



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

Prishtina, on 12 April 2021
Ref. no.: RK 1748/21

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RESOLUTION ON INADMISSIBILITY

in
case no. KI217/19

Applicant

Astrit Shabiu

**Constitutional review of Judgment ARJ-UZVP. No. 77/2019 of the
Supreme Court of the Republic of Kosovo of 10 June 2019**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Astrit Shabiu, from the village Smirë, Municipality of Viti (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment ARJ-UZVP. No. 77/2019, of 10 June 2019, of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment AA. No. 367/2018 of 19 December 2018, of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment A. No. 729/16 of 4 May 2018, of the Basic Court in Prishtina, Department of Administrative Matters (hereinafter: the Basic Court).
3. The Applicant was served with the challenged Judgment of the Supreme Court on 28 August 2019.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment whereby, according to the Applicant's allegation, the fundamental rights and freedoms guaranteed by Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: Constitution) have been violated.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 29 November 2019, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral, which he submitted by mail service on 26 November 2019.
7. On 5 December 2019, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
8. On 15 January 2020, the Court notified the Applicant about the registration of the Referral and also sent a copy of the Referral to the Supreme Court, the Independent Oversight Board of the Republic of Kosovo (hereinafter: the IOBCSK) and the Municipality of Viti. On the same date, the Court requested the Basic Court to submit the acknowledgment of receipt, which proves when the Applicant was served with the challenged Judgment ARJ-UZVP. No. 77/2019, of 10 June 2019, of the Supreme Court.

9. On 20 January 2020, the Court received the acknowledgment of receipt submitted by the Basic Court in Prishtina, which proves that the Applicant was served with the challenged Judgment of the Supreme Court on 28 August 2020.
10. On 29 March 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. Based on the case file, submitted by the Applicant, it results that on 17 October 2012 he applied for the position of Administrative Secretary in the Primary School "Dëshmorët e 5 Prillit" in the village of Smirë, Municipality of Viti.
12. In the vacancy published by the Municipality of Viti, it was determined that the candidate must have a degree in law and have at least three years of work experience.
13. As a result of the completion of the application and interview procedure and the achievement of maximum points, the Applicant was admitted to the above-mentioned position of the Administrative Secretary in this educational institution.
14. On an unspecified date, the other two candidates, I.S. and XH. N., who had competed in the same position, in the capacity of the dissatisfied parties, filed a complaint to the Complaints and Appeals Commission in the Municipality of Viti, where the latter rejected their claims as ungrounded.
15. On 8 January 2013, against the Decision of the Appeals and Complaints Commission, the two candidates in question filed an appeal with the IOBCSK.
16. Based on the facts of the case, which are reflected in the decisions of the regular courts and which were not attached to the file by the Applicant, it appears that the IOBCSK, on an unspecified date, initially rejected the appeal of the two other candidates. After that, the other two candidates filed a statement of claim with the Basic Court in Prishtina, Department of Administrative Matters (hereinafter: the Basic Court), requesting the annulment of the IOBCSK Decision. On an unspecified date, the Basic Court in Prishtina, by Judgment A. No. 264/13 approved the request of the other two candidates and remanded the case for reconsideration to the IOBCSK.
17. On 1 April 2016, the IOBCSK by Decision No. A02/77/2016 (Protocol No. 1283/2016), approved the appeal of the two candidates I.S. and XH. N., and decided to annul the vacancy announced on 17 October 2012. The IOBCSK found that the Applicant did not meet the criteria of work experience after graduation required in the vacancy.
18. On 26 April 2016, as a result of the IOBCSK Decision, the Applicant's employment relationship was terminated.

