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

Prishtina, 23 September 2021
Ref. no.:RK 1845/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI96/21

Applicant

Xhelal Zherka

Constitutional review of Judgment Rev. 599/2020 of the Supreme Court, of 1 April 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 Xhelal Zherka, from the Municipality of Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [Rev. 599/2020] of 1 April 2021 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [Ac. No. 5011/2018] of 18 August 2020 of the Court of Appeals and Judgment [C. No. 180/18] of 21 September 2018 of the Basic Court in Gjakova (hereinafter: the Basic Court).

3. The Applicant was served with the Judgment of the Supreme Court on 11 May 2021.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, whereby the Applicant alleges that his fundamental rights and freedoms 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) have been violated.

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 (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 19 May 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 4 June 2021, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Safet Hoxha (Presiding), Radomir Laban and Remzie Istrefi Peci, members.

8. On 9 June 2021, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi on 26 June 2021.

10. 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 resigned as a judge before the Constitutional Court.

11. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.

12. On 10 September 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. The Applicant was an Applicant in another case, namely in case KI06/16. The first Referral does not relate to issues related to the present Referral.

14. Based on the case file, on 5 April 2018, the NLB Bank j.s.c. with headquarters in Prishtina (hereinafter: NLB) filed a lawsuit with the Basic Court against the respondnts NTP Vlera based in Gjakova, the Applicant and DPT "Qarri"-L based in Gjakova, for the realization of the debt by requesting the amount of 5.445.00 (five thousand four hundred and forty five) euro, with legal interest, as well as covering procedural costs, all these within 15 days.

15. On 21 September 2018, the Basic Court by Judgment [C. No. 180/18], due to disobedience, approved the NLB statement of claim and obliged the respondents to pay the debtor on behalf of the loan the amount of 5,445.00 (five thousand four hundred and forty five) euro with an annual legal interest of 8%, starting from the date of filing the lawsuit until the final payment of the debt.

16. On an unspecified date, the Applicant and the other respondents filed an appeal against Judgment [C. No. 180/18], of the Basic Court with the Court of Appeals, on the grounds of violation of the Law on Contested Procedure, erroneous application of the substantive law and erroneous determination of the factual situation, with the proposal that the appeal be approved as grounded, while the impugned judgment be quashed and the claimant's lawsuit be dismissed as irregular. It was also requested that the claimant be obliged to reimburse the respondents for the procedural costs of court fees.

17. On 18 August 2020, the Court of Appeals by Judgment [Ac. No. 5011/2018] rejected as ungrounded the appeal of the Applicant and of other respondents, while it upheld the Judgment of the Basic Court [C. No. 180/18] of 21 September 2018.

18. On an unspecified date, against the Judgment of the Court of Appeals, the Applicant filed a revision with the Supreme Court, on the grounds of essential

violation of the provisions of the contested procedure and erroneous application of the substantive law, proposing that the revision be approved as grounded and that both the impugned judgments be quashed and the case ber remanded for retrial to the first instance court.

19. On 1 April 2021, the Supreme Court by Judgment [Rev. 599 /2020], rejected as ungrounded the Applicant's revision.

Applicant's allegations

20. The Applicant challenges Judgment [Rev. 599/2020] of 1 April 2021 of the Supreme Court, alleging that it was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

21. With regard to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant, in essence, states that the regular Courts have not sufficiently reasoned their decisions, stating that "*The judgment for reasons of disobedience nowhere mentions the date of the loan, the loan amount, the loan number, the principal, the interest and the penalty since the legal basis is the lawsuit for the return of the debt. Such non-reasoned decision increases even more when there is penalty which legally should not be*", and consequently, the regular courts have not provided a fair and impartial trial in his circumstances.

22. The Applicant further states that the courts have made erroneous interpretation of the law because "*periodic requests in accordance with Article 353 par.1 of the LOR become statute-barred for 3 years and that the loan was issued on 28.01.2010, the deadline for closing the loan is 12 months, which is from this date until the beginning of the contested procedure on 05.04.2018, the lawsuit is statute barred*".

23. Finally, the Applicant requests the Court to act in accordance with the laws and general constitutional practice and to annul the Judgments of the regular courts.

