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

Prishtina, on 25 June 2021
Ref. No:RK1815/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI146/20

Applicant

Xhemile Krapi and 11 others

Constitutional review of Judgment Rev. no. 66/2020 of the Supreme Court, of 2 June 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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 Xhemile, Ardianë, Artan, Valdete, Alban, Arianit, Behar, Bashkim, Blerta, Qerime dhe Rrahman Krapi (hereinafter: the Applicants) from the village of Nekoc, Municipality of Gllogoc, who are represented by Rrahim Hajdari, a lawyer from Gllogoc.

Challenged decision

2. The Applicants challenge the Judgment Rev.no.66/2020 of the Supreme Court, of 2 June 2020, whereby their request for revision was rejected.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which as alleged by the Applicants has violated their rights guaranteed by Article 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 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 on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 2 October 2020, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 October 2020, the Applicants submitted the power of attorney as evidence of their representation in Court.

7. On 12 October 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

8. On 22 October 2020, the Court notified the Applicants about the registration of the Referral. On the same day, in accordance with the Law, a copy of the Referral was sent to the Supreme Court.

9. 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.

10. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision KSH51/21, appointed Judge Remzije Istrefi-Peci as member of the Review Panel instead of Judge Bekim Sejdiu.

11. On 2 June 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court in full composition to declare the Referral inadmissible as manifestly ill-founded.

Summary of facts

Background

12. On 11 November 2002, a traffic accident had occurred on the Lipjan-Prizren highway, involving a vehicle of make RABA, which was insured with the Insurance Company Kosova e Re, and a vehicle of make TAM. As a consequence of the road accident, the driver of the TAM vehicle, Tahir Krapi, respectively the Applicants' family member lost his life. On 28 and 29 November 2002, M.K., in his capacity as an expert, had drafted a report to shed light on the causes of the accident, based on which it was concluded that the driver of the RABA vehicle, B. Gj, was the primary culprit for the accident, while the deceased Tahir Krapi, the secondary culprit for the accident.

Criminal proceedings

13. On an unspecified date, the Applicants filed a claim with the Municipal Court in Lipjan, against B.GJ, the driver of the RABA vehicle, whereby, among other things, they claimed non-material and material compensation.

14. On 27 March 2003, the Municipal Court in Lipjan, by Judgment P.no.5/2003, found B.Gj guilty and sentenced him to effective imprisonment in length of 1 (one) year. On the other hand, in respect of the legal property claims, the Applicants were instructed to pursue their claims in a contested procedure.

15. Acting within the legal deadline, B.GJ filed an appeal with the District Court in Prishtina against this Judgment, due to incomplete determination of the factual situation and erroneous application of the substantive law.

16. On 13 July 2005, the District Court in Prishtina, through Judgment Ap.no.158 /2003, rejected the appeal of B. Gj as unfounded and upheld the Judgment P.no.5/2003 of the Municipal Court in Lipjan, of 27 March 2003.

Contested Procedure

17. On an unspecified date, the Applicants, based on the instruction of Judgment [P.no.5/2003] of the Municipal Court in Lipjan, filed a statement of claim with the Municipal Court in Prishtina, against the respondent Kosova e Re, for compensation of non-material and material damage, seeking annuity and compensation for lost maintenance.

18. On 9 March 2006, the Municipal Court in Prishtina, held the main trial, regarding the case C.no.528/2006, in which took part two of the Applicants and the representative of the respondent Kosova e Re. During this session, the Applicants supplemented their statement of claim by calling upon Article 14 of the LCP and arguing that the claim is closely related to the criminal Judgment P.no.5/2003 of the Municipal Court in Lipjan, of 27 March 2003, which was

upheld by the District Court in Prishtina, on 13 July 2003. In the main trial of the case, the respondent Kosova e Re challenged the statement of claim, in respect of the amount of compensation as well as in respect of the expert report of 28 and 29 November 2002, by requesting a new expertise.

