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

Prishtina, on 17 December 2020
Ref. no.:RK 1665/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI189/19

Applicant

Alban Miftaraj

Constitutional review of Judgment [ARJ-UZPV. No. 85/2019] of the Supreme Court of 26 June 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 Alban Miftaraj, with permanent address in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [ARJ-UZPV. No. 85/2019] of the Supreme Court of 26 June 2019, which was served on him on 15 July 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment [ARJ-UZPV. No. 85/2019] of the Supreme Court, of 26 June 2019, which allegedly violates the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise Profession] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of 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 22 October 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 October 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban (members).

7. On 8 November 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 26 November 2019, the Applicant submitted additional documents to the Court.

9. On 7 October 2020, the Review Panel proposed that the review of the Referral be postponed for additional supplementation.

10. On 10 November 2020, the Review Panel considered the Report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. The Applicant has been employed in the Special Anti-Corruption Department, which operates within the Special Prosecution Office of the Republic of Kosovo (hereinafter: SPRK), since 15 April 2011.

12. On 6 January 2011, the Government of the Republic of Kosovo rendered Decision no. 02/151. Point no. 4 of this decision determined the increase of the basic salary for all civil servants, in the amount of 30% (thirty percent).

Administrative procedure

13. On 8 February 2013, the Applicant, based on the Decision of the Government of the Republic of Kosovo, no. 02/151 of 6 January 2011, submits a request to the Kosovo Prosecutorial Council (hereinafter: KPC), to increase monthly salary, in the amount of 30%.

14. On 4 March 2013, the KPC, by Decision KPC No. 55/2013, rejects the request of the Applicant for increase of the monthly salary in the amount of 30%, stating that *"Anti-corruption experts are compensated with salaries that are outside the salary system of civil servants (coefficient), therefore, found that based on Article 10, paragraph 3 of the Law on Budget of the Republic of Kosovo for 2013 cannot use the right to increase the salaries of 30% according to the Government Decision. Also, the Council noted that point 1.1 and 1.2 of paragraph 1 of the Government Decision, of 13 February 2013, No. 13/155, "on compensation of allowances and financial incentives for SPRK employees for 2013", determines the number of officials and support staff who are entitled to additional compensation, while Anti-Corruption Experts and two Information Technology officers are not included in that number. Therefore, considering the importance of equal treatment of all employees in the SPRK, it was decided as in the enacting clause of this decision".*

15. On 22 March 2013, the Applicant filed a complaint with the Independent Oversight Board for the Civil Service of the Republic of Kosovo (hereinafter: IOBCSK), against the Decision of the KPC, of 4 March 2013, on the grounds of determination of erroneous factual situation and violation of the provisions of procedural and substantive law.

16. On 5 April 2013, the IOBCSK by Decision No. 737-02/132/2013, rejected the Applicant's complaint, on the grounds that: *"The Law on the Budget of the Republic of Kosovo for 2013, Article 10, paragraph 3, Limits on Commitments and Expenditures, states that: "Employees of Budgetary Organizations of Independent Institutions that have their salaries outside the salary system of Civil Servants, can not use the right for meals, other reimbursements and increase from thirty percent (30%) according to the decision of the Government". Which means that your salary of 870 euro is a fixed salary and of a very high level compared to other employees, whose salary is not fixed, therefore you cannot use the right to a salary increase of 30 %. Also (according to the case file) you as an expert in addition; fixed salary is paid with 30.00 euro CSK and 50.00 euro limited allowance, which means that your total income for one month is in the amount of 950.00, euro since May*

2011. (...) The Panel of the Council after analysis and systematization of evidence, based on the legal acts in force, as a result of a thorough adjudication, found that the appeal is not grounded and decided as in the enacting clause of this decision, by which the decision issued by the Prosecutorial Council of Kosovo, KPC. no. 55/2013 prot. no. 289, of 05.03.2013, remains in force which rejected the complainant's request for a salary increase of 30% as they do not have a coefficient defined as other civil servants".

The first lawsuit (administrative conflict), against the IOBCSK

17. On 3 May 2013, the Applicant filed a lawsuit with the Basic Court in Prishtina - Department of Administrative Affairs, against the Decision of the IOBCSK, of 23 July 2014, alleging that *"The decision complained of contains essential violation of the provisions of the administrative procedure, was rendered in an erroneous determination of factual situation, while the law was applied to the detriment of the now claimant, as a result of legal violations and erroneous determination of factual situation".*

18. On 13 June 2014, the Basic Court in Prishtina, Department for Administrative Matters, by Judgment A. No. 613/2013, approves the Applicant's lawsuit and remands Decision no. 737-02/132/2013 of the IOBCSK, of 5 April 2013 for retrial, due to the flaws in determination of facts and essential violations of the provisions of the procedural law.

19. On 23 July 2014, the IOBCSK, by Decision A/02/299/2014, rejects as inadmissible the Applicant's appeal, activated by the Judgment of the Basic Court in Prishtina, of 13 June 2014, with the following reasoning: *"The complainant appealed to the Independent Oversight Board of the Kosovo Civil Service against the Decision of the Kosovo Prosecutorial Council, No. 289/2013 of 05.03.2013, by unjustifiably bypassing the Dispute Resolution and Complaints Commission of the respective institution, and as a result, has acted contrary to Article 12 subparagraph 3.1 of Law No. 03/L-192 on the Independent Oversight Board of the Civil Service of Kosovo, which stipulates that "before appealing to the Board, the civil servant or applicant who alleges to be damaged must exhaust the internal appeals procedures of the employing authority concerned, unless the Board excuses this requirement based on evidence of reasonable fear of retaliation, failure by the employing authority to resolve the appeal within thirty (30) days, or other good cause".*

The second lawsuit (administrative conflict), against the IOBCSK

20. On 15 August 2014, the Applicant again filed a lawsuit with the Basic Court in Prishtina - Department for Administrative Matters, against the IOBCSK Decision A/02/299/2014, of 23 July 2014, on the grounds of erroneous determination of factual situation, essential violations of the provisions of the administrative procedure and erroneous application of the substantive law. The Applicant filed his lawsuit on 14 April 2016.

