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

Prishtina, on 8 March 2021
Ref.no.:RK1725/21

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RESOLUTION ON INADMISSIBILITY

in

Case no. KI106/20

Applicant

Kosovo Energy Distribution and Supply Company "KEDS" J.S.C.

Constitutional review of Judgment Rev. no. 107/2020 of the Supreme Court of Kosovo of 6 April 2020

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by the Kosovo Energy Distribution and Supply Company "KEDS" J.S.C. (hereinafter: the Applicant), with headquarters in Prishtina, which is represented by authorization by Arbër Krasniqi.

Challenged decision

2. The Applicant challenges the Judgment [Rev. no. 107/2020] of the Supreme Court of Kosovo of 6 April 2020.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] 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 (hereinafter: the ECHR).

Legal basis

4. 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

5. On 30 June 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 July 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges Radomir Laban (Presiding), Remzije Istrefi-Peci, and Nexhmi Rexhepi (members).

7. On 3 August 2020, the Court notified the Applicant of the registration of the Referral. On the same day, the Court notified the Supreme Court of the registration and sent to it a copy of the Referral.

8. On 10 February 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of the facts

9. Based on the case file it is noted that employee V.M. (hereinafter: the employee) had been employed by the Applicant, in the position *"Head of Projects in Operations"*. The employee had established an employment relationship with the Applicant on 15 November 2005 until 7 May 2016.

10. On 20 March 2016, respectively one month before the expiration of the fixed-period contract, Applicant by Decision no.106, informed the employee V.M. that his contract has ended and that the same will not be extended. On the other hand, as a legal basis

for non-extension of the employment contract, the Applicant was based on Articles 71.2 and 67 1.3 of the Law on Labour as well as the employment contract.

11. On 12 April 2016, the employee V.M. filed a complaint with the Applicant against the aforementioned Decision on termination of the employment relationship.

12. On 20 April 2016, the Applicant by Decision no. 3286 rejected as unfounded the complaint of the employee V.M.

13. On 16 May 2016, the employee V.M. had filed a lawsuit in the Basic Court in Prizren, against the Applicant, requesting the annulment of the Decision no.106, for termination of employment, as unlawful, claiming that, among other things, he had been employed by the Applicant, with a contract for a fixed period, a contract which had been renewed for more than 10 years.

14. On 20 September 2016, the Basic Court in Prizren through Judgment C.no.519/16, rejected as unfounded the claim of the employee V.M. arguing that the employee V.M. did not have 10 years of work experience with the Applicant. The Basic Court in Prizren, in its reasoning invoked on the provision of article 67, point 1.3 of the Law on Labour, which stipulates *"[...] termination of employment according to legal force, except in other cases, is also terminated with the expiration of the duration of the contract"* and consequently, the Basic Court in Prizren considered that the decision to terminate the employment was in accordance with legal provisions.

15. On 3 November 2016, the employee V.M. filed an appeal with the Court of Appeals against the judgment of the court of first instance, alleging a substantial violation of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law.

16. On 4 December 2019, the Court of Appeals by Judgment [Ac. no. 4181/16] rejected as unfounded, the employee's appeal and at the same time upheld the judgment of the court of first instance. Therefore, the Court of Appeals considered that the assessment of the court of first instance is lawful and regular.

17. On an unspecified date, the employee V.M. filed for a revision against the judgment of the court of first instance and second instance, where he requested that the revision of the employee be approved as grounded and that the judgments of the two lower instance courts be amended, alleging a substantial violation of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of substantive law.

18. On 6 April 2020, the Supreme Court by Judgment [Rev. no. 107/2020], approved as grounded the revision submitted by the employee and changed the judgments of the Basic Court in Prizren and the Court of Appeals. In this case, the Supreme Court decided to (i) oblige the Applicant to reinstate the employee V.M. to his job.

