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

Prishtina, 20 July 2020
Ref. No.:RK 1586/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI36/20

Applicant

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

Constitutional review of Judgment Rev. no. 10/2018 of the Supreme Court of Kosovo, of 16 October 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Joint Stock Company Limak Kosovo International Airport "Adem Jashari" (hereinafter: the Applicant), based in Vrellë village, Lipjan Municipality, which is represented with power of attorney by Fazli Gjonbalaj and Leonora Fejzullahu.

Challenged decision

2. The Applicant shall challenge the Judgment of the Supreme Court of Kosovo, [Rev. no. 10/2018], of 16 October 2018.

3. The Applicant was served with the challenged decision on 13 January 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged judgment, which allegedly violates the Applicant's rights guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial), and Article 1 of Protocol no. 1 of the European Convention for the Protection of Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing of Referrals] and 47 [Individual Request] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03 / L-121 (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

6. On 21 February 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 24 February 2020, the President of the Court appointed Judge Remzie Istrefi-Peci, as Judge Rapporteur and the Review Panel, composed of judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu, and Selvete Gërxhaliu-Krasniqi (members).

8. On 10 March 2020 the Court notified the Applicant about the registration of the Referral. On the same day, the Court also notified the Supreme Court about the registration and sent a copy thereof.

9. On April 3, 2020, the Court also notified the Basic Court in Prishtina- Branch in Lipjan about the registration of the case and requested from it submit to the Court the acknowledgment of receipt proving the date when the Applicant was served with the challenged decision.

10. On 27 April 2020, the Basic Court in Prishtina-Branch in Lipjan submitted the required acknowledgment of receipt to the Court.

11. On 27 May 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

12. On 12 August 2010, the Government of the Republic of Kosovo and the Applicant had signed a Public Private Partnership Agreement (hereinafter: PPP). Prior to the signing of the PPP agreement, Prishtina Airport was called Prishtina International Airport (hereinafter: PIA).

13. On the basis of the case file it is noticed that the employee M.H. (hereinafter: employee M.H.), had been employed at the PIA. The Employee M.H. had established an employment relationship with the PIA from 3 August 2009 to 3 April 2011. Based on the PPP Agreement, the Applicant took over the obligation to keep the employment relationship with all employees for a period of 3 (three) years. Based on the PPP Agreement, the Applicant had concluded with the employee M.H. a fixed-term employment contract for a period of 3 (three) years, respectively from 3 April 2011 to 3 April 2014.

14. On 3 March 2014, 30 days prior to the expiration of the fixed-term contract, the Applicant by a "Notice on non-renewal of the employment contract" notified the employee M.H. that her employment contract will be terminated and reasoned that this was based on "[...] the Company's decision on the future planning of human resources". On the other hand, the Applicant based itself upon paragraph 2 of Article 71 of the Law on Labour as a legal basis for non-renewal of the employment contract.

15. On 11 March 2014, the employee M.H. 03.03.2014, submitted a complaint to the Applicant *"...by proposing that the notification of the respondent on non-renewal of the employment contract dated 03.03.2014, be annulled as illegal and the claimant be reinstated to her previous job position, with all the rights stemming from the employment relationship."*

16. On 20 March 2014 the Applicant rejected as unfounded the request of the employee seeking the annulment of the notice on non-renewal of the contract as illegal.

17. On an unspecified date, the employee M.H. filed a statement of claim with the Basic Court in Prishtina-Branch in Lipjan (hereinafter: the Basic Court), seeking the annulment of the notice of 3 March 2014, as well as the respondent's response of 20 April 2014, on non-extension of the employment contract, by requesting to have the Applicant (respondent) obliged to reinstate the employee to her job position with all rights and obligations, as well as to compensate her for the material damage caused.

18. On 13 May 2015, the Basic Court by Judgment [C. no. 215/14] rejected as unfounded, the claim of M.H. by referring to the provision of Article 67, point 1.3 of the Law on Labour, which provides *"[...] termination of employment contract on legal basis, among other cases, employment contract, on legal basis, may be terminated with expiry of duration of contract."* Therefore, in the present case, according to the Basic Court, since the employee has not completed 10 (ten) years or more of work experience, to be considered to be in an indefinite employment relationship, then "[the Applicant] has had no legal obligation to extend the claimant's employment

contract" since her employment relationship was terminated upon the expiry of the duration of employment contract, respectively, on legal basis.

