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

Prishtina, 14 October 2021
Ref. no.:RK 1866/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI99/20

Applicant

Tatjana Stefanović

Constitutional review of Judgment AC-I-16-0150 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters of 21 February 2020

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 Tatjana Stefanović residing in the municipality of Mitrovica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [AC-I-16-0150] of 21 February 2020 of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) in conjunction with Judgment [SCL-11-0039] of 9 June 2016 of the Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which, according to the Applicant's allegations, violated her rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of 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

5. On 19 June 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 July 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban (members).

7. On 7 July 2020, the Court notified the Applicant and the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC) about the registration of the Referral.

8. 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.

9. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision No. KK 160/21 appointed Judge Gresa Caka-Nimani as Presiding in Review Panels in cases where she was appointed as member of Panels, including the present case.

10. On 8 June 2021, the President of the Court, Arta Rama-Hajrizi, by Decision No. KI99/21, appointed Judge Safet Hoxha as Judge Rapporteur instead of Judge Gresa Caka-Nimani.

11. On 25 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 8 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. On 23 July 2010, based on the case file, the process of privatization of the Socially Owned Enterprise Auto Moto Mustafa Bakia Start from Gjakova (hereinafter: SOE „Auto Moto") and placed under the Administration of the Privatization Agency of Kosovo (hereinafter: the PAK). Based on the same file, the Applicant was in 1994 established the employment relationship with the SOE „Auto Moto", in which, according to her allegations, she worked until June 1999.

14. On 31 December 2010, PAK began the liquidation procedure of the SOE „Auto Moto".

15. On 21 March 2011, the Applicant submitted to the Liquidation Commission of the above-mentioned social enterprise (hereinafter: the Liquidation Commission), a request for (i) compensation of a share of 20% (twenty percent) of revenues from privatization; (ii) payment of shares of the SOE; and (iii) compensation of unpaid personal income for the period from the beginning to the end of the liquidation process of the social enterprise.

16. On 19 May 2011, the Liquidation Commission by decision [PEJ183-0017, 0025, 0026, 0027], (i) declared itself incompetent in terms of 20% (twenty percent) from the privatization of social enterprise with the reasoning that, *" it is not competent authority to deal with 20%, Department for 20% in Prishtina deals with such claims",* (ii) rejected the request for the *"payment of shares" of the SOE Auto Moto Start, is not a shareholder company, but a socially owned enterprise",* and (iii) rejected the Applicant's request for payment of unpaid personal income, referring to Article 608 of the Law on Association Labor in 1976 (hereinafter: the Old Law on Labor), according to which *"the right to request the payment of personal income and other employment rights expires after 3 years, in accordance with the principles of statute of limitation".*

Procedure on the right to 20% (twenty percent) from the privatization of SOE Auto Moto Start

17. On 30 June 2012, the PAK published a final list of employees who have the right to compensation of 20% (twenty percent) of the privatization revenues of the SOE "Auto Moto", on which list the Applicant was not included.

18. On 16 July 2012, the Applicant challenged the final list, filing the claim to the SCSC, stating the right to obtain 20% (twenty percent) from the privatization revenues of SOE Auto Moto Start, with the request that its name is included into the final list .

19. On 31 March 2014, the Specialized Panel by judgment [C-11-12-0029-C-0003] approved the Applicant's lawsuit regarding 20% from the privatization of the SOE, as grounded, and ordered inclusion of the name of the Applicant in the final list of workers who are entitled to compensation of 20% of the privatization of the SOE "Auto Moto".

20. On 16 May 2014, against the abovementioned judgment of the Specialized Panel, the PAK and the group of former employees of SOE Auto Moto Start filed appeal with the Appellate Panel of the SCSC, challenging the right of number of employees, including the Applicant's right to 20% from the privatization of the abovementioned SOE.

