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

Prishtina, on 21 June 2021
Ref. no.:RK 1814//21

RESOLUTION ON INADMISSIBILITY

in

Case no. KI08/21

Applicant

Mirishahe Shala

Constitutional Review of the Judgment AC.no. 625/2020 of the Court of Appeals, of 9 September 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
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 Mirishahe Shala (hereinafter: the Applicant) residing in Gjilan, represented by Bardhosh Dalipi, a lawyer.

Challenged decision

2. The Applicant challenges the Judgment [AC.no. 625/2020] of the Court of Appeals of the Republic of Kosovo, of 9 September 2020 (hereinafter: the Court of Appeals).

3. The challenged Judgment was served on the Applicant on 14 October 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, by which is alleged to have been violated the Applicant's rights guaranteed by Articles 3 [Equality Before the Law], 22 [Direct Applicability of International Agreements and Instruments] 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), with Articles 6 [Right to a fair trial] and 13 [Right to an effective remedy] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 20 [Decisions] and 22 [Processing Referrals] of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as 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

6. On 12 January 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 18 January 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha (members).

8. On 27 January 2020, the Court notified the Applicant of the registration of the Referral. On the same day, the Court sent a copy of the Referral to the Court of Appeals.

9. On 27 January 2020, the Court requested information from the Basic Court in Gjilan to confirm the date when the challenged Judgment of the Court of Appeals was served on the Applicant.

10. On 10 February 2021, the Basic Court in Gjilan informed the Court that the challenged Judgment was served on the Applicant's representative on 14 October 2020.

11. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of judge before the Constitutional Court.

12. On 2 June 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

13. The Applicant had worked as an Administrative Assistant in the Municipality of Gjilan from 1973 until reaching the retirement age on 6 April 2018.

14. The Applicant, after retiring, addressed the Municipality of Gjilan with a request for payment of three salaries in the name of jubilee remuneration and three accompanying salaries in the name of retirement.

15. On 16 May 2019, the Municipality of Gjilan, through the Office of the Mayor, responded to the Applicant's request with an accompanying (monthly) salary for retirement, while two other salaries were rejected on the grounds that she was not entitled to them according to the law. As for the request for the jubilee remuneration, the Municipality of Gjilan had reasoned that this type of remuneration is given for every 10 years of work in the institution and the Applicant has realized the same on the occasion of the 10th anniversary of her work in the municipality, respectively in November 2017.

16. On 16 July 2019, the Applicant filed a claim against the respondent, Municipality of Gjilan, to the Basic Court in Gjilan through which, in the name of the jubilee remuneration, she requested the payment of three salaries and two accompanying (monthly) retirement salaries, in the total amount of € 2,144.25 with legal interest of 8% (eight percent).

17. On 6 January 2020, the Basic Court in Gjilan, with Judgment C. no. 618/2019: I. partially approved the claim of the Applicant and obliged the Municipality of Gjilan to compensate her for the material damage caused as a result of non-payment of accompanying retirement salaries, in the amount of € 431.85, respectively the total amount of € 863.70, with legal interest of 8% (eight percent); II. rejected as ungrounded the rest of the claim regarding the amount of € 1280.55 claimed more than the adjudicated amount; and III obliged the Municipality of Gjilan to compensate her on behalf of the costs of the court proceedings in the amount of € 269.00.

18. On an unspecified date, the Applicant, dissatisfied with points I and II of the Judgment of the Basic Court in Gjilan, of 6 January 2020, filed an appeal with the Court of Appeals, due to erroneous determination of the factual situation and incorrect application of substantive law. Also, the Municipality of Gjilan, as a respondent in this case, had filed an appeal with the Court of Appeals, due to incomplete determination of the factual situation and incorrect application of the substantive law.