19. On 16 April 2016, the Municipality of Viti filed a statement of claim with the Basic Court requesting the annulment of the IOBCSK Decision, AO2/77/2016, of 1 April 2016.
20. On 4 May 2018, the Basic Court, by Judgment, A. No. 729/16, rejected the statement of claim of the Municipality of Viti as unfounded.
21. The Basic Court held the main hearing, in which the Municipality of Viti participated as a claimant, the IOBCSK as a respondent and the Applicant as an interested party. The Applicant, in his capacity as an interested party, alleged that the IOBCSK had not completely determined the factual situation and consequently have erroneously applied Article 28 of Rules of Procedure 02/2010 on Civil Service Recruitment Procedures.
22. The Basic Court in its Judgment initially referred to the provisions of Regulation 02/2010 on Civil Service Recruitment Procedures, namely Article 19, which stipulates that the review of applications is the first stage of selection in the recruitment process. Further, the Basic Court also referred to Article 28 of this Regulation, which sets out the criteria for inclusion in the shortlist, and which specifies that members of the CSSC [Civil Service Selection Committee] evaluate applications based on criteria as in following: vocational education and training, work experience, skills and abilities, and other elements of employment. The Basic Court also referred to Article 11 of Law no. 03/L-149 on Civil Service (hereinafter: the Law on Civil Service) which stipulates that: *“Admission to the Civil Service of Kosovo shall be done in compliance with principles of merit, professional capacity, impartiality and upon verification of eligibility of the candidates to act”*.
23. Subsequently, the Basic Court, referring to the administered evidence, held that *“the Applicant applied in the vacancy announced on 17 October 2012, by the Municipality of Viti for the vacant working position of Administrative Secretary in the Primary and Lower Secondary School “5 Prill” in the village of Smirë, where he was selected as the best candidate in written and oral with 70.4 % of points. Furthermore, the Ministry of Education, Science and Technology on 8 October 2013 issued him the recognition of the degree of lawyer graduated for four-year studies, obtained at the University of Tetova [...]”*. Therefore, at the time of application, the latter did not meet the work experience after graduation, as it was defined in the competition, namely all his experience was before graduation, and this has already been confirmed by the Kosovo Pension Trust”. Therefore, the Basic Court found that during the recruitment procedure by the Municipality of Viti the factual and legal situation was not established by that certified by the IOBCSK.
24. On an unspecified date, the Applicant (in his capacity as an interested party) filed an appeal with the Court of Appeals against the Judgment of the Basic Court due to erroneous and incomplete determination of the factual situation and erroneous application of the substantive law.

25. On 19 December 2018, the Court of Appeals of Kosovo, by Judgment, AA. No. 367/2018, rejected as ungrounded the Applicant's appeal against the abovementioned Judgment of the Court of Appeals.
26. The Court of Appeals, by this Judgment, upheld as fair and based on law the finding and legal position of the Basic Court. The Court of Appeals noted that *"despite the fact that the judgment of the first instance was not appealed due to the essential violations of the provisions of the procedure, the panel of this court considered the latter on the basis of the appeal, and concluded that the appealed judgment [of the Basic Court] does not contain essential violation of the procedural provisions, since the court has reviewed the lawsuit, first sent the lawsuit to the respondent's representative [IOBCSK] in response to the lawsuit, then scheduled the main hearing, produced sufficient evidence, which means that during the assessment the first instance court, did not violate the procedural provisions of the LAC"*.
27. Subsequently, the Court of Appeals found that the Applicant's allegations of erroneous interpretation of the Civil Service legislation regarding work experience *"These allegations are ungrounded as the court of first instance, in the course of reviewing the lawsuit of the claimant [the municipality of Viti produced sufficient evidence which proves that the allegations of the claimant and now the allegations [of the Applicant] are ungrounded"*. According to the Court of Appeals, the Applicant's allegations are in contradiction with the factual situation determined by the IOBCSK and the Basic Court and contradict the evidence in the case file.
28. On an unspecified date, the Applicant filed with the Supreme Court a request for an extraordinary review of the Judgment of the Court of Appeals. In his request, the Applicant challenged the legality of the abovementioned Judgment of the Court of Appeals, claiming that the latter contains erroneous application of the substantive law, namely alleging erroneous interpretation of Article 28 of the Rules of Procedure 02/2010 on Civil Service Recruitment Procedures.
29. On 10 June 2019, the Supreme Court, by Judgment ARJ-UZVP. No. 77/2019, rejected the Applicant's request for extraordinary review of the Judgment of the Court of Appeals.
30. The Supreme Court fully upheld the legal position of the Court of Appeals, finding that the latter does not contain a violation of substantive law. In this regard, the Supreme Court found that the provisions of Regulation 02/2010 on Civil Service Recruitment Procedures, namely Articles 19 and 28, as well as Article 11 of the Law on Civil Service, which stipulates that admission to the Civil Service of Kosovo shall be done in compliance with principles of merit, professional capacity, impartiality, equal opportunities, upon verification of eligibility of the candidates to act.
31. The Supreme Court found that the Applicant's allegations in the capacity of the interested party for extraordinary review of the court decision are ungrounded because they do not affect the determination of the factual situation other than what the second instance court found. According to the Supreme Court, the

Judgment of the Court of Appeals is clear, comprehensible and contains sufficient reasons for the decisive facts.