21. On 26 March 2015, by Judgment [AC-I-14-0165-A0001], the Appellate Panel rejected the appeal of the PAK and of the former employees of the SOE Auto Moto Start as ungrounded, and upheld the above-mentioned judgment of the Specialized Panel, stating among other, that (i) the finding that none of the appellants included in point II of the appealed judgment did not present the relevant facts, based on which can be proven the fact that they are not equal, is inconsistent and on the basis of which a reasoning related to application of direct or indirect discrimination in accordance with Article 8.1 of the Law against Discrimination, and because of that, the appellant did not submit counter-arguments related to discrimination; and (ii) regarding the remarks provided by this group of employees for four workers of Serbian nationality, in this case their remarks are not argued, other than speculations, which are not relevant for the court, so this remark has also not been established.

Proceedings in terms of exercising the right to unpaid personal income in the privatization process of SOE Auto Moto Start

22. On 18 November 2011, against Decision [PEJ 183-0017, 0025, 0026, 0027] of 19 May 2011, the Liquidation Commission, the Applicant submitted a lawsuit to the Specialized Panel with a request for (II) payment of shares of the SOE Auto Moto Start; and (iii) compensation of unpaid personal income for the period from the beginning to the end of the process of liquidation of this SOE.

23. On 9 June 2016, the Specialized Panel by judgment [SCL-11-0039], rejected the Applicant's lawsuit regarding (II) payment of the SOE for lack of evidence; while (iii) the payment of unpaid personal income for the period from the

beginning to the end of the liquidation process of the SOE, as ungrounded, and upheld the decision of the Liquidation Commission, and among other things, that the request for the payment of unpaid personal income for the period from 2007 to 2010, is not statute-barred, but ungrounded, because the Applicant did not substantiate this part with legal regulations or evidence, while for the period 1999 to 2007, due to statute of limitation.

24. On 24 June 2016, the Applicant filed appeal with the Appellate Panel against the Judgment of the Specialized Panel, stating essential violation of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation, as well as the erroneous application of substantive law.

25. On 21 February 2020, by Judgment [AC-I-16-0150], the Appellate Panel rejected the Applicant's appeal, as ungrounded, and upheld the above-mentioned judgment of the Specialized Council, citing, *inter alia*, that the fact that the Applicant acquired the right to obtain 20% of the SOE is not a legal basis related to personal income, which she claims to have the right, and as the Specialized Panel emphasized, the request for personal income for the period from 1999 to 2007 is statute-barred, while from 2007 to 2010, was not substantiated by evidence.

Applicant's allegations

26. The Applicant states that the Judgment [AC-I-16-0150] of the of the Appellate Panel of 21 February 2020 in conjunction with Judgment (SCL-11-0039] of 9 June 2016 of the Specialized Panel, was rendered in violation of fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 46 [Protection of Property] of the Constitution, as well as Articles 6 (Right to a fair trial) and 1 (Protection of property) of Protocol No. 1 of the ECHR.

27. Regarding the allegations related to the violation of Article 24 of the Constitution, the Applicant states: (i) *"... until the beginning of the start of the liquidation process, the respondent company did not address the claimant by any act; and (ii) "nor did I receive any act for engagement and for termination of employment relationship".*

28. Regarding the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant, among other things, points out that (i) her employment relationship with the relevant company has never been terminated; (ii) procedure prescribed in Articles 71 (Notification period for termination of employment contract) and 72 (Procedure Prior to the Termination of the Contract) of the Law on Labor no. 03/L-212 of 1 November 2010 (hereinafter: the Law on Labor) was not complied by the relevant company (i) *"the court was placed in the role of the protector of the responding party"*; (iii) the respondent by none of its acts and actions has not shown or presented a position that she reviewed and tried to find a job for the respondent, but the whole defense is reduced to the point that the respondent is not entitled to personal income, because she did not work and the request is statute-barred; and (iii) PAK in a tendentious manner and without adequate overall requests ignored all evidence and rendered a discriminatory decision.

29. Regarding the allegations related to Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 ECHR, the Applicant points out that *"the SCSC when rendering judgments at any case must examine the circumstances of the case seen as a whole and based on this, establish the right to material interest ...".*

30. Finally, the applicant requests the Court to (i) declare the challenged judgments *"unconstitutional and invalid"*; and (ii) *"render the decision, which will create conditions for the approval of requests for payment of personal income"*.