19. On 9 September 2020, the Court of Appeals, by Judgment AC. no. 625/2020 had decided as follows: "I. APPROVED partially as grounded the appeal of the respondent Municipality of Gjilan-Directorate of Education based in Gjilan; AMENDED the Judgment C. no. 618/2019 of the Basic Court in Gjilan, of 06.01.2020, in point (I) of its enacting clause, the part that has to do with the request for payment of an accompanying retirement salary, and the issue in this part is adjudicated as follows: It is REJECTED, the part of the claim of the claimant Mirishahe Shala from Gjilan, for the payment of the amount of € 431.85, in the name of a retirement salary, as unfounded. II. It is REJECTED, as unfounded the appeal of the claimant Mirishahe Shala from Gjilan, while the Judgment C.no.618/2019 of the Basic Court in Gjilan, of 06.01.2020, in point (I) of the enacting clause, in the part that refers to the compensation of the jubilee remuneration, is UPHELD. III. Each party shall bear its own costs of this procedure.

20. Relevant parts from the reasoning of the above Judgment of the Court of Appeals: "*The appellate claims that in this case the provisions of the general collective agreement of 18.04.2014 should have been applied, the panel of this court assessed as unfounded allegations because the general collective agreement in this case against the claimant is not applicable, not for the fact that at the time of the claimant's retirement it was not in force, but for the reason that given the status of the claimant's employment relationship, in regard to the jubilee remuneration upon the retirement applies the Law on Civil Servants respectively its derivative Regulation no. 33/2012 on Allowances in Salaries and Other Compensations*".

21. On 5 October 2020, the Applicant through the Office of the Chief State Prosecutor requested that a request for protection of legality be filed with the Supreme Court, as the request for revision was not allowed due to the small value, below 3000 euros, of the civil dispute with allegations of violation of legal provisions.

22. On 26 November 2020, the Office of the Chief State Prosecutor, by Notification KMLC.no.155/2020, rejected the Applicant's proposal with the reasoning: "*After reviewing your proposal and the case file, we inform you that the Office of the Chief State Prosecutor has found that your proposal cannot be approved, because the allegations mentioned in your proposal are not sufficient to submit a request for protection of legality according to Article 247.1, point b) of the Law on Contested Procedure.*

Applicant's allegations

23. The Applicant alleges that the regular courts have violated her rights guaranteed by Articles 3 [Equality Before the Law], 22 [Direct Applicability of International Agreements and Instruments] 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 6 [Right to a fair trial] and 13 [Right to an effective remedy] of the ECHR.

24. The Applicant alleges that: *"The courts of both instances have concluded that the claim of the claimant should be rejected as unfounded because in this case they could not apply the General Collective Agreement of Kosovo, because according to the court the claimant had the status of civil servant and that in this case, the Law on Civil Service applies, respectively Regulation no. 33/2012 on Allowances in Salaries and Other Compensations, not taking into account the fact that the claimant sets her claim on Article 52 paragraph 1, subparagraph 1.2, of the General Collective Agreement of Kosovo and Article 53 paragraph 1, of this agreement, for the reason that this agreement has not excluded any category of employees nor civil servants. (...) The General Collective Agreement of Kosovo entered into force on 01.01.2015, (with Article 90, paragraph 4, of the Law on Labour, it is provided that the Collective Agreement can be concluded for a certain period with a duration of not more than three (3) years, which means that the same was in force until 01.01.2018, but the claimant retired on 11.04.2018, while Article 81, paragraph 2, of this agreement provides that "If none of the Parties withdraw from the GCAK, after its expiry, the GCAK is implemented for another year". (...)*

25. The Applicant further alleges: *Moreover, this court in all other cases has recognized this right to persons who have been employed by the respondent, Municipality of Gjilan, as civil servants, while as evidence of these statements to this request, we are attaching the Judgment C.no.188/2017 of the Basic Court in Gjilan, of 22.02.2018, upheld by the Judgment Ac.no.1517/2018 of the Court of Appeals of Kosovo, of 28.03.2019".*

