



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

Prishtina, 16 December 2019  
Ref. no.:RK 1486/19

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI109/18**

Applicant

**Limak Kosovo International Airport J.S.C. “Adem Jashari”**

**Constitutional Review of Judgment Rev.no.54/2018 of the Supreme  
Court of Kosovo, of 12 April 2018**

**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 Limak Kosovo International Airport “Adem Jashari” Joint Stock Company (hereinafter: the Applicant), with its seat in the village of Vrellë, Municipality of Lipjan, represented by authorization by Fazli Gjonbalaj and Leonora Fejzullahu.

## **Challenged decision**

2. The Applicant challenges the Judgment Rev. no. 54/2018 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 12 April 2018.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

## **Legal basis**

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, on Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121 (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 30 July 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 23 August 2018, pursuant to Rule 40.1 of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI 36/18, KI 60/18, KI 65/18, KI 80/18, KI 81/18, KI 82 / 18, KI 109/18, KI 122/18, KI 123/18 and KI 124/18. Judge Bekim Sejdiu was appointed as Judge Rapporteur for all these cases. All of these Referrals were submitted by the Applicant during the period March-August 2018.
7. On 11 September 2018, the President of the Court appointed the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and Radomir Laban (members).
8. On 13 September 2018, the Court notified the Applicant and the Supreme Court about the joinder of Referrals KI36 / 18, KI 60/18, KI 65/18, KI 80/18, KI 81/18, KI 82/18, KI 109 / 18, KI 122/18, KI 123/18 and KI 124/18.
9. On 14 September 2018, the Court notified the Basic Court in Prishtina about the registration and joinder of the cases and requested from it to submit to the Court the acknowledgments of receipt related to the cases: KI36/18, KI81/18, KI82/18 and KI124/18.
10. On 1 October 2018, the Basic Court in Prishtina submitted the requested acknowledgments of receipt to the Court.

11. On 17 October 2018, the Applicant submitted a letter to the Court requesting that the Referral no. KI109/18 be examined separately from the Referral no. KI36/18, alleging that the cases are not of the same nature.
12. On 5 April 2019, the Court considered and approved the Applicant's Referral concerning the severance of Referral KI109/18 from Referral KI36/18. The Court also, pursuant to Rule 40 (3) of the Rules of Procedure, ruled that Referrals KI36/18, KI60/18, KI65/18, KI80/18, KI81/18, KI82/18, KI109/18, KI122/18, KI123/18 and KI124/18 to be examined separately, in individual cases, with the same Judge Rapporteur and Review Panel.
13. On 11 April 2019, the Court notified the Applicant and the Supreme Court about the severance of Referrals KI36/18, KI 60/18, KI 65/18, KI 80/18, KI 81/18, KI 82/18, KI 109/18, KI 122/18, KI 123/18 and KI 124/18.
14. On 12 April 2019, the Applicant submitted to the Court a submission titled *"Submission, concerning the cases registered at the Constitutional Court, and in particular the case registered at the Constitutional Court under number 132/18"*, in which it basically reiterated the allegations which it had made earlier.
15. On 16 May 2019, the Applicant submitted to the Court a submission titled *"Submission concerning the cases registered at the Constitutional Court"*, wherein it reiterated its previous allegations.
16. On 14 October 2019, the Applicant filed with the Court another submission entitled *"Submission concerning the Case KI 109/18"* in which it reiterated the same allegations it had made in the Referral.
17. On 25 October and 8 November 2019, the Applicant submitted to the Court two requests for urgency to have its case dealt with.
18. On 7 November 2019, the Review Panel after considering the report of the Judge Rapporteur unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of case facts**

19. On 12 August 2010, the Government of the Republic of Kosovo and the Applicant signed a Public-Private Partnership Agreement (hereinafter: PPPA), regarding Prishtina Airport. Prior to the PPP Agreement, Prishtina Airport was renamed Prishtina International Airport "Adem Jashari" (hereinafter: PIA). Based on the PPP Agreement, the Applicant took over the obligation to keep the employees employed for another 3 (three) year period.
20. On the basis of the case file, it is noted that B.SH (hereinafter: the Employee) had been in regular employment relationship with the Applicant from 4 April 2011 until 4 April 2016

