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

Prishtina on 12 November 2020
Ref. no.:RK 1639/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KO139/18

Applicant

Municipality of Skenderaj

Constitutional review of the Collective Sectoral Contract, No. 05-3815, of 12 June 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, 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 Municipality of Skënderaj, represented by the legal representative Mr. Enver Çerkini (hereinafter: the Applicant).

Challenged act

2. The Applicant challenges the Collective Sectoral Contract [No. 05-3815] (hereinafter: the CSC) of 12 June 2018, concluded between the Ministry of Health of the Republic of Kosovo (hereinafter: the Ministry of Health) and the Trade Union Health Federation of Kosovo (hereinafter: the Federation of Trade Unions).

Subject matter

3. The subject matter of this Referral is the constitutional review of Article 17 (Salaries) of the CSC, which which is alleged to be contrary to paragraphs 3 and 5 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 18 (Delegated Competencies) of Law No. 03/L-040 on Local Self-Government (hereinafter: LSG).

4. The Applicant also requests (i) imposition of the interim measure due to "*the fact that we are dealing with public interests*"; and (ii) holding a hearing reasoning that "*to reach out to the objective truth, we consider it necessary to hold a public hearing*".

Legal basis

5. The Referral is based on paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution and Article 40 (Accuracy of the Referral) and 41 (Deadlines) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 14 September 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 18 September 2018, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha.

8. On 21 September 2018, the Court notified the Applicant about the registration of the Referral. On the same date, the Court notified the Ministry of Health and the Federation of Trade Unions about the registration of the Referral, and asked them to submit their comments, if any, related to the referral under consideration, by 11 October 2018.

9. On 11 October 2018, the Ministry of Health and the Federation of Trade Unions submitted their comments regarding the allegations raised in the Applicant's Referral.

10. On 15 October 2018, the Court notified (i) the Applicant about the receipt of comments from the Ministry of Health and the Federation of Trade Unions, giving them the opportunity to respond to their comments; and (ii) the Ministry of Finance and the Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister) about the registration of the Referral and requested them to submit their comments, if any. In both cases, the deadline for submission of comments was set on 1 November 2018.

11. On 1 and 5 November 2018, the Ministry of Health and the Ministry of Finance submitted their comments to the Court.

12. On 8 November 2018, the Applicant submitted another letter to the Court, whereby the Court was requested to hold a hearing.

13. On 12 November 2018, the Court notified the Ministry of Health about the receipt of comments from the Ministry of Finance and asked them to submit a response to the comments, if any, by 20 November 2018.

14. On 12 November 2018, the Court also notified the Applicant about the comments of the Ministry of Health and the Ministry of Finance and requested the latter to respond to the comments, if any, by 20 November 2018.

15. On 16 November 2018, the Court notified the Ministry of Labor and Social Welfare (hereinafter: the MLSW) about the registration of the Referral and also addressed questions to the Ministry in question regarding (i) finality of the General Collective Agreement of Kosovo (hereinafter: GCAK); (ii) legal status of CSC; and (iii) the budget set for the implementation of GCAK. The MLSW did not submit comments about the Referral under consideration nor did it respond to the abovementioned questions.

16. On 20 November 2018, the Applicant's comments and those of the Ministry of Health regarding the comments of the Ministry of Finance were submitted to the Court.

17. On 25 March 2019, 30 April 2019 and 10 January 2020, the Applicant submitted to the Court three additional documents. Through the first requested the imposition of an interim measure due to "*the fact that we are dealing with public interests*", also attaching in support of this request a Judgment of the Basic Court in Mitrovica by which the Municipality of Skenderaj was obliged to bear the costs related to the jubilee rewards arising from the CSC. Through the second, he filed a request for urgency, also emphasizing the importance of the interim measure. While through the third, asked for the correction of an error in their initial request, stating that "*we noticed that a technical error was made by us even though the content is in order, but instead of writing article 124 of the Constitution we referred to Article 123, so paragraph 3 of Article 124 is confused with Article 123 thereof*".

18. On 18 December 2019, the Review Panel considered the report of the Judge Rapporteur, proposing that the Referral be declared admissible and the case be considered on merits. The minutes of this date reflect the individual statement of the members of the Review Panel, who by majority were against the

admissibility of the Referral. In addition, the minutes also reflect the statements of other judges about this, as well as the same minutes reflect that the full Court finally decides that the decision-making regarding the case be postponed to one of the next sessions.

