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

Prishtina, on 22 July 2019
No.ref.:RK 1398/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI36/18

Applicant

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

Constitutional review of Judgment Rev. No. 98/2017 of the Supreme Court of Kosovo of 19 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 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. 98/2017 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 19 October 2017, which was served on the Applicant on 15 November 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 31 [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).

5. On 31 May 2018, 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 Constitutional Court

6. On 9 March 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 13 March 2018, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur, and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Bekim Sejdiu and Gresa Caka-Nimani (members).

8. On 22 March 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 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 22 August 2018, the President of the Court rendered a decision to replace the Judge Rapporteur and Judge Bekim Sejdiu was appointed as Judge Rapporteur instead of Judge Altay Suroy.

12. On 11 September 2018, the President of the Court appointed the new Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Radomir Laban and Gresa Caka-Nimani (members).

13. On 13 September 2018, in accordance with Rule 40 (1) of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI36/18, KI60/18, KI65/18, KI80/18, KI81/18, KI82/18, KI109/18, KI122/18, KI123/18 and KI124/18.

14. On 13 September 2018, the Court notified the Applicant and the Supreme Court about the joinder of Referrals KI36/18, KI60/18, KI65/18, KI80/18, KI81/18, KI82/18, KI109/18, KI122/18, KI123/18 and KI124/18.

15. On 14 September 2018, the Court notified the Basic Court in Prishtina about the registration and joinder of cases and requested it to submit to the Court the acknowledgment of receipts regarding the cases: KI36/18, KI81/18, KI82/18 and KI124/18.

16. On 1 October 2018, the Basic Court in Prishtina submitted the requested acknowledgment of receipts to the Court.

17. On 17 October 2018, the Applicant submitted a document to the Court requesting that the Referral No. KI109/18 be examined separately from the Referral with No. KI36/18, alleging that the cases are not of the same nature.

18. On 5 April 2019, the Court reviewed and approved the Applicant's Referral regarding the separation of Referral KI109/18 from the Referral number KI36/18. The Court also, in accordance with Rule 40 (3) of the Rules of Procedure, decided that the Referrals KI36/18, KI60/18, KI65/18, KI80/18, KI81/18, KI82/18, KI109/18, KI122/18, KI123/18 and KI124/18 are considered separately.

19. On 11 April 2019, the Court notified the Applicant and the Supreme Court about the separation of Referrals KI36/18, KI60/18, KI65/18, KI80/18, KI81/18, KI82/18, KI109/18, KI122/18, KI123/18 and KI124/18.

20. 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*" and submitted to the Court the Public Private Partnership Agreement (hereinafter: PPP).

21. On 16 May 2019, the Applicant submitted to the Court a submission entitled "*Submission, regarding the cases registered with the Constitutional Court*" in which it essentially reiterated the allegations it had previously made.

22. 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

23. 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).

24. Based on the case file, it is noted that N. D. (hereinafter: the employee) was employed with the PIA. The employee established employment relationship with the PIA for the fix period, starting from 1 July 2011 until 30 June 2013. This contract was extended, namely renewed until 3 April 2015.

25. On 3 March 2015, namely 30 (thirty) days before the expiry of the contract, the Applicant notified the employee that that he will not be offered a new employment contract after the expiration of the existing contract on the grounds that the contract is not being extended by *"[...] the policies of the Board of Directors for future human resources planning"*.

26. On 11 March 2015, the employee filed a complaint with the Applicant (the employer) regarding the notice of non-renewal of the employment contract, requesting that the latter be annulled.

27. On 18 March 2015, the Applicant rejected as ungrounded the employee's complaint.

28. On an unspecified date, the employee filed a complaint with the Labor Inspectorate in Prishtina regarding the decision on non-renewal of the employment contract by the Applicant.

29. On 1 April 2015, the Executive Body of the Labor Inspectorate in Prishtina approved the employee's complaint and ordered the Applicant to implement the provisions of Article 10.5 of the General Collective Agreement and Article 71 of the Law on Labor.

