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

Prishtina, on 17 April 2020
Ref. no.:RK 1546/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI125/19

Applicant

Ismajl Bajgora

Constitutional review of Judgment Rev. No. 73/2019 of the Supreme Court of 19 March 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 Ismajl Bajgora, residing in the village of Bernicë e Poshtme, Municipality of Prishtina, who is represented by Ali Latifi, a lawyer (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [Rev. No. 73/2019] of 19 March 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [Ac. No. 4134/14] of 27 November 2018 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [C. No. 2915/12] of 11 June 2014 of the Basic Court in Prishtina (hereinafter: the Basic Court).

3. The challenged Judgment was served on the Applicant on 20 May 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 30 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 14 August 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 (members).

8. On 30 August 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court. On the same date, the Basic Court was requested the acknowledgment of receipt as an evidence that the challenged Judgment was served on the Applicant.

9. On 4 September 2019, the Basic Court notified the Court that the challenged Judgment was served on the Applicant on 20 May 2019.

10. On 11 March 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

Extrajudicial proceedings

11. On 20 September 2002, the Applicant entered into an Contract [No. 200] on indefinite term with the Insurance Company "Siguria" based in Prishtina (hereinafter: the "Siguria" company), as head of the sector of damages in the company.

12. On 17 June 2003, the "Siguria" company, namely its General Director, by Decision [No. 01-895] terminated the Applicant's employment relationship with effect from 16 June 2003.

13. On an unspecified date, the Applicant filed a complaint with the Board of Directors of the "Siguria" company against the abovementioned Decision. According to the Applicant's allegations, the respective Board has never responded.

Contested procedure

14. On an unspecified date, the Applicant filed a statement of claim against the "Siguria" company with the Municipal Court in Prishtina (hereinafter: the Municipal Court), alleging that the requirements set out in paragraph 7 of Article 11 (Termination of a Labour Contract) of UNMIK Regulation No. 2001/27 of 8 October 2011 on Essential Labor Law in Kosovo (hereinafter: UNMIK Regulation) were not met, because at the time of issuance of the challenged decision, the respondent, namely the "Security" company, was not subject to economic, technological or structural changes, the ground on which the contract could have been terminated based on the provision in question.

15. On 12 January 2005 the Municipal Court by Judgment [C1. No. 233/2003] (i) approved the Applicant's claim as grounded; (ii) annulled the Decision [No. 01-895] of 17 June 2013 of the "Siguria" company as unlawful; and (iii) obliged the said company to return the Applicant to his previous job position. The Court, through the relevant Judgment, reasoned *inter alia* that (i) the respective Contract could not have been terminated based on paragraph 7 of Article 11 (Termination of a Labour Contract) of UNMIK Regulation, because the relevant provision must be interpreted jointly with paragraph 1 of Article 12 (Termination of employment due to economic, technological or structural changes in the enterprise) of the UNMIK Regulation, whereas in the circumstances of the case the respondent, namely the "Security" company, has not undergone economic changes, technological or structural and (ii) the claimant, namely the Applicant, has not been notified 30 (thirty) days prior to the termination of the Contract.

16. On an unspecified date, the "Security" company filed appeal against Judgment [C1. No. 233/2003] of the Municipal Court in the District Court of Prishtina, alleging essential violations of the provisions of procedure, erroneous and incomplete determination of the factual situation and erroneous application of substantive law.

17. On 17 June 2006, the District Court in Prishtina, by Judgment [Ac. No. 706/2005] rejected the appeal of the "Security" company and upheld Judgment [C1. No. 233/2003] of 12 January 2005 of the Municipal Court. Based on the case file, the Judgment of the Municipal Court, namely Judgment [C1. No. 233/2003] of 12 January 2005, became final on the date of confirmation by the District Court on 17 June 2006.

Enforcement procedure

18. On 14 July 2006, the Applicant addressed the Municipal Court with the request for enforcement of the Judgment [C. No. 233/2003] of 12 January 2005 of the Municipal Court ordering the "Security" company to return the Applicant to his previous working place and to compensate him with unpaid salaries, starting from the day of termination of his employment relationship, namely from 16 June 2003 until the day of return to work.