19. On 9 July 2020, the Judge Rapporteur presented before the Review Panel the same proposal with supplementations. The Review Panel, by majority, voted in favor of the proposal to declare the Referral admissible and to consider the case on merits. However, on the same date, the full Court, by a majority, decided against the proposal of the Judge Rapporteur and accordingly, decided to declare the Referral inadmissible. The Judge Rapporteur pursuant to paragraph (4) of Rule 58 (Deliberations and Voting) of the Rules of Procedure, requested the President of the Court to appoint another judge, from a majority, to prepare the Resolution on Inadmissibility. The President of the Court appointed Judge Gresa Caka-Nimani to this position.

20. On 30 September 2020, on behalf of the majority, Judge Gresa Caka-Nimani presented the Resolution on Inadmissibility before the Court. The judges during the discussion raised the issue of technical errors regarding the minutes of 18 December 2019.

21. On 30 October 2020, taking into account that the Court during the discussions on 30 September 2020, noted that the minutes of 18 December 2019 reflected contradictions as a result of technical errors, within the Administrative Session, the judges discussed the content of these minutes and found that the only finding from that session is the decision of judges of full Court on the postponement of the decision-making for one of the next sessions.

Summary of facts

22. On 18 March 2014, the Government of the Republic of Kosovo (hereinafter: the Government) and the Union of Independent Trade Unions of Kosovo and the representatives of employers, the Kosovo Chamber of Commerce and the Kosovo Business Alliance, concluded the GCAK. The latter, *inter alia*, determined (i) in its Article 2 (Scope) that the provisions of the GCAK oblige the parties to the Agreement in the private, public and state sector, in general, at the level of branches and in enterprise level; (ii) in Article 4 [no title] that the Collective Agreement may be concluded at the level of the Branch and the Enterprise; (iii) in Article 6 [no title] that the provisions and qualifications of the GCAK are standard, unique and binding also at the branch and enterprise level; (iv) in Articles 52 (Jubilee Rewards) and 53 (Retirement reimbursement) it states that health workers receive a jubilee rewards in the amount of one (1), two (2) or three (3) salaries for ten (10) , twenty (20) thirty (30) years of work experience, respectively, and also in case of retirement, the jubilee reward in the amount of three (3) salaries, these amounts which are paid by the last employer; (v) in Article 81 [no title] that if the GCAK, after the expiration of the deadline, any of the parties does not withdraw, its implementation continues for another year; and finally (vi) in Article 82 [no title] that the GCAK enters into force on 1 January 2015.

23. On 12 June 2018, the Ministry of Health and the Federation of Trade Unions, concluded the CSC. The latter, *inter alia*, stipulated (i) in its Article 4 (Scope) that the relevant contract applies to the regulation of legal relations for all employees in health institutions; (ii) Article 32 (Resolution of Disputes) that resolving disputes between the signatory parties is done through consultation and mutual dialogue, and in case of failure, through the competent court in Prishtina; and (iii) in its Article 17 that health workers receive a jubilee rewards in the amount of one (1), two (2) or three (3) salaries for ten (10), twenty (20) and thirty (30) years of work experience, respectively, and also in case of retirement the jubilee rewards in the amount of three (3) salaries, these amounts which are paid by the last employer.

Applicant's allegations

24. The Applicant alleges that Article 17 of the CSC is contrary to paragraphs 3 and 5 of Article 124 of the Constitution and Article 18 of the LLSG.

25. The Applicant, more specifically, alleges that contrary to the constitutional and legal guarantees set forth in paragraph 3 of Article 124 of the Constitution and paragraph 3 of Article 18 of the LLSG, namely the obligation of the state authority to cover the costs of delegation of competencies at the municipal level, the Ministry of Health, pursuant to Article 17 of the CSC, has obliged the municipality itself to cover the costs related to the jubilee rewards of health employees.

26. The Applicant states before the Court that: "*The Municipality of Skenderaj requests the Constitutional Court of the Republic of Kosovo to assess the constitutionality of this collective contract in general, and in particular Article 17 paragraph 3, and sub-paragraphs 3.1, 3.2, and 3.3. and paragraph 4 and 5 of the same article of the Collective Sectoral Contract dated 12.06.2018, by which legal provisions have placed an additional burden on the municipality even though we have a small and poor budget in relation to the requests of citizens, and such a burden is unjust, unlawful and contrary to the Constitution and the law, due to the fact that the Ministry of Health before signing this contract had to foresee the budget and financial means, namely to create the budget line, because it has lists for every employee in the health sector who retire and those accompanying and jubilee salaries to be provided in the budget and not to unfairly burden the municipality for this*".

