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

Prishtina, on 18 December 2017
Ref. No.: RK 1175/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI129/16

Applicant

"KOSBAU GmBH"

Constitutional review of Judgment E. Rev.nr.21/2016 of the Supreme Court, of 02 June 2016

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by "KOSBAU GmBH", registered in Kosovo as a foreign company with an office in Tërstenik, Gllogoc (hereinafter: the Applicant) represented by Shaqir Behrami and Visar Morina, lawyer and professor of law, respectively.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo [E. Rev.nr.21/2016] of 02 June 2016, which was served on the Applicant on 22 July 2016.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 1 of Protocol 1 (Protection of Property) of the European Convention of Human Rights (hereinafter: the Convention)

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filling 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 11 November 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 December 2016, the President of the Court by Decision No. GJR. KI129/16, appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Ivan Cukalovic.

7. On 22 December 2016, the Court notified the Applicant on the registration of the Referral.

8. On the same day, the Supreme Court and the Municipality of Gllogoc (hereinafter: the Municipality) were notified on the registration of the Referral and were served with a copy of the Referral.

9. On 13 November 2017, the Review Panel considered the report of the Judge Rapporteur and made an unanimous recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 03 November 2009, the Applicant concluded contract no.611-09-101-521 (hereinafter: the Contract) with the Municipality to refurbish the "Fehmi Lladrovci" Square in the amount of 61.718,29 Euro.

11. The Applicant was fully paid the monetary amount specified in the Contract. However, after the requirements foreseen by the Contract were met, according to the Applicant, at the oral request of Municipality, it continued additional works for

another 90 days for the finalization of the square. No additional contract was signed between the Applicant and the Municipality. The additional work was conducted at the amount of 135.760,18 Euro, as indicated in invoices that were submitted to the Municipality by the Applicant. This amount was never reimbursed by the Municipality.

12. On 10 September 2012, the Applicant filed to the Basic Court in Prishtina (hereinafter: the Basic Court) the proposal for enforcement regarding the debt in the total amount of 135.760,18 Euro towards the Municipality. The Applicant specified that "*if the Municipality presents its eventual objection then it proposes to the court to consider [the] proposal as a Claim.*"

13. On 11 September 2012, the Basic Court rendered a decision approving the Applicant's proposal for enforcement. However, within the legal deadline, the Municipality filed an objection against this proposal, reasoning that the Municipality *"has no obligation towards the Creditor as it stands in his proposal for enforcement, as with the Creditor there was no signed contract in relation to the execution of works".*

14. Upon the objection of the Municipality, the Basic Court repealed the decision on approving the Applicant's proposal for enforcement, and decided to continue the assessment of the Applicant's claim following the contested procedure.

15. On 5 January 2015, the Basic Court rendered the Judgment [C.nr.411/2012] rejecting the statement of claim of the Applicant as entirely ungrounded. The Judgment of the Basic Court, among others, reasoned that according to the Law on Obligational Relationships (hereinafter: LOR), construction work must be performed based on prior written contract between the parties, a condition which was not fulfilled in the current case.

16. On 5 January 2015, the Applicant filed an appeal against the Judgment [C.nr.411/2012] of the Basic Court, claiming violation of the provisions of the contested procedure; erroneous determination of the factual situation; and erroneous application of the substantive law. The Applicant primarily maintained that the contract between the Applicant and the Municipality is not to be regarded as a construction contract but rather a services contract for which no written consent is required. In addition, the Applicant maintained that the Municipality not only requested, but never objected the work performed by the Applicant.

17. On 14 March 2016, the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) through its Judgment [Ae.nr.90/2015] rejected the appeal of the Applicant as ungrounded and confirmed on its entirety the Judgment of the Basic Court. The Court of Appeals, in addressing the allegations of the Applicant maintained that, as specialized organization for construction works, the Applicant should have known that without a written contract or amendment to the main Contract no work could have been performed, especially considering that the main Contract clearly defined that no additional work is allowed exceeding the contracted amount.