21. On 19 July 2016, the Basic Court in Prishtina, Department for Administrative Matters, by Judgment A. No. 1518/2014, approves the lawsuit of the Applicant,

remanding the case back to the IOBCSK, due to the fact that: *"In this sense, the court considers that the responding body has not correctly applied the legal provisions cited above, when by the challenged of 22.07.2014, it dismissed the claimant's appeal of 07.07.2014, for non-exhaustion of legal remedies within the employment body. The court, as a rule, decides on the administrative conflict based on the factual situation by the administrative bodies, while from the decision challenged in the lawsuit, it cannot be understood how the factual situation was determined by the respondent. In this regard, the court obliges the responding body, within thirty (30) days, in the re-procedure to act according to the remarks given in this judgment and after correcting the mentioned flaws, to render a fair decision based on law. The mentioned remarks are obligatory for the responding body, based on Article 65 of the Law on Administrative Conflicts".*

22. On 25 July 2016, the IOBCSK filed an appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina [A. No. 1518/2014] of 19 July 2016, on the grounds of incomplete determination of factual and legal situation.

23. On 12 January 2017, the Court of Appeals, by Judgment AA. No. 324/2016, rejects, as ungrounded, the appeal filed by the IOBCSK and upholds the Judgment of the Basic Court in Prishtina [A. No. 1518/2014] of 19 July 2016, reasoning that: *"...the first instance, correctly applied the procedural and material provisions in the case of the approval of the claim of the claimant, by which it annulled the decision of the respondent, and since with the appealing allegations such a judgment cannot be put in question, the respondent's appeal was rejected as ungrounded, while the appealed judgment was found as fair and lawful".*

24. On 3 March 2017, the IOBCSK, by Decision A/02/332/2016, rejects, as inadmissible, the Applicant's appeal, which was activated by the Judgment of the Basic Court in Prishtina, of 19 July 2016 and the Judgment of Court of Appeals, of 12 January 2017 on the grounds that the Applicant did not exhaust legal remedies within the employing institution.

The third lawsuit (administrative conflict), against the IOBCSK

25. On 3 April 2017, the Applicant again filed a lawsuit with the Basic Court in Prishtina, against IOBCSK Decision A/02/332/2016, of 3 March 2017, on the grounds of violation of substantive and procedural law, requesting the annulment of the IOBCSK Decision on the grounds of violations of the provisions of the procedural law.

26. On 17 July 2018, the Basic Court in Prishtina, Department of Administrative Matters, by Judgment A. No. 598/2017, rejected the statement of claim of the Applicant for annulment of the Decision [A/02/332/2016] of the IOBCSK, of 3 March 2017, on the grounds that the legal remedies have not been exhausted, as provided by Article 130 of the Law No. 02/L-28 on Administrative Procedure and Article 12, paragraph 3.1 of Law No. 03/L-192 on the IOBCSK.

27. On 13 August 2018, the Applicant filed an appeal with the Court of Appeals against Judgment A. No. 598/2017 of the Basic Court of 17 July 2017, alleging: 1) erroneous determination of factual situation, 2) erroneous application of substantive law and 3) essential violation of procedural provisions.

28. On 28 February 2019, the Court of Appeals, by Judgment AA. No. 466/2018, rejected as ungrounded the Applicant's appeal and confirmed as right the Judgment of the Basic Court in Prishtina, A. No. 1518/2014, of 17 July 2018, reasoning: "*...the court of first instance in reviewing the claim of the claimant has produced sufficient evidence which proves that the allegations of the claimant are ungrounded. Because the same are contrary to the factual situation determined by the responding body, and the first instance court, and contrary to the evidence in the case file. Because the claimant with no evidence has not substantiated his allegations, while the evidence presented is not influential for a different decision of this administrative legal matter*".

29. On 13 August 2018, the Applicant filed a request with the Supreme Court for an extraordinary review of Judgment AA. No. 466/2018 of the Court of Appeals, of 28 February 2019, requesting the approval of his statement of claim, that the case be remanded for retrial or to modify the judgments of the courts of lower instance.

30. On 26 June 2019, the Supreme Court, by Judgment [ARJ-UZPV. No. 85/2019, rejected as ungrounded the Applicant's request for extraordinary review of court decisions, on the grounds that: "*...the allegations in the claimant's request for an extraordinary review of the court decision are ungrounded, because they do not affect the determination of a factual situation other than what the second instance court established. According to this court, the challenged judgment of the second instance court is clear and understandable. In the reasoning of the challenged judgment are given sufficient reasons for the decisive facts, which are also accepted by this court. The court finds that the substantive law has been applied correctly and that the law has not been violated to the detriment of the claimant*".

Relevant legal provisions

LAW No. 03 / L-006 ON CONTESTED PROCEDURE

Article 203

Second instance court can change the decision of the first instance court to the prejudice of the complaining party if only it complained and not the opposing party.

CRIMINAL No. 04/L-123 PROCEDURE CODE

Article 395
The Restriction Reformatio in Peius

Where only an appeal in favour of the accused has been filed, the judgment may not be modified to the detriment of the accused with respect to the legal classification of the offence and the criminal sanction imposed.

Applicant's allegations

31. The Applicant alleges that the challenged decisions of the regular courts violated his rights guaranteed by Articles 31, 49 and 55 of the Constitution, Article 6 and Article 1 of Protocol No. 1 of the ECHR.

