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

Prishtina, on 5 January 2021
Ref. no.:RK 1684/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI144/18

Applicant

Jashar Krasniqi

Constitutional review of Judgment Rev. No. 198/2018 of the Supreme Court of Kosovo, of 2 July 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Jashar Krasniqi (hereinafter: the Applicant) from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [Rev. No. 198/2018] of the Supreme Court of Kosovo of 2 July 2018 in conjunction with Judgment [Ac. No. 4148/14] of the Court of Appeals of 28 March 2018, the Decision [Ac. No. 3011/2012] of the Court of Appeals of 6 June 2013, Decision [C1. No. 425/2003] of the Municipal Court of 6 January 2005, Decision [C1. No. 408/2003] of the Municipal Court of 23 March 2006 and the Decision [No. 819/03] of the University of Prishtina, Faculty of Mathematical-Natural Sciences of 13 October 2003.

Subject matter

3. The subject matter is the constitutional review of the challenged decisions which allegedly violate the Applicant's right to fair and impartial trial and the right to work.

Legal basis

4. The Referral is based on Article 113 (1) and (7) [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: 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 20 September 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 9 October 2018, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

7. On 11 December 2018, the Court notified the Applicant about the registration of the Referral.

8. On 11 January 2019, a copy of the Referral was sent to the Supreme Court.

9. On 17 January 2019, the Court requested the Basic Court in Prishtina to submit the complete case file of Referral No. KI144/18.

10. On 23 January 2019, the Basic Court in Prishtina submitted the complete case file of Referral No. KI144/18.

11. On 23 September 2020, the Review Panel considered the case and decided to postpone the decision on this case for another session.

12. On 9 December 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

13. The origin of this case is related to the fact that the Applicant was dismissed by decision of the Dean of the Faculty of Mathematical and Natural Sciences of the University of Prishtina on the grounds of serious violation of work duties, namely abusing position and authority – falsifying document. The Applicant was accused of issuing a forged transcript of grades for student IR while at a later stage he was accused of another charge accepting bribes of 80 euro from student FI.

14. On 13 October 2003, the Dean of the Faculty of Mathematical and Natural Sciences (hereinafter: FMNS-UP) (Decision 819/03) terminated the employment contract of the Applicant on the grounds of serious violation of work duties, namely the abusing position and authority – falsifying document. Until the issuance of the decision to terminate the contract, the Applicant for 33 years was assigned to the work and work duties "Student Affairs Officer" at the faculty in question.

15. From the documents included in the Referral, it results that on an unspecified date, R.R. the father of student IR had given a written statement to the Dean of the FMNS-UP. That statement stated that the Applicant submitted to RR the following documents: (i) duplicate index with one passed exam; (ii) certificate no. 955 and 24 April 2003; (iii) the certificate with an exam passed. RR stated, *inter alia*, that the Applicant did not commit "any falsification" and that the index and certificate of grades sent for verification with additional exams were not issued by the FMNS. RR had added that the documents in question were forged in other ways that as he had expressed "I do not know either".

16. The aforementioned decision of the Dean of the FMNS in the reasoning part read:

> *"1. Jashar Krasniqi employed at the Faculty of Natural Sciences, in job and job duties officer for student issues, is suspected of serious breach of work duties, certifying, signing and stamping six grades in Index no. 955 (Duplicate) of Ilir (Ruzhdi) Rexhepi, student of the Faculty of Mathematical-Natural Sciences-Branch of Chemistry. (Photocopy of index no. 955 duplicates).*
>
> *2. On 24.04.2003 it issued the Trasncript of grades No. 955 of 24.04.2003 for the exams not passed; has signed this document and stamped it with the student service stamp (Photocopy of Certificate No. 955 of 24.04.2003).*
>
> *Based on File no. 955 of the student Ilir Rexhepi, and Certificate no. 955 of 01.10.2003 it can be seen that the mentioned person has given an exam and that:*

1. Basics of chemical technique 10 (ten) on 05.02.1999, while the other six exams do not appear in the student file, there is no application nor are they recorded in the minutes, whereby it is suspected of a serious violation of the work duties, abusing position and authority – falsifying document".