18. The Applicant filed a Revision against Judgment [Ae.nr.90/2015] of the Court of Appeals alleging essential violations of the provisions of the contested procedure and erroneous application of the substantive law, raising the same allegations raised before the Court of Appeals.

19. On 2 June 2016, the Supreme Court [E.Rev.nr.21/2016] rejected the revision of the Applicant against the Judgment of the Court of Appeals as ungrounded. The Supreme Court, among others, reasoned that there is no legal basis to realize the right for compensation for the performed works conducted by the Applicant, as the additional works were not authorized by the contracting authority, being the sole competent authority for issuing consent for additional works.

Applicant's allegations

20. The Applicant claims that the Supreme Court Judgment [E.Rev.nr.21/2016] violates its rights guaranteed by Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 of Protocol 1 (Protection of Property) of the Convention.

21. As it pertains to alleged violations for the Article 46 of the Constitution, the Applicant maintains that the Municipality requested additional work for the finalization of the square, allowing the Applicant to undertake serious financial investments *"while not providing compensation for the works performed"*. The Applicant added that during 90 days of performing the additional work, the Municipality never informed the Applicant *"through any action or document that for this additional work in the square a separate contract must be singed"*. On the contrary, the Municipality allowed and supervised the works performed by the Applicant.

22. Further, the Applicant maintains that Municipality, as a public authority, has positive obligations to protect the rights of property of individuals, including the Applicant. The absence of any action of the Municipality to inform and to prevent the Applicant to make the investment in the Municipality Square, according to the Applicant, constitutes a violation of Article 46 of the Constitution in conjunction with Article 1 Protocol 1 of the Convention. In relation to the positive obligation of the state to protect the property of individuals, the Applicant makes reference to the Case *Zolatas v Greece* of the European Court of Human Rights (hereinafter: the ECtHR).

23. While not alleging violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution specifically, the Applicant further maintains that the regular courts failed to address the Applicant's allegations for violation of Article 46 of the Constitution, especially as it pertains to the positive obligations of the public authority to protect property rights.

24. In addition, the Applicant alleges that in a similar case [Judgment E.Rev. 35/2013 of 9 December 2013], the Supreme Court while deciding for compensation of the debt on behalf of additional works for fixing the sewage system in one of the villages in Prishtina, obliged the Government of Kosovo to pay for additional works conducted by D.H, because of the fact that "the invoices delivered by the Claimant were not objected to".

25. Finally, the Applicant requests the Constitutional Court to approve the Referral as admissible and declare violation of Article 46 [Protection of Property] in conjunction with Article 1, Protocol 1 (Protection of Property) of the Convention and to annul Judgment [Rev. 21/2016] of the Supreme Court, remanding the case for retrial.

Admissibility of the Referral

26. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by 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 continuation, the Court also examines whether the Applicant has fulfilled the admissibility requirements as further specified in the Law and Rules of Procedure. In this respect, the Court first refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

> *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. Regarding the fulfillment of these requirements, the Court notes that the Applicant is an authorized party, contesting an act of a public authority, namely, the Supreme Court Judgment [E. Rev.nr.21/2016] of 02 June 2016, after having exhausted all legal remedies provided for by law. The Applicant has also accurately specified the rights, guaranteed by the Constitution and the Convention that have allegedly been violated, in accordance with Article 48 of the Law and has submitted the referral within the four (4) month legal deadline foreseen in Article 49 of the Law.

30. In addition, the Court must examine whether the Applicant has fulfilled the admissibility requirements provided by Rule 36 [Admissibility Criteria] of the Rules of Procedure. Rule 36 (1) of the Rules of Procedure specifies the requirements under which the Court may examine a referral, including the requirement that the referral is not manifestly ill-founded. According to Rule 36 (2), a Referral is manifestly ill-founded when it is satisfied that:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

[...]