30. Against this decision, the Applicant filed an appeal with the second instance, the Executive Body of the Labor Inspectorate in Prishtina.

31. On an unspecified date, by Decision 05/2015, the Executive Body of the Labor Inspectorate in Prishtina rejected the Applicant's appeal and upheld the first instance decision.

32. On an unspecified date, the employee filed a statement of claim with the Basic Court in Prishtina (hereinafter: the Basic Court), requesting the annulment of the Notice of the 3 March 2015, issued by the Applicant and obliging the Applicant to reinstate the employee to work with all rights and obligations. Among other things, the employee alleged that his position with the Applicant had a permanent nature and, moreover, the notice of non-renewal of the contract was in violation of Article 10.5 of the Collective Agreement effective from 1 January 2015.

33. On 12 January 2016, the Basic Court, by Judgment C. No. 140/2015, decided to: (i) approve the employee's statement of claim as grounded and annul the employer's (Applicant's) notice of non-renewal of the employment contract; (ii) to oblige the employer (the Applicant) to reinstate the employee to work; (iii) to pay the respective

amounts to the employee on behalf of the material damage; and (iv) to cover the costs of the contested procedure.

34. In this judgment, the Basic Court found that, based on Article 10.5 of the General Collective Agreement of Kosovo (GCAK), a fixed-term contract is considered to be an indefinite term contract if the employee has worked without interruption over three years and in the present case he worked for four years without interruption (namely from 2 July 2011 to 3 April 2015). According to the Basic Court, the Applicant had to initiate an internal procedure for termination of the employment relationship before terminating the employment relationship "[...] *or if eventually the termination of the employment relationship at an indefinite time has to do with technical, economic or organizational reasons, in accordance with the provisions of Article 70 in conjunction with Article 76 of the LL, the respondent was obliged to draft the programs and to apply these provisions of the LL and in addition to notifying the claimant one month before terminating the employment relationship, was obliged to notify the trade union of the employee about the planned change, making efforts to make internal systematization of the employees [...]".*

35. On 21 January 2016, the Applicant filed an appeal against the Judgment of the Basic Court of 12 January 2016, with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), alleging essential violation of the procedural provisions, erroneous determination of factual situation and erroneous application of substantive law.

36. On 27 January 2017, the Court of Appeals, by Judgment Ac. No. 887/16, rejected as ungrounded the Applicant's appeal and upheld the Judgment of the Basic Court, considering the latter as fair and lawful. The Court of Appeals noted that the first instance court gave concrete reasons for the decisive facts and provided adequate explanations for such a decision, based on the relevant legal provisions. As to the GCAK, the Court of Appeals considered that "*the court of first instance decided correctly when it supported its decision in the GCAK, which was in force at the time the contested event occurred and that its provisions oblige the parties in the private, public and state sector*".

37. On 1 March 2017, the Applicant submitted a 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 substantive law. The Applicant alleged that the lower instance courts violated the Law on Labor, which provides that the employment contract for a period longer than 10 years is considered to be an indefinite contract. Whereas, the lower instance courts, according to the Applicant, were referred to the provision of Article 10.5 of the Collective Agreement which is in contradiction with the Law on Labor.

38. On 19 October 2017, the Supreme Court, by Judgment Rev. No. 98/2017, rejected as ungrounded the Applicant's revision, assessing the challenged decisions as fair and assessing that sufficient reasons were given for the relevant facts for fair trial of this case.