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 24
[Equality Before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.
[...]

Article 31
[Right to Fair and Impartial Trial]

1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*
[...]

Article 32
[Right to Legal Remedies]

1. *Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.*

[...]

Article 46
[Protection of Property]

1. The right to own property is guaranteed.

2. Use of property is regulated by law in accordance with the public interest.

3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.

5. Intellectual property is protected by law.

[...]

European Convention on Human Rights

Article 6
(Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

[...]

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Article 1
Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

[...]

UNMIK Regulation No. 2003/2013
ON THE TRANSFORMATION OF THE RIGHT OF USE TO SOCIALLY IMMOVABLE PROPERTY
of 9 May 2003

Article 10
[Rights of Employees]

[...]
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 Sociallyowned 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.

[...]

Law on Associated Labor
OG SFRY 53/76
of 25 November 1976

[...]

Article 22

[...]

The conditions of acquisition of income in the free exchange of work exchanges are determined by a self-governing agreement.
[...]

Article 606

[...]

If the fulfillment of the material obligation of one participant in a self-governing agreement becomes impossible due to events for which is responsible neither him, nor other participants, their mutual obligations cease.

[...]

Article 608

[...]

Statute of limitation ceases the right to request the fulfillment of material obligations arising from the self-governing agreement, and that:

1. *Payment of personal income amounts and other claims of employees from employment relationship.*

[...]

Against the statute of limitation of the request referred to in paragraph 1 of this Article shall according to the general provisions on the statute of limitation of claims, with these requests become statute-barred in three years.

[...]

Law No. 03/L-212
on Labor
of 1 November 2010

Article 71
Notification period for termination of employment contract

1. The employer may terminate an employment contract for an indefinite period according to Article 70 of this Law with the following periods of notification:

1.1. from six (6) months - 2 years of employment, thirty (30) calendar days;

1.2. from two (2)- ten (10) years of employment: fourty-five (45) calendar days;

1.3. above ten (10) years of employment: sixty (60) calendar days.

2. The employer may terminate an employment contract for a fixed term with thirty (30) calendar days notice. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.

Article 72
Procedure Prior to the Termination of the Contract

1. *The decision to terminate an employment contract shall be issued in writing and shall include the grounds for the dismissal.*

2. *Decision, under paragraph 1 of this Article, shall be final on the day of submission to the employee.*

3. *Employer is obliged to execute the salary and other allowances up to day of the termination of employment relationship.*

4. *The employer may deny the employee access to the premises of the enterprises during the period of notification, namely prior to terminating the employment contract.*

Admissibility of the Referral

31. 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.

32. 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".*

33. In addition, the Court also examines whether the Applicant has fulfilled 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...".

34. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, which is challenging an act of a public authority, namely Judgment [AC-I-16-0150] of the Appellate Panel of 21 February 2020 and that she has exhausted all legal remedies provided by law. The Applicant has also specified the rights and freedoms, which she claims to have been violated, pursuant to the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

35. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph Rule 39 (2) of the Rules of Procedure establishes the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) 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".

36. 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, 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.

37. 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).

38. 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.

39. In this regard, the Court first reminds that the circumstances of this case apply to the alleged right to the Applicant that in the privatization process of the SOE Auto Moto Start exercises the right to (i) a compensation of 20% of the privatization revenues; (ii) payment of shares of SOE, and compensation of unpaid personal income for the period from 1999 to 2010. The Applicant first filed her claims for the liquidation of the said SOE with the Liquidation Commission, this requirement in the part concerning (i) compensation of a 20% from the privatization revenues, the liquidation commission was declared incompetent, a part concerning (ii) payment of shares of the liquidation commission rejected on the grounds of being unfounded and part concerning (iii) compensation of unpaid personal income for the period from 1999 to 2010, was dismissed due to statute of limitation. After that, the Applicant regarding (i) compensation of 20% from the SOE privatization revenues exercised her right in the process that was conducted before the SCSC in terms of 20% of privatization. The Applicant in addition to this issue before the SCSC, also filed appeal against the decision of the Liquidation Commission concerning (ii) the payment of shares of the SOE, (iii) compensation of unpaid personal income for the period from 1999 to 2010, in the proceedings that was conducted on this issue, the SCSC rejected the Applicant's request as ungrounded,. The Applicant challenges the conclusions of the SCSC, stating (i) violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of the erroneous interpretation of the Law, namely Articles 71 and 72, of the Law on Labor no. 03/L-212 as well as the erroneous determination of factual situation and (ii) violation of Articles 24, 32 and 46 of the Constitution and Article 1 of Protocol 1 of the ECHR. The review of the Applicant's allegations, the Court will start with (i) her allegation of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in order to continue with (ii) consideration of allegations regarding the violation of Articles 24, 32, and 46 of the Constitution and Article 1 of Protocol 1 of the ECHR.

