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

Prishtina, on 21 April 2020
Ref. no.:RK 1547/20

This translation is unofficial and serves for information purposes only

RESOLUTION ON INADMISSIBILITY

in

Case No.KI115/19

Applicant

Sadete Jusufi

Constitutional review of Decision Rev.no.53/2019 of the Supreme Court of Kosovo, of 20 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 Sadete Jusufi from the Municipality of Prishtina (hereinafter: the applicant).

Challenged Decision

2. The Applicant challenges the Decision [Rev.no.53 / 2019] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 20 March 2019 in conjunction with the Decision [Ac.no.2945 / 2017] of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals), of 26 November 2018 and the Judgment [C.No.1312 / 2014] of the Basic Court of Prishtina (hereinafter: the Basic Court), of 19 May 2017.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment of the Supreme Court, which as alleged by the Applicant has violated her fundamental rights and freedoms guaranteed by Articles 24 [Equality before the Law] and 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) as well as Articles 32 [Right to Legal Remedies] and 49 [Right to Work and Exercise Profession] of the Constitution.

Legal Basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03 / L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as 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 8 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 July 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of judges: Bajram Ljatifi (presiding), Safet Hoxha and Radomir Laban.

7. On 18 July 2019, the Court notified the Applicant about the registration of the Referral. The Court also sent a copy of the Referral to the Supreme Court.

8. On 29 July 2019, the Court notified the Municipality of Prishtina and the Main Family Medicine Center in Prishtina (hereinafter: MFMC) about the registration of the application.

9. On 11 March 2020 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

10. On 21 September 1988, by the Decision [no. 862], the Applicant had established the employment relationship in the capacity of a dentist for an indefinite term with the Health House in Prishtina, now MFMC.

11. On 1 January 2000, the Department of Health and Social Welfare (hereinafter: DHSW) of the United Nations Interim Administration in Kosovo approved the Administrative Instruction 17/2000 on the Establishment of a Central Board for the Training of Medical Specialists (hereinafter: Administrative Instruction).

12. The above-mentioned Administrative Instruction under paragraphs 5 and 6 of point D [General Administrative Arrangements], among other things, stipulated that: (i) before the commencement of specialist training an agreement must be signed by every trainee that they will work full-time for five years for the Kosovo's public health service after successful completion of their specialist training and registration as a licensed specialist, or repay their full salary paid during the training: and (ii) doctors who have successfully completed their specialist training and are registered as licensed specialists must apply by public competition for posts within Kosovo's public health service. They will not be able to stay in their training posts nor automatically be offered posts in their training institution.

13. On 17 January 2001, by the Decision [no. 910/2000] of the DHSW, the Applicant was allowed to specialize in the field of pedodontics and preventive dentistry.

14. On 3 April 2001, the Applicant and the DHSW signed the "*Employment Contract for Trainees*". This Agreement stipulated, *inter alia*, that the Applicant had been offered a job from 3 January 2001 to 3 January 2005, a period during which she would be paid three hundred and sixty (360) Deutsche marks per month; and in exchange, pursuant to paragraph 10 of this contract, (ii) upon successful completion of professional training and registration as a licensed doctor, the Applicant is obliged to work full time for 5 (five) years without interruption for Kosovo Public Health Service, or alternatively be obliged to repay all salaries earned in the capacity of a trainee.

15. On the basis of the case file, following the completion of the specialization, the Applicant addressed the relevant institutions requesting to return her to her post, but had no success. Consequently, on 3 May 2005, together with a number of other doctors who had completed their specialization, the Applicant addressed a letter to the Institution of Ombudsperson requesting the realization of her rights to return to the previous post as a dentist and be compensated for the lost salaries.

16. On 12 May 2006, based on the case file, the Minister of Health issued a Decision [no. 20-03-2006], whereby suspended the implementation of points 9 and 10 of employment contracts for trainees, based on which, the obligation of specialists to work for 5 (five) years, in public health services or alternatively to repay the full salary received during the training. The decision in question

was issued on the grounds that *"budget cuts make it difficult to implement points 9 and 10."*

17. On 29 April 2014 the Applicant filed a claim with the Basic Court against the MFMC and the Health Directorate of the Municipality of Prishtina.