27. The Applicant requests the Court to (i) declare the Referral admissible; and (ii) repeal Article 17 of the CSC of 12 June 2018.

Comments of interested entities

28. The Court will further present the comments of (i) the Ministry of Health on the Applicant's Referral; (ii) the Federation of Health Trade Unions on the Applicant's Referral; (iii) Ministry of Finance; (iv) the Applicants regarding the responses of the Ministry of Health and the Ministry of Finance; and (v) the Ministry of Health regarding the letter from the Ministry of Finance.

(i) Comments of the Ministry of Health

29. Responding to the possibility given by the Court, on 21 September 2018 to the comments of the Ministry of Health regarding the allegations of the Applicant, the Ministry of Health submitted the comments with reference to Article 124 of the Constitution; Article 4 (Hierarchy among the Law, Collective Contract, Employer's Internal Act and the Labour Contract) and Article 90 (Collective Contract) of Law no. 03-L/212 on Labor (hereinafter: the Law on Labor); and Articles 2, 3 (Application and Inclusion), 4, 5, 6, 52 and 53 of the GCAK of 18 March 2014.

30. The Ministry of Health stated, *inter alia*, that (i) based on Article 90 of the Law on Labor, a Collective Agreement is directly applicable between the employer and the employee and that one may be concluded at the national level, such as the GCAK. of 18 March 2014 or at the branch level, such as the CSC of 12 June 2018; (ii) The GCAK in its Article 2 stipulates that its provisions are binding on the private, public and state sector, at general level, of branches and enterprises, and that consequently, jubilee rewards for years of work experience and in case of retirement, are defined through the GCAK and were mandatory at the Kosovo level even before the signing of the CSC; (iii) consequently, the Ministry of Health, by signing the CSC, has not imposed any additional obligations but has only implemented the Law on Labor and Articles 52 and 53 of the GCAK, including the two latter in its Article 17; and (iv) the Ministry of Health has not "*delegated*" competencies at the municipal level, as it has not delegated any responsibility belonging the Ministry of Health at the municipal level, moreover, the LLSG in Article 3 (Definitions) and 18 thereof, determines exactly the manner of delegation of competencies from the central to the municipal level, and that such a delegation is done only through the law, which is not the case in the circumstances of the present case.

(ii) Comments of the Federation of Health Trade Unions

31. Responding to the opportunity provided by the Court, on 21 September 2018 to the comments of the Federation of Trade Unions regarding the allegations of the Applicant, the Federation of Trade Unions submitted their comments stating, *inter alia*, that (i) the Applicant has not exhausted legal remedies because based on Article 32 of the CSC, it was forced to initially try to address its allegations through social dialogue and the "*competent court in Prishtina*"; (ii) Article 17 of the CSC derives from Articles 52 and 53 of the GCAK on 18 March 2014, and consequently does not constitute any additional obligation; and (iii) the financial analysis of the CSC is "*calculated by the other signatory in this case the Ministry of Health*".

(iii) Comments of the Ministry of Finance

32. Responding to the opportunity provided by the Court on 15 October 2018 to the comments on the Applicant's Referral as well as the relevant submissions of the Ministry of Health and the Federation of Trade Unions, the Ministry of Finance submitted the relevant comments to the Court, emphasizing the CSC "*has not been subject to costing procedures and the Ministry of Finance has not provided any opinion on the eventual cost that this document may have. Therefore, the implementation of the provisions of this Agreement should be done within the existing budget allocations*".

(iv) Applicant's comments on the response of the Ministry of Finance and the Ministry of Health

33. Responding to the possibility provided by the Court on 12 November 2018 to the Applicant's comments regarding the comments of the Ministry of Health and Finance, the Applicant regarding the former stated that their comments are *"unfounded and unsubstantiated"*, also adding that the CSC is also contrary to Law No. 03/L-048 on Public Financial Management and Accountability (hereinafter: the Law on Financial Management and Accountability), while regarding the latter, stated that the letter from the Ministry of Finance confirms their claims that the procedures provided by the Law on Financial Management and Accountability have not been respected.

(v) Comments of the Ministry of Health in the letter of the Ministry of Finance

34. Responding to the opportunity given by the Court, on 12 November 2018 to the comments of the Ministry of Health in the letter of the Ministry of Finance, the Ministry of Health stated that (i) GCAK of 18 March 2014 continues to be in force because based on Article 81 thereof, if after the expiration of the determined deadline no signatory party withdraws, its implementation continues for another year, namely until January 2019; and (ii) taking into account the fact that the GCAK is in force, *"as such does not represent additional costs to and regarding it, there was no need to consult the Ministry of Finance"*.

