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

Prishtina, on 11 June 2021
Ref. no.:RK 1804/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI81/20

Parashtrues

Arbër Shkreli

Constitutional review of Judgment Rev.no.457/2019 of the Supreme Court of Kosovo, of 30 January 2020

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 Arbër Shkreli from the village of Treboviq, Municipality of Peja (hereinafter: the Applicant), who is represented by lawyer Idriz Ibraj.

Challenged decision

2. The Applicant challenges the Judgment [Rev.no.457/2019] of the Supreme Court of Kosovo, of 30 January 2020.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment, which allegedly has violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial], and Article 49 [Right of Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution)

Legal basis

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

Proceedings before the Constitutional Court

5. On 22 May 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 12 June 2020, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).

7. On 25 June 2020, the Court notified the Applicant about the registration of the Referral. On the same day, the Court also notified the Supreme Court about the registration of the Referral and sent a copy thereof to it.

8. On 20 May 2021, the Review Pane considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. Based on the case file it results that the Applicant had been employed in KEDS-District in Peja (hereinafter: the Employer) in the position of Physical Labourer, in the Network Division, System Operation Department, since 2009 based on the fixed term contracts, and on the basis of the last contract from 1 September 2014 that was amended by the annex to the Contract, of 16 January 2015.

10. On 14 December 2015, the Employer, by Decision [no.10697], had suspended the Applicant from work, until further decision, due to a serious breach of job

duties, defined in Article 6 paragraph 6.1 subparagraphs (a), (j), (n) and (p) of the KEDS Disciplinary Code.

11. On 23 December 2015, the Employer based on Decision [No. 11040], had permanently terminated the employment relationship with the Applicant, by justification that the Applicant had committed a serious breach of job duties.

12. On 28 December 2015, the Applicant had filed a complaint with the Employer seeking the reconsideration of the above decision, by alleging that the factual situation was erroneously determined and that there was committed an essential violation of the provisions of the disciplinary procedure and legal provisions of the Employer's Regulation.

13. On 19 January 2016, the Employer by Decision [no.561] rejected the Applicant's complaint as ungrounded and upheld its Decision [No. 11040], of 23 December 2015.

14. On an unspecified date, the Applicant filed a complaint with the Executive Body of the Labour Inspectorate, requesting the annulment of Decision [No. 11040], of 23 December 2015, and his reinstatement to the job position.

15. On 22 March 2016, the Executive Body of the Labour Inspectorate through the Official Report in respect of the Applicant's request, among other things, found that the Employer had committed a legal violation on the occasion of termination of the employment contract.

16. On an unspecified date, the Applicant filed a claim with the Basic Court in Peja (hereinafter: the Basic Court), seeking the annulment of the Employer's Decision [No. 11040], of 23 December 2015, his reinstatement to work as well as compensation of personal income starting from 23 December 2015 to 30 November 2016.

17. On 7 February 2017, the Basic Court by Judgment [C.no. 127/16] approved the Applicant's claim and decided as follows: I. Annulled the Employer's Decision [No. 11040] of 23 December 2015, as being unlawful; II. Obliged the Employer to reinstate the Applicant to the same job position or to another position which corresponds to his qualifications; III. Obliged the Employer to compensate the Applicant for personal income for the requested period