18. On 19 May 2017, the Basic Court, through its Judgment [C.No.1312 / 2014], dismissed the claim of the Applicant as out of time. The Basic Court in its Decision, among other things, stated that (i) based on Regulation No. 1999/21 of 24 December 1999 on the applicable law in Kosovo, in the employment dispute of the Applicant applies the Law on Associated Labour of 1976 as supplemented and amended in 1987(hereinafter: LAL); (ii) pursuant to paragraph 1 of Article 224 of the LAL, against the decision or in its absence following a period of 30 (thirty) days from the submission of the request, the claim may be filed with the respective court within 15 (fifteen) days; and (iii) in the circumstances of the case and taking into account that the Applicant had begun her specialization in 2001 and completed it in 2005, whereas the claim was filed with the court on 29 April 2014, the claim before the Basic Court is out of time.

19. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court, alleging a substantial violation of the provisions of the contested procedure and erroneous application of the substantive provisions, with the proposal to have the appeal approved while the challenged Decision to be quashed and the case to be remanded for reconsideration.

20. On 26 November 2018, the Court of Appeals through the Judgment [Ac.no.2945 /2017] rejected the Applicant's appeal as unfounded, by confirming the above-mentioned Judgment of the Basic Court.

21. On an unspecified date, the Applicant filed a revision with the Supreme Court against the Decision of the Court of Appeals, alleging substantial violations of the provisions of the contested procedure and erroneous application of substantive law, proposing that the 2 (two) Decisions of lower courts be quashed and the case be remanded for reconsideration.

22. On 20 March 2019 the Supreme Court, by its Judgment [Rev. no. 52/2019], rejected as unfounded the revision submitted by the Applicant, thus confirming the Judgment [Ac.no.2945 / 2017] of the Court of Appeals, of 26 November 2018 in conjunction with the Judgment [C.no.1312 / 2014] of the Basic Court, of 19 May 2017.

Applicant's allegations

23. The Applicant challenges the Judgment [Rev. no.52 / 2019] of the Supreme Court, of 20 March 2019, alleging that it has been issued in violation of her 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, as well as Articles

32 [Right to Legal Remedies] and 49 [Right to Work and Exercise Profession] of the Constitution.

24. As regards the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant essentially states that (i) the applicable law, namely the LAW has been erroneously applied, in relation to its Article 224 which concerns the deadlines within which a decision can be challenged, because, according to the allegation, she has never received such a decision. According to the Applicant, the deadlines "start to be calculated from the day of receipt of the contested decision", so considering that she has never received the relevant decision, the deadlines with respect to the initiation of a dispute have not started to run; and (ii) in addition to the fact that the decision to terminate her employment has never been submitted to her, the same is in contradiction with Article 35 (Termination of Employment) of Administrative Instruction No. 2003/2 on the implementation of Regulation No. 2001/36 on the Civil Service of Kosovo. In support of her arguments, the Applicant also refers to the case law of the Court, namely Judgment KI69 /16, Applicant *Nora Dukagjini-Salihu*, Judgment of 6 June 2018 (hereinafter: the case of Court KI69 /16), as stated by her "*as regards the failure of the Supreme Court to provide the proper reasoning in the Judgment rendered in relation to these cases".*

25. With regard to the alleged violations of Article 24 of the Constitution, the Applicant in essence alleges a violation of the principle of equality of arms, because according to her, *"The Supreme Court took into account the norm which satisfies only the requirements of one party while it did not take into account the norm which is an obligation of the employer and her right".*

26. The Applicant also alleges violations of Articles 32 and 49 of the Constitution, respectively. Regarding the first, she claims that "*she has been denied what is guaranteed by the Constitution that is the right to effective remedy, which is recognized by the European Convention and thus she has been denied the constitutional right provided by Article 32 [Right to Legal Remedies] of the Constitution", while regarding the second, she claims that" despite numerous requests for return to work, she has been denied the constitutional right to work and free exercise of the profession guaranteed by Article 49 (Right to Work and Exercise Profession), as one of the most important economic and social human rights".*

27. Finally, the Applicant requests from the Court to (i) declare her Referral admissible; and (ii) the Judgment [Rev. no. 53 / 2019] of the Supreme Court, of 20 March 2019, to be declared invalid and the case to be remanded for retrial.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

[…]

Chapter II
Fundamental Rights and Freedoms

[…]

Article 31
(Right to Fair and Impartial Trial)

1. Everyone shall be guaranteed equal protection of rights in the proceedings before the courts, other state authorities and holders of public powers.