39. The Judgment of the Supreme Court, among others things, stated that: "*the submissions [in the revision] this Court finds as unfounded [because] they are in contradiction with the content of the case file, namely the written notice of the respondent of 3* March *2015, of the non-renewal of the claimant's employment*

contract and a reply to an appeal of the respondent [...] from which evidence it results that the claimant was not extended the employment contract on the basis of the company's decision on future human resources planning, the Labor Law and the Public Private Partnership Agreement [...] The respondent before the first instance court did not present the Company's decision on future human resources planning and the Public Private Partnership Agreement [...] in order to substantiate his claims [...].
In this present case the respondent did not respect the primary rules of procedure and his obligations to present facts to the court on which he supported his allegation and did not present any evidence to prove the grounds of the allegations. The claimant's failure to act within the meaning of the provision of Article 7 of the LCP could not be attributed to the Court as its failure [...]". Regarding the allegations of the revision that the claimant (employee) was in a fixed-term employment relationship, the Supreme Court reasoned that: "*such submissions were rejected by the court as unfounded, because the subject of the statement of claim of the claimant is not the confirmation of existence of the employment relationship at an indefinite time but the assessment of the legality of the notice of termination of the employment contract, which notice was taken in violation of the Law on Labor, which is a basic law governing the employment relationship in Kosovo.*

Applicant's allegations

40. The Court recalls that the Applicant alleges that the Supreme Court by Judgment Rev. No. 98/2017 of 19 October 2017 violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] of the Constitution and Article 6 (Right to a fair trial) and Article 1 of Protocol No. 1 of the Convention.

41. The Applicant alleges that the Supreme Court did not give sufficient reasoning in its decision. According to the Applicant, the rights guaranteed by Articles 31, 32 and 46 of the Constitution, in conjunction with Article 6 of the ECHR, were violated as a result of insufficient reasoning of the decision. In relation to this allegation, the Applicant states that: "*The judgment of the Supreme Court does not have sufficient reasoning, especially in relation to the essential violations of the provisions of the contested procedure (erores in procedanto) of the Law on Contested Procedure*".

42. Furthermore, the Applicant alleges that the Supreme Court of Kosovo has erroneously applied the substantive law (*errores in judicando*) of the Law on Labor No. 03/L-212 and the General Collective Contract. In this regard, the Applicant alleges that "*the Supreme Court made an erroneous interpretation of Article 10.5 of the Collective Agreement because it could not be applied to the Limak Company, because it did not have a written agreement with the Airport Trade Union, as required by the Law on Labor*".

43. The Applicant also alleges that the Supreme Court in this case did not at all address the issue of the implementation of the Collective Agreement and, moreover, addressed the issues which no party has filed, such as Article 5.1 of the Law on Labor.

44. The Applicant alleges that the lack of reasoning of the Judgment of the Supreme Court consists in "*what legal act had the greater legal power, the Collective Agreement or Law on Labor, as the Law on Labor No. 03/L-212, Article 90, paragraph 5 states that the Collective Contract shall be applicable to those*

employers and employees who commit themselves to the implementation of obligations deriving from such an agreement". Moreover, the Applicant also states that all instances have implemented various legal provisions, with various reasoning regarding the request of the employee for annulment of the notice.

45. In this regard, the Applicant states that the Supreme Court should have taken into account Article 9.18 of the GCAK, according to which the Applicant is obliged to keep the employees in work for a term of 3 (three) years.

46. Accordingly, the Applicant alleges that the financial aspect and his property rights have been damaged with the reinstatement of the employee.

47. The Applicant also cites Judgment KI138/15 of the Constitutional Court and states that "*the application of the substantive law, which could have been a decisive factor in rendering* the *judgment of that court, but the Supreme Court did not address this issue and only found that the lower instance courts have correctly applied the provisions of the substantive law*".

48. Therefore, the Applicant alleges that the Supreme Court did not sufficiently reason their judgments and did not address the issues raised by the judgments of the lower instance courts.

49. 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 2
[The Scope]

1. Provisions of this Law shall be applicable for employees and employers in the private and public sector in Republic of Kosovo.
2. Provisions of this Law shall be applicable for employees and employers, whose employment is regulated through a special Law, if the special Law does not provide for a solution for certain issues deriving from employment relationship.
3. Provisions of this Law shall be applicable for foreign citizenship employees and persons without citizenship, who are employed to employers within territory of Republic of Kosovo, unless otherwise provided by Law.
4. Provisions of this Law shall not be applicable to employment relationships within international missions, diplomatic and consular missions of foreign states, International Military Presence established in the Republic of Kosovo under the Comprehensive Proposal for the Status Settlement and international governmental organizations.

