on the concept of “*application of law in a manifestly erroneous manner*”, see, *inter alia*, the ECtHR Guide on Article 6 of the ECHR (civil limb), 31 August 2020, part IV. Procedural requirements; 3. Fourth instance; b. Scope and limits of the Court's supervision, paragraphs 329-333; and the case of the Court KI 154/17 and KI05/18, cited above, paragraphs 60 to 65 and the references used therein).
47. In this context, the Court recalls that in the circumstances of the present case, the main allegations of the Applicant concerning the alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR relate to the issuance of the challenged Judgment, in contradiction with Articles 33, 109 and 110 of the LBO, while allegations for violation of Article 24 of the Constitution relate to the erroneous application of Article 72 paragraph 1 of the LOR.

48. With regard to these allegations, namely the issuance of the challenged Judgment contrary to the provisions of the LBO and the LOR, the Court first notes that they do not precisely clarify and adequately present the facts and allegations for violation of rights or constitutional provisions. However, the Court notes that such allegations have been addressed by the regular courts.
49. In this context, the Court first recalls that the Basic Court by Judgment [I.C.no.435/2014] of 10 March 2017, by addressing the Applicant's allegations, among other things, had stated as follows:

*“[...] Article 72 paragraph 1 of the LOR stipulates that the contract may be concluded by a representative. In this case, the claimant has claimed that the person who concluded the contract with the Ministry of Health did not have the authority from the respondent to enter into the contract. Whilst the court has found that Mr. Y.Sh. has been authorized by the group “Printec LLC & Virtuo NTSH” to take undertake action with respect to the announced tender. Moreover, at the extraordinary meeting of shareholders of the respondent party, it was unanimously confirmed that all transactions undertaken by Y.Sh. , including the conclusion of the contract with the Ministry of Health, have been authorized and are acceptable. Hence, the claimant’s claim for cancellation of the contract only in respect of the respondent due to the lack of authorization of Mr. Y.Sh. for concluding the contract, is ungrounded, and as such the court has rejected it.”*

50. On the other hand, the Court of Appeals, through Judgment [Ae.no.103/2017] of 6 November 2019, had addressed the essential allegations of the Applicant, by reasoning, *inter alia*, as follows:

*“This court assesses that the court of the first instance has correctly applied the substantive law, namely the provision of article 72, paragraph 1 of the LOR, which provides that: “Contracts and other legal transactions may be concluded via a representative”. In this case, the person who has signed the contract has been authorized to sign the contract, and this is confirmed by the evidence contained in the case file, respectively by the authorizations of 18.04.2012 and 20.11.2012 and the minutes of 18 July 2014, based on which are confirmed the actions of Mr. Y.Sh., as a person has been authorized to take actions with respect to the challenged contract. Therefore the claimant’s claim for cancellation of the contract only in respect of respondent due to the lack of authorization for Mr. Y. Sh., for the conclusion of the contract, is ungrounded. The Court of Appeals has also assessed the claimant’s allegations regarding the failure to obtain evidence by hearing the witnesses, as well as the issuance of expertise in the field of IT, but this court finds that the court of the first instance has acted correctly when rejecting these claimant’s allegations, because the actions of Mr. Y.Sh. have been authorized.”*

51. Finally, the Court also recalls that the Supreme Court, through Judgment [E.Rev.no. 23/2020] of 27 April 2020, had addressed the Applicant’s essential allegations, by reasoning, *inter alia*, as follows:



*“In the claimant’s revision, it is stated that the judgments of the court of the first and the second instance contain essential violations of the procedural provisions from Article 182.2. item n of the LCP, this for the reason, that these courts, in these judgments have not provided clear and complete explanations and clarifications of the decisive facts and why they refer to those as confirmed facts, by having not assessed the contradictory evidence, proposed and administered by the court itself. These revision claims were rejected by the Supreme Court as being ungrounded because both aforementioned courts have provided complete and clear explanations regarding the rejection of the statement of claim, and the correct application of the substantive law, which relate to the decisive fact that Mr. Y.Sh., has had the necessary legitimacy and authorizations to take underactions as the person authorized by the parties to the dispute, within the framework of the tender and execution of the aforementioned contract, wherefore the court of the first instance has correctly rejected the proposal of the claimant’s authorized person for judicial expertise and hearing of witnesses in relation to this circumstance, this for the reason that the actions of the authorized Mr. Y.Sh., were later confirmed and accepted by the respondent. On this basis, it results that none of these judgments contains deficiencies and ambiguities in their reasoning regarding the decisive facts on which the correct application of substantive law depends, and in this respect, the revision claims are considered ungrounded.”*

52. In this regard, the Court considers that the regular courts, in the circumstances of the present case, had addressed and reasoned the Applicant’s allegations, including those relating to the erroneous interpretation of the provisions of the applicable law. They had addressed the essential allegations of the Applicant, and had clarified that based on the administered evidence Y.Sh. was legitimated to represent the joint venture “Printec LLC & Virtuo NTSH”.
53. Finally, the Court also notes that the Applicant’s dissatisfaction with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim for a violation of the fundamental rights and freedoms guaranteed by the Constitution.(see, the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).
54. In such circumstances, taking into consideration the allegations made by the Applicant and the facts presented by it, as well as the reasonings of the regular courts elaborated above, the Court considers that the Applicant does not sufficiently prove or substantiate its allegation that the regular courts may “*have applied the law in a manifestly erroneous manner*”, thus resulting in “*arbitrary conclusions*” or “*manifestly unreasonable*” for the Applicant, and consequently its allegations for erroneous interpretation and application of the applicable law, qualify as claims falling within the category of “*fourth instance*” and as such, they reflect claims at the level of “*legality*” and are not argued at the level of “*constitutionality*”. Consequently, they are manifestly ill founded on constitutional basis, as provided for by paragraph (2) of Rule 39 of the Rules of Procedure.

55. Therefore, on the basis of the foregoing and taking into consideration the special peculiarities of the case, the allegations raised by the Applicant and the facts presented by him, the Court, by relying also on the standards established in its case law in similar cases and on the case law of the ECtHR, holds that the Applicant's allegations for violation of Articles 24 and 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous interpretation of the law applicable to the circumstances of the case constitute "*fourth instance*" claims and as such, they are manifestly ill-founded on constitutional basis, as defined by paragraph (2) of Rule 39 of the Rules of Procedure.
56. Consequently and finally, the Court finds that the Referral is manifestly ill-founded on constitutional basis and must be therefore declared inadmissible, pursuant to paragraph 7 of Article 113 of the Constitution and Rule 39 (2) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of the Republic of Kosovo, pursuant to Article 21.4, 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 5 May 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**

Remzije Istrefi Peci



Arta Rama-Hajrizi

*This translation is unofficial and serves for informational purposes only.*