European Convention on Human Rights

Title I
Rights and Freedoms

Article 6
(Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice

Law on Associated Labour (LAL) of 1976 amended and supplemented in 1987

Article 224

1. If the worker is not satisfied with the decision, or if the competent body in the basic organization does not render a decision within 30 days from the date when the request was submitted, the worker has the right within 15 days to seek protection of his rights before a court of associated labour.

[…]

Admissibility of the Referral

28. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and 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. In addition, the Court also examined whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47 [Individual Requests], 48 [Accuracy of the Referral, which provide:

> 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..."*

31. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment [Rev. no. 53/2019] of the Supreme Court, of 20 March 2019 after having exhausted all legal remedies prescribed by law. The Applicant has also clarified the rights and freedoms she claims to have been violated pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines stipulated by Article 49 of the Law.

32. In addition, the Court examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Acceptance Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure provides for the criteria on the basis of which the Court may examine the Referral, including the criterion for the Referral not to be 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"*

33. In this respect, the Court recalls that the Applicant since 1988 had an indefinite employment contract with the predecessor of the MFMC. In 2001, she was allowed to specialize for a period of 3 (three) years supported by a payment, in exchange of which the Applicant was obliged to work 5 (five) years for the public health service. This agreement was based on the Administrative Instruction, and which, as mentioned above, in its paragraph 5 had defined the obligation of specialists to work for the above period in public health services, while in its paragraph 6, it emphasized that they should compete for posts in the public sector and that they are not necessarily guaranteed posts in specialization training institutions.

34. Based on the case file, after the completion of the specialization, the Applicant addressed the relevant institutions asking to return to her job, also including the Institution of the Ombudsperson. Whereas, she had addressed the courts in 2014, when she filed the claim with the Basic Court, a judicial process which was completed in 2019, as all three instances of the regular courts, had rejected the claim, the appeal and the revision of the applicant, respectively, arguing that her initial 2014 lawsuit was out of time. The Applicant challenges this finding of the regular courts before the Court, by raising allegations that are essentially related to the procedural guarantees guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, emphasizing the (i) erroneous interpretation of the LAL on the basis of which the regular courts had declared her claim as being out of time; and (ii) the fact that the decision on termination of her employment, in addition to having not been submitted to her, was also contrary to the applicable legal regulations.

35. In this context, the Court will in the following address the Applicant's allegations concerning (i) the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which in the circumstances of the present case are essentially related with the erroneous interpretation of the law; and (ii) violation of Articles 24, 32 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, 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.

(i) As for the allegations for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

36. In this respect, the Court initially emphasizes that the ECtHR case law stipulates that the fairness of the proceedings is assessed based on the proceedings as a whole. (See the ECtHR Judgment of 6 December 1988, *Barbera, Messeque and Jabardo v. Spain*, paragraph 68). Consequently, the Court will adhere to this principle during the assessment of Applicant's allegations. (See, inter alia, the cases of Court KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and KI143 / 16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility, of 13 June 2018, paragraph 31).

37. Further, and as to the allegations of the Applicant relating to the erroneous interpretation of the law, namely Article 224 of the LAL, the Court initially emphasizes that, as a general rule, the allegations of erroneous interpretation of the law alleged to be made by the regular courts, relate to the field of legality and as such, are not within the jurisdiction of the Court, and therefore, in principle, the Court cannot examine them. (See the Case no. KI06 / 17, Applicant *L.G. and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 36; case KI122/16, applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; and KI49/19, *Applicant Limak Kosovo International Airport JSC, "Adem Jashari"*, Resolution on Inadmissibility of 10 October 2019, paragraph 47).

38. The Court has consistently reiterated that it is not its duty to deal with errors of fact or law which are alleged to have been made by the regular courts (legality), unless and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality). The Court cannot by itself assess the law that 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. In fact, it is the role of the regular courts to interpret and enforce the relevant rules of procedural and substantive law. (See the ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see also, inter alia, Court cases: KI70/11, Applicant *Faik Hima, Magbule Hima and Besart Hima* , Resolution on Inadmissibility, of 16 December 2011, paragraph 29; KI06/17, cited above, paragraph 37; KI122/16, cited above, paragraph 57; and KI49/19, cited above, paragraph 48).

