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

Prishtina, on 14 June 2019
Ref. no.: 1372/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI140/17

Applicant

Merita Dervishi

Constitutional review of Judgment ARJ. UZVP. No. 55/2017 of the Supreme Court of Kosovo of 30 October 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 Merita Dervishi from the Municipality of Skenderaj, represented by Safet Voca, a lawyer from the Municipality of Mitrovica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [ARJ. UZVP. No. 55/2017] of 30 October 2017 of the Supreme Court in conjunction with the Judgment [AA. No. 56/2017] of 18 July 2017 of the Court of Appeals and Judgment [A. No. 781/2015] of 23 December 2016 of the Basic Court in Prishtina (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), Article 32 [Right to Legal Remedies], 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, 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).

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

Proceedings before the Court

6. On 24 November 2017, the Applicant submitted the Referral to the Court.

7. On 1 December 2017, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Arta Rama-Hajrizi.

8. On 7 December 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

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

10. 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.

11. On 23 October 2018, the President of the Court rendered Decision No. KSH.KI140/17 on the replacement of the Review Panel and in the Panel were appointed judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Bajram Ljatifi.

12. On 28 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

13. From the case file, it results that as of 30 August 2013, the Applicant was employed as Director of the Primary School "Shotë Galica" in Runik of the Municipality of Skenderaj.

14. On 30 July 2014, the Municipality of Skenderaj, namely the Office of the President of the Municipality, by the Decision [No. 2-02-40376] annulled the Decision [No. 020-020642] of 30 August 2013 on the appointment of the Applicant as a Director by terminating her employment relationship.

Regarding administrative proceedings

15. On 8 August 2014, the Applicant challenged the abovementioned decision to the Municipal Directorate of Education and the Office of the President of Skenderaj.

16. On 21 August 2014, the appeal of the Applicant was rejected by the President of the Municipality. The Applicant did not receive any response from the Municipal Directorate of Education.

17. On 1 September 2014, the Applicant filed an appeal with the Independent Oversight Board for Civil Service of Kosovo (hereinafter: IOBK) against the Decision of the Municipality.

18. On 24 September 2014, the IOBK rendered the Decision [A. No. 02/372/2014], through which (i) obliged the Dispute Resolution and Appeals Commission in the Municipality of Skenderaj (hereinafter: the Appeals Commission) to decide on the Applicant's appeal filed on 8 August 2014; (ii) requested the latter to enforce this decision within 15 (fifteen) days; and (iii) obliged the Appeals Commission to notify KPMC of the outcome of this decision-making.

19. The IOBK stated in the abovementioned Decision that the Education Directorate of the Municipality was obliged to submit the appeal to the Appeals Commission in the course of receiving the appeal from the Applicant within two days, in accordance with item (b) of paragraph 1 of the Article 18 of Law No. 02/L-28 on the Administrative Procedure (hereinafter: the LAP), in force at the time of the dispute. The IOBK found that the Directorate of Education of the Municipality failed to apply the relevant legal provisions and as a result, the IOBK also declared invalid the response of the Office of the President of the Municipality to the Applicant's appeal of 8 August 2014, because according to the IOBK, it was made in violation of paragraphs 1 and 2 of Article 82 of Law No. 03/L-149 on Civil Service.

20. On 10 October 2014, the Appeals Commission by Decision [No. 2-112-42544] declared itself incompetent to resolve the Applicant's appeal, *inter alia*, on the grounds that the Applicant did not belong to the category of civil servants. According to the legal remedy of this decision, the deadline of the appeal with the IOBK is 30 (thirty) days from the day of rendering the decision. The Applicant claims that she has never received this decision of the Appeals Commission.

21. On 30 January 2012, the Applicant requested the IOBK to be informed of the outcome of her appeal of 1 September 2014 and the implementation of the IOBK Decision of 24 September 2014.