40. The Court notes that the Applicant conducted two proceedings before the SCSC for (i) compensation of 20% of the SOE's privatization proceeds and (ii) payment of SOE shares and compensation for unpaid salaries for the period from 1999 to 2010. Considering that the Applicant does not complain about the procedure (s) related to the compensation of 20% of the privatization of the SOE, the Court will not deal with this procedure.

41. In this regard, the Court first recalls that the Applicant's allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous interpretation of the applicable law and erroneous determination of the factual situation, constitute a category of allegations, which the Court, in accordance with its case-law and the case law of the ECtHR, considers, in principle, the "*allegations of the fourth instance*".

42. 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 275 to 304), 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 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).

43. 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 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).

44. 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 in 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 KI154/17 and KI05/18, cited above, paragraphs 60 to 65 and the references used therein).

45. In this context, the Court recalls that in the circumstances of the present case, the Applicant's main allegations concerning the alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR relate to the rendering of the challenged Judgment [AC-I- 16-0150] of 21 February 2020 of the Appellate Panel contrary to Articles 71 and 72 of the Law on Labor No. 03/L-212.

46. As regards these allegations, namely the adoption of the challenged judgment contrary to the provisions of the Law on Labor no. 03/L-212, the Court first emphasizes that they did not precisely clarify and adequately state the facts of violation of constitutional rights or provisions. Moreover, the Court notes that the abovementioned allegations of violation of Law on Labor no. 03/L-212, were clarified by the regular courts.

47. In this regard, the Court first recalls that the Specialized Panel, by Judgment [SCL-11-0039] of 9 July 2016, considering the Applicant's allegations, noted, *inter alia*, the following:

> *"The Court notes that neither the statute of limitations in Kosovo, nor the UNMIK Regulation, contain provisions on the statute of limitations for workers' rights. But the law on associated labor, contains. It should first be noted that this provision is applicable. The court thinks that Kosovo clearly intended to annul those parts of the law on labor. But there is no reason to believe that it would intend to annul those parts of Yugoslav law that deal with issues that it did not deal with. Therefore, Article 608 of the Law on Associated Labor, which determines the three-year limitation period, is applicable.*
> *Article 608, first sentence, item 1, of the Law on Associated Labor regulates the rights to payment of salaries arising from the self-governing labor agreement (see Article 22, paragraph 2 of the Law on Associated Labor), one period of statute of limitations of three (3) years".*

48. On the other hand, the Appellate panel, by Judgment [AC-I-16-0150] of 21 February 2020, also considered the Applicant's relevant allegations and reasoned, *inter alia*, the following::

> *"The Appellate Panel notes that until March 2011, when the claim for compensation was sent to the liquidation authority, previously not even by mail, the claimant never addressed the company regarding the alleged salaries or the court to claim these salaries in the lawsuit for the said period.*
> *The Appellate Panel supports the finding of the Specialized Panel presented in the appealed Judgment that the required salaries for the period June 1999 to March 2007 are statute barred, but the claimant did not perform her duties in the SOE for other required salaries.*

49. Finally, the Court also recalls that the Appellate Panel, by the same judgment, considered the Applicant's allegations regarding the fact that she exercised the

right to 20% of the privatization of the SOE and reasoned, *inter alia*, the following:

> *"The Appellate Panel further notes that the claimant by her appeal in the appeal procedure stated that she received income from a legitimate right to 20%, but such a right has no real basis to be linked to the salaries she seeks, as the conditions and procedure for a legitimate right to 20% are regulated by Section 10.4 of UNMIK Regulation 2003/13, which is not applicable and is not substantive law to approve her salary claim".*

50. In this regard, the Court considers that the Specialized Panel and Appellate Panel, in the circumstances of the present case, considered and reasoned the Applicant's allegations, including those relating to erroneous interpretation of the provisions of the applicable law. The latter considered the Applicant's essential allegations and clarified (i) that Article 608 of the Law on Associated Labor, which sets a three-year statute of limitation period, is applicable to the Applicant's case, (ii) that the Applicant has not substantiated her allegations regarding the right to shares in this SOE (iii) that the fact that the Applicant had exercised her right to 20% of the privatization of the SOE is not the real basis on which the Applicant's claims for unpaid salaries could be justified.

51. In this regard, in order to avoid misunderstandings on the part of 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. This translates in practical terms into adversarial proceedings in which submissions are heard 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).

52. This means more precisely 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) to be able to adduce the arguments and evidence they consider relevant to their case at the various stages of those proceedings; (iii) to be guaranteed that all the arguments, viewed objectively, relevant for the resolution of their case were heard and reviewed by the regular courts; (iv) to be guaranteed that the factual and legal reasons against the challenged decisions were presented and examined in detail; and that, according to the circumstances of the case, (v) be guaranteed that the proceedings, viewed in entirety, were fair and not arbitrary (See, *inter alia*, case of the ECtHR *Garcia Ruiz v. Spain*, cited above, paragraph 29; and KI131/19, cited above, paragraph 58). The Court states that, in the circumstances of the present case, the Applicant has not substantiated that this is not the case

53. In these circumstances, taking into consideration the Applicant's allegations and the facts presented by him, as well as the reasoning of the Specialized Panel and of the Appellate Panel elaborated above, the Court considers that the Applicant does not sufficiently prove or substantiate her claim that the regular courts may have "*applied the law in a manifestly erroneous manner*", resulting

in "*arbitrary*" or "*manifestly unreasoned*" *conclusions* for the Applicant and consequently her 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.

54. The Court also recalls that the Applicant alleges a violation of Articles 24, 32 and 46 of the Constitution as well as Article 1 of Protocol No. 1 to the ECHR, filing general allegations before the Court without accurately and adequately clarifying the facts and allegations of violation of these constitutional rights.

55. The Court recalls that it has already a very consolidated case law through which it has consistently emphasized that merely mentioning an article of the Constitution, without a clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the protection machinery provided by the Constitution and the Court, as an institution caring for respect of human rights and freedoms (see, in this context, the cases of the 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; see also ECtHR Guide of 30 April 2020 on Admissibility Criteria; Part I. Admissibility Based on Merit; A. Manifestly ill-founded claims; 4. Unsubstantiated complaints: lack of evidence, paragraphs 300 to 303).

56. In the circumstances of the present case, the Applicant, beyond the reference to certain articles of the Constitution and their content, and in addition to the formulation of the general allegations, did not clearly and adequately reason how these Articles were violated by the challenged judgment. Therefore, the Court considers that the Applicant's allegations of violation of the above articles of the Constitution fall into the category of "*unsubstantiated or unsupported*" 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 an obligation to accurately clarify and adequately present facts and allegations; and also (ii) to prove and sufficiently substantiate their allegations of violation of constitutional rights or provisions.

Conclusion

57. Therefore, based on the above and taking into account the specific characteristics of the case, the Applicant's allegations and the facts presented by her, the Court, based on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant's allegations of violation (i) of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous interpretation of the applicable law in the circumstances of her case, constitute allegations of „*fourth instance*"; while allegations (ii) of violation of Articles 24, 32 and 46 of the Constitution as well as Article 1 of Protocol No. 1 to the ECHR constitute „*unsubstantiated or*

unsupported " allegations, and as such, they are manifestly ill-founded on constitutional basis, as established in Article 113.7 of the Constitution and paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113.1 and 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 8 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, and

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.