21. On 10 November 2015, the Applicant's Disciplinary Commission decided to terminate the employee's employment relationship on the ground that the employee had committed serious disciplinary violations.
22. On 18 November 2015, the Employee submitted to the Applicant's Complaint Board a complaint against the decision of the Disciplinary Commission.
23. Based on the case file it results that this employee's complaint has never been decided.
24. On an unspecified date, the employee filed a claim with the Basic Court seeking annulment of the decision on termination of the employment relationship and compensation of damage.
25. On 11 November 2016, the Basic Court, by Judgment C. no. 511/2015, approved the claim of the employee as grounded and obliged the Applicant to: (i) reinstate the employee to work, (ii) cover all costs of the contested procedure.
26. The Basic Court, inter alia, stated in its reasoning that on the occasion of the termination of the employment relationship the provisions of the Applicant's Internal Act on Disciplinary and Complaints Procedures were not respected. This finding of the Basic Court had to do with the composition of the Disciplinary Commission, to which the member of the Independent Trade Union was not invited, as provided for in Article 8.1 of the Applicant's Internal Act. Moreover, the Basic Court reasoned that the decision on dismissal from work was not taken by the General Manager but by the Chief Executive, contrary to Article 8.15 of the said Act.
27. The Applicant submitted to the Court of Appeals an appeal against the aforementioned Judgment of the Basic Court, alleging substantial violations of procedural provisions, erroneous determination of the factual situation and erroneous application of substantive law. In particular, the Applicant alleges that the Basic Court erroneously determined the factual situation, claiming that the representative of the Independent Trade Union was invited but he did not take part.
28. On 12 December 2017, the Court of Appeals, by Judgment Ca.no.1519/2017, rejected the appeal as ungrounded and confirmed the Judgment of the Basic Court, C.no.511/2015, considering the same as just and lawful. In the reasoning of its Judgment, the Court of Appeals stated that the court of the first instance gave concrete reasons on the decisive facts, by providing adequate explanations for such a decision based on the relevant legal provisions.
29. As regards the Applicant's central allegation regarding the (non) inviting of the representative of the Independent Trade Union, the Court of Appeals in the reasoning of its Judgment stated that: *"According to the findings of this court the respondent has failed to submit sufficient evidence regarding the regular invitation of the representative of the trade union. The first instance court has correctly established the relevant facts in this legal case"*.

30. The Applicant filed a revision with the Supreme Court against the Judgment of the Court of Appeals, alleging substantial violations of the provisions of the contested procedure and erroneous application of substantive law, and reiterated the allegation that the representative of the Independent Trade Union was invited to take part in the Disciplinary Commission, but he failed to take part.
31. On 12 April 2018, the Supreme Court of Kosovo, by Judgment Rev. no. 54/2018, rejected as unfounded the Applicant's revision. The Supreme Court in its Judgment emphasized that the composition of the Disciplinary Commission was incomplete, since the Trade Union representative had been absent and on the basis of the evidence presented by the Applicant it resulted that the representative of the Independent Trade Union was not invited.

