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

Prishtina, on 08 July 2019
Ref. no.:RK1390/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI129/18

Applicant

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

Constitutional review of Judgment Rev. No. 220/2018 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. 220/2018 of the Supreme Court of Kosovo 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 24 [Equality Before the Law], 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 ECHR).

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, 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 3 September 2018, the Applicant submitted the Referrals KI128/18, KI129/18 and KI130/18 to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 5 September 2018, the Applicant submitted the Referral KI132/18 to the Court.

7. 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), Remzije Istrefi and Nexhmi Rexhepi, in case KI128/18.

8. On 21 September 2018, the President of the Court by Order joined the cases KI128/18, KI129/18, KI130/18, KI132/18, with the same Judge Rapporteur and the Review Panel, as in case KI128/18.

9. On 25 September 2018, the Applicant submitted the Referrals KI164/18, KI165/18, KI166/18 and KI167/18 to the Court.

10. 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, with the same Judge Rapporteur and the Review Panel, as in case KI128/18.

11. On 8 November 2018, the Court notified the Applicant and the Supreme Court about the registration and joinder of Referrals KI164/18, KI165/18, KI166/18 and KI167/18 with Referrals KI128/18, KI129/18, KI130/18, KI132/18.

12. On 6 December 2018, the Applicant submitted a letter to the Court and attached two decisions of the Basic Court in Prishtina - branch in Lipjan, and a decision of the Court of Appeals. It requested that these documents be joined to cases KI129/18 and KI166/18. With these additional documents, the Applicant wanted to demonstrate different practices of regular courts in the decision-making process.

13. 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, with the same Judge Rapporteur and the Review Panel, as in case KI128/18.

14. On 12 April 2019, the Court notified the Applicant and the Supreme Court that 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 before the Constitutional Court.

15. 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"*.

16. On 16 May 2019, the Applicant submitted to the Court a document entitled *"Submission, regarding the cases registered with the Constitutional Court"*, in which in essence he repeated the allegations, which he made before.

17. On 20 June 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

18. 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).

19. Based on the case file, it is noted that the employee B. A. (hereinafter: the employee) was employed with the PIA. The employee B. A. established employment relationship with the PIA for the period from 1 January 2005 until 3 April 2011. Pursuant to the PPP Agreement, the Applicant assumed the obligation to keep all employees in employment relationship for three (3) years. Based on the PPP Agreement, the Applicant hired B. A. employee, according to a fixed-term contract for a duration of 3 (three) years, namely from 3 April 2011 until 3 April 2014.

20. On 3 March 2014, namely 30 (thirty) days before the expiry of the fix-term contract, the Applicant notified the employee B. A. that his contract was terminated through a "*Notice of termination of the employment contract*" and reasoned that this is based on *"[...] the company's decision on future human resource planning*". On the other hand, as a legal basis for the non-extension of the employment contract, the Applicant was based on paragraph 2 of Article 71 of the Law on Labor and the employment contract.

21. On 18 March 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*".

22. On 1 April 2014, the Applicant rejected as ungrounded the employee's request of the employee to annul the notification on non-renewal of the contract as unlawful.

23. 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 and the response of the Applicant of 1 April 2014 on non-extension of the employment contract, 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.

24. On 2 June 2015, the Basic Court in Prishtina - Branch in Lipjan (hereinafter: the Basic Court) by Judgment C. No. 202/14 rejected, as ungrounded, the claim of B.A. referring to the provision of Article 67, item 1.3 of the Law on Labor, which provides *"[...] termination of employment relationship based on law, except for other cases, is terminated even after the expiry of the term of the contract* ". Therefore, in the present case, according to the Basic Court, as the employee has not completed 10 (ten) years of work experience, to be considered to be on an indefinite term, then *"[the Applicant] did not have a legal obligation to extend the employment contract of [the employee]*, as his employment relationship with the expiry of the employment contract was terminated, namely, on legal basis.

25. On an unspecified date, the employee B. A. filed an appeal against the judgment of the first instance court.

26. On 5 April 2018, the Court of Appeals by Judgment Ac. No. 3627/2015 rejected the Applicant's appeal as ungrounded and upheld the Judgment of the first instance court, pointing out that the appealing allegations are ungrounded because the employee has not 10 (ten) years or more work experience with the Applicant to be considered as having an indefinite employment relationship. Therefore, the Court of Appeals considered that the assessment of the first instance court is lawful and regular.

