



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

Prishtina, 05 November 2020
Ref. no.:RK1637/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI45/19

Applicant

Municipality of Vushtrri

Constitutional review of Judgment Ac. No. 4858/2018 15 of the Court of Appeals of 19 February 2019

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by the Municipality of Vushtrri (hereinafter: the Applicant), which is represented by Ismet Gashi, Head of Legal Office of the Applicant.

Challenged decision

2. The Applicant challenges Judgment Ac. No. 4858/2018 of the Court of Appeals of 19 February 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 24 [Equality Before the Law] and Article 44 [Freedom of Association] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as a result of contradictory decisions of the Court of Appeals.

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 18 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 March 2019, the President appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi Peci and Nexhmi Rexhepi.
7. On 15 April 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Court of Appeals.
8. On 31 January 2020, the Court requested the Applicant to fill in the official form of the Referral.
9. On 7 October 2020, the Review Panel considered the Report of the Judge Rapporteur, and recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 6 May 2018, the Directorate of Education under the Applicant's administration retired I.L., due to reaching the retirement age.
11. On 11 September 2018, I.L. filed a lawsuit with the Basic Court in Mitrovica - Branch in Vushtrri (hereinafter: the Basic Court), submitted the statement of claim, requesting that the Applicant pay 3 salaries in the name of the jubilee reward and 3 salaries in the name of accompanying salaries for pension.

12. On 26 October 2018, the Basic Court, by Judgment C. No. 408/18] rejected as ungrounded the statement of claim of I.L. for the payment of 3 salaries in the name of the jubilee reward and 3 salaries in the name of the accompanying salaries for retirement. As reasons for rejecting the statement of claim, the Basic Court stated: *“the claimant does not have the right to the jubilee reward and the accompanying salary, as it is an indisputable fact that he is not a member of the trade union of education, science and technology, referred to in Article 35, paragraph 8 and 9 of the collective agreement on education“*.
13. On 2 November 2018, against the Judgment [C. No. 408/18] of the Basic Court, I.L. filed an appeal with the Court of Appeals on the grounds of *“erroneous application of substantive law”*.
14. On 19 February 2019, the Court of Appeals [by Judgment Ac. No. 4858/2018] approved the appeal of I.L. and modified the Judgment [C. No. 408/18] of the Basic Court of 26 October 2018, in order for it to approve the Applicant’s statement of claim for payment of 3 salaries in the name of jubilee rewards and 3 salaries in the name of accompanying salaries for pension. In the reasoning of the Judgment, the Court of Appeals, among other things, stated: (i) *“that the first instance court has erroneously applied the substantive law under Article 35 paragraph 8 and 9 of the Collective Agreement on Pre-university Education, because this would be discrimination and would be a condition of trade union membership for the exercise of rights, then this jeopardizes the right or freedom of association in the trade union organization, jeopardizes the principle of equality“* and (ii) that the statement of claim of I.K., *“has support in Articles 52 and 53 of the General Collective Agreement of 18 March 2014, which does not contain the constitutional provision that an employee should be a member of a trade union, Collective Agreement on Pre-University Education, in case of conclusion and signing, as a reference point, the same agreement was taken based on its principles so that this provision cannot be applied, as it is in contradiction with Articles 24 and 44 of the Constitution of the Republic of Kosovo”*. In conclusion, the Court of Appeals stated that *“based on the fact that the claimant is now entitled to three accompanying salaries with a modified judgment, and based on 22 years, 4 months and 18 days of work experience (or in short under 30 years) he is entitled to a basic salary of 75% for a period of 20 years of work experience“*.

Applicant’s allegations

15. The Applicant alleges that the challenged Judgment violates his fundamental rights and freedoms guaranteed by Article 24 and Article 44 of the Constitution.
16. The Applicant specifically stated that in another case, which according to him contained identical factual and legal circumstances as those in his case, the Court of Appeals in its Judgment had decided differently from the challenged decision. In relation to this allegation, the Applicant alleges that the Court of Appeals, because it decided differently in two identical cases, violated his right to equality before the Law and freedom of association, guaranteed by Articles 24 and 44 of the Constitution, namely the Applicant brings the two mentioned articles of the Constitution in relation to the violation of the right to a fair and impartial trial,

guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, all as result of contradictory court decisions of the Court of Appeals.