39. 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, the ECtHR case, *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and cases of the Court

KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58; and KI49/19, cited above, paragraph 49).

40. The Court, however, emphasizes that the case law of the ECtHR and the Court provide for the circumstances under which exceptions to this positions should be made. The ECtHR has emphasized 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 ensure or verify whether the effects of such interpretation are compatible with the ECHR. (See the ECtHR case, *Miragall Escolano et al. V. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

41. Consequently, 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 is argued that a court has *"applied the law manifestly erroneously"* in a specific case or so as to reach *"arbitrary conclusions"* or *"manifestly unjustified"* for the Applicant.(In regards to the basic principles concerning the manifestly erroneous interpretation of the law, see, among others, the case of the Court KI154/17 and 05/18, Applicants, *Basri Deva, Aferdita Deva and the Limited Liability Company "Barbas"* , Resolution on Inadmissibility of 28 August 2019, paragraphs 60 to 65 and the references used therein).

42. In this context, the Court notes that in the circumstances of the present case the essential issue relates to the deadline of the Applicant's claim and to her allegation that she has never received the decision on termination of employment relationship. As stated above, the Applicant alleges that she has never received this decision and that, consequently, the time limits for complaining against it have not begun, thus making it impossible to declare her claim as being out of time. On the other hand, the regular courts, having determined that in the circumstances of the Applicant's case the LAL is applicable, pursuant to Article 224 thereof, have established that her claim is out of time regardless of whether the claimant has received the relevant decision or not. This is because, according to the reasoning of the regular courts, Article 224 of the LAL includes possibilities, the deadline for complaining against a decision, and the deadline for complaining if such a decision has not been rendered or submitted. In the first case, the period for complaining is 15 (fifteen) days from the issuance of the decision, while in the second case, 15 (fifteen) days, following a period of 30 (thirty) days from when a request was exercised and the relevant body did not render a decision. The regular courts have further stated that the Applicant had completed the specialization on 3 January 2005, while the claim was filed with the respective court on 29 April 2014, namely 9 (nine) years after the completion of the specialization.

43. Furthermore, the Court notes that all regular courts have addressed all allegations of the Applicant relating to the (i) time limits of her claim and non-receipt of the decision on termination of employment relationship, a fact which on the basis of which the Applicant alleges that the legal deadlines for the submission of the cannot be running, thus making it impossible to declare her claim as being out of time; and (ii) the illegality of the decision on termination of her employment.

44. As for the first case, namely the deadline of the claim , the Basic Court, by its Judgment [C. no. 1312/2014] of 19 May 2017, among other things, had stated:

> *"The Court, by assessing the time limit of the claim exercised, on the basis of the evidence contained in the case file, found that the claimant by Decision Ref.no.910/2000 of 17.01. 2001, was allowed the specialization from the field of pedodontics and preventive dentistry on 02.01.2001 , then by the employment contract for a trainee dated 03.04.2001, it results that the claimant started her specialization on 01.03.2001 and completed it on 03.01.2005, whilst the claim was filed with the court on 29.04.2014 , hence based on this it results that be failing to abide by the deadlines for protection of rights before the court, the claimant has filed the claim out of the legal deadline, after nine years, from the day of the completion of specialization.*
>
> *Based on the established factual situation, the court proved that the claimant has missed the deadline for the protection of the violated rights, as provided for by the provision of Article 224. para.1 of Law on Associated Labour of 1976 amended and supplemented in 1987 which provides that "If the worker is not satisfied with the decision, or if the competent body in the basic organization does not render a decision within 30 days from the date when the request was submitted, the worker has the right within 15 days to seek protection of his rights before a court of associated labour"- This law applicable in Kosovo according to UNMIK Regulation 1999/24, which was in force at the time when the claimant did not return to work after specialization".*

45. Whereas, by addressing the same allegation, the Court of Appeals, by its Judgment [Ac. no. 2945/17] of 26 November 2018, inter alia, had stated:

> "*The Court of Appeals did not accept the claimant's appeal claims that the decision of the court of first instance was illegal and that it was issued by erroneous application of the substantive provisions, namely Article 224 of the LAL. This is due to the fact that the court of first instance has provided sufficient justification as to why in the present case the above-mentioned law applies.... [ ].*
>
> *Also, for the Court of Appeals, the claimant's allegation presented in the appeal that the claimant has never received the decision on termination of employment from the first respondent is unfounded and in this case the condition provided by the provision of the Article 224 of the LAL cannot be met. This is due to the fact that the above-mentioned article in paragraph 1 expressly stipulates that if the competent body does not render a decision within 30 days of the request, the employee has the right within 15 days to seek protection of rights from employment relationship directly before a court".*

