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

Prishtina, on 26 August 2019
Ref. no.:RK 1417/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI133/17

Applicant

Ali Gashi

Constitutional review of Decision Rev. No. 96/2017 of the Supreme Court of Kosovo of 1 June 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Ali Gashi from the village Vërmica, Municipality of Malisheva, represented by Xhevdet Krasniqi, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Decision [Rev. No. 96/2017] of 1 June 2017 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [CA. No. 902/2014] of 7 February 2017 of the Court of Appeals and Judgment [C. No. 432/13] of 24 January 2014 of the Basic Court in Peja (hereinafter: the Basic Court).

3. The challenged decision was served on the Applicant on 20 July 2017.

Subject matter

4. The subject matter is the constitutional review of the abovementioned Decision of the Supreme Court in conjunction with Judgment [CA. No. 902/2014] of 7 February 2017 of the Court of Appeals and Judgment [C. No. 432/13] of 24 January 2014 of the Basic Court.

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 the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

6. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Court

7. On 14 November 2017, the Applicant submitted the Referral to the Court.

8. On 16 November 2017, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Bekim Sejdiu.

9. On 29 November 2017, the Court notified the Applicant about the registration of the Referral and requested him to submit the evidence (acknowledgment of receipt) indicating the date of receipt of the challenged Decision, and based on Article 21 (Representation) of the Law and Rule 32 of the Rules of Procedure, requested him to submit to the Court the power of attorney in the proceedings before the Court. On the same date, a copy of the Referral was sent to the Supreme Court and the Basic Court.

10. On 12 December 2017, the Basic Court submitted additional documents and the acknowledgment of receipt indicating the date of receipt of the challenged Decision by the Applicant.

11. On 13 December 2017, the Applicant submitted the requested documents to the Court.

12. On 24 January 2018, a copy of the Referral was sent to the Presidency of the Islamic Community of Kosovo (hereinafter: PICK) and the Islamic Community Council in Peja (hereinafter: ICC in Peja) for eventual comments regarding the Referral No. KI133/17.

13. On 30 January 2018, the ICC in Peja submitted the relevant comments to the Court.

14. On 16 June 2018, the mandate of judges: Snezhana Botusharova and Almiro Rodrigues was terminated. On 26 June 2018, the mandate of judges: Altay Suroy and Ivan Čukalović was terminated.

15. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

16. On 7 May 2019, as the mandate as judges of the Court of four abovementioned judges was over, the President of the Court, based on the Law and the Rules of Procedure, rendered Decision KSH. KI133/17, on the replacement of the members of the Review Panel Altay Suroy and Ivan Čukalović and the Review Panel was reappointed composed of judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Bajram Ljatifi.

17. On 29 July 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

18. According to the case file, it follows that the Applicant worked as a chief imam in ICC in Peja.

19. On 26 November 2002, the PICK by Notification [No. 469/02] informed all authorities of the Islamic Community of Kosovo that in the absence of a law on pensions in the Republic of Kosovo and until its adoption, the employees of the Islamic Community who meet the retirement requirements, will be compensated in the name of the pension at 60% of the amount of the salary.

20. On 27 August 2009, the Applicant's employment relationship with the ICK in Peja was terminated due to reaching retirement age and the PICK, by Decision [No. 396/09] recognized the Applicant's right to a *'pension - financial assistance'* in the amount of 60% of monthly personal income, namely 300 euro per month.

21. On 30 December 2011, the ICC in Peja by Decision [No. 226/11] annulled the aforementioned Decision and as of 1 January 2012, finally terminated the *'pension-financial assistance'* to the Applicant. The ICC in Peja, *inter alia*, justified its decision with limited budgetary opportunities.

Regarding procedures within the structures of the Islamic Community of Kosovo

22. On an unspecified date, the Applicant filed a complaint with the ICC in Peja regarding its Decision to terminate the relevant compensation.

23. On 21 March 2012 and 22 January 2013, the PICK addressed the ICC in Peja (i) stating that Decision [No. 226/11] of 30 December 2011 is in contradiction with the Decision [No. 396/06] of the PICK; and (ii) requested the latter to annul Decision [No. 226/11] of 30 December 2011.