17. Finally, the Applicant requests the Court to declare his Referral (i) admissible; (ii) finds that there has been a violation of Articles 24 and 44 of the Constitution; (iii), declare invalid Judgment Ac. No. 4858/2018 of the Court of Appeals of 19 February 2019; and (iv) remand the case for retrial.

Relevant legal provisions

Constitution of the Republic of Kosovo

Article 22

[Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

(1) Universal Declaration of Human Rights;

(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

(3) International Covenant on Civil and Political Rights and its Protocols;

(4) Council of Europe Framework Convention for the Protection of National Minorities;

(5) Convention on the Elimination of All Forms of Racial Discrimination;

(6) Convention on the Elimination of All Forms of Discrimination Against Women;

(7) Convention on the Rights of the Child;

(8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or punishment.

[...]

Article 24

[Equality Before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.

2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

[...]

Article 44

[Freedom of Association]

1. The freedom of association is guaranteed. The freedom of association includes the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization.

2. The freedom to establish trade unions and to organize with the intent to protect interests is guaranteed. This right may be limited by law for specific categories of employees.

3. Organizations or activities that infringe on the constitutional order, violate human rights and freedoms or encourage racial, national, ethnic or religious hatred may be prohibited by a decision of a competent court.

Collective Agreement on Education in Kosovo

(signed on 18.04.2017)

[...]

Article 35

8. Employees (UITUK members) in the jubilee years of employment are entitled to jubilee rewards from their last employer, at the amount:

8.1 for 10 years of work experience at a rate of 50% of a basic salary

8.2 for 20 years of work experience at a rate of 75% of a basic salary

8.3 for 30 years of work experience at a rate of one basic salary

8.4 for 40 years of work experience at a rate of 150% of a basic salary.

8.5 Jubilee reward is paid by the employer, when the employee has met the conditions for reward salary according to the relevant criteria.

8.6 The jubilee reward is paid on 7 March of each year.

9. Employees (UITUK members) are entitled to an accompanying pension of three salaries at the average amount of the last three salaries of workers.

General Collective Agreement in Kosovo

(signed on 18.03.2014 and entered into force on 01.01.2015)

[...]

Article 52

Jubilee rewards

1. Employee is entitled to jubilee rewards in following cases:

1.1. for 10 years of continuous experience at the last employer, equal to one monthly wage;

1.2. for 20 years of continuous experience, for the last employer, equal to two monthly wages;

1.3. for 30 years of continuous experience, for the last employer, equal to three monthly wages.

2. The last employer is the one who provides jubilee rewards.

3. Jubilee reward, is paid in a timeframe of one month, after meeting the conditions from the present paragraph.

Article 53 Retirement reimbursement

When retiring, employee is entitled to a reimbursement equal to three (3) monthly wages, he/she received during the last three (3) months.

Admissibility of the Referral

18. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure.

19. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] paragraphs 1 and 7 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”.

20. 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”.*

21. In addition, the Court also examines whether the Applicant has met the admissibility criteria as set out in Law. In this regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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...”.

22. With regard to the fulfillment of these admissibility criteria, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Judgment Ac. No. 4858/2018 of the Court of Appeals of 19 February 2019, after having exhausted all legal remedies provided by law. The Applicant also clarified the fundamental rights and freedoms claimed to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.
23. The Court notes that the Applicant alleges in his Referral that his challenged Judgment violated his right guaranteed by Articles 24 and 44 of the Constitution.
24. When reviewing this allegation, the Court initially examines whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure establishes the criteria based on which the Court may consider a Referral including the criterion that the referral is not manifestly ill-founded. Specifically, Rule 39 (2) of the Rules of Procedure establishes 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”.
25. The abovementioned rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and the case law of the Court, allows the latter to declare the referrals inadmissible because they relate to the merits of a case, despite the fact that a referral may meet the formal and procedural requirements of admissibility as set out in the Law and the Rules of Procedure. More specifically, on the basis of this rule, the Court may declare a Referral inadmissible on the basis of and after having assessed its merits, namely if it finds that the content of the Referral is manifestly ill-founded on constitutional basis.
26. In this regard, and in the following, in order to assess the admissibility of the Referral, namely in the circumstances of this case, to assess whether the referral is manifestly ill-founded on constitutional basis, the Court will first recall the essence of the case contained in this Referral, and the respective allegations of the Applicant, in the assessment of which the Court will apply the standards of case law of the ECtHR, in accordance with which, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

