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

Prishtina, on 10 October 2019
Ref. no.RK 1442/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI49/19

Applicant

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

Constitutional review of Judgment Rev. No. 16/2019 of the Supreme Court, of 7 February 2019

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", based in Vrellë village, Lipjan Municipality, which is represented with power of attorney by Fazli Gjonbalaj and Leonora Fejzullahu (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [Rev. No. 16/2019] of 7 February 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [Ac. No. 3565/15] of 29 October 2018 of the Court of Appeals and Judgment [C. No. 224/2014] of 19 May 2015 of the Branch in Lipjan 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 rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol No. 1 of the ECHR, and Article 54 [Judicial Protection of Rights] of the Constitution.

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and 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).

Proceedings before the Constitutional Court

5. On 26 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 2 April 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.

7. On 12 April 2019, the Applicant submitted to the Court a submission regarding all cases registered in the name of the Applicant with the Court and in particular in relation to case KI132/18 (Resolution on Inadmissibility of 8 July 2019, Applicant *Limak Kosovo International Airport JSC "Adem Jashari")*. The Applicant in this letter stated that the Court in considering these referrals should also consider paragraphs 2, 3 and 4 of Article 13 (The Rights of an Employee in case of change of the Employer) of Law on Labor 03/L-212 (hereinafter: the Law on Labor) and paragraph 18 of Article 9 (Termination of Personnel) of the Public Private Partnership Agreement for the Operation and Expansion of Prishtina International Airport between the Republic of Kosovo, acting through the Inter-Ministerial Public Private Partnership Steering

Committee and *Limak Kosovo International Airport JSC*, (hereinafter: PPP Agreement).

8. On 24 April 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court also notified the Supreme Court about the registration of the Referral.

9. On 16 May 2019, the Applicant submitted again to the Court a document entitled *"Submission, regarding the cases registered"*, in which in essence he repeated its allegations, and adding once more that the Court should also consider paragraphs 2, 3 and 4 of Article 13 of the Law on Labor and paragraph 18 of Article 9 of the PPP Agreement.

10. On 10 September 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

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

12. Paragraph 18 of Article 9 of the PPP Agreement established that: *"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"*.

13. According to the case file, it turns out that H.H. (hereinafter: the employee), had been employed with the PIA since 7 May 2004. On 4 April 2011, he signed a new contract with the Applicant for a fixed period of three (3) years, respectively until 3 April 2014.

14. On 3 March 2014, through a *"Notice of non-renewal of the employment contract"* the Applicant notified the respective employee that his contract was terminated. Referring to paragraph 2 of Article 71 (Notification period for termination of employment contract) of the Law on Labor as well as the relevant employment contract, the Applicant reasoned that the termination of the contract was based on *"[...] the company's decision on future human resource planning"*.

15. On 12 March 2014, the employee requested the Applicant to reinstate him to the previous working place, alleging that the notice of 3 March 2014 is unlawful.

16. On 20 March 2014, the Applicant rejected as ungrounded the employee's request.

17. On 16 April 2014, the employee filed a claim with the Basic Court requesting (i) annulment of the decision for termination of employment relationship; and (ii) compensation of income.

18. On 19 May 2015, the Basic Court, by Judgment [C. No. 224/14], rejected the employee's claim as ungrounded. The Basic Court, *inter alia*, in its reasoning stated that (i) the employee had a fixed-term contract with the Applicant based on Article 10 (Employment Contract) of the Law on Labor; (ii) the termination of employment was made by the expiration of the term of the contract based on item 1.3 of Article 67 (Termination of Employment Contract on Legal Basis) of the Law on Labor; and (iii) Article 76 (Collective Dismissals) in relation to collective dismissals was not applicable in the circumstances of the present case, because according to the reasoning, the number of employees dismissed was less than ten percent (10%) of the total number of employees by the respondent, namely the Applicant.

19. On 26 June 2015, the employee filed appeal against the abovementioned Judgment of the Basic Court, alleging violation of the provisions of contested procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law.

20. On 29 October 2018, the Court of Appeals by Judgment [Ac. No. 3565/15] rejected the appeal of the employee as ungrounded, upholding the Judgment of the Basic Court.

21. On 20 December 2018, the employee filed a revision against the Judgments of the Court of Appeals and the Basic Court, alleging violation of the provisions of contested procedure and erroneous application of the substantive law. He requested that the revision be approved as grounded and that the matter be remanded for retrial. The Applicant did not submit a response to the revision.

22. On 7 February 2019, the Supreme Court by Judgment [Rev. No. 16/2019] partially approved as grounded the revision filed by the employee and modified the Judgments of the lower instance courts. The Supreme Court (i) annulled the notice of non-extension of the contract of 3 March 2014 as unlawful and obliged the Applicant to (ii) reinstate the employee to work; (iii) pay the relevant amount in the name of pecuniary damage; and (iv) pay the costs of the proceedings.

23. The Supreme Court, *inter alia*, in its reasoning stated that the lower instance courts had erroneously applied the substantive law because according to it (i) the respondent, namely the Applicant, failed to substantiate all the allegations regarding the legality of the notice of termination of employment; (ii) the Applicant in termination of this contract referred to paragraph 1.1 of Article 70 (Termination of Employment Contract by the Employer) of the Law on Labor, namely "*economic, technical or organizational reasons*", whilst never presenting a relevant plan, which could serve the legality of the notice of termination of employment; (iii) the essence of the matter is not the establishment of an indefinite employment relationship for the employee, but the assessment of the legality of the notice of non-extension of the employment contract; moreover that (iv) the legal position of the lower instance courts that

the claimant, namely the employee had a fixed-term employment relationship, cannot be accepted as fair and lawful.

Applicant's allegations

24. The Applicant alleges that the challenged Judgment of the Supreme Court was rendered in violation of its fundamental rights and freedoms guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, Article 32 [Right to Legal Remedies] and Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol No. 1 of the ECHR, and Article 54 [Judicial Protection of Rights] of the Constitution.

25. With regard to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant alleges a violation of his right to a reasoned court decision. In support of its allegations, the Applicant refers to the Judgment of the Court of 4 September 2017 in Case KI138/15, with Applicant *Sharr Beteiligung GmbH* (hereinafter: the case of Court KI138/15). Furthermore, the Applicant also alleges that the Supreme Court has erroneously interpreted and applied the Law on Labor because (i) by referring to Article 5 (Prohibition of all Forms of Discrimination) of the Law on Labor, it exceeded the requests of the revision filed by the employee; and (ii) has not correctly interpreted Articles 67 and 70 of the Law on Labor, applicable in the circumstances of the present case.

26. With regard to the alleged violations of Article 46 of the Constitution in conjunction with Article 1 of Protocol 1 to the ECHR, the Applicant alleges that the Judgment of the Supreme Court resulted in financial damage to the Applicant thus violating his property rights. In this regard, the Applicant refers to the case law of the European Court of Human Rights (hereinafter: the ECtHR), without citing any specific case.

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

Relevant legal provisions

Law No. 03/L-212 on Labor

Article 5
[Prohibition of all Forms of Discrimination]

1. 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.

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

Article 9
(Termination of Personnel)

"18. 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

28. 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.

29. 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".

30. The Court also refer to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes: *"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable".*

31. In addition, the Court also refers to 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... ".

32. In assessing the fulfillment of the admissibility criteria as set out above, the Court initially 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 Court No. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14). Therefore, the Court holds that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [Rev. No. 16/2019] of 7 February 2019 of the Supreme Court, after exhaustion of all legal remedies provided by law.

33. The Applicant also clarified the fundamental rights and freedoms it 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.

34. However, in addition, the Court examines whether the Applicant met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 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:

"(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".

35. In this regard, the Court recalls that the Applicant had signed a PPP Agreement with the Republic of Kosovo, in which it had determined, *inter alia*, that after the third anniversary of the contracts with its employees, it could terminate the latter without any limitation. Pursuant to this provision, after the expiration of three (3) years of the concerned employee, he has notified the latter that his employment contract will not be renewed. The Basic Court and the Court of Appeals, through their respective Judgments, rejected the claim and the appeal of the respective employee, while the Supreme Court, by Judgment [Rev. No. 16/19] of 7 February 2019, partially upheld the revision of employee as grounded, modifying the lower instance decisions and annulling the Applicant's notice of non-extension of the employment contract. The Applicant alleges that this Judgment was rendered in violation of its constitutional rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR specifically due to the lack of reasoning of the court decision and erroneous interpretation of the Law on Labor. The Applicant also alleges violation of Articles 32, 54 and 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR.

36. The Court will further address the Applicant's allegations regarding (i) a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as to the lack of reasoning of the court decision and erroneous interpretation of the law; and (ii) the violation of Articles 32, 46 and 54 of the Constitution by applying the case law of the ECtHR, on the basis of which the Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

37. With regard to the allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court will first focus on the allegations of the lack of the reasoning of the court decision by the Supreme Court. In this respect, the Court first notes that it already has a consolidated practice with regard to the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. This practice was built based on the ECtHR case law, including, but not limited to cases *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. In addition, the fundamental principles regarding the right to a reasoned judicial decision have also been elaborated in the cases of this Court, including but not limited to KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012; KI22/16, *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018; and

KI143/16, *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018.

38. In principle, the case-law of the ECtHR and that of the Court point out that the right to a fair trial includes the right to a reasoned decision and that the courts must "*indicate with sufficient clarity the reasons on which they base their decision*". However, this obligation of the courts cannot be understood as a requirement for a detailed answer to each argument. The extent to which the obligation to give reasons may vary depending on the nature of the decision and must be determined in the light of the circumstances of the case. The essential arguments of the Applicants are to be addressed and the reasons given must be based on the applicable law.

39. In examining the Applicant's allegations, the Court notes that (i) the Applicant did not submit a response to the employee's revision filed with the Supreme Court against the relevant Judgments of the Court of Appeals and of the Basic Court; and (ii) the Applicant, in the circumstances of the present case, does not specifically specify what substantive allegations have remained unreasoned by the challenged Judgment of the Supreme Court. The Applicant's main allegation before the Court relates to a reference to the reasoning of the Supreme Court, *inter alia*, to Article 5 of the Law on Labor, which, according to the Applicant, exceeds the request filed by the employee's revision.

40. In this respect, the Court notes first of all that in the light of a reasoned court decision, the Courts are obliged to address and substantiate the essential allegations of the parties. The Court recalls that, by failing to respond to the revision of the employee before the Supreme Court, the Applicant did not in fact present its arguments before the Supreme Court. As a result, the latter was unable to address their allegations.

41. In addition, the Court recalls that the Supreme Court, through the challenged Judgment, in principle clarified, *inter alia*, two issues: (i) that the notice of non-extension of the employee's employment contract was not lawful because the employment relationship was terminated based on Article 67 and paragraph 2 of Article 71 of the Law on Labor, contrary to the case file; and (ii) that the essential issue in the circumstances of the case was not to establish the existence of an indefinite employment relationship for the employee but to assess the legality of the notice of non-extension of the employment contract; moreover, in its view, it cannot be accepted as fair and lawful the legal position that the employee was in a fixed-term employment relationship.

42. The Supreme Court referred to Article 5 of the Law on Labor only in support of other arguments on the basis of which it approved the employee's revision as partly grounded. In this respect, the Court recalls that the concrete jurisdiction of any regular court is determined by the relevant legislation. In connection with the present case, the Court notes that while paragraph 1 of Article 2 of Law No. 03/L-006 on Contested Procedure, restricts the courts to decide within the limits of the claims filed by litigating parties, paragraph 2 of the same Article, stipulates that the application of the rules of the substantive law relates to the free assessment of the court and which, in applying this law, is not related to the claims of the parties pertaining to the substantive law.

43. Therefore, and in this regard, the Court reiterates that, despite the Applicant's allegation of the lack of reasoning of the court decision, namely the challenged Judgment, beyond the allegation that the Supreme Court has exceeded its jurisdiction by referring to Article 5 of the Law on Labor, the Applicant does not specify before the Court any other substantive argument which the Supreme Court has failed to reason. Furthermore, the Court recalls that the Applicant did not submit any response to the revision of the employee filed with the Supreme Court.

44. The Court also notes that the Applicant in support of its allegation, refers to the case of the Court KI138/15. However, apart from the fact that the Applicant has mentioned and cited this decision, it did not elaborate its factual and legal connection, with the circumstances of the present case. The Court emphasizes that the reasoning of other court decisions must be interpreted in the context and in light of the factual circumstances in which they were rendered. (See, in this regard, Judgment in Case KI 48/18 of 4 February 2019, with Applicants *Arban Abrashi and the Democratic League of Kosovo (LDK),* paragraph 275; and case KI 119/17, Applicant *Gentian Rexhepi,* Resolution on Inadmissibility, of 3 May 2019, paragraph 80).

45. The Court notes, however, that the case in question is different from the case under consideration before the Court. The Court notes that in case KI138/15, the Applicant has consistently raised, *inter alia*, substantive allegations regarding (i) the establishment of the passive legitimacy of the party to the proceedings and (ii) application of the applicable law in relation to the disciplinary proceedings, and which, the Supreme Court failed to consider and reason. (See specifically paragraphs 44 and 45 of the case KI138/15).

46. Therefore in these circumstances, based on the foregoing and having regard to the allegation raised by the Applicant and the facts presented by it, the Court also relying on the standards established in its own case law in similar cases and in the case law of the ECtHR, finds that the Applicant does not prove and sufficiently substantiate its allegation of a violation of his fundamental rights and freedoms as to the reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

47. Furthermore, as to the allegations relating to the erroneous interpretation of the law, the Court initially notes that, as a general rule, the allegations of erroneous application of law, allegedly committed by the regular courts, relate to the scope of legality and as such, are not in the jurisdiction of the Court, and therefore, in principle, the Court cannot review them. (See case of the Court No. KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 36; and case KI122/16, Applicant *Riza Dembogaj,* Judgment of 30 May 2018, paragraph 56).

48. The Court has consistently reiterated that it is not its task to deal with errors of facts or law allegedly committed by the regular courts (*legality*), unless and in so far as they may have infringed the fundamental rights and freedoms protected by the Constitution (*constitutionality*). It may not itself assess the law which has led a regular court 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 pertinent rules of both procedural and substantive law. (See, ECtHR case, *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, para. 28; and see, also cases of the Court: KI70/11, Applicants *Faik Rima, Magbule Rima and Besart Rima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 29; KI06/17, Applicant *L. G. and five others*, cited above, paragraph 37; and KI122/16, cited above, paragraph 57).

49. This stance has been consistently held by the Court, based on the case-law of the ECtHR, which clearly maintains that it is not the role of this Court to review the conclusions of the regular courts in respect of the factual situation and application of the substantive law (see: ECtHR case, *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and cases of the Court KI06/17, Applicant *L. G. and five others*, cited above, paragraph 38; and KI122/16, cited above, paragraph 58).

50. The Court, however, also notes that the case law of the ECtHR and of the Court also provides for the circumstances under which exceptions from this position can be made. The ECtHR reiterated that while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of legislation, the role of the Court is to verify whether the effects of such interpretation are compatible with the ECHR. (See the ECtHR case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

51. Therefore, 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 or so as to reach *"arbitrary conclusions"* or *"manifestly unreasoned"* for the Applicant. (See, in this regard, the ECtHR cases *Anheuser-Busch Inc. v. Portugal,* Judgment of 11 January 2007, paragraph 83; *and* see also cases of the Court KI06/17, Applicant *L. G. and five others*, cited above, paragraph 40; and KI122/16, cited above, paragraph 59).

52. In the circumstances of the present case, the Court notes that the Applicant, beyond the allegation of erroneous interpretation of the Law on Labor, namely Articles 67 and 70 thereof, by the Supreme Court, including Article 13 of the Law, to which the Applicant refers in its letters submitted to the Court on 12 April and 16 May 2019, it did not raise any specific allegations of erroneous interpretation of these articles and furthermore did not substantiate whether, in the circumstances of the present case, the law was applied and interpreted in a manifestly erroneous and arbitrary manner resulting in *"arbitrary conclusions"* or *"manifestly unreasonable"* for the Applicant.

53. Therefore, based on these circumstances and taking into account the allegation raised by the Applicant and the facts presented by it, the Court relying also on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant does not prove and does not sufficiently substantiate its allegation of a violation of its fundamental rights and freedoms

guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

54. The Court also reiterates that Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Court to challenge the application of substantive law by the regular courts of a civil dispute, where often one of the parties wins and the other loses. (See cases of the Court KI118/17 Applicant *Şani Kervan and others,* Resolution on Inadmissibility of 17 January 2018, paragraph 36; and KI142/15, Applicant *Habib Makiqi,* Resolution on Inadmissibility of 1 November 2016, paragraph 43).

55. In this respect, in order to avoid misunderstandings on the part of applicants, it should be borne in mind that the "*fairness*" required by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is not "*substantive*" fairness, but "*procedural*" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (See also the case of the Court No. KI42/16 Applicant: *Valdet Sutaj*, Resolution on Inadmissibility of 7 November, paragraph 41 and other references therein).

56. The Court further notes that the Applicant is not satisfied with the outcome of the decisions of the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim for the violation of the constitutional right to fair and impartial trial. (See, ECtHR case, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and see also case of the Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 42).

57. Finally, and with regard to the allegations of violation of Articles 24, 46 and 54 of the Constitution, the Court recalls that the Applicant alleges a violation of these Articles without substantiating and justifying their violation by the challenged Judgment of the Supreme Court.

58. Regarding these allegations, the Court reiterates that the mere fact that the Applicant does not agree with the outcome of the Judgment 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, in this regard, case of the Court KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

59. Finally, the Court also recalls that the Applicant before this Court has also sought the constitutional review of the other Judgments of the Supreme Court, the referrals entailing the disputes similar to the one before us. The Court in all previous referrals decided that they are inadmissible as manifestly ill-founded on constitutional basis. (See, in particular, the cases of Court KI129/18, Applicant *Limak Kosovo International Airport JSC "Adem Jashari"*, Resolution on Inadmissibility of 20 June 2019; KI166/18, Applicant *Limak*

Kosovo International Airport JSC "Adem Jashari", Resolution on Inadmissibility of 20 June 2019; and KI 36/18, Applicant *Limak Kosovo International Airport JSC "Adem Jashari"*, Resolution on Inadmissibility of 20 June 2019).

60. Based on the foregoing and taking into account the particular characteristics of the case, the allegations raised by the Applicant and the facts presented by it, the Court also based on the standards established in its own case law in similar cases and the case law of the ECtHR, finds that the Applicant does not prove and sufficiently substantiate its allegation of violation of its fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Articles 24, 54 and Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR.

61. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47 of the Law, and Rule 39 (2) of the Rules of Procedure, on 10 September 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.