26. In addition to the above allegations, the Applicant adds: *"Therefore, based on the fact that in regard to this issue the value of the object of the dispute, respectively the claim of the claimant was € 2.144.25 and based on Article 211.2, of the Law on Contested Procedure, the revision as an ordinary extraordinary legal remedy is not allowed in disputes, if the value of the object of the dispute does not exceed € 3,000, the claimant has used the legal opportunity provided by Article 245, paragraph 1, subparagraph b), Article 246, as well as Article 247 of the Law on Contested Procedure, and in regard to this case addressed the Office of the Chief State Prosecutor in Prishtina, with a proposal to file the request for protection of legality in the Supreme Court of Kosovo in Prishtina, against the Judgment AC.no.625/2020 of the Court of Appeals of Kosovo in Prishtina, of 09.09.2020 and the Judgment C.no.618/2019 of the Basic Court in Gjilan, General Department, Division of Civil Cases, of 06.01.2020 due to the substantial violation of the provisions of the contentious procedure and erroneous application of the substantive law, while, from the Office of the Chief State Prosecutor, we were informed that after reviewing the submitted proposal and case files, the proposal was not approved, because the allegations mentioned in the proposal are insufficient to submit a request for protection of legality under Article 247.1, point b) of the Law on Contested Procedure, although we have given sufficient and convincing reasons".*

27. Finally, the Applicant requests from the Court: *"I. TO ADMIT the Referral; II. TO FIND that there has been a violation of Article 3 [Equality Before the*

Law], Article 31 [Right to Fair and Impartial Trial]; Article 32 (Right to Legal Remedies); Article 54 [Judicial Protection of Rights); Article 102 [General Principles of the Judicial System]; Article 22 [Direct Applicability of International Agreements and Instruments]; Article 6 [Right a fair trial]; and Article 13 [Right to an effective remedy] of the European Convention on Human Rights; III. TO DECLARE invalid, the Judgment AC.no, 625/2020, of the Court of Appeals of Kosovo, in Prishtina, of 09.09.2020, and the Judgment C.no.618/2019, of the Basic Court in Gjilan, General Department, Division of Civil Cases, of 06.01.2020; IV. TO REMAND the Judgment C.no.618/2019 of the Basic Court in Gjilan, General Department, Division of Civil Cases, of 06.01.2020 for retrial".

Admissibility of the referral

28. The Court initially examines whether the Applicant has met the admissibility criteria set out in the Constitution and further specified in the Law and the Rules of Procedure.

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

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
> *[...]*
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."*

30. The Court further refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law which stipulate:

> 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...".*

31. Regarding the fulfilment of these criteria, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Judgment [AC.no.625/2020] of the Court of Appeals, of 9 September 2020, after having exhausted all legal remedies provided by law and submitted the referral within the deadline set by law.

32. However, in addition to these criteria, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria], namely sub-rule (2) of the Rules of Procedure, which stipulates 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."*

33. 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 allegation that a referral may contain. In this respect, it is more accurate to refer to the same as "manifestly ill-founded allegations". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) allegations that qualify as "fourth instance" allegations; (ii) allegations that are categorized as "clear or apparent absence of a violation"; (iii) "unsubstantiated or unsupported" allegations; and finally, (iv) "confused or farfetched" allegations. (See ECtHR cases, *Kemmachev v. France*, Application no.17621/91, category (i), *Mentzen v. Lithuania,* Application no. 71074/01, category (ii) and *Trofimchuk v. Ukraine*, Application no. 4241/03, category (iii)).

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

35. In this regard, the Court recalls that the Applicant alleges that the challenged Judgment violates her constitutional rights guaranteed by Articles 3, 31, 32, 54, and 102 of the Constitution and Articles 6 and 13 of the ECHR.

36. In light of this, the Court notes that the substance of the Applicant's appeal concerns: (i) the manner of interpretation and application of the substantive law, because it has not been implemented *"Article 52 paragraph 1, subparagraph 1.2, of the General Collective Agreement of Kosovo and Article 53 paragraph 1, of this agreement;* ii) with the allegation that the regular courts have recognized the right to jubilee salaries to the employees of the municipality of Gjilan, according to the general collective agreement, with the Judgment C.no.188/2017 of 22 February 2018; (iii) the allegation of denial of legal remedies, and (iv) allegations of other violations of constitutional rights.

Regarding the allegations under point (i) - the manner of interpretation and application of the substantive law

37. The Court initially recalls its general position that a fair and complete determination of the factual situation, as well as the relevant interpretations of the legal provisions of the law, as a rule fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure compliance with the standards and rights guaranteed by the Constitution, and, consequently, it cannot act as a "fourth instance" court (see, in relation to the "fourth instance" doctrine, the ECtHR case, *Garcia Ruiz v.* Spain, [GC], no. 30544/96, Judgment of 21 January 1999, paragraph 28).

