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

Prishtina, on 30 November 2018
Ref. no.:RK 1291/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI64/18

Applicant

Hasan Maxhuni

Constitutional review of Decision Rev. No. 234/2017 of the Supreme Court of Kosovo, of 14 December 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 Hasan Maxhuni, residing in Fushë Kosovë (hereinafter: the Applicant), who is represented by Agon Rexhaj, a lawyer from Fushë Kosova.

Challenged decision

2. The Applicant challenges Decision Rev. No. 234/2017 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 14 December 2017, which was served on the Applicant on 18 January 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 31 paragraph (1) and (2) [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo hereinafter: the Constitution).

Legal basis

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

5. On 31 May 2018, in an administrative session the Court adopted 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 Constitutional Court

6. On 3 May 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 20 May 2018, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.

8. On 8 June 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 8 June 2018, the Court requested information from the Basic Court in Prishtina, regarding the date of receipt of Decision Rev. No. 234/2017 of the Supreme Court of 14 December 2017.

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

11. On 26 June 2018, the Basic Court in Prishtina informed the Court that Decision Rev. No. 234/2017 of the Supreme Court of 14 December 2017 was served on the Applicant on 18 January 2018.

12. 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.

13. On 22 August 2018, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur.

14. On 18 October 2018, the President of the Court appointed new Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Nexhmi Rexhepi.

15. On 5 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

16. From 1975 the Applicant was in an indefinite employment relationship in the job position of machinery technician at the Public Enterprise Belgrade Railways, with headquarters in Fushë Kosovë.

17. After 1999, the new Kosovo Railways "Trainkos" UNMIK (hereinafter: Railways) was established, which was not able to hire all the workers who had worked previously in the Railways.

18. On 26 May 2000, the Railways approved a Directive for categorization of job positions, which foresaw the hiring of 524 full-time workers (active lists) in permanent employment relationship and 350 support workers (reserve list) for a fixed term employment relationship (all former employees of the Public Enterprise Railways in Belgrade).

19. The Applicant was hired as a support worker (reserve list), who received a monthly amount of 50 DM because they were not engaged in work.

20. On 28 February 2001, the Railways in cooperation with the International Organization for Migration issued a public announcement notifying the workers in the assistance (reserve list) that their engagement program was completed on 31 December 2000, and that it would no longer be extended.

21. By that announcement all employees from the reserve list were invited to participate in the re-qualification program and at the same time they were informed that those who do not participate in the re-qualification are entitled to a fixed monetary compensation in the amount of 250 DM.

22. On 9 March 2001, the Applicant signed an accompanying letter confirming that he received a fixed monetary compensation in the amount of 250 DM, while at the same time it stated that with the receipt of this payment he is

obliged to leave any service in the Railways and that it is clear to him that the agreement on his engagement as a worker in assistance (reserve list) expired in December 2000.

23. On 14 August 2001, the Applicant addressed the Railway Board requesting a copy of the decision on termination of the employment relationship. The Applicant has not received any response from the Board regarding his request.

24. On 29 August 2001, the Applicant filed a claim with the Municipal Court in Prishtina against the Railways. In his claim, the Applicant requested that the Municipal Court in Prishtina confirm his indefinite employment relationship with the Railways and oblige the Railways to reinstate the Applicant to his previous job position.

25. On 20 June 2002, the Applicant filed a specified statement of claim.

26. On 16 September 2002, the Municipal Court in Prishtina, by Judgment C1. No. 384/2001, approved the Applicant's claim as grounded and held that the Applicant was in an indefinite employment relationship with the Railways. Moreover, the Municipal Court in Prishtina obliged the Railways to reinstate the Applicant to his previous working place and work duties that correspond to his professional background with all the rights deriving from the employment relationship starting from 1 July 2001, within 8 (eight) days from the date that Judgment became final, under the threat of forced execution.