22. In this request, the Applicant, *inter alia*, stated the following:

> *"Despite the fact that since the time when I, as the authorized representative of the appellant, was served with the abovementioned decision of the IOBK have passed more than 3 months, I did not receive from the Board any letter by which I would be notified of the fate of the appeal filed within the legal time limit against Decision no. 02 - 02 - 40376 of the President of the Municipality of Skenderaj of 30.07.2014, and so far I do not know how the Municipality of Skenderaj acted in connection with the implementation of the IOBCSK decision A. 02/237/2014, since I have not received any letter about this issue from the latter".*

23. On 9 February 2015, the IOBK notified the Applicant that the Appeals Commission decided to declare itself incompetent to decide on the Applicant's appeal. Through this letter, the IOBK, based on paragraph 1 of Article 6 of Regulation no. 02/2014 on the IOBK Rules of Procedure of Appeals in the IOBK (hereinafter: the Rules on Appeals) also informed the Applicant that within eight days from the day of receipt of this notice, she was entitled to complete her request of 30 January, namely 3 February 2015, namely the initial appeal of 1 September 2014 against the Decision [No. 2-02-40376] of the Municipality of 30 July 2014. The Applicant has allegedly been served with this notice on 9 March 2015.

24. On 11 March 2015, the Applicant submitted to the IOBK the completed request, challenging the Decision [No. 2-112-42544] of 10 October 2014 of the Appeals Commission and by repeating once again the allegations made in the previous appeal against the Decision [No. 2-02-40376] of 30 July 2014 of the President of the Municipality.

25. On 14 April 2015, the IOBK by Decision [A. No. 02/107/2015] decided to reject the above-mentioned request as inadmissible with the reasoning that the Applicant was served with the Appeals Commission's decision on 18 October 2014, the date from which the time limit for challenging the Decision of the Commission of 10 October 2014 started to run to the party. The IOBK therefore reasoned that the Applicant's appeal against the Decision of the Appeals Commission was filed out of the legal deadlines as set out in Article 130 of the LAP and Article 4 of the Regulation on Complaints.

With regard to the court proceedings

26. On 4 May 2015, the Applicant challenged the abovementioned decision of the IOBK in the Basic Court alleging, *inter alia*, that IOBK erroneously determined the factual situation when rejected her appeal of 11 March 2015.

27. On 23 December 2016, the Department of Administrative Matters of the Basic Court, by Judgment [A. No. 781/2015], rejected as ungrounded the Applicant's appeal. The Basic Court, among other things, based its Judgment on (i) the finding that the Applicant in fact received the Appeals Commission Decision on 18 October 2014 and that based on paragraph 1 of Article 130 of the LAP and paragraph 1 of Article 4 of the Regulation on Appeals, the deadline for filing the appeal with the IOBK was 30 (thirty) days after the receipt of this decision; and (ii) the fact that even if the Applicant had not received the Decision, pursuant to Article 130, paragraph 2 of Article 130 of the LAP, in the case of administrative silence the time limit for the appeal is 60 (sixty) days from the submission of the request for the initiation of the administrative procedure, while the Applicant filed the first request for notification on 30 January 2015.

28. On an unspecified date, the Applicant challenged the abovementioned Judgment of the Basic Court with the Court of Appeals alleging violation of the provisions of the procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law, with the proposal that the challenged Judgment be annulled and the case be remanded for retrial.

29. On 18 July 2017, the Department for Administrative Matters of the Court of Appeals, by Judgment [AA. No. 56/2017], rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Basic Court.

30. On 11 August 2017, the Applicant filed a request for extraordinary review against the Judgment of the Court of Appeals with Supreme Court, alleging essential violation of the procedural provisions, erroneous and incomplete determination of

factual situation and erroneous application of the substantive law. The Applicant also alleged violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and violation of Articles 32 and 54 of the Constitution. The Applicant requested the Supreme Court to annul both Judgments of the lower courts and her case be remanded for retrial.

31. On 30 October 2017, the Supreme Court, by Judgment [ARJ. UZVP. No. 55/2017], rejected as ungrounded the request for extraordinary review and upheld the Judgments of the Court of Appeals and of the Basic Court.

Applicant's allegations

32. The Applicant alleges that the Judgment [ARJ. UZVP. No. 55/2017] of the Supreme Court of 30 October 2017, was rendered in violation of her fundamental rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 (Right to a fair trial) of the ECHR, Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution. The Applicant also alleges that as a result of the violation of violation of these articles, Article 49 [Right to Work and Exercise Profession] of the Constitution has also been violated in her case.

33. The Applicant in essence alleges that in violation of Articles 32 and 54 of the Constitution, it was impossible for her to exercise the legal remedy against the Decision of the Appeals Commission, because the latter has never been served on her.