46. Finally, the Supreme Court, by Judgment [Rev. no. 53/2019] of 20 March 2019, had also confirmed the decisions of the pre-trial courts, by reasoning as follows:

> *"Other claims relating to the erroneous application of substantive law from Article 224 of the Law on Associated Labour were also rejected as unfounded, as that legal provision and the Law on Associated Labour in general dated before 23 March 1989 and as such has been in application under UNMIK Regulation No. 1999/24, however, because at that time, until the issuance of Law on Labour 03 / L-212, the applicable Law has been Special law from the employment relationship, Official Gazette no. 42/90, in which there has existed a legal provision of Article 83, with exactly the same content as Article 224 of the Law on Associated Labour where the provided legal deadlines for judicial protection are 30 + 15 days. The claimant failed to comply with these deadlines, but after 9 years from the time she completed her specialization, she addressed the court with a claim seeking her reinstatement to work. The other revision claims were assessed by the court as irrelevant as they had no effect that would result in the rendering of a different decision regarding the revision filed by the claimant's authorized person."*

47. Consequently and as elaborated above, the Court notes that all regular courts had found that the Applicant had filed her claim out of the legal deadline under the applicable law and had dealt with all her allegations before them relating to the interpretation of Article 224 of the LAL.

48. The Court, as stated above, also emphasizes the fact that the regular courts have addressed the Applicant's allegations concerning the non-receipt of the decision on termination of employment relationship, based on the same provision. According to the regular courts, such circumstances are provided for in paragraph 1 of Article 224 of the LAL, according to which in case of inaction of the administrative body within 30 (thirty) days, the complaint is made before the respective court within 15 (fifteen) days.

49. Whereas, as for the second case, namely the illegality of the decision on termination of her employment, the Supreme Court by its Judgment had stated that the same are related to the merits of the statement of claim and that given that the latter has been declared as out of time, the Supreme Court cannot examine them. In this context, the Supreme Court had stated the following:

> *"The Supreme Court cannot provide an assessment of these revision claims, as the claimant's claim has been dismissed as out of time, so it is not possible for the Court to elaborate on the basis of the statement of claim as long as it is treated as out of time. If the revision claims are related to procedural violations which concern the dismissal of the claimant's claim, then it is possible for them to be examined and considered , while such claims as presented in the revision that the claimant up to date has not been issued a decision terminating her employment relationship, neither prior nor after the completion of the specialization, they cannot be examined as they are related to the merits of*

the statement of claim, and in the present case the basis of the statement of claim are not a subject of review and assessment".

50. The Court also recalls that the Applicant by referring to the case of the Court KI69/16 alleges that the decisions of the regular courts are unlawful and contrary to the Constitution.

51. In this respect, the Court notes that, in addition to the fact that the Applicant has mentioned and cited the case of KI69/16 Court, she has not elaborated on its factual and legal relevance, for the circumstances of the case. The Court emphasizes that the reasonings of other court decisions must be interpreted in the context and in light of the factual circumstances in which they were rendered. (See, inter alia, in this context, the Judgment in case KI48/18 of 4 February 2019, Applicant *Arban Abrashi and the Democratic League of Kosovo* (LDK), paragraph 275; case KI119/17, Applicant Gentian Rexhepi, Resolution on Inadmissibility, of 3 May 2019, paragraph 80; and case KI49/19, cited above, paragraph 44).

52. However, the Court notes that the factual circumstances of the applicant in the present case are similar to those of the case to which she refers. More specifically, both cases are related to the (i) conclusion of indefinite term contracts as dentists of the respective applicants in the late 80's and the beginning of 90's, with the now MFMC; (ii) issuance of decisions and conclusion of contracts for specialization in 2001, based on the relevant Administrative Instruction; and (iii) the refusal of the relevant health institutions to return the applicants to the respective posts after the completion of the specializations in 2005.