27. On 9 December 2002, the Railways filed an appeal with the District Court in Prishtina against Judgment C1. No. 384/2001 of the Municipal Court in Prishtina, stating that the Applicant signed an accompanying letter on 9 March 2001 confirming that he had received the fixed monetary compensation in the amount of DM 250 and at the same time he accepted that with this payment he was obliged to leave the service in the Railways. Further, it stated that Railways could not hire all the employees who had worked previously because the railway infrastructure was destroyed.

28. On 13 December 2003, the Applicant submitted a response to the appeal.

29. On 28 June 2005, the District Court in Prishtina, by Decision Ac. No. 6/2003, approved the appeal of the Railways as grounded and annulled Judgment C1. No. 384/2001 of the Municipal Court in Prishtina, of 16 September 2002 and decided that the case should be remanded to the first instance court for retrial.

30. On 5 December 2007, the Railways filed a submission with the Basic Court in Prishtina, requesting that the Applicant's claim should be dismissed because it was filed out of time.

31. On 25 March 2008, the Applicant submitted to the Basic Court in Prishtina a response to the submission of the Railways.

32. On 16 April 2008, the Municipal Court in Prishtina, by Judgment C1. No. 222/2005, rejected as ungrounded the Applicant's claim for reinstatement to work.

33. On 24 December 2008, the Applicant filed an appeal with the District Court in Prishtina against Judgment C1. No. 222/2005 of the Municipal Court in Prishtina.

34. On 26 December 2008, the Applicant submitted the supplement to the above-mentioned appeal to the District Court in Prishtina.

35. On 4 December 2012, the District Court in Prishtina, by Decision Ac. No. 106/2009, approved the Applicant's appeal as grounded and quashed Judgment C1. No. 222/15 of the Municipal Court in Prishtina of 16 April 2008 and decided that the matter should be remanded to the first instance court for retrial.

36. On 28 October 2013, the Applicant filed a specified statement of claim.

37. On 14 January 2014, the Basic Court in Prishtina, by Judgment C. No. 3413/12, approved the claim of the Applicant as grounded and confirmed that the Applicant was in an indefinite employment relationship with the Railways. In addition, the Municipal Court in Prishtina obliged the Railways to reinstate the claimant to his previous working place and work and duties that correspond to his professional background with all the rights from employment relationship from 1 July 2001, within seven (7) days from the date that Judgment became final, under threat of forced execution. By the same Judgment, the Court obliged the Railways to pay the costs of the proceedings in the amount of 830 euro.

38. On 14 February 2014, the Railways filed an appeal with the Court of Appeals of Kosovo against Judgment C. No. 3413/12 of the Basic Court in Prishtina, stating that the Applicant's employment relationship was terminated in 1997 and that after the war he was engaged in a certain period of time as an employee in assistance (reserve list) in Railways and that the Applicant had filed the claim out of time.

39. On 19 July 2017, the Court of Appeals of Kosovo, by Decision Ac. No. 2141/2014, approved the appeal of the Railways as grounded and quashed Judgment C. No. 3413/12 of the Basic Court in Pristina of 14 January 2014, and by the same Judgment, the Court of Appeal of Kosovo rejected as inadmissible the Applicant's claim, because it was filed out of time.

40. The Court of Appeals, among other things, reasoned:

> *"With the appeal of the respondent the Judgment of the court of first instance was challenged emphasizing that the claimant did not meet the requirements for judicial protection, for the fact that he filed the claim after the legal time limit, while the court assessing the appealing allegations and evidence in the case file, found that it is rightly mentioned in the appeal that the claim of claimant was submitted after the legal time limit, for the fact that while taking into consideration that the claimant in regards to the accompanying letter of 09.03.2001 did not submit the objection and did not use the right that within the legal time limit after the date 09.03.2001 to request the protection of the rights from the*

employment relationship with the respondent, but the latter filed the claim with the court on 29.08.201 out of legal time limit. The provision of Article 178 paragraph 1 of the Law of the Basic Rights of the Employment Relationship defines that: "an employee may submit the request for the protection of his rights within time period of 15 days from the day when realised that his/her rights are violated, and if the competent body whom he addressed will not deliver the decision in time period of 15 days from the day of submission of the request, the employee is entitled that within the other deadline of 15 days to request the protection from the court", and pursuant to this legal provision the claimant did not meet the requirements established for the legal protection since he filed the claim with delay for more than five months, and based on these reasons this court assesses that the claim of claimant is inadmissible due to the delay, whereas based on the abovementioned facts it was not possible to deal with the claim of claimant, because of the omissions of deadlines set by law, the later is inadmissible in compliance with the Article 391 f) of the LCP".