34. The Applicant specifically alleges as follows: "*Having never sent to me as a representative of the party with the power of attorney on this subject matter, the Decision No. 2-112-42544of the Dispute Resolution and Complaints Commission of Skenderaj, of 10.10.2014, there has been a violation of the basic principles of the Law on the Administrative Procedure and the Principle of Legality, the Principle of Equality before the Law and the Principle of Objectivity and Impartiality, and also the violation of an elementary procedural principle was committed, which stipulates that when the party assigned in the procedure has represented it with the power of attorney, such decision is first sent to the authorized representative of the party, and only this is considered regular communication between the body and the party*".

35. Finally, the Applicant requests the Court to declare her Referral admissible, and declare invalid the challenged Judgment of the Supreme Court, by remanding her case for retrial.

Relevant legal provisions

LAW NO. 02/L-28 ON ADMINISTRATIVE PROCEDURE

Article 130
Deadline for administrative appeal

"130.1. The administrative appeal shall be done in the course of 30 days since the day:
a) the complainant has received the notice on the act or refusal to issue an act;
b) the act has been promulgated in accordance with the provisions of this and other laws.
130.2. In case of failure to undertake any action by the administration (non-issue of act or complete silence), the administrative appeal shall be done in the course of 60 days since the day of submission of request for commencement of administrative proceeding".

REGULATION NO. 02/2014 ON RULES AND PROCEDURES OF THE COMPLAINTS IN THE INDEPENDENT OVERSIGHT BOARD FOR THE CIVIL SERVICE OF KOSOVO

Article 4
Deadline for appeal

1. The appeal must be filed within 30 days from the day when the decision of the Dispute Resolution and Complaints Commission has been served on the party.
2. In case of failure to act by the administration body (failure to issue the act or complete silence), the appeal is filed within 60 days from the date of submission of the request for initiation of administrative proceeding.
3. When the party under the influence of extraordinary circumstances cannot file an appeal, he/she is entitled, within 8 days from the day when the obstacles do not exist, to submit to the board a request for return to the previous situation together with the appeal.
4. All the effects of administrative actions against which an appeal has been filed with the board are suspended until the final decision.

Assessment of the admissibility of Referral

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

37. 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".

38. 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 establish:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.
2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

Article 48
[Accuracy of 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...".

39. Regarding the fulfillment of these requirements, the Court considers that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [ARJ. UZVP. No. 55/2017] of 30 October 2017 of the Supreme Court, after exhaustion of all legal remedies provided by law. The Applicant also clarified the rights and freedoms she 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.

40. In addition, the Court examines whether the Applicant met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule

39 (2) of the Rules of Procedure establishes the requirements based on which the Court may consider a referral, including the requirement that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) of the Rules of Procedure provides that:

> *"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".*

41. In this regard, the Court recalls that the Applicant alleges that the challenged Judgment of the Supreme Court violates her rights guaranteed by Articles 24, 31, 32 and 54 of the Constitution and as a result of these violations the rights guaranteed by Article 49 of the Constitution have also been violated. The Court notes that the Applicant did not justify her allegations of a violation of Articles 24 and 31 of the Constitution, while she build the allegations of violation of Articles 32 and 54 of the Constitution by claiming that she had never received the Decision of the Appeals Commission, and, consequently, it was impossible for her the the effective exercise of the legal remedy against this Decision.

42. The Court further notes that in addressing the Applicant's allegations, it will apply the standards of the case law of the European Court on Human Rights (hereinafter: the ECtHR), in accordance with which, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution is required to interpret the fundamental rights and freedoms guaranteed by the Constitution.

43. In this respect, the Court initially notes that the case law of the ECtHR states that the fairness of a proceeding is assessed looking at the proceeding as a whole (See the ECtHR Judgment of 6 December 1988, *Barbera, Messeque and Jabardo v. Spain*, paragraph 68). Accordingly, in assessing the Applicant's allegations, the Court will also adhere to this principle (See, *inter alia,* cases of the Court KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018, paragraph 31).

44. In this regard, the Court recalls that the Applicant in the administrative and judicial proceedings challenged the Decision of the President of the Municipality on annulment of a previous decision, through which the Applicant was employed as a director in a primary school. The administrative procedure was completed by the Decision [A. No. 02/107/2015] of 14 April 2015 of the IOBK, through which the Applicant's appeal against the decision of the President of the Municipality was dismissed as inadmissible on the ground that the latter was out of time. This IOBK Decision was upheld by three Judgments of the regular courts.