19. On 29 October 2007, the Municipal Court, by Decision [E. No. 348/07] approved the Applicant's proposal for compensation of unrealized salaries for the period from 17 May 2006 until 31 May 2007, in a total amount € 19,799.51, together with the costs of the proceedings, including those of the financial expert and a lawyer. As the above mentioned decision clarifies, the value of compensation was determined based on the assessment of a financial expert whom the relevant court had engaged to calculate unrealized salaries during the period in which his contract was terminated, given that the "Security" company did not provide the Municipal Court with accurate data regarding the Applicant's income.

Contested procedure

20. On an unspecified date, the Applicant again filed a claim with the Municipal Court challenging the financial expert's assessment regarding the value of the compensation, stating, *inter alia,* that the financial expert's assessment was not based on the Employment Contract, based on which his gross monthly salary was 2,000 euro.

21. On 16 December 2009, the Municipal Court, by Judgment [C1. No. 92/2007], (i) partially approved the Applicant's claim for compensation of unrealized salaries for the period 1 June 2007 to 10 July 2007 in the total amount of € 2,330.00, including legal interest; while (ii) rejected the Applicant's statement of claim for compensation *"more than the approved amount"* for the period from 16 June 2003 until 2 June 2009 in the amount of € 81,207,46.00, as well as claims for legal interest for the relevant period, the pension savings and pay taxes totaling over € 39,000. The enacting clause of the Judgment notes that the Municipal Court approved the Applicant's claim only for the period 1 June 2007 to 10 July 2007, reasoning that beyond this period, the Applicant worked with other organizations and consequently carried out personal income.

22. On an unspecified date, the Applicant filed an appeal with the District Court in Prishtina against the aforementioned Judgment of the Municipal Court, alleging violation of the provisions of the contested procedure, erroneous or

incomplete determination of factual situation and erroneous application of the substantive law, with the proposal that the challenged Judgment be modified as to the rejecting part, or that the latter be quashed and the case be remanded.

23. On 1 November 2011, the District Court in Prishtina, by Decision [Ac. No. 241/2010] quashed Judgment [C1. No. 92/2007] of 16 December 2009 of the Municipal Court, remanding the case for retrial.

24. At the main hearing of the Basic Court of the retrial, the Applicant requested that the compensation for the period from 16 June 2003 until 31 January 2014 be in the amount of € 182,466, excluding the realization of salaries already paid in the enforcement proceedings. He further requested that the amount of € 182,466 be calculated on the basis of paragraph 1 of Article 80 (Court decision on Termination of Employment Contract) of Law No. 03/L-212 (hereinafter: Law on Labour), which according to him amounts to 364,932 euro, including legal interest of 3.5% up to 4%.

25. On 11 June 2014, the Basic Court, by Judgment [C. No. 2915/12]: (i) partially approved the Applicant's statement of claim and obliged the "Siguria" company to pay him in the name of unrealized salaries the amount 17,834.22 euro for the period from 16 June 2003 until 31 January 2014, pension contributions in the amount of 1,922.89 euro, tax on salary in the amount of 3,720.99 euro, and 3% of penalty interest, starting from the issuance of the Judgment until the definitive payment; whereas (ii) rejected as ungrounded the rest of the statement of claim, stating *inter alia* that (i) the amounts claimed were inconsistent with the expert's finding; (ii) some of the salaries in the meantime were paid by the respondent; and (iii) the Applicant's statement of claim for compensation right to double value under Article 80 of the Law on Labor are ungrounded because according to the reasoning of this court: "*The Court considers that this legal provision cannot be interpreted as the claimant claims for double salaries, but may file indemnity for any other damages that an employee may be entitle to under any legal basis, and the court when deciding assessed that the claimant could not be entitled to any compensation other than the compensation of the salaries and other income for which it was established as set out in item I of the enacting clause of the judgment*".

26. On 6 August 2014, the Applicant filed an appeal with the Court of Appeals against the aforementioned Judgment of the Basic Court, alleging violation of the provisions of contested procedure, erroneous or incomplete determination of factual situation and erroneous interpretation of the substantive law. The Applicant continued to challenge the interpretation of Article 80 of the Law *on* Labor, alleging that based on this Article, he is entitled to "*doubling wage compensation*".

27. On 27 November 2018, the Court of Appeals, by Judgment [Ac. No. 4134/14], rejected as ungrounded the Applicant's appeal and response to the appeal filed by the "Security" company, thus upholding the Judgment of the Basic Court, including interpretation regarding Article 80 of the Law on Labor, with the exception of the item relating to legal interest, obliging the "Security" company to pay the Applicant "*the interest payable by commercial banks in Kosovo,*

such as for non-designated deposited funds for one year, starting from the date of the first instance judgment of 11.06.2014 until the definitive payment".