Relevant legal provisions

LAW No. 03/L-006 ON CONTESTED PROCEDURE

e) Judgment due to absence

Article 151

151.1 When the charge is not sent for answer, but it is sent only together with the invitation for the preparation session, and he doesn't come for the session until it's finished, or in the first session for the main elaboration, if the timing for the preliminary session was not determined, the court with proposal from the plaintiff or in accordance with the official task issues a

decision by which it approves the claim charge (decision due to the absence) if these conditions are met:

a) if the accused was invited regularly to the session;

b) if the accused never contested the request for charges through a preliminary pre-note if the charged party didn't oppose it;

c) if the depth of the request for charges is based on the facts shown in the charge;

d) if the facts on which the charges are based are not contradictory to the existing proofs presented by the plaintiff or other facts known worldwide;

e) if there are no circumstantial notes from which it can be determined that the charged party was stopped due to justified reasons no tot attend the session.

[...]

Article 160

160.6 6 In the contumacy verdict, verdict on the basis of pleading guilty, verdict on the basis of withdrawing the charges, or the verdict due to the lack of attendance, the justification consists of only the reasons for issuing the verdict of the kind.

Admissibility of the Referral

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

25. 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."*

26. In addition, the Court also refers to the admissibility requirements as prescribed by the Law. In this regard, 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...".

27. As regards the fulfillment of the admissibility requirements, the Court finds that the Applicant is an authorized party, challenging the act of the public authority, namely Judgment [Rev. 599/2020] of 1 April 2021 of the Supreme Court, after the exhaustion of all available legal remedies provided by Law. The Applicant also clarified the rights and freedoms he claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

28. In addition, the Court examines whether the Applicant has met 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 requirements based on which the Court may consider a referral, including the requirement that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) of the Rules of Procedure provides that:

Rule 39
(Admissibility Criteria)

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

29. The abovementioned 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 the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after the assessment of its merits, namely if the latter 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.

30. 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 constitute. In this regard, it is more accurate to refer to the same as "*manifestly ill-founded claims*". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of "*fourth instance*"; (ii) claims that are categorized as "*clear or apparent absence of a violation*"; (iii) "*unsubstantiated or unsupported*" claims; and finally, (iv) "*confused or far-fetched*" claims. (See: more precisely, 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 Merit; A. Manifestly ill-founded applications, paragraphs 275 to 304).

31. In the context of the assessment of the admissibility of the referral, namely in the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the merits 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 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.

32. Thus, the Court first recalls that the circumstances of the case relate to the loan debt that the Applicant owed to the NLB Bank, where the latter filed a lawsuit with the Basic Court for the realization of that debt, requesting the amount of 5.445.00 (five thousand four hundred and forty five) euro, with legal interest. The Basic Court approved the statement of claim of NLB Bank and obliged the Applicant and the other respondents to pay the debtor on behalf of the loan in the amount of 5,445.00 (five thousand four hundred and forty five) euro with an annual legal interest of 8%, starting from the date of filing the lawsuit until the final payment of the debt. The Court of Appeals and the Supreme Court rejected as ungrounded the Applicant's appeal and revision, and upheld the decision of the Basic Court.

33. The Applicant challenges the finding of the regular Courts before the Court, raising allegations related to the procedural guarantees guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In this regard, the Applicant, *inter alia*, emphasizes (i) non-reasoning of court decisions, as well as (ii) erroneous interpretation of the law.

Regarding allegation of non-reasoning of the court decisions

34. As to the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court first notes that it already has a consolidated case-law. This case-law was built based on the case law of the ECtHR (including but not limited to the cases of *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, Judgment of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. Moreover, the fundamental principles concerning the right to a reasoned court decision have also been elaborated in the cases of this Court, including but not limited to KI22/16, Applicant *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; KI143/16, Applicant *Muharrem Blaku* and others, Resolution on Inadmissibility of 13 June 2018; KI87/18, Applicant *IF Skadiforsikring*, Judgment, of 27 February 2019, and KI24/17, Applicant *Bedri Salihu*, Judgment of 27 May 2019; KI35/18, Applicant *"Bayerische Versicherungsverbrand"*, Judgment of 11 December 2019; and case of the Court KI230/19, Applicant *Albert Rakipi,* Judgment of 9 December 2020, paragraph 135).

