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

Prishtina, on 27 June 2019
Ref.no.:1380/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI128/18

Applicant

Limak Kosovo International Airport J.S.C. "Adem Jashari"

Constitutional review of Judgment Rev. No. 218/2018 of the Supreme Court of Kosovo of 4 July 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 Joint Stock Company Limak Kosovo International Airport J.S.C, "Adem Jashari" (hereinafter: the Applicant), based in Vrellë village, Lipjan Municipality, which is represented with power of attorney by Fazli Gjonbalaj and Leonora Fejzullahu.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 218/2018 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 4 July 2018.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] Article 32 [Right to Legal Remedies] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) and Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the Convention).

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, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 26 February 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 21 September 2018, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur, and the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Remzie Istrefi – Peci and Nexhmi Rexhepi.

7. On 21 September 2018, the President of the Court by Order joined the cases KI128/18, KI129/18, KI130/18, KI132/18.

8. On 19 October 2018, the Court notified the Applicant about the registration of the Referral and the joinder of the cases and submitted the copies of the joined Referrals to the Supreme Court.

9. On 5 November 2018, the President of the Court by Order joined the cases KI128/18, KI129/18, KI130/18, KI132/18, with cases KI164/18, KI165/18, KI166/18 and KI167/18.

10. On 8 November 2018, the Court notified the Applicant about the registration of the Referral KI164/18, KI165/18, KI166/18 and KI167/18 and joinder with cases KI128/18, KI129/18, KI130/18, KI132/18, and submitted copies of the joined referrals to the Supreme Court.

11. On 4 April 2019, the President of the Court by Order separated the joined cases KI128/18, KI129/18, KI130/18, KI132/18, KI164/18, KI165/18, KI166/18 and KI167/18 in individual cases.

12. On 12 April 2019, the Court notified the Applicant and the Supreme Court that the cases KI128/18, KI129/18, KI130/18, KI132/18, KI164/18, KI165/18, KI166/18 and KI167/18 were separated by Order and that they will be individually reviewed in the Constitutional Court

13. On 12 April 2019, the Applicant submitted to the Court the letter entitled *"[...] regarding the cases registered with the Constitutional Court AND in particular the case registered with [...] number KI132/18"*.

14. On 16 May 2019, the Applicant submitted to the Court a submission entitled *"Submission, regarding the cases registered with the Constitutional Court"*.

15. On 27 May 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 of the case

16. On 12 August 2010, the Government of the Republic of Kosovo and the Applicant signed a Public-Private Partnership Agreement (hereinafter: the PPP Agreement). Prior to the signing of the PPP Agreement, the name of Prishtina Airport was Prishtina International Airport (hereinafter: the PIA).

17. Based on the case file, it is noted that the employee O. T. (hereinafter: the employee) was employed with the PIA. Pursuant to the PPP Agreement, the Applicant assumed the obligation to keep all employees in employment relationship for another three (3) years.

18. The employee had a regular employment relationship with the Applicant for the period from 4 April 2011 until 3 April 2014. On 3 March 2014, namely 30 (thirty) days before the expiry of the contract, the Applicant notified the employee that *"... in accordance with the policies of the Board of Directors and the Law on Labor of Kosovo, as well as the decision on future human resource planning [...] the Employment Contract will not be extended after 03.04.2014"*.

19. On 21 May 2014, the employee filed a complaint with the Applicant "... *with the proposal that the notice of non-extension of the employment contract of 03.03.2014, be annulled as unlawful and to reinstate the claimant to the previous working place, with all the rights under the employment relationship*".

20. On 5 July 2014, the Applicant rejected as ungrounded the employee's complaint.

21. The employee filed the statement of claim with the Basic Court in Prishtina - Branch in Lipjan (hereinafter: the Basic Court), requesting the annulment of the notice of 3 March 2014 issued by the Applicant, and obliging the Applicant to reinstate the employee to work with all rights and obligations, and to compensate the material damage.

22. On 29 May 2015, the Basic Court, by Judgment (C. No. 368/2014), (i) approved the statement of claim of the employee as grounded; (ii) annulled the Applicant's notification of 3 March 2014, as well as the Applicant's reply of 5 July 2014 for non-extension of the employment contract; (iii) obliged the Applicant to reinstate the employee to working place; (iv) obliged the Applicant to pay to the employee a certain amount in the name of the material damage; and (v) obliged the Applicant to cover the costs of the contested procedure.