45. Throughout all proceedings the deadline of the Applicant's appeal was disputable. In this regard, the Court recalls that the first appeal of the Applicant against the Decision of the President of the Municipality was filed on 8 August 2004. The response to this appeal was received on 21 August 2014, which the Applicant

challenged at IOBK on 1 September 2014. The latter, on 24 September 2014, rendered a Decision by which the Applicant's case was remanded for decision-making at the level of the Municipality, namely the Appeals Commission, which was obliged to decide within 15 (fifteen) days. The Appeals Commission rendered the Decision on 10 October 2014, by which it declared itself incompetent for the matter in question. The Applicant claims that this Decision has never been served on her.

46. On 30 January 2015, the Applicant requested information from the IOBK regarding the Decision of the Appeals Commission. On 9 February 2015, the IOBK informed the Applicant that the Appeals Commission rendered a Decision and that the Applicant had a deadline of 8 (eight) days to complete her initial appeal, namely that of 1 September 2014 , and to resubmit it to the IOBK. The Applicant alleges that she received this notice on 9 March 2015, while she submitted the completed appeal to the IOBK on 11 March 2015. The latter, by the Decision of 14 April 2015, was rejected by the IOBK as inadmissible by considering it as out of time.

47. In this regard, the Court notes that in the circumstances of the case, the essential issue related to the timeliness of the Applicant's appeal is whether and when the Applicant was served with the Decision of the Appeals Commission. As stated above, the Applicant alleges that she has never received this decision, whereas the IOBK and the regular courts state that the Applicant in fact received this decision on 18 October 2014, a moment from which, based on Article 130 of LAP and Article 4 of the Rules on Appeals, started to run the 30 (thirty) day deadline for appeal with the IOBK.

48. The Court initially points out that in principle such cases relating to the interpretation of facts and laws are in the jurisdiction of the regular courts. The Court has consistently reiterated that it is not its task to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). The Court may not itself assess the law that has led the regular courts to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "*fourth instance*", which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of the procedural and substantive law (See, case *García Ruiz v. Spain*, ECtHR Judgment of 21 January 1999, paragraph 28; and see also cases of the Court: KI70/11, Applicants: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011; KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 37; and KI122/16, Applicant *Riza Dembogaj*, Judgment of 6 June 2018, paragraph 57).

49. However, the Court has consistently reiterated that even though the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take measures where it observes that a court has applied the law manifestly

erroneously in a particular case, which may resulted in reaching arbitrary conclusions. (See the ECtHR cases *Anheuser-Busch Inc.* Judgment of 11 January 2007, paragraph 83; *Kuznetsov and Others v. Russia*, Judgment of 11 January 2007, paragraphs 70-74 and 84; *Păduraru v. Romania*, Judgment of 5 December 2005, paragraph 98; *Sovtransavto Holding v. Ukraine*, Judgment of 25 July 2002, paragraphs 79, 97 and 98;, *Beyeler v. Italy* [GC], Judgment of 5 January 2000, paragraph 108, *Koshoglu v. Bulgaria*, Judgment of 10 May 2007, paragraph 50; see also the cases of the Court KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 40; and KI122/16, Applicant *Riza Dembogaj*, Judgment of 6 June 2018, paragraph 59).

50. In this regard, the Court notes that the Applicant did not substantiate the allegations that the proceedings before the regular courts were in any way unfair or arbitrary and that the challenged Judgment violated the rights and freedoms guaranteed by the Constitution and the ECHR. (see, *mutatis mutandis, Shub v. Lithuania*, ECtHR Decision of 30 June 2009).

51. The Court notes that all the decisions of the regular courts dealt with her allegation on the timeliness of her request and sufficiently reasoned the rejection of that allegation.

52. In this respect, the Court recalls that the Basic Court, by its Judgment [A. No. 781/2015] of 23 December 2016, *inter alia*, stated:

> *"From the evidence administered in the session of the main hearing and that, the decision of the Dispute Resolution and Appeals Commission of the Municipality of Skenderaj dated 03.02.2015, which was served on the claimant on 18.10.2014, the date from which the deadline of the appeal has started to run, while the claimant's authorized representative the request with no. 332/20 15 for notification regarding the appeal of. 01.09.2014, filed with the respondent on 03.02.2015, while supplementation the amendment of the appeal of 01.09.2014, was made on 11.03.2015, which is out of the legal deadline of 30 days set by the Law on Administrative Procedure No. 02/L-28, Article 130.1 and 130.2, as well as Article 4, paragraph 1 of Regulation No. 02/2014, on Complaints Procedures in the Independent Oversight Board for Civil Service of Kosovo".*