35. In principle, the Court notes that the guarantees embodied in Article 6 of the ECHR include the obligation of courts to provide sufficient reasons for their decisions (See the ECtHR case, *H. v. Belgium*, Judgment of 30 November 1987, paragraph 53; and see the case of the Court KI230/19, Applicant *Albert Rakipi,* cited above, paragraph 139 and case KI87/18, Applicant *IF Skadiforsikring,* paragraph 44).

36. The Court also notes that based on its case law, when assessing the principle which refers to the proper administration of justice, the court decisions must contain the reasons on which they are based. The extent to which the duty to give reasons applies may vary depending on the nature of the decision and must be determined in the light of the circumstances of the particular case. It is the essential arguments of the Applicants that need to be addressed and the reasons given must be based on the applicable law (see, by analogy, the cases of the ECtHR *Garcia Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 29; *Hiro Balani v. Spain*, Judgment of 9 December 1994, paragraph 27; and *Higgins and Others v. France*, paragraph 42; see also the case of Court KI97/16, Applicant *IKK Classic*, cited above, paragraph 48; and case KI87/18 *IF Skadeforsikring*, cited above, paragraph 48). By not requiring a detailed response to each complaint raised by the Applicant, this duty implies that the parties to the proceedings may expect to receive a specific and explicit response to their allegations that are crucial to the outcome of the proceedings conducted (see, case *Morerira Ferreira v. Portugal*, Judgment of 5 July 2011 paragraph 84 and all references used therein, as well as the case of Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 137).

37. In addition, the Court refers to its case law where it is established that the reasoning of the decision must state the relationship between the merit findings and the examination of evidence on the one hand, and the legal conclusions of the court, on the other. A judgment of a court will violate the constitutional principle of ban on arbitrariness in decision-making, if the reasoning given fails to contain the established facts, the legal provisions and the logical relationship between them (the Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; no. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58, and KI96/16 *IKK Classic*, Judgment of 8 December 2017, see Court cases KI87/18 Applicant *"IF Skadeforsikring"*, Judgment of 27 February 2019, paragraph 44; KI138/19 Applicant *Ibish Raci*, cited above, paragraph 45, as well as the case of Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 138).

38. The Court recalls that the Applicant with respect to this allegation states that the Judgments of the regular Courts are not sufficiently reasoned. Among other things, he states that "*The judgment for reasons of disobedience nowhere mentions the date of the loan, the loan amount, the loan number, the principal, the interest and the penalty since the legal basis is the lawsuit for the return of the debt. Such non-reasoned decision increases even more when there is penalty which legally should not be*".

39. The Court will continue to refer to the relevant parts of the Judgments of the regular courts, which address the Applicant's allegations regarding the Judgment for reasons of disobedience.

40. Initially, the Court refers to the Judgment of the Basic Court in Gjakova, which in the case of rendering the Judgment due to disobedience to the Applicant, has reasoned that in his case all the circumstances of the case within the meaning of Article 150.1 of the LCP, which have influenced the adoption of this decision have been assessed. Furthermore, the Basic Court reasoned that "*By Decision of this Court C. No. 180/18 of 25.04.2018, the respondents are invited to make a mandatory response to the lawsuit within 15 days. From the case file it results that the above-mentioned decision was served on the respondent parties 1 and 2 on 02.05.2018, while on the respondent 3 it was served on 03.05.2018 and so far they have not filed a response to the lawsuit. Since the respondents did not submit a response to the lawsuit within the deadline set by law, based on Article 150.1 of the Law on Contested Procedure, this Judgment was rendered due to disobedience, because the following conditions were met: a) , to the respondents the lawsuit and the summons for giving response in the lawsuit has been duly served on him, b), the merits of the statement of claim arise from the facts shown in the lawsuit and c), the facts on which the statement of claim is based are not in conflict with the evidence proposed by the claimant himself, therefore, it had to be decided as in the enacting clause*".