27. In this regard and above all, the Court recalls that based on its decision of 6 May 2018, the Applicant due to reaching old age retired I.L. On 11 September 2018, I.L. filed a lawsuit with the Basic Court in Mitrovica, Branch in Vushtrri, for the payment of 3 salaries in the name of jubilee rewards and 3 salaries in the name of accompanying salaries for retirement. The Basic Court rejected his claim for payment of 3 salaries in the name of jubilee rewards and 3 salaries in the name of accompanying salaries for retirement as ungrounded. However, the Court of Appeals approved the appeal of I.L. as grounded and modified the judgment of the Basic Court. In its Judgment, the Court of Appeals stated that under the provisions of the General Collective Agreement of 18 March 2014, there is no obligation for an employee to be a member of a trade union in order to exercise the right to jubilee rewards and salaries for pension and that paragraph 9 of Article 35.8 of the Collective Agreement on Education in Kosovo cannot be applied, because this would be discrimination and union membership would be a condition for the exercise of rights, then this violates the right or freedom of association in the trade union organization, violates the principle of equality. Therefore, the Court of Appeals modified the judgment of the first instance and approved the statement of claim of I.L. for the payment of jubilee rewards and accompanying salaries for pension.
28. Therefore, in his Referral, the Applicant alleges that the Court of Appeals, by issuing two different decisions in identical circumstances both in fact and in law, violated his right guaranteed by Article 22 [Equality Before the Law] and Article 44 [Freedom of Association] of the Constitution. In relation to this allegation, the Court notes that the Applicant alleges a violation of the right to Equality Before the Law and Freedom of Association. The Applicant did not specifically state a violation of the right to a fair trial, but essentially links the violation of Articles 24 and 44 of the Constitution with the violation of the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution. in conjunction with Article 6 of the ECHR, all as a result of contradictory court decisions of the Court of Appeals.
29. Therefore, in addressing the Applicant's allegation, the Court will refer to the general principles regarding the lack of consistency established through the case law of the Court, in accordance with the case law of the ECtHR, in the context of the procedural guarantees embodied in Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
- (i) *Principles and criteria established through the case law of the ECtHR and the case law of the Court*
30. The Court initially notes that the principles and criteria set by the ECtHR, this Court, while examining the Applicants' allegations of violation of the principle of legal certainty, as a result of contradictory decisions, have also applied in its case law. (See cases of the Court KI87/18, Applicant "*IF Skadeforsikring*", Judgment of 27 February 2019 and KI35/18, Applicant *Bayerische Versicherungsverband*, Judgment of 6 January, where the Court found, *inter alia*, violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to the violation of the principle of legal certainty, as a result of divergence in the case law of the ECHR).