(d) the Applicant does not sufficiently substantiate his claim;"

31. In this respect, the Court recalls that the Applicant challenges the Judgment of the Supreme Court [E. Rev.nr.21/2016] of 02 June 2016, arguing that, *i)* the Supreme Court failed to consider his claim for payment for additional works conducted in the square in light of the right to property as guaranteed by the Constitution; *ii)* the Municipality, as a public authority, based on the Constitution, Convention, and the ECtHR case law, has a positive obligation, to prevent the Applicant from undertaking investments, which in the view of the Municipality had no legal basis and, *iii)*that the Supreme Court in a case that is similar to the one of the Applicant has decided differently, thus rising issues of the right to fair and impartial trial under Article 31 of the Constitution in conjunction with Article 6 (Right to a Fair Trial) of the Convention.

As to the alleged violation of the Right to Protection of Property

32. The Court first recalls the content of Article 46 of the Constitution and Article 1 Protocol No. 1 of the Convention:

Article 46 [Protection of Property] of the Constitution:

"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.
[...]

Article 1 [Protection of Property] of Protocol nr. 1 of the Convention:

1. *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.*

2. *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

33. The content of Article 1 of Protocol no. 1 of the Convention and its application, have been interpreted by the ECtHR through its case law, and the Court based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret human rights and freedoms guaranteed by the Constitution in harmony with the case law of the ECtHR. Consequently, regarding the interpretation of allegations concerning violation of Article 46 of the Constitution in conjunction with Article 1, Protocol no. 1 of the Convention, the Court will refer to the ECtHR case law.

34. As it pertains to the rights guaranteed and protected by Article 46 of the Constitution, the Court firstly notes that the right to property under paragraph 1 Article 46 of the Constitution guarantees the right to own property; paragraph 2 of Article 46 of the Constitution defines the method of use of the property, by clearly specifying that it's use is regulated by law and in accordance with the public interest and in paragraph 3, it guarantees that no one can be deprived of property in an arbitrary manner, while also determining the conditions under which property can be expropriated. (see, *mutatis mutandis*, Case KI50/16, Applicant *Veli Berisha and others*, Resolution on Inadmissibility of 10 March 2017, para. 31).

35. As it pertains to the rights guaranteed and protected by Article 1 of Protocol 1 of the Convention, the Court notes that the ECtHR has held that the right to property comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; this appears in the second sentence of the same paragraph. The third rule recognizes that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; this is contained in the second paragraph. (See, *mutatis mutandis,* the Judgment of the ECtHR of 23 September 1982, *Sporrong and Lonnrot v. Sweden*, no. 7151/75; 7152/75, para. 61).

36. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule. (See, mutatis mutandis, the Judgment of the ECtHR of 21 February 1986, *James and others v. UK*, no. 8793/79, para. 37).

37. In addition, the concept of "possessions" and "legitimate expectations" have a central place in the interpretation on the property rights guaranteed by the Convention and further developed by the ECtHR case law.

38. As it pertains to the first, the ECtHR has consistently held that the concept of "possession" within the meaning of Article 1 of Protocol No. 1 of the Convention has an autonomous meaning which is not limited to ownership of material goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions". (See, the Judgment of the ECtHR of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, para.73 and 75; the Judgment of ECtHR of 22 June 2004, *Broniowski v Poland*, no. 31443/96, para. 129).

39. On the other hand, the "legitimate expectations may give rise to possessions". Although Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not create a right to acquire property, in certain circumstances a "legitimate expectation" of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1. (See, the Judgment of the ECtHR of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, para.73 and 75; the Judgment of ECtHR of 22 June 2004, *Broniowski v Poland*, no. 31443/96, para. 129).

40. The Court recalls however that the ECtHR also maintains that: a "legitimate expectation" must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision. (See, the Judgment of the ECtHR of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, para.75). No "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts. (See, the Judgment of the ECtHR of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, para.75).

41. In the present case, the allegation of the Applicant falls within the first rule set out in the first sentence of the first paragraph of Article 1 of Protocol no. 1 of the Convention – peaceful enjoyment of possessions. This guarantee also entails, according to the ECtHR case law, the positive obligations of the state to protect possessions, which the Applicant refers to and alleges constitute violations of property rights in its case.