41. On 4 September 2017, the Applicant filed a request for revision with the Supreme Court against Decision Ac. No. 2141/2014 of the Court of Appeals of 19 July 2017.

42. On 14 December 2017, the Supreme Court of Kosovo, by Decision Rev. No. 234/2017, rejected as ungrounded the Applicant's request for revision.

43. In addition, the Supreme Court, in its decision, reasoned:

"[...The Supreme Court assesses the stance of the second instance court as fair and lawful as the claimant missed the deadline to seek judicial protection within the meaning of Article 83 of the Law on Basic Rights of Employment Relationship (Official Gazette of SFRY 60/89) which at that time was applicable under UNMIK Regulation 1999/24. In the provision of Article 83 paragraph 1 of the Law in question it is stipulated that a worker who is not satisfied with the final decision of the competent body in the organization, or if this body does not make a decision within 30 days from the date of the submitted request, respectively the objection, has the right that in the next 15 days to demand the protection of his judicial rights before the competent court. The claimant missed the deadline and the second instance court correctly acted when rejected the claim of claimant as inadmissible [...]".

Applicant's allegations

44. The Applicant alleges that the Court of Appeals and the Supreme Court violated his right guaranteed by Article 31 paragraph (1) and (2) of the Constitution because a) he was not offered equal protection of rights before the court and b) have delayed the procedures and did not decide within a reasonable time, reasoning in this way:

a) Equal protection of rights before the court

"...the protection of rights before the courts was denied to him, the Court did not take into consideration that the termination of the employment relationship is contrary to the legislation in force. The termination of the employment relationship was done without legal act, only by the notice of 9 March 2001, this right was denied to the appellant by not allowing him equality, enjoyment of the rights and freedoms stipulated by the European Convention on Human Rights and Freedoms".

b) Decision within reasonable time

"Article 31, item 2, of the Constitution of the Republic of Kosovo foresees the fair trial within a reasonable time limit. If we refer to the case file from the claim which was submitted on 29 August 2001 and Decision of the Supreme Court of 14 December 2017, it is confirmed that the appellant did not have the opportunity to resolve the matter within a reasonable time limit".

45. The Applicant alleges that the Court of Appeals and the Supreme Court also violated Article 49 [Right to Work and Exercise Profession] of the Constitution, because:

"The right to work is the most important economic-social right because this right guarantees economic – social security and human dignified existence. By taking into consideration that the appellant was dismissed from work without legal act, who was misled by the Kosovo Railways in signing the notice, which in legal aspect cannot be counted as legal act with its composing parts, the Court of Appeals of Kosovo and the Supreme Court did not take this fact into consideration and decided to the detriment of the appellant..."

46. The Applicant also claims that the Court of Appeals and the Supreme Court violated Article 54 of the Constitution, reasoning:

"...the action of the Kosovo railways was contrary to the legislation in force, which misled with the signature of the notice and this was confirmed twice. Once by the former Municipal Court in Prishtina, by Judgment C. No. 384/2001, and by Judgment C. No. 3413/12 of the Basic Court in Prishtina, ... the Supreme Court of Kosovo committed constitutional violations of Article 54 of the Constitution of the Republic of Kosovo by not providing judicial protection of the constitutional rights".

47. Finally, the Applicant request the Court:

"...to assess the constitutionality of Decision Rev. No. 234/2017 of the Supreme Court of Kosovo and [...] to render Judgment which would annul Decision Rev. No. 234/2017 of the Supreme Court of Kosovo and it confirms that the rights deriving from the employment relationship have been violated to Hasan Maxhuni, these rights are guaranteed based on Article 49 of the Constitution of the Republic of Kosovo".