38. In this regard, the Court emphasizes that the interpretation of substantive and procedural law is a primary duty and falls within the jurisdiction of the regular courts (a matter of legality). The role of the Constitutional Court is only to determine whether the effects of such interpretation are in line with constitutional norms and standards.

39. In this particular case, the Court refers to the relevant parts of the Judgment [AC.no.625/2020] of the Court of Appeals, as a final instance in this civil case, and notes that it has explained in detail the reasons for the rejection of some of the claims raised in the claim by the Applicant, arguing that: *"Assessing the legality of the challenged judgment, against the appellate claims raised by the respondent, the panel of this court finds that the appellate claims of the respondent are partially grounded, regarding the claims of the claimant for compensation of an additional salary in the name of retirement, due to the fact that in such a case the court of first instance has rendered the challenged judgment in this part in erroneous application of substantive law as a result of incorrect interpretation of the state of facts and evidence of the issue. The case file proves the fact that the claimant received from the respondent a monthly salary which was recognized to her by the respondent by decision of 06.04.2018, in terms of legal obligations that the respondent had from Article 19 of the Regulation no. 33/2012 on Allowances in Salaries and Other Compensations of civil servants, therefore in this part the panel had to, in respect to Article 201 par. 1 point (b) of the LCP, amend the challenged judgment in order to overcome its flaws regarding the part of the compensation of one salary for the claimant for going into retirement".*

40. The Court further notes that with regard to points one (I) and two (II) of the enacting clause which were challenged by the Applicant, the Court of Appeals reasoned: "*Regarding the appellate claims raised with the claimant's appeal, the panel of this court has assessed that the challenged judgment in point (I) of the enacting clause, the part related to the jubilee remuneration, and (II) of its enacting clause, has not been rendered with essential violations of the provisions of the procedural law, violations with which this court officially deals, and that the challenged judgment has been rendered on the factual situation established correctly and fully and that on this situation the court of first instance has correctly applied the substantive law when it has found that the claimant is entitled to the jubilee remuneration in the amount of 25% of one base salary, for each jubilee reached, and that in this case, given that the claimant has reached 4 jubilees of her experience, the decision of the first instance court that the claimant should be recognized in the name of the jubilee remuneration the amount up to one base salary is right, this in respect*

of Regulation no. 33/2012 on Allowances in Salaries and Other Compensations, respectively Article 21 thereof".

41. The Court also notes that with regard to the Applicant's allegation that the general collective agreement should have been applied in her case, the Court of Appeals reasoned that: *"The appellate claims that in this case the provisions of the general collective agreement of 18.04.2014 should have been applied, the panel of this court has assessed as unfounded allegations because the general collective agreement is not applicable against the claimant in this case, not for the fact that at the time of the claimant's retirement it was not in force, but for the reason that given the status of the claimant's employment relationship, in regard to the jubilee remuneration upon the retirement applies the Law on Civil Servants respectively its derivative Regulation no. 33/2012 on Allowances in Salaries and Other Compensations".*

42. Therefore, as it can be seen from the above reasoning, the Court notes that the Court of Appeals has addressed all the allegations of the Applicant, in accordance with the legislation in force, reasoning the issue of why in her case the general collective agreement could not be applied, but the civil service legislation.

43. In this context, the Court recalls that it itself cannot become a court of fact and tell the regular courts what would be the most appropriate way of applying substantive law, because such jurisdiction, as a rule, belongs to courts of regular jurisdiction. The Court emphasizes that it can intervene only when the reasoning of the decisions of the regular courts is highly arbitrary and unjustifiable, which in the concrete circumstances is not the case as we are not dealing with clearly arbitrary or unjustified decisions.

44. In this regard, the Court, looking at the procedure in its entirety, with regard to the right to a "fair trial", considers this allegation of the Applicant to fall into the first category (i), "fourth instance" allegations, therefore, the Court, as such, on constitutional grounds declares it manifestly ill-founded and consequently inadmissible, in accordance with Rule 39 (2) of the Rules of Procedure.