Based on the case file, it is noted that within a period from 2006 until July 2016 there have been taken in total 16 procedural actions by the former Municipal Court (case C.no.5282006), later the Basic Court in Prishtina (case C.no.1017/2011), until the final decision making in the case by the court of the first instance.

19. On 1 July 2016, the Basic Court in Prishtina, by Judgment C.no.1017/2011, decided as follows:

I. Partially approved the specified statement of claim of the Applicants and obliged the respondent Kosova e Re to compensate the Applicants in the name of non-material damage and emotional pain, due to the death of their family member, in the total amount of 21,300 € ;

II. In the name of material damage (monthly annuity), the total amount of 12,043.56 €, along with the legal interest for the period from 11 November 2002 until 29 February 2016;

III. In the name of the lost annuity- maintenance for the next period from 1 March 2016 until 23 December 2017, in capitalized form for all Applicants the amount of 1,707.03 € ;

IV. Obliged the respondent Kosova e Re to pay to the Applicants, in respect of the approved part of the statement of claim for non-material damage, under point I of the enacting clause of the judgment as well as the annual interest in respect of the material damage under point III of the enacting clause of the judgment, which is calculated as for the time deposited funds in the banks of Kosovo, for a period of more than one year, without a specific destination, starting from 30 April 2003, until the final payment, as well as to cover the costs of the proceedings in the amount of 1,005.90 €, all this to be done within a term of 15 days upon receiving the judgment, under the threat of legal enforcement; and

V. Rejected the Applicants' statement of claim as unfounded in respect of the amount claimed for non-material damage, in the name of emotional pain in the total amount of 72,700 €; it rejected as unfounded also the Applicant's statement of claim in respect of compensation of material damage, in the name of the annuity, in the total amount of 32,084.71 €.

20. On 18 October 2016, the Applicants filed an appeal with the Court of Appeals, due to: a) erroneous and incomplete determination of the factual situation and b) erroneous application of the provisions of the substantive law.

21. On 22 March 2019, the Court of Appeals, by Judgment Ac.no.4043/16, decided as follows:

I. rejected the Applicants' appeal as unfounded and upheld the Judgment of the Basic Court in Prishtina; and

II. partially accepted the appeal of the respondent Kosova e Re, and modified the Judgment C.no.1017 / 2011 of the Basic Court in Prishtina, of 1 July 2016, under point I (one) of the enacting clause, for granting non-material damage, and obliged to the respondent Kosova e Re, to pay to the Applicants the interest as paid by the commercial banks of Kosovo, for the funds deposited without a specific destination, for a period of one year, starting from the day of receipt of the Judgment C .nr.1017/2011 of the Basic Court in Prishtina, of 1 July 2016, until the definitive payment, while the interest under point III of the enacting clause referring to the annuity was confirmed.

22. On 17 June 2019, the Applicants filed a request for revision with the Supreme Court, due to allegations for substantial violation of the provisions of the contested procedure and erroneous application of the substantive law, requesting the quashing of the judgments of the lower instances and the remanding of the case for a retrial.

23. On 2 June 2020, the Supreme Court, by Judgment Rev.no.66 / 2020, rejected the Applicants 'request for revision, filed against the Judgment of the Court of Appeals of 22 March 2019, reasoning that the Applicants' allegations do not question the legality of the judgments of the courts of lower instance, whether in the procedural or material aspect of the law.

Applicants' allegations

24. The Applicants allege that the challenged Judgment Rev. no. 66/2020 of the Supreme Court has violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 14 of the Law on Contested Procedure, because the regular courts have based their conclusion upon the super-expertise which was conducted by persons who according to them were not familiar to the University of Prishtina.