(i) Allegations regarding violations of Article 31 of the Constitution and Article 6 of the ECHR

32. The Applicant alleges that the regular courts violated his right to fair and impartial trial on the grounds of: i. the participation of a judge in two court instances, namely in the first instance and the second instance, an allegation that raises the violation of the principle of the court established by law, ii. violation of the principle *reformatio in peius* and the principle of the adjudicated case (*res judicata).*

a. *Applicant's allegation of "impartiality"*

33. The Applicant alleges that: *"...in rendering the appealed judgment of the Court of Appeals AA. m. 466/2018 of 28.02.2019, Judge D.H. participated, who had to be expelled as the latter in the same case rendered Decision A. No. 1518/2014, as a judge in the procedure conducted in the court of first instance. This violation constitutes such a violation for which according to Article 182.2 item c) the decision must always be annulled regardless of whether such a decision is fair or unfair".*

b. *violation of principle "reformatio in piues"*

34. The Applicant further alleges that *"Judgment AA. m. 466/2018 of the Court of Appeals of 28.02.2019 and Judgment A. No. 598/2017 of the Basic Court Prishtina - Department for Administrative Affairs of 17.07.2018, are also included in violation of Articles 194 and 213 of the Law on Contested Procedure, on the grounds of violation of the principle "reformatio in peius" as one of the basic principles of the LCP, because: "... according to this principle the party cannot be put in a worse legal position with the subsequent decision according to the subsequent procedure that takes place upon his request or appeal".*

c. *violation of the principle of the adjudicated matter (res judicata)*

35. The Applicant also alleges that: *"...the first instance court has taken a position on this issue and assessed that: the respondent body has not correctly applied the legal provisions ...when by challenged decision of 22.07.2014 rejected the appeal of 07.07.2014, for non-exhaustion of legal remedies within the employment body". This Judgment was upheld by Judgment AA. No. 324/2016 of the Court of Appeals, of 12.01.2017, therefore, this case has received a final epilogue and cannot be addressed once again by either the administrative body or the court as this case adjudicated cases "res judicata".*

(ii) Alleged violations of Article 1 of Protocol No. 1 to the ECHR

36. The Applicant links the violation of property rights with his right to compensation of the difference of the basic salary based on Government Decision No. 02/151, claiming that this compensation, namely this right derives from Article 1 of Protocol No. 1 of the Convention. The Applicant further argues that based on this decision he has created "legitimate expectations" for the payment of salary increase while his request is considered a property claim as it meets the concept of property under Article 1 of Protocol no. 1 to the Convention, referring to the cases of ECtHR *Pine Valley Developments Ltd and others v. Iceland* and *Broniowski v. Poland.* Furthermore, in relation to this allegation, the Applicant adds that:

> *"The right to enjoy the salary is an acquired right that represents a legal doctrine according to which a right acquired on the basis of previous legal norms cannot be limited by laws or acts issued later. The doctrine of the acquired right is closely related to the principle of legal certainty, therefore based on the case law of the ECtHR, a right which was acquired under previous laws cannot be changed by a subsequent decision of the Administrative Authority and on this basis the previously recognized rights of individuals (legitimate expectations) must be respected".*
>
> *In case of Grudic v. Serbia, which can be analogously applied in this case, the ECtHR considered inadmissible the argument of the Government of Serbia that not all legal remedies have been exhausted on the grounds that no administrative remedy within the competence of the Administrative authorities will was effective on this issue, therefore, it could not be expected from the Applicants to claim resolution of cases in any other forum.*
> *Meanwhile, on the merits of the case, the Court began by recalling that Article 1 of this Protocol does not guarantee the right to acquire property nor the right to a pension (in this case read page) of a certain amount; but, nevertheless, when a state has in force the legislation that provides payment as a right to a pension - that legislation should be considered to generate a property interest, which falls within the scope of Article 1 of Protocol No. 1. Therefore, the reduction or non-extension of the pension may constitute an interference with the peaceful enjoyment of possessions. When the Court assessed the domestic legislation on these pensions, it did not notice that there was any provision which would explain why the payment of these pensions was interrupted.*
> *(...)*
> *Whereas from the Decision of the Government of Kosovo No. 02/151 there is no provision that restricts or excludes the claimant from the enjoyment of this right, therefore, the claimant gained the right to increase the payment according to the challenged decision and this right cannot be denied because it contains property and is the right guaranteed under the ECHR - Article 1 of Protocol 1. Also, the MPA secretary himself in the email sent through the official email does not challenge at any time the right to a salary increase of 30% based on the Government Decision No. 02/151, but requires the institution to ensure that it has sufficient funds (money) in order to execute the payment of 30%".*

37. In addition, the Applicant alleges a violation of Articles 49 and 55 of the Constitution.

38. Finally, the Applicant requests the Court to:

> *"ANNUL Judgment of the Supreme Court with number ARJ-UZPV. no. 85/2019 of 26.06.2019 and the judgments of the courts that were rendered before the decision of the Supreme Court, and the case be remanded to the first instance court for reconsideration and retrial or that the Constitutional Court decides on merits and finds constitutional violations, in which case the right to increase the salary has been denied by the Kosovo Prosecutorial Council/Special Prosecution of Kosovo for the realization of compensation of the difference in income in the amount of 30% in gross income, starting from 15.04.2011, until the final payment".*

Admissibility of the Referral

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

40. 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".*

41. In addition, the Court also refers to the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

> 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...".

42. With regard to the fulfillment of the admissibility criteria, as mentioned above, the Court finds that the Applicant is an authorized party and challenges an act of public authority, namely Judgment [ARJ-UZPV. No. 85/2019] of the Supreme Court of 26 June 2019, after having exhausted the legal remedies in the formal sense. The Applicant also clarified the fundamental rights and freedoms that he claims to have been violated, in accordance with Article 48 of the Law, and submitted the Referral within the time limit set out in Article 49 of the Law.

43. However, in addition, the Court examines whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria], namely paragraphs 1 (b) and 2 of Rule 39 of the Rules of Procedure, which stipulates:

1) The Court may consider a referral as admissible if:

[...]
(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted;
[...]

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".