With regard to the allegations under point (ii) - the issue of divergence in case law

45. In addition to the above, the Court notes that the Applicant alleges that the Basic Court in Gjilan, "... *has recognized this right to persons who have been employed by the respondent, Municipality of Gjilan, as civil servants, while as evidence of these statements to this request, we are attaching the Judgment C.no.188/2017 of the Basic Court in Gjilan, of 22.02.2018, upheld by the Judgment Ac.no.1517/2018 of the Court of Appeals of Kosovo, of 28.03.2019".*

46. Referring to the established principles of the ECtHR, the Court recalls 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 the case law are "*profound and long-standing*"; (ii) whether the

domestic law provides for mechanisms capable of resolving such divergences; and (iii) whether those mechanisms have been applied and with what effect (in this context, see ECtHR cases, *Beian v. Romania* (no.1), Judgment of 6 December 2007, paragraphs 37-39; *Greek Catholic Parish Lupeni 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 Court case, KI42/17, with Applicant *Kushtrim Ibraj*, cited above, paragraph 39).

47. In this context, the Court also reiterates that it is not its function to compare different decisions of the regular courts, even if they are taken in significantly similar proceedings. It must respect the independence of the courts. Furthermore, in such cases, namely allegations of constitutional violations of fundamental rights and freedoms as a result of divergences in case law, the Applicants must submit to the Court relevant arguments regarding the factual and legal similarity of the cases which they allege to have been resolved differently by the regular courts, thus resulting in a divergence in 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.

48. In addition, the Court recalls that the case law of the ECtHR has noted the fact that divergence in case law is not necessarily contrary to the ECHR, because the dynamic and evolutionary approach of the courts to the interpretation of applicable law and, moreover, the development of case law is important to maintain the proper dynamics of continuous improvement of administration of justice.

49. In relation to this allegation, the Court notes that it is a fact that there are differences regarding the "applicable law" between the Applicant's case and the referred case C.no.188/2017 of the Basic Court in Gjilan, of 22 February 2017, Judgment which was upheld by the Court of Appeals with Judgment Ac.no.1517/2018, of 28 March 2018. However, the identification of a single case is insufficient to establish that we are dealing with "profound and long-standing differences" that would lead the Court to conclude that we are dealing with inconsistencies in decision-making on the same factual and legal issues, and in finding a violation of the principle of legal certainty guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR.

50. The Court notes that the reasoning of the regular courts states: *"... given the status of the claimant's employment relationship, in regard to the jubilee remuneration upon the retirement applies the Law on Civil Servants respectively its derivative Regulation no. 33/2012 on Allowances in Salaries and Other Compensations*". Such reasoning of the regular courts is in accordance with the principle of "hierarchy of legal acts", because the respective courts considered that the Applicant's status was regulated by the civil service legislation of the Republic of Kosovo.

51. Therefore, from the above considerations the Court considers that the Applicant is merely dissatisfied with the outcome of the proceedings before the regular courts, however her dissatisfaction cannot in itself raise a substantiated allegation of violation of the fundamental rights and freedoms guaranteed by the Constitution (see, ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

52. In this context, the Court finds that the Applicant's allegation falls into the third category (iii), *"unsubstantiated and unsupported"* allegations, therefore, the Court, as such, on constitutional grounds declares it manifestly ill-founded and consequently inadmissible, in accordance with Rule 39 (2) of the Rules of Procedure.

Regarding the allegations under point (iii) – legal remedies

53. In addition, the Court notes that the Applicant has tried to file a request for protection of legality in the Supreme Court, through the Office of the Chief State Prosecutor, on the grounds that: *"She did not have the opportunity to file a request for revision, as an extraordinary legal remedy, to the Supreme Court, however, she used the legal opportunity provided by Article 245, paragraph 1, subparagraph b) of Article 246, as well as Article 247 of the Law on Contested Procedure, addressing the Office of the Chief State Prosecutor, with a proposal to file the request for protection of legality in the Supreme Court, against the challenged Judgment AC-I-17-0689 of the Appellate Panel, of 24 June 2020 and the Judgment C-III-13-0499 of the Specialized Panel, of 22 November 2017"*.

54. The court noted that the Office of the Chief State Prosecutor with the Notification KMLC.no.155/2020, of 26 November 2020, rejected the Applicant's proposal on the grounds that it had not found a sufficient legal basis to file such a Referral with the Supreme Court.