17. On 18 October 2003, the Applicant filed an appeal against the decision of the Dean of the FMNS with the Board of the University of Prishtina (hereinafter: the UP Board) alleging that it is an unfounded and unlawful decision. In addition, the Applicant added that he did not admit that he was wrong but said that "mistakes can be made" due to physical and mental fatigue at work, that without "proving things" no one can be blamed because the suspicion is not a ground for termination of the contract, and that the decision of the Dean of the FMNS was harsh especially considering, *inter alia*, his 33-year contribution as am officer for student affairs at the FMNS. Also, 26 colleagues of the Applicant in a letter of 20 October 2003 addressed to the UP Board expressing their opinion that the measure of the Dean of FMNS-UP was harsh and urgent and that a more lenient measure could have been taken until the photocopied document is verified.

18. On 26 November 2003, the UP Board (Decision 1/931) rejected the Applicant's appeal as ungrounded and upheld the decision of the Dean of the FMNS. The UP Board, after administering the evidence, confirmed that the Applicant has stamped and signed six (6) non-passed exams and issued a transcript of grades for non-passed exams. In addition, the UP Board stated that the Applicant committed another serious breach of work duties, because he falsified a duplicate index in the name of student FI, accepting bribes in the amount of 80 euro without issuing any payment invoice.

19. On 9 December 2003, the Applicant filed a lawsuit against FMNS-UP in the Municipal Court in Prishtina alleging the annulment and unlawful declaration of the aforementioned decision of the UP Board. The Applicant also requested that the FMNS-UP be obliged to reinstate him to work with all rights deriving from the employment relationship.

20. On 6 January 2005, the Municipal Court in Prishtina (Decision C1. No. 425/2003) dismissed the Applicant's claim on the grounds that it has no jurisdiction to review the claim. The Municipal Court added that the Applicant as a civil servant should seek protection of the violated right in the Independent Oversight Board, as an appellate body.

21. On an unspecified date, the Applicant filed an appeal with the District Court in Prishtina requesting that the challenged decisions be quashed and that the case be remanded for retrial to the first instance court.

22. On 27 May 2008, the District Court in Prishtina (Decision Ac. No. 126/2007) quashed the challenged decisions of the Municipal Court and remanded the case for retrial. The District Court found that the challenged decisions of the municipal court were characterized by essential violation of procedural provisions. The District Court in Prishtina added that the first instance court

must eliminate the procedural flaws while deciding on the Applicant's claim fairly and "meritoriously".

23. On 29 November 2011, the Municipal Court in Prishtina (Judgment C1. No. 263/08) approved the Applicant's statement of claim, annulled the challenged decisions of the Dean of the FMNS and the UP Board and ordered that the Applicant be reinstated to his place of work and be compensated for lost personal income with legal interest. The Municipal Court explained that the judgment was rendered due to the disobedience of the respondent because: (i) the respondent was duly summoned and the decision to bring evidence was duly served; (ii) the grounds of the statement of claim arise from the facts set forth in the claim; (iii) the facts on which the statement of claim is based are not inconsistent with the evidence proposed by the Applicant.

24. On an unspecified date, the FMNS-UP filed an appeal with the Court of Appeals alleging erroneous application of the substantive law, proposing that the appeal be approved as grounded, while the challenged judgment be dismissed as ungrounded or annulled.

25. On 6 June 2013, the Court of Appeals (Decision Ac. No. 3011/2012) approved the appeal of the FMNS-UP, quashed the challenged judgment of the municipal court and remanded the case for retrial to the Basic Court in Prishtina. The Court of Appeals explained that it annulled the judgment of the municipal court because it was characterized by essential violation, and consequently, the conditions for the issuance of a judgment for disobedience were not met.

26. On 30 June 2014, the Basic Court in Prishtina (Judgment C. No. 1483/13) decided: (i) to partially approve the Applicant's statement of claim as grounded, (ii) annulled the decisions of the Dean of the FMNS and the Board of UP, obliged the FMNS to compensate the Applicant for unpaid salaries; and, (iii) rejected the Applicant's statement of claim for reinstatement to the previous job. The Basic Court reasoned: (i) that the challenged decisions are contradictory and ungrounded because in violation of Administrative Direction 2003/2 the Applicant was imposed the most severe measure, termination of employment relationship; (ii) the Applicant was not given the opportunity to face facts nor to present evidence of guilt or innocence; (iii) the Applicant was not given the opportunity to confront student IR; (iv) the respondent (FMNS) did not take into account the statement of RR (father of student IR) which was exculpatory to the Applicant; and, that (v) the Applicant did not issue forged documents as evidenced by the expertise of the expert selected by the Applicant.