44. The Court recalls that the Applicant alleges that the challenged Decision violates his rights guaranteed by Articles 31, 49 and 55 of the Constitution and Article 6 and Article 1 of Protocol No. 1 to the Convention.

45. In this context and in the following, the Court will address the Applicant's allegations concerning (i) the alleged violations of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR; (ii) the alleged violations of Article 1 of Protocol No. 1 of the ECHR, and the alleged violations of Articles 49 and 55 of the Constitution, applying the case law of the European Court of Human Rights (hereinafter: the ECtHR), on the basis of which the Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

(i) With regard to allegations of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR

46. With regard to the violation of the right to a "fair and impartial trial", the Court notes that the Applicant raises three allegations, relating to: a) impartiality in decision-making; b) violation of the principle *reformatio in peius*; and c) violation of the principle of the adjudicated matter (*res judicata).*

a) Regarding "impartiality in decision-making"

47. The Court first recalls that any allegation raised in the Referral by the Applicants before the Court requires a concrete response from the Court, provided that the Applicants have met the admissibility criteria established in the Constitution, the Law and the Rules of Procedure.

48. One of these criteria is that of exhaustion of effective legal remedies. The Court recalls that the criteria for assessing whether this obligation has been fulfilled are well established in the case law of the Court and that of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, the Court based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

49. In this regard, the Court notes that it already has a consolidated case law with regard to the exhaustion of legal remedies in the formal aspect (See, *inter alia*, the general principles regarding the exhaustion of legal remedies in the cases of Court KI108/18, Applicant *Blerta Morina*, paragraphs 152-163 and KI147/18, Applicant *Arbër Hadri*, paragraphs 39-50). But, based on the ECtHR case law, it has also built the case-law regarding exhaustion of legal remedies in the substantial aspect. (See, in this context, *inter alia* the case of Court KI154/17 and KI05/18, Applicants *Basri Deva, Aferdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility of 13 August 2019, paragraphs 90-96).

50. Therefore, the Court reiterates that the exhaustion of legal remedies includes two important elements: (i) the exhaustion in the formal-procedural aspect, which implies the possibility of using a legal remedy against an act of a public authority, in a higher instance with full jurisdiction; and (ii) exhausting the remedy in a substantial aspect, which means reporting constitutional violations in "*substance*" before the regular courts, so that the latter have the opportunity to prevent and correct the violation of human rights protected by the Constitution and the ECHR. The Court considers as exhausted the legal remedies only when the Applicants, in accordance with applicable laws, have exhausted them in both aspects. (See also the case of the Constitutional Court, KI71/18, Applicants *Kamer Borovci, Mustafë Borovci dhe Avdulla Bajra*, Resolution on Inadmissibility of 21 November 2018, paragraph 57; KI119/17, Applicant *Gentian Rexhepi*, Resolution on Inadmissibility, of 3 May 2019, paragraph 73; and case KI154/17 and 05/18, cited above, paragraph 94).

51. The substantive aspect of the exhaustion of legal remedies is established in the case law of the ECtHR and of the Court and implies that allegations of a violation of the ECHR and the Constitution must have been raised "*at least in substance*" before the regular courts so that the latter have been given the opportunity to address the allegations of relevant violations. (see the

Constitutional Court, case KI01/19, Applicant: *Fatos Rizvanolli*, Resolution on Inadmissibility, of 2 September 2020, paragraphs 96-100 and references cited in this case).

52. In this regard, the ECtHR, aslo establishes that the Applicants cannot be exempted from this obligation, even if the regular courts may have been obliged to examine the relevant allegations itself (*ex officio*). (See, moreover, on the exhaustion of legal remedies in the substantial aspect, the ECtHR Guide on Admissibility Criteria of 30 April 2019, Part I. Procedural Grounds for Inadmissibility, A. Non-Exhaustion of Legal Remedies, 2. Application of the rule d. Complaint raised in substance).

53. In addition, the ECtHR maintains the position that, in so far as there exists a legal remedy enabling the regular courts to address, at least in substance, the argument of violation of a right, it is that remedy which should be used. If the complaint presented before the Court has not been put, either explicitly or in substance, to the regular courts when it could have been raised in the exercise of a legal remedy available to the applicant, the regular courts have been denied the opportunity to address the issue, which the rule on exhaustion of legal remedies is intended to give. (See, ECtHR case, Jane *Nicklinson v. The United Kingdom* and *Paul Lamb v. United Kingdom*, cited above, paragraph 90 and the references therein; see also the case of the Court KI 119/17, cited above, paragraph 72).

54. From the above, in the circumstances of the present case, the Court must further assess whether beyond the exhaustion of legal remedies in the formal aspect, which is the case in the circumstances of the present case, the legal remedies have been exhausted in a substantial aspect, namely if the allegations of the Applicant, in substance, have also been brought before the regular courts.

55. In this regard, the Court first recalls that the Applicant alleges that in the Court of Appeals (AA. m. 466/2018, 28 February 2019), Judge D.H., who participated as a judge in the Court of Appeals, was part of the decision-making in the first instance in Decision A. No. 1518/2014, of 19 July 2016, and this fact according to him, constitutes a violation of Article 182.2 point c) of the Law on Contested Procedure and consequently a violation of Article 31 of the Constitution and Article 6.1 of the ECHR.

56. In the present case, the Court notes that after being served with the Judgment of the Court of Appeals, AA. m. 466/2018, of 28 February 2019, the Applicant, against the latter, had filed a request for extraordinary review with the Supreme Court. In this regard, the Court finds that the Applicant was aware of the participation of Judge D. H. in the decision-making of the Court of Appeals, which decided on his appeal of 13 August 2018, before addressing the request to the Supreme Court. However, from the case file and the content of the challenged Decision of the Supreme Court, it is clear that the Applicant did not raise as a claim before the Supreme Court the issue of violation of the right to fair and impartial trial, in the context of " impartial trial ", before raising it directly in the Constitutional Court.