Applicant's allegations

32. The Court recalls that the Applicant alleges that by the Judgment of the Supreme Court his rights guaranteed by Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise the Profession] and Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution have been violated.
33. With regard to the allegation of a violation of Article 31, the Applicant alleges that the interpretation given by the Supreme Court by the challenged Judgment is *"arbitrary due to the fact that nowhere in the vacancy did it say that the experience should be before or after graduation, so their interpretation is not based on law, but only copy paste was made from previous judgments [...]"*. The Applicant further specifies that as a result of arbitrary interpretation by the Supreme Court he lost his job. According to the Applicant *"[...] the competence of the municipality - the employer is to set criteria for employment, therefore the interpretation of something that was not in the vacancy is arbitrary and is a mixture in the municipal employment institution"*.
34. With regard to the allegation of a violation of Article 23 [Human Dignity] of the Constitution, the Applicant alleges that: *"the above-mentioned institutions, through their decisions, constitute a constitutional violation of Article 23 - Human Dignity, violating my dignity, since I was a graduated lawyer, I had work experience, over three years, as it was specified in vacancy, proven even with trust, why should my employment be terminated?"*.
35. The Applicant further alleges a violation of Article 24 [Equality Before the Law] of the Constitution, stating that: *"[regular courts] through their interpretations have made available discriminatory criteria, respectively they have created practices not based on laws and which is not in the public interest at all. Specifically, their interpretation is arbitrary, not referring correctly to the legal norm. By not applying the most favorable provisions for the injured party, namely me, they do not adjudicate two times: the legislation of 2012 and that of 2016. Namely, the Basic Court and the Court of Appeals, do not accurately refer to the provisions governing the civil service in Kosovo and do not apply the substantive law correctly, it is also surprising that they do not recognize as a fact the declarative administrative acts"*.
36. With regard to the allegation of violation of Article 49 of the Constitution [Right to Work and Exercise the Profession] of the Constitution, the Applicant states that: *"[...] they deny me my constitutional right to work as well as my right to choose a profession. With their decisions, they have violated the constitutional provisions, preventing me from exercising my profession as a law graduate, making discriminatory interpretations and creating an employment monopoly, when it is known that the IOBCSK, with the interpretation that work experience is recognized only after graduation, violates the right to exercise a profession as well as the right to work. Is it absurd not to recognize*

a person as a graduated lawyer if he does not have post-graduation experience? How to practice the profession of lawyer when we have a violation of this right as the IOBCSK, the Basic Court, the Court of Appeals, the Administrative departments and the Supreme Court authorize themselves what should be the work experience before or after graduation and thus I think that here we deal with violation of Article 49 of the Constitution”.