19. The Supreme Court by Judgment [Rev. no. 107/2020], reasoned that *"the General Collective Agreement should be applied to KEDS as well, there is no doubt, because among other things the respondent in two articles of the claimant's [the employee, V.M.] employment contract is based on the Collective Agreement. According to Article 10 point 5 of the Kosovo Collective Agreement in force from 01.01.2015 [...]*

Employment Contract, for a limited duration, which is extended clearly or implicitly, for a period of employment period longer than 3 years, will be considered as a contract for unlimited duration. Therefore, it is not fair to conclude from the two aforementioned courts that the claimant has been in a fixed-term employment relationship with the respondent for less than 10 years, therefore his employment relationship is considered to have been in a fixed-term. This finding is not correct from the aspect of the implementation of the provision from Article 10 point 5 of the abovementioned General Collective Agreement".

Summary of facts related to the enforcement procedure

20. On 11 June 2020, the employee V.M. had submitted a proposition for reinstatement and salary compensation in the amount of 21,500.00 euros, in the Basic Court in Prizren, based on the Judgment of the Supreme Court Rev. no.107/2020 of 6 April 2020.

21. On 18 July 2020, the Basic Court in Prizren by Decision CP.nr. 827/20, approved the above proposition of the employee V.M.

22. On an unspecified date, the Applicant filed an objection with the Basic Court in Prizren against Decision CP.no.827/20, only in regard to the part related to salary compensation.

23. On 31 July 2020, the Basic Court in Prizren, by Decision CP.no.827/2020, decided to reject as unfounded the Applicant's objection.

24. On 24 August 2020, the Applicant filed an appeal with the Court of Appeals against Decision CP.no.827/2020, of the Basic Court in Prizren, alleging violation of contentious and enforcement provisions, erroneous determination of the factual situation and erroneous application of substantive law.

25. Based on the case file, it results that so far the Court of Appeals has not decided on the Applicant's appeal.

26. As the decisions and procedures initiated by the employee V.M. are still ongoing, and the Applicant does not explicitly challenge these procedures and decisions in the Court, the latter are not subject to review by this Court.

Applicant's allegations

27. The Court recalls that the Applicant alleges that the challenged Judgment violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

28. The Applicant regarding the challenged decision claims "*whose reasoning is not clear in order to reflect the analysis of the evidence and facts, as well as the substantive law on which the court bases its decision. The request regarding the obligation of clear reasoning of the court decision is provided in Article 160 of the Law on Contested Procedure*".

29. The Applicant further alleges that *"the Third Instance Judgment is completely inconsistent with the previous practice of the Supreme Court of Kosovo itself on the issue of reinstating employees to work.* [...]".

30. The Applicant in support of this allegation has submitted to the Court a Judgment of the Supreme Court, respectively Judgment Rev.No. 457/2019, of 30 January 2020 and referring to the latter, the Applicant alleges that in a similar case the Supreme Court had decided otherwise, stating that *"the Supreme Court of Kosovo expressly states that the employment contract defines a time limit of validity up to a certain date as is the case in the case addressed by the Third Instance Judgment, approved by the Court itself. The Supreme Court further determines that beyond such a date there are no legal remedies, either in the Law on Labour or in any other provision that would support such a court decision to reinstatement.... [...] The judgment of the Third Instance is completely absurd and with the imposition of not only one-sidedness - of double standards on the same issue".*

31. The Applicant also alleges that the Supreme Court in deciding this case, even though the Applicant acted in accordance with the Law on Labour, according to the Applicant, the Supreme Court intentionally invokes Article 90 [Collective Agreement] of the Law on Labour stating that *"it uses this provision as a basis for the sole purpose of validating "incorrectly".*

32. Regarding the proposition of the employee V.M. for reinstatement and compensation of salaries, the Applicant informed the Court that the employee V.M. had initiated an enforcement procedure for reinstatement and compensation of salaries, claiming that *"The Supreme Court Judgment obliges KEDS only on the reinstatement of the Creditor"* and not on the compensation of salaries. The Applicant stated that after the appeal, he had filed with the Court of Appeals, against the Decision CP.no.827/2020, of the Basic Court in Prizren, the Applicant states that the Court of Appeals has not yet decided on the appeal and that the Applicant will notify the Court after having a decision on this issue.