24. On 8 May 2013, the ICC in Peja rejected the Applicant's appeal.

With regard to court proceedings

25. In 2013, the Applicant filed a claim against ICC in Peja with the Basic Court.

26. On 24 January 2014, the Basic Court, by Judgment [C. No. 432/13] approved the Applicant's claim as grounded by (i) reasoning that there is a civil-legal relationship between the claimant, namely the Applicant and the respondent, namely the ICC in Peja, pursuant to paragraph 1 of Article 262 of the Law on Obligation Relationships of 30 March 1978 (hereinafter: the LOR); and (ii) obliged the ICC in Peja to compensate the Applicant in the name of debt for unpaid pensions the amount of 7,200 euro and the costs of the proceedings.

27. On 19 February 2014, the ICC in Peja filed an appeal against the abovementioned Judgment of the Basic Court with the Court of Appeals, on the grounds of essential violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law, and proposed that the abovementioned Judgment should be annulled and the case be remanded for retrial.

28. Meanwhile, on 6 May 2014, the Assembly of the Republic of Kosovo adopted Law No. 04/L-131 on Pension Schemes Financed by the State (hereinafter: the Law on Pensions), whereas on 2 December 2014, the PICK notified Decision [No. 1068/14], approved on 4 September 2014, which repealed its Decision on pensions, with effect from 1 January 2015.

29. On 7 February 2017, the Court of Appeals by Judgment [CA. No. 902/2014] rejected the appeal of the ICC in Peja as ungrounded and upheld the Judgment of the Basic Court.

30. On an unspecified date, the Applicant submitted a proposal for enforcement based on the abovementioned Judgment of the Court of Appeals. Private Enforcement Agent by the Enforcement Order [P. No. 53/2017] allowed the enforcement. According to the case file, this Order was enforced.

31. On 14 March 2017, the ICC in Peja filed a request for revision against the judgments of the Court of Appeals and the Basic Court, with the Supreme Court, on the grounds of violation of the provisions of contested procedure and erroneous application of the substantive law. The claimant, namely the Applicant, filed a response to the revision.

32. On 1 June 2017, the Supreme Court by Decision [Rev. No. 96/2017] approved as grounded the revision of the ICC in Peja, annulled the Judgments of the lower instance courts and dismissed the Applicant's statement of claim as inadmissible. The Supreme Court reasoned, *inter alia*, that the lower instance courts do not have jurisdiction to consider the litigation between the Applicant and the ICC in Peja. The Supreme Court based its finding on the lack of jurisdiction of the courts on paragraph 2 of Article 5 (Religious Neutrality) and paragraph 2 of Article 7 (Self-Determination and Self-Regulation) of UNMIK Regulation No. 02/31 on Freedom of Religion hereinafter: UNMIK Regulation) and paragraph 2 of Article 39 [Religious Denominations] of the Constitution.

Comments submitted by ICC in Peja

33. The authorized representative of the ICC in Peja stated before the Court that the Decision of the Supreme Court is fair because (i) the independence of Religious Denominations, including internal organization, is guaranteed by paragraph 2 of Article 5 and paragraph 2 of Article 7 of UNMIK Regulation and paragraph 2 of Article 39 of the Constitution; and (ii) the courts have no jurisdiction to adjudicate matters pertaining to the organization, administration, and independence of Religious Denominations. In support of these arguments, the ICC in Peja referred to the Court's Resolution on Inadmissibility of 28 January 2016 in the case KI63/15, with Applicant *Bedri Haxhi Halili*.

Applicant's allegations

34. The Applicant alleges that the Decision [Rev. No. 96/2017] of 1 June 2017 of the Supreme Court, violated his fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law], 8 [Secular State], 24 [Equality Before the Law], 31 [E Right to Fair and Impartial Trial], 32 [Right to legal Remedies], 46 [Protection of Property] and 54 [Judicial Protection of Rights] of the Constitution. The Applicant also alleges that this Decision violated Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR) and Article 10 of the Universal Declaration of Human Rights (hereinafter: the Universal Declaration).