27. On an unspecified date, the responding party (FMNS-UP) filed an appeal with the Court of Appeals alleging erroneous application of substantive law proposing that the challenged judgment of the Basic Court be rejected in its entirety as ungrounded.

28. On 2 October 2014, the Applicant filed a response to the above mentioned appeal of the respondent FMNS-UP. The Applicant alleged: (i) the forensic expert found that the signatures that were the subject of dispute were not

original signatures signed by the Applicant; (ii) the statement of witness RR proves that the Applicant has not committed any forgery; and, (iii) the statement of witnesses HT, IK and HK proves that the Applicant returned the amount of 80 euro to student FI.

29. On 28 March 2018, the Court of Appeals (Judgment Ac. No. 4148/14) rejected the Applicant's claim as ungrounded, approved the respondent's appeal (FSMN-UP) and modified the Judgment of the Basic Court C. No. 1483/13, of 30 June 2014. The Court of Appeals in the procedure upon the appeal assessed that the conclusion and legal position of the first instance court is not fair and lawful, as despite the fact that the challenged judgment turns out not to contain essential violations of the provisions of the contested procedure, the factual situation determined by the first instance court, does not correspond correctly with the evidence from the case file, where as a consequence the judgment of the first instance court was taken with erroneous application of the substantive law, for which it modified the appealed judgment and decided as in the enacting clause of that judgment. The Court of Appeals reasoned: that (i) based on Article 35 paragraph 2 item (a) of the Administrative Direction 2003/2 stipulates that employment in the civil service may be terminated by the employment body at its discretion: as a disciplinary measure for serious violation of the code of conduct in accordance with Chapter 7; (ii) the respondent FMNS based on the provisions of Administrative Direction 2003/2 did not need to conduct disciplinary proceedings; and, (iii) that the Applicant in the written statement on 13.10.2010i claimed all the violations challenged by the decision to terminate the employment.

30. On 19 April 2018, the Applicant filed a revision alleging essential violation of the provisions of the contested procedure and erroneous application of substantive law, with a proposal to modify the judgment of the second instance court, so that the judgment of the first instance remains in force.

31. The Applicant complained:

    (i) that the responding party (FSMN-UP) - before imposing the most severe disciplinary measure - has not previously conducted disciplinary proceedings and has not given him the opportunity to present evidence;

    (ii) The Court of Appeals, in the appeal procedure, did not assess the statement of RR (father of student IR), who with moral and material responsibility stated that on behalf of his son IR requested the transcript of grades and that the Applicant provided the certificate with only one exam passed, which confirms the fact that the Applicant did not issue a certificate with forged grades;

    (iii) The Court of Appeals has not assessed at all the expertise of the forensic expert which proved that the Applicant has not issued a transcript with forged grades;

(iv) The Court of Appeals determined the factual situation only by examining the case file and has not directly produced evidence, thus violating the principle of direct hearing of the parties in the contested procedure; and

(v) (as regards the falsification of duplicate index no. 874, the Court of Appeals did not assess the statements of witnesses HK, IK and HT, who stated that 80 euro were taken only to register the semester, for charitable purposes, from student FI who was from Kamenica and to have no expenses coming to Prishtina for the registration of the semester. In addition, the Applicant stated that, in the presence of witnesses, student FI was reimbursed the amount of 80 euro.

32. On 2 July 2018, the Supreme Court (Judgment Rev. No. 198/2018) rejected the revision filed by the Applicant against Judgment Ac. No. 4148/14, of the Court of Appeals, of 28 March 2018 as ungrounded. The Supreme Court assessed: (i) that the second instance court has correctly applied the legal provisions of Administrative Direction no. 2003/2 determining the termination of employment in the civil service; (ii) the statements of witnesses HK, IK and HT are related to the determination of factual situation for which based on Article 214 paragraph 2 of the LCP, the revision cannot be filed; (iii) the allegations of non-assessment of the statement of witness RR and failure to provide reasons for the expertise of the forensic expert were assessed without influence because other existing evidence established serious violations of work which led to the respondent terminating the employment relationship with the Applicant; (iv) that the Applicant himself has asserted the evidence examined which has made the conduct of the disciplinary proceedings unnecessary; (v) the allegation of violation of the principle of direct hearing of the parties is ungrounded, because the second instance court examines the case only in a session of the trial panel and only exceptionally the appeal is examined in a court session in cases provided under Article 190 of the LCP- and, that (vi) during the course of the proceedings, the lower instance courts examined sufficient evidence to prove the violations imposed on the Applicant.