27. On unspecified date, the employee B. A. submitted a request for revision against the judgment of the first instance and second instance courts. The employee requested in the revision that the revision of the claimant be

approved as grounded and that the judgments of the lower instance courts be modified so that the statement of claim of the claimant be approved as grounded and the respondent be obliged to compensate the costs of the proceedings or annul the judgments of two courts and the case be remanded for retrial to the first instance court.

28. On 4 July 2018, the Supreme Court by Judgment Rev. No. 220/2018, approved as grounded the revision filed by the employee and modified the judgments of the Basic Court and the Court of Appeals.

29. The Supreme Court by Judgment Rev. No. 220/2018 (i) approved the revision of the employee as grounded, (ii) annulled the Applicant's notification of 3 March 2014, as well as the Applicant's reply of 1 April 2014 on the non-extension of the employment contract, (iii) obliged the Applicant to reinstate the employee to the same working place, (iv) obliged the Applicant to pay a certain amount to the employee on behalf of the material damage, and (v) obliged the Applicant to cover the costs of the contested procedure.

30. The Supreme Court further reasoned that *"[the Applicant] failed to prove all his allegations regarding the legality of the non-extension of [the employee's] employment contract as well as the confirmation of the relevant facts if [the Applicant] has compiled a detailed operational plan in which it would be determined which services could be reduced and what involvement would have been reduced in order to establish the fact that the evidence presented constitutes a valid legal basis for non-extension of the employment contract [...],therefore, [the Applicant]'s failure in this regard for the non-extension of the employment contract makes it unlawful"*.

31. Furthermore, the Supreme Court found that the subject of the statement of claim of the employee "*was the assessment of legality of the notice of non-extension of the employment contract and not the confirmation of existence of the indefinite employment relationship, which notice was taken in contradiction with the Law on Labor* ", considering that the courts of lower instances have correctly determined the factual situation but have erroneously applied the substantive law.

Applicant's allegations

32. The Court recalls that the Applicant alleges that *"The Supreme Court of Kosovo, by its Judgment Rev. No. 220/ 2018 of 4.07.2018, [...] 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"*.

33. The Applicant in substance justifies his referral by stating that:

(i) That the Supreme Court exceeded the request for revision when interpreting Article 5, paragraph 1 of the Law on Labor.
(ii) That the Basic Court and the Court of Appeals have correctly applied the law regarding Article 1.1 and Article 67, paragraph 1.3, and Article 71 paragraph 2 of the Law on Labor No. 03/L-212, whereas the Supreme Court has erroneously applied the substantive law and the reasoning of the judgment of the Supreme Court is in contradiction with the facts.
(iii) The Applicant further alleges that the regular courts interpreted differently the same legal norms and violated the principle of legal certainty and as evidence of various case laws regarding cases KI129/18 and KI166/18, attached the Judgments of the Basic Court in Prishtina (Judgment C. No. 238/2014 and Judgment C. No. 179/2018) and Judgment of the Court of Appeals (CA. No. 3633/2015).
(iv) That violations of other articles have resulted from a violation of Article 31 of the Constitution and Article 6 of the ECHR.

34. The Applicant in support of his allegations, cites 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, but the Supreme Court did not resolve this issue at all, based on a legal fact*".

35. The Applicant alleges 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).*

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

Relevant legal provisions

Law No. 03/L-212 on Labor

Article 5
Prohibition of all Forms of Discrimination

5. Discrimination is prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment or other matters arising out of the employment relationship and regulated by Law and other Laws into force.
[...]

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

37. 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.

38. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]
7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".

39. The Court also refers 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".*

40. 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).

41. The Court further examines whether the Applicant 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
[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 [...]".

42. 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.

43. However, the Court refers to paragraph (2) of Rule 39 [Admissibility Criteria] of the Rules of Procedure, which 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".

44. 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.

