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

Prishtina, on 22 January 2021
Ref. no.: RK1695/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI228/19

Applicant

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

Constitutional review of Judgment Rev. No. 268/2019 of the Supreme Court of Kosovo of 4 September 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 was submitted by Joint Stock Company Limak Kosovo International Airport "Adem Jashari" (hereinafter: the Applicant), based in village of Vrellë, Lipjan Municipality, which is represented with power of attorney by Fazli Gjonbalaj and Leonora Fejzullahu.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 268/2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 4 September 2018.

3. The Applicant claims that he was served with the challenged decision on 6 September 2019.

Subject matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] Article 32 [Right to Legal Remedies] and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) and Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

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

6. On 17 December 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 20 December 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur. On the same date, the President appointed the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Safet Hoxha.

8. On 28 January 2020, the Court notified the Applicant about the registration of the Referral. On the same date, the Court notified the Supreme Court about the registration of the Referral and sent it a copy of the Referral.

9. On 10 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 of the case

10. The Applicant does not submit the Referral to the Court for the first time.

11. On 12 August 2010, the Government of the Republic of Kosovo and the Applicant signed a Public-Private Partnership Agreement (hereinafter: the PPPA). Prior to the signing of the PPPA, the name of Prishtina Airport was Prishtina International Airport "Adem Jashari" (hereinafter: the PIA). Based on the PPP Agreement, the Applicant had an obligation to keep the employees for another 3 (three) years.

12. Based on the case file, it is noted that M.Ç., (hereinafter: the employee) was employed with the PIA from 12 July 2004 until 3 April 2011.

13. After signing of the PPPA, the employee was in employment relationship with the Applicant from 4 April 2011 until 3 April 2014.

14. On 3 March 2014, namely 30 (thirty) days before the expiry of the contract, the Applicant notified the employee that that she will not be offered a new employment contract after the expiration of the existing contract on the grounds that the contract is not being extended by *"[...] the policies of the Board of Directors for future human resources planning"*.

15. On 13 March 2014, the employee filed a complaint with the Applicant (the employer) regarding the notice of non-renewal of the employment contract, requesting that the latter be annulled.

16. On an unspecified date, the Applicant rejected as ungrounded the employee's complaint.

17. Based on the case file, it is noted that on 27 March 2014, the Executive Body of the Labor Inspectorate in Prishtina, by Decision Vn. 45/2014, ordered the Applicant *"to apply provisions of Articles 49, 52 and 71 of the Law No. 03/L-212 on Labor"*.

18. On an unspecified date, the employee filed a statement of claim with the Basic Court in Prishtina-Branch in Lipjan (hereinafter: the Basic Court), requesting the annulment of the Notice of the 3 March 2014, issued by the Applicant and obliging the Applicant to reinstate the employee to work with all rights and obligations and compensation for the damage caused.

19. On 27 May 2015, the Basic Court, by Judgment C. No. 231/2014 rejected the employee's statement of claim as ungrounded. The Basic Court reasoned that the employee M.Ç. was in an employment relationship for a fixed period of time and with the expiration of the employment contract, the employment contract of the employee M.Ç. was terminated and the Applicant had no legal obligation to extend the contract.

20. Employee M.Ç., filed an appeal against Judgment C. No. 231/2014 of the Basic Court, with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), alleging essential violations of procedural provisions, erroneous determination of factual situation and erroneous application of substantive law.

21. On 19 April 2019, the Court of Appeals by Judgment AC. No. 3635/2015 annulled the notification for non-renewal of the employment contract of the

employee M.Ç., and obliged the Applicant (i) to reinstate the employee M.Ç. , to work; (ii) to pay financial compensation to the employee in the amount of 7477.44 euro.

22. The Court of Appeals reasoned that the Applicant failed to substantiate the allegations regarding the legality of the notification for non-extension of the claimant's employment contract as well as the determination of the relevant facts if the latter has compiled a detailed operational plan, in which would be determined what services could be reduced and to what extent should have been reduced, in order to establish the fact that the evidence presented constitute a valid legal basis for non-renewal of the employment contract.