37. With regard to the allegation of a violation of Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution, the Applicant alleges that: *“The above-mentioned institutions, through their decisions not based on civil service legislation, have created bad practices, restricting the freedoms and rights guaranteed by the constitution, and in this case I think that there is a violation of Article 55- Limitations on Fundamental Rights and Freedoms”.*
38. In this regard, the Applicant also submitted the Opinion of the Office of the Ombudsperson, no. 207/2018, of 31 January 2018. This Opinion was submitted by the Office of the Ombudsperson in the capacity of *Amicus Curiae*, *“regarding the issue of interpreting the concept of ‘work experience’ in the context of vacancies for employment in public institutions, offered to: the Supreme Court, the Court of Appeals and the Basic Court, and the Ministry of Public Administration”.* The introductory part of this Opinion states that *“This legal opinion of the Ombudsperson in the capacity of a friend of the court aims to provide legal assistance to create the possibility of a fair interpretation of the concept of “work experience” in the context of vacancies for employment in public institutions [...]”.*
39. In this regard, the Applicant states that the Opinion of the Ombudsperson *“convincingly and argumentatively substantiates my claims”.* According to the Applicant, *“Interpretation according to the abovementioned institutions that: ‘work experience is recognized only after graduation’, is not in the public interest, and creates exclusionary criteria in public vacancies, namely it violates the public interest and unfairly restricts the fundamental freedoms and rights of as well as it denies recent graduates to compete in various positions”.*
40. In this regard, the Applicant alleges that *“according to the decisions of the above-mentioned Courts, among other things, it is stated that the candidate Astrit Shabiu did not have his diploma validated, since the studies were conducted at the State University of Tetova. It is known that in the vacancy in question there was no nostrification criterion, but based on previous practices, it is known that all graduates with the old Yugoslav system, do not need nostrification, although I already have the decision on nostrification in question and which I think is a declarative administrative act, and as such the above-mentioned instances do not recognize it”.*
41. Finally, the Applicant requested the Court that Judgment ARJ-UZVP No. 77/2019, of the Supreme Court, of 10 June 2019, Judgment AA. No. 367/2018, of the Court of Appeals of 19 December 2018, and Judgment A. No. 729/16, of the Basic Court of 4 May 2018 *“be assessed as unconstitutional, be repealed and annulled”.*

Relevant constitutional provisions

Constitution of the Republic of Kosovo

Article 23 [Human Dignity]

Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.

Article 24 [Equality Before the Law]

- 1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
- 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*
- 3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.*

Article 31 [Right to Fair and Impartial Trial]

- 1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
- 2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

(...)

Article 49 [Right to Work and Exercise Profession]

- 1. The right to work is guaranteed.*
- 2. Every person is free to choose his/her profession and occupation.*

Article 55 [Limitations on Fundamental Rights and Freedoms]

- 1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law..*

2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.

3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.

4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.

5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.

Law no. 03 / L-149 on the Civil Service of the Republic of Kosovo

Article 11

Admission to the Civil Service

1. Admission to the Civil Service of Kosovo shall be done in compliance with principles of merit, professional capacity, impartiality, equal opportunities, non discrimination and equal representation, on the basis of public competition and upon verification of eligibility of the candidates to act.

[...]

Regulation no. 02/2010 on Recruitment Procedures in Civil Procedure

Article 19

Review procedure

The application review is the first selection phase in recruitment process. The purpose of review is to prepare the qualified short-listed candidates for further proceeding after evaluating the profile, merits and their compliance with requests defined for relevant position.

Article 28

Criteria for inclusion in the short list

1. Members of SCCS, for assessment of application shall use the form MPACS/Rec/005 based on the following criteria:
 - 1.1. Education and professional qualification;
 - 1.2. Working experience;
 - 1.3. skills;
 - 1.4. other elements of merit.

Admissibility of the Referral

42. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
43. 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.”

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

45. As regards the fulfillment of the admissibility requirements, the Court finds that the Applicant is an authorized party, challenging the act of the public authority, namely Judgment ARJ-UZVP. No. 77/2019, of 10 June 2019 of the Supreme

Court, after the exhaustion of all available legal remedies provided by Law. 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.

46. The Court clarifies, in addition to these criteria, when assessing the admissibility requirements, the Court should also refer to Rule 39 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 39 (2) of the Rules of Procedure, establishes that:

“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.”

47. In light of this, the Court emphasizes the Applicant’s allegations that by Judgment ARJ-UZVP. No. 77/2019 of the Supreme Court, of 10 June 2019, the following constitutional rights have been violated: the right to fair and impartial trial; right to work and exercise profession; right to dignity; equality before the law; limitations on fundamental rights and freedoms.
48. In the light of these allegations, for the purpose of assessing the admissibility of the Referral, in the following the Court will apply the standards of its case law, as well as the case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
49. In this regard, as the substance of the Applicant’s allegations and arguments relates to the standards of a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, the Court will examine these allegations of the Applicant.