Applicant's allegations

33. The Applicant alleges that the Court of Appeals and the Supreme Court violated Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR). In addition, the Applicant alleges that as a result of the violation of the right to fair and impartial trial, Article 49 [Right to Work and Exercise the Profession] of the Constitution was also violated.

34. The Applicant alleges: "*In the present case, in this submission the Applicant's right to a fair trial (Article 31 of the Constitution and Article 6 of the Convention) was seriously breached, because the Applicant was denied the right to have equality of arms in the proceedings, to present the evidence in his favor. Thus, the courts of general jurisdiction have changed the factual situation without first opening the procedure and without hearing the*

submitter of this submission, thus preventing him from presenting the evidence which was in his favor. Thus, the complainant's rights to a fair trial under Article 31 of the Constitution and Article 6 of the Convention have been violated. Therefore, in the present case it can be undoubtedly concluded that the Judgment of the Supreme Court upholding the Judgment of the Court of Appeals is not in accordance with the standards of a fair and impartial trial set by the Constitution, the Convention and the case law of the ECtHR. Therefore, we request this Court to interpret these errors against the Applicant on the basis of these legal sources, and to declare these sources violated towards the rights guaranteed to the Applicant".

35. The Applicant requests the Court to remand the case for retrial to the regular courts.

Relevant legal provisions

ADMINISTRATIVE DIRECTION NO. 2003/2
IMPLEMENTING OF UNMIK REGULATION NO. 2001/36 ON THE KOSOVO CIVIL SERVICE

CHAPTER VII VIOLATIONS
AS TO CONDUCT, PENALTIES
AND DISCIPLINARY PROCEEDINGS

Section 30
Violations as to Conduct and Penalties

30.1 Violations as to conduct shall be classified as follows:

(a) Breach of the Civil Service Code of Conduct in the Annex of UNMIK Regulation No. 2001/36;

(b) Neglect of duty;

(c) Failure to obey a reasonable instruction from a manager or employing authority;

(d) Unauthorized absence from work;

(e) Fraud or theft;

(f) Discrimination against or harassment of another civil servant or member of the public direct or indirect, on grounds of sex, race, color, language, religion, residency, political opinion, national, ethnic or social origin, association with a national community, property, birth status, disability, family status, pregnancy, sexual orientation or age;

(g) Sexual harassment of another civil servant, defined as, any physical or verbal conduct of a sexual nature infringing the dignity of

women and men at work that is unwanted by or offensive to the recipient, which is made a condition of employment or which creates a hostile, threatening or intimidating working environment for that person;

(h) Behavior outside the workplace that is incompatible with status as a civil servant and which may bring the Civil Service into disrepute, including the association with individuals or establishments engaged in prostitution, trafficking in human beings or organized crime;

(i) Failure to declare or making a false declaration in relation to conflict of interest; and

(j) Violent, threatening or abusive behaviour or language at the work place.

30.2 Penalties for violations as to conduct set out in section 30.1 may consist of any of the following:
(a) Oral warning;
(b) Written warning;
(c) Withholding of salary increases for up to one (1) year;
(d) Demotion;
(e) Ban on promotion up to three (3) years; or
(f) Termination of employment.

CHAPTER IX
TERMINATION OF EMPLOYMENT

Section 35
Termination of Employment

35. 2 Employment in the Civil Service may be terminated by the employing authority at its discretion:

(a) As a disciplinary measure for a serious violation of the Code of Conduct pursuant to ChapterVII...

Admissibility of the Referral

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

37. 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".

38. The Court also refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 48
[Accuracy of the Referral]

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".

Article 49
[Deadlines]

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...".