57. In this respect, the Court considers that the Applicant has failed to prove that he has exhausted all effective legal remedies in a substantive aspect, which means that the declaration of a violation of the right to fair and impartial trial should have been raised as an issue before the Supreme Court, so that the Supreme Court could have the opportunity of correcting the violation of the Constitution. The respect for the principle of subsidiarity requires precisely allowing the necessary way and space for the regular courts to perform their duty of direct implementation of the Constitution and the ECHR.

58. The Court wishes to recall that an exception to the obligation to exhaust legal remedies comes into play only when the Court is satisfied that the use of the relevant legal remedy may not be effective in providing a reasoned response to a claim of violation of the rights, guaranteed by the Constitution. In the present case, the legal remedy in the Supreme Court was exercised by the Applicant himself and his claim was within the scope of Article 31 of the Constitution and Article 6.1 of the ECHR, which obliges the regular courts, according to Articles 53 and 102 of the Constitution, to respond to the Applicants at all stages of the proceedings, until the completion of the case. However, the Applicant missed such an opportunity, and did not raise the violation of "impartiality" in the Supreme Court.

59. Therefore, taking into account the fact that this specific allegation of the Applicant was first raised in the Court, it concludes that the Applicant has not given the Supreme Court the opportunity to address this allegation and, in this case, to prevent the alleged violations, which the Applicant raises directly before this Court, without exhausting the legal remedies in their substance. (See, *mutatis mutandis*, case of the Court, KI118/15, Applicant *Dragiša Stojković*, Resolution on Inadmissibility, of 12 April 2016, paragraphs 30-39; and case KI119/17, cited above, paragraph 74).

b) Regarding violation of principle "reformatio in peius"

60. The Court recalls that the Applicant relates the violation of principle of *reformatio in peius* to the fact that: *"...according to this principle the party cannot be put in a worse legal position with the subsequent decision according to the subsequent procedure that takes place according to his request or appeal".*

61. In this context, the Court reiterates that the principle of "*reformatio in peius*" enjoys protection under Article 31 of the Constitution, when this article is interpreted in the light of Article 6 of the ECHR, because it concerns the right of the individual to complain. (see, Constitutional Court, case KI70/18, Applicant: *Alfred Zylfaj*, Resolution of 6 December 2019, paragraph 40).

62. The Court notes that as a principle "*reformatio in peius*" according to the legislation of the Republic of Kosovo is applied as a rule for civil, criminal and administrative matters, when we have in mind Article 63 of Law No. 03/L 202 on Administrative Conflicts, which defines: *"If this law does not contain provisions for the procedures on administrative conflicts, the law provisions on civil procedures shall be used".* However, in the circumstances of this case,

the Court considers that this principle is inapplicable because we do not have the decision on merits of the case where with the previous decisions of the regular courts, namely before 12 January 2017 it was decided in favor of the Applicant and after that date, it was decided to his detriment, because the regular courts and throughout the conducted administrative procedure have never decided on the merits of the case.

63. The fact that the regular courts have remanded the Applicant's case several times to the IOBCSK does not imply that the decisions of the regular courts (before 12 January 2017) were in his favor, as the case had been remanded for retrial to correctly reflect the facts of the case. Subsequently, on 3 March 2017, the IOBCSK by Decision A/02/332/2016, based on the Law on the IOBCSK, found that the Applicant's complaint cannot be addressed on merits, because it does not meet the procedural criteria for review, because the Applicant has not exhausted the legal remedies within the employment body (employer). Consequently, the regular courts finally accepted as correct the finding of the IOBCSK, given in Decision A/02/332/2016, of 3 March 2017. (See, above, the Judgment of the Basic Court in Prishtina, A. No. 598/2017, of 17 July 2018, Judgment of the Court of Appeals, AA. m. 466/2018 of 28 February 2019 and the challenged Judgment of the Supreme Court, ARJ-UZPV No. 85/2019, of 26 June 2019).

64. In addition, the Court notes that viewing the proceedings in entirety, the Applicant was able to adduce the arguments and evidence he considered relevant to his case at the various stages of those proceedings; he was given the opportunity to challenge effectively the arguments and evidence presented by the responding party; and that all the arguments, viewed objectively, relevant for the resolution of his case were heard and reviewed by the regular courts; that the factual and legal reasons against the challenged decisions were examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in entirety, were fair. (See, *inter alia, mutatis mutandis,* the Constitutional Court, case No. KI118/17, Applicant *Sani Kervan and Others*, Resolution on Inadmissibility of 16 February 2018, paragraph 35; see also, case *Garcia Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 29).

65. The Court further notes that the Applicant merely does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of violation of the right to fair and impartial trial. (see, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see also: the Constitutional Court of the Republic of Kosovo, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution of Inadmissibility of 18 December 2017, paragraph 42).

66. Based on the above, the Court considers that the Applicant's allegation that in his case the right to a fair trial has been violated as a result of violation of the principle *reformatio in peius* on constitutional basis is manifestly ill-founded, pursuant to Rule 39 (2) of the Rules of Procedure and consequently inadmissible.

c) With regard to violation of the principle of the adjudicated matter (res judicata).

67. With regard to this allegation, the Court recalls that the Applicant alleges that his case received a final epilogue by Judgment AA. No. 324/2016 of the Court of Appeals, of 12 January 2017, therefore this case cannot be addressed once again by either the administrative body or the court, as this case according to him, constitutes an adjudicated matter/*res judicata*.

General principles

68. The Court initially recalls that the right to fair and impartial trial also requires that an issue that has become *res judicata* must be regarded as irreversible, in accordance with a principle of legal certainty (see case of ECtHR *Brumărescu v. Romania,* application no. 28342/95, Judgment of 28 October 1999, paragraph 61; see, also, case of the Court KI 122/17, Applicant: *Ceska Exportni Banka A.S.*, Judgment of 30 April 2018, paragraph 149, and case KI67/16, Applicant: *Lumturije Voca*, Resolution on Inadmissibility of 4 January 2017, paragraph 87, see also case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 42).