53. The difference is that in the case which the Applicant refers to, the respective Applicant (i) immediately after the refusal for her return to work, addressed the Independent Oversight Board of Kosovo (hereinafter: the IOBK), which rejected the Applicant's complaint; afterwards she (ii) immediately appealed this decision in the Basic Court which approved her statement of claim, a decision which thereupon was also confirmed by the Court of Appeals; (iii) in 2015, the claimant had initiated the enforcement procedure and the Basic Court and the Court of Appeals had approved the claimant's proposals and rejected the respective appeals, respectively; while (iv) acting at the request for revision against the Judgment of the Court of Appeals, the Supreme Court had accepted the revision of the respondent, by annulling the decisions of the lower instance courts. This decision of the Supreme Court was declared by the Court to be in contradiction with Article 31 of the Constitution in conjunction with Article 6 of the ECHR through the case KI69/16, for the reasons which are elaborated in the relevant Judgment. (For case facts see paragraphs 9 - 36, while for the reasoning see paragraphs 46 - 85 of the Judgment in case KI69 / 16).

54. Furthermore, different from the case KI69/16 in which the Applicant refers to, the latter, in the circumstances of the present case, has not taken any legal action from 2005, the year in which she completed her specialization until 2014, when she had filed the claim for the first time with the Basic Court. Consequently, the regular courts had declared Applicant's statement of claim

filed in 2014 as out of time, by having applied the applicable law in the circumstances of 2005, namely the LAL. Within this period during which the Applicant had not taken any action, the Applicant in the case KI69/16, had addressed the IOBK, had challenged its decision, and won the case in the Basic Court of Appeal, and thereby managed to succeed, respectively to obtain the confirmations from the Basic Court and the Court of Appeals, in the enforcement proceedings.

55. In this respect, the Court considers that the regular courts had treated and reasoned in its entirety the allegations of the Applicant and that the proceedings before the courts in the circumstances of the present case have in no way been unfair or arbitrary. Moreover, also the arguments of the Applicant in reference with the KI69/16 Court, as stated above do not stand.

56. In this regard, in order to avoid misunderstandings on the part of the 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. In practical terms, and in principle, this is expressed in an adversarial proceeding, where the parties are heard and placed on the same terms before the Court. (See in this respect, the cases of the Court no. KI42/16, Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and other references mentioned therein; and KI49/19, cited above, paragraph 55).

57. The Court also reiterates that Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, does not guarantee anyone a favourable outcome in a judicial proceeding, nor does it stipulate that the Court shall put into discussion the application of substantive law by the regular courts in a civil dispute, where mainly one of the parties wins and the other loses. (See, cases of the Court KI118/17, Applicant *Sani Kervan and others*, Resolution on Inadmissibility of 17 January 2018, paragraph 36; KI49/19, cited above, paragraph 54; and KI99/19, Applicant *Persa Raičević*, Resolution on Inadmissibility of 19 December 2019, paragraph 48).

58. Therefore in these circumstances, on the basis of the foregoing and taking into account the allegation raised by the Applicant and the facts presented by her, the Court also relying on the standards set in its case law in similar cases and the case law of the ECtHR Court finds that the Applicant does not sufficiently prove and substantiate her claim for violation of fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

(ii) As for the allegations for violation of Articles 24, 32 and 49 of the Constitution

59. The Court recalls that the Applicant also alleges that in the circumstances of the present case, the challenged Judgment of the Supreme Court has been issued in violation of her fundamental rights and freedoms, guaranteed by Articles 24, 32 and 49 of the Constitution.

60. As regards these allegations, the Court emphasizes that the mere fact that the Applicant is not satisfied with the outcome of the Supreme Court Judgment or only the mention of Articles of the Constitution is not sufficient to build an allegation for a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and compelling arguments. (See, in this context, the case of the Court KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33; and the case KI49/19, cited above, paragraph 58).

61. However, as regards the Applicant's allegation for a violation of Article 24 of the Constitution, the Court recalls that, on the basis of the case law of the ECtHR, in principle, in order for an issue to be raised within the framework of Article 24 of the Constitution and Article 14 (Prohibition of discrimination) of the ECHR, there must exist a difference in treatment between persons in similar or comparable situations. (See, the ECtHR case, *X and others v. Austria*, Judgment of 19 February 2013, paragraph 98). Moreover, not every difference in treatment constitutes a violation of the above articles. In principle, the difference in treatment will be discriminatory if it lacks objective or reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means used and the aim sought to be realised. (See, the ECtHR case, *Guberina v. Croatia*, Judgment of 22 March 2016, paragraph 69 and other references mentioned therein). In the circumstances of the concrete case, the Applicant did not specify any claim regarding any difference in treatment and consequently did not justify or substantiate her allegations for violation of Article 24 of the Constitution.