45. In essence, the Applicant justifies his Referral regarding 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 Supreme Court exceeded the request for revision when interpreting Article 5, paragraph 1 of the Law on Labor.
(ii) That the Basic Court and the Court of Appeals have correctly applied the law regarding Article 1.1 and Article 67, paragraph 1.3, and Article 71 paragraph 2 of the Law on Labor No. 03/L-212, whereas the Supreme Court has erroneously applied the substantive law and the reasoning of the judgment of the Supreme Court is in contradiction with the facts.
(iii) The Applicant further alleges that the regular courts interpreted differently the same legal norms and violated the principle of legal certainty and as evidence of various case laws regarding cases KI129/18 and KI166/18, attached the Judgments of the Basic Court in Prishtina (Judgment C. No. 238/2014 and Judgment C. No. 179/2018) and Judgment of the Court of Appeals (CA. No. 3633/2015).
(iv) That violations of other articles have resulted from a violation of Article 31 of the Constitution and Article 6 of the ECHR.

46. Referring to the Applicant's allegations, the Court refers to the case law of the European Court of Human Rights (hereinafter: the ECHR), which obliges the Court, that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, to interpret human rights and fundamental freedoms guaranteed by the Constitution in harmony with ECtHR court decisions.

(i) Regarding allegations of violation of the Applicant's right to fair and impartial trial in relation to exceeding the competencies of the Supreme Court

47. The Court recalls that the Applicant alleges that the Supreme Court exceeded the request for revision when interpreting Article 5 of the Law on Labor.

48. Based on the foregoing, regarding the Applicant's specific allegations of exceeding competencies by the Supreme Court, the Court recalls that the specific jurisdiction of each regular court is determined by the relevant legislation. regarding the present case, paragraph 2.2 of Article 2 of the Law on Contested Procedure states that *"The court applies the rules set by the substantive law as it deems appropriate and is not obliged to claims of litigants concerning the substantive law"*.

49. With regard to these allegations of the Applicant, the Court notes that the Supreme Court reasoned that *"the claimant with the respondent's predecessor was employed from 1 January 2005 until 3.04.2014, although the working place was of a permanent employment nature. Such contracts, according to*

the assessment of this Court, are contrary to the principle of conscientiousness and honesty, where for 8 years and 3 months the claimant is kept in uncertain legal situation of the employment relationship, with the extension of the employment relationship for a certain time and finally notice the termination of the employment contract which has no legal basis. The employer cannot waive the rights of employees deriving from the mandatory provisions of Article 5 par. 1 of the Law on Labor, which provides that any discrimination is prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment or other matters arising out of the employment relationship and regulated by Law and other Laws into force. The respondent failed to substantiate the fact that during the implementation of the PPP Agreement between the respondent and the Republic of Kosovo, it has correctly applied the provision of Article 5.1 of the Law on Labor. Therefore, setting from such a situation in this case, the Supreme Court decided that the revision of the claimant is grounded, that the judgments of the two courts were rendered with erroneous application of the substantive law and therefore decided to approve the statement of claim of the claimant, as in the enacting clause of the judgment of this court".

50. Therefore, the Court finds that the Applicant's allegations of violation of the right to fair trial regarding the exceeding of the competencies of the Supreme Court are ungrounded on constitutional basis.

(ii) Regarding the allegations of violation of the Applicant's right to fair and impartial trial in relation to unreasoned decision

51. In this respect, the Court first notes that a basic function of a reasoned decision is to demonstrate to the parties that they have been heard. In addition, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice. (See *mutatis mutandis,* ECtHR cases, *Hirvisaari v. Finland,* no. 49684/99, Judgment of 27 September 2001, paragraph 30; *see also Suominen v. Finland,* application no. 37801/97, Judgment of 1 July 2003, paragraph 37; see also the cases of the Constitutional Court, *IKK Classic* Judgment of December 2017, paragraph 46).

52. The Court notes that, while it is not necessary for the Court to deal with any point raised in the argument (see also the case of the ECtHR, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, paragraph 61), the main arguments of the Applicants should be addressed (See ECtHR cases, *Buzescu v. Romania*, No. 61302/00, Judgment of 24 May 2005 and *Pronina v. Ukraine*, No. 63566/00, Judgment of 18 July 2006). In addition, giving a reason for a decision that is not a good reason in the law will not meet the criteria of Article 6 (See ECtHR case *De Moor v. Belgium*, No. 16997/90, Judgment of 23 June 1994 as well as the case of the Constitutional Court *IKK Classic*, cited above, paragraph 51).