23. On unspecified date, the Applicant submitted a revision to the Supreme Court against the Judgment of the Basic Court and the Judgment of the Court of Appeals of Kosovo, alleging essential violation of the procedural provisions and erroneous application of substantive law.

24. On 4 September 2018, the Supreme Court, by Judgment Rev. No. 268/2019, rejected as ungrounded the Applicant's revision, assessing the challenged decision as fair and that sufficient reasons were given for the relevant facts for the fair adjudication of this issue.

25. The Judgment of the Supreme Court, *inter alia*, states that "*[...] the allegations of the respondent's representative regarding the fact that the challenged judgment is the result of a erroneous application of substantive law are ungrounded and unsubstantiated due to the fact that the notice not to renew the employment contract of the claimant was rendered in violation of the Law on Labor, which is a basic law that governs the employment relationship in Kosovo, which defines the basis and procedures for termination of the claimant's employment contract. The claimant after the period from 12.07.2004 until 3.4.2014, had a fixed-term contract, such an employment contract under Article 10.5 of the Law on Labor is considered a contract for an indefinite period of time, so the termination of the employment contract must respect the prescribed legal procedures which the respondent has not indisputably respected, which clearly results that the legal conclusion that the claimant's right to a lawful decision to terminate the employment contract has been violated.*

Applicant's allegations

26. The Court recalls that the Applicant alleges that the challenged decision violated his rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution, as well as Article 6 (Right to a fair trial) and Article 1 of Protocol No. 1 of the Convention.

27. The Applicant alleges that the Supreme Court did not give sufficient reasoning in its decision. Regarding this allegation, the Applicant states that: "*The lack of legal reasoning on the basis of facts by the Supreme Court of Kosovo, regarding the rejection of the revision of the respondent, with its judgment directly violated the right to fair and impartial trial*".

28. The Applicant alleges that the Supreme Court in the challenged judgment has erroneously applied the substantive law "*erores in judicando*" and made an erroneous interpretation of Article 10.5 of the Law No. 03/L-212 on Labor and PPPA, because, according to the Applicant, the employee did not have 10 (ten) years of uninterrupted work with the Applicant.

29. The Applicant specifically states that the Supreme Court in another case, which according to him includes different legal issues with those of his case, by its Judgment rejected the revision of the party. In the context of this allegation, the Applicant states that the Supreme Court, by deciding in the same way and basing on the same legal provisions in two different cases has violated his right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

30. In relation to this allegation, the Applicant states that: "*The Supreme Court of Kosovo by its judgments regarding different legal provisions of the LL for employees who have over 10 years of work experience and for employees who have less than 10 years of work experience upheld the same provisions for different legal issues. According to labor law we cite: for employees who have more than 10 years of work experience is Article 10.5, while the termination of work is done based on Article 70 [...] the employees who have less than 10 years of work experience are subject to Article 71.2 and 67 point 1.3 of the LL*".

31. The Applicant also cites Judgment KI138/15 of the Constitutional Court and states that "*the application of the substantive law, which could have been a decisive factor in rendering the judgment of that court, but the Supreme Court did not address this issue on the basis of legal fact*".

32. In the end, the Applicant requests the Court to annul the Judgment of the Supreme Court and to remand the case for retrial.

Relevant legal provisions

Law No. 03/L-212 on Labor

Article 10
[Employment Contract]

1. An employment contract shall be concluded in written form and signed by the employer and employee.

2. Employment contract may be concluded for:

2.1. an indefinite period;

2.2. . a fixed period; and

2.3. specific tasks and duties.

3. Employment contract which contains no indication of its duration shall be deemed to be for an unspecified period of time.