33. The Applicant requests from the Court a constitutional review of the challenged decision.

Relevant legal provisions

Law no. 03/L-212 of Labour

Article 10
Employment Contract

[...]

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 subparagraph 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 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 sub-paragraphs 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: forty-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.

Kosovo General Collective Agreement

Article 10
Employment Contract

1. Employment Contract, is concluded in written form and signed by the employer and employee.
2. Employment Contract may be concluded for:
2.1. unlimited duration;
2.2. limited duration, and
2.3. specific work and tasks.
3. Employment Contract, which does not contain details on its duration, is considered as an unlimited duration contract.
4. Employment Contract, for limited duration, may not be concluded, extended for a period longer than three (3) years), when employee establishes an employment relation for the first time.
5. Employment Contract, for a limited duration, which is extended clearly or implicitly, for a period of employment period longer than three (3) years), will be considered as a contract for unlimited duration.
[...]

Assessment of the admissibility of the Referral

34. The Court initially examines whether the application has met the admissibility criteria set out in the Constitution and further specified by law and the Rules of Procedure.

35. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

> *"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."*

36. The Court also refers to paragraph 4, of Article 21 [General Principles] of the Constitution, which stipulates: *"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."*

37. In this regard, the Court notes that the Applicant has the right to file a constitutional complaint, invoking on the alleged violations of his fundamental rights and freedoms, which apply to individuals and legal entities (see the Constitutional Court case no. KI41/09, the Applicant *University AAB-RIINVEST L.L.C*, Resolution on Inadmissibility of 3 February 2010, par. 14).

38. Moreover, the Court also assesses whether the Applicant has met the admissibility criteria, as defined in 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. [...]"

39. With regard to the fulfilment of these criteria, the Court finds that the Applicant is an authorized party, who challenges the act of a public authority, after the exhaustion of all legal remedies. The Applicant also clarified the rights and freedoms that he alleges to have been violated, in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

40. However, the Court refers to paragraph (2) of Rule 39 [Admissibility Criteria] of the Rules of Procedure, which 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.

41. The Court first recalls that the Applicant alleges that his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, has been violated, because the principle of legal certainty has been violated since the challenged decision is contrary to the practice of the Supreme Court as well as the challenged decision is not sufficiently reasoned and the substantive law has been erroneously violated.

42. The Court, referring to the Applicant's allegations, will refer to the case law of the European Court of Human Rights (hereinafter: ECtHR), which obliges the Court according to Article 53 [Interpretation of Human Rights Provisions] of the

Constitution, to interpret the human rights and fundamental freedoms guaranteed by the Constitution in accordance with the judicial decisions of the ECtHR.

Regarding the Applicant's allegation of violation of the principle of legal certainty, as a result of contradictory decisions

43. The Court first recalls once again the Applicant's allegation regarding the violation of the principle of legal certainty as a result of the contradictory decisions of the Supreme Court. In this regard, the Applicant alleges *"the Third Instance Judgment is completely contrary to the previous practice of the Supreme Court of Kosovo on the issue of reinstating employees to the workplace* [...] *The Supreme Court of Kosovo expressly states that the employment contract defines a time limit of validity up to a certain date as is the case in the case addressed by the Third Instance Judgment, approved by the Court itself. The Supreme Court further determines that beyond such a date there are no legal remedies, either in: the Law on Labour or in any other provision that would support such a court decision to reinstatement.... [...] The judgment of the Third Instance is completely absurd and with the imposition of not only one-sidedness - of double standards on the same issue"*.

44. The Applicant in support of this allegation has submitted to the Court a Judgment of the Supreme Court, respectively Judgment Rev. no. 457/2019, of 20 January 2020 and referring to the latter, the Applicant alleges that in a similar case the Supreme Court had decided otherwise.