53. The Court recalls that the Supreme Court in its Judgment reasoned that, having regard to this factual situation of the case, the Supreme Court has "... *found that the lower courts erroneously applied the substantive law (224.1 of LCP) when they found that the notice of the respondent for termination of the employment contract is lawful because the employment relationship was terminated in accordance with Article 67 of the Law on Labor, and in the procedure established by Article 71, paragraph 2 of the Law on Labor and Article 1.1 of the employment contract, which was for a term of three (3) years, and that thereafter there is no obligation towards the claimant. Such a conclusion of the first instance court is not in accordance with the case file, because the evidence contained therein, namely from the written notification of the respondent of 3.03.2014, it follows that the claimant's employment relationship has not been extended in accordance with policies of the Board of Directors, the Law on Labor and the decision on future human resources planning and the PPP Agreement, which was concluded between the respondent and the Republic of Kosovo. According to the statement of the Director of Human Resources, of 12 March 2014, which was given in the official report of the Labor Inspector, no. 56-44/2014 of 13.3.2014, the reason for not extending the employment contract for a group of respondent's employees is also the low performance evaluation and the written warning that the concerned workers had".*

54. The Supreme Court explained to the Applicant that he failed to prove all his allegations regarding the legality of the non-extension of the employment contract and the confirmation of the relevant facts, namely, whether he compiled a detailed operational plan in which it would be determined which services could be reduced and what involvement would have been reduced in order to establish that the evidence submitted presents a valid legal basis for non-extension of the employment contract.

55. The Court further explained that: *"... it does not accept as fair and lawful the legal position of the court of first instance that the claimant was in employment relationship for a certain period of time and that ten years have not elapsed within the meaning of Article 10.5 of the Law on Labor, so that the claimant's employment relationship be treated for an indefinite period because the subject of the claimant's statement of claim is not to determine the existence of the claimant's employment relationship for an indefinite period of time but to assess the legality of the notice of termination of the employment contract, which was in violation of the Law on Labor, which is the basic law governing the employment relations in Kosovo, where the bases and procedures for termination of a worker's employment relationship were determined, which the respondent did not respect in the case of non-renewal of the claimant's employment contract, and as a consequence it is unlawful".*

56. Finally, regarding the Applicant's allegation and specifically with reference to citing the case of the Constitutional Court, namely Judgment KI138/ 5, the Court recalls that the present case differs from the case before us, because of the following reasoning: (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; and (iii) contradictory elements existed in decisions of the

lower instance courts. In addition, the Court of Appeals applied and used for reasoning 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).

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, 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 drafting judgments. 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. Based on the foregoing, the Court first reiterates that it is not its role to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law (see: the ECtHR case *Garcia Ruiz v. Spain, no. 30544/96,* Judgment of 21 January 1999, paragraph 28).

59. The Court notes that the Applicant did not substantiate allegations that the respective proceedings before the regular courts were in any way unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR. (see ECtHR case, *Shub v. Lithuania*, no. 17064/06, Decision of 30 June 2009).

60. Therefore, the Court finds that the Applicant's allegation of violation of the principle of the reasoning of the court decision by the Supreme Court is ungrounded on constitutional basis.

(iii) As regards the allegations of violation of the Applicant's right to fair and impartial trial in relation to the principle of legal certainty

61. The Court recalls that the Applicant alleges that "*the regular courts for the same contested matter [...] rendered different decisions*", referring to Referrals KI129/18 and KI166/18, and thus attaching two decisions of the Basic Court and a decision of the Court of Appeals.

62. The Court initially notes that there were several cases where the Applicants raised the issue of "contradictory decisions" of the regular courts (See Constitutional Court cases: KI29/17, *Adem Zhegrova*, Resolution on Inadmissibility of 2 October 2017 and case KI42/18, *Kushtrim Ibraj*,

Resolution on Inadmissibility of 5 December 2017), Moreover, the ECtHR dealt with these cases in the framework of the principle of legal certainty (See *mutatis mutandis* the case of ECtHR, *Nejdet Sahin and Perihan Sahin v. Turkey*, No. 13279/05, Judgment of 20 October 2011, paragraph 52).

63. The ECtHR, through its case law, has also maintained that the requirements of legal certainty and the protection of the legitimate confidence of the public, do not confer nor guarantee an acquired right to consistency of case-law. (see ECtHR case, *Unedic v. France,* no. 20153/04, Judgment of 18 December 2008, paragraph 74, and see case of the Constitutional Court KI42/18, *Kushtrim Ibraj,* cited above, paragraph 34).