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 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.
[...]

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".

Article 90
[Collective Contract]

5. Collective Contract shall be applicable to those employers and employees who commit themselves to the implementation of obligations deriving from such an agreement.

The General Collective Agreement in Kosovo

Article 2
[Scope]

1. Provisions of the GCAK are binding to the parties of the Agreement, at private, public and state sector (at general level, branch level and company level).
2.Provisions of the GCAK apply to pupils, students in vocational training.
3.Provisions of the GCAK apply also to foreign employers and workers, or those without citizenship who carry out economic activities in the Republic of Kosovo.
4.Provisions of the GCAK do not apply to employers, or their representatives and workers or their representatives, set in Article 2, paragraph 4, of the Labour Law in Kosovo.

Article 3
[Application and inclusion]

Provisions of the GCAK are applied throughout the territory of the Republic of Kosovo.

Article 4

1.Provisions of the GCAL bind employers who, in any way, carry out economic, non-economic activities and civil services. Collective Agreement can copncluded at Branch or Enterprise levels.
2.Branches of non-economic activity trade unions (civil, public services and public companies), reach a separate contract with their employers (relevant Ministries, State Administration, Education, Health, etc.) in accordance with their specifics.

Article 5

GCAK applies to all employees who work for an employer, with their representation in the territory of Kosovo.

Article 10
[Employment Contract]

1.Employment Contract, is concluded in written form and signed by the employer and employee.

[...]
5.Employment Contract, for a limited duration, which is extended clearly or implicitly, for a period of employment period longer than three (3) years), will be considered as a contract for unlimited duration.
6.Employment Contract, for specific work and tasks, may not be longer than one hundred and twenty days (120) within one (1) year.

7.Employee, for specific work, is not entitled to annual leave, whereas he/she is entitled to other rights set by the law.

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

50. 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.

51. 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".

52. 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".

53. Initially, 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 (See case of the Constitutional Court No. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

54. 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 [...]".

55. 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.

56. However, the Court should also examine whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure, including the criterion that the referral is not manifestly ill-founded. Thus, Rule 39 (2) of the Rules of Procedure stipulates:

"(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".

57. In this regard, the Court notes that the Applicant alleges that the challenged decision violated its rights protected by the Constitution, namely the right to fair and impartial trial, right to legal effective remedies and protection of property.

58. The substance of the Applicant's allegations falls within the scope of Article 31 of the Constitution, namely Article 6 of the ECHR and consist in its arguments that: The Supreme Court did not sufficiently reason the respective judgment and has erroneously applied the provisions of the Law on Labor and the Collective Agreement. This is because, according to the Applicant, the Collective Agreements cannot be applied to them because there was no prior agreement between the Applicant and the Trade Union (of the Airport).

59. In this regard, the Applicant alleges that the Supreme Court (as well as the lower instance courts) did not give sufficient reasoning as to what legal act had the bigger legal power, the Collective Agreement or the Law on Labor. Moreover, the Applicant

also alleges that all instances have applied various legal provisions, with various reasoning regarding the employee's request for annulment of the notice.

60. Regarding the Applicant's allegations, the Court notes that in its Judgment on revision the Supreme Court held that the challenged Judgment of the Court of Appeals was clear and comprehensible and that it contained sufficient reasons regarding the decisive facts for rendering a lawful decision.

61. The Court recalls that the Supreme Court rejected as ungrounded the revision of the Applicant, reasoning that in this case the subject of the statement of claim was not to establish the existence of an indefinite employment relationship but to assess the legality of the notice of termination of the contract which, according to the Supreme Court, is in contradiction with the Law on Labor. According to the Supreme Court, the employee was not extended the employment contract on the grounds of human resource planning, which was not presented before the regular courts.