45. Regarding this, in dealing with this allegation, the Court initially refers to the case law of the ECtHR which has consistently emphasized that one of the essential components of the rule of law is legal certainty, which, inter alia, guarantees a certain certainty in legal situations and contributes to public trust in the courts (see the ECtHR case *Ătefănică and others v. Romania, application no. 38155/02, Judgment of 2 November 2010,* paragraph 38, and the case *Nejdet Şahin and Perihan Şahin v. Turkey,* Judgment of 20 October 2011, paragraph 56).

46. Also, the possibility of conflicting decisions is an inseparable feature of any judicial system based on the network of Basic and Appellate Courts, with authorisations within their territorial jurisdiction, and an aberration can occur even within the same court, which aberration, cannot be considered contradictory in itself (see case *Santos Pinto v. Portugal,* application no. 390005/04, paragraph 41, Judgment of 20 May 2008, paragraph 41, see also the Court case KI87/18, Applicant *"IF Skadeforsikring"*, Judgment of 27 February 2019, paragraph 66).

47. Furthermore, the ECtHR has established three basic criteria, which are also accepted in the case law of the Court to determine whether a divergence of the alleged court decisions constitutes a violation of Article 6 of the ECHR, and which determine the following: (i) if there are *"deep and long-term"* differences in case law; (ii) whether domestic law establishes mechanisms capable of resolving such divergences; and (iii) whether those mechanisms have been implemented and with what effect (in this context, see ECtHR cases, *Beian v. Romania* (no.1), Judgment of 6 December 2007, paragraphs 37-39; *Greek Catholic parish Lupeni and others v. Romania,* Judgment of 29 November 2016, paragraphs 116 - 135; *Iordan Iordanov and others v. Bulgaria,* Judgment of 2 July 2009, paragraphs 49-50; *Nejdet Şahin and Perihan Şahin v. Turkey,* cited above, paragraph 53; and see the Court case, KI29/17, Applicant *Adem*

Zhegrova, Resolution on Inadmissibility, of 5 September 2017, paragraph 51 and see also the Court cases cited above, KI42/17, Applicant *Kushtrim Ibraj*, paragraph 39, KI87/18 Applicant *"IF Skadiforsikring"*, paragraph 67, cited above, KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, of 11 March 2020).

48. The Court notes that the ECtHR during the development of the concept of "*deep and long-term differences*" also considered whether the discrepancy is isolated or it affects a large number of people (see, inter alia, the ECtHR case, *Greek Catholic parish Lupeni and others v. Romania,* cited above, paragraph 135).

49. The Court in this regard also notes that the ECtHR has not found a violation of Article 6 of the ECHR in cases of divergent case law even if it has affected a large number of people in relation to the same case in a short period of time before relevant contradictions were resolved by the higher courts, thus enabling state mechanisms to ensure proper consistency (see, inter alia, the EtCHR case, *Albu and others v. Romania*, Judgment of 10 May 2012, paragraphs 42 - 43).

50. The latter relates to the second and third criteria, respectively to the existence of a mechanism capable of resolving inconsistencies in case law and whether this mechanism has been used and with what effect. In this regard, the ECtHR initially found that the lack of such a mechanism constituted a violation of the right to a fair trial guaranteed by Article 6 of the ECHR (see, in this context, *Tudor v. Romania*, Judgment of 4 March 2009, paragraphs 30-32; and *Ătefănică and others v. Romania,* Judgment of 2 February 2010, paragraphs 37-38; and *Nejdet Şahin and Perihan Şahin v. Turkey,* cited above, paragraph 54).

51. Initially, the Court should also reiterate that, based on the case law of the Court, it is not its function to compare different decisions of the regular courts, even if they are taken in significantly similar proceedings, as their independence must be respected (see the ECtHR case *Adamsons v. Latvia*, cited above, paragraph 118, see also the Court cases KI87/18 Applicant *"IF Skadeforsikring"* and KI35/18, Applicant *Bayerische Versicherungsverbrand,* cited above).

52. Furthermore, the Applicants regarding the allegations of constitutional violation of fundamental rights and freedoms as a result of divergences in case law, must submit to the Court the relevant arguments regarding the factual and legal similarity of the cases which claim to have been resolved differently by the regular courts, resulting in conflicting decisions in case law and which may have resulted in a violation of their constitutional rights and freedoms guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR (see case cited above KI35/18, Applicant *Bayerische Versicherungsverbrand*, paragraph 76).