Admissibility of the Referral

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

49. 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".*
>
> *[...]*

50. The Court also examines whether the Applicant has met the admissibility criteria as further specified in the Law. In this regard, the Court refers to the Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which define:

> 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 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..."*

51. As to the fulfillment of the abovementioned criteria, the Court finds that the Applicant is an authorized party; has exhausted available legal remedies; has specified the act of the public authority which he challenges before the Court and has submitted the Referral in time.

52. However, the Court also considers whether the Applicant has fulfilled the admissibility requirement established in Rule 39 (2) of the Rules of Procedure, which stipulates:

> *"(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."*

53. In this case, the Court notes that the Applicant alleges that the challenged Decision of the Supreme Court violated his constitutional rights guaranteed by Article 31 paragraph (1) and (2) [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution.

Regarding the Applicant's allegation of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution

a) Equal protection of rights before the court

54. The Applicant in essence justifies these allegations stating that *"...the termination of the employment relationship is done without a legal act, only with the notice of 09.03.2001, this right was denied to the appellant by not allowing equality..."*

55. The Court notes that these allegations of the Applicant were addressed in detail by Decision Ac. No. 2141/2014 of the Court of Appeals, which determines that:

> *„From the case file it results that the claimant after the end of war in 1999 was not systemized in the work with the respondent, but the latter in agreement with the respondent was included on the list of employees under the assistance and the latter on 09.03.2001 with his signature acknowledged that he read the accompanying letter of the respondent dated 01 February 2001, whereas confirmed that the agreement on social assistance ended by the end of month December 2000, stating that he acknowledges that the payment of social assistance enabled and obliged him to terminate his employment relationship with Kosovo Railways, further stated that he acknowledges that he has read the notification letter of IOM, which explains the terms for the claimant's appointment to attend the training program ".*

56. The Court notes that the Court of Appeals confirmed that the Applicant *"was not systemized in work with the respondent"* and that the Applicant himself *"accepts that this social assistance allowance enables and obliges him to leave the service in the Kosovo Railways".*

57. The Court reiterates that the right to a fair hearing as guaranteed by Article 6 of ECHR and Article 31 of the Constitution includes the right of the parties to the hearing and to submit any observations that they consider relevant to their case. It may therefore be relied on by anyone who considers that an interference with the exercise of one of his civil rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 paragraph 1 (see *Cañete de Goñi v. Spain*, no. 55782/00, § 34, ECHR 2002-VIII, with further references). Another element of the broader concept of a "fair hearing" within the meaning of this provision is the principle of equality of arms, which requires a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 56, ECHR 2004-III).

58. Based on the abovementioned considerations, the Court concludes that during the proceedings the Applicant had the opportunity to be heard about the facts and observations relevant to his case; that the Applicant did not provide evidence that there was an unlawful interference; that he had the opportunity to present the case to the court; that he has not provided evidence that he has been significantly disadvantaged vis-à-vis his opposing party.

59. In this regard, the Court notes that the Applicant did not provide the Court with evidence that would have challenged such a reasoning of the Court of Appeals. Therefore, the Court considers that his allegations concerning those claims are manifestly ill-founded.

b) Decision within reasonable time

60. Initially, the Court recalls that Article 6 (1) of the Convention provides that it is for the Contracting States to organize their legal systems in such a way that the competent authorities can meet the requirements of the abovementioned Article of the Convention, including the obligation to hear cases within a reasonable time and, where necessary, join them, suspend them or reject the further institution of new proceedings (in addition: see the ECtHR Judgment in case *Luli and others v. Albania* on 1 April 2014 complaints no. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09, paragraph 91).

61. As regards the length of the proceedings, the Court recalls the criteria established in the Judgment of European Convention on Human Rights (hereinafter: the ECtHR) in case *Tomažič v Slovenia*, of 2 June 2008, complaint no. 38350/02, paragraph 54), where is established as it follows: *"As to the reasonableness of the length of the proceedings, the [ECtHR] reiterates that it must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute".*

62. Within the meaning of Article 6, paragraph (1) of the Convention, the calculation of the process, the reasonable length of the proceedings, starts to run when the parties file request with the competent court for the

establishment of a right or a legitimate interest claimed (see, case, *Erkner and Hofauer v. Austria* ECtHR, 23 April 1987, paragraph 64; see also ECtHR case *Poiss v. Austria*, 23 April 1987, paragraph 50). This process is considered completed with the issuance of a final decision by a competent court of the last instance (see case *Eckle v. the Federal Republic of Germany*, ECtHR, of 15 July 1982, paragraph 74).