19. On 13 July 2015, employee M.H. filed an appeal with the Court of Appeals against the judgment of the court of first instance, alleging substantial violations of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law.

20. On 15 November 2017, the Court of Appeals by Judgment [Ac. no. 3634/15] rejected, as unfounded, the appeal of the employee and at the same time confirmed the judgment of the court of first instance, emphasizing that the appeal claims do not stand because the employee has not completed 10 (ten) years or more work of experience at the Applicant's Company, a requirement for her to be considered to have had an indefinite employment relationship. Therefore, the Court of Appeals considered that the assessment of the court of first instance was lawful and regular.

21. On 21 December 2017, employee M.H. filed an appeal against the judgment of the Court of First Instance and the Court of First Instance, requesting that the employee's revision be accepted as grounded and the judgments of the two lower instance courts be amended so that her statement of claim be approved as grounded and the Applicant be obliged to compensate the costs of the procedure or alternatively the judgments of the two courts to be annulled and the case to be remanded for retrial to the court of first instance.

22. On 16 October 2018, the Supreme Court by Judgment [Rev. no. 10/2018], approved as grounded the revision submitted by the employee and modified the judgments of the Basic Court and the Court of Appeals. In this case, the Supreme Court decided to (i) approve the Employee's statement of claim as partially grounded, (ii) it annulled the Applicant's of 3 March 2014, as well as its response of 20 March 2014 on the non-extension of the employment contract, (iii) obligated the Applicant to reinstate the employee to the same job, (iv) obliged the Applicant to pay to the employee a certain amount in the name of material damage, (v) obliged the Applicant to cover the costs of the contested procedure, and (vi) rejected the rest of the revision whereby the employee has sought compensation for non-realization of personal income, in the amount of 411, 68 Euros, beyond the adjudicated amount of 8,517.58 Euros.

23. The Supreme Court by Judgment [Rev. no. 10/2018], reasoned *that "[the Applicant] has failed to substantiate all his allegations regarding the legality of the non-extension of the contract [the employee] as well as the confirmation of the facts whether [the Applicant] has drawn up a detailed operational plan, whereby it would be determined which services could be reduced and to what extent they would be reduced, in order to prove the fact that the evidence presented, constitutes a valid legal basis for non-renewal of the employment contract [...], therefore the failure of the [Applicant] in the respect of non-extension of the employment contract makes it unlawful".*

24. The Supreme Court further assessed that the subject matter of the employee's statement of claim was *"the subject matter of the claimant's statement of claim is not the confirmation of the claimant's indefinite term employment relationship but to assess the legality of the notice of non-extensionl of the employment contract.",* thus

considering that the lower instance courts have correctly determined the factual situation, but have erroneously applied the substantive law.

Applicant's allegations

25. The Applicant alleges that *"The Supreme Court of Kosovo, by judgment Rev. no.10/2018, of 16.10.2018 [...], has violated his right to fair and impartial trial, as guaranteed by Article 24 and Article 31 [Right to Fair and Impartial Trial], due to the non-justification of the court decision, further stating that "as a result of the lack of evidence-based reasoning, the challenged decision deprived the Applicant of the constitutional right to an effective remedy" and thereby violated the right guaranteed by Article 32 and as a result of these violations, also the claimant's right to property under Article 46 [Protection of Property] of the Constitution was violated. The Applicant also alleges that there is a violation of Article 6.1 [Right to a fair trial] of the ECHR".*

26. The Applicant alleges that the Supreme Court has gone beyond the request for revision when interpreting Article 5 paragraph 1 of the Law on Labour. In this regard, the Applicant states, *"The Supreme Court of Kosovo goes beyond the requests of the Revision and the judgments of the lower instances in the proceedings and the requirements of the law for which it should take care ex officio, and addresses the matter which neither party has raised with any legal fact in the court proceedings, and on this basis it results that this court has taken prejudiced actions even when referring to Article 5.1 of the Law on Labour, whereas the legal provisions on which the notification was made by the respondent this court has erroneously applied for the fact that no other legal provisions of the Law on Labour is addressed except for Article 71, para.2 which provision concerns the non-extension of the employment contract for fixed-term employment contracts".*