42. The Court recalls that the ECtHR, in this respect maintains that *"Genuine, effective exercise of the rights protected by that provision does not merely depend on the state's duty to not interfere, but may acquire positive measures of protection, particularly where there is a direct link between the measures which an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions"*. (See, the Judgment of the ECtHR of 30 November 2004, *Oneryildiz v Turkey*, no. 48039/99, para.134).

43. However, in determining whether the concept of positive obligations, preventive or remedial, to protect peaceful enjoyment of possessions, applies in the circumstances of the Applicant, firstly, the question to be examined in the present case is whether the circumstances of the case, considered as a whole, conferred on the Applicant a title to a substantive interest protected by Article 46 of the Constitution and Article 1 of Protocol No. 1. (See, *mutatis mutandis*, the Judgment of ECHR of 22 June 2004, *Broniowski v Poland*, no. 31443/96, para. 129).

44. The Court recalls that while "legitimate expectations may give rise to possessions", a "legitimate expectation" must be of a concrete nature, be based on legal provision or

a judicial decision, and that one cannot arise where there is a dispute as to the correct interpretation or application of domestic law.

45. In this respect, the Court recalls that the Applicant failed to secure a written contract or amendment to existing contract for conducting the additional works in the Square, which it claims were requested by the Municipality, as required by the LOR. The Court also recalls that the allegations of the Applicant were rejected by the regular courts, Basic, Appeals and Supreme Court, respectively.

46. The Court recalls that the Basic Court [Judgment C.nr.411/2012] based its decision, among others, on the reasons that there was *"no prior written consent from the [Municipality], or addendum to the contract in regard to performing the works"* as required by the applicable legislation.

47. The Basic Court has also addressed the Applicant's arguments that the work performed should not have been considered as a construction contract, but a services contract instead. The Basic Court, in responding to this allegation, reasoned:

> *"based on the provision of Article 630 of LOR, this is a contract on construction as such it was foreseen in the job description mentioned in general requirements of the contract of 03.11.2009, therefore, in this case we are not dealing with a services contract as Claimant supposes in his written closing statement."*

48. The Court notes that the reasoning adopted by the Basic Court was confirmed by the Court of Appeal, which among others, reasoned that:

> *"The [Applicant] as a contractor is a specialized organization for contracting construction works and being that, in this respect it should have known that without consent, without addendum to the contract no work can be done if not foreseen by the contract. Moreover, the [Applicant] was aware of this fact where in in Article 2.2, Article 21 and 28.4 of the [main] contract it is clearly defined that no additional work is allowed which exceed the contracted price."*

49. The Court also reiterates that the Supreme Court, among others, concluded that:

> *"the additional works were not authorized by the contracting authority being the sole competent authority for issuing consent for additional works or through getting consent from the [Agency on Public Procurement] for signing the contract through the negotiated procedure in this case the [Applicant] has no legal basis to realize the right of compensation for the performed works, as was rightfully determined by the two courts".*

50. In this respect, the Court considers that the conclusions of the Basic Court, Court of Appeals and the Supreme Court were reached after a detailed examination of all arguments submitted by the Applicant. In this way, the Applicant was given the opportunity to present at all stages of the proceedings the arguments and evidence which he considered relevant to his case.

51. All the arguments of the Applicant, which were relevant to the resolution of the dispute, were heard and properly reviewed by the courts and the Court concludes

that the proceedings before the regular courts, viewed in their entirety, were fair. (See, *mutatis mutandis*, ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 29 and 30).

52. Considering the above, and the circumstances of the case as a whole, the Court notes that the Applicant did not substantiate that the circumstances of the case conferred to the Applicant a "legitimate expectation" protected under the right to property under Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 of the Convention. The ECtHR case law clearly maintains that a "legitimate expectation" cannot arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts. (See, the Judgment of the ECtHR of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, para.75).