### **Applicant's allegations**

32. The Court recalls that the Applicant alleges that the challenged decision violated its rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] of the Constitution and Article 6 (Right to fair trial) of the ECHR.
33. The Applicant alleges that the Supreme Court did not provide a sufficient reasoning in its decision. According to the Applicant, as a result of insufficient reasoning of the decision, his rights guaranteed by Articles 31, 32 of the Constitution, in conjunction with Article 6 of the ECHR, have been violated. In relation to this allegation, the Applicant states that: *"The Judgment of the Supreme Court lacks sufficient reasoning, especially with regard to the substantial violations of the provisions of contested procedure (erores in procedanto) of the Law on Contested Procedure"*.
34. The Applicant alleges that the Supreme Court in the respective judgment has erroneously applied the substantive rights *"erore in iudicando"* of the Law on Labour, No.03/L-212, Employment Contract and Regulation/Disciplinary and Complaints Procedure, by erroneously confirming Article 8.1 of the Respondent's Internal Act on Disciplinary and Complaints Procedures.
35. The Applicant further alleges that: *"The Court makes an erroneous confirmation when stating that the composition of the Disciplinary Commission was incomplete as the Trade Union representative has been absent which is unacceptable for the Respondent since we have submitted to the Court a written fact that the representative of the union was invited but he failed to assist in the session without providing any written justification in that respect"*.
36. The Applicant also cites the Judgment KI138/15 of the Constitutional Court and claims that *"the application of substantive law which could have been a fact was decisive for the rendering of the judgment of that court but the Supreme Court did not address this issue at all, instead it only ascertained that the courts of the lower instances have applied the provisions of the substantive law in a correct manner"*.

37. Therefore, the Applicant alleges that the Supreme Court did not sufficiently justify its judgment and did not address the issues raised by the judgments of the lower courts.
38. The Applicant requests from the Court to repeal the Judgment of the Supreme Court and remand the case for retrial.

### **Relevant legal provisions**

#### ***Law No. 03 / L-212 on Labour***

##### *Article 10 [Employment Contract]*

- 1. An employment contract shall be concluded in written form and signed by the employer and employee.*
- 2. Employment contract may be concluded for:*
  - 2.1. an indefinite period;*
  - 2.2. a fixed period; and*
  - 2.3. specific task and duties.*
- 3. Employment contract which contains no indication of its duration shall be deemed to be for an unspecified period of time.*
- 4. A contract for a fixed period may not be concluded for a cumulative period of more than ten (10) years.*
- 5. A contract for a fixed period of time that is expressly or tacitly renewed for a continued period of employment of more than ten (10) years shall be deemed to be a contract for an indefinite period of time.*

##### *Article 67 [Termination of Employment Contract on Legal Basis]*

- 1. Employment contract, on legal basis, may be terminated, as follows:*
  - [...]*
  - 1.3. With the expiry of duration of contract;*

##### *Article 70 [Termination of Employment Contract by the Employer]*

- 1. An employer may terminate the employment contract of an employee with the prescribed period of notice of cancellation, when:*
  - 1.1. Such termination is justified for economic, technical or organizational reasons;*
  - 1.2. The employee is no longer able to perform the job.*
  - 1.3. The employer may terminate the employment contract in the circumstances specified in subparagraph 1.1 and 1.2 of this paragraph, if,*

*it is impracticable for the employer to transfer the employee to other employment or to train or qualify the employee to perform the job or other jobs.*

*1.4. An employer may terminate the employment contract of an employee with providing the period of notice of termination required, in:*

*1.4.1. serious cases of misconduct of the employee; and*

*1.4.2. because of dissatisfactory performance of work duties;*

*1.5 An employer shall notify the employee about his/her dismissal immediately after the event which leads to this decision or as soon as the employer has become aware of it.*

*1.6. An employer may terminate the employment contract of an employee without providing the period of notice of termination required, in the case when:*

*1.6.1. the employee is guilty of repeating a less serious misconduct or breach of obligations,*

*1.6.2. the employee's performance remains dissatisfactory in spite of the written warning.*

*2. The employer may terminate the employment contract of an employee under sub-paragraphs 1.6 of paragraph 1 of this Article only when after the employee has been issued previous written description of unsatisfactory performance with a specified period of time within which they must improve on their performance as well as a statement that failure to improve the performance shall result with dismissal from work without any other written notice.*

*[...]*

#### *Article 85*

##### *[Disciplinary Measures for the Violation of Labour Duties]*

*1. In an event of violation of labour duties, the following disciplinary measures shall be imposed to an employee:*