31. In light of the development of general principles regarding the lack of consistency established through the case law, the Court initially refers to the case law of the ECtHR, which has consistently stated that one of the essential components of the rule of law is legal certainty (See ECtHR case *Brumarescu v. Romania* [GC], application no. 28342/95, paragraph 61) which, among other things, guarantees a certain security in legal situations and contributes to public confidence in the courts (see, *mutatis mutandis*, *Ștefănică and Others v. Romania* application no. 38155/02, Judgment of 2 November 2010, paragraph 38, *Nejdet Sahin and Perihan Sahin v. Turkey*, Judgment of 20 October 2011, paragraph 56).
32. According to the ECtHR, “*the presence of conflicting court decisions, on the other hand, may create situations of legal uncertainty, which would reduce the public's trust in the judicial system*” (See case *Paduraru v. Romania*, application no. 63252/00, paragraph 98; *Vinčić and others v. Serbia*; application no. 44698/06, paragraph 56, Judgment of 1 December 2009; and case *Ștefănică and Others v. Romania*, cited above, paragraph 38). The ECtHR, however, has specified that there is no right acquired for consistency of case law (See case *Unédic v. France*, application no. 20153/04, paragraph 74, 18 December 2008, see the case cited above *Nejdet Sahin and Perihan Sahin v. Turkey*, paragraph 56, see also the case of the Court cited above KI35/18, Applicant *Bayerische Versicherungsverband*, paragraph 65, as well as the case KI42/17, Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 25 January 2018, paragraph 33).
33. Also, the possibility of conflicting court decisions is an inherent trait of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction, and such divergences may also arise within the same court, which divergence cannot be considered contrary in itself (see case of the ECtHR *Santos Pinto v. Portugal*, application no. 39005/04, Judgment of 20 May 2008, paragraph 41, see also the case of the Court KI87/18, Applicant “*IF Skadeforsikring*”, cited above, paragraph 66).
34. In addition, the ECtHR has established three criteria, which are also accepted in the case law of the Court to determine whether a divergence of the alleged court decisions constitutes a violation of Article 6 of the ECHR, and which determine as follows: (i) whether “*profound and long-standing differences*” exist in the case-law of the domestic courts; (ii) whether the domestic law provides for a mechanism to overcome these divergences, and (iii) whether that mechanism has been applied and, if so, to what extent, (in this regard, see ECtHR case, *Beian v. Romania* (no. 1), Judgment of 6 December 2007, paragraphs 37-39; *Lupeni Greek Catholic Parish and others v. Rumania*, Judgment of 29 November 2016, paragraphs 116-135; *Iordan Iordanov and Others v. Bulgaria*, Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Şahin and Perihan Şahin v. Turkey*, cited above, paragraph 53; and see the case of the Court, KI29/17, Applicant *Adem Zhegrova*, Resolution on Inadmissibility, of 5 September 2017, paragraph 51 and also see the cases of the Court cited above, KI42/17, Applicant *Kushtrim Ibraj*, paragraph 39, KI87/17 Applicant “*IF Skadiforsikring*”, paragraph 67, KI35/18 Applicant “*Bayerische Versicherungsverband*”, paragraph 70, KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, 11 March 2020).
35. The Court notes that the ECtHR in developing the concept of “*profound and long-standing differences*” also considered whether the discrepancy was isolated or

affected a large number of people. (See, *inter alia*, the ECtHR case, *Lupeni Greek Catholic Parish and others v. Rumania*, cited above, paragraph 135).

36. The Court also notes in this respect that the ECtHR has not found a violation of Article 6 of the ECHR in cases of divergent case law even and if it has affected a large number of people regarding the same matter over a short period of time, when the respective divergences were settled by the higher courts, thereby enabling state mechanisms to ensure proper consistency. (See, *inter alia*, the case of the ECtHR, *Albu and Others v. Romania*, Judgment of 10 May 2012, paragraphs 42 - 43).
37. The latter relates to the second and third criteria, namely the existence of a mechanism capable of resolving inconsistencies in case law and whether this mechanism has been used and to what extent. In this regard, the ECtHR initially held that the absence of such a mechanism constituted a violation of the right to a fair trial guaranteed by Article 6 of the ECHR. (See, in this context, *Tudor Tudor v. Romania*, Judgment of 4 March 2009, paragraphs 30-32; and *Ștefănică and Others v. Romania*, Judgment of 2 February 2010, paragraphs 37-38; and *Nejdet Sahin and Perihan Sahin v. Turkey*, cited above, paragraph 54).

(i) *Application of such principles in the circumstances of the present case*

38. In the following, the Court will apply the principles elaborated above in the circumstances of the present case, applying the criteria on the basis of which the Court and the ECtHR address the divergence issues with regard to case law, starting with the assessment of whether, in the circumstances of the present case, (i) the alleged divergences in case law are “*profound and long-standing*” and, if this is the case, (ii) the existence of mechanisms capable of resolving the relevant divergence; and (iii) an assessment of whether these mechanisms have been implemented and with what effect in the circumstances of the present case.
39. Initially, the Court must also reiterate that, based on the case law of the ECtHR and the case law of the Court, it is not the function of the Court to compare different decisions of the regular courts, even if given in apparently similar proceedings, it must respect the independence of those courts. (See case of ECtHR *Adamsons v. Latvia*, cited above, paragraph 118, see also cases of the Court KI87/18 Applicant *IF Skadeforsikring* and KI35/18, Applicant *Bayerische Versicherungsverband*, cited above).
40. In addition, regarding the allegations of constitutional violations of fundamental rights and freedoms as a result of divergences in the case law, the Applicants should submit to the Court relevant arguments concerning the factual and legal similarity of the cases alleging that they have been resolved differently than the regular courts, thus resulting in a divergence in case law and which may have resulted in a violation of their constitutional rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. (See case cited above KI35/18, Applicant *Bayerische Versicherungsverband*, paragraph 76).
41. Based on the above, the Court recalls that the Applicant, in the context of his allegation of violation of the principle of legal certainty, as a result of divergence

in the case law of the Court of Appeals, submitted to the Court the Judgment [Ac. No. 1569/18] of the Court of Appeals of 23 July 2018, for which alleges that his case encompasses the same factual and legal circumstances as those of the case established by the challenged Judgment [Ac. No. 4858/2018] of the Court of Appeals of 19 February 2019. In addition to the Judgment [Ac. No. 1569/18] of the Court of Appeals of 23 July 2018, the Applicant has not submitted any decision of the Court of Appeals or other regular courts.