23. On 31 July 2015, the Applicant filed an appeal with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) against the Judgment (C. No. 368/2014) of the Basic Court stating that the challenged Judgment was rendered with essential violation of the procedural provisions and that there is an erroneous determination of factual situation and erroneous application of the substantive law.

24. The Applicant in his appeal in essence stated that the Basic Court has erroneously determined the factual situation regarding the duration of the employee's work experience, claiming that the employee has no more than 3 years of work experience. The Applicant considers that due to such erroneous determination of factual situation was committed erroneous application of substantive and procedural law, and that the Judgment of the Basic Court is in violation of Article 9.18 of the Public Private Partnership Agreement signed by the Government of the Republic of Kosovo and Limak Kosovo International Airport, of 12 August 2010.

25. On 13 April 2018, the Court of Appeals by Judgment (Ac. No. 3648/2015) rejected the Applicant's appeal as ungrounded and upheld the Judgment (C. No. 368/2014) of the Basic Court, considering that the latter is fair and lawful and emphasizing that the first instance court has given concrete reasons for the decisive facts and provided appropriate explanations for such a decision on the basis of the relevant legal provisions.

26. On 10 May 2018, the Applicant submitted a request for revision to the Supreme Court against the Judgment of the Basic Court and the Judgment of the Court of Appeals of Kosovo, alleging essential violation of the procedural provisions and erroneous application of the substantive law. The Applicant alleged that the lower instance courts did not take into account Article 9.18 of the PPP Agreement, according to which the Applicant took over the obligation to keep the employees in work for 3 (three) years. In addition, the Applicant alleges that "*the court merged the work by two different employers*".

27. On 4 July 2018, the Supreme Court by Judgment Rev. No. 218/2018 rejected the Applicant's revision as ungrounded, reasoning that the lower instance courts have "*...completely determined the factual situation, correctly applied the substantive law, when they found that the claimant's statement of claim is*

grounded. The challenged judgment does not contain essential violations of the provisions of the contested procedure, which this court assesses ex-officio. The second instance court in the reasoning of the judgment provided sufficient reasons for the relevant facts for fair adjudication of this legal matter, which are approved by this court too, therefore the allegations in the revision do not question the lawfulness of the challenged judgment".

Applicant's allegations

28. The Court recalls that the Applicant alleges that *"The Supreme Court of Kosovo, by its Judgment Rev. No. 218/ 2018, [...] has violated his right to fair and impartial trial, as guaranteed by Article 31 [Right to Fair and Impartial Trial], on the grounds of unreasoned decision, further claiming that "as a result of the absence the reasoning, the challenged decision deprived the Applicant of the constitutional right to an effective legal remedy" and thereby violated his constitutionally right guaranteed by Article 32 and as a result of these violations, the Applicant's right of property under Article 46 [Protection of Property] of the Constitution has also been violated. The Applicant also alleges that there is a violation of Article 6 (Right to a fair trial) of the ECHR".*

29. The Applicant in substance justifies his referral by stating that the regular courts have erroneously determined the factual situation and that the procedural and substantive law was erroneously applied, stating that the decisions of the regular courts did not sufficiently reasoned the following:

    (i) That the regular courts have erroneously determined the factual situation regarding the duration of the employee's work experience, claiming that the employee has no more than 3 years of work experience.
    (ii) That the Applicant was entitled to terminate his employment relationship by notice in accordance with the employment contract, Article 1.1 and Article 67 paragraph 1.3, as well as Article 71 paragraph 2 of the Law on Labor No. 03/L-212.
    (iii) That the regular courts have erroneously interpreted Article 10.5 of the Law on Labor No. 03/L-212, because it cannot be applied for Limak company, because the employee did not have ten (10) years of uninterrupted work experience with the respondent.
    (iv) That the regular courts failed to take into account Article 9.18 of the PPP Agreement, according to which the Applicant took over the obligation to keep the employees in work for a period of 3 (three) years.

30. The Applicant also cites the Judgment of the Constitutional Court KI138/15 and states that "*the application of the substantive law, which may have been a fact, has been a decisive factor in obtaining the judgment of that court*".