27. Further, the Applicant considers that the Basic Court and the Court of Appeals have correctly applied the law in relation to Article 1.1 and Article 67, paragraph 1.3, as well as Article 71 paragraph 2 of the Law on Labour 03/L-212. In this regard, the Applicant states: *"The lower instance courts have taken into account that the Applicant had acted correctly by the notice of non-renewal of the employment relationship, as the respondent has notified the claimant by a notice that the contract will not be renewed by respecting the labour laws and the employment contract. The claimant has received the notification of 03 March 2014 pursuant to the legal procedures and in accordance with the employment contract, Article 1.1., And article 67, para.1.3 as well as article 71, para.2 of the Law on Labour No. 03 / L-212."* According to the Applicant, *"The Supreme Court of Kosovo has erroneously applied the substantive law (errores in judicando) of the Law on Labour no.03/L-212 and the fixed-term employment contract."*

28. The Applicant further alleges that the Supreme Court interpreted the same legal norms differently. In this respect, the Applicant states: *"The Supreme Court of Kosovo by its judgments for different legal provisions of the LL concerning the employees who have over 10 years of work experience and for employees who have less than 10 years of work experience has supported the same provisions on different legal matters. According to the Law on Labour, employees who have more than 10 years of work experience, they are subject to Article 10.5, while the termination of employment under Article 70 for employees with less than 10 years of work*

experience is subject to Article 71.2 and 67, item 1.3 of the LL. In order to set forth arguments we are attaching to this referral as evidence the challenged judgment REV.no.268/2019 which concerns the work experience of less than 10 years and the other judgment Rev.297/2019 which concerns the work experience of more than 10 years."

29. The Applicant alleges that the violations of other articles have resulted from the violation of Article 31 of the Constitution and Article 6 of the ECHR. The Applicant adds, "As a result of these legal violations, we can freely ascertain that the Supreme Court of Kosovo imposed an unequal trial before the law and thereby it comes into contradiction with Article 24 of the KRK, and also made a biased judgment which comes into contradiction with Article 31 of the KRK, and consequently caused material damage to the property of the Applicant which is contrary to Article 46 of the KRK."

30. With regard to the allegation for violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, the Applicant states, *"The Supreme Court of Kosovo BY ITS JUDGMENT has violated the Applicant's right by enabling Ms. M.H., to be paid personal income and other expenses without employment contract in force as well as to be reinstated to her job position, thus financially damaging the Applicant's property rights...."*, In this regard, the Applicant has referred to the ECtHR by stating that *"the European Court of Human Rights has provided a broad interpretation to the concept of property and possession. In some cases, the European Court has held that the right of ownership extends to all cases relating to property rights such as shares or monetary claims based on contracts or claims for compensation of damages. The European Court of Human Rights has even considered that a conditional claim will be treated as protected property only if all the necessary conditions for its recognition are met. In this particular case, the Applicant had to pay personal income pursuant to the judgment of the Supreme Court of Kosovo, which infringed its property rights. Therefore, the obligation of the Applicant under the Judgment constitutes a direct violation of the right of ownership defined by Article 46 of the Constitution of Kosovo and Article 1 of Protocol 1 of the European Convention on Human Rights."*

31. In support of his allegations, the Applicant also cites the Judgment KI138/15 of the Constitutional Court and states that *"[...] the application of substantive law which could be a decisive fact for the rendering of that court's judgment, but the Supreme Court did not apply this issue at all on the basis of legal fact."*

32. The Applicant alleges that *"the Constitutional Court must assess whether the trial as a whole has been fair and impartial, as required by Article 31 of the Constitution (see, inter alia, mutatis mutandis, Edwards v. The United Kingdom, 16 December 1992, pg. 34, series A. no. 247, and B. Vidal v. Belgium, 22 April 1992. pg. 33, series A. no. 235)."*

33. The Applicant requests from the Court to repeal the Judgment [Rev. no. 10/2018] of the Supreme Court, of 16 October 2018 and remand the case for retrial.

Relevant legal provisions

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, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment or other matters arising out of the employment relationship and regulated by Law and other Laws into force.
[...]

Article 10
Employment Contract

[...]

5. A contract for a fixed period of time that is expressly or tacitly renewed for a continued period of employment of more than ten (10) years shall be deemed to be a contract for an indefinite period of time.