Relevant constitutional and legal provisions

THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 113
[Jurisdiction and Authorized Parties]

1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]
4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.
[...]

Article 124
[Local Self-Government Organization and Operation]

1. The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.
[...]
3. Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates

competencies shall cover the expenditures incurred for the exercise of delegation.
[...]
5. Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.

LAW NO. 03/L-212 ON LABOUR

Article 4
Hierarchy among the Law, Collective Contract, Employer's Internal Act and the Labour Contract

1. Provisions of the Collective Contract, Employer's Internal Act and Labour Contract shall be in compliance with the provisions of this Law.
[...]

Article 90
Collective Contract

1. Collective Contract may be concluded between:
1.1. Organization of employers and their representatives and
1.2. Organization of employees or, in cases where there are no such organisations, the agreement may be concluded by the representatives of employees;
2. . Collective Contract may be concluded at:
2.1. the state level,
2.2. . the branch level; and
2.3. the enterprise level.
[...]
3. . Collective Contract shall be concluded in a written form in official languages of Republic of Kosovo.
4. Collective Contract may be concluded for a certain period of time with a duration of maximum three (3) years.
[...]
9. . For the resolution of various disputes in a peaceful manner and the development of consultations on employment, social welfare and labour economic policies by the representatives of employers, employees and Government in the capacity of social partners, through a special legal-secondary legislation act, the Social-Economic Council shall be established.
[...]

LAW No. 03/L-040 ON LOCAL SELF GOVERNMENT

Article 3
Definitions

-"Delegated Competencies"- shall mean competencies of the central government and other central institutions the execution of which is temporarily assigned by law to municipalities;

Article 18

Delegated competencies

18.1 Central authorities in Republic of Kosova shall delegate responsibility over the following competencies to municipalities, in accordance with the law:
a) cadastral records;
b) civil registries;
c) voter registration;
d) business registration and licensing;
e) distribution of social assistance payments (excluding pensions); and
f) forestry protection on the municipal territory within the authority delegated by the central authority, including the granting of licenses for the felling of trees on the basis of rules adopted by the Government;
18.2 Central authorities in Republic of Kosova may delegate other competencies to municipalities, as appropriate, in accordance with the law.
18.3. Delegated competencies must in all cases be accompanied by the necessary funding in compliance with objectives, standards and requests determined by the Government of Kosova.

THE GENERAL COLLECTIVE AGREEMENT IN KOSOVO (signed on 18.03.2014 and entered into force on 01.01.2015)

Article 1
Purpose

1. Purpose of the present General Collective Agreement of Kosovo (hereinafter referred to as GCAK), is to set and regulate in a clear and detailed manner the rights, duties and obligations of the parties involved in the Agreement.
2.Parties of the present GCAK include: employers' representatives, workers' representatives and the Government of the Republic of Kosovo.
3.Government of Kosovo is guarantor for implementation of the present GCAK, concluded with parties' will as in paragraph 2 of the present Article.

Article 2
Scope

1. Provisions of the GCAK are binding to the parties of the Agreement, at private, public and state sector (at general level, branch level and company level).
[...]

Article 3
Application and inclusion

Provisions of the GCAK are applied throughout the territory of the Republic of Kosovo.

Article 4
[No title]

1. Provisions of the GCAL bind employers who, in any way, carry out economic, non-economic activities and civil services. Collective Agreement can copncluded at Branch or Enterprise levels.
[...]

Article 5
[No title]

GCAK applies to all employees who work for an employer, with their representation in the territory of Kosovo.

Article 6
[No title]

Provisions and quantification of GCAK are standard, unique and binding also at Branch and Company level.

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.

SECTORAL COLLECTIVE CONTRACT
(signed on 12.06.2018)

Article 1
Purpose

1. The Sectoral Collective Contract (hereinafter: SCC) is bound by the parties in this contract for the advancement of the rights of labor relations and respecting the rights and obligations of the contracting parties.
2. Through the SCC, the rights of the labor relations are extended according to the legislation in force.
3. SCC regulates:

[...]
3.12. Resolving Disputes.