31. The Applicant requests that "*the Constitutional Court should assess whether the trial in its entirety was fair and impartial, as required by Article 31 of the Constitution (see, inter alia, mutatis mutandis, Edwards v. United Kingdom, 16 December 1992, p. 34, Series A, No. 247 and B. Vidal v. Belgium, 22 April 1992, p. 33, Series A. No. 235).*

32. The Applicant requests the Court to annul the Judgment of the Supreme Court and to remand the case for retrial.

Relevant legal provisions

Law on Labor No. 03/L-212

Article 10
Employment Contract
[...]

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 sub-paragraph 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 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 subparagraphs 1.6 of paragraph 1 of this Article only when after the employee has been issued previus 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 71
[Notification period for termination of employment contract]

1. The employer may terminate an employment contract for an indefinite period according to Article 70 of this Law with the following periods of notification:
1.1. from six (6) months - 2 years of employment, thirty (30) calendar days;
1.2. from two (2)- ten (10) years of employment: fourty-five (45) calendar days;
1.3. above ten (10) years of employment: sixty (60) calendar days

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

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 PIA Employee (i) at any time for cause in accordance with applicable laws, rules, administrative regulations and decrees, (ii) upon mutual agreement and (iii) without limitation, after the third (3rd) anniversary of the Effective Date".

Admissibility of the Referral

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

34. 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".

35. The Court also refer to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes:

> *"4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".*

36. In this regard, the Court notes that the Applicant has the right to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms applicable both to individuals and to legal persons (case of the Constitutional Court No. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

37. The Court further examines whether the Court has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

> Article 47 of Law
> [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 [...]".*

38. Regarding the fulfillment of these requirements, the Court considers that the Applicant is an authorized party, challenging an act of a public authority, after exhaustion of all legal remedies. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

39. However, the Court should 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 is not manifestly ill-founded. Thus, Rule 39 (2) of the Rules of Procedure provides that:

> *"(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".*

40. Initially, the Court notes that the Applicant alleges that his right to fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR has been violated, because the decisions of the regular courts were not sufficiently reasoned, while the violations of other rights guaranteed by the Constitution and the ECHR are presented by the Applicant as a result of the violation of the right to fair and impartial trial.

41. The Applicant in essence justifies his Referral by repeating the same allegations that it had filed before the regular courts, which pertain to erroneous determination of factual situation and erroneous application of the procedural and substantive law, pointing out that the decisions of the regular courts did not sufficiently reason the following issues:

(i) That the regular courts have erroneously determined the factual situation regarding the duration of the employee's work experience, claiming that the employee has no more than 3 years of work experience.
(ii) That the Applicant was entitled to terminate the employment relationship by notice in accordance with the employment contract, Article 1.1 and Article 67 paragraph 1.3, as well as Article 71 paragraph 2 of the Law on Labor No. 03/L-212;
(iii) That the regular courts have erroneously interpreted Article 10.5 of the Law on Labor No. 03/L-212, because it cannot be applied for Limak company, because the employee did not have ten (10) years of uninterrupted work experience with the respondent;
(iv) That the regular courts failed to take into account Article 9.18 of the PPP Agreement, according to which the Applicant took over the obligation to keep the employees in work for a period of 3 (three) years.

42. The Constitutional Court will assess the constitutionality of the challenged decisions of the regular courts with respect to the Applicant's allegation that the decisions of the regular courts have not been sufficiently reasoned, referring to each individual allegation of the Applicant.

43. First, as to the Applicant's allegation that (i) the regular courts have erroneously determined the factual situation regarding the duration of the employee's work experience, claiming that the employee has not more than 3 years of work experience.

44. With regard to these allegations of the Applicant, the Court notes that the Basic Court reasoned that *"Based on the factual situation determined by the evidence administered above, to which the court entirely gave trust, it was established that the claimant with the predecessor of the respondent PIA „Adem Jashari" j.s.c., has established employment relationships since*

15.03.2003 and worked with the latter uninterruptedly until 01.04.2011, whereas from 04.04.2011 until 03.04.2014 has continuously worked for the respondent and has completed over 10 years of uninterrupted work with the predecessor of the respondent and with the respondent, based on the provision of Article 10.5 of the Law on Labor, the court came to the conclusion that the employment contract on indefinite term with the respondent is considered to be an indefinite employment relationship, therefore the court considers that in this situation, the respondent, to terminate the indefinite employment relationship to the claimant, was obliged to conduct an internal procedure for termination of the employment relationship, a procedure which was not conducted with the respondent but the claimant has only been notified by the notice on non-extension of the employment contract ...".