35. As to the allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant alleges a violation of his right to access to court; whereas in relation to the allegations of violation of Articles 32 and 54 of the Constitution, the Applicant alleges violations of the legal remedy and judicial protection of rights. In support of his allegations, the Applicant refers to the cases of the Court KI04/12, Applicant *Esat Kelmendi*, Judgment of 24 July 2012 (hereinafter: case KI04/12) and KI89/13, Applicant *Arbresha Januzi*, Judgment 15 May 2014 (hereinafter: case KI89/13).

36. Finally, the Applicant requests the Court to declare his Referral admissible and to declare invalid the Decision [Rev. No. 96/2017] of the Supreme Court of 1 June 2017, remanding the case for retrial.

Admissibility of the Referral

37. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.

38. 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".*

39. The Court further 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...".*

40. As to the fulfillment of these criteria, the Court considers that the Applicant is an authorized party and challenges an act of a public authority, namely Decision [Rev. No. 96/2017] of 1 June 2017 of the Supreme Court, having exhausted all

legal remedies provided by law. The Applicant also clarified the fundamental rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law and submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.

41. The Court also notes in this respect that the Applicant's Referral has met the criteria set out in items (a), (b) and (c) of paragraph 1 of Rule 39 [Admissibility Criteria] of the Rules of Procedure.

42. However, in the circumstances of the present case, the Court also refers to item (b) of paragraph 3 of Rule 39, according to which the Court must declare a referral inadmissible if it is incompatible *ratione materiae* with the Constitution.

43. In this context, the Court recalls that the essence of the Applicant's allegations relates to his constitutional right to a court, namely the right of access to the court. This right is guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. But this right, and as will be elaborated below, is not absolute and it is subject to certain limitations. Taking into account that in the circumstances of the present case, the Applicant's dispute relates to a Religious Confession which autonomy is guaranteed by the Constitution, the Court must first consider whether, in the circumstances of the present case, Article 31 of the Constitution in conjunction with Article 6 of the ECHR is applicable.

44. In order to determine this applicability, the Court will further (i) elaborate on the general principles deriving from the case law of the European Court of Human Rights (hereinafter: the ECtHR) with regard to the right to a court, in harmony with which based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret fundamental rights and freedoms; and then (ii) apply these principles to the circumstances of the present case.

(i) General principles regarding "the right to a court"

45. The right of access to court for the purposes of Article 6 of the ECHR is defined in case *Golder v. the United Kingdom*. (See ECtHR case, *Golder v. the United Kingdom*, Judgment of 21 February 1975, paragraphs 28-36). Referring to the principle of the rule of law and the avoidance of arbitrary power, the ECtHR found that the "*right of access to court*" is an essential aspect of the procedural guarantees enshrined in Article 6 of the ECHR. (On the general principles of right to a court, see also ECHR Guide of 31 December 2018 to Article 6 of the ECHR, Right to Fair and Impartial Trial, Civil Aspects, Part II, Right to a court and also, *inter alia*, the case of the ECtHR, *Zubac v. Croatia*, Judgment of 5 April 2018, paragraph 76). Moreover, according to the ECtHR, this right provides everyone with the right to address respective issue related to "*civil rights and obligations*" before a court. (See ECtHR case, *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 84 and references therein.).

46. The Court in this regard notes that the right to a court, as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution

in conjunction with Article 6 of the ECHR, provides that all litigants should have an effective judicial remedy enabling them to assert their civil rights. (See Cases of the ECHR, *Běleš and Others v. the Czech Republic*, Judgment of 12 November 2002, paragraph 49; and *Naït-Liman v. Switzerland*, Judgment of 15 March 2018, paragraph 112).

47. Therefore, based on the case law of the ECtHR, everyone has the right to file a *'lawsuit'* related to their respective *"civil rights and obligations"* with a court. Article 31 of the Constitution in conjunction with Article 6 of the ECHR embodies the *"right to a court"*, that is, *"the right of access to a court"*, which implies the right to institute proceedings before the courts in civil matters. (See ECtHR case *Golder v. the United Kingdom*, cited above, paragraph 36). Therefore, anyone who considers that there has been unlawful interference with the exercise of his/her civil rights and claims to have been denied the opportunity to challenge such a claim before a court may refer to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, invoking the relevant right of access to a court.

