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

Prishtina, 23 September 2021
Ref. no.:RK 1846/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No.KI67/21

Applicant

Burim Zhubi

Constitutional review of Decision Ac.no.5196/2020 of the Court of Appeals, of 22 February 2021

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Burim Zhubi, from the Municipality of Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [Ac.no.5196/2020] of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals), of 22 February 2021 in conjunction with the Decision [PPP.no.12/2020] of the Basic Court in Gjakova (hereinafter: the Basic Court) , of 30 September 2020.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Decision of the Court of Appeals, which allegedly has violated the Applicant's fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial] , 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Articles 1 of Protocol 1 (Protection of property), 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: 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 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 13 April 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 14 April 2021, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu Krasniqi and Gresa Caka Nimani.

7. On 15 April 2021, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Court of Appeals.

8. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, it was determined that Judge Gresa Caka-Nimani, shall assume the duty of President of the Court after the conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.

9. On 25 May 2021, based on point 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 a judge at the Constitutional Court.

10. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision K.SH. KI67/21, appointed Judge Radomir Laban as a member of the Review Panel instead of Judge Bekim Sejdiu.

11. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision no. KK160/21 on the replacement of the presiding judges in review panels, appointed the elected President of the Court Gresa-Caka Nimani, as presiding judge of the panel in the case KI67/21.

12. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.

13. On 10 September 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. On an unspecified date, the creditor RWC "Çabrati" J.S.C. - Gjakova (hereinafter: RWC Çabrati) had submitted a proposal for enforcement to the private enforcement agent Gjokë Radi in Gjakova (hereinafter: the private enforcement agent) requesting that in the name of the invoiced debt from 31 March 2012 to 30 November 2019, according to the verified excerpt - the excerpt from the Accounting Books, the debtor A.ZH pays to it the total amount of 313.35 euros.

15. On 20 December 2019, the private enforcement agent by order [P.no.1250/19] allowed the enforcement according to the proposal of the creditor in this enforcement matter.

16. Since the debtor A.ZH had passed away, the court by the conclusion [PPP.no.12/2020] of 30 September 2020, assigned as temporary representative of the debtor A.ZH, formerly from Gjakova, his son B.ZH, the Applicant in this case.

17. On 6 January 2020, the Applicant had filed an objection against the order of the private enforcement agent, wherein he had stated that he objects the proposal in its entirety due to the violation of the provisions of the contested procedure, which are applied in a subsidiary manner also in this enforcement procedure, erroneous or incomplete determination of the factual situation, erroneous application of the substantive law, the proposal for enforcement is not grounded and legal, otherwise the majority of the debt has become statute-

barred, hence he has proposed to the court approve the objection, whereas the order P.nr.1250 / 19 of the private enforcement agent,Gjoke Radi from Gjakova, of 20.12.2019, to be abrogated and all enforcement actions to be revoked.

18. On 30 September 2020, the Basic Court through Decision [PPP.no.12/20] rejected the Applicant's objection exercised against the order [P.no.1250/19] of the private enforcement agent allowing the enforcement, of 20 December 2019 as being unfounded.

19. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court, due to violations of the provisions of the contested procedure, erroneous or incomplete determination of the factual situation and erroneous application of of the substantive law, by proposing to the Court of Appeals, to approve the appeal, modify the challenged ruling by treating the enforcement order as irregular and unfounded.

20. On 22 February 2021, the Court of Appeals through Decision [Ac.no.5196/20] rejected the Applicant's appeal as unfounded, whereas the Decision [PPP.no.12 /20] of 30 September 2020 of the Basic Court was upheld.

Applicant's allegations

21. The Applicant challenges the Decision [Ac.no.5196/20] of the Court of Appeals, of 22 February 2021, alleging that it was rendered in violation of his fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution and Articles 1 of Protocol 1 (Protection of Property), 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.

22. As regards the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant, in essence, states that the courts have erroneously interpreted the law, because according to him, his debt is has become statute-barred and that *"the issue of the statute of limitations until 22 March 1999 was regulated by the LCT, Article 371 and the statute of limitations was 5 years. Therefore, the provision of Article 34 of the Law on Amending and Supplementing the Law of Contracts and Torts 31/90, of 18.06.1993, which provision regulates that field differently from the legal provision in force until 22 March 1999, is an innaplicable provision, which can not be applied even on exceptional basis, despite being non-discriminatory, wherefrom it results that Article 34 of the Law Amending and Supprlementing the Law on Contract and Torts "Official Gazette of the FRY 31/90 of 18 June 1993 is a law not applicable in Kosovo"*, and consequently, the regular courts have not ensured a fair and impartial trial in its circumstances.