28. On 16 January 2019, against the aforementioned Judgment of the Court of Appeals, the Applicant filed a request for revision with the Supreme Court alleging erroneous application of substantive law, and more specifically Article 80 of the Law on Labor, pursuant to which as stated above, the Applicant alleges that he is entitled "*double salary compensation*".

29. On 19 March 2019, the Supreme Court, by Judgment [Rev. No. 73/2019] rejected as ungrounded the Applicant's request for revision and upheld the Judgment of the Court of Appeals.

Applicant's allegations

30. The Applicant alleges that the challenged Judgment of the Supreme Court is rendered in violation of his fundamental rights and freedoms guaranteed by Articles 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 23 [Human Dignity], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 49 [Right to Work and Exercise Profession] of the Constitution.

31. As to the allegations of violation of Article 31 of the Constitution, the Applicant alleges that (i) the final Judgment, namely Judgment [C1. No. 233/2003] of 12 January 2005 of the Municipal Court and consequently he was financially damaged in the amount of € 182,466.00, excluding the 8% interest set forth in Article 382 (Penalty interest) of Law No. 04/L-077 on Obligational Relationships (hereinafter: the LOR) for certain periods of time; (ii) The challenged judgment is in violation of Article 5 (Prohibition of all Forms of Discrimination) and paragraph 1 of Article 80 of the Law on Labor, according to which "*the employee is entitled to claim double wage compensation in the total amount of € 364,932.00, including 8% interest, in accordance with Article 382, paragraph 2, of the LOR "; (iii) "the judgments of the first, second and third instance courts are contradictory"; (iv)* the Law on Labour has been interpreted to his detriment as a result of *"individual, class, nepotism and kleptocracy" interests and (v) the "Security" company has committed a criminal offense, more specifically the "Security" company for non-enforcement of final judgments, for reinstatement to work has also committed the CO (criminal offense) guaranteed by the Constitution and the CC, CCRK…".*

32. Finally, the Applicant requests the Court: (i) compensation of personal income under the Employment Contract in the amount of €2000 per month, starting from the day of dismissal until the day of return to work; (ii) compensation of pension trust payments from 16 June 2003 to 31 December 2011; (iii) the calculation of legal interest rate of 3.5% and that of 8% for the period from 1 January 2012 until 10 November 2015 in accordance with paragraph 2 of Article 382 of the LOR; (iv) compensation of € 182,466.00 estimated by the financial expert; and (v) deduction of costs of proceedings, calculated according to the fee of the Chamber of Advocates in the amount of € 3.184,80.

Relevant Constitutional and Legal Provisions

Article 31 of the Constitution
[Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers".
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

Law No. 03/L-212 on Labour

Article 5
(Prohibition of all Forms of Discrimination)

1. Discrimination is prohibited in employment and occupation in respect of recruitment, training, promocion 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 80
(Court decision on Termination of Employment Contract)

1. If the court finds that the employer's cancellation of the employment contract is unLawful according to the provisions of this Law, the collective contract or the employment contract, it shall order the employer to do one of the following:

1.1. to pay the employee compensation, additional to any allowance and other amounts to which the employee may be entitled under this Law, the employment contract, a collective contracts or the Internal Act, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal; or
1.2. in cases where the dismissal is deemed unlawful under Article 5 of this Law, the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.

Law No. 04/L-007 on Obligational Relationships

Article 382
(Penalty interest)

1. A debtor that is in delay in performing a pecuniary obligation shall owe penalty interest in addition to the principal.

2. The interest rate for penalty interest shall amount to eight percent (8%) per annum, unless stipulated otherwise by a separate act of law.

Admissibility of the Referral

33. The Court first examines whether the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure have been met.

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

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

35. In addition, the Court also refers to the admissibility criteria, as provided by Law. In this respect, 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...".

36. As to the fulfillment of the admissibility requirements, as stated above, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [Rev. No. 189/2018] of 13 June 2019 of the Supreme Court, after having exhausted all legal remedies provided by law. The Applicant also clarified all rights and freedoms he claims to have been violated, in accordance with Article 48 of the Law and submitted the Referral in accordance with the deadline established in Article 49 of the Law.