39. The Court finds that the Applicant is an authorized party, has exhausted all legal remedies provided by law in accordance with Article 113 (7) of the Constitution and has submitted the Referral in accordance with the deadline provided in Article 49 of the Law. The Applicant has also accurately clarified the rights and freedoms he claims to have been violated and the acts of the public authorities he challenges in accordance with the criteria of Article 48 of the Law.

40. Based on the foregoing, the Court refers to of Rule 39 (2) [Admissibility Criteria] of the Rules of Procedure, which specifies:

"The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".

41. The Court recalls that the Applicant alleges a violation of his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 (Right to a fair trial) of the ECHR. In addition, the Applicant alleges that as a result of the violation of the right to fair and impartial trial, Article 49 [Right to Work and Exercise the Profession] of the Constitution has also been violated.

42. The Applicant, in essence, alleges that the principle of "equality of arms" has also been violated to his detriment due to: (i) his non-confrontation with student IR; (ii) non-assessment of the statement of RR (father of student IR); (iii) failure to assess the expertise of the forensic expert; (iv) non-hearing of his

arguments in a direct court hearing; and, (v) failure to conduct a "genuine" disciplinary procedure against him by the FMNS-UP.

43. In this regard, the Court refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which stipulates:

> *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

44. The Court notes that the right to fair and impartial trial is guaranteed by Article 31 of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR and its application has been interpreted by the European Court of Human Rights (hereinafter: the ECtHR). The Court based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution has a constitutional obligation to interpret fundamental rights and freedoms in accordance with the case law of the ECtHR.

45. Therefore, with regard to the interpretation of the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court will refer to the general principles consolidated in the case law of the ECtHR.

46. The ECtHR established that the requirement of "*fairness*" as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR covers the proceedings as a whole, and the question whether a person has had a "*fair*" trial is looked at way by cumulative analysis of all the stages, not merely of a particular incident or procedural defect; as a result, defects at one stage may be put right at a later stage (see, case of the ECtHR *Monnell and Morris v. the United Kingdom*, paragraphs 55-70).

47. As regards the issue of the administration of evidence, the ECtHR emphasized that the ECHR does not lay down rules for the admission of evidence as such (see case of the ECtHR *Mantovanelli v. France*, Judgment of 18 March 1997, paragraph 34). Admissibility of the evidence and the way in which it should be assessed, are primarily matters for regulation by the national law and the domestic courts (see ECtHR case, *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28). The same applies to the burden of evidentiary value of the evidence and the burden of proof (*Tiemann v. France and Germany*, Decision as to admissibility, of 27 April 2000. Regular courts must also assess the relevance of the proposed evidence (see the case of the ECtHR, *European Center 7 S.r.l and Di Stefano v. Italy*, Judgment of 7 June 2012, paragraph 198).

48. However, it is the duty of the ECtHR under the ECHR to determine whether the proceedings as a whole are fair, including the way of obtaining evidence (see the ECtHR case, *Elsholz v. Germany*, Judgment of 13 July 2000, paragraph 66). The Court must therefore determine whether the evidence has been presented in such a way as to guarantee a fair trial (see the ECtHR case *Blücher v. Czech Republic*, Judgment of 11 January 2005, paragraph 65).

49. It is the duty of the regular courts to conduct a proper examination of the submissions, arguments and evidence presented by the parties (see the case of the ECtHR, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, paragraph 59).

50. The Court notes that the substance of the Applicant's Referral relates to his allegation of failure to assess the evidence proposed by him. The Court again highlights the Applicant's central allegation: *"In the present case, in this submission the Applicant's right to a fair trial (Article 31 of the Constitution and Article 6 of the Convention) was seriously breached, because the Applicant was denied the right to have equality of arms in the proceedings, to present the evidence in his favor. Thus, the courts of general jurisdiction have changed the factual situation without first opening the procedure and without hearing the submitter of this submission, thus preventing him from presenting the evidence which was in his favor".*

51. In the present case, the Court considers that it is not its duty to assess *in abstracto* the procedural and substantive legal provisions valid for resolving the Applicant's case. The main task of the Court in this case is to determine whether the proceedings as a whole were fair and in accordance with the procedural guarantees embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

52. Furthermore in this case, as a general rule, the assessment of the facts of the case and the interpretation of the law are matters only for the regular courts, the assessments and conclusions of which in this regard are binding on the Court. However, when a decision of a regular court is manifestly arbitrary, the Court can and should question it (See the case of the ECtHR, *Sisojeva and Others v. Latvia*, Judgment of 15 January 2007, paragraph 89).