23. The Applicant further states that the enforcement proposal is not regular because according to him the calculation of the debt was not correctly calculated and was done to his detriment, and he claims that he did not sign any agreement with the creditor. The Applicant also states that he is not the

only heir of his father, and that he is the only one who is burdened with the debt and not the others.

24. The Applicant also alleges violations of Articles 32 and 102 of the Constitution and Articles 1 of Protocol 1, and 13 of the ECHR. As regards these allegations, except for the fact that he refers to the content of the articles, he does not reason his allegations.

25. Finally, the Applicant requests from the Court not to (i) enable the creditor to achieve his goal in unlawful way; (ii) to declare unconstitutional the decisions of the Basic Court and the Court of Appeal.

Relevant Legal Provisions

LAW NO. 04/L-077 ON OBLIGATIONAL RELATIONSHIPS

DISCONTINUANCE OF STATUTE-BARRING
Article 368
Acknowledgment of debt

1. Statute-barring shall discontinue when the debtor acknowledges the debt.

2. A debt may be acknowledged by the debtor not only through a declaration made to the creditor but also indirectly, for example by paying something into an account, by paying interest or by providing security.

Admissibility of the Referral

26. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

27. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

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

28. In the following, the Court also examines whether the Applicant has fulfilled the admissibility criteria, as provided by Law. In this respect, the Court first 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..."

29. As to the fulfilment of these requirements, the Court finds that the Applicant is an authorizd party, who is challenging an act of a public authority, namely the Decision [Ac.nr.5196/2020] of the Court of Appeals, of 22 February 2021, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which he alleges to have been violated pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

30. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in paragraph (2) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. Rule 39(2) of the Rules of Procedure establishes the criteria based on which the Court may examine the Referral, including the criterion that the Referral is not manifestly ill-founded. More precisely, Rule 39 (2) 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."

31. The Court first notes that the above rule, based on the case law of the European Court of Human Rights(hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral

inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.

32. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "manifestly ill-founded" in its entirety or only with respect to any specific claim that a referral may contain. In this regard, it is more accurate to refer to the same as "manifestly ill-founded claims". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of *"fourth instance"*; (ii) 6 claims that are categorized as *"clear or apparent absence of a violation"*; (iii) *"unsubstantiated or unjustified"* claims; and finally, (iv) *"confused or far fetched"* claims. (See, more precisely, on the concept of inadmissibility on the basis of a referral assessed as *"manifestly ill-founded"*, and the specifics of the four above-mentioned categories of claims qualified as *"manifestly ill-founded"*, the Practical Guide to the ECtHR on Admissibility Criteria of 30 April 2020; Part III. Inadmissibility based on the merits; A. Manifestly ill-founded applications, paragraphs 275 to 304).

33. In the context of the assessment of the admissibility of the Referral, namely, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

In relation to the allegation of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

34. In this context, the Court first recalls that the circumstances of the case relate to the debt owed by the Applicant's father to RWC Çabrati. RWC Çabrati had submitted a proposal for enforcement to the private enforcement agent requesting that in the name of the invoiced debt from 31 March 2012 to 30 November 2019, according to the verified excerpt - the excerpt from the Accounting Books, the debtor A.ZH pays to it the total amount of 313.35 euros. The Applicant was appointed as temporary representative of his late father in the enforcement proceedings conducted before the private enforcement agent. The private enforcement agent had allowed the enforcement, whereas the Applicant filed an objection against the order of the private enforcement agent. The objection and the appeal were rejected by the Basic Court and the Court of Appeals, respectively.

35. The Applicant challenges the finding of the regular courts before the Court, by raising allegations that relate, in essence, to the procedural guarantees guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In this respect, the Applicant, inter alia, emphasizes the erroneous interpretation of the LOR, stating that his debt is statute-barred, and the enforcement procedure was not regular.

36. In examining these allegations, the Court initially notes that they are, in essence, related to the erroneous determination of the factual sitation and the erroneous application of the applicable law, allegations which, in accordance with its case-law and that of the ECHR, the Court considers as *"fourth degree claims"*.