64. The Court recalls that the ECtHR, through its case law, also maintained that except when there is "evident arbitrariness", it is not the role of the Court to question the interpretation of the domestic law by the national courts. (See ECtHR case, *Adamsons v. Latvia*, no. 3669/03, Judgment of 24 June 2008, paragraph 118, and case of the Constitutional Court KI42/18, *Kushtrim Ibraj*, cited above, paragraph 38).

65. However, the Court initially notes that in the case attached by the Applicant the facts are as follows: (i) the employee L. A. was employed in PIA and subsequently with the Applicant; (ii) the Applicant notified the employee L. A., by notice of non-extension of the employment contract that the employment relationship would not be extended; and (iii) the employee L. A. filed a lawsuit with the Basic Court for annulment of the Applicant's notification. The Basic Court, by Judgment C. No. 238/2014 of 25 May 2015, rejected the lawsuit of the employee L.A. as ungrounded. This Judgment of the Basic Court after the appeal of the employee L. A. was remanded to the first instance court in reconsideration and decision by the Court of Appeals [Decision CA. No. 3633/2015] of 19 March 2018, a decision which approved the appeal of the employee L. A as grounded.

66. However, the Court notes that the decisions by which the Applicant tries to prove the different practices of the regular courts concerning the employee L.A., and which the Applicant cited and attached, are the decisions which are not final and according to the latter, there is the possibility of filing legal remedies by the opposing party in the dispute.

67. The Applicant also did not provide evidence that these decisions were upheld by the Supreme Court of Kosovo and that these disputes ended in a final way in favor of the Applicant. Therefore, the Court will not enter a comparative analysis of these decisions and the challenged decisions of the Applicant, because this analysis is impossible, taking into account that the Applicant refers to the decisions which are not final.

68. Accordingly, the Court finds that it will not consider the Applicant's allegations with regard to the Judgment C. No. 179/18 of the Basic Court, of 18 August 2018, which was rendered after Decision CA. No. 3633/2015 of the Court of Appeals, because the Applicant did not notify the Court whether the other party [the employee L. A.] filed appeal and in what procedure is this case, which is possible under the legal remedy of the Judgment [C. No. 179/18].

69. The Court notes that in the present case the Supreme Court justified to the Applicant that the subject of the review was the legality of the termination of the employment relationship and, therefore, the Supreme Court found that the employment relationship of the employee was not terminated according to the legal provisions in force.

70. Therefore, the Court finds that the Applicant's allegation of violation of the principle of legal certainty is ungrounded on constitutional basis.

(iv) Regarding the allegations of violation of Articles 24, 32 and 46 of the Constitution

71. Finally, the Court recalls that the Applicant links the violation of Articles 24, 32 and 46 of the Constitution, as well as of Protocol No. 1 of the ECHR with violation of Article 31 of the Constitution.

72. The Applicant merely mentioned these articles without explaining and elaborating as to how they resulted in a violation of his constitutional rights, as a result of his allegation of violation of Article 31 of the Constitution, the Court considers that there is no need to be considered as allegations.

73. 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 KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

74. Therefore, the Court finds that the Applicant's allegations of violation of his right to equality before the law, legal remedies and property rights are ungrounded on constitutional basis.

Conclusion

75. The Court considers that the Applicant's allegation of violation of his constitutional right to fair and impartial trial due to violation of the principle of reasoning of the court decision and the allegation of exceeding the competence of the Supreme Court, as well as the Applicant's allegation of violation of the principle of legal certainty are ungrounded on constitutional basis. The allegations of violation of his right to equality before the law, legal remedies and property rights are also ungrounded on constitutional basis.

76. In sum, the Court considers that the Applicant has not provided evidence, facts and arguments, showing that the proceedings before the regular courts have presented in any way a constitutional violation of their rights guaranteed by the Constitution, which allegedly violate the right guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and Articles 24, 32 and Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR.

77. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with Article 113, paragraph 7 of the Constitution and 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 20 June 2019, unanimously

DECIDES

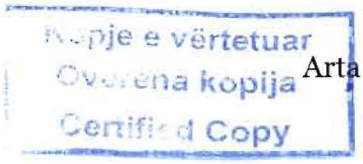
I. TO DECLARE the Referral inadmissible;

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**

Radomir Laban  Arta Rama-Hajrizi

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