41. The Court further refers to the Judgment of the Court of Appeals, which reasoned that: "*...In general, all claims of the respondents in the present situation are irrelevant because they may not have an impact on any other*

decision than the one taken by the first instance court, including the enforcement proceedings, the confiscated collateral issue and its value or even eventual litispendence, because the first instance court with the impugned judgment has decided correctly and according to the legal requirements in this case. The Court of Appeals finds that the first instance court rendered the impugned judgment in compliance with the procedural law, the full and correct determination of the factual situation, as well as the correct application of the substantive law. _The first instance court, on the occasion of the preliminary review of the lawsuit rendered its Decision C. No. 180/2018 of 25.04.2018, by which it sent the lawsuit to the respondents for response, with all the documents. This decision was now served on the respondents on 02.05.2018, respectively on 03.05.2018, informing them at the same time about the legal consequences in case the respondents do not respond to the lawsuit within the deadline. The defendants, despite this warning, did not respond to the lawsuit. The Court of Appeals finds that in this case all legal requirements from Article 150 paragraph 1 point a), b) and c) of the LCP have been met, to decide as in the enacting clause of the impugned judgment. The respondent was regularly served with the lawsuit and the decision on giving response in the lawsuit, as well as all written evidence on which the grounds of the claim are based. The grounds of the statement of claim in this case result from the facts shown in the lawsuit. These facts do not contradict the evidence proposed by the claiming party. The appealing allegations of the defendants are ungrounded, because the first instance court after having correctly determined the situation of the case and correctly assessed the fulfillment of the legal requirements of article 150 paragraph 1 point a), b) and c) of the LCP, did not have the duty to schedule a hearing for the main trial of the case, but to decide as in the enacting clause of the challenged judgment. With the legal provision of article 150, the non-response to the lawsuit of the respondents as well as the fulfillment of the legal requirements provided by this legal provision, has as a legal consequence the issuance of the judgment without hearing. Therefore, the appealing allegations of the respondents in this case are ungrounded, because they did not prove that the claimant does not have a certain debt".

42. The Court also notes that the Supreme Court also gave its reasoning regarding the Applicant's allegations, where among other things reasoned: "*Thus, based on Article 150.1 of the LCP, the court has rendered a judgment due to disobedience, because the legal requirements from point a), b) and c) of Article 150.1 of the LCP have been met. Thus, within the meaning of Article 160.6 of the LCP, has given only the reasons that justify the statement of the challenged judgment and finally within the meaning of Article 452.1 of the LCP, has decided on the costs of the proceedings. By the judgment due to disobedience, the court does not justify its decision, except for the reasoning that justifies the issuance of the judgment due to disobedience within the meaning of Article 160.6 of the LCP, therefore the claims in the revision that according to Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the ECHR, were rejected as ungrounded. The paragraph of the provision of Article 382 of the Law on Obligations stipulates that the debtor who is late in fulfilling the obligation in cash debits, in addition to the main debt, the interest. Paragraph 2 defines the amount of default interest in the amount of 8%, with which interest was owed to the respondent due to the*

delay in fulfilling the obligation to the claimant. The statements of the respondent in the revision that the latter is liable with penalties and interest on interest do not stand, since the respondents are obliged in addition to the debt to pay the default interest in the amount of 8%. ". [...] The objection of the statute of limitation that was not presented at the trial in the first instance cannot be presented with an appeal as well as with a revision, therefore the objection of the respondent regarding the statute of limitation of the request at this stage of the procedure cannot be examined".

43. In view of the above, the Court considers that the regular courts have addressed and responded to the Applicant's allegations regarding the Judgment due to disobedience, considering that in the Judgment due to disobedience the court does not justify its decision as such, except for the reasoning that justify the issuance of the judgment due to disobedience within the meaning of Article 160.6 of the LCP. Also regarding the issue of statute of limitations, the Supreme Court had given its reasoning stating that the issue of statute of limitations was not raised by the Applicant through objection in the first instance, and that this could not be filed by appeal or revision, therefore, the Applicant's objection regarding the statute of limitation of the request was not examined by the Supreme Court.