Article 17
Salary

1. *The salary of the employee increases for each full year of working time at a rate of 0.5% on the basic salary in accordance with the General Collective Agreement of Kosovo*
2. *The employee is entitled to compensation of the thirteenth (13) salary for each calendar year in the value of the basic salary, according to employer's budget possibilities.*
3. *Health workers, in jubilee years of employment benefit jubilee reward from the last employer in the amount of:*
   - *3.1 For 10 years of work experience in health institutions, worth a monthly salary;*
   - *3.2 For 20 years of work experience in health institutions, worth two monthly salaries;*
   - *3.3 For 30 years of work experience in health institutions, to the last employer, worth three monthly salaries.*
4. *The last employer is the one who pays jubilee rewards. The jubilee reward is paid within one month after the conditions of this paragraph have been met.*
5. *Compensation in case of retirement, the employee on retirement has the right to a subsequent payment of three (3) monthly salaries, which he has received for the last three (3) months.*

Article 32
Resolution of dispute

1. *The parties in this contract will resolve all disputes between them through mutual consultations and dialogue.*
2. *If the dispute between the parties cannot be resolved under paragraph 1 of this Article, the parties to the dispute shall be referred to the competent court in Pristina.*
3. *Health workers who are members of the trade union enjoy legal trade union protection.*

Admissibility of the Referral

35. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

36. The Court, in this respect, first refers to paragraphs 1 and 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which determine:

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

4. A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act."

37. The Court also refers to Articles 40 (Accuracy of the Referral) and 41 (Deadlines) of the Law, which stipulate:

Article 40
(Accuracy of the Referral)

"In a referral made pursuant to Article 113, Paragraph 4 of the Constitution, a municipality shall submit, inter alia, relevant information in relation to the law or act of the government contested, which provision of the Constitution is allegedly infringed and which municipality responsibilities or revenues are affected by such law or act."

Article 41
(Deadlines)

"The referral should be submitted within one (1) year following the entry into force of the provision of the law or act of the government being contested by the municipality."

38. Finally, the Court also refers to the Rule 73 (Referral pursuant to Article 113.4 of the Constitution and Articles 40 and 41 of the Law), which specifies:

"(1) A referral filed under this Rule must fulfill the criteria established under Article 113.4 of the Constitution and Articles 40 and 41 of the Law.
(2) In a referral pursuant to this Rule, a municipality must submit, inter alia, the following information:
(a) relevant information in relation to the law or act of the government contested;
(b) the specific provision of the Constitution which is allegedly infringed; and (c) the municipality responsibilities or revenues that are affected by such law or act.
(3) The referral under this Rule must be filed within one (1) year following the entry into force of the provision of the law or act of the Government being contested."

39. Based on the abovementioned provisions of the Constitution, the Court notes that the referrals submitted to the Court pursuant to paragraph 4 of Article 113 of the Constitution must meet the following constitutional criteria: (i) The municipality must challenge the constitutionality of a law of the Assembly or of an act of the Government; and (ii) The municipality must substantiate that the challenged law or act violates municipal responsibilities or reduces its revenues. These two conditions are cumulative. Consequently, the respective Municipality must challenge the law of the Assembly or the act of the Government and argue that they have violated or reduced the municipal responsibilities or its revenues. Based on the Law and the Rules of Procedure, this law or act must be challenged in Court within one (1) year from its entry into force.

40. Consequently and in the following, in order to assess the admissibility of the Referral, the Court must first assess whether a law of the Assembly or an act of the Government is challenged before it, and if the answer is affirmative then, it must assess whether the relevant law/act reduces municipal responsibilities or affects its revenues.

41. In the circumstances of the present case, it is clear that the Agreement challenged by the Applicant, namely the CSC, is not the law of the Assembly. Therefore, it must be assessed whether the latter can qualify as a "*Government act*".

42. The Court notes in this context that the scope of the "acts" of the Government, namely the Prime Minister, Deputy Prime Ministers and Ministers, includes their decision-making, as set out in Article 92 [General Principles] of the Constitution. The Court, through its case law, has established that regardless of the formal name of these decisions issued, they are subject to constitutional review, if they raise "*important constitutional matters*" and taking into account the legal effects produced by them, always insofar as they have been brought before the Court in the manner prescribed by the Constitution and the Law (see case of the Court KO61/20, Applicant, *Uran Ismaili and 29 other deputies of the Assembly of the Republic of Kosovo*, Constitutional review of Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, on declaration of the Municipality of Prizren "*quarantine zone*"; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipalities of Prizren, Dragash and Istog, Judgment of 5 May 2029,* paragraphs 92 to 98 and other references used therein.