Article 67
[Termination of Employment Contract on Legal Basis]

1. Employment contract, on legal basis, may be terminated, as follows:

[...]

1.3. With the expiry of duration of contract;

Article 70
[Termination of Employment Contract by the Employer]

1. An employer may terminate the employment contract of an employee with the prescribed period of notice of cancellation, when:
1.1. Such termination is justified for economic, technical or organizational reasons;
1.2. The employee is no longer able to perform the job;
1.3. The employer may terminate the employment contract in the circumstances specified in subparagraph 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 sub-paragraphs 1.6 of paragraph 1 of this Article only when after the employee has been issued previous written description of unsatisfactory performance with a specified period of time within which they must improve on their performance as well as a statement that failure to improve the performance shall result with dismissal from work without any other written notice.
[...]

Article 71
[Notification period for termination of employment contract]

1. The employer may terminate an employment contract for an indefinite period according to Article 70 of this Law with the following periods of notification:
1.1. from six (6) months - 2 years of employment, thirty (30) calendar days;
1.2. from two (2)- ten (10) years of employment: fourty-five (45) calendar days;
1.3. above ten (10) years of employment: sixty (60) calendar days.
2. The employer may terminate an employment contract for a fixed term with thirty (30) calendar days notice. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days".

Public Private Partnership Agreement for the Operation and Expansion of Prishtina International Airport

9.18 [Termination of Personnel]

"The Private Partner may terminate the employment or the engagement of any PIA Employee (i) at any time for cause in accordance with applicable laws, regulations and decrees, (ii) upon mutual agreement and (iii) without limitation after the third (3rd) anniversary of the Effective Date".

Assessment of the admissibility of the Referral

34. 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.

35. 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."

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

37. In this regard, the Court notes that the Applicant is entitled to file a constitutional complaint, invoking fundamental rights and freedoms, which are valid for individuals as well as for legal persons (see: case of the Constitutional Court no. KI41/09, Applicant AAB-RIINVEST University L.L.C., Resolution on Inadmissibility of 3 February 2010, para.14).

38. In addition, the Court also examines 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..."

39. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, which is challenging an act of a public authority, after having exhausted all legal remedies. The Applicant has also specified the rights and freedoms for which he claims to have been violated, pursuant to the conditions of Article 48 of the Law, and has submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

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

> *(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.*

41. The Court first notes that the Applicant alleges that his right to fair and impartial trial has been violated, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, because the decisions of the regular courts are not sufficiently reasoned, while the violation of other rights guaranteed by the Constitution and the ECHR as alleged by the Applicant have resulted as a consequence of the violation of the right to a fair and impartial trial.

42. In essence, the Applicant justifies his Referral concerning the erroneous application of the procedural and substantive law, by stating that the judgment of the Supreme Court has not sufficiently reasoned as follows:

(i) That the Supreme Court has gone beyond the request for revision when it interpreted Article 5 paragraph 1 of the Law on Labour.
(ii) That the Basic Court and the Court of Appeals have correctly applied the law in relation to Article 1.1 and Article 67, paragraph 1.3, and Article 71 paragraph 2 of the Law on Labour No. 03 / L-212, whereas the Supreme Court has erroneously applied the substantive law and the reasoning of the judgment of the Supreme Court is contrary to the facts.
(iii) The Applicant further alleges that the Supreme Court interpreted the same legal norms differently. The Applicant in his Referral has referred to the two Judgments of the Supreme Court which are not contained in the case file, respectively the Judgment Rev no. 268/2019 and Judgment Rev 297/2019.
(iv) That the violations of other articles have resulted as a consequence of the violation of Article 31 of the Constitution and Article 6 of the ECHR.

43. The Court, referring to the Applicant's allegations, shall refer to the case law of the European Court of Human Rights (hereinafter: the ECHR), which obliges the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution, to interpret human rights and fundamental freedoms guaranteed by the Constitution in consistent with the court decisions of the ECHR.

(i) As regards the allegations for violation of the Applicant's right to a fair and impartial trial in conjunction with the violation of exceeding of competencies by the Supreme Court.

44. The Court recalls that the Applicant alleges that the Supreme Court has gone beyond the request for revision during the interpretation of Article 5 of the Law on Labour.