25. Moreover, the Applicants allege that: *"Based on the above mentioned expertises, it results that the experts have given different (subjective) opinion and conclusion. I say this because in the traffic accident on 11.11.2002, have been involved the same people, with the same vehicles, at the same time, and at the same place, these experts give different opinions and findings, and this is something unacceptable. In these circumstances, we consider and can freely say that the courts of the first, second and third instance have failed in a fair and impartial trial in this civil case, by violating the principle of a fair and impartial trial."*

26. Finally, the Applicants request from the Court: to review the constitutionality of the challenged Judgments in accordance with the requirements of Article 31 of the Constitution, to annul the challenged Judgments and to remand the case for retrial and reconsideration to the court of the first instance.

Admissibility of the Referral

27. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

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

Article 113
[Jurisdiction and Authorized Parties]

"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."
[...]

29. In the following, the Court examines whether the Applicants have fulfilled the admissibility criteria, as provided by Law, namely by Articles 47, 48 and 49 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced..."

30. As to the fulfillment of the above criteria, the Court notes that the Applicants: 1) are legitimized, within the meaning of Article 113.7 of the Constitution, as authorized parties who challenge the constitutionality of an act of a public authority, namely the Judgment Rev.no.62/2020 of the Supreme Court; 2) have exhausted all available legal remedies, pursuant to Article 113.7 of the Constitution and paragraph 2 of Article 47 of the Law; 3) have clearly specified the rights guaranteed by the Constitution and the ECHR, which they allege to have been violated, as well as they have specified the act of the public authority, the constitutionality of which they dispute, in accordance with the requirements of Article 48 of the Law; and 4) have submitted the Referral within the legal deadline of four (4) months as established in Article 49 of the Law.

31. However, the Court also takes into consideration the requirements of Rule 39 [Admissibility Criteria], namely paragraph (2) of the Rules of Procedure, which stipulates that:

Rule 39
[Admissibility Criteria]

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

32. The Court recalls that the Applicants allege that the challenged Judgment of the Supreme Court has violated their right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6.1 of the ECHR, also defined by Article 14 of the LCP, because it did not take into account the fact that the super-expertise was performed by experts from the University of Prishtina, who were not familiar to the latter.

33. In the light of this, the Court will examine the allegations of the Applicants for violation of the right to a "fair trial", which is guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR, always referring to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which requires that, *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*

34. In this respect, the Court recalls the content of Article 31 [Right to Fair and Impartial Trial] of the Constitution, which stipulates that:

> *"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."*

35. In addition, the Court also recalls the content of Article 6.1 (Right to a fair trial) of the ECHR, which provides that:

> *"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,..."*

36. On the basis of the case file, the Court notes that the essence of the Applicants' allegations relates mainly to the manner in which the regular courts have administered the facts of the case and to the interpretation and application of the procedural law, namely the provisions of the LCP.

37. The Court has repeatedly stated that, as a general rule, the allegations concerning the manner of administration of facts, erroneous interpretation and application of the provisions of substantive or procedural law, allegedly committed by the regular courts, relate to the scope of legality and as such, are not within the jurisdiction of the Constitutional Court, and therefore, in principle, they cannot be reviewed by the Court (see, in this context and, inter alia, the cases of the Court KI128/18 , Applicant: *Joint Stock Company Limak Kosovo International Airport J.S.C. "Adem Jashari"*, Resolution of 28 June 2019, paragraph 55; KI62/19, Applicant *Gani Gashi*, Resolution on Inadmissibility of 19 December 2019, paragraphs 56-57; KI110/19, Applicant *Fisnik Baftijari*, Resolution on Inadmissibility of 7 November 2019, paragraph 40).

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

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

40. The Court, however, notes that the case law of the ECtHR and of the Court also provide for the circumstances under which exceptions from this position can be made. The ECtHR has reiterated that while it is primarily for the national authorities to resolve the problems of interpretation of legislation, the role of

the Court is to verify whether the effects of such interpretation are compatible with the ECHR. (See the ECtHR case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

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

42. In this respect, the Court must state that the Applicants have failed to argue before the Court: (i) the reasons on which they could base the allegation that in the circumstances of the present case, the relevant articles of the Law on Contested Procedure were interpreted by regular courts, respectively by the Supreme Court in a *"manifestly erroneous manner"*; and (ii) how such an interpretation has resulted in *"arbitrary conclusions"* or *"manifestly unreasoned"* for the Applicants.