(i) Regarding the allegation of violation of Article 31 of the Constitution

50. With regard to the allegations relating to Article 31 of the Constitution, the Court notes that the Applicant’s main argument is that the regular courts, as well as the IOBCSK, have erroneously and arbitrarily interpreted the relevant legal provisions for admission to civil service, when they have decided not to recognize his work experience before graduation. The Applicant in his Referral did not specify what was his profession or experience exercised before graduation.
51. In this regard, the Court has consistently reiterated that, as a general rule, the allegations of erroneous interpretation and application of law, allegedly committed by the regular courts, relate to the scope of legality and as such, in principle, are not in the jurisdiction of the Constitutional Court (See cases of the Court No. KI06/17, Applicant *L. G. and five others*, Resolution on Inadmissibility of 25 October 2016, paragraph 36; KI75/17, Applicant *X*, Resolution on Inadmissibility of 6 December 2017, paragraph 55, and KI122/16, Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56).

52. The Court has consistently reiterated that it is not its task to deal with errors of facts or law allegedly committed by the regular courts (legality), unless and in so far as they (the regular courts) may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). In principle, the Constitutional Court may not itself assess the factual and legal reasons which have led a regular court to adopt one decision rather than another. If it were otherwise, the Constitutional Court would be acting as a court of "fourth instance", which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *inter alia*, decisions of the Constitutional Court in cases: KI70/11, Applicants *Faik Rima, Magbule Rima and Besart Rima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 29; KI06/17, Applicant *L. G. and five others*, paragraph 37; and KI122/16, Applicant *Riza Dembogaj*, paragraph 57).
53. The Constitutional Court can only make the assessment of legal interpretations of the regular courts and only if those interpretations may have resulted in arbitrary or manifestly unreasonable conclusions (see case cited above, KI75/17, paragraph 59).
54. Therefore, based on the content of the Applicant's allegations, the Court will examine whether his allegations of erroneous application of law fall within the scope of legality or constitutionality.
55. In this regard, the Court recalls that the Applicant specifically challenges the Judgments of the Basic Court, the Court of Appeals and the Supreme Court, which also upheld the IOBCSK finding that the Applicant did not have the necessary work experience to the position for which he had applied.
56. Referring to the proceedings conducted in the present case, the Court notes that after the IOBCSK Decision, by which it was concluded that the Applicant did not meet the criteria of work experience and, consequently, annulled the vacancy published by the Municipality of Viti, the latter filed a statement of claim with the Basic Court requesting the annulment of the abovementioned Decision of the IOBCSK. In the proceedings before the Basic Court, the Applicant also participated in the capacity of an interested party, who was given the opportunity to present his allegations.
57. The Basic Court, after holding the main hearing and the administration of evidence, by its Judgment rejected the request of the Municipality of Viti, upholding the findings of the IOBCSK that the Applicant did not meet the criteria of work experience. Relying also on the evidence administered and specifically on the data of the Kosovo Pension Trust, this Court concluded that the Applicant did not meet the criteria of work experience. The Basic Court, in this case, referred to the relevant provisions defining the criteria and procedures for admission to the Civil Service, namely Articles 19 and 28 of Regulation no. 02 on recruitment procedures in the Civil Service and Article 11 of the Law on Civil Service.