53. The Court wishes to reiterate that it is not its role to examine whether the regular courts have correctly interpreted the applicable law (legality), but will examine whether the courts in question in their decisions have violated individual rights and freedoms protected by the Constitution (constitutionality). (See, for example, the case of the Constitutional Court no. KI72/14, Applicant *Besa Qirezi*, Judgment of 4 February 2015, paragraph 65).

54. With regard to the evidence of witnesses, the Court notes that Article 31 of the Constitution in conjunction with Article 6 (1) does not explicitly guarantee the right to call witnesses and that the admissibility of witness testimonies is in principle a matter of legality. However, the proceedings as a whole, including the manner in which the evidence was allowed, must be "fair" within the meaning of Article 31 in conjunction with Article 6 (1) (see the case of the ECtHR, *Dombo and Beheer B.V. v. Netherlands*, Judgment of 27 October 1993, paragraph 31).

55. In this regard, the Court notes that the Supreme Court assessed: (i) that the second instance court had correctly applied the legal provisions of Administrative Direction no. 2003/2 determining the termination of

employment in the civil service; (ii) the statements of witnesses HK, IK and HT are related to the determination of factual situation for which, based on Article 214 paragraph 2 of the LCP, the revision cannot be filed; (iii) the allegations of non-assessment of the statement of witness RR and failure to provide reasons for the expertise of the forensic expert were assessed as having no influence because other existing evidence established serious violations of work which led the respondent to terminate the employment relationship with the Applicant; (iv) that the Applicant himself has asserted the evidence examined which has made the conduct of the disciplinary proceedings unnecessary; (v) the allegation of violation of the principle of direct hearing of the parties is unfounded, because the second instance court examines the case only in a session of the trial panel and only exceptionally the appeal is examined in a court session in cases provided under Article 190 of the LCP - and, that (vi) during the course of the proceedings, the lower instance courts have examined sufficient evidence to establish violations which the Applicant is charged with.

56. The Court also recalls that the Court of Appeals reasoned: (i) that based on Article 35 paragraph 2 item (a) of Administrative Direction 2003/2 it is determined that employment in the civil service may be terminated by the employing authority at its discretion: as a disciplinary measure for serious violation of the code of conduct in accordance with Chapter 7; (ii) the respondent FMSN based on the provisions of Administrative Direction 2003/2 did not need to conduct the disciplinary proceedings; and, (iii) that the Applicant in the written statement given on 13.10.2010 had asserted all the violations challenged by the decision to terminate the employment.

57. With regard to these concrete allegations, the Court notes that the regular courts assessed that other evidence that is part of the case - such as the Applicant's written statement of 13.10.2010 in which case he asserted all the violations challenged by the decision of the FMNS to terminate the employment - as evidence with probative value higher than the evidence provided by the Applicant. The question of assessing what evidence has the highest probative value falls within the scope and prerogative of the regular courts and that the Court can only interfere with in specific cases where it turns out that the assessment was clearly unreasonable, which did not happen in the present case.

58. With regard to the Applicant's allegation of non-hearing in a direct court session, the Court notes: (i) that the Supreme Court assessed that the allegation of a violation of the principle of direct hearing of the parties is ungrounded, because the second instance court examines the case only in the session of the trial panel and only exceptionally the appeal is examined in the court session in the cases foreseen according to Article 190 of the LCP; (ii) that the Applicant was given the opportunity to respond to the appeal of the FMNS, which he also used by the submission of 2 October 2014 submitted to the Court of Appeals; and; that, (iii) the Court of Appeals did not change the factual situation but only assessed the application of the law.