43. In this view, the Court notes that the repeated allegations of the Applicants were answered by the Supreme Court as the highest instance of the regular judiciary, by providing detailed reasoning for each of them, including the response about the super-expertise, legal provisions relating to the amount of non-material and material damages caused by the road accident of 11 November 2002.

44. In light of this, the Court draws attention to the reasonings provided by the Supreme Court in response to the Applicants' allegations. In the following, are presented relevant parts from the reasoning of the challenged Judgment Rev. no.66/2020:

> *Reasoning of the challenged Judgment regarding the substantial violation of legal provisions:*
>
> *"Further, the revision allegations for substantial violation of the provisions of the contested procedure from article 182.2 item n, of the LCP were rejected as unfounded, as it is not sufficient to only describe the content of this legal provision, instead there must be specified and clarified which are those violations due to which the above-mentioned judgments can not be examined and what are those contradictions between what is stated in the reasons of the judgment and the content of the written documents in the case, therefore such general allegations were rejected as unfounded.*
>
> *Reasoning of the challenged Judgment regarding super-expertise:*
>
> *In fact, the revision challenges the super traffic expertise in the case file, alleging that this super expertise is biased, because the contribution of the now deceased Tahir Krapi in causing this accident is lesser than as found*

by the above-mentioned traffic experts, and that this super expertise is brought into question by another expertise for which the claimants had engaged the expert Prof. Dr. N.D.
Such allegations of revision were rejected by the Supreme Court as unfounded, because the claimants in the main hearing on 01.07.2016, in which the evidence from the case were read, did not make any remarks regarding this super expertise, but have adhered to the written objection to this expertise, as indicated in the submission of 20.04.2016 wherein was objected the finding of this super expertise for division of liability. It is normal that the claimants have objected to such a finding of the super expertise, but according to the assessment of the Supreme Court the opinion and finding of these experts is not questioned in any way because their opinion is quite professional and well-argued, and moreover, cannot be put into question by another traffic expertise of an expert engaged by the plaintiffs themselves, which, as such, is irrelevant to the court because that evidence was not issued by the court order. Therefore, the court of first instance has fully entrusted this traffic super expertise since as its opinion and finding is provided a realistic picture regarding the causes, the manner, of the accident and omissions of traffic participants, which are facts that by no means are called into question by the revision allegations.

Reasoning of the challenged Judgment regarding the amount of compensation:

Based on what was stated above, it results without a doubt that the court of the first instance and that of the second instance have correctly applied the substantive law when partially approving the claimants' statement of claim based on the legal institute of division of liability in causing the accident described above, in accordance with which the institute also the courts herein have determined respectively confirmed the amount of compensation, by taking into consideration the contribution rate of 70% on the side of the late Tahir Krapi, and 30% on the side of the late B. Gj, who drove the truck insured with the respondent, hence the approved amounts are in accordance with the contribution of the now deceased Tahir Krapi in the amount of 30% in causing the damage, therefore the court of the first instance has correctly rejected the claimants' statement of claim beyond the adjudicated part as unfounded. Based on the 30% degree of liability of the respondent's insured person, the amounts approved are real, and any other amount beyond the adjudicated portion claimed by the claimants is inconsistent not only with the degree of liability of the respondent's insured in causing of this accident, but also with other factors relevant for determining the amount of compensation, as the amount of approved compensation, within the meaning of Article 200 paragraph 2, of the LOR may not present gainful intent for the claimants, on the contrary with the approved compensation the claimants will be in position to balance their emotional condition due to the great emotional pain caused on the occasion of the loss of their close family member, the now deceased Tahir Krapi, thus meeting their daily life needs with such a compensation, by having these emotional pains alleviated at least . While with the adjudicated maintenance, annity they

will in continuity manage to meet their different daily needs in material aspect as long as there are legal conditions for the payment of the maintenance. The amounts received are in accordance with the standard of living in Kosovo but also with the current case law of the courts in Kosovo according to which in similar cases similar amounts of compensation have been adjudicated."