48. More specifically, according to the ECtHR case law, there must first be *"a civil right"* and second, a *"dispute"* as to the legality of an interference that affects the very existence or scope of *"a civil right"* protected. The definition of both of these concepts should be substantial and informal. (See, *inter alia*, the cases of ECtHR *Le Compte, Van Leuvenand De Meyere v. Belgium*, Judgment of 23 June 1981, paragraph 45; *Moreira de Azevedo v. Portugal*, Judgment of 23 October 1990, paragraph 66; *Gorou v. Greece* (no. 2), Judgment of 20 March 2009, paragraph 29; and *Boulois v. Luxembourg*, Judgment of 3 April 2012, paragraph 92). The *"dispute"*, however, based on the ECtHR case law, must be (i) *"genuine and serious"* (see, in this context, the ECtHR cases *Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982, paragraph 81 and *Cipolletta v. Italy*, Judgment of 11 January 2018, paragraph 31); and (ii) the outcome of the proceedings before the courts must be *"decisive"* for the civil right in question. (See, in this context, the case of the ECtHR, *Ulyanov v. Ukraine*, Judgment of 5 October 2010). According to the ECtHR case law, the *"tenuous links"* or *"remote consequences"* between the civil right in question and the outcome of these proceedings are not sufficient to fall within the scope of Article 6 of the ECHR. (See, in this context, ECHR cases, *Lovrić v. Croatia*, Judgment of 4 April 2017, paragraph 51 and *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 71 and references therein).

49. In such cases, when it is found that there is a *"civil right"* and a *"dispute"*, Article 31 of the Constitution in conjunction with Article 6 of the ECHR guarantee to the affected individual the right *"to have the question determined by a tribunal"*. (See ECtHR case, *Z and Others v. the United Kingdom*, Judgment of 10 May 2001, paragraph 92). A court's refusal to consider the parties' claims as to the compatibility of a procedure with the basic procedural guarantees of fair and impartial trial, limits their access to the court. (See the case of ECHR *Al Dulimi and Montana Management Inc. v. Switzerland*, Judgment of 21 June 2016, paragraph 131).

50. Moreover, according to the ECtHR case law, the ECHR does not aim at guaranteeing the rights that are *"theoretical and false"*, but the rights that are

"practical and effective". (See, for more on *"practical and effective"* rights, ECtHR Guide of 31 December 2018 to Article 6 of the ECHR, The Right to Fair and Impartial Trial, Civil Aspects, Part II. Right to Court, A. Right and Access to Court, 1. A practical and effective right; and the ECHR cases *Kutić v. Croatia*, cited above, paragraph 25 and the references cited therein; and *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein).

51. Therefore and importantly, within the meaning of these rights, Article 31 of the Constitution in conjunction with Article 6 of the ECHR, guarantee not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court. (See ECHR cases, *Kutić v. Croatia*, Judgment of 1 March 2002, paragraphs 25-32; *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein; *Aćimović v. Croatia*, Judgment of 9 October 2003, paragraph 41; and *Beneficio Cappella Paolini v. San Marino*, Judgment of 13 July 2004, paragraph 29).

52. The abovementioned principles, however, do not imply that the right to court and the right of access to court are absolute rights. They may be subject to limitations, which are clearly defined by the ECtHR case law. (See ECHR Guide of 31 December 2018, Article 6 of the ECHR, Right to Fair and Impartial Trial, Civil Aspects, and specifically with respect to limitations on the right to court, Part II. Right to Court, A. Right and Access to Court 2. Limitations). However, these limitations cannot go so far as to restrict the individual's access so as to impair the very essence of the right. (See, in this context, ECtHR case, *Baka v. Hungary*, Judgment of 23 June 2016, paragraph 120; and *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 89 and references therein). Whenever access to the court is limited by the relevant law or respective case law, the Court examines whether the limitations touches on the essence of the law and, in particular, whether that limitation has pursued a *"legitimate aim"* and whether there is *"a reasonable relationship of proportionality between the means employed and the aim sought to be achieved"*. (See ECHR cases, *Ashingdane v. the United Kingdom*, Judgment of 28 May 1985, paragraph 57; *Lupeni Greek Catholic Parish v. Romania*, cited above, paragraph 89; *Naït-Liman v. Switzerland*, cited above, paragraph 115; *Fayed v. the United Kingdom*, Judgment of 21 September 1990, paragraph 65; and *Marković and Others v. Italy*, Judgment of 14 December 2006, paragraph 99).