53. The Court also recalls that the Applicant, relying in ECtHR Judgment *Zolotas v. Greece (no. 2)*, alleges that the state has a positive obligation to protect the right to property of the citizen, so it would be legitimate for the Applicant in this case to expect to be notified or prevented by the Municipality to continue making investments which put his financial interest to risk. The Applicant maintains that an early notification regarding this situation by the Municipality as public authority would have resulted in Applicant's actions that would ensure that the work would be performed in accordance with the law, and that it would therefore be able to preserve and protect his right to property.

54. In this regard, the Court notes that in the above Judgment (Zolotas v Greece (no2)) of the ECtHR found that: *"State has a positive obligation to protect citizens and to require that banks, in view of the potentially adverse consequences of limitation periods, should inform the holders of dormant accounts when the limitation period is due to expire and thus afford them the possibility of stopping the limitation period running, for instance by performing a transaction on the account."* Accordingly, by not notifying the account holders about the limitation period, the bank *"placed account holders, especially when they are ordinary citizens unversed in civil or banking law, at a disadvantage vis-à-vis the bank or even the State"*. (See ECtHR judgment of 29 January 2013, *Zolotas v. Greece (no. 2)*, application no.66610/09, paragraph 53).

55. However, the lack of establishment of a "legitimate expectation" aside, the Court also notes that the circumstances of the case of the Applicant differ from the circumstances in the case *Zolotas v. Greece (no. 2)*, because as specified, among others, by the Court of Appeals, the Applicant is a specialized organization for contracting construction works and being that, it was in a position to know that without a written contract or addendum to the existing contract, no additional work can be performed in accordance with the legislation in force. Therefore, with no prejudice to the appropriateness of actions of the municipality, this allegation of the Applicant is not grounded.

As to the allegations of the Applicant regarding the right to fair and impartial trial

56. The Court recalls that the Applicant alleges that the Supreme Court in a case that is similar to the one of the Applicant has decided differently, thus rising issues of the

right to fair and impartial trial under Article 31 of the Constitution in conjunction Article 6 of the Convention.

57. In this, regard the Court recalls the ECtHR case law, which, among others, emphasizes: *"[...] save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by the national courts.* (See, for example, Ādamsons v. Latvia, no. 3669/03, § 118, 24 June 2008). *Similarly, on this subject, it is not in principle its function to compare different decisions of national courts, even if given in apparently similar proceedings; it must respect the independence of those courts [...]".* (Judgment of the ECtHR of 20 October 2011, *Nejdet Şahin and Perihan Şahin v. Turkey*, No. 13279/05, paragraph 50).

58. The Court notes that the Applicant specifically refers to the Judgment of the Supreme Court [Rev. No. 35/2013 of 9 December 2013] submitted to the Court, by which the Supreme Court had rejected as ungrounded the revision against Judgment of the Court of Appeals which approved the findings of the Basic Court to oblige a government institution to pay for the additional works conducted by a contractor that where not foreseen in the initial contract.

59. With regard to the Applicant's claim, the Court again refers to the ECtHR case law, which has admitted that*: "A certain degree of distinction in legal interpretations [by the courts] can be accepted as an inherent feature of any judicial system [...] However, when the higher court finds no solution to contradictory decisions without any valid reason, it becomes a source of legal uncertainty. (*See ECtHR cases, *Beian v. Romania*, application No. 30658/05, Judgment of 6 March 2008, paragraph 39 and *Tomić and Others v. Montenegro*, applications no. 18650/09, 18676/09, 18679/09, 38855/09, 38859/09, 38883/09, 39589/09, 39592/09, 65365/09 and 7316/10, Judgment of 17 April 2012, paragraph 53).

60. However, the ECtHR has established in its case law the criteria for assessing the conditions in which contradictory decisions of the last instance courts are in contradiction with the right to a fair trial, namely it must be established whether there are any profound differences in the case law, whether the domestic law provides for a mechanism to overcome those inconsistencies, whether this mechanism has been implemented and if so, to what extent. (See *mutatis mutandis* the case of ECtHR *Iordan Iordanov and Others v. Bulgaria*, Application no. 23530/02, Judgment of 2 October 2009, para. 49-52).