45. The Court also notes the fact that when assessing the "fourth instance" claims relating to alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, it has also consistently emphasized that the "fairness" required by the above articles is not "substantive", but rather "procedural" fairness. This concept in practical terms, in principle, mainly implies (i) the possibility of conduction of proceedings based on the principle of avderserial proceedings; (ii) the opportunity for the parties to present arguments and evidence which they consider relevant to the respective case at various stages of these proceedings; (iii) the opportunity to effectively challenge arguments and evidence presented by the opposing party; and (iv) the right that their arguments, which, viewed objectively, are relevant for the resolution of the case, be duly heard and examined by the courts; and that, consequently, the proceedings, viewed in entirety, would result to be fair (see, also, the ECtHR Practical Guide of 30 April 2019 on Admissibility Criteria; Part I. Inadmissibility based the on merits; A. Manifestly ill-founded applications; 2. "Fourth instance", paragraph 264 and the references mentioned therein). Moreover, the assessment of the fairness of a procedure in its entirety is one of the main premises of case law of the Court and that of ECtHR (see, in this context, the case of the ECtHR *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68; and the cases of the Court KI128/19, cited above paragraph 58; and KI22/19, Applicant *Sabit Ilazi*, Resolution on Inadmissibility of 07 June 2019, paragraph 42).

46. The Court notes that Article 6 of the ECHR, does not guarantee anyone a favorable outcome in the course of a judicial proceeding based on subjective expectations (see, in this context, the cases of the Court KI118/17, *Şani Kervan and others*, Resolution on Inadmissibility, paragraph 36, and KI142/15, Applicant *Habib Makiqi*, Resolution on Inadmissibility, of 1 November 2016, paragraph 43).

47. In view of the foregoing, the Court finds that the Supreme Court, as the last instance in the regular judiciary, has complied with the requirements of Article 31 of the Constitution and Article 6.1 of the ECHR, by giving the Applicants an opportunity, to submit their objections, regarding the factual and legal issues raised as allegations before the Supreme Court. Moreover, all the arguments, which were relevant to the resolution of the Applicants' case, have been duly heard and reviewed by the court in question, as well as the factual and legal reasons for the challenged Judgment have been addressed and reasoned in detail by the said Court, and the proceedings, viewed in their entirety, were not arbitrary or unfair.

48. The Court considers that there is nothing to indicate that the Supreme Court has applied the law manifestly erroneously, an application which could result in arbitrary or manifestly unreasonable conclusions for the Applicants.

49. In the circumstances of the present case, the Court considers that the Applicants are simply not satisfied with the outcome of the proceedings before the Supreme Court. However, their dissatisfaction cannot of itself raise an arguable claim for a violation of the fundamental rights and freedoms guaranteed by the Constitution (see the case of ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

Conclusion

50. The Court finds that the Applicants' allegations for erroneous determination of facts, erroneous interpretation and application of the applicable law qualify as allegations pertaining to the category of "fourth instance" claims, and as such, reflect allegations at the level of "legality", and have not been argued at the level of "constitutionality". Moreover, the Court concludes that the Applicants do not sufficiently substantiate their allegation that in their case there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6.1 (Right to a fair trial) of the ECHR.

51. Consequently, they are manifestly ill founded on constitutional basis and in accordance with paragraph (2) of Rule 39 of the Rules of Procedure, the Court concludes that the Referral must be declared inadmissible.

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**

Nexhmi Rexhepi

Arta Rama-Hajrizi

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