69. The ECtHR, regarding the importance of respecting the principle of legal certainty found that "*one of the fundamental principles of the rule of law is the principle of legal certainty, which requires, inter alia, that where the courts have finally decided a case, their decision should not be called into question*" (see, *mutatis mutandis*, case of the ECtHR, *Brumarescu v. Romania*, application no. 28342/95, Judgment of 28 October 1999, paragraph 61, see, also cases of the Constitutional Court, KI89/13, Applicant: *Arbresha Januzi*, Judgment of 12 March 2014, paragraph 83, KI122/17, Applicant: *Ceska Exportni Banka A. S.*, Judgment of 30 April 2018, paragraph 149, case KI67/16, Applicant: *Lumturije Voca*, Resolution on Inadmissibility, of 4 January 2017, paragraph 87, and case KI94/13, Applicant: *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 14 April 2014, see also case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 43).

70. In this regard, the Court finds that its case law as well as the case law of the ECtHR mentioned above, clearly and explicitly, state that the right to a fair trial, according to Article 31 of the Constitution and Article 6 of the ECHR includes the principle of legal certainty, which includes the principle that final court decisions which have become *res judicata* must be respected and cannot be reopened or become the subject of appeals (see case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 44).

71. Therefore, in the case law of the Court and of the ECtHR, it has been emphasized that one of the fundamental principles of the rule of law is the principle of legal certainty, which assumes *the respect of judicial decisions that have become, res judicata* (see case *Brumarescu v. Romania*, application no. 28342/95, Judgment of 28 October 1999, paragraph 62). According to the ECtHR, "*no party is entitled to seek a review of a final and binding decision*

merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, *inter alia*, ECtHR cases *Ryabykh v. Russia*, no. 52854/99, ECtHR, Judgment of 24 July 2003, paragraph 52, and *Sovtransavto Holding v. Ukraine*, application no. 48553/99, paragraphs 72; see also cases of the Court case no. KI55/18, Applicant *Fatmir Pirreci*, the Constitutional Court, Judgment of 16 July 2012, paragraph 42 and case no. KI94/13, Applicant *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 14 April 2014, see also case KI127/19 Applicant: *Benazir Berisha*, Resolution of 13 May 2020, paragraph 45)·

Application of the abovementioned principles in the circumstances of the present case

72. In this regard, in the Applicant's case the Court notes that no decision of the public authorities has decided on the merits of the case. In order to examine the merits of a lawsuit/appeal, the procedural applicable laws require the fulfillment of certain procedural criteria which are a precondition for the examination of a legal case on substance.

73. The Court recalls that the Applicant's allegation of a violation of the principle *res judicata* relates to the decisions of the IOBCSK and of the regular courts after 12 January 2017, when the Court of Appeals upheld the Judgment of the Basic Court in Prishtina, of 19 July 2016, by which it was decided to remand the case for retrial to the IOBCSK, with reasoning: "*...The court, as a rule, decides on the administrative conflict based on the factual situation by the administrative bodies, while from the decision challenged in the lawsuit, it cannot be understood how the factual situation was determined by the respondent. In this regard, the court obliges the responding body, within thirty (30) days, in the re-procedure to act according to the remarks given in this judgment and after correcting the mentioned flaws, to render a fair decision based on law. The mentioned remarks are obligatory for the responding body, based on Article 65 of the Law on Administrative Conflicts*".

74. The Court notes that the Basic Court in Prishtina did not decide on the merits of the lawsuit, but on remanding the case for retrial to the IOBCSK, which on 3 March 2017, by Decision A/02/332/2016, dismisses, as inadmissible, the Applicant's complaint, due to non-exhaustion of legal remedies, within the employment institution. This finding of the IOBCSK was confirmed by the Basic Court in Prishtina, by Judgment A. No. 598/2017, of 17 July 2018, with reasoning:

> *"The court after administering the evidence as above has concluded that it is not disputed that by Decision No. 02/151 of the Government of the Republic of Kosovo, of 06.01.2011, the salaries for Civil Servants have been increased by 30% above the basic salary, excluding allowances. But the fact that the complainant has not previously filed a complaint with the employment body and after the claimant has received the contract on 15.04.2011, while the act of appointment receives from the Office of the Prosecutor on 26.02.2013 in the position of Expert, civil servant of career with fixed salary, without any defined coefficient. In this situation*

ascertained from the case file, the court, after assessing the evidence one by one, has carefully concluded that the claims of the claimant that he is injured in terms of the implementation of the above decision of the Government of the Republic of Kosovo (since the latter was recruited to assist the Anti-Corruption task force, with a fixed salary which is higher than that of civil servants and where the coefficient is not determined and for this fact here the claimant on the occasion of the establishment of employment on 15.04. 2011 was aware, therefore, based on this reason, the court assessed and decided as in the enacting clause of this judgment".

75. The aforementioned Judgment of the Basic Court was subsequently upheld by the Court of Appeals, by Judgment AA. No. 466/2018 of 28 February 2018, which reasons the rejection of the Applicant's appeal as ungrounded.

"With regard to the appealing allegations that the first instance court committed essential violation of the provisions of the procedure, this allegation does not stand, as the court reviewed the lawsuit, first sent the lawsuit to the respondent's representative in response to the lawsuit, then scheduled the hearing of the main trial, has administered sufficient evidence, which means that during the assessment the first instance court did not violate the provisions of the LAC; and LCP.
As for the appealing allegations of erroneous determination of the factual situation, that the appealed judgment does not contain reasons for the decisive facts, and that in the same decision the notary facts which were not presented in the appeal are substantiated, nor earlier in the request, or in any other document that is the subject of this lawsuit. These appealing allegations are ungrounded, as the first instance court in examining the claimant's lawsuit has produced sufficient evidence which proves that the appealing allegations are ungrounded. Because the latter are contrary to the factual situation established by the respondent body and the first instance court, and contrary to the evidence in the case file. Because the claimant with no evidence has not substantiated his allegations, while the evidence presented is not influential for a different decision of this administrative legal issue".