43. In the circumstances of the present case, an agreement signed between the two parties is challenged before the Court, on the one hand the Ministry of Health and on the other the Federation of Trade Unions, namely the Collective Contract signed at branch level, as defined by paragraph 2.2 of Article 90 of the Law on Labour. The Court notes that based on the latter, namely paragraph 1.8 of Article 3 (Definitions) thereof, the Collective Agreement is defined as an agreement between employers' organizations and employees' organizations which regulates the rights, duties and responsibilities arising from the employment relationship according to the agreement reached. Furthermore, based on Article 90 of the Law on Labour, the Collective Agreement can be concluded between the employers' organization or its representative, and the employees' organization, or when there are no organizations, the agreement can also be concluded by the employees' representatives.

44. Consequently, the Ministry of Health is only one party to the Agreement, namely the challenged act. The latter does not derive from the decision-making of the Government, but is the result of a bilateral agreement based on the Law on Labor and GCAK of 18 March 2014. Consequently, it cannot be qualified as a "*government act*" for the purposes of paragraph 4 of Article 113 of the Constitution. This Agreement in fact reflects the mutual will between the Ministry of Health and the Federation of Health Trade Unions, as signatories and which, moreover, through it have agreed to address possible disputes

through social dialogue or through *"the competent court in Prishtina"*. Resolution of disputes in this regard belongs to the regular courts.

45. Therefore, and taking into account that no *"Government act"* is challenged before the Court, it does not assess further whether the Collective Agreement may have violated municipal responsibilities or reduced its revenues, as set out in paragraph 4 of Article 113 of the Constitution, because the first criterion of admissibility has not been met, namely the challenging of a law of the Assembly or the *"Government act"*, as stipulated by the same paragraph of Article 113 of the Constitution.

46. The Court notes that the Constitutional Courts of the region have had a similar approach in this regard. More precisely, unlike the Constitution of Kosovo, a part of the constitutions of the states in the region, explicitly define the competence of the respective Constitutional Courts to assess the constitutionality of Collective Contracts. This category includes the Republic of North Macedonia and that of Serbia. The first, in Article 110 of the Constitution, defines the jurisdiction of the Constitutional Court, and on the basis of which, the latter, among other things, decides on the compatibility of laws with the Constitution and other rules and Collective Agreements with the Constitution and laws. Whereas the second, in Article 167 of the Constitution, defines the jurisdiction of the Constitutional Court, and based on which, the latter, among other things, decides on the compatibility of laws and general acts with the Constitution; of general acts with law and general acts of organizations entrusted to public authorities, political parties, trade unions, citizens' associations and General Collective Agreements with the Constitution and the law.

47. Other constitutions, such as that of the Republic of Kosovo, do not refer to the competence of the Constitutional Courts to assess the constitutionality of a Collective Agreement. The latter, among others, refer beyond the assessment of the constitutionality of laws, to the assessment of the constitutionality of *"acts"* of central and local authorities or those issued for the exercise of public authority. More specifically, (i) Albania, in Article 131 of its Constitution, defines the jurisdiction of the Constitutional Court, based on which, among other things, the latter assesses the compatibility of normative acts of central and local authorities with the Constitution and international agreements; (ii) Slovenia, in Article 160 of its Constitution, defines the jurisdiction of the Constitutional Court, based on which, among other things, it specifies that the latter assesses the compatibility of laws with the Constitution, of regulations with the Constitution and with laws; and general acts issued in the exercise of public authority in accordance with the Constitution, laws and regulations; (iii) Croatia, in Article 129 of its Constitution, defines the jurisdiction of the Constitutional Court, based on which, among other things, it specifies that the latter assesses the compatibility of laws with the Constitution and other regulations with the Constitution and laws; whereas (iv) Montenegro, in Article 149 of this Constitution, defines the jurisdiction of the Constitutional Court, based on which, among other things, it specifies that the latter assesses the compatibility of laws with the Constitution and of regulations and other general acts with the Constitution and the law. Within the jurisdiction to assess *"other general acts"*, the Constitutional Court of Montenegro also assessed the

General Collective Agreement (See Decision U-II no. 3/15 of the Constitutional Court of Montenegro, 21 April 2017).

48. In contrast, the Constitutional Courts of Slovenia and Croatia rejected constitutional review of the Collective Agreements. The Constitutional Court of Slovenia when reviewing cases r. UI-220/94 of 6 February 1997 and UI-75/97 of 14 May 1997, held that it has no jurisdiction to review the provisions of the General Collective Agreement, emphasizing that this is the competence of the regular courts. Similarly, the Constitutional Court of Croatia, during the review of cases, Decision no. U-II-75/2018 of 30 January 2018 and Decisions U-II-363/2015 of 4 February 2015, U-II-318/2003 of 9 April 2003 and U-II-4380/2004 of 14 June 2006, also stated that it has no jurisdiction to assess the provisions of the General Collective Agreements, because this is the competence of the regular courts.

