



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

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Prishtina, on 27 August 2020  
Ref.No.:RK 1613/20

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI37/20**

Applicant

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

**Constitutional review of Judgment Rev. no.297/2019 of the Supreme Court of  
Kosovo, of 18 November 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 the Joint Stock Company Limak Kosovo International Airport "Adem Jashari" (hereinafter: the Applicant), having its seat in the village of Vrellë, Municipality of Lipjan, represented by Fazli Gjonbalaj and Leonora Fejzullahu

## **Challenged decision**

2. The Applicant challenges the Judgment Rev. no. 297/2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 18 November 2019.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly has violated 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], Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 6 (Right to a fair trial), and Article 1 of Protocol no. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing 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**

5. On 24 February 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 24 February 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (presiding) Bajram Ljatifi and Safet Hoxha (members).
7. 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.
8. On 22 July 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**

9. On 12 August 2010, the Government of the Republic of Kosovo and the Applicant signed a Public Private Partnership Agreement (hereinafter: PPP). Prior to the signing of the PPP Agreement, Prishtina Airport was called Prishtina International Airport "Adem Jashari" (hereinafter: PIA). On the basis of the PPP Agreement, the Applicant (namely Limak Kosovo International Airport "Adem Jashari") had assumed the obligation to keep the employees at work for another 3 (three) years.



10. On the basis of the case file it results that I.A. (hereinafter: the Employee) had been employed by the PIA from 4 November 2003 until 4 April 2011. Following the signing of the PPP, the employee I.A. has been in regular employment relationship with the Applicant from 4 April 2011 to 3 April 2014.
11. On 3 March 2014, respectively 30 (thirty) days before the expiration of the contract, the Applicant informed the employee that she would not be offered a new employment contract after the expiration of the existing contract, on the grounds that her contract would not be extended based on “[...] the policies of the Board of Directors on future human resource planning”.
12. On 11 March 2014, the employee submitted a complaint to the Applicant (employer) regarding the notice on non-renewal of the employment contract, requesting to have the same notice annulled.
13. On 20 March 2014, the Applicant rejected the employee's complaint as unfounded.
14. On an unspecified date, the Employee I.A. filed a statement of claim with the Basic Court in Prishtina-Lipjan Branch (hereinafter: the Basic Court), requesting the annulment of the Notice of 3 March 2014, issued by the Applicant, and obliging the Applicant to reinstate the employee to her job position, with all rights and obligations, including compensation of the material damage caused.
15. On 6 May 2015, the Basic Court, by Judgment (C. no.197 / 2014), approved the statement of claim of the Employee I.A. as founded and obliged the Applicant to: (i) reinstate the employee to her job position and the Applicant's notice dated 3 March 2014 to be annulled (ii) the Employee to be paid the respective amount in the name of material damage, namely the amount of personal income for the period from 3 April 2014 to 30 April 2015; as well as (iv) to cover the costs of the contested procedure.
16. The Basic Court had reasoned that the Employee I.A. has worked continuously for 10 (ten) years at the Applicant's Company and its predecessor the International Airport “Adem Jashari”. Further, the Basic Court reasoned that *“pursuant to Article 10.5 of the Law on Labour, the Court came to the conclusion that the claimant's fixed-term employment relationship with the respondent is considered as indefinite employment relationship, therefore the court considers that being in this situation, the respondent in order to terminate the employment contract, was obliged to conduct an internal procedure for termination of employment relationship, a procedure which has not taken place at the respondent's Company, instead the claimant was only notified about the non-renewal of the employment contract by a notice”*.
17. On 31 July 2015, the Applicant filed an appeal with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) against the Judgment of the Basic Court (C. no. 1977/2014), alleging essential violation of the procedural provisions, erroneous determination of the factual situation and erroneous application of the substantive law.
18. On 28 May 2019, the Court of Appeals by Judgment (AC.no.3788 / 2015) rejected, as unfounded the Applicant's appeal and confirmed the Judgment of the Basic Court

(C. no.197 / 2014), considering the same to be fair and lawful. The Court of Appeals reasoned that the court of first instance has provided concrete reasons on decisive facts, as well as appropriate explanations for such a decision based on the relevant legal provisions.

19. On 8 July 2019, the Applicant filed a request for revision with the Supreme Court, against the Judgment of the Court of Appeals, alleging essential violation of the procedural provisions and erroneous application of the substantive law.
20. On 18 November 2019, the Supreme Court through Judgment Rev.no. 297/2019, rejected as unfounded the Applicant's revision, by assessing the challenged decision as fair, on the grounds that there were provided sufficient reasons on the important facts for a fair adjudication of this case.
21. The Judgment of the Supreme Court, inter alia, states that "[...] *The Court of second instance in the reasoning of the Judgment has provided sufficient reasons on the relevant facts for a fair adjudication of this legal matter which are accepted also by this Court, hence the revision allegations do not call into question the legality of the contested judgment*".