45. Based on the above, in respect of the concrete allegation of the Applicant for exceeding of competencies by the Supreme Court, the Court recalls that the concrete jurisdiction of each regular court is determined by the relevant legislation. Regarding this concrete case, paragraph 2.2 of Article 2 of the Law on Contested Procedure states that *"The court applies the rules set by the substantive law as it deems appropriate and is not obliged to claims of litigants concerning the substantive law."*

46. With regard to these allegations of the Applicant, the Court notes that the Supreme Court reasoned that *"The respondent has failed to substantiate all his claims regarding the legality of the notice of non-renewal of the contract and the confirmation of the facts whether the respondent has drafted a detailed operational plan, which would determine which services could be reduced and to what extent they should have been reduced, in order to prove that the evidence presented constitutes a valid legal basis for non-renewal of the contract of employment of the claimant, that the respondent has acted in accordance with the decision on the contract and those who regulate the procedures for termination of the contract, therefore the failure of the defendant in this regard, makes the non-extension of the contract illegal. This Court does not accept as fair and lawful the legal standpoint of the courts of lower instance that the claimant has been in employment relationship for a fixed period of time and that there have not passed more than 10 years within the meaning Article 10.5 of the Law on Labour, for the employment relationship of the claimant be treated as indefinite, for the reason that the subject matter of the claimant's statement of claim is not the confirmation of the existence of the claimant's indefinite employment relationship but the assessment of the legality of the Notice on non-extension of the employment contract. The claimant has been in the employment relationship with the predecessor of the respondent, when the concession was granted, furthermore, her job position was of a permanent nature. Such contracts, according to the assessment of this Court, are contrary to the principle of conscientiousness and honesty and that the claimant's employment contract has not been extended due to formal reasons, but not due to real or adequate reasons on which the respondent would base its claims or their credibility. The respondent could not waive the rights of the employees, treat them differently or cause any other discrimination in employment and profession, hence it has failed to argue the fact that on the occasion of implementation of the Agreement, it has correctly applied the provision of Article 5.1 of the LL. In the present case the respondent failed to respect the primary rules of procedure and its obligation to present to the court the facts on which it has based its claims."*

47. Consequently, the Court finds that the Applicant's allegations for the violation of the right to a fair trial in conjunction with exceeding of competencies by the Supreme Court are ill-founded on constitutional grounds.

(ii) As regards the allegations for violation of the Applicant's right to a fair and impartial trial, in conjunction with the non-reasoned decision

48. In this respect, the Court first emphasizes that the essential function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision gives an opportunity to the party to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be a public scrutiny of the administration of justice (see, mutatis mutandis, ECtHR cases, *Hirvisaari v. Finland*, no. 49684/99, Judgment of 27 September 2001, paragraph 30; and see, also, *Suominen v. Finland*, no. 37007/97, Judgment of 1 July 2003 paragraph 37; and see also the case of the Constitutional Court KI97/16 Applicant IKK Classic, Judgment of 4 December 2017, paragraph 46).

49. The Court notes that, while it is not necessary for the Court to deal with every point raised in argument (see also the case of the ECtHR, *Van de Hurk v. the Netherlands*,

Judgment of 19 April 1994, paragraph 61), the Applicants; main arguments must be addressed (see the ECtHR cases, *Buzescu v. Romania*, no. 61302/00, Judgment of 24 May 2005 and Pronina v. Ukraine, no. 63566/00, Judgment of 18 July 2006). Also, giving a reason for a decision that is not a good reason in law will not meet the criteria of Article 6 (see the ECtHR case *De Moor v. Belgium*, no. 16997/90, Judgment of 23 June 1994 as well as the case of the IKK Classic Constitutional Court, cited above, paragraph 51).

50. The Court recalls that the Supreme Court in its Judgment reasoned that on the basis of this factual situation of the case, the Supreme Court has *"... found that the lower courts have erroneously applied the substantive law (224.1 LCP) when finding that the respondent's notice on the termination of the employment contract is legal, as the employment relationship of the claimant has been terminated in accordance with Article 67 of the Law on Labour, and the procedure defined by Article 71. 2 of the Law on Labour and Article 1.1 of the employment contract, which was for a fixed period of time, from 03.04.2014 to 24.04.201, and that after this period, it does not have any obligation towards the claimant. This conclusion of the courts of lower instance is contrary to the case file since on the basis of the evidence contained the case file, the respondent's written notice of 03.03.2014 it results that the claimant has not been extended his employment contract in accordance with the policies of the Board of Directors, the Law on Labour and the Decision on the future planning of human resources"*.