42. In case [Ac. No. 1569/18], of the Applicant, the Court notes that this case concerns a lawsuit for the payment of jubilee rewards, filed with the Basic Court in Mitrovica - Branch in Vushtrri. The Basic Court in Mitrovica - Branch in Vushtrri rejected this lawsuit as ungrounded. Therefore, the Court of Appeals, deciding on the appeal filed against the Judgment of the Basic Court, upheld the reasoning of the Basic Court and rejected this appeal as ungrounded. In its Judgment, the Court of Appeals referred to the Collective Agreement on Pre-University Education. The Court of Appeals also found that in this case, the fact that the claimant was not a member of the Education and Science Trade Union and did not pay the membership was not a ground for rejecting the claim, but because the General Collective Agreement was not implemented, while the latter should have rejected the compensation for the jubilee rewards and accompanying pensions due to the General Collective Agreement, which ceased to apply from 1 January 2018 and all claims filed after 01.01.2018, cannot be approved by the court, because they are filed after the expiration of this agreement. However, unlike the Applicant's case, the Court of Appeals in Judgment [Ac. No. 1569/18] of 23 July 2018, rejected the claimant's appeal, filed against the decision of the court of first instance as ungrounded and upheld the decision of the first instance. The Court of Appeals, *"approved the legal assessment of the court of first instance as fair and lawful in terms of deciding as in the enacting clause of the challenged judgment, on the ground that it did not contain essential violation of the provisions of the contested procedure, nor in violations of Article 182 par. 2, point b), g), j), k) and m), of the LCP and consequently there is no erroneous application of the substantive law which the court takes care of ex officio within the meaning of the provision of Article 194 of the LCP, and therefore it does not contain other violations of the provisions of the contested procedure alleged by the appellant in the appeal.*

The Court of Appeals assessed the manner of deciding in this contested legal issue by the court of first instance and found that the court of first instance has rightly decided on the basis of the administered evidence, which refers to the factual situation, completely and correctly determined by the court of first instance and consequently correctly applied the substantive law".

43. Therefore, taking into account the Applicant's allegation that the Court of Appeals has decided differently in two identical cases, the Court recalls that in cases KI87/18 and KI35/18, the Court found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to violation of the principle of legal certainty as a result of divergence of case law, in case KI87/18 in the assessment of 3 (three) cases of the Supreme Court, rendered in a time period of 3 (three) years, and in case KI35/18 in the assessment of 9 (nine) cases of the Supreme Court issued in a period of 5 (five) years and after finding that (i) there were *"profound and long-standing differences"*; (ii) the mechanism of the Supreme Court for the harmonization of case law existed; but that (iii) the abovementioned

mechanism was not used (see cases of the Court KI87/18, cited above, paragraph 79 and paragraphs 81 to 85, and case KI35/18, cited above, paragraph 70 and paragraphs 110-111).

