



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 17 June 2021
Ref. no: RK1810/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY
in

Case no. KI94/20

Applicant

Shefqet Fetahu and others

**Constitutional review of Judgment AC-I-16-0101-A22, of the Special
Chamber of the Supreme Court of Kosovo, of 4 February 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 Shefqet Fetahu, Jakup Kashtanjeva, Sabri Shabiu, Kadri Vllahiu, Nysrete Ismajli, Sali Muhaxheri, Sali Rexhepi, Din Pajaziti, Hysen Shatmani, from Ferizaj and Shtime (hereinafter: the Applicants), represented by Kemajl Ademaj, lawyer from Ferizaj.

Challenged decision

2. The Applicants challenges the constitutional review of Judgment [AC-I-16-0101-A22] of the Appellate Panel of the Special Chamber of the Supreme Court (hereinafter: the Appellate Panel of the SCSC), of 4 February 2020, in conjunction with Judgment [SCEL-11-0057] of the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel of the SCSC), of 18 April 2016.
3. The Applicants' representative received the challenged decision on 18 February 2020.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violate the Applicants' 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: ECHR).

Legal basis

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

Proceedings before the Constitutional Court

6. On 9 June 2020, the Applicants submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 15 June 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.
8. On 17 June 2020, the Applicants' representative was notified regarding the registration of the Referral and was requested to complete the Referral in accordance with Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure.
9. On 9 July 2020, the Applicants' representative submitted documents in accordance with Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure.
10. On 12 August 2020, the Court notified the SCSC of the registration of the Referral and also requested the submission of the acknowledgment of receipt proving the date of receipt of the contested decision by the Applicants. On the

same date, the Applicants' representative was requested to submit the acknowledgment of receipt proving the date of receipt of the contested decision by the Applicants.

11. On 18 August 2020, the SCSC submitted the abovementioned acknowledgment of receipt.
12. On 19 August 2020, the Applicants' representative informed the Court that he does not possess the acknowledgment of receipt and that the same can be provided by the SCSC.
13. On 20 May 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

14. Socially Owned Enterprise "17 November" Ferizaj, was established in 1954 in Prishtina registered in the Economic Court with number Fi-730/89, as a business company that owns a network of retail stores.
15. On 17 April 2007, the first contract between the Privatization Agency of Kosovo (hereinafter: PAK) and the buyer with regard to the Socially Owned Enterprise (SOE) "17 November" Ferizaj has been "ratified".
16. On 27, 28 and 29 October 2011, the PAK published the list of eligible employees to the share of 20% of the proceeds from the privatization of SOE "17 November" Ferizaj. In that list were also included the Applicants of the Referral no. KI94/20.
17. The deadline for submitting complaints against the final list of employees, in the SCSC was 19 November 2011. There were 58 complaints filed against the final list. The complainants alleged that they were employees of SOE "17 November" Ferizaj, which was privatized by the respondent PAK.
18. On 16 November 2011, a group of complainants identified in the proceeding before the SCSC with numbers (C-0032, C-0034, C-0035, C-0036, C-0044, C-0045) have complained against the final list of the PAK requesting to be included in that list but also requesting the removal of the Applicants of the Referral no. KI94/20, from the list with the reasoning that the same after the war had rented the premises of SOE "17 November" and that they have exercised independent activities until the privatization of the SOE in question. The complainants also stated that the Applicants of the Referral no. KI94/20 do not have the status of employee of SOE "17 November" and that as a representative group of employees of SOE "17 November" are obliged to protect their interests in accordance with Section 10.4 of UNMIK Regulation 2003/13.
19. On 18 April 2016, the Specialized Panel of the SCSC by Judgment [SCEL-11-0057]: (i) approved the complaint of complainants (C-0032, C-0034, C-0035, C-0036, C-0044, C-0045) with regard to all Applicants of Referral no. KI94/20 but also for some other employees; (ii) decided that the Applicants of the

Referral no. KI94/20 to be removed from the list entitled to receive a share of 20% of the proceeds of the sale of SOE "17 Nëntori" Ferizaj.