37. However, in addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) stipulates that:

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

38. In this regard, the Court recalls that in 2002, the Applicant entered into an employment contract with the "Security" company. In June 2003 the latter terminated the Applicant's employment relationship. The decision to terminate the employment relationship was challenged by the Applicant initially in administrative proceedings and subsequently in the court proceedings, which resulted in the Applicant's favor, by the Judgment [Ac. No. 706/2005] of 17 June 2006 of the District Court and which upheld the lower instance Judgment as to the unlawfulness of termination of the Applicant's employment contract. Further, the Applicant pursued the enforcement procedure which ended by Decision [E. No. 348/07] of 29 October 2007, recognizing the right to the Applicant to return to work and granting him the same right to payment of the total amount € 19.799,51 for the period from 17 June 2006 until 31 January 2007. According to the case file, the Applicant was not allowed to return to the working place by the "Security" company, but the aforementioned amount of compensation was realized.

39. However, this amount of compensation was again subject to the court proceedings. Initially the court proceedings related to the dispute over the value of compensation, namely the application of legal provisions in determining this amount, were decided by the Municipal Court in 2009, and remanded by the District Court in 2011. Whereas, in the new trial, the Basic Court also determined the additional amount of compensation of € 17,834.22 for the period from 16 June 2003 until 31 January 2014, and also, as explained above, pension contributions, tax on salary, and related penalty interest, compensation amounts, which were subsequently approved by both the Court of Appeals and the Supreme Court.

40. The Applicant continues to challenge the set amount of compensation, claiming that the Judgment of the Supreme Court was rendered in violation of Articles 21, 22, 23, 24, 31 and 49 of the Constitution. In essence, the Applicant alleges that the regular courts have erroneously interpreted Article 80 of the Law on Labor, which according to him obliges the courts to compensate the

claimant in "*not less than the double value of any indemnity to which the employee is entitles at the time of dismissal*", which according to him, in the circumstances of the present case, amounts to € 364,932.00, including the calculation of the relevant interests.

41. In this regard and hereafter, the Court will address the Applicant's allegations regarding (i) the alleged violations of Article 31 of the Constitution on the grounds of erroneous interpretation of the Law on Labor; and (ii) the alleged violations of Articles 21, 22, 23, 24 and 49 of the Constitution, by applying the case law of the European Court of Human Rights (hereinafter: the ECtHR), on the basis of which the Court, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

(i) As to the allegation of a violation of Article 31 of the Constitution as a result of a erroneous interpretation of law

42. In this respect and initially, the Court emphasizes in the context of assessing the compatibility of the court proceedings with Article 31 of the Constitution in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), the case law of the Court and of the ECtHR state that the fairness of a proceeding is assessed looking at the proceeding as a whole (see, in this regard the ECtHR, case *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68). Therefore, when assessing the Applicant's allegations, the Court will also adhere to this principle (see cases of the Court K1104/16, Applicant *Miodrag Pavic*, Judgment of 4 August 2017, paragraph 38; and case K1143/16, Applicant *Muharrem Blaku* and others, Resolution on Inadmissibility of 13 June 2018, paragraph 31).

43. Moreover, in the context of the Applicant's allegations of violation of Article 31 of the Constitution, the Court recalls that the substance of the allegations relates to the allegation of erroneous interpretation of Article 80 of the Law on Labor, which according to the Applicant's claim, resulted in the determination of an erroneous amount of compensation in the circumstances of his case.

44. In the context of the allegation relating to an erroneous interpretation of the applicable law, the Court first notes that, as a general rule, the allegations of erroneous interpretation of law, allegedly committed by the regular courts, relate to the domain of legality and as such, are not within the jurisdiction of the Court, and therefore, in principle, the Court cannot consider them (see the cases of Court: no. KI06/17, Applicant *L.G. and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 36; KI122/16, Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; and case of the Court KI154/17 and 05/18, Applicants, *Basri Deva, Afërdita Deva and Limited Liability Company "Barbas"*, Resolution on Inadmissibility of 28 August 2019, paragraph 60).

45. The Court has consistently reiterated that it is not its role to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and insofar as they may have violated 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 result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (see ECtHR case, *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, also cases of the Court: KI06/17, cited above, paragraph 37; and KI122/16, cited above, paragraph 57; and KI154/17 and 05/18, cited above, paragraph 61).