53. By addressing the same allegation, the Court of Appeals, by its Judgment [AA. No. 56/2017] of 18 July 2017, *inter alia*, emphasized:

> *"It is undoubtedly proved that the claimant missed the legal time limit for appeal with the responding body the IOBCSK, within the legal time limit of 30 days, as it is foreseen in the provisions of Article 130 of the LAP, and Article 4 par. 1, the Reg. 02/2014, on appeals procedures in the IOBCSK of Kosovo, as cited in the decision of the responding body and the appealed judgment, therefore her appeal was rightly dismissed as inadmissible, because it is an indisputable fact that the latter received on 18.10.2104 the*

decision of the Municipal Commission for Resolving Disputes and Complaints of M. Skenderaj, No. 2-112- 42544, of 10.10.2014, then the request to the IOBCSK, for notification regarding the appeal of 01.09.2014, was filed on 03.02.2015, whereas the supplementation-amendment of the appeal of 01.09.2014, challenging the abovementioned decision as above with an appeal with the responding body IOBCSK, was filed on 11.03.2015, which is out of the legal deadline of 30 days as foreseen by the provisions mentioned above, which regulate the timeliness of the appeal".

54. Finally, the Supreme Court, by the Judgment [ARJ. UZVP. No. 55/2017] of 30 October 2017, also upheld the Judgments of the previous courts, reasoning as follows:

"It is an indisputable fact that the latter received on 18.10.2014 Decision No. 2-11 2-42544 of the Municipal Commission for Resolution of Disputes and Complaints of the Municipality of Skenderaj of 10.1.2014, whereas the complaint to the responding body - IOBCSK was filed on 1.03.2015. According to the assessment of this court, the responding administrative body acted fairly when rejected the appeal of the claimant Merita Dervishi as inadmissible. Also, this court assessed that both courts rendered decisions in accordance with the law by correctly applying the procedural provisions".

55. Therefore, and as elaborated above, the Court notes that all regular courts found that the Applicant received the Decision of the Appeals Commission on 18 October 2014, a moment from which, based on Article 130 of the LAP and Article 4 of the Regulation on Appeals, started to run the 30 (thirty) day deadline for submitting the appeal to the IOBK, the deadline which the Applicant missed.

56. The Court, however, notes the fact that the Applicant alleges that she has never received this Decision of the Appeals Commission. In this regard, the Court recalls the reasoning of the Basic Court and which, in such circumstances, referred to paragraph 2 of Article 130 of the LAP, according to which in the case of failure to act by the administrative body, the appeal is filed within 60 (sixty) days from the date of submission of the request for initiation of the administrative proceeding.

57. In this dispute, the Court notes that it is not disputable that (i) the Applicant did not file the appeal within the 30 (thirty) days after the decision of the Appeal Commission of 10 October 2014 was rendered, and which according to the IOBK and the regular courts was received by the Applicant on 18 December 2014; and (ii) the Applicant did not file an appeal either within the 60 (sixty) day deadline from the day the administrative proceeding was initiated, as foreseen by the LAP in case of administrative silence, and in the circumstances of the present case, it would be the case if the Applicant would not have been informed about the Decision of the Appeals Commission of 10 October 2014, as she alleges.

58. In support of the latter, the Court recalls that the IOBK Decision of 24 September 2014 obliged the Appeals Commission to take a decision on the Applicant's case

within 15 (fifteen) days. This Decision, as stated above, was taken by the Appeals Commission on 10 October 2014. The first time the Applicant addressed the IOBK after her initial complaint of 1 September 2014, is 30 January 2015, namely 3 February 2015, the date when the Applicant submitted the request for notification to the IOBK, and when the latter received this request.

59. Accordingly, the Court notes that the Applicant's appeal even in the case of taking into account her allegation and despite the determination by the regular courts that she had never received the decision of the Appeals Commission of 10 October 2014 is out of time, as it has been determined by the regular courts, because the latter was filed even after the 60 (sixty) day deadline provided by paragraph 2 of Article 130 of the LAP and paragraph 2 of Article 4 of the Regulation on Appeals.