62. As to the Applicant's allegation regarding the application of the provisions of the Collective Agreement or the Law on Labor, for the calculation of duration of the employment relationship, the Court recalls that the Supreme Court explained to the Applicant that the subject of the statement of claim is to assess the legality of the notification of non-renewal of the employment contract.

63. In this regard, the Supreme Court reasoned that:

> *"The submissions in the revision that the Judgment of the second instance was rendered with erroneous application of the substantive law when it approved the statement of claim of the claimant, due to the fact that the claimant was in employment relationship for definite time period, and the deadline of 10 years did not pass which within the meaning of Article 10.5 of the Law on Labor, that the employment relationship of the claimant will be considered as one with indefinite time period [...] were reviewed by this Court and as such, it rejected them as ungrounded because the subject of the statement of claim of the claimant is not the confirmation of the existence of the employment relationship of the claimant with indefinite time period but the assessment of legality of the notice on non-extension of the employment contract, notice which was issued contrary to Law on Labor, which is the basic law that regulates the employment relationship in Kosovo, where it defines the grounds and procedures for termination of the employment contract of the employee, which procedures were not respected by the respondent on the occasion of termination of the employment relationship of the claimant and as a consequence, the non-extension of the employment contract of the claimant IS unlawful".*

64. Furthermore, the Court notes the Supreme Court's reasoning that: " [...] *since the establishment of the employment relationship in 2009, even after the concession, the employment relationship was extended by a contract with definite time period even though the working place had the permanent nature. Such contract, according to the opinion of this Court, are contrary to the principles of conscientiousness and honesty* wherein *for nearly 7 years the claimant was continuously held in an unsecure legal situation of the employment relationship, by extension of the employment relationship with definite time period and finally by a notice, which does not have legal support, it terminated the employment contract to the claimant. The employee*

cannot waive the rights of employees, which derive from the mandatory provisions of Article 5, paragraph 1, of the Law on Labor, which stipulates that 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 [...].

65. The Court recalls that the Applicant alleges that the Supreme Court exceeds the request of revision and the requirements of the law for which it should take care *ex-officio* and addresses issues that no party has filed, such as Article 5.1 of the Law on Labor.

66. Regarding the concrete allegation (and in the light of the main reasoning of the Supreme Court), the Court considers that the Applicant does not reason why the referral of the Supreme Court to Article 5.1 of the Law on Labor caused a violation of any constitutional rights of the Applicant, namely why that referral has affected the epilogue of the trial in the present case.

67. The Applicant also refers to 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, but the Supreme Court did not resolve this issue at all, but only found that the lower instance courts have correctly applied the provisions of substantive law*".

68. As to this allegation of the Applicant, the Court recalls that the mentioned case differs from the present case, 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).

69. In the light of the foregoing considerations, the Court emphasizes its general position, that in principle, it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts, when assessing the evidence or applying the law (legality), 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 the regular courts to interpret and apply the pertinent rules of procedural and substantive law (see, *mutatis mutandis*, the case of the Constitutional Court, Resolution on Inadmissibility of 6 September 2017, *Driton Syla*, KI78/16, paragraph 59).

70. Complete determination of factual situation and correct application of law is a primary duty and within the jurisdiction of the regular courts (issue of legality). Therefore, the Constitutional Court cannot act as a "fourth instance court" (See *mutatis mutandis* case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

71. The Court recalls that the mere fact that the Applicant does not agree with the outcome of the decisions of the Supreme Court (and of the lower instance courts) 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).

72. In conclusion, the Court considers that the right to fair and impartial trial of the Applicant has not been violated by the decisions of public authorities.

73. Therefore, the Court finds that the Applicant did not present evidence, facts and convincing arguments showing that the proceedings before the regular courts constituted in any way constitutional violation of their rights guaranteed by the Constitution and the ECHR.

74. Therefore, the Referral is manifestly ill-founded on constitutional basis and is 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 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**

Kopje e vërtetuar
Overena kopija
Certified Copy

Bekim Sejdiu Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.