58. Following the Applicant's appeal against the Judgment of the Basic Court, the Court of Appeals, by its Judgment, fully upheld the findings of the Basic Court. Against the Judgment of the Court of Appeals, the Applicant filed a request for extraordinary review of the court decision with the Supreme Court. In his request for extraordinary review, the Applicant alleged erroneous interpretation and application of the substantive law, namely Article 28 of Regulation No. 02/2010 on Recruitment Procedures in the Civil Service, by the Court of Appeals.
59. The Supreme Court rejected the Applicant's request (in the capacity of the interested party) for an extraordinary review, finding that it was ungrounded. The Supreme Court, in its Judgment, upheld the assessment and findings given by the Judgment of the Court of Appeals in entirety, concluding that the interpretation of the latter was fair and based on law. In this regard, the Supreme Court found that the provisions of Regulation 02/2010 on Civil Service Recruitment Procedures, Articles 19 and 28, respectively, as well as Article 11 of the Law on Civil Service, which stipulates that admission to the Civil Service is done in compliance with the principles of merit, professional capacity, impartiality, equal opportunities, on the basis of public competition and upon verification of the eligibility of the candidates to act.
60. In the circumstances of the present case, the Court considers that the Applicant does not sufficiently substantiate or prove before the Court how these interpretations of the relevant legal provisions, made by the Supreme Court and the regular courts, may have resulted in arbitrary or clearly unreasonable conclusions for the Applicant, or how the proceedings before the regular courts, in their entirety, may not have been fair or may have been even arbitrary.
61. In view of the above, the Court considers that the Applicant's allegations that the findings of the regular courts, in particular of the Supreme Court, are not based on law fall into the category of "*the fourth instance*" allegations, because they involve issues that are related to the determination of factual situation and the interpretation and application of the law, namely "*legality*" and not "*constitutionality*".
62. Therefore, and based on the explanations above, the Court considers that the Applicant does not prove and does not sufficiently substantiate his allegation of erroneous application of the law by the regular courts, namely the challenged Judgment of the Supreme Court, which upheld the assessment and finding of the IOBCSK, the Basic Court and the Court of Appeals and, therefore, these allegations are manifestly ill-founded on constitutional basis, as stipulated in paragraph (2) of Rule 39 of the Rules of Procedure.

(i) Regarding the allegations of violation of Articles 23, 24, 49 and 55 of the Constitution

63. The Court recalls that the Applicant also alleges violations of Articles 23 [Human Dignity], 24 [Equality Before the Law], 49 [Right to Work and Exercise Profession] and Article 55 [Limitations on Fundamental Human Rights and Freedoms] of the Constitution.

Regarding the allegation of violation of Article 23 of the Constitution

64. The Applicant alleges a violation of Article 23 [Human Dignity] of the Constitution stating that by the challenged decisions of the regular courts, through which it was decided regarding the non-fulfillment of the criteria of his work experience, his dignity has been violated. The Court emphasizes the fact that the protection of human dignity is not only an individual right, but represents the basis of all fundamental rights provided by the Constitution of the Republic of Kosovo. However, in the present case, the Court notes that the Applicant has not submitted any facts and has not substantiated how the challenged Judgment of the Supreme Court has violated his dignity.

Regarding the allegation of violation of Article 24 of the Constitution

65. The Court recalls that the Applicant in his Referral alleges a violation of Article 24 of the Constitution [Equality Before the Law], because, according to him, *“The regular courts through their interpretations have made available discriminatory criteria, namely they have created a practice not based on laws and which is not in the public interest at all”*.
66. With regard to the Applicant’s allegation of a violation of equality before the law, the Court refers to its case-law and that of the ECtHR, which notes that only differences in treatment, based on an identifiable characteristic, *or status*, may constitute unequal treatment within the meaning of Article 24 of the Constitution. Furthermore, in order for a case to be raised under Article 24, there must be a difference in the treatment of persons in analogous or similar situations (see, *mutatis mutandis*, the case of the Constitutional Court, KI157/18, Applicant. *the Supreme Court of Kosovo*, Judgment of 13 March 2019, paragraph 33, see also the cases of the ECtHR *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, applications Nos. 5095/71, 5920/72 and 5926/72, 7 December 1976 , paragraph 56; and *Carson and Others v. the United Kingdom*, application no. 42184/05, Judgment of 16 March 2010, paragraph 61). In accordance with these case laws, not every difference in treatment will be discriminatory if it lacks objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if it lacks a reasonable relationship between the means used and the aim pursued (see the case of the ECtHR *Guberina v. Croatia*, Judgment of 22 March and other references cited therein).
67. Therefore, the Court notes that the Applicant has not substantiated his allegation as to how he was treated differently from other persons in a similar situation and, consequently, has not substantiated his allegation of discrimination in the proceedings before the IOBCSK and the regular courts.
68. Therefore, the Applicant’s allegation of a violation of Article 24 of the Constitution is manifestly ill-founded on constitutional basis.