37. In the context of this category of claims, the Court emphasizes that based on the case law of the ECtHR, but also taking into account its peculiarities, as are determined through the ECHR (see in this context, clarification in The Practical Guide to the ECtHR on Admissibility Criteria, of 30 April 2020; Part I. Admissibility based on the merits; A. Manifestly ill-founded applications; 2. "Fourth instance", paragraphs 281 and 288), the principle of subsidiarity and the doctrine of the fourth instance, it has consistently emphasized the difference between "constitutionality" and "legality" and has asserted that it is not its duty to deal with errors of facts or erroneous interpretation and application of the law, allegedly committed by a regular court, unless and insofar as such errors may have infringed the rights and freedoms protected by the Constitution and/or the ECHR. (See, in this context, among others, the cases of Court KI179/18, Applicant *Belgjyzar Latifi*, Resolution on Inadmissibility, of 23 July 2020, paragraph 68; KI49/19, Applicant *Limak Kosovo Joint Stock Company International Airport JSC., "'Adem Jashari"*, Resolution of 31 October 2019, paragraph 47; KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility, of 12 August 2019, paragraph 60).

38. The Court has also consistently reiterated that it is not the role of this Court to review the findings of the regular courts which concern the factual situation and the application of substantive law, and that it may not by itself assess the facts which have 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. (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 the Court, KI49/19, cited above, paragraph 48; and KI154/17 and KI05/18, cited above, paragraph 61).

39. The Court, however, states that the case law of the ECtHR and the Court also provide for the circumstances under which exceptions from this position must be made. As stated above, while it is the primary duty of the regular courts to resolve problems of interpretation of the applicable law, the role of the Court is to ensure or verify whether the effects of such interpretation are compatible with the Constitution and the ECHR. (See ECtHR case, *Miragall Escolano and others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39; and see also the case of the Court KI154/17 and KI05/18, cited above, paragraph 63). In principle, such an exception relates to cases which result to be apparently arbitrary, including those in which a court has "applied the law manifestly erroneously" in a particular case and which may have resulted in "arbitrary conclusions" or "manifestly unreasoned" for the respective applicant. (For a more detailed explanation regarding the concept of *"application of law in a*

manifestly erroneous manner", see, inter alia, The ECtHR Guide on Article 6 of the ECHR (civil limb), of 31 August 2020, part IV. Procedural requirements; 3. Fourth instance; b. Scope and limits of the Court's supervision, paragraphs 329-333; and the case of Court KI154/17 and KI05/18, cited above, paragraphs 60 to 61 and the references used therein)

40. In this respect, in order to avoid misunderstandings on the part of the Applicants, the Court notes that the *"fairness"* required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not "substantive" fairness, but "procedural" fairness. In practical terms, and in principle, this translates into adversarial proceedings, in which submissions are from the parties and they are placed on an equal footing before the Court. (See, KI131/ 19, Applicant *Sylë Hoxha*, Resolution on Inadmissibility, of 21 April 2020, paragraph 57; and KI49/19, cited above, paragraph 55).

41. More precisely this means, that the parties in a course of a fair and impartial trial should (i) be afforded a conduct of procedure based on adversarial principle; (ii) be able to adduce the arguments and evidence they consider relevant to their case at the various stages of those proceedings; (iii) be guaranteed that all the arguments and evidence, viewed objectively, relevant for the resolution of their case were heard and reviewed by the regular courts; (iv) be guaranteed that the factual and legal reasons in the court decisions were examined and reasoned in detail; and that, according to the circumstances of the case, they (v) be guaranteed that the proceedings, viewed in entirety, were fair and not arbitrary (see, inter alia, the ECtHR case *Garcia Ruiz v. Spain*, cited above, paragraph 29; and KI131/19, cited above, paragraph 58). The Court emphasizes that in the circumstances of the present case, the Applicant has fialed to provide arguments that this not the case.

42. In this context, the Court recalls that in the circumstances of the present case, the main allegations of the Applicant relate to the erroneous interpretation of the LOR by the regular Courts. In essence, the Applicant alleges that the enforcement procedure was not regular and that the regular courts during the course of the contested procedure did not take into account that the debt had become statute-barred.

43. Moreover, the Court notes that the regular courts had addressed all of the allegations of the Applicant relating to (i) the statute of limitations of the debt; and (ii) the allegation that the enforcement procedure has not been regular.