59. In this regard, the Court highlights the relevant parts of the judgment of the Supreme Court: *"[...] The Supreme Court of Kosovo, considers that the decision of the Dean of the Faculty of Mathematical-Natural Sciences no. 819/03 of 13.10.2003, for the termination of the employment contract and the decision of the Board of the University of Prishtina no. 1/931 of 4.12.2003, by which the complaint of Jashar Krasniqi was rejected as unfounded, are lawful, because by the evidence administered from the case file it appears that the claimant has committed a serious violation of work duties by stamping 6 grades in the index number (955) duplicate of IR and on 24.4.2003, has issued the transcript of grades number 955, for the failed exams, by signing this document and stamping it with the stamp of the student service, as well as has issued the duplicate index number 874 with registration date 28.6.2002, on behalf of student FI taking the amount of 80 € without issuing a receipt. In the case file before the first instance court, a photocopy of the certificate was administered as evidence, in which the data for student IR were described regarding the grades for the course Basics of Chemical Engineering, Organic Chemistry, Physics, Mathematics, Analytical Chemistry, CPC and English language and the certificate that student IR has registered for the first semester as well as certificate no. 955 of 24.4.2003 for the exam given under the course Basics of Chemical Engineering, from which evidence it appears that the mentioned student passed an exam while the faculty officer - here the claimant was provided with an index and a certificate in which appeared 7 grades, for which the claimant himself in the oral and written statement stated that it was his mistake. While regarding the index number 874, the student FI himself in the written statement given on 13.10.2003 admitted that the index was a duplicate, that it is not registered and treated as falsified for which he gave € 80 to the claimant, while the claimant in the presence of witnesses mentioned as in the judgment of the first instance court returned this money. Therefore, the finding of the first instance court that it has not been established that the claimant has committed a serious breach of duty is unfounded, as it was rightly found by the second instance court when it assessed that the factual situation concluded by the first instance court, does not correspond to the evidence from the case file. From what has been said, the Supreme Court of Kosovo deems that the allegation in revision that the claimant was not given the opportunity to present evidence for presentation of facts to prove the violation of the duties assigned to him, is ungrounded, while by the claim of the claimant regarding the examined evidence, this Court considers that the conduct of any procedure by the respondent regarding the present case was not necessary. During the conduct of proceedings before the lower instance courts, sufficient evidence was examined which proved the violations the claimant was charged with".*

60. In addition, the Court notes that the Applicant should be afforded a conduct of proceedings based on adversarial principle; that he was able to adduce the arguments and evidence he considered relevant to his case at the various stages of those proceedings; that he has been given the opportunity to effectively challenge the arguments and evidence presented by the responding party; 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 presented and examined in

detail; and that, according to the circumstances of the case, the proceedings, viewed in entirety, were fair (see, *inter alia*, case of the Court No. KI118/17, Applicant *Sani Kervan and Others*, Resolution on Inadmissibility of 16 February 2018, paragraph 35; see also *mutatis mutandis*, case *Garcia Ruiz v. Spain*, cited above, paragraph 29).

61. The Court reiterates that Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, do not guarantee anyone a favorable outcome in the course of a judicial proceeding nor provide for the Court to challenge the application of substantive law by the regular courts in a civil dispute, where one of the parties wins and the other loses (See case No. KI118/17, cited above, see also, case of the Court KI142/15 Applicant *Habib Makiqi*, Resolution on Inadmissibility of 1 November 2016, paragraph 43).

62. In this respect, in order to avoid misunderstandings on the part of applicants, it should be borne in mind that the "fairness" required by Article 31 of the Constitution, is not "substantive" fairness, but "procedural" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (See, also the case of the Court No. KI42/16 Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and other references mentioned therein).

63. In this regard, the Court reiterates that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "*fourth instance*", which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, case *García Ruiz v. Spain*, ECtHR no. 30544/96 of 21 January 1999, paragraph 28; and see, also case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

64. The Court further notes that the Applicant is dissatisfied with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings of the regular courts cannot in 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; and see also, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

65. As a result, the Court considers that the Applicant has not substantiated allegations that the relevant proceedings were in any way unfair or arbitrary and that the challenged decisions violated the rights and freedoms guaranteed by the Constitution and the ECHR. (see, *mutatis mutandis, Shub v. Lithuania*, no. 17064/06, ECtHR, Decision of 30 June 2009).

66. Therefore, the Referral is manifestly ill-founded on constitutional basis, and is to be declared inadmissible, as established in Article 113.7 of the Constitution, provided for in Articles 20 and 48 of the Law, and further specified in 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 48 of the Law and pursuant to Rules 39 (2) and 59 (2) of the Rules of Procedure, on 9 December 2020, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Nexhmi Rexhepi Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.