55. In this regard, the Court, based on the ECtHR case law, in many of its cases, has reiterated that the legal remedy which is not in the direct discretion of the Applicant to exercise an appeal against a court decision, cannot be considered an effective remedy (see, the Constitutional Court case KI215/19, Applicant: *Fekë Kuçi,* Resolution on inadmissibility of 15 July 2020, paragraph 45, which states: *"... the request for protection of legality submitted to the State Prosecutor is a legal remedy which is not directly available to the Applicant, but depends on the "mediator", and in the present case the "mediator" is the State Prosecutor, and as such is not considered by the Court (see ECtHR case Tanase v. Moldova, [VV], paragraph 122)"*.

56. Therefore, in these circumstances, the Court, based on the standards set in its case law in similar cases and the ECtHR case law, finds that this allegation of the Applicant also falls into the third category (iii), *"unsubstantiated or unsupported"* allegations, therefore, the Court, as such, declares it on constitutional grounds manifestly ill-founded and consequently inadmissible, in accordance with Rule 39 (2) of the Rules of Procedure.

Regarding other allegations under point (iv)

57. With regard to the Applicant's allegations of violation of the rights guaranteed by Articles 22, 54 and 102 of the Constitution, the Court recalls that according to the consolidated case law of the ECtHR, the Court declares the Referral inadmissible as manifestly ill-founded in accordance with criterion (iii), *"unsubstantiated or unsupported"* allegations when one of the two characteristic conditions is met, namely:

> a) when the Applicant merely cites one or several provisions of the Convention or the Constitution, without explaining how they have been violated, unless this is clearly evident in the facts and circumstances of the case (see, in this regard, the ECtHR case *Trofimchuk v. Ukraine* (*Decision*) no. 4241/03 of 31 May 2005, see also *Baillard v. France* (*Decision*) no. 6032/04 of 25 September 2008);
>
> b) when the Applicant does not present or refuses to present material evidence to support his/her allegations (this is especially true for decisions of courts or other domestic authorities), except when there are exceptional circumstances that are out of control and which prevent him/her from doing so (for example, when the prison authorities refuse to submit to the Court the documents from the case file of the prisoner in question) or unless the Court itself decides otherwise (see case KI166/20, the Applicant, *Ministry of Labour and Social Welfare*, Resolution on Inadmissibility, 5 January 2021, paragraph 42).

58. With respect to these allegations, the Court notes that the Applicant only mentions the relevant articles, but does not further elaborate on how and why these relevant articles of the Constitution were violated. The Court recalls that it has consistently stated that merely referring to Articles of the Constitution and the ECHR is not sufficient to construct a substantiated allegation of a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, in this context, the cases of the Constitutional Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, paragraph 33; KI187/18 and KI 11/19, 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).

59. Regarding the Applicant's allegation of violation of the right guaranteed by Article 3 [Equality Before the Law], although the Applicant does not provide arguments on how and why this right was violated, the Court notes that Article 3 of the Constitution is within Chapter I [Basic Provisions] of the Constitution which cannot be reviewed within the scope of this constitutional complaint.

60. Therefore, the Court finds and concludes that with regard to the allegations of the Applicant for violation of the rights guaranteed by these Articles of the Constitution, the Referral should be declared manifestly ill-founded, because these allegations are considered as allegations falling into category (iii), *"unsubstantiated and unsupported"* allegations, because the Applicant simply

mentions these provisions of the Constitution, without explaining how they have been violated.

Conclusion

61. In summary, the Court finds that the Applicant's allegations of violation of the rights guaranteed by the above-mentioned Articles of the Constitution and the ECHR are manifestly ill-founded, as they are considered as allegations falling into the first category (i) "fourth instance court" and the third category (iii) *"unsubstantiated and unsupported"* allegations on constitutional grounds.

62. The Court therefore concludes that the Referral in its entirety must be declared manifestly ill-founded and therefore inadmissible on constitutional grounds, in accordance with Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, on 2 June 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**

Kopje e vërtetuar
Overena kopija
Certified Copy

Selvete Gërxhaliu-Krasniqi Arta Rama-Hajrizi