### **Applicant's allegations**

22. The Court recalls that the Applicant alleges that the challenged decision has violated its rights guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR and Article 1 of Protocol no. 1 of the ECHR.
23. The Applicant alleges that the Supreme Court failed to provide sufficient reasoning in its decision. Regarding this allegation, the Applicant states that: "*the Judgment of the Supreme Court does not have sufficient reasoning, especially regarding the essential violations of the provisions of the contested procedure (erores in procedanto) of the Law on Contested Procedure*".
24. The Applicant initially alleges that the Supreme Court in the respective Judgment has erroneously applied the substantive law "*erores in iudicando*" and erroneously interpreted Article 10.5 of the Law on Labour, No. 03 / L-212 and PPP Agreement because, according to the Applicant, the employee did not have 10 (ten) years of uninterrupted work at the Applicant's Company.
25. Further, the Applicant alleges that "*the Supreme Court of Kosovo has made an erroneous interpretation of Article 10.5 of the Law on Labour No. 03 / L 212 because that cannot be applied for Limak Company since the claimant did not have (10) years of uninterrupted work at the respondent's Company*".
26. In this regard, the Applicant states that the Supreme Court should have taken into account Article 9.18 of the PPP Agreement according to which the Applicant assumes the obligation to keep the employees at work for a period of three (3) years.
27. The Applicant also refers to the Judgment of the Constitutional Court KI138/15, in which the Court, inter alia, states that "*the application of the substantive law that*



*could have been a fact, was decisive for the rendering of the judgment of that court but the Supreme Court did not address this issue at all instead it only found that the lower courts had correctly applied the provisions of substantive law.”*

28. Therefore, the Applicant alleges that the Supreme Court did not sufficiently reason its Judgment and did not address the issues raised in relation to the judgments of the lower courts.
29. The Applicant requests from the Court to repeal the Judgment of the Supreme Court, so that the case can be remanded for retrial.

## **Relevant legal provisions**

### ***Law No. 03/L-212 on Labour***

#### *Article 10 [Employment Contract]*

1. *An employment contract shall be concluded in written form and signed by the employer and employee.*
2. *Employment contract may be concluded for:*
  - 2.1. *an indefinite period;*
  - 2.2. *a fixed period; and*
  - 2.3. *specific tasks and duties.*
3. *Employment contract which contains no indication of its duration shall be deemed to be for an unspecified period of time.*
4. *A contract for a fixed period may not be concluded for a cumulative period of more than ten (10) years.*
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 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-paragraph 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: forty-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 (3<sup>rd</sup>) anniversary of the Effective Date”.*

### **Assessment of the admissibility of the Referral**

30. 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.
31. 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.”*

32. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which states:

*“4. Fundamental rights and freedoms set forth for in the Constitution are also valid for legal persons, to the extent applicable.”*

33. Initially, the Court notes that the Applicant (as a legal person) is entitled to file a constitutional complaint, by calling upon alleged violations of his fundamental rights and freedoms, which apply to individuals and legal entities (see the case of the Constitutional Court No.KI41/09, Applicant *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).
34. In the following, the Court examines whether the Applicant has met the admissibility requirements as set out in the Law. In this respect, the Court refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, 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. [...]”*

35. 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 by the challenged decision, 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.

36. However, the Court must further consider whether the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure are met, including the condition for the Referral not to be manifestly ill-founded. Thus, Rule 39 (2) of the Rules of Procedure stipulates:

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

37. In light of this, the Court notes that the Applicant alleges that its right to a fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR has been violated, because the decisions of the regular courts have not been sufficiently reasoned, whilst the violations of other rights guaranteed by the Constitution and the ECHR are presented by the Applicant as a consequence of the violation of the right to a fair and impartial trial.

38. The essence of the Applicant's allegations is that the Supreme Court did not sufficiently reason its Judgment and it interpreted Article 10.5 of the Law on Labour(No. 03 / L-212) in erroneous manner, because according to the Applicant the Employee I.A. did not have 10 (ten) years of uninterrupted work at the Applicant's Company. Further, the Applicant argues this allegation based on Article 9.18 of the PPP Agreement, according to which the latter undertakes to keep the employees at work for a period of 3 (three) years after the entry into force of PPP Agreement. The Applicant also alleges that its constitutional right to an effective remedy has been violated as a result of the lack of the reasoning for the challenged decision.

39. In this regard, the Court notes that the Applicant alleges that the regular courts have erroneously applied the law when referring to the employee's work experience, by alleging that the court in the present case should consider that we are dealing with two different employers (thus referring to the International Airport “Adem Jashari”, before and after the signing of the PPP Agreement) and emphasizing that the employee did not have more than 10 (ten) years of work at the Applicant's Company.