45. Secondly, as to the Applicant's allegations (ii) that the Applicant was entitled to terminate the employment relationship in accordance with the employment contract, Article 1.1 and Article 67, paragraph 1.3, and Article 71, paragraph 2 of the Law on Labor No. 03/L-212.

46. With regard to these allegations of the Applicant, the Court notes that the Basic Court first concluded that *"... the notice of the respondent for the non-extension of the employment contract of the claimant, without conducting any internal procedure for termination of the employment relationship is unlawful".*

47. By the same Judgment, the Basic Court, further reasoned when and under what conditions the employer could use this opportunity, reasoning in detail what preliminary measures should be taken, stating that "... *if eventually the termination of the employment relationship has to do with technical, economic or organizational reasons, in conformity with the provisions of Article 70 in conjunction with Article 76 of the Law on Labor, the respondent was obliged to draft a written program and to apply these provisions of the LL, and in addition to notifying the claimant one month before termination of the employment relationship, it was obliged to notify the trade union of the employee about the planned changes, by attempting in advance the internal re-systematization of the employees, by limiting overtime working hours, reducing working hours of employees, providing vocational training and other measures determined by law, the measures which none of them were taken by the respondent, namely until the completion of the procedure did not provide evidence that it did something in this direction".*

48. Also, regarding these allegations, the Court of Appeals responded in detail when rejected as ungrounded "*the appealing allegation that from the moment of signing the Agreement between the Government of Kosovo and the respondent, the claimant does not have more than 3 years of work experience, this is for the Court of Appeals without any influence, because it is important that the claimant in the same working place worked for more than 10 years and that his employment contract is considered within the meaning of Article 10 paragraph 5 of Law on Labor, as a contract for an indefinite period of time, so that the it was possible to terminate the employment relationship to the latter, only under the conditions laid down in the provision of Article 70 of the Law on Labor, and not based on Article 67, paragraphs 1 and 3 of this*

Law. In the present case by a notification, as the respondent acted, could not non-extend the employment contract, when according to the Law on Labor, his contract is treated as a contract on indefinite term".

49. Thirdly, as to the Applicant's allegations (iii) that the regular courts have erroneously interpreted Article 10.5 of the Law on Labor No. 03/L-212, because it cannot be applied for Limak company, because the employee did not have ten (10) years of uninterrupted work experience with the respondent.

50. The Court notes that the Supreme Court reasoned that "*...the allegations in the revision of the representative of the respondent that the challenged judgment is a consequence of erroneous application of the substantive law, are ungrounded and cannot stand due to the fact that the notice on non-extension of the claimant's employment contract is rendered contrary to the Law on Labour, which is basic law that regulated the employment relationship in Kosovo, where was set the basis and procedures on termination of the employment contract of the claimant. The claimant from 1.2.2002 until 3.4.2014 had employment contract on fix-term, such an employment contract based on Article 10.5 of the Law on Labour is considered as an employment contract on indefinite term, so for the termination of the employment contract the legal procedures should be respected, which the respondent did not do, it follows undoubtedly and certainly the legal conclusion that the claimant's right to a lawful decision on termination of the employment contract has been violated*".

51. Fourthly, as to the Applicant's allegations (iv) that the regular courts did not take into account Article 9.18 of the PPP Agreement, under which the Applicant took over the obligation to keep the employees at work for a term of 3 (three) years.

52. The Court notes that the Supreme Court reasoned that "*...the allegations in the revision that the approval of the claimant's statement of claim is in contradiction with Article 9.18 of the Public Private Partnership Agreement between the respondent and the Republic of Kosovo, according to the opinion of this court, are ungrounded and were rejected as such, because by Article 9.18 of the abovementioned Agreement, is not foreseen the termination of the employment contracts of employees in contradiction with the laws, as by this Agreement it is foreseen that the private partner, here the respondent, may hire or engage any PIA employee at any time on the issues regarding the law, rules and administrative regulations and the decrees applied under the joint Agreement and without limitations, after the third anniversary of entrance into force of this Agreement*".