- (i) For the Applicant Shefqet Fetahu, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 27/06/1971 to 11/10/1995, then from 01/06/2001 to 01/02/2003. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
- (ii) For the Applicant Jakup Kashtanjeva, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 01/09/1966 to 27/04/1967, then from 01/12/1981 to 16/10/1992 then again from 01/07/1999 to 01/07/2003. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
- (iii) For the Applicant Sabri Shabiu, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 18/04/1981 to 11/10/1995, then from 01/07/1999 to 15/05/2000. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
- (iv) For the Applicant Kadri Vllahiu, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 10/01/1977 to 11/10/1995, then from 01/07/1999 to 31/05/2000. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
- (v) For the Applicant Nysrete Ismajli, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 06/02/1975 to 18/04/1996, then from 01/07/1999 to 01/04/2000. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to

receive a share of the proceeds from the privatization of the SOE and (3) the complaint for her exclusion from the list is approved.

- (vi) For the Applicant Sali Muhaxheri, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 21/10/1983 to 07/03/1994, then from 01/07/1999 to 31/03/2000. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
 - (vii) For the Applicant Sali Rexhepi, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 01/10/1983 and has closed the employment relationship on 01/02/1985 and that he did not provide evidence for the renewal of his employment relationship with the SOE in question. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
 - (viii) For the Applicant Din Pajaziti, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 10/01/1977 to 11/10/1995, then from 12/10/1995 to 10/06/2000. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
 - (ix) For the Applicant Hysen Shatmani, the Specialized Panel of the SCSC had concluded that from the documentation of the contested employee-work booklet, it is noted that he commenced his work from 10/01/1972 to 30/06/2002. The Specialized Panel of the SCSC decided: (i) the Applicant based on the available evidence does not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) the Applicant is removed from the list of eligible employees to receive a share of the proceeds from the privatization of the SOE and (3) the complaint for his exclusion from the list is approved.
20. On an unspecified date, the Applicants in the procedure according to the complaint, have stated at the Appellate Panel of the SCSC that the Specialized Panel of the SCSC has erroneously determined the factual situation, that the lease agreement of the premises of the SOE "17 November" Ferizaj, did not foresee the loss of employee status and that at the time of privatization there

were more than three (3) years that they were employees of the SOE “17 November” Ferizaj.

21. On 4 February 2020, the Appellate Panel of the SCSC with Judgment [AC-I-16-0101-A22] with regard to all Applicants of the Referral no. KI94/20 decided to reject their appeals as unfounded and upheld the Judgment [SCEL-11-0057] of the Specialized Panel of the SCSC, of 18 April 2016. The Appellate Panel of the SCSC: (i) confirmed the factual situation determined by the Specialized Panel of the SCSC; (ii) assessed that the Applicants did not meet the criterion set out in Section 10.4 of UNMIK Regulation 2003/13, for recognition of the right to be included in the final list with legitimate rights to benefit from the privatization of the SOE “17 November” Ferizaj; and, (iii) consequently, the appealed Judgment of the Specialized Panel is upheld as fair and based on law.

Applicants’ allegations

22. The Applicants allege violation of 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 Applicants allege that *“the Special Chamber of the Supreme Court, deciding in the first instance, partially approved the appeal of the employees group (C0034) and according to the Judgment about 45 contested employees remained on the final list whereas about 25 employees were out of the final list...deciding on the appeal of these employees, the second instance court allowed all these employees to remain on the final list of the PAK, and the Applicants of this Referral, unjustly, are out of the list, although all the factual and procedural circumstances of the same were identical with the employees who remained on the list”*.
24. The Applicants add that SOE “17 November” was a socially owned enterprise that dealt with the trade of food items and that it owned many shops for the development of commercial activity. After the end of the war in Kosovo, all employees of SOE “17 November” returned to work but there was no capital to resume work so it was decided that interested employees could rent the shops of SOE “17 November”. According to the Applicants, based on the lease contract, both the tenant and the shop employees all maintained the capacity of the employee of SOE “17 November” because *“this was the only way to function and to provide salaries for the employees of this company”*.
25. The Applicants allege: *“In the present case the mentioned Judgments of the Special Chamber are contrary to Article 24.1 of the Constitution of Kosovo, which guarantees all citizens equality before the law...The said decisions are contrary to Article 31 of the Constitution of Kosovo and Article 6 of the ECHR. The employee did not have an effective protection by the court, which in this case did not respect the principle of equality between the parties in the procedure”*.
26. The Applicants allege that Articles 24 and 31 of the Constitution have been violated to their detriment because they have been removed from the final list of