44. As regards the Applicant's allegations, the Basic Court, by Decision [PPP.no.12/20] of 30 September 2020, had stated as follows:

> *"The court assessed the allegations of the temporary representative of the debtor alleging that the proposal is not regular, but found that these allegations are unfounded, as the proposal for enforcement was exercised in accordance with the LEP, as in it are shown the creditor, the debtor, the athentic document, amount of loan, etc. Therefore, as such it fulfills the legal requirements. The court also assessed the allegations of the temporary representative, relating to the prescription of the debt, but found that the said allegations are unfounded since on the basis of the case*

file it has proven that the enforcement debtor has accepted the debt by concluding a contract for payment of the debt, specifically the contract on the payment of the debt of 23.08.2017 which is signed and bears the original stamp. In this case the Debtor himself has confirmed the debt by concluding the Contract on the Payment of Debt and the Debt Consent Declaration whereby he has agreed to pay the debt through the debt reprogramming. Pursuant to Article 368 para.2 of the LCT it is stipulated that "Statute-barring shall discontinue when the debtor acknowledges the debt. A debt may be acknowledged by the debtor not only through a declaration made to the creditor but also indirectly, for example by paying something into an account, by paying interest or by providing security", therefore the court decided as in the enacting clause this decision having assessed that there is no statute-barring of the debt.

45. Having addressed the same allegations, the Court of Appeals through Decision [Ac.no.5196/20] of 22 February 2021, had given the reasons for the rejection of the appeal, by stating as follows:

"Taking into consideration that in this case we are dealing with an enforcement proposal, based on an authentic document, whilst the provision of Article 29 of the Law on Enforcement Procedure No.04/L-139, stipulates that enforcement for the purpose of settlement of monetary claims shall be assigned on the basis of an authentic document, and that an authentic document according to the PPL are: extracts verified from business books, for payment of utilitites, water supply, power and waste services. A reliable document is eligible for enforcement if it shows the creditor, the debtor, the object, means, amount and deadline for settling the monetary obligation, in the present case we are dealing with an authentic document such as: the extract verified from the business book no. 3279, in the total amount for payment of 313.35 euros. The extract is eligible for enforcement because it is submitted in original; it states the creditor, the debtor, the object, type and deadline for settling the monetary obligation. Therefore, based on this it results that the authentic document document is eligible for enforcement and that the court of first instance has correctly decided as in the enacting clause of the challenged decision. The appeal claim of the debtor's temporary representative that the debt claimed by the creditor has reached the absolute prescription and that the creditor has lost the right to claim the debt, the Court of Appeals considers to be unfounded and unsustinable claim, since on the basis of the case file respectively based the Extract verified from the business books for the payment of utility services-for the transport of waste m.3279, it is confirmed that the debtor has carried out payments, in 2019 and 2018 onwards, which payments have resulted in the acknowledgment of debt by the debtor and consequently with the discontinuation of the statute of limitations based on the provision of Article 368, paragraph 1 of the LOR, where is explicitly stated that: "Statute-barring shall discontinue when the debtor acknowledges the debt", whilst paragraph 2 states that: "A debt may be acknowledged by the debtor not only through a declaration made to the creditor but also indirectly, for example by paying something into an account, by paying interest or by providing security". Thereforebased on the foregoing, the court of second instance considers that the decision of

the court of first instance should be upheld while the appeal of the temporary representative of the debtor should be rejected as unfounded."

46. In this respect, the Court considers that the Basic Court and the Courts of Appeals, in the circumstances of the present case, had addressed and reasoned the Applicant's allegations, and that the Court notes that the regular courts have concluded that the enforcement was conducted on the basis of authentic document such as the extract verified from the business book. Also as regards the allegation that the debt is statute-barred, the regular courts had found that the Applicant used to make payments, which payments resulted in the acknowledgment of the debt and the discontinuation of the statute of limitations. Hence, the Court considers that the proceedings before the regular Courts, in their entirety, do not result to have been unfair or arbitrary.

47. Therefore, taking into account the allegations made by the Applicant and the facts presented by him, as well as the reasonings of the regular courts elaborated above, the Court considers that the Applicant does not sufficiently prove and substantiate his allegation that the regular courts may have have applied the law in a *"manifestly erroneous manner"*, resulting *in "arbitrary conclusions"* or *"manifestly unreasoned"* for the Applicant, and consequently his allegations for erroneous interpretation and application of the applicable law, qualify as claims pertaining to the category of *"fourth instance"* and as such, reflect claims at the level of *"legality"* and are not argued at the level of *"constitutionality"*. Consequently, they are manifestly ill-founded on constitutional basis, as established by paragraph (2) of Rule 39 of the Rules of Procedure.