51. The Supreme Court had clarified to the Applicant that he had failed to substantiate all his claims concerning the legality of non-extension of the employment contract and to establish the relevant facts, namely, whether it had drafted a detailed operational plan, whereby it would determine which services could be reduced and to what extent they would be reduced, with aim to confirm the fact that the evidence presented constitute a valid legal basis for non-renewal of the employment contract.

52. Finally, as regards the Applicant's claim and specifically with regard to the citation of the case of the Constitutional Court, namely Judgment KI138/15, the Court recalls that the case in question differs from the case before us for the following reasons: (i) the case of disciplinary proceedings against the Applicant's employee in that case was handled in different ways by the regular courts; (ii) the legal basis on which the disciplinary procedure was conducted is unclear; and (iii) there were contradictory elements in lower court decisions. Furthermore, the Court of Appeals had applied and used as an excuse an Administrative Instruction which applied a Regulation for civil servants, and not the Law on Labour. Even though this argument was raised by the Applicant in that case, it was not reviewed by the Supreme Court (see the case of the Constitutional Court KI138/15, Applicant *Sharr Beteiligung GmbH*, Judgment of 4 September 2017).

53. The Court reiterates that Article 6 of the ECHR and Article 31 of the Constitution oblige the courts to give reasons for their decisions, but this cannot be understood as an obligation of the court to provide a detailed answer to every argument of the Applicant. (see the ECtHR case, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, paragraph 61). The degree to which the obligation to give reasons applies may vary according to the nature of the decision. It should also take into account, among other things, the variety of submissions submitted by a party in the proceedings that may result in the courts giving different opinions and legal

conclusions when rendering decisions. Therefore, the question of whether the court has complied with the obligation to explain the reasons for its decision, which stems from Article 6 of the Convention, can only be determined in the light of the circumstances of each individual case.

54. Based on the above, the Court emphasizes that it is not its duty to deal with errors of fact or the law, allegedly committed by the regular courts when assessing evidence or applying the law *(legality)*, unless and insofar as they may have infringed the rights and freedoms protected by the Constitution *(constitutionality)*. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See: *mutatis mutandis*, the ECtHR case, *Garcia Ruiz v. Spain* No. 30544/96, Judgment of 21 January 1999, paragraph 28).

55. The Court considers that the Applicant did not support the allegations that the relevant proceedings were in any way unfair or arbitrary and that the contested decision violated the rights and freedoms guaranteed by the Constitution and the ECHR (see mutatis mutandis, the ECtHR case, *Shub v. Lithuania*, no. 17064/06, Decision of 30 June 2009).

56. Consequently, the Court finds that the Applicant's allegation for the infringement of the principle of reasoning of a court decision by the Supreme Court is unfounded on constitutional grounds.

57. The Court recalls that the Applicant alleges that the Supreme Court interpreted the same legal norms in a different manner. The Applicant in his Referral has referred to two Judgments of the Supreme Court which are not contained in the case file, respectively the Judgment Rev no.268/2019 and Judgment Rev297/2019.

58. The Court shall not take into account this allegation of the Applicant as it did not provide evidence as to how the Court has acted differently in these two cases, and moreover it has only referred to them without attaching them to the case file.

(iii) As regards the allegations for violation of Articles 24, 32 and 46 of the Constitution

59. With regard to Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, the Court recalls once again the Applicant's allegation stating that *"The Supreme Court of Kosovo, by its JUDGMENT, has violated the Applicant's right by enabling Ms. M.H., to be paid personal income and other expenses without an employment contract in force as well as to be reinstated to her job position, thereby financially damaging the Applicant's property rights.*

60. The Court recalls that Article 46 of the Constitution does not guarantee the right to acquire property. Such a position is based on the ECtHR case law (See *Van der Mussele v. Belgium*, para.48, ECtHR Judgment, of 23 November 1983; and *Slivenko and Others v. Latvia*, paragraph 121, ECtHR Judgment, of 9 October 2003).