46. The Court has consistently held this view based on the ECtHR case law, which clearly states that it is not the role of this Court to review the findings of the regular courts as to the factual state and the application of substantive law (see ECtHR case, *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and the cases of the Court KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58 and KI154/17 and 05/18, cited above, paragraph 62).

47. However, the Court emphasizes that the case law of the ECtHR and of the Court also determine the circumstances under which exceptions to this position are to be made. The ECtHR emphasized that while it primarily pertains to the domestic authorities, and in the present case, the courts, to resolve problems of interpretation of the legislation, the role of the Court is to ensure or verify that the effects of this interpretation are in compliance with the ECHR (see the ECtHR case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

48. Therefore, although the role of the Court is limited in terms of the assessment of the interpretation of the law, it must ensure and take action when it notices that a court has "*applied the law in an obviously arbitrary manner*" which in the a particular case could have resulted in "*arbitrary conclusions*" or "*manifestly unreasonable*" for the Applicant. (With regard to the fundamental principles concerning the manifestly erroneous interpretation and application of law, see, *inter alia*, the case of the Court KI154/17 and 05/18, cited above, paragraphs 60 to 65 and the references used therein.)

49. In this regard, the Court should note that the Applicant did not substantiate before the Court (i) the reasons which might support the allegation that in the circumstances of the present case, Article 80 of the Law on Labor was interpreted by the regular courts in "*in an obviously arbitrary manner*" and (ii) how such an interpretation has resulted in "*arbitrary conclusions*" or "*manifestly unreasonable*" for the Applicant.

50. The Court however, notes, that in the context of his allegations of erroneous interpretation of Article 80 of the Law on Labor, the Applicant alleges that, as a result of Article 80 of the Law on Labor, he must be compensated in double payment he is entitled to, because in his interpretation, based on paragraph 1 of this article, the amount of compensation in the event of a court's finding that the termination of employment was unlawful, "*shall not be less than less than twice the value of any severance payment to which the employee was entitled at the time of dismissal*".

51. In this regard, the Court first notes that the Applicant's allegations regarding the interpretation of Article 80 of the Law on Labor, have been addressed and reasoned by the regular courts, initially by the Basic Court through Judgment [C. No. 2915/12] of 11 June 2014, as follows:

> *"...this legal provision cannot be interpreted in the way the the claimant claims for compensation of double salaries, but may file indemnity for any other damage that may an employee may be entitled under any legal basis, whereas the court when deciding assessed that the claimant could not be entitled to any compensation other than the compensation of the salaries and other income for which it was established as set out in item I of the enacting clause of the judgment."*

52. Moreover, the Court of Appeals and the Supreme Court, by rejecting as ungrounded the appeal and the revision, upheld the interpretation of the Basic Court with regard to Article 80 of the Law on Labor.

53. From the aforementioned considerations, the Court notes that the regular courts have responded to the Applicant's allegation that under the provisions of Article 80 of the Law on Labor, he is entitled to double amount of € 182,466. The regular courts found these allegations to be ungrounded, finding that the substantive law was correctly applied because *"the claimant may not be entitled to any remuneration other than the compensation of the salaries and other income for which it was established, as set out in item I of the enacting clause"*.

54. In this regard, the Court considers that there is nothing to indicate that the regular courts have "*applied the law in a manifestly erroneous manner*" which application could have resulted in "*arbitrary*" or "*manifestly unreasonable*" conclusions for the Applicant.

55. Therefore, in the light of the abovementioned explanations, the Court notes that the Applicant's allegations regarding Article 80 of the Law on Labour were dealt with and clarified by the regular courts, and that, in the entirety of the proceedings, it does not appear that the regular courts acted in an arbitrary manner or interpreted the applicable law in an arbitrary manner (see, in this regard, case of the Court, KI99/19, Applicant *Persa Raičević,* Resolution on Inadmissibility, of 7 November 2019, paragraph 46).

56. The Court recalls that the Applicant, beyond the allegations related to Article 80 of the Law on Labor, also alleges before the Court (i) erroneous interpretation of Article 5 of the Law on Labor; and (ii) failure to execute the final Judgment of the Municipal Court of 2005.

57. With regard to the first issue, the Court notes that the Applicant only refers to this provision and has not submitted any arguments to the Court in support of this allegation. Consequently, based on its case law, the Court will not consider this claim further (see, in this regard, cases of the Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33; and KI187/18 and 11/19, Applicant *Muhamet Idrizi,* Judgment of 29 July 2019, paragraph 73).