44. The Court also wishes to recall that Article 31 of the Constitution and Article 6.1 of the ECHR oblige the courts to give reasons for their decisions, however, this cannot be understood as requiring from the courts a detailed answer to every argument (see ECtHR cases *Van de Hurk v. Netherlands*, Judgment of 19 April 1994, *Garcia Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, paragraph 26, *Jahnke and Lenoble v. France*, [GC], paragraph 81).

45. Based on the above, in the assessment of allegations which are related to alleged violations of Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR, the Court considers it important to reiterate its general position that „justice" requested by the aforementioned articles is not „substantial" justice but „procedural" justice. The concept of „procedural justice" mainly in practical terms, in principle, implies (i) the possibility of adversarial proceedings/adversarial proceedings principle; (ii) the possibility for the parties at various stages of these proceedings to bring arguments and evidence that they consider important to the relevant case; (iii) the ability to effectively challenge arguments and evidence presented by the opposing party; and (iv) the right that their arguments, which, objectively, are relevant to the resolution of the case, be properly heard and examined by the courts (see, *inter alia*, the case of the ECtHR *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68; and 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. Having said that, the Court considers that in the Applicant's case all the above mentioned criteria have been respected by the regular courts. The Applicant may still be dissatisfied with the outcome of the adjudication of his case, however, his dissatisfaction cannot in itself raise an arguable claim of violation of the fundamental rights and freedoms guaranteed by the Constitution (see,

the case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

47. Therefore, the Court finds that the Applicant's allegations of a violation of the right to a reasoned decision, as guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR, as such, fall into the third category of (iii) *"unsubstantiated or unsupported claims"* therefore in this part the referral is manifestly ill-founded on constitutional basis.

Regarding allegation of erroneous application of law

48. In the examination of the allegation of erroneous interpretation of the law, where the Applicant alleges that the lawsuit is statute barred based on Article 353 paragraph 1 of the LOR. The Court first notes that this allegation is in essence related to the erroneous determination of facts and the erroneous application of applicable law, allegations which the Court, in accordance with its case-law and that of the ECtHR, considers as *"fourth instance claims"*.

49. 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 of the ECtHR of 30 April 2020 on Admissibility Criteria; part I. Admissibility Based on Merit; A. Manifestly ill-founded claims; 2. "Fourth instance" paragraphs 281 to 288), the principle of subsidiarity and the fourth instance doctrine, 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 erroneous application of the law, allegedly committed by a regular court, unless and insofar such errors may have violated the rights and freedoms protected by the Constitution and/or the ECHR. (See, in this context, *inter alia*, the cases of Court KI179/18, Applicant *Belgjyzar Latifi*, Resolution on Inadmissibility of 23 July 2020, paragraph 68; KI49/19, Applicant *Limak Kosovo Joint Stock Company International Airport 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).

50. The Court has consistently reiterated that it is not the role of this Court to review the conclusions of the regular courts concerning the factual situation and the application of the substantive law and that it cannot of itself assess the facts which have led a regular court to adopt one decision rather than another. Otherwise, the Court would act as a court of *"fourth instance"*, which would result in exceeding the limits imposed on its jurisdiction (See, in this context, the case of the ECtHR *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and the references used therein, and see also the cases of the Court, Kl49/19, cited above, paragraph 48, and Kl154/17 and KI05/18, cited above, paragraph 61).

51. 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 primarily for the regular courts, to resolve the problems in respect of interpretation of the applicable law, the role of the Court is to ensure and verify whether the effects of such interpretation are compatible with the Constitution and the ECHR. (See the ECtHR case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39; and see also the case of Courts 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 erroneous manner*" 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 KII54/17 and KI05/18, cited above, paragraphs 60 to 65 and the references used therein).

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

53. The Court also reiterates that Article 31 of 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,* cases of the 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).

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

Conclusion

55. In sum, the Court finds that the Applicant's allegations of violation of the rights guaranteed by the abovementioned articles of the Constitution and the ECHR are manifestly ill-founded, because the latter are considered as allegations

belonging to the first category (i) "fourth instance court" and third category (iii) "*unsubstantiated or unsupported*" claims on constitutional basis.

56. Therefore, the Court finds that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with Article 7 of the Constitution and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rule 39 (2) of the Rules of Procedure, in its session 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**
Nexhmi Rexhepi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.