61. The Applicant may allege a violation of Article 46 of the Constitution, only insofar as the challenged decision relates to his "property". Within the meaning of this provision, "property" may be "existing possessions", including claims in respect of which the applicants may have "legitimate expectations" that they will acquire an

effective enjoyment of any property right (see the cases of the Constitutional Court KI26/18, Applicant "Jugokoka", Resolution on Inadmissibility, of 6 November 2018, paragraph 49; and case KI156/18, Applicant *Verica (Aleksić) Vasić and Vojislav Čađenović*, Resolution on Inadmissibility, 17 July 2019, paragraph 52paragraph 52).

62. Pursuant to the ECtHR case law, no "legitimate expectation" can be said to arise where there is a dispute as to correct interpretation and application of domestic law and where the applicant's submissions are subsequently rejected by the national courts (see the case of the Constitutional Court KI156/18, Applicant *Verica (Aleksić) Vasić and Vojislav Čađenović*, Resolution on Inadmissibility, of 17 July 2019, paragraph 53 and see the ECtHR case *Kopecky v. Slovakia*, no. of the ECtHR Judgment of 28 September 2004).

63. Based on what is stated above, the Court considers that the Applicant has not proved that the Supreme Court by Judgment [Rev. no. 10/2018], whereby it approved as grounded the revision submitted by the employee, and obliged the Applicant to reinstate the employee to the same job and to pay to the employee a certain amount in the name of the material damage, has acted in illegal or arbitrary manner. Consequently, the Court concludes that this allegation of the Applicant for the violation of his property rights, guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR, is manifestly ill-founded on constitutional grounds.

64. Finally, the Court notes that the Applicant relates the violation of Articles 24 and 32, to the violation of Article 31 of the Constitution.

65. The Applicant has only mentioned these articles, without clarifying and elaborating on how they resulted in the violation of his constitutional rights as a consequence of his allegation for violation of Article 31 of the Constitution, therefore, the Court will not examine them as separate allegations.

66. In the end, the Court also recalls that the Applicant has requested at this Court also the constitutional review of other judgments of the Supreme Court, which in itself include disputes similar to the Referral before us. In all previous referrals, the Court has decided that they are inadmissible, as manifestly ill-founded on constitutional grounds (see, in particular, the cases of the Court KI129/18, Applicant *Limak Kosovo International Airport J.S.C. "Adem Jashari"*, Resolution on Inadmissibility of 20 June 2019; KI66/18, Applicant *Limak Kosovo International Airport J.S.C. "Adem Jashari"*, Resolution on inadmissibility of 20 June 2019; KI122 /18 Applicant *Limak Kosovo International Airport J.S.C. "Adem Jashari"*, Resolution on Inadmissibility, of 6 November 2019).

67. The Court recalls that the mere fact that the Applicant is not satisfied with the outcome of the decisions of the Supreme Court, or the mention of Articles of the Constitution is not sufficient to build an allegation for constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and compelling arguments (see, *mutatis mutandis*, the case of the Constitutional Court KI136/14, Abdullah Bajqinca, Resolution on Inadmissibility, of 10 February 2015, paragraph 33).

68. Consequently, the Court finds that the Applicant's allegations for a violation of his right to equality before the law, legal remedies and property rights, are ill-founded on constitutional basis.

Conclusion

69. The Court considers that the Applicant's allegations for a violation of his constitutional right to fair and impartial trial due to the violation of the principle of the reasoning of the court decision as well as the allegation for exceeding of competencies by the Supreme Court are ill-founded on constitutional basis. Also, the allegations for a violation of his right to equality before the law, legal remedies and property rights, are ill-founded on constitutional basis.

70. To sum up, the Court considers that the Applicant did not present evidence, facts and arguments showing that the proceedings before the regular courts had in any way constituted a constitutional violation of the rights guaranteed by the Constitution, which allegedly violated his right guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR as well as Articles 24, 32 and Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

71. Consequently, the Court comes to the conclusion that the Referral is manifestly ill-founded on constitutional basis and it is to be declared inadmissible, in accordance with Article 113, paragraph 7 of the Constitution and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.1 and 113.7 of the Constitution and Rule 39(2) of the Rules of Procedure, on 27 May 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**

Remzie Istrefi-Peci Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.