63. In this case, the Court notes that the proceedings started on 29 August 2001 with the filing of the claim and ended with rendering of judgment by the Supreme Court on 14 December 2017.

64. From the case file submitted by the Applicant to the Court, it results that during the conduct of the proceedings, the Municipal Court in Prishtina held ten (10) main hearings to determine the factual situation and to respond to the parties' requests according to the various submissions.

65. The Court further notes that there have been many hearings which have been postponed by the Basic Court due to the conduct of the parties themselves and these delays cannot be attributed to the court.

66. The Court then finds that during the conduct of the proceedings, the regular courts were obliged to respond to a large number of submissions (complaints, responses to complaints, lawsuits, responses to lawsuits) whose total number was eleven (11).

67. The Court further notes that the Applicant's conduct itself contributed to the delay in the proceedings, since he submitted his specified statement of claim to the first instance court on 28 October 2013. From that moment, the first instance court considered that all the requirements for decision-making on merits were met.

68. The Court also recalls that during this period of time, three (3) judgments were rendered by the first instance court, three (3) decisions by the Court of Appeals, and one (1) decision by the Supreme Court.

69. The Court reiterates that the proceedings in the regular courts began on 29 August 2001 and ended with the Decision rendered by the Supreme Court on 14 December 2017. Viewed in its entirety, from the initiation of the first instance court by the Applicant, until the completion of the proceedings before the regular courts, a total of twenty seven (27) procedural actions were conducted, which lasted 16 (sixteen) years and 9 (nine) months.

70. In this regard, the Court emphasizes that the Applicants have the right to pursue all procedural steps made available by applicable laws. However, the Applicants should also take into account the consequences in the event that the legal remedies used may affect the postponement of the termination of the proceedings (see, case *McFarlane v. Ireland*, ECtHR, 10 September 2010, application no 31333/06 , paragraph 148).

71. In addition, the Court considers that the conduct of the Applicants constitutes an objective fact which cannot be attributed to the courts and must be taken

into account in the finding whether the proceedings continued beyond the reasonable time-frame required by the provisions of Article 31 of the Constitution and Article 6 of the Convention (See case *Eckle v. Germany*, ECtHR, application No. 8130/78, Judgment of 15 July 1982, paragraph 82). Parties in proceedings are fully equal in the use of legal remedies made available by law, if their purpose is to reinstate an alleged right.

72. The Court, in the light of the complex circumstances of the case, given the complexity of the case, the conduct of the Applicant and the respondent and their legitimate interests; as well as the special procedural obligations that the regular courts have been obliged to apply based on the laws in force, with regard to this particular case, by assessing separately the course of proceedings in each of the judicial instances, it reaches the conclusion that the respective courts from the moment of initiation of proceedings were active.

73. In this regard, the Court notes that the Applicant did not provide the Court with any evidence regarding the objection to "unnecessary delays" in the conduct of court proceedings before the regular courts to substantiate his allegation of a violation of the right to a final decision within a reasonable time. Therefore, the Court considers that his allegations in relation to this allegation are manifestly ill-founded.

Regarding the Applicant's allegation of violation of Article 49 [Right to Work and Exercise Profession] of the Constitution

74. In this regard, the Court notes that within the meaning of this specific right, Article 49 [Right to Work and Exercise Profession] of the Constitution is a standard definition that specifies the guarantees and rights to work, the employment opportunities and the provision of equal conditions without discrimination, as well as the right to choose freely the working place and exercise profession, without forced obligations. (see, among other, Resolution on Inadmissibility of the Constitutional Court, in Case KI46/15, Applicant: *Zejna Qosaj*, of 9 October 2015, published on 20 October 2015, paragraph 26).