62. As regards the allegations of the Applicant for violation of Article 32 of the Constitution, the Court recalls that in principle and in its entirety, Article 54 [Judicial Protection of Rights] of the Constitution on the judicial protection of rights, Article 32 of the Constitution on the right to legal remedies and Article 13 (Right to an effective remedy) of the ECHR on the right to an effective remedy, guarantee: (i) the right to judicial protection in the event of a violation or denial of any right guaranteed by the Constitution or by law; (ii) the right to use legal remedies against judicial and administrative decisions which violate the rights guaranteed in the manner prescribed by law; (iii) the right to effective legal remedies if it is found that a right has been violated; and (iv) the right to an effective remedy at the domestic level, if a right guaranteed by the ECHR has been violated. (See, the case KI48/18, cited above, paragraphs 195-198).

63. However, the Court reiterates that the Applicant does not in any way substantiate her allegations for violations of these rights. In fact, the Court notes that the Applicant has had an effective legal remedy at her disposal and that the failure to meet the deadlines for submitting the statement of claim and appeals could in no way result in argumentative allegations for a violation of the rights guaranteed by Articles 32 and 54 of the Constitution, respectively.

64. On the contrary, the Court has consistently emphasized that it is the duty of Applicants or their representatives to act with *'due diligence'* to ensure that their claims for protection of fundamental rights and freedoms are filed within

the legal deadline. (See, the ECtHR case, *Mocanu and others v. Romania*, Judgment of 17 September 2014, paragraphs 263-267, also see the case of the Court, KI140/17, Applicant *Merita Dervishi*, Resolution on Inadmissibility of 14 June 2019, paragraph 64).

65. Finally, and in respect of the allegations of the Applicant for violation of Article 49 of the Constitution, the Court emphasizes that within the meaning of this concrete right, the Constitution defines a standard that determines the guarantees and rights to work, employment opportunities and ensures provision of equal working conditions without discrimination, as well as the right to choose a job and exercise the profession freely, without forcible obligations. These rights are specifically regulated by applicable laws. (See, inter alia, the cases of Court KI46 /15, Applicant *Zejna Qosaj*, Resolution on Inadmissibility of 20 October 2015, paragraph 26; and KI70/17, Applicant *Rrahim Ramadani*, Resolution on Inadmissibility of 8 May 2018, paragraph 48).

66. The Court emphasizes that the allegation of the Applicant for the violation of the right to work must be understood in the light of the above interpretation. The Court also notes that the Applicant's allegation, in the present case, has nothing to do with the denial of the right to work and exercise profession, within the meaning of Article 49 of the Constitution.

67. The Court considers that the challenged Decision of the Supreme Court in no way prevents the Applicant from working or exercising profession. Consequently, there is nothing in the Applicant's allegation that would justify the conclusion that her constitutional rights guaranteed by Article 49 of the Constitution have been violated. (See, inter alia, the cases of the Court KI136/ 14, cited above, paragraph 34; as well as KI42/17, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility, of 5 December 2017, paragraph 53).

68. Consequently, based on the foregoing and taking into account the specific characteristics of the case, the allegations raised by the Applicant and the facts presented by her, the Court having relied on the standards established in its case law in similar cases and the case law of the ECHR, finds that the Applicant did not sufficiently prove and substantiate her claims that the proceedings before the regular courts have in any way been unfair or arbitrary and that the challenged decision has violated her rights and freedoms mentioned above and guaranteed by the Constitution and the ECHR. (See, *mutatis mutandis*, the ECtHR case *Shub v. Lithuania*, Decision of 30 June 2009).

69. The Court finally concludes that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the applicant with the outcome of the proceedings by the regular courts cannot by itself raise an argumentative allegation for a violation of constitutional rights. (See, the ECtHR Case, *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and see also the case of the Court KI56/17, applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

70. Consequently, the Referral is manifestly ill founded on constitutional basis, and is declared inadmissible, as stipulated in Article 113.7 of the Constitution and further specified in Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, in the session held 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

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