53. The Court further recalls that the Applicant also refers to the Judgment KI138/15 of the Constitutional Court and claims that "*the application of substantive law, which may have been a fact, has been a decisive factor for rendering the judgment of that court*".

54. As to this allegation of the Applicant, the Court recalls that the present case differs from the case before us, because of the following reasons: (i) the issue of disciplinary proceedings against the Applicant's employee in that case has been

reviewed differently by the regular courts; (ii) there was no clear legal basis under which disciplinary proceedings were conducted; (iii) contradictory elements existed in decisions of the lower instance courts. In addition, the Court of Appeals applied and used for explanation the Administrative Instruction which resulted from the Civil Service Regulation, not the Law on Labor. This argument, although raised by the Applicant in this case, was not reviewed by the Supreme Court (see the case of the Constitutional Court KI138/15, *Sharr Beteiligung GmbH,* Judgment of 4 September 2017).

55. The Court first reiterates that it is not its function to deal with the errors related to the factual situation or the erroneous application of the law, allegedly committed by the regular courts, unless the errors and erroneous application of the law are not such as to violate the rights and freedoms protected by the Constitution (see case of ECtHR, *Garcia Ruiz v. Spain* [GC], no. 30544/96, Judgment of 21 January 1999, paragraph 28).

56. However, it is the primary role of the regular courts to resolve the issues of interpretation of the domestic legal rules. This applies in particular to the interpretation of substantive and procedural law by the courts (see ECtHR case, *Pekinel v. Turkey*, No. 9939/02, 18 March 2008, paragraph 53). The role of the Court is only to determine whether the effects of such interpretation are in accordance with the Constitution in entirety and with the principle of legal certainty, in particular those guaranteed by Article 6 of the ECHR.

57. The Court reiterates that Article 6 of the ECHR and Article 31 of the Constitution oblige the courts to give reasons for their decisions, but this cannot be understood as an obligation of the court to give a detailed answer to any arguments of the Applicant. (see ECtHR case, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, Series A. No. 288, p. 20, paragraph 61). The extent to which the duty to give reasons applies may vary according to the nature of the decision. It should also take into account, *inter alia*, the variety of submissions submitted by a party to proceedings that may make the courts give various legal opinions and conclusions when rendering decisions. Therefore, the question whether the court has fulfilled the obligation to explain the reasons for its decision, stemming from Article 6 of the ECHR, can only be determined in the light of the circumstances of each individual case.

58. Accordingly, the Court finds that the Applicant had the benefit of the conduct of the proceedings based on adversarial principle, he was able to adduce the arguments and evidence he considered relevant to his case at the various stages of those proceedings, he was given the opportunity to challenge effectively the arguments and evidence presented by the responding party; all the arguments, viewed objectively, relevant for the resolution of his case were heard and reviewed by the regular courts; the factual and legal reasons of the challenged decision were presented in detail; and therefore, the proceedings, viewed in entirety, were fair (see, *mutatis mutandis,* Judgment of ECtHR of 21 January 1999, *Garcia Ruiz v. Spain*, no. 30544/96, paragraphs 29 and 30).

59. Therefore, the Court finds that the right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, has not been violated by the decisions of public authorities.

60. Taking into account that the Applicant failed to present evidence, facts and arguments showing that the proceedings before the regular courts violated his right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, the Court will not deal with the examination of further allegations of the Applicant because the violations of other rights guaranteed by Articles 32 and 46 of the Constitution and Article 1 of Protocol 1 of the ECHR, are presented by the Applicant as a result of the violation of the right to fair and impartial trial.

61. The Court recalls that the mere fact that the Applicant does not agree with the outcome of the decisions of the Supreme Court, as well as mentioning of articles of the Constitution, are not sufficient to build a reasoned allegation of constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (See, *mutatis mutandis*, case of the Constitutional Court Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, KI136/14, paragraph 33).

62. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible in accordance with Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 27 May 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**

Kopje e vërtetuar
Overena kopija
Certified Copy

Radomir Laban Arta Rama-Hajrizi

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