49. The Constitutional Court of Croatia, *inter alia*, stated as follows: "*In these cases, it was found that the (non) compliance of the collective agreements with the Constitution, the mandatory regulations and the morality of the society are decided by the courts applying the rules of the obligatory law for the invalidity of the contract. The Constitutional Court only in a case of a possible constitutional lawsuit decides whether a court decision issued in such a dispute violates human rights and fundamental freedoms guaranteed by the Constitution. From what was said above, it follows that the Constitutional Court is not competent to decide on the legal validity of collective agreements in the process of assessing the compliance of laws with the Constitution and other regulations with the Constitution and law. (*See Constitutional Court of Croatia, Decision No. U-II-75/2018 of 30 January 2018 and, *mutatis mutandis,* Decisions number: U-II-363/2015 of 4 February 2015, U-II-318/2003 of 9 April 2003 and U-II-4380/2004 of 14 June 2006).

50. The Court notes that it has followed the same approach in the previous cases reviewed by it and submitted to the Court based on paragraph 4 of Article 113 of the Constitution. One case, namely case KO89/16 (see the case of the Court, KO89/16, Applicant, *Municipality of Prishtina*, Resolution on Inadmissibility, of 5 December 2016), was declared inadmissible by the Court as out of time. While the other three, namely the cases KO08/13, KI07/10 and KO123/10, were declared inadmissible because a "*Government act*" was not challenged, as required by paragraph 4 of Article 113 of the Constitution.

51. More precisely, in case KO08/13 (see the case of Court KO08/13, Applicant *Municipality of Klina*, Resolution on Inadmissibility of 14 November 2013), referring to paragraph 4 of Article 113 of the Constitution, the Municipality of Klina challenged Decision [A. No. 811/2006] of 14 March 2007 and fifteen (15) other decisions of the Administrative panel of the Supreme Court, claiming that the latter, *inter alia*, were contrary to Articles 123 [General Principles] and 124 of the Constitution. The Court declared the Referral inadmissible, stating that the admissibility requirements set out in paragraph 4 of Article 113 of the Constitution were not met, because the acts challenged by the Applicant were not "*acts of the Government*" for the purposes of this Article. Furthermore, the Court stated that even if a Referral was submitted pursuant to paragraph 7 of

Article 113 of the Constitution, in the capacity of the respective municipality as a legal entity, the Referral would be inadmissible as out of time.

52. In case KI07/10 (see the case of the Court KI 07/10, Applicant *Municipality of Klina*, Resolution on Inadmissibility of 16 December 2010), referring to paragraph 4 of Article 113 of the Constitution, the Municipality of Klina challenged Decision [No. 112/08] of 5 June 2009 of the Independent Oversight Board of Kosovo. The Court declared the Referral inadmissible, stating that the admissibility requirements set out in paragraph 4 of Article 113 of the Constitution were not met, because the acts challenged by the Applicant were not "*acts of the Government*" for the purposes of this Article, but of an independent body based on the legislation in force. Furthermore, the Court stated that even if a Referral was submitted pursuant to paragraph 7 of Article 113 of the Constitution, in the capacity of the respective municipality as a legal entity, the Referral would be inadmissible as a result of non-exhaustion of legal remedies.

53. In case KO123/10 (see the case of the Court, KO123/10, Applicant *Municipality of Gjakova*, Resolution on Inadmissibility, of 13 May 2011), referring to paragraph 4 of Article 113 of the Constitution, the Municipality of Gjakova challenged Judgment [No. c. no. 183/2009] of 17 June 2009 of the District Commercial Court in Prishtina. The Court declared the Referral inadmissible stating that the admissibility requirements set out in paragraph 4 of Article 113 of the Constitution were not met, because the acts challenged by the Applicant were not "*acts of the Government*" for the purposes of this Article. Furthermore, the Court stated that even if a Referral was submitted pursuant to paragraph 7 of Article 113 of the Constitution, in the capacity of the respective municipality as a legal entity, the Referral would be inadmissible as out of time.

54. Therefore, based on the abovementioned case law regarding the cases filed pursuant to paragraph 4 of Article 113 of the Constitution, the Court also notes that even if the Municipality of Skenderaj had submitted a request for the constitutional review of the CSC, in its capacity as legal person and based on paragraph 7 of Article 113 of the Constitution, similar as in the case of Court KI07/10, the Referral would be inadmissible due to non-exhaustion of legal remedies. This is because (i) based on paragraph 9 of Article 90 of the Law on Labour, the Social-Economic Council is competent for resolving various disputes by representatives of employers, employees and the Government in the capacity of social partners; and (ii) based on paragraphs 1 and 2 of Article 32 of the CSC, the disputes between the parties are resolved initially through "*consultations and mutual dialogue*" and vice versa, through the "*Competent Court in Prishtina*".