53. Based on the above, in the present case, the Court recalls that the Applicant in the context of his allegation of violation of the principle of legal certainty, as a result of divergence in the case law of the Supreme Court, has submitted to the Court the Judgment of the Supreme Court of Kosovo [Rev. no.457/2019], for which he claims that his case involves the same factual and legal circumstances as those of the case decided by the challenged Judgment.

54. Regarding this allegation of the Applicant, the Court recalls that the Applicant submitted to the Court only the Judgment of the Supreme Court of Kosovo [Rev. no.

no.457/2019] of 30 January 2020, and not the decisions which preceded the latter or any other decision.

55. The Court notes that the mentioned case differs from the case before us, due to this reasoning: (i) initially in the case which the Applicant has submitted before the Court, against the employee A.Sh. a disciplinary procedure was conducted, while in the case before us against the employee V.M., no disciplinary procedure was conducted; (ii) employee A.Sh. was terminated his employment as a result of violations of duty; (iii) employee A.Sh. had far fewer years of work experience than the employee V.M., in the case before us.

56. The court once again recalls that in the Applicant's case, the Supreme Court through its Judgment [Rev. no. 107/2020], reasoned that *"the General Collective Agreement should be applied to KEDS as well, there is no doubt, because among other things the respondent in two articles of the claimant's [the employee V.M.,] employment contract is based on the Collective Agreement. According to Article 10 point 5 of the Kosovo Collective Agreement in force from 01.01.2015 [...] Employment Contract, for a limited duration, which is extended clearly or implicitly, for a period of employment period longer than 3 years, will be considered as a contract for unlimited duration. Therefore, it is not fair to conclude from the two aforementioned courts that the claimant has been in a fixed-term employment relationship with the respondent for less than 10 years, therefore his employment relationship is considered to have been in a fixed-term. This finding is not correct from the aspect of the implementation of the provision from Article 10 point 5 of the abovementioned General Collective Agreement"*.

57. In this regard, the Court considers that the challenged Judgment of the Supreme Court is reasoned and that the interpretation of the Supreme Court, regarding the facts presented for assessment by the Applicant, cannot be said to be arbitrary, unreasonable or could have affected a fair trial, but was merely a matter of interpretation and application of the law (see, by analogy, case KI29/17, Applicant *Adem Zhegrova,* cited above, paragraph 57).

58. Therefore, in the light of its case law, the Court considers that it is not possible to establish the existence of *"deep and constant differences"* in the case law of the Supreme Court endangering the principle of legal certainty, by invoking only one Judgment of the Supreme Court, issued 4 (four) months earlier (see, by analogy, case KI29/17, Applicant *Adem Zhegrova*, cited above, paragraph 53).

59. Therefore, the Court considers that neither the number of judgments alleged to be contradictory, nor the period of time within which these judgments were rendered, nor the way in which the Supreme Court assessed and handled the Applicant's case create sufficient grounds to justify the allegation of violation of the principle of security, as a result of conflicting decisions of the Supreme Court (see case KI29/17, cited above, paragraph 58)

Regarding the Applicant's allegation of lack of reasoning of the court decision in the sense of erroneous application of substantive law

60. Initially, regarding the allegation of violation of the right to a fair trial, because the challenged decision is not reasoned, the Court recalls once again the Applicant's allegation related to the lack of reasoning of the decision, which before the Court states "*whose reasoning is not clear in order to reflect the analysis of evidence and facts, as well as the substantive law on which the court bases its decision. The requirement regarding the obligation of clear reasoning of the court decision is provided in Article 160 of the Law on Contested Procedure*".

61. In this regard, the Court initially emphasizes that the essential function of a reasoned decision is to show the parties that they have been heard. Furthermore, a reasoned decision gives a party the opportunity to appeal against it, as well as the opportunity for the decision to be reviewed by an appellate body. Only by giving a reasoned decision can there be a public review 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; as well as see the Constitutional Court case KI97/16 Applicant *IKK Classic,* Judgment of 4 December 2017, paragraph 46).