76. Furthermore, the Court notes that the Judgment of the Court of Appeals of 28 February 2018 was upheld by the Supreme Court, with the following reasoning:

"Taking into account the undeniable facts mentioned above and based on the above mentioned provisions of Article 130 of Law no. 02/L-28 (On Administrative Procedure), and Article 12. subparagraph 3.1 of the Law on the Independent Oversight Board for the Civil Service of Kosovo, this court found that the claimant filed a complaint with the respondent, the Independent Oversight Board for the Civil Service of Kosovo, without first addressing the Dispute Resolution and Complaints Commission to the Prosecutorial Council or any other body of the Prosecutorial Council. From what has been said, this court has found that the courts of lower instances acted correctly when they rejected as ungrounded the statement of claim of the claimant requesting the annulment of the decision of the respondent Independent Oversight Board for the Civil Service of Kosovo,

no. 02/332/2016 of 01.03.2017. In the opinion of this court, the respondent, in the foreseen legal procedure, acted correctly when it rejected as inadmissible the appeal of the claimant Alban Miftaraj. From the above, the Supreme Court found that the allegations in the claimant's request for extraordinary review of the court decision are ungrounded, because they do not affect the determination of a factual situation other than what the second instance court established. According to this court's assessment, the challenged judgment of the second instance court is clear and comprehensible. In the reasoning of the challenged judgment are given sufficient reasons for the decisive facts, which are also accepted by this court. The court finds that the substantive law has been applied correctly and that the law has not been violated to the detriment of the claimant".

77. The Court, based on the above, notes that the regular courts have not in fact decided on the merits of the claim but on the procedural criteria of the admissibility of the lawsuit, therefore in the circumstances of the present case we are not dealing with interference in the "adjudicated matter" as claimed by the Applicant, because in no procedure has been decided on the merits of the lawsuit of the Applicant, whether or not he would be entitled to a salary increase of 30%, according to Government Decision No. 02/151. As such, the Court on constitutional basis also considers this allegation of the Applicant to be manifestly ill-founded.

(ii) With regard to the alleged violation of Article 1 of Protocol no. 1 of the ECHR

78. The Court notes that the allegation of violation of property rights by the Applicant is related to the "acquired" rights according to Decision no. of the Government and the "legitimate expectations" from this decision on increase of salary by 30% (thirty percent), citing the case law of the ECtHR, namely in the cases *Pine Valley Developments Ltd and others v. Iceland* and *Broniowski v. Poland* , claiming that the latter are applicable in his case.

79. The Court first recalls the content of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the Convention, which in relation to property rights establish:

Article 46
[Protection of Property]

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.

[...]

ECHR
Protocol No. 1 Article 1 [Protection of Property]

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

General principles

80. As it pertains to the rights guaranteed and protected by Article 46 of the Constitution, the Court first notes that the right to property under paragraph 1 Article 46 of the Constitution guarantees the right to own property; paragraph 2 of Article 46 of the Constitution defines the method of use of the property, by clearly specifying that it's use is regulated by law and in accordance with the public interest and in paragraph 3, it guarantees that no one can be deprived of property in an arbitrary manner, while also determining the conditions under which property can be expropriated. (see, *mutatis mutandis*, Case KI50/16, Applicant *Veli Berisha and others*, Resolution on Inadmissibility of 10 March 2017, paragraph 31).

81. As to the rights guaranteed and protected by Article 1 of Protocol No. 1 of the ECHR, the Court notes that the Article 1 of Protocol No. 1 of the ECHR comprises three distinct and interrelated rules: the first rule, enounces the principle of peaceful enjoyment of property; the second rule covers deprivation of possessions and subjects it to certain conditions; and the third rule recognizes that the States are entitledto control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose (see *mutatis mutandis*, ECtHR cases: *Sporrong and Lonnrot v. Sweden*, Judgment of 23 September 1982, appeal no. 7151/75; 7152/75, paragraph 61; *James, Wells and Lee v. The United Kingdom*, complaints no. 25119/09, 57715/09 and 57877/09, 18 September 2012; *Sargsyan v. Azerbaijan*, complaint no. 40167/06, 16 June 2015; and *Belane Nagy v. Hungary*, complaint no. 53080/13, dated 13 December 2016).

82. The Court recalls that the three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule. (See, *mutatis mutandis*, the Judgment of the ECtHR of 21 February 1986, *James and others v. UK*, no. 8793/79, paragraph 37).

83. With regard to the first rule, the ECtHR has consistently found that the concept of "possessions" which is included in the first part of Article 1 of Protocol No. 1 of the ECHR is an autonomous concept, encompassing both "existing possessions" and claimed possessions, in respect of which a claimant may argue that he or she has at least a "legitimate expectation". "Possessions" under this concept include *"in rem"* and *" in personam"*, rights, such as immovable, movable property and other property interests.