the PAK even though their position in factual and legal aspect *“was completely the same as of their colleagues who remained in the said list”*.

27. The Applicants propose: (i) that the Referral be declared admissible; (ii) to find that there has been violation of Articles 24 and 31 of the Constitution in conjunction with Article 6 of the ECHR with regard to the part which removes the Applicants from the final list of the PAK; (iii) to declare null and void the Judgments of the Specialized Panel and the Appellate Panel of the SCSC with respect to the part that removes the Applicants from the final list of the PAK; and, (iv) to recognize the eligibility of the Applicants to a share of 20% of the privatization of SOE “17 November”, same as it has been recognized to other employees.

Relevant legal provisions

REGULATION NO. 2003/13
UNMIK/RREG/2003/13
9 May 2003

ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY-OWNED IMMOVABLE PROPERTY

Section 10 ENTITLEMENT OF EMPLOYEES

10.1 Because of the special status of employees in Socially-owned Enterprises in relation to these Enterprises and the impact that the privatisation will have on this status, such employees shall be entitled to a share of the proceeds from the privatisation on a priority basis. This share shall be 20 per cent of the proceeds from the sale of shares of a subsidiary corporation of a Socially-owned Enterprise that is privatised pursuant to section 8 of Regulation No. 2002/12. The amount shall be distributed for the benefit of eligible employees in accordance with this section.

10.2 The representative body of employees in the Socially-owned Enterprise concerned, in cooperation with the Federation of Independent Trade Unions of Kosovo, shall establish on a non-discriminatory basis and submit to the Agency a list of eligible employees entitled to receive payments pursuant to subsection 10.1. The Agency shall review the list and make such adjustments as it deems necessary to ensure equitable access by all eligible employees to the funds to be distributed.

10.3 The official list of eligible employees issued by the Agency shall be published, together with a notice of the right of complaint pursuant to 10.6, on two consecutive workdays and the following weekend in major Albanian language publications of general circulation in Kosovo and major Serbian language publications.

10.4 For the purpose of this section an employee shall be considered as eligible, if such employee is registered as an employee with the Socially-owned Enterprise at the time of privatisation or initiation of the liquidation

procedure and is established to have been on the payroll of the enterprise for not less than three years. This requirement shall not preclude employees, who claim that they would have been so registered and employed, had they not been subjected to discrimination, from submitting a complaint to the Special Chamber pursuant to subsection 10.6.

Assessment of the admissibility of the Referral

28. The Court initially examines whether the Referral 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 also refers the admissibility criteria, as provided by Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47 [Individual Requests]

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

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

Article 48 [Accuracy of the Referral]

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

Article 49 [Deadlines]

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

31. The Court finds that the Applicants are an authorized party, challenging the act of the public authority, namely Judgment [AC-I-16-0101-A22] of the Appellate Panel of the SCSC, of 4 February 2020, after the exhaustion of all available legal remedies provided by Law.
32. The Applicants also clarified the rights and freedoms they allege to have been violated, in accordance with the requirements of Article 48 of the Law and have submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
33. In addition, the Court examines whether the Applicants have fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

“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”.