62. The Court notes that, while it is not necessary for the court to deal with any points raised in the 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 need to be addressed (see ECtHR cases, *Buzescu v. Romania*, no. 61302/00, Judgment of 24 May 2005 and *Property 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 ECtHR case *De Moor v. Belgium*, no. 16997/90, Judgment of 23 June 1994 as well as the Constitutional Court case *IKK Classic,* cited above, paragraph 51).

63. The Court recalls that the Supreme Court in its judgment reasoned that based on this factual situation of the case, the Supreme Court "*Does not approve as grounded the legal position of the court of first and second instance regarding the rejection of the claimant's claim as unfounded, since the judgments of these two courts in this contentious legal matter were taken not with a substantial violation of the provisions of the contentious procedure, but with erroneous application of substantive law [...] The judgment of the court of second instance is involved in erroneous application of the substantive law from Article 2 and 15 of the LOR, this is because the employment relationship and contested issues about the employment contract are not regulated by the provisions of the LOR as Article 1 of the Law on Labour stipulates that this law aims to regulate the rights and obligations from the employment relationship, as defined in this law, while Article 2.1 provides that the provisions of this law apply to employees and employers of the public and private sector in the Republic of Kosovo, so according to the assessment of the Supreme Court, the application of those provisions of the LOR in the present case is not considered*".

64. The Supreme Court had clarified to the Applicant that he had failed to substantiate all his allegations regarding the legality of the non-extension of the employment contract as well as the establishment of relevant facts, in order to establish the fact that the evidence presented, constitutes a valid legal basis for non-renewal of the employment contract.

65. Also, the Supreme Court had clarified to the Applicant that based on the General Collective Agreement of Kosovo, which is applicable in this case, it is provided that the Employment Contract which is concluded for a period of employment longer than three (3) years, will be considered as a contract concluded for unlimited duration.

66. Therefore, in light of all this, the Court considers that the reasoning given in the Judgment [Rev.no. 107/2020] of 6 April 2020, of the Supreme Court approving the revision of the employee V.M. is clear and after reviewing all the proceedings, the Court also found that the proceedings before the Supreme Court and the courts of lower instance, were not unfair or arbitrary (see case *Shub v. Lithuania*, No. 17064/06, Decision of the ECtHR of 30 June 2009).

67. 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 construed as an obligation of the court to give a detailed response to each of the Applicant's arguments (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. Therefore, the question whether the court has fulfilled the obligation to explain the reasons for its decision, deriving from Article 6 of the ECHR, can be determined only in the light of the circumstances of each individual case.

68. The Court has also consistently asserted that it is not the role of this Court to review the findings of the regular courts concerning the factual situation and the application of substantive law, and that it cannot assess for itself the facts which have made a regular court render one decision and not another. Otherwise, the Court would act as a court of *"fourth instance"*, which would result in disregard for the boundaries set in its jurisdiction. (See, in this context, the ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and references used therein; and see also the Court cases, KI49/19, Applicant *Joint Stock Company Limak Kosovo International Airport J.S.C., "Adem Jashari"*, Resolution of 31 October 2019, paragraph 48; and KI154/17 and KI05/18, with Applicants, *Basri Deva, Aferdita Deva and the Limited Liability Company "Barbas"* Resolution on Inadmissibility, of 12 August 2019, paragraph 61, KI 36/18 Applicant *Joint Stock Company Limak Kosovo International Airport J.S.C., "Adem Jashari"*, Resolution of 20 June 2019).

69. In view of the above, the Court notes that it is not its duty to deal with errors of fact or law allegedly made by the regular courts in assessing evidence or applying the law (legality), except and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality). Indeed, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law (see, *mutatis mutandis*, ECtHR case *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 21 January 1999, paragraph 28).

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

71. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional grounds and, consequently, inadmissible.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, on 10 February 2021, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this decision to the parties;

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

IV. This decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only