40. The Supreme Court during the review of the Applicant's allegations reasoned that the fact that from the moment of signing the contract with the Government, the employee has no more than 3 (three) years of work experience has no bearing on the matter because she has worked in the same working place for more than 10 (ten) years. The Supreme Court further clarified that the contract is considered as an indefinite period and can be terminated only on the basis of Article 70, and never on the basis of Article 67, paragraphs 1 and 3 of the Law on Labour.
41. In this respect, the Supreme Court reasoned as follows: *"The Supreme Court assesses that the allegations of the respondent's authorized representative stating that the challenged judgment is a result of erroneous application of substantive law are unfounded and unsubstantiated due to the fact that the notice on non-renewal of the employment contract of the claimant was made in violation of the Law on Labour, which is a basic law regulating the employment relationship in Kosovo, wherein are defined the basis and procedures for termination of the claimant's employment contract. The claimant from 4.04.2011 and until 3.4.2014, has had a fixed-term contract, such an employment contract pursuant to Article 10.5 of the Law on Labour is considered a contract for an indefinite period of time and thus for termination of the employment contract the prescribed legal procedures must be complied with"*.
42. In light of the above elaborations, the Court considers that all the allegations and arguments of the Applicant, which were relevant for the resolution of the dispute, were duly heard and examined by the regular courts. Therefore, the Court finds that the proceedings before the regular courts, viewed in their entirety, were fair (see the case of the Constitutional Court KI75/18, Applicant, *Ilmi Behrami and Fatime Behrami-Parduzi*, Resolution on Inadmissibility of 7 February 2019).
43. The Court notes that the Applicant calls upon the Judgment KI138/15 of the Constitutional Court, stating that *"the application of the substantive law which could have been a fact was decisive in rendering the Judgment of that court but the Supreme Court did not address this issue at all instead it only found that the lower courts have correctly applied the provisions of substantive law"*.
44. As regards this allegation of the Applicant, the Court recalls that the said case differs from the present case, for the following reasons: (i) the issue of disciplinary proceedings in case KI138 / 15 was different from the present case because the legal basis according to which the disciplinary procedure was conducted has not been clear; and, (ii) there have existed conflicting elements in lower court decisions. In addition, the Court of Appeals had applied and used as a basis for reasoning the Administrative Instruction which resulted from the Regulation on Civil Service, and not the Law on Labour. This argument, despite being raised by the Applicant in this case, has not been reviewed by the Supreme Court (see the case of the Constitutional Court KI138 / 15, Applicant *Sharr Beteiligungs GmbH*, Judgment of 4 September 2017).
45. In the light of these arguments, the Court finds that all Applicants' arguments, which were relevant to the resolution of his dispute, have been duly examined and decided by the regular courts. Consequently, the Court finds that the proceedings before the regular courts, viewed in their entirety were fair (see the case of the Constitutional Court KI129/18, Applicant *Limak Kosovo International Airport "Adem Jashari"*,

Resolution on Inadmissibility of 20 June 2019, paragraphs 58 and 59 and see also the Case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).

46. A full determination of the factual situation and fair application of the law within their jurisdiction is the primary task of the regular courts (issue of legality). Therefore, the Constitutional Court cannot act as a “court of fourth instance” (see, *mutatis*, the case of the Constitutional Court KI86/11, Applicant Milaim Berisha, Resolution on Inadmissibility of 5 April 2012).
47. Consequently, the Court finds that the Applicant's right to fair and impartial trial has not been violated by the decisions of the public authorities, namely by the decisions of the regular courts.
48. As regards the allegations for violation of Articles 24, 32 and 46 of the Constitution, the Court notes that the Applicant alleges a violation of these Articles without providing arguments and without justifying the violation of the same by the challenged Judgment of the Supreme Court.
49. The Court recalls that the mere fact that the Applicant does not agree with the outcome of the decision of the Supreme Court (and of the lower courts) is not sufficient to build a substantiated allegation for constitutional violation. 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).
50. In sum, the Court considers that the Applicant has not submitted evidence, facts and arguments which prove that the proceedings before the regular courts have caused a violation of his rights guaranteed by the Constitution, namely Articles 24, 31, 32 and 46 of the Constitution, in conjunction with Article 6 of the ECHR.
51. Consequently, the Referral is manifestly ill-founded on constitutional basis and as such is declared inadmissible pursuant to Rule 39 (2) of the Rules of Procedure.



## **FOR THESE REASONS**

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 39(2) and 59(b) of the Rules of Procedure, on 22 July 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**

Nexhmi Rexhepi



Arta Rama-Hajrizi

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