34. In this regard, the Court notes that the Applicants allege violation of 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, because the Panels of the SCSC have discriminatorily removed them from the final list of the PAK.
35. The Applicants in essence allege: (i) that they have been discriminated against due to non-inclusion in the final list of eligible employees entitled to a share of 20% of the proceeds from the privatization of SOE “17 November” Ferizaj; (ii) that the right to equality before the law and for a fair and impartial trial was violated to their detriment because the Panels of the SCSC have discriminatorily removed them from the final list of the PAK.
36. Furthermore, the Court, will consider the allegations of the Applicants, applying the case law of the ECtHR, in accordance with which, the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
37. In this regard, the Court notes that the case law of the ECtHR determines that the fairness of a proceeding is assessed on the basis of the procedure in its entirety. (See, in this context, the case of *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68). Consequently, in assessing the Applicant’s allegations, the Court will also adhere to this principle. (See, cases of the Court KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and Case KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018, paragraph 31).

38. The Court considers that the Applicants' allegations for a fair and impartial trial and equality before the law will be dealt jointly due to the close connection between them.
39. With regard to the allegation of violation of equality before the law and discrimination as guaranteed by Article 24 of the Constitution in conjunction with Article 14 [Prohibition of Discrimination] of the ECHR, the Court notes that based on the case law of the ECtHR, generally, in order for a case to be referred under Article 14 of the ECHR there must be a difference in treatment between persons in similar or comparable situations (see the case of the ECtHR, *X and others v. Austria*, Judgment of 19 February 2013, paragraph 98). However, not every difference in treatment constitutes a violation of Article 14. A difference in treatment will be discriminatory if it lacks objective or reasonable justification; in other words, if it does not pursue a legitimate aim or if there is no reasonable relationship between the means used and the aim to be achieved (see the case of the ECtHR *Guberina v. Croatia*, Judgment of 22 March 2016, paragraph 69 and other references cited therein).
40. In the circumstances of the present case, the Court notes that the Panels of the SCSC have found: (i) that the Applicants based on the available evidence do not meet the criteria of Section 10.4 of UNMIK Regulation 2003/13 as amended; (ii) respectively were not registered as employees at the time of privatization of SOE "17 November" Ferizaj; and that (iii) for these reasons the Applicants should be excluded from the list of eligible employees entitled to a share of the proceeds from the privatization of SOE "17 November" Ferizaj.
41. In this regard, the Court notes that in the present case it is not in question the discrimination or violation of the right to fair and impartial trial-because from the case file-it is evident that the Applicants have not met the legal requirement provided by Section 10.4 of UNMIK Regulation 2003/13, hence this is a matter of legal requirement and not of discrimination or a fair and impartial trial as alleged by the Applicants. The Court also finds that the Applicants' allegation that their discrimination consists in the fact that they have been excluded from the final list of the PAK while others-in a similar factual and legal situation-have been included in the list in question, does not stand because from the case file it is noted that various complainants and even of different ethnicities were included or excluded from the final list of the PAK depending on whether or not they met the legal requirement of Section 10.4 of UNMIK Regulation 2003/13. The Court considers that the application of the legal requirement by the Panels of the SCSC to determine who is included and who is excluded from the final list of the PAK cannot be confused with discrimination or violation of a fair and impartial trial.
42. The Court considers that the non-inclusion of the Applicants in the final list of the eligible employees to benefit from 20% shares from the privatization of SOE "17 November" Ferizaj, has more to do with their failure to provide relevant evidence as required by section 10.4 of UNMIK Regulation 2003/13 rather than treating persons differently in similar or comparable situations or even with the regular court process.