84. The autonomous concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting "assets" can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. In each case the issue that needs to be examined is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No 1 of the ECHR (see, *Depalle v. France* [GC], paragraph 62; *Anheuser-Busch Inc. v. Portugal* [GC], paragraph 63; *Öneryıldız v. Turkey* [GC], paragraph 124; *Broniowski v. Poland* [GC], paragraph 129; *Beyeler v. Italy* [GC], paragraph 100; *Iatridis v. Greece* [GC], paragraph 54; *Centro Europa 7 SRL and di Stefano v. Italy* [GC], paragraph 171; *Fabris v. France*[GC], paragraphs 49 and 51; *Parrillo v. Italy* [GC], paragraph 211; *Béláné Nagy v. Hungary* [GC], paragraph 76).

a) Legitimate expectation

85. The concepts of "possessions" and "legitimate expectations" have a central place in the interpretation of property rights guaranteed by the ECHR and further developed by the case law of the ECtHR. On the other hand, "legitimate expectations" can result in "possessions". Although Article 1 of Protocol No. 1 of the ECHR applies only to a person's existing property and does not create the right to acquire property. In certain circumstances, a "legitimate expectation" of acquiring a property may also enjoy the protection of Article 1 of Protocol No. 1. 1 of the ECHR. (See ECtHR Judgment of 13 December 2016, *Béláné Nagy v. Hungary*, no. 53080/13, paras. 73 and 75, ECtHR Judgment of 22 June 2004, *Broniowski v. Poland*, no. 34443/96, para. 129). Further, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Anheuser-Busch Inc. v. Portugal* [GC], paragraph 65; *Centro Europa 7 SRL and di Stefano v. Italy* [GC], paragraph 173; *Béláné Nagy v. Hungary* [GC], paragraph 75; *Karachalios v. Greece* (dec), paragraph 46; *Radomilja and Others v. Croatia* [GC], paragraph 149).

Application of general principles in the circumstances of the present case

86. The Court, based on the general principles of the right to property and after analyzing the Applicant's allegations in conjunction with the allegations of violation of the right to property, considers that the cases the Applicant referred to are not applicable in the circumstances. of the present case, because in the present case we are not dealing with a property right acquired by a final court decision nor with a legitimate expectation due to the fact that the Applicant does not have a claimed right that he is entitled to 30% increase in basic salary (see, similar to the ECtHR case *Kopecký v. Slovakia* [GC], the principle set out in paragraph 52).

87. The Court underlines above that Article 1 of Protocol No. 1 of the ECHR applies only to a person's existing property and does not create the right to acquire

property. It is by no means disputable that the salary as a material good within the meaning of Article 1 of Protocol 1 to the ECHR generates a property interest. In the present case, the Applicant considers the salary increase of 30% as a property right, based on Government Decision No. 02/151, claiming that his non-inclusion in the list of benefits from the 30% salary increase has deprived him of the right to property. However, the Court considers that such a claim would be well-founded if the right to benefit from the 30% salary increase was confirmed in favor of the Applicant by a final decision of the regular courts.

88. In this regard, the Court reiterates that the regular courts have not decided on the substance of the Applicant's claim, whether he would be entitled to a 30% salary increase or not, because in order to reach such an assessment according to the applicable laws, the legislator has foreseen the fulfillment of some procedural criteria, before a request/complaint is examined on its basis. In the present case, the Court notes that no administrative or court decision has substantially examined the Applicant's case, whether he was entitled to this increase or not, because he had not exhausted the legal remedies within the employment institution, as required by the provisions of the applicable laws.

89. Therefore, in the circumstances of this case, it is not a question of a property right acquired or confirmed by a final court decision which has not been implemented by the public authorities, for which the denial of an acquired right, in accordance with the requirements of Article 1 of Protocol No. 1 of the ECHR would be considered a violation of property rights.

90. The Court in this regard states that the Applicant is merely dissatisfied with the outcome of the proceedings before the regular courts, therefore, his dissatisfaction cannot in itself raise an arguable claim of violation of the fundamental rights and freedoms guaranteed by the Constitution (see, case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).

91. In this context, the Court finds that the Applicant's allegation of violation of the right to property is manifestly ill-founded based on the reasons above.

(i) With regard to allegations of violations of Articles 49 and 54 of the Constitution

92. In addition, the Court notes that the Applicant alleges that the challenged Decision also violates his rights guaranteed by Articles 49 and 54 of the Constitution. In the present case, the Applicant only mentions the respective Articles, but does not justify with a single word how the challenged Decision violates the constitutional rights under Articles 32 and 54, as well as Article 1 of Protocol No. 1. of the ECHR. In this regard, the Court recalls that it has consistently emphasized that the mere mentioning of articles of the Constitution and the ECHR is not sufficient to build a substantiated allegation of a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide substantiated allegations and convincing arguments (see, in this context, the cases of the Constitutional Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, paragraph 33;

KI187/18 and KI 11/19, Applicant: *Muhamet Idrizi* Resolution on Inadmissibility, of 29 July 2019, paragraph 73, and most recently case KI125/19 Applicant: *Ismajl Bajgora*, Resolution on Inadmissibility, of 11 March 2020, paragraph 63).

93. Therefore, with regard to these allegations, the Court in accordance with its case law, declares the Applicant's Referral as manifestly ill-founded and consequently inadmissible.

Conclusion

In sum, with regard to the allegations of violation of the rights guaranteed by the Constitution and the ECHR by the public authorities, the Court finds that the Referral:

i. in relation to the allegation of violation of Article 31 of the Constitution, namely the allegation of "impartiality in the trial" must be declared inadmissible in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (a) of the Rules of Procedure , due to non-exhaustion of legal remedies in the substantive aspect;

ii. with regard to the allegation of a violation of the "*reformatio in peius*" principle, it must be declared manifestly ill-founded, in accordance with Rule 39 (2) of the Rules of Procedure, because the Applicant has not sufficiently substantiated his allegation of a violation of this principle;

iii. in relation to the allegation of a violation of the principle of the adjudicated case (*res judicata*), it must be declared manifestly ill-founded, in accordance with Rule 39 (2) of the Rules of Procedure, as it has not been confirmed that the courts interfered with and reopened "the adjudicated case";

iv. in relation to the alleged violation of Article 1 of Protocol No. 1 [Protection of Property] of the ECHR, it must be declared manifestly ill-founded, in accordance with Rule 39 (2) of the Rules of Procedure; and

v. with regard to the allegation of violation of Articles 49 and 54 of the Constitution, it must be declared manifestly ill-founded, in accordance with Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 39 (1) (b), 39 (2), and 59 (2) of the Rules of Procedure, on 10 November 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**

Safet Hoxha Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.