48. The Court reiterates that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Court to challenge the application of substantive law by the regular courts of a civil dispute, where often one of the parties wins and the other loses. (See, inter alia, the cases of Court KI118/17, Applicant *Şani Kervan and others*, Resolution on Inadmissibility, of 17 January 2018, paragraph 36; KI49/19, cited above, paragraph 54; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility, of 19 December 2019, paragraph 48).

In relation to the allegation of violation of Articles 32 and 102 of the Constitution in conjunction with Article 1 of Protocol 1 and 13 of the ECHR

49. The Court, finally, also recalls that the Applicant alleges that in the circumstances of the present case, the challenged Decision of the Court of Appeals was issued in violation of his fundamental rights and freedoms guaranteed by Articles 32 and 102 of the Constitution and Articles 1 of Protocol 1 and 13 of the ECHR. In the context of these allegations, the Court notes that the Applicant alleges a violation of the above provisions of the Constitution, without providing arguments and reasons on the alleged violation by the challenged Decision of the Court of Appeals. Furthermore, the Court notes that the allegation for a violation of Article 102 can be raised in an arguable manner by the individual applicants, only in relation to any specific right guaranteed by

Chapters II and III of the Constitution. Therefore, these articles cannot be applied independently unless the facts of the case fall within the scope of at least one or more of the provisions of the Constitution relating to the *"enjoyment of human rights and freedoms"*(see, the case KI 67/16, Applicant *Lumturije Voca*, Resolution on Inadmissibility, of 23 January 2017, para.128; KI172/18, Applicant *Arbër Kryeziu, owner of "Al-Petrol" L.L.C.*, Resolution on Inadmissibility, of 20 January 2020, paragraph 65).

50. In this respect, the Court recalls that it already has a well consolidated case law whereby it has consistently emphasized that the mere mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that cares for the respect of human rights and freedoms. (See, in this context, the cases of Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility, of 20 June 2019, paragraph 36; and KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility, of 8 October 2019, paragraphs 30-31; and see also the ECtHR Guide of 30 April 2020 on Admissibility Criteria; Part I. Inadmissibility based on the merits; A. Manifestly Ill-Founded Applications; 4. Unsubstantiated Complaints: Lack of Evidence, paragraphs 300 to 303).

51. In the circumstances of the present case, the Applicant, apart from referring to certain articles of the Constitution, has failed to clearly and adequately reason how these articles may have been violated by the challenged Decision of the Court of Appeals. Therefore, the Court considers that the allegations of the Applicant for violation of the above articles of the Constitution fall into the category of *"unsubstantiated or unreasoned"* claims. In the context of this category of allegations, the Court, based on paragraphs (1) (d) and (2) of Rule 39 of its Rules of Procedure and its case law, has consistently emphasized that (i) the parties have the obligation to accurately clarify and adequately present facts and allegations; as well as (ii) to adequately prove and substantiate their allegations for violation of constitutional rights or provisions.

52. In these circumstances, based on the foregoing and taking into consideration the allegations raised by the Applicant and the facts presented by him, the Court notes that his allegations for violations of Articles 32 and 102 of the Constitution and Articles 1 of Protocol 1, 6 and 13 of the ECHR, constitute *"unsubstantiated or unreasoned"* claims, and as such, they are manifestly ill-founded on constitutional basis, as defined by paragraph (2) of Rule 39 of the Rules of Procedure.

53. Finally, the Court also notes, that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot in itself raise an arguable allegation for a violation of the fundamental rights and freedoms guaranteed by the Constitution. (See, the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

Conclusion

54. In sum, the Court finds that the Applicant's allegations for violation of the rights guaranteed by the above articles of the Constitution and the ECHR are manifestly ill-founded, as they are qualified as allegations pertaining to the first category (i) "fourth instance court" and the third category (iii) "unsubstantiated or unreasoned" claims on constitutional basis.

55. Consequently, the Court finds that the Referral is manifestly ill-founded on constitutional basis and declares it inadmissible, pursuant to paragraph 7 of Article 113 of the Constitution and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rule 39 (2) of the Rules of Procedure, in the sesion held on 10 September 2021, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. This Decision is effective immediately.

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

Bajram Ljatifi | Gresa Caka-Nimani

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