61. In the present case, the Court finds that the Applicant referred and submitted only one Judgment of the Supreme Court [Rev. No. 35/2013 of 9 December March 2013], which, the Applicant alleges, in similar factual circumstances interpreted differently the substantive law.

62. In the light of the ECtHR case law, however, the Court considers that it is not possible to ascertain the existence of profound and long-lasting differences in the case law of the Supreme Court which endangers the principle of legal certainty by invoking only one Judgment of the Supreme Court, rendered around four (4) years earlier.

63. In addition, the Court notes that the Applicant did not explain and argue how his case is similar with the other case decided by the Supreme Court, referred to by the Applicant. The Applicant only concluded that the Supreme Court obliged the

Government *"to pay off the debt on behalf of additional works for fixing the sewage system as the Commission of the Respondent concluded that the works are completed and by the fact that the invoices delivered by the Claimant were not objected to"*.

64. Therefore, the Court considers that the Applicant has not submitted evidence nor has it substantiated its allegations for violation of his rights on fair and impartial trial or equality before the law. When such constitutional violations are alleged, the applicant should provide well-reasoned justification and convincing arguments. (See the Constitutional Court Case, KI45/15, *Elizabeta Arifi*, Resolution on Admissibility of 7 April 2016, para. 49).

65. In addition, the Court considers that the Applicant has not succeeded to show and prove that the proceedings before the Supreme Court were unfair or tainted by arbitrariness or that his rights and freedoms protected by the Constitution have been infringed by the alleged erroneous interpretation of the respective law. The Court reiterates that, the interpretation of law is a matter solely for the regular courts and is a matter of legality. No constitutional matter was substantiated by the Applicant. (See the Constitutional Court case KI63/16, Applicant *Astrit Pira*, Resolution on Admissibility, of 8 August 2016, para. 44. And also CaseKI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 dhe KI64/16, applicant *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Admissibility, of 15 November 2016, para. 62).

66. In this regard, the Court emphasizes that it is not its task to deal with errors of law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). It cannot itself assess that law that lead a regular court to issue one decision instead of another. If it was different the Court would act as "fourth instance court", which would result in a exceeding the limitations provided for its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and material law. (See case, of 21 January 1999, *Garcia Ruiz v. Spain*, no. 30544/96, para. 28; see also, case KI70/11, Applicant *Faik Hima, Magbule Hima dhe Bestar Hima*, Resolution on Inadmissibility of 16 December 2011.

67. The Court notes that the Applicant does not agree with the conclusions of the decision of regular courts. However, the mere fact that the Applicant is not satisfied with the outcome of the decisions of regular courts cannot raise on itself an arguable claim for violations of Article 31 [Right to a Fair and Impartial Trial] guaranteed by the Constitution. (See, *mutatis mutandis*, the ECtHR case *Mezotur Tiszazugi Tarsulat v Hungary*, No. 5503/02, Judgment of 26 July 2005).

68. Thus, the Court considers that the admissibility requirements established by the Rules of Procedure have not been met, because the referral must be considered as manifestly ill-founded as the presented facts do not in any way justify the allegation of a violation of the constitutional rights and as the Applicant does not sufficiently substantiate its claim.

69. Accordingly, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, as established by Article 113.7 of the Constitution, provided for in Article 48 of the Law, and as further specified in Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS,

The Constitutional Court of Kosovo, in accordance with Article 113 (7) of the Constitution, Articles 48 of the Law and Rule 36(1) (d) and (2) (b) of the Rules of Procedure, in the session held on 13 November 2017, unanimously

DECIDES

I. TO DECLARE the Referrals inadmissible;

II. TO NOTIFY the Parties of this Decision;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law; and

IV. TO DECLARE this Decision effective immediately;

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

Gresa Caka-Nimani | Arta Rama-Hajrizi