(ii) Application of these general principles to the circumstances of the present case

53. In the light of the foregoing, and in so far as relevant to the circumstances of the present case, the Court notes that the right to a court is, in principle, guaranteed in respect of *"disputes"* concerning a *"civil right"*.

54. In this context, the Court notes that there are two essential issues to determine the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The former relates to *"civil right"* and the latter to the existence of a *"dispute"*. Consequently, in the circumstances of the present case, the Court will first consider whether the latter involve in itself a *"civil right"*.

55. The Court, in this respect, first recalls that the Applicant was retired on 27 August 2009. Based on the decisions of the PICK, namely (i) Notice [no. 469/02] of 26 November 2002; and (ii) Decision [no. 396/09] of 27 August 2009, he had benefited from the pension of the Islamic Community of Kosovo until 30 December 2011, the date on which the ICC in Peja by Decision [no. 226/11] terminated the Applicant's income. The latter challenged this decision of the ICC in Peja, initially within the structures of the Islamic Community of Kosovo. In this regard, the Court notes that the PICK requested the ICC in Peja to annul the Decision of 30 December 2011, a request which was not respected by the ICC in Peja. As a result, the Applicant addressed the regular courts. The Basic Court and the Court of Appeals approved, namely upheld, the Applicant's claim. These Judgments, however, were annulled by the Supreme Court by the Decision [Rev. No. 96/2017] of 1 June 2017, which held that pursuant to paragraph 2 of Article 39 of the Constitution and paragraph 2 of Article 5 and paragraph 2 of Article 7 of UNMIK Regulation, the courts in the Republic of Kosovo do not have jurisdiction to examine the litigation between the Applicant and the ICC in Peja. The Applicant challenges this Decision to the Court, alleging that it limits his right of access to court.

56. In this respect, the Court first notes that, in the circumstances of the present case, the Applicant's right to pension derives from the internal rules and decisions of the Islamic Community of Kosovo. According to the case file, it follows that the latter's decision to enable its members to retire was made in the absence of and not based on the Law on Pensions, which was approved by the Assembly of the Republic of Kosovo on 6 May 2014. Specifically , the Court recalls that the Applicant's right to a pension of the Islamic Community of Kosovo derives first from Notice [No. 469/02] of 26 November 2002 of the PICK, and subsequently from Decision [No. 396/09] of the latter, through which the Applicant was granted the right to *'pensions and financial assistance'*. According to the case file, following the adoption of the Law on Pensions, on 4 September 2014 the PICK annulled its Decision on pensions for its members.

57. Therefore, the Applicant's "*right*" to pension and his dispute with the ICC in Peja was based and governed by the internal rules of the Islamic Community of Kosovo, which organizational independence is protected and guaranteed. by the Constitution, while it was neither grounded nor regulated by the applicable laws of the Republic of Kosovo.

58. The Court further notes that, despite the finding of the Basic Court and the Court of Appeals, the Supreme Court, by its Decision, which approved the respondent's revision, namely of the ICC in Peja as admissible, reasoned that the Applicant's right , in the circumstances of the present case, derives from his employment relationship regulated through the internal rules of the Islamic Community of Kosovo, which organizational matters, according to the Supreme Court's reasoning, do not fall within the scope of the regular courts, and consequently the latter do not have the competence to resolve the respective disputes. Specifically, in this regard, the Supreme Court emphasized:

> *"The Supreme Court assesses that the revision of the respondent of the Islamic Community Council in Peja is inadmissible due to the fact that the regular courts do not have jurisdiction to decide upon the statement of claim*

of the claimant regarding the realization of monthly salaries in the name of the old age pension at the respondent. The statement of claim of the claimant is related to the realization of the right deriving from the employment relationship at the Islamic Community of Kosovo, defined by the Constitution of the Islamic Community of Kosovo based on the Decision of the presidencly of this Community. The internal organization of religious communities is not under the jurisdiction of regular courts, religious communities are separated from public authorities and regulate and administer independently their internal organization. Consequently, the statement of claim of the claimant is protected by the Islamic Community of Kosovo and by the Constitution of the Islamic Community".