*1.1. verbal warning;*

*1.2. written warning;*

*1.3. degradation from the post;*

*1.4. temporary Suspension;*

*1.5. termination of employment relationship.*

*2. Disciplinary measures, verbal warning, written warning and degradation shall be imposed for minor violation of job duties in compliance with the Collective Contract, Employer's Internal Act and the employment contract.*

*3. Disciplinary measures, fine, temporary suspension and termination of employment relationship shall be imposed for minor violation of job duties in compliance with the Collective Contract, Employer's Internal Act and the employment contract.*

## **Public Private Partnership Agreement for the Operation and Expansion of Prishtina International Airport**

### *9.18 [Termination of Personnel]*

*“The Private Partner may terminate the employment or other engagement of any PLA Employee (i) at any time for cause in accordance with applicable laws, rules, regulations and decrees, (ii) upon mutual agreement and (iii) without limitation after the third (3<sup>rd</sup>) anniversary of the Effective Date”.*

### **Admissibility of the Referral**

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

40. 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.”*

41. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which provides:

*“4. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.”*

42. In this respect, the Court notes that the Applicant is entitled to file a constitutional complaint, alleging violations of his fundamental rights and fundamental freedoms, which apply to individuals and legal entities (see, the case of Constitutional Court no. KI41/09, Applicant AAB-RIINVEST University L.L.C., Resolution on Inadmissibility of 3 February 2010, para.14).

43. In addition, the Court also examined whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47[Individual Requests] , 48 [Accuracy of the Referral] and 49 [Deadlines], which provide:

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.[...].”*

44. As to the fulfillment of these criteria, the Court finds that the Applicant (as legal person) is an authorized party challenging an act of a public authority, after having exhausted all the legal remedies provided by the law. The Applicant has also specified the rights and freedoms it claims to have been violated, in accordance with the requirements of Article 48 of the Law as well as has submitted the Referral in accordance with the time limit provided by Article 49 of the Law.

45. However, the Court needs to further assess whether the criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure have been met, including the requirement that the Referral be not manifestly ill-founded. So, Rule 39 (2) of the Rules of Procedure provides:

*“(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.”*

46. Initially, the Court notes that the Applicant alleges that his right to a fair and impartial trial guaranteed by Articles 31 and 32 of the Constitution and Article 6 of the ECHR has been violated, because the decisions of the regular courts are not sufficiently justified.

47. The essence of the Applicant's allegations is that the Supreme Court did not sufficiently substantiate its judgment and moreover has erred when interpreting the Law on Labour No.03/L-212, the Employment Contract and the Regulation/Disciplinary and Complaints Procedure”. In particular, the

Applicant states that the Supreme Court erroneously confirms the fact when stating that the Disciplinary Commission has not been in full composition, as the representative of the Trade Union was absent. The Applicant alleges that the representative of the Independent Trade Union has been invited but did not assist in the session without providing any written justification.