55. The Court has consistently reiterated that the purpose and rationale behind the requirement to exhaust the legal remedies or the exhaustion rule, provided by paragraph 7 of Article 113 of the Constitution, is to afford the relevant authorities, primarily the regular courts, the opportunity to prevent or put right the alleged violations of the Constitution. It is based on the presumption, reflected in Article 32 [Right to Legal Remedies] of the Constitution and Article 13 (Right to an effective remedy) of the European Convention on

Human Rights that the Kosovo legal order provides an effective remedy for the protection of constitutional rights. This is an important aspect of the subsidiary nature of the constitutional justice machinery (See in this regard, the cases of the European Convention on Human Rights: *Selmouni v. France*, cited above, paragraph 74; *Kudła v. Poland,* Judgment of 26 October 2000, paragraph 152; and among others, see also the cases of the Court: KI07/15, Applicant *Shefki Zogiani*, Resolution on Inadmissibility of 8 December 2016, paragraph 61; KI30/17, Applicant *Muharrem Nuredini*, Resolution on Inadmissibility of 7 August 2017, paragraph 35; KI41/09, Applicant *AAB-RIINVEST University L.L.C*, Resolution on Inadmissibility of 3 February 2010, paragraph 16; and, KI94/14, Applicant *Sadat Ademi*, Resolution on Inadmissibility of 17 December 2014, paragraph 24).

56. Therefore and in conclusion, pursuant to paragraphs 1 and 4 of Article 113 of the Constitution, Article 40 of the Law and paragraph 1 of Rule 73 of the Rules of Procedure, the Applicant's Referral is to be declared inadmissible.

Request for interim measure

57. The Court recalls that the Applicant requested the imposition of the interim measure due to the "*fact that we are dealing with public interests*".

58. The Court has now concluded that the Applicant's Referral is to be declared inadmissible.

59. Therefore, in accordance with paragraph 1 of Article 27 (Interim Measures) of the Law and item (a) of paragraph 4 of Rule 57 (Decision on Interim Measures) of the Rules of Procedure, the Applicant's request for interim measure is to be rejected, because the latter cannot be the subject of review, as the referral is declared inadmissible (See, in this regard, the cases of the Court: KI159/18, Applicant *Azem Duraku*, Resolution on Inadmissibility of 6 May 2019, paragraphs 89-91; KI19/19 and KI20/19, Applicants *Muhamed Thaqi and Egzon Keka,* Resolution on Inadmissibility of 29 July 2019, paragraphs 53-55).

Request for hearing

60. The Court recalls that the Applicant also requested the Court to schedule a hearing on the grounds: "*to reach out to the objective truth, we consider it necessary to hold a public hearing*".

61. In this regard, the Court recalls that pursuant to paragraph (2) of Rule 42 (Right to Hearing and Waiver) of the Rules of Procedure, *"The Court may order a hearing if it believes a hearing is necessary to clarify issues of fact or of law."*

62. The Court notes that the abovementioned rule of Rules of Procedure is of a discretionary nature. As such, that rule only provides for the possibility for the Court to order a hearing in cases where it believes it is necessary to clarify issues of fact or law. Thus, the Court is not obliged to order a hearing if it considers that the existing evidence in the case file suffices, beyond any doubt, to reach a decision on merits in the case under consideration. (See, among

others, case of the Court, KI48/18, *Applicant Arban Abrashi and the Democratic League of Kosovo*, Judgment of 23 January 2019, paragraph 272 and references mentioned therein).

63. In the present case, the Court does not consider that there is any uncertainty about the "*evidence or the law*" and therefore does not consider it necessary to hold a hearing. The documents included in the Referral are sufficient to decide on the inadmissibility of this case.

64. Therefore, the Court finds that the Applicant's request for scheduling a hearing must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 4 of the Constitution, Articles 20 and 40 of the Law, Rules 57 (4), 59 (2) and 73 (1) of the Rules of Procedure, on 30 September 2020, by majority

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for imposition of interim measure;

III. TO REJECT the request for holding a hearing;

IV. TO NOTIFY this Decision to the Parties;

V. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

VI. This Decision is effective immediately.

Judge that prepared Decision **President of the Constitutional Court**

Gresa Caka-Nimani Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.