59. However, despite (i) the fact that the "*right*" of the Applicant, in the circumstances of the present case, is not based on the applicable law of the Republic of Kosovo, it derives from the internal regulation of a Religious Confession; and (ii) the reasoning of the Supreme Court, the Court, in determining whether the Applicant's "*right*", in the circumstances of the present case, is a "*civil right*", will refer to the ECtHR case law. The latter, has examined a number of cases related to religious denominations, but in the case of *Karoly Nagy v. Hungary* (Judgment of 14 September 2017), it considered a case very similar to the circumstances of the present case. It should be noted that the Hungarian Constitution, which case was examined in this context by the ECtHR, also specifically stipulates the autonomy and independence of the Church and its separation from the State. (See the provisions of the Hungarian Constitution relevant to the circumstances of the case in Part II of the ECtHR Judgment in *Karoly Nagy v. Hungary*, cited above).

60. In the present case, the Applicant alleged a violation of his rights of access to a court guaranteed by the ECHR, challenging the decisions of the Hungarian courts which refused to deal with his case on the merits, considering that, his right to compensation was not determined by state laws, but by the rules of the Hungarian Reformed Church, where he worked as a pastor.

61. More specifically, the Applicant's dispute with the relevant Church had arisen as a result of a disciplinary procedure initiated by the latter which had initially resulted in the suspension of the Applicant by reducing his income by 50%, and subsequently on his removal from office. (For the factual circumstances of the present case, see the relevant ECtHR case *Karoly Nagy v. Hungary*, cited above, paragraphs 8 to 24). The internal organs of the respective Church rejected his complaints. The Hungarian regular courts also rejected his request, pointing out that his income was determined by the internal rules of the relevant Hungarian Church, and did not meet the criteria for being considered contractual relationship based on the relevant civil law, and consequently, the regular courts had no jurisdiction to settle the respective dispute.

62. The case was further examined by the Hungarian Constitutional Court. The latter, by its Decision No. 32/2003, examined the interconnection of the right of access to court and individuals in service in religious denominations. The Hungarian Constitutional Court stated that these individuals have the right to access to court in all disputes related to rights deriving from the state laws. The relevant court further stated that the courts are obliged to determine all cases,

in the context of such circumstances, if a right allegedly infringed is regulated by state law. It is important to note that the Hungarian Constitutional Court held that (i) the principle of separation of the Church from the State cannot result in an infringement of the right of individuals of access to the court; however (ii) the right to a court guarantees these individuals only the resolution of disputes which are based on state legislation; and (iii) that in resolving these disputes, the courts, namely the State, must also respect the autonomy of the Church. (See the reasoning of Hungarian Constitutional Court in paragraph 29 of the ECtHR case *Karoly Nagy v. Hungary*, cited above).

63. The issue was finally considered by the ECtHR. Its Grand Chamber confirmed the Hungarian courts' decisions, declaring the Applicant's allegations regarding the right of access to court as incompatible *ratione materiae* with the ECHR. The ECtHR noted, *inter alia*, that the service, compensation and benefits of the Applicant were determined by act of appointment based on the internal rules of the Church; and that consequently the Applicant's right to the disputed compensation did not derive from the applicable civil law of the Hungarian State. (See ECtHR reasoning in paragraphs 64-77 in *Karoly Nagy v. Hungary*, cited above). As a result, the ECtHR found that in the circumstances of the case there was no "*civil right*", and therefore the guarantees of Article 6 of the ECHR were not applicable and consequently the applicant's application was declared incompatible *ratione materiae* with the ECHR. (See ECtHR case *Karoly Nagy v. Hungary*, cited above, paragraph 78).