60. The Court notes that the Applicant also alleges that her response, namely the completion of her appeal according to the IOBK request of 9 February 2015, which the Applicant submitted on 11 March 2015, was timely, because according to the allegation, the IOBK notification was served on her on 9 March 2015. However, the Court notes that in fact this issue is not disputable in the circumstances of the case because neither the IOBK by the Decision [A. No. 02/107/2015] of 14 April 2015; nor the regular courts by their respective Judgments, dismissed or rejected as ungrounded the Applicants' appeals as out of time because of the time-limit related to the completion of her appeal filed on 11 March 2015, but in essence, and as stated above, with the justification that the Applicant had not appealed within the deadlines set out in paragraphs 1 and 2 of Article 130 of the LAP and paragraphs 1 and 2 of Article 4 of the Rules of Appeals from the moment when the administrative proceeding was initiated .

61. The Court recalls that the Applicant alleges that in the circumstances of the present case, *inter alia*, the right to legal remedy and the right to judicial protection of the rights guaranteed by Articles 32 and 53 of the Constitution, have been violated.

62. In this respect, the Court recalls that, in principle and in its entirety, Article 54 of the Constitution for the judicial protection of right, Article 32 of the Constitution on the right to a legal remedy and Article 13 of the ECHR on the right to an effective legal remedy, guarantee: (i) the right to judicial protection in case of violation or denial of a right guaranteed by the Constitution or by law; (ii) the right to use a legal remedy against judicial and administrative decisions that violate the rights guaranteed in the manner prescribed by law; (iii) the right to an effective legal remedy if it is found that a right has been violated; and (iv) the right to an effective remedy at national level if a right guaranteed by the ECHR has been violated. (See case, KI48/18, Applicant *Arban Abrashi and Democratic League of Kosovo*, Judgment of 4 February 2019, paragraphs 195-198).

63. However, the Court reiterates that the Applicant does not support in any way her allegations of violation of these rights. The Court in fact states that the Applicant had an effective legal remedy at her disposal and that missing the time limits for

filing complaints cannot in any way result in arguable claims of violation of the rights guaranteed by Articles 32 and 54 of the Constitution.

64. On the contrary, the Court has consistently emphasized that it is the duty of the Applicants or of their representatives to act with '*due diligence*' to ensure that their claims for protection of rights and fundamental freedoms are filed within the legal deadline. (See case of ECtHR, *Mocanu and Others v. Romania*, Judgment of 17 September 2014, paragraphs 263-267).

65. The Court also recalls that the Applicant alleges a violation of her rights guaranteed by Article 49 of the Constitution, namely the rights to work and exercise profession.

66. The Court emphasizes that within the meaning of this specific right, the Constitution provides 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. These rights are regulated by applicable laws in a specific manner. (see, *inter alia*, cases of the Court KI46/15, Applicant *Zejna Qosaj,* Resolution on Inadmissibility of 20 October 2015, paragraph 26; and KI70/17, Applicant *Rrahim Ramadani*, Resolution on Inadmissibility, of 8 May 2018, paragraph 48).

67. The Court notes that the Applicant's allegation of a violation of the right to work must be understood in the light of the abovementioned interpretation. The Court also notes that the Applicant's allegation in the present case does not relate to the denial of the right to work and to exercise profession, within the meaning of Article 49 of the Constitution.

68. 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 her constitutional rights, guaranteed by Article 49 have been violated. (See, *inter alia*, the cases of the Court KI136/14, Applicant *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 34, and KI42/17, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 5 December 2017, paragraph 53).

69. Therefore, based on the foregoing and taking into account the special characteristics of the case, the allegations raised by the Applicant and the facts presented by her, the Court also relying on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and sufficiently substantiated her allegations that the proceedings before the regular courts were in any way unfair or arbitrary and that the challenged Judgment violated the rights and freedoms guaranteed by the Constitution and the ECHR. (see, *mutatis mutandis, Shub v. Lithuania*, appl. No. 17064/06, ECtHR, Decision of 30 June 2009).

70. The Court finally notes that the dissatisfaction of the Applicant with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of violation of the fundamental rights and freedoms guaranteed by the Constitution (See, *mutatis mutandis*, ECtHR case, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Decision of 26 July 2005, paragraph 21).

71. Therefore, the Referral is manifestly ill-founded on constitutional basis, and is declared inadmissible, as established in Article 113.7 of the Constitution and further specified in 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, in the session held on 28 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**

Gresa Caka-Nimani Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.