Regarding the allegation of violation of Article 49 of the Constitution

69. The Court recalls that the Applicant alleges that by the challenged Judgment of the Supreme Court and, according to him, discriminatory interpretations by the latter, he was denied his right to work and exercise his profession..
70. In the context of the Applicant's allegation of violation of Article 49 of the Constitution, the Court emphasizes its case law, which clarifies that the Constitution provides a standard definition that specifies the guarantees and rights to work, the employment opportunities and the provision of equal working conditions without discrimination, as well as the right to choose freely the working place and exercise profession, without forced obligations. These rights are regulated by applicable laws in a specific manner (see, *inter alia*, cases of the Court KI46/15, Applicant *Zejna Qosaj*, Resolution on Inadmissibility of 20 October 2015, paragraph 26; KI70/17, Applicant *Rrahim Ramadani*, Resolution on Inadmissibility, of 8 May 2018, paragraph 48; and KI115/19, Applicant *Sadete Jusufi*, Resolution on Inadmissibility, of 11 March 2019, paragraph 65).
71. The Court notes that the Applicant's allegation of violation of the right to work must be understood in the light of the abovementioned interpretation. In this regard, the Court considers that the Applicant, in the present case, alleges that his right to work and exercise his profession has been violated, within the meaning of Article 49 of the Constitution (see, *mutatis mutandis*, case KI115/19, Applicant *Sadete Jusufi* cited above, paragraph 66).
72. The Court considers that the challenged Judgment of the Supreme Court does not prohibit the Applicant in any way to work and exercise his profession. Consequently, there is nothing in the Applicant's allegation that would justify the finding that his constitutional rights guaranteed by Article 49 of the Constitution have been violated. The Court therefore considers that his allegation of a violation of Article 49 of the Constitution is manifestly ill-founded on constitutional basis.

Regarding the allegation of violation of Article 55 of the Constitution

73. In the Referral, the Applicant also alleges a violation of Article 55 of the Constitution, claiming that the interpretation of the regular courts, by which the recognition of work experience before graduation is denied, violates the public interest and restricts human rights and freedoms. Regarding this specific allegation, the Applicant also refers to Opinion no. 207/2018, of 31 January 2018, of the Office of the Ombudsperson in the capacity of *Amicus Curiae* "regarding the issue of interpreting the concept of 'work experience' in the context of vacancies for employment in public institutions, offered to: the Supreme Court, the Court of Appeals and the Basic Court, and the Ministry of Public Administration".
74. In this respect, the Court notes that Article 55 of the Constitution establishes the criteria and circumstances in which human rights and freedoms may be restricted in accordance with the Constitution. Article 55 of the Constitution

determines whether: (i) the restriction is provided by law; (ii) there is a legitimate aim intended to be achieved by the restriction; and (iii) there is a relationship of proportionality between the restriction and the aim intended to be achieved.

75. The Court recalls that the issue of interpretation of work experience was also raised in the context of the alleged violation of Article 31, as a result of erroneous interpretation of the law and the allegation of violation of Article 49 of the Constitution. In this regard, the Court recalls that it has already found that these allegations are manifestly ill-founded on constitutional basis.
76. Therefore, in the light of the allegations and arguments presented in the Referral, the Court considers that the Applicant has not specified how and in what way this provision of the Constitution has been violated in his case.
77. In view of the above, and in connection with the Applicant's allegations of violation of Articles 23, 24, 49 and 55 of the Constitution, the Court also recalls that it has consistently reiterated that only the mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that cares for the respect of human rights and freedoms (see, in this context, the cases of the Court KIO2/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta*, Resolution on Inadmissibility of 8 October 2019).
78. Therefore, the Court, based on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and has not sufficiently substantiated his allegations as to Articles 23, 24, 49 and 55 of the Constitution, and consequently, the Court finds that these allegations are manifestly ill-founded on constitutional basis, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

Conclusion

79. For the reasons presented above, the Court concludes that in accordance with Rule 39 (2) of the Rules of Procedure, the Applicant's Referral regarding his allegations of violation of Articles 23, 24, 31, 49 and 55 of the Constitution is manifestly ill-founded on constitutional basis, and therefore, his Referral is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) and 59 (2) of the Rules of Procedure, on 29 March 2021, unanimously:

DECIDES

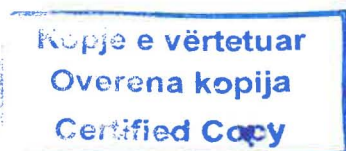
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bekim Sejdiu

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.