43. In this regard, the Court highlights the relevant parts of the reasoning given by the Appellate Panel of the SCSC in relation to the complaint of Applicant Sabri Shabiu which is valid *mutatis mutandis* (see the findings of the Specialized Panel of the SCSC regarding the Applicants in paragraph 19) also for other Applicants of this Referral: *"The Appellate Panel considers that the finding of the Specialized Panel regarding this complainant is fair and based on law. From the case file, respectively from the copy of the work booklet submitted as evidence to the Specialized Panel, it is confirmed that the complainant has established employment relationship with the enterprise for the last time on 01 July 1999 until 15 May 2000, has not provided any other evidence to prove the fact that the complainant has continued the employment relationship after 15 May 2000, therefore based on this fact, the complainant has terminated the employment relationship before the privatization of the SOE and thus cannot benefit from the 20% shares of the sale of the enterprise since she does not meet the condition of being on the payroll at the time of privatization of the SOE, a condition provided by UNMIK Regulation 2003/13, Section 10.4, to recognize the right to be included in the final list with legitimate rights to benefit from the shares of the sale of the SOE."*
44. With regard to the establishment of facts and the interpretation of the application of the law, the Court has repeatedly reiterated that it is not its duty to deal with errors of fact or law allegedly made by the regular courts (*legality*), except and insofar as they may have violated the rights and freedoms protected by the Constitution (*constitutionality*). The Court itself cannot evaluate the law that has made a regular court to confirm a decision instead of another decision. If it were otherwise, the Court would act as a *"fourth instance"* court, which would result in exceeding the limits set in its jurisdiction. Indeed, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law. (See the case of the ECtHR, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, inter alia, also the cases of the Court: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 29; KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility, of 20 December 2017, paragraph 37; and KI122/16, Applicant *Riza Dembogaj*, Resolution on Inadmissibility, of 19 June 2018, paragraph 57).
45. This stance has been consistently maintained by the Court, based on the case law of the ECtHR, which clearly states that it is not the role of this Court to review the findings of the regular courts regarding the factual situation and the application of substantive law. (See, cases of the Court, KI06/17, Applicant *L. G. and five others*, cited above, paragraph 38; and KI122/16, cited above, paragraph 58).
46. Consequently, although the Court's role is limited in terms of assessing the interpretation of the law, it must be reassured and take action when it finds that a court has *"applied the law in manifestly erroneous manner"* in a specific case and which may have resulted in *"arbitrary conclusions"* or *"clearly unreasonable"* for the Applicant. (See, in this context, the case of the ECtHR, *Anheuser-Busch Inc. v. Portugal*, Judgment of 11 January 2007, paragraph 83; and also the cases of the Court KI06/17, Applicant *L. G. and five others*, cited above, paragraph 40; and KI122/16, cited above, paragraph 59).

47. In the present case, the Court considers that it cannot be said that the challenged decisions of the Panels of the SCSC have applied the law in manifestly erroneous manner and that they resulted in arbitrary or clearly unreasonable conclusions to the detriment of the Applicants.
48. The Court further reiterates that, in principle, the interpretation of the law is the competence of the regular courts. Furthermore, the “justice” required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not “substantial” justice, but “procedural” justice. In practical terms, and in principle, this is expressed by contradictory procedure, where the parties are heard and placed in the same conditions before the court. (See, in this context, the case of the Court no. KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility, of 7 November 2016, paragraph 41 and other references mentioned therein).
49. The Court also notes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, does not guarantee anyone a favorable result in a judicial proceeding, nor does it stipulate that the Court questions the application of substantive law by the regular courts a civil dispute, where mainly one of the parties wins and the other loses. (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).
50. The Court notes that the Applicants’ dissatisfaction with the result of the proceedings before the Panels of the SCSC cannot in itself raise a substantiated allegation of violation of the fundamental rights and freedoms guaranteed by the Constitution and the ECHR. (See the case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, inter alia, KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 October 2017, paragraph 42).
51. The Court, relying also on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicants have not proved and have not sufficiently substantiated their allegations of violation of fundamental rights and freedoms guaranteed by Articles 24 and 31 of the Constitution in conjunction with Article 6 of the ECHR.
52. Consequently, the Referral is manifestly ill-founded on constitutional basis and must be declared inadmissible pursuant to Articles 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court in accordance with Article 113. 7 of the Constitution, Article 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 20 May 2021, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Resolution to the parties;
- III. TO PUBLISH this Resolution in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Resolution is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Remzije Istrefi-Peci

**Kopje e vërtetuar
Overena kopija
Certified Copy**

Arta Rama-Hajrizi

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