64. The Court notes that, as in the aforementioned case of the ECtHR, the Applicant's right to pension determined by the PICK Decision derives and is determined by the internal rules of the Islamic Community of Kosovo and is not based on the civil laws of the Republic of Kosovo. In such circumstances, the Court must find that, in the circumstances of the present case, a "*civil right*" is not involved and which, together with the existence of a "*dispute*", would guarantee also the Applicant's right of access to court, and more specifically the right to resolution of this "dispute" by a court as one of the procedural guarantees set out in Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Court also states that a fact that such an agreement or right deriving from the internal rules of a Religious Confession may be similar to a contractual agreement deriving from civil law, not necessarily results in the finding that in the circumstances of a case there is a "*civil right*", the existence of which, would not limit the right of access to court.

65. The Court, however, should also recall and emphasize that the limitation of the fundamental rights and freedoms, namely of the right to a court in the circumstances of a particular case must be prescribed by law and cannot restrict the relevant right to that extent, as to impair its essence and that any restrictions, in order to be compatible with the procedural guarantees enshrined in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, must (i) pursue a "*legitimate aim*"; and (ii) have a "*reasonable relationship of proportionality between the means employed and the aim sought to be achieved*". These criteria are also embodied in Article 55 [Limitation on Fundamental Rights and Freedoms] of the Constitution.

66. The Court considers that in the circumstances of the present case, such a limitation has a "*legitimate aim*" and entails "*proportionality between the means employed and the aim pursued.*"

67. In this regard, the Court notes that based on Article 39 of the Constitution, *inter alia* (i) Religious denominations have autonomy; and (ii) are free to regulate independently their internal organization. This autonomy and organizational independence does not necessarily result in a limitation of the right of access to court guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR with regard to individuals serving in Religious Denominations. The constitutional right of access to court is also guaranteed to individuals serving in Religious Denominations, as any other citizen, provided that the subject matter of the dispute derives and is regulated by applicable state law, which, as discussed above, is not the case in the circumstances of the present case.

68. Given that the public authorities in the Republic of Kosovo are separate from Religious Denominations, they cannot be used to enforce internal rules and decisions of Religious Denominations. Moreover, the principle of the separation of Religious Denominations from public authorities prevents the latter from interfering in the internal affairs of the former.

69. That being said, and notwithstanding the reasoning of the Supreme Court, which establishes not only the lack of jurisdiction of the regular courts to resolve the Applicant's case, but also the jurisdiction of the regular courts to resolve all disputes relating to internal matters of Religious Denominations, the Court reiterates that (i) the principle of the autonomy of Religious Denominations and their internal organizational independence may not result in a violation of the right of individuals of access to court guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR; (ii) the courts must assess the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR in the circumstances of each case to determine whether there is a "*civil right*" and a "*dispute*"; the relevant "*civil right*" shall be based on the applicable civil laws of the Republic of Kosovo; and (iv) that in resolving these disputes, the courts must also respect the autonomy of the relevant Religious Confession, as defined by the Constitution.

70. The Court at the end also recalls the fact that the Applicant in support of his arguments refers to two cases of the Court, namely KI04/12 and KI89/13. However, apart from the fact that the Applicant has mentioned and cited these decisions, he did not elaborate its factual, and legal connection, with the circumstances of the present case. The Court emphasizes that the reasoning of other court decisions must be interpreted in the context and in light of the factual circumstances in which they were rendered. (See, in this context, Judgment in Case KI 48/18 of 4 February 2019, with Applicants *Arban Abrashi and the Democratic League of Kosovo (LDK),* paragraph 275; and case KI 119/17, Applicant *Gentian Rexhepi,* Resolution on Inadmissibility, of 3 May 2019, paragraph 80). Furthermore, the Court notes that none of the cases referred by the Applicant corresponds to the circumstances of his case nor do they relate to Religious Denominations.

71. Therefore, the Court notes that in the circumstances of the present case, there is no "*civil right*" established by the civil laws of the Republic of Kosovo and, as a result, Article 31 of the Constitution in conjunction with Article 6 of the ECHR, are not applicable. Therefore, the Court must find that the Applicant's Referral is incompatible *ratione materiae* with the Constitution and, in accordance with item (b) of paragraph 3 of Rule 39 of the Rules of Procedure, is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47 of the Law, and Rules 39 (3) and 59 (2) of the Rules of Procedure, on 29 July 2019, 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**

Gresa Caka-Nimani | Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.