75. In this respect, the Court considers that the Applicant's allegation of a violation of the right to work must be understood in the light of the abovementioned interpretation. The protection of the right to work is specifically regulated by the provisions of applicable law in the Republic of Kosovo.

76. In this regard, the Court considers that the challenged decision of the Supreme Court does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the Applicant's allegation that would justify a conclusion that his constitutional rights, guaranteed by Article 49 have been violated (See, *mutatis mutandis*, the Constitutional Court in case KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 34, and case KI42/17, Applicant: *Kushtrim Ibraj*, Resolution on Inadmissibility of 5 December 2017, paragraph 53).

77. In fact, the Applicant alleges that the regular courts violated his right to work because "*[t]he termination of the employment relationship was done without*

legal act, who was misled by the Kosovo Railways in signing the notice, which in legal aspect cannot be counted as legal act with its composing parts..."

78. In this regard, the Court reiterates that the Applicant has been given the opportunity to be heard, to present the facts in his favor and to challenge the unfavorable evidence of the opposing party. Therefore, the Court concludes that the Applicant failed to substantiate his allegation and to find on a constitutional basis that the Court of Appeals and the Supreme Court denied him the right to work and exercise the profession.

Regarding the Applicant's allegation of violation of Article 54 [Judicial Protection of Rights] of the Constitution

79. With respect to this allegation, the Court notes that the Applicant did not sufficiently justify and substantiate, how and why the regular courts have violated his right to judicial protection of the rights guaranteed by this specific provision of the Constitution.

80. In fact, the Applicant argued that "*... the action of the Kosovo Railways was in contradiction with the applicable legislation, which has misled it with the signing of the notification and this has been confirmed twice*".

81. Furthermore, the Court notes that this allegation has been answered by the Court of Appeals, which in its Decision, reasoned that the Applicant "*acknowledges that this social assistance payment enables and obliges him to leave the service in the Kosovo Railways*". Further, the Court of Appeals reasoned that "*... the latter on 09.03.2001, with his signature, he acknowledges that he has read the accompanying letter of the respondent dated 01 February 2001, which has confirmed that the agreement on social assistance was terminated at the end of December 2000.*"

82. From the foregoing, the Court notes that the Applicant raised the same allegations with this Court, to which the second instance and the third instance had responded. Therefore, given this fact, the Court considers that such allegations do not raise constitutional issues, namely issues under Article 54 of the Constitution, but issues of fact-finding (legality), which fall within the regular courts' scope of competence, which is given to them by the Constitution.

83. In this regard, the Court reiterates that it is not a fact-finding court and that the correct and complete determination of factual situation is within the full jurisdiction of the regular courts, whereas the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, therefore, cannot act as "a fourth instance court". (See, Judgment of the ECtHR, *Pekinel v. Turkey*, of 18 March 2008, no. 9939/02, paragraphs 53; and *mutatis mutandis* in Case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

84. In this regard, the Court refers to the case law of the ECtHR, where it is clarified that "*it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law*" (See, *mutatis mutandis*,

ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain* [GC], no. 30544/96, para. 28).

85. The Constitutional Court interferes only when, through their actions, the regular courts violate constitutional rights and standards. In these cases, the Court does not reassess the facts and circumstances or reinterpret the laws, but an assessment of the constitutional nature, distinct from that of the courts of regular jurisdiction.

86. The Court considers that the Applicant did not substantiate that the proceedings before the Supreme Court were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated, as a result of allegations of erroneous application of the respective law. No constitutional matter has been substantiated by the Applicant (See: case of the Constitutional Court KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 15 November 2016, paragraph 62).

Conclusion

87. In sum, the Court concludes that the arguments raised by the Applicant in his Referral do not in any way justify the alleged violations of the constitutional rights invoked by the Applicant and that he has not substantiated his allegations of a violation of his rights protected by the Constitution, namely Article 31, 49 and 54 of the Constitution.

88. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Article 48 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 10 October 2018, 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**

Radomir Laban | Arta Rama-Hajrizi

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