4. A contract for a fixed period may not be concluded for a cumulative period of more than ten (10) years.

5. A contract for a fixed period of time that is expressly or tacitly renewed for a continued period of employment of more than ten (10) years shall be deemed to be a contract for an indefinite period of time.

Article 67
[Termination of Employment Contract on Legal Basis]

1. Employment contract, on legal basis, may be terminated, as follows:
[...]
1.3. With the expiry of duration of contract;

Article 70
[Termination of Employment Contract by the Employer]

1. An employer may terminate the employment contract of an employee with the prescribed period of notice of cancellation, when:
1.1. Such termination is justified for economic, technical or organizational reasons;
1.2. The employee is no longer able to perform the job;
1.3. The employer may terminate the employment contract in the circumstances specified in sub-paragraph 1.1 and 1.2 of this paragraph, if, it is impracticable for the employer to transfer the employee to other employment or to train or qualify the employee to perform the job or other jobs;
1.4. An employer may terminate the employment contract of an employee with providing the period of notice of termination required, in:
1.4.1. serious cases of misconduct of the employee; and
1.4.2. because of dissatisfactory performance of of work duties;
1.5. An employer shall notify the employee about his/her dismissal immediately after the event which leads to this decision or as soon as the employer has become aware of it.
1.6. An employer may terminate the employment contract of an employee without providing the period of notice of termination required, in the case when:
1.6.1. the employee is guilty of repeating a less serious misconduct or breach of obligations;
1.6.2. the employee's performance remains dissatisfactory in spite of the written warning.
2. The employer may terminate the employment contract of an employee under subparagraphs 1.6 of paragraph 1 of this Article only when after the employee has been issued previous written description of unsatisfactory performance with a specified period of time within which they must improve on their performance as well as a statement that failure to improve the performance shall result with dismissal from work without any other written notice.

[...]

Article 71
[Notification period for termination of employment contract]

1. The employer may terminate an employment contract for an indefinite period according to Article 70 of this Law with the following periods of notification:
1.1. from six (6) months - 2 years of employment, thirty (30) calendar days;
1.2. from two (2)- ten (10) years of employment: fourty-five (45) calendar days;
1.3. above ten (10) years of employment: sixty (60) calendar days.
2. The employer may terminate an employment contract for a fixed term with thirty (30) calendar days notice. The employer who does not intend to renew a fixed term contract must inform the employee at least thirty (30) days before the expiry of the contract. Failure to do so entitles the employee to an extension of employment with full pay for thirty (30) calendar days.

Public-Private Partnership Agreement for the Operation and Expansion of Prishtina International Airport

9.18 [Termination of Personnel]

"The Private Partner may terminate the employment or other engagement of any PIA Employee (i) at any time for cause in accordance with applicable laws, rules, administrative regulations and decrees, (ii) upon mutual agreement and (iii) without limitation, after the third (3rd) anniversary of the Effective Date."

Admissibility of the Referral

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

34. 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."

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

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

36. In this regard, the Court notes that the Applicant (as a legal person) has the right to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms applicable both to individuals and to legal persons (See case of the Constitutional Court No. KI41/09, Applicant: *AAB-RIINVEST University LLC*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

37. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Article 47 [Individual Requests] Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which establish:

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. [...]."

38. Regarding the fulfillment of these requirements, the Court considers that the Applicant is an authorized party, challenging an act of a public authority, after exhaustion of all legal remedies. The Applicant also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

39. However, the Court should also examine whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure, including the criterion that the referral is not manifestly ill-founded. Thus, Rule 39 (2) of the Rules of Procedure stipulates:

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

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

41. The substance of the Applicant's allegations is that the Supreme Court did not sufficiently substantiate its Judgment and has erroneously interpreted Article 10.5 of the Law No. 03/L-212 on Labor because according to the Applicant, the employee did not have 10 (ten) years of uninterrupted work with the Applicant. Further, the Applicant alleges that the Supreme Court has decided in the same way in Judgment Rev. No. 268/2019 and Judgment Rev. No. 297/2019, relying on the same legal provisions, although the cases were different, and consequently violated its right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

42. In this regard, the Court notes that the Applicant alleges that the regular courts have erroneously interpreted the law when referring to the employee's work experience, stating that the employee did not have 10 (ten) years of work with the Applicant.