44. On the other hand, the Court in its cases KI29/17, KI42/17, KI35/18 and KI107/19 noted that “*profound and long-standing differences*” cannot be ascertained, in comparing only 2 (two) cases even if the same can be contradictory. In this case, in such a circumstance, where the Applicants refer only to one decision, which contains findings and conclusions different from the decision, issued in the case of the Applicants, the Court had not found that the principle of legal certainty has been violated. (See, cases K29/7, cited above, paragraph 53, KI42/17, cited above, paragraph 44, KI35/18, cited above, paragraphs 104 and 114, and KI107/19, cited above, paragraph 75).
45. Similarly, in the circumstances of the present case, the Applicant submitted to the Court only one decision, namely the Judgment [Ac. No. 1569/18] of the Court of Appeals of 23 July 2018, for which case through the submission of a copy of this Judgment in relation to this case, has proved the factual and legal connection with that of his case. However, referring to this case referred to by the Applicant, the Court recalls that the Court of Appeals in its Judgment [Ac. No. 1569/18] of 23 July 2018 found that the court of first instance decided correctly on the basis of the evidence given in relation to the factual situation and that it did not contain essential violation of the provisions of the contested procedure, and therefore upheld the decision of the Basic Court.
46. On the other hand, in the Applicant’s case, the Court recalls that the Court of Appeals in Judgment [Ac. No. 4858/2018] found that “*[...] With regard to the appellant’s allegation that the court of first instance has erroneously applied the substantive law under Article 35.8, in conjunction with paragraph 9 of the Collective Agreement on Pre-University Education, the Court of Appeals found them as fair and correct and that the fact that the court of first instance was based on the provisions in the text of the contract that he must be a member, cannot be applied as this would be discriminatory and would be a condition for union membership for the exercise of rights, then this violates the right or freedom of association in trade unions, violates the principle of equality. The right of the claimant has support in Articles 52 and 53 of the General Collective Agreement of 18 March 2014, which does not contain the constitutional provision that an employee should be a member of a trade union, Collective Agreement on Pre-University Education, in case of conclusion and signing, as a reference point, the same agreement was taken based on its principles so that this provision cannot be applied, as it is in contradiction with Articles 24 and 44 of the Constitution of the Republic of Kosovo.*”
47. Based on the above, the Court notes that the Court of Appeals due to erroneous application of the law approved the statement of claim of the claimant as grounded and modified the judgment of the first instance so that it approved the statement of claim of the Applicant for the payment of 3 salaries in name of jubilee rewards and 3 salaries in the name of accompanying pension salaries.
48. In this regard, the Court considers that the challenged Judgment of the Court of Appeals is reasoned and that the interpretation of the Court of Appeals with

regard to the facts presented for assessment by the Applicant cannot be said to be arbitrary, not reasoned or that it could have influence on a fair trial, but was merely a matter of the law enforcement. (See analogously, case KI29/17, Applicant *Adem Zhegrova*, cited above, paragraph 57).

49. Recalling the obligation established by the case law of the Court that the Applicants must present to the Court the relevant arguments regarding the factual and legal similarity of cases which claim to have been resolved differently by the regular courts, resulting in conflicting decisions in case law, the Court notes that in addition to the submission of a single case, which refers to factual and legal circumstances similar to those in the Applicant's case, the Applicant has failed to present additional arguments to the Court, or other cases that have been decided differently by the Court of Appeals, and consequently to support his allegation of violation of legal certainty, as a result of conflicting decisions of the Court of Appeals.
50. Accordingly, in the light of its case law, the Court considers that it is not possible to ascertain the existence of "*profound and long-lasting differences*" in the case law of the Court of Appeals which endanger the principle of legal certainty by invoking only one Decision of the Court of Appeals, rendered 7 (seven) months earlier. (See in an analogous way case KI29/17, Applicant *Adem Zhegrova*, cited above, paragraph 53)
51. Therefore, the Court considers that neither the number of judgments allegedly contradictory nor the period within which these judgments were rendered, nor the manner in which the Court of Appeals has reviewed and reasoned the Applicant's case, create sufficient grounds to justify the allegation of violation of the principle of certainty, as a result of the contradictory decisions rendered by the Court of Appeals (See case KI29/17, cited above, paragraph 58).
52. With regard to the Applicant's allegations regarding the violation of the rights protected by Articles 22 and 44 of the Constitution in the challenged decision, the Court notes that the Applicant merely invoked those Articles, but did not provide any arguments regarding that allegation, except that the violation of these articles related to the allegation that the Court of Appeals has rendered two different decisions in identical circumstances, and the Court dealt with this issue in the previous part of this resolution.
53. The Court emphasizes once more its general view that the mere fact that the Applicants do not agree with the outcome of the decisions of the Court of Appeals, or of other regular courts, as well as a mere mentioning of articles of the Constitution or international instruments, are not sufficient to build a reasoned allegation of constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, case of the Constitutional Court, KII36/14, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, paragraph 33).
54. In sum, the Court finds that the Applicant's Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, in accordance with paragraph 7 of Article 113 of the Constitution, Article 47 of the Law and paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with paragraph 7 of Article 113 of the Constitution, Article 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 7 October 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.