48. With regard to these Applicant's allegations, the Court notes that the Supreme Court rejected the Applicant's request for the fact that when the Applicant's disciplinary measure had been imposed on the employee, the composition of the Disciplinary Commission was not in compliance with their internal Regulation, which concerns the Disciplinary and Complaints Procedure.
49. In relation to this Applicant's allegation, the Supreme Court reasoned as follows: *"The respondent's revision allegations that the respondent's decision on termination of employment relationship is based on Article 70 par 1.4.1 and Article 85 par 1.5 of the Law on labour (no. 03 / L-2012) do not stand for the reason that even if there are elements of a disciplinary offence of serious violation of job duties, in this legal case it is a relevant fact that the respondent's commission which recommended to the manager imposition of a disciplinary measure of termination of employment on the claimant, has not been fully composed. According to the provision of Article 8.1 of the Respondent's Internal Act on Disciplinary and Complaints Procedures, the Commission consists of 3 members and the secretary who keeps the minutes. The Chairman of the Commission is the Director of Human Resources [...], the Director of the Legal Office, an Airport Employee, the President of the Independent Trade Union and the Secretary tasked to keep the minutes. On the basis of the administered evidence, it was established that the respondent's disciplinary commission when imposing the disciplinary measure was not fully composed, as the President of the Independent Trade Union was absent. The respondent alleges both in the complaint and in revision that the representative of the union was informed but did not attend, however the respondent failed to prove this fact with any evidence"*.
50. Also with regard to this Applicant's allegation, the Court recalls the reasoning's of the Judgment of the Basic Court [C.no.511/2015] and the Judgment of the Court of Appeals [Ca.no.1519/2017], which stated that on the basis of the evidence presented by the Applicant it does not result that the member of the Independent Union had been invited.
51. The Court considers that the findings of the Supreme Court have been reached after a thorough examination of all the arguments put forward by the Applicant. Thereby, the Applicant was given the opportunity, at all stages of the proceedings, to present arguments and evidence which it has considered relevant for its case.
52. The Court finds that all of the Applicant's arguments, which were relevant to the resolution of the dispute, had been properly heard and considered by the regular courts. Accordingly, the Court concludes that the proceedings before the regular courts, viewed in their entirety, have been fair.

53. The Court notes that the Applicant calls upon the Judgment KI138/15 of the Constitutional Court, claiming that “*the application of the substantive law which could have been a fact was decisive for rendering that Judgment but the Supreme Court did not address this issue at all instead it only ascertained that the lower courts have applied the provisions of substantive law in a correct manner*”.
54. As for this allegation of the Applicant, the Court recalls that the said case differs from the one before us for the following reasons: (i) the issue of disciplinary procedure against the employee in the case of that Applicant has been dealt with differently by the regular courts; (ii) the legal basis on which the disciplinary procedure was conducted was not clear; (iii) there were contradictory elements in the decisions of the lower courts. In addition, the Court of Appeals applied and used for justification purposes the Administrative Instruction which derived from the Regulation on the Civil Service, not from the Law on Labour. This argument, although raised by the Applicant in this case, has not been considered by the Supreme Court (see, the Constitutional Court case KI138/15, *Sharr Beteiligung GmbH*, Judgment of 4 September 2017).
55. In the light of the foregoing considerations, the Court puts emphasis on its general view that it is not in principle its task to deal with errors of fact or of law which have allegedly been committed by the regular courts when assessing the evidence or law enforcement (legality), unless and insofar that they may have violated the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of the regular courts to interpret and apply the relevant rules of the procedural and substantive law (see, mutatis mutandis, the ECHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, para. 28).
56. Full determination of the factual situation and the correct application of the law is a primary task within the jurisdiction of the regular courts (issue of legality). Therefore, the Constitutional Court cannot act as a “court of fourth instance” (see mutatis mutandis, the Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
57. The Court recalls that the mere fact that the Applicants do not agree with the outcome of the decisions of the Supreme Court (and the lower courts) is not sufficient to build an argumentative claim for constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, mutatis mutandis, the Constitutional Court case KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility, of 10 February 2015, paragraph 33).
58. To sum up, the Court considers that the Applicant has not presented evidence, facts and arguments showing that the proceedings before the regular courts have in any way constituted a constitutional violation of his rights guaranteed by the Constitution, which allegedly violate his right guaranteed by Article 31, Article 32 of the Constitution in conjunction with Article 6 of the ECHR.

59. Consequently, the Referral is manifestly ill-founded on constitutional grounds and is declared inadmissible pursuant to Rule 39 (2) of the Rules of Procedure.

**FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 39(2) of the Rules of Procedure, on 7 November 2019, unanimously

**DECIDES**

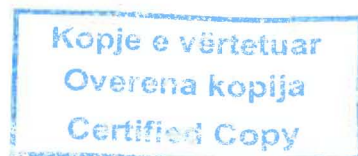
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bekim Sejdiu

Arta Rama-Hajrizi



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