43. In this respect, the Court first emphasizes that the essential function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision gives an opportunity to the party to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision there can be a public scrutiny of the administration of justice (see, *mutatis mutandis*, ECtHR cases, *Hirvisaari v. Finland*, no. 49684/99, Judgment of 27 September 2001, paragraph 30; and see, also, *Suominen v. Finland*, no. 37007/97, Judgment of 1 July 2003 paragraph 37; and see also the case of the Constitutional Court KI97/16 Applicant *IKK Classic*, Judgment of 4 December 2017, paragraph 46).

44. The Court notes that, while it is not necessary for the Court to deal with every point raised in argument (see also the case of the ECtHR, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, paragraph 61), the Applicants' main arguments must be addressed (see the ECtHR cases, *Buzescu v. Romania*, no. 61302/00, Judgment of 24 May 2005 and *Pronina v. Ukraine*, no. 63566/00, Judgment of 18 July 2006). Also, giving a reason for a decision that is not a good reason in law will not meet the criteria of Article 6 (see the ECtHR case *De Moor v. Belgium*, no. 16997/90, Judgment of 23 June 1994 as well as the case of the *IKK Classic* Constitutional Court, cited above, paragraph 51).

45. With regard to the Applicant's allegations, the Court notes that all the decisions of the regular courts addressed the Applicant's allegations and finally explained why the Applicant's request was rejected.

46. In this regard, the Court recalls that the Court of Appeals, by Judgment [3635/15] of 19 April 2019, based on this factual situation of the case, *"found that the first instance court has erroneously applied the substantive law, when it found that the notification of the respondent for termination of the employment contract is lawful, since the claimant's employment was terminated in accordance with Article 67 of the Law on Labor and in the procedure defined by Article 71. 2 of the Law on Labor and Article 1.1 of the employment contract, which was for a fix period of time, for the period from 04.04.2011 to 03.04.2014, and that after this period, there is no obligation towards the claimant. This conclusion of the first instance court is contrary to the case file as from the evidence found in the case file, the written notification of the respondent of 03.03.2014 shows that the claimant's employment contract was not extended in accordance with Policies of the Board of Directors, Law on Labor and Decision on future human resource planning"*.

47. The Court of Appeals reasoned, *inter alia*, as follows: *"The Court of Appeals of Kosovo does not accept as fair and lawful the legal position of the court of first instance that the claimant was in a fixed-term employment relationship and did not have 10 years of uninterrupted work within the meaning of Article 10.5 of the Law on Labor, because the claimant's employment relationship is treated for an indefinite period of time, because the object of the statement of claim is not the determination of the existence of the claimant's employment relationship for an indefinite period of time, but the assessment of the legality of the notice for non-extension of the employment contract, which notice was rendered contrary to the Law on Labor, which is a basic law that governs the labor relations in Kosovo, and which defines the basis and procedures for termination of employment contract of the employee, which procedure the respondent did not respect in case of non-extension of the employment contract of the claimant, as a result it turns out that not extending the employment contract is unlawful"*.

48. In addition, the Court of Appeals stated that *"the claimant with predecessor of the respondent was in a fixed-term employment relationship from 12.07.2004, until 03.04.2011, when PIA "Adem Jashari" was given with concession, and then with the respondent according to the last contract until 03.04.2014 even though the working place had a permanent nature"*.

49. The Court further points out that the Supreme Court when reviewing the Applicant's request for revision reasoned that *"the claimant worked in the same working place for more than 10 years, and that such an employment contract within the meaning of Article 10.5 of the Law on Labor is considered a contract for an indefinite period of time, so the employment relationship could have been terminated to the claimant only under the conditions determined by the provision of Article 70 of the Law on Labor, and not based on Article 67.1 and 3 of this law, as both courts have rightly assessed"*.

50. The Supreme Court also clarified in this respect that *"the respondent had to submit a detailed operational plan regarding the decision on future human resource planning, which would specify what services could be reduced and to what extent should have been reduced, in order to establish the fact that the evidence presented, constitute a valid legal basis for non-renewal of the*

employment contract of the claimant, that the respondent acted in accordance with the lawful decision that meets the legal standards for non-extension of the employment contract and those that regulate the procedures of termination of the contract. Since these relevant facts have not been substantiated by the respondent on which the credibility of the allegations in the revision depends, it is unjustifiably stated in the revision that the judgment of the second instance court was rendered on the basis of essential violations of the provisions of the contested procedure".

51. In light of this, the Court notes that the Supreme Court clarified to the Applicant that it failed to substantiate all its allegations regarding the legality of the non-extension of the employment contract as well as the determination of the relevant facts, namely, if it drafted a detailed operational plan, which would specify what services could be reduced and to what extent they would have been reduced, in order to establish the fact that the evidence presented is a valid legal basis for non-renewal of the employment contract.

52. In this regard, the Court considers the Applicant's allegation regarding erroneous termination of the regular courts in relation to the years of service of the employee M.Ç. as ungrounded, because the regular courts which are competent for full determination of factual situation found that the working place of the employee M.Ç. was of a permanent nature.

53. The Court also recalls that the Applicant in the context of his allegation of a violation of the right to fair and impartial trial and equality before the law as a result of the same applicability of legal provisions to different cases in the case law of the Supreme Court, has submitted to the Court the Decision [Rev. No. 297/2019] of 18 November 2019 of the Supreme Court, for which he claims that his case involves different legal issues with those of the case decided through the challenged Judgment [Rev. No. 268/2019] of 4 September 2018 of the Supreme Court.

54. In case [Rev. No. 297/2019], submitted by the Applicant, the Court notes that this case refers to the claimant, I.A., from the Municipality of Prishtina, against Limak Kosovo International Airport J. S. C. "Adem Jashari". The Court notes that the Supreme Court in both its Judgments, namely in Judgment [297/2019] of 18 November 2019 and Judgment [268/2019] of 4 September 2019 already challenged by the Applicant, rejected as ungrounded the requests for revision in both cases.

55. In this regard, the Court will refer to the relevant part of Judgment [297/2019] of the Supreme Court of 18 November 2019, submitted by the Applicant, which states: *"the claimant in the same working place has been working for more than 10 years, and her employment contract is considered within the meaning of Article 10.5 of the Law on Labor as a contract for an indefinite period of time, so the employment may have been terminated to her only under the requirements provided for in Article 70 of the Law on Labor, and in no case under Article 67.1 and 3 of this Law, as correctly assessed by both courts.*

56. Whereas, the Supreme Court in Judgment [268/2019] of 4 September 2019 already challenged by the Applicant clarified the following: "*the claimant worked in the same working place for more than 10 years, and that such an employment contract within the meaning of Article 10.5 of the Law on Labor is considered a contract for an indefinite period of time, so the employment relationship could have been terminated to the claimant only under the conditions determined by the provision of Article 70 of the Law on Labor, and not based on Article 67.1 and 3 of this law, as both courts have rightly assessed*".

57. In the light of these arguments, the Court notes that the Supreme Court was based on the same legal provisions in both of the aforementioned judgments after finding that both parties in the respective cases worked for more than 10 years in the working place, and that such an employment contract within the meaning of Article 10.5 of the Law on Labor, is considered a contract for an indefinite period of time.

58. In the light of these arguments of the Supreme Court, the Court considers that all Applicant's allegations and arguments, which were relevant to the resolution of its dispute, have been properly heard and considered by the regular courts. Therefore, the Court finds that the proceedings before the regular courts, viewed in their entirety, were fair (see case of the Court KI128/18, Applicant, *Limak Kosovo International Airport J. S. C. "Adem Jashari"*, Resolution on Inadmissibility of 27 May 2019, KI129/18, Applicant, *Limak Kosovo International Airport J. S. C. "Adem Jashari"*, Resolution on Inadmissibility of 20 June 2019, KI130/18, Applicant, *Limak Kosovo International Airport J. S. C. "Adem Jashari"*, Resolution on Inadmissibility of 20 June 2019).

59. The Court also notes that the Applicant refers to Judgment KI138/15 of the Constitutional Court, by claiming that "*the application of substantive law, which may have been a fact, has been a decisive factor for rendering the judgment of that court, but the Supreme Court did not address this issue at all on the basis of the legal fact*".

60. As to this allegation of the Applicant, the Court recalls that the mentioned case differs from the present case, because of the following reasons: (i) the issue of disciplinary proceedings against the Applicant's employee has been reviewed differently by the regular courts; (ii) there was no clear legal basis under which disciplinary proceedings were conducted; (iii) contradictory elements existed in decisions of the lower instance courts. In addition, the Court of Appeals applied and used for explanation the Administrative Instruction which derived from the Civil Service Regulation, not the Law on Labor. This argument, although raised by the Applicant in this case, was not reviewed by the Supreme Court (see the case of the Constitutional Court KI138/15, *Sharr Beteiligung GmbH,* Judgment of 4 September 2017).

61. The Court reiterates that Article 6 of the ECHR and Article 31 of the Constitution oblige the courts to give reasons for their decisions, but this cannot be understood as an obligation of the court to provide a detailed answer to every argument of the Applicant (see the ECtHR case, *Van de Hurk v. the*

Netherlands, Judgment of 19 April 1994, paragraph 61). The extent to which the obligation to give reasons applies may vary according to the nature of the decision. It should also take into account, among other things, the variety of submissions submitted by a party in the proceedings that may result in the courts giving different opinions and legal conclusions when rendering decisions. Therefore, the question of whether the court has complied with the obligation to explain the reasons for its decision, which stems from Article 6 of the Convention, can only be determined in the light of the circumstances of each individual case.

62. In the light of the foregoing considerations, the Court emphasizes its general position that, in principle, it is not its duty to deal with errors of fact or the law, allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and insofar as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, the ECtHR Judgment, *Garcia Ruiz v. Spain* No. 30544/96, Judgment of 21 January 1999, paragraph 28).

63. The Court wishes to reiterate that complete determination of factual situation and correct application of law is a primary duty and within the jurisdiction of the regular courts (issue of legality). Therefore, the Constitutional Court cannot act as a "fourth instance court" (see, *mutatis mutandis,* case of the Constitutional Court KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012; case KI122/18, Applicant *Limak Kosovo International Airport J. S. C. "Adem Jashari"*, Resolution on Inadmissibility of 6 November 2019, paragraph 56).

64. Consequently, the Court finds that the Applicant's right to fair and impartial trial has not been violated by the decisions of the public authorities.

65. The Court recalls that the mere fact that the Applicants do not agree with the outcome of the decisions of the Supreme Court (and of the lower instance courts) is not sufficient to build a reasoned allegation of constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (See, *mutatis mutandis*, case of the Constitutional Court KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

66. In sum, the Court considers that the Applicant did not present evidence, facts and arguments showing that the proceedings before the regular courts constituted constitutional violation of their rights guaranteed by the Constitution, namely by Articles 24, 31 and 46 of the Constitution, in conjunction with Article 6 of the ECHR.

67. Therefore, the Referral is manifestly ill-founded on constitutional basis and is declared inadmissible, 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, Article 20 of the Law and Rules 39 (2) and 59 (b) of the Rules of Procedure, on 10 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**

Bajram Ljatifi

Arta Rama-Hajrizi

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