58. Whereas, regarding the second, namely the execution of Judgment [C. No. 233/2003] of 12 January 2005 of the Municipal Court and which is final from 17 June 2006, the Court notes that the Municipal Court, by Decision [E. No. 348/07] of 29 October 2007 has decided in the enforcement proceedings on the execution of this Judgment, and that the amount of compensation awarded thereby has been executed in favor of the Applicant. The Court notes that the Applicant has not returned to his job position at the "Security" company, however, (i) since 2007, the Applicant has never brought this claim before the regular courts; (ii) since 2008, the Applicant has pursued court proceedings solely by contesting the amount of compensation awarded by this Judgment; and (iii) The Basic Court, by Judgment [C. No. 2915/12] of 11 June 2014, also taking into account the fact that the Applicant had not returned to the working place, had provided the Applicant with additional compensation of € 17.834,22, adding the necessary amounts in respect of pension, salary tax and interest. The latter may realize the request by following the relevant provisions of the enforcement proceedings.

59. Therefore, in these circumstances, based on the foregoing and having regard to the allegations raised by the Applicant and the facts presented by him, 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 his allegation of a violation of fundamental rights and freedoms with regard to Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

60. The Court further reiterates that, in principle, 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, in this regard, the case of the Court KI42/16 Applicant: *Valdet Sutaj*, Resolution on Inadmissibility of 7 November, paragraph 41 and other references therein; KI118/18, Applicant *Eco Construction l.l.c,* Resolution on Inadmissibility of 10 September 2019, paragraph 48; and KI49/19, Applicant: *Limak Kosovo International Airport L.L.C., "Adem Jashari",* Resolution on Inadmissibility of 8 January 2020, paragraph 55).

61. This means that the parties should be afforded a conduct of procedure based on adversarial principle; to be able to adduce the arguments and evidence they consider relevant to their case at the various stages of those proceedings; that all the arguments, viewed objectively, relevant for the resolution of their case were heard and reviewed by the regular courts; that the factual and legal reasons against the challenged decisions were presented and examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in entirety, were fair (see, *inter alia*, case of the Court No. KI118/17, Applicant *Sani Kervan and Others*, Resolution on Inadmissibility of 16 February 2018, paragraph 35; see also *mutatis mutandis*, case *Garcia Ruiz v. Spain*, cited above, paragraph 29). The Court considers that, in the circumstances of the present case, the Applicant has not substantiated that this is not the case.

62. Further and finally, the Court emphasizes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in a court proceeding, nor provide for the Court, to challenge the application of substantive law by the regular courts in a civil dispute, where often one of the parties wins and the other loses (see, in this regard, cases of the Court KI118/17 Applicant *Sani 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).

(ii) With regard to the Applicant's other allegations of violation of constitutional rights

63. The Court recalls that the Applicant also alleges violation of Articles 21, 22, 23, 24 and 49 of the Constitution. In this regard, the Court recalls that it has consistently reiterated that the mere mentioning of articles of the Constitution is not sufficient to build a substantiated claim of constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, in this context, the cases of the Court KI136/14, cited above, paragraph 33; and KI187/18 and 11/19, cited above, paragraph 73).

64. However and with regard to the Applicant's allegation that the challenged Judgment of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by Article 24 of the Constitution, the Court reiterates its principled standpoint that treatment is unequal and discriminatory if an individual is treated differently from others in similar positions or situations and if this difference in treatment has no objective and reasonable justification. To be justified, the different treatment under the same circumstances must pursue a legitimate aim and must have a reasonable relationship of proportionality, between the means employed and the aim sought to be realised (see the ECtHR case, *Marckx v. Belgium*, Application No. 6833/74, Judgment of 13 June 1979, paragraph 33). The Applicant has not raised any allegations of unequal treatment, beyond stating that he has been injured as a result of "*individual, class, nepotism and kleptocracy*" interests. This Applicant's allegation is not based on any argument and therefore cannot be examined by the Court.

65. The Court in this regard reiterates that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim of violation of the fundamental rights and freedoms guaranteed by the Constitution (see, ECtHR case, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

66. Therefore, in these circumstances, based on the foregoing and having regard to the allegations raised by the Applicant and the facts presented by him, 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 has not proved and sufficiently substantiated his allegation of a violation of his fundamental

rights and freedoms guaranteed by the aforementioned Articles of the Constitution.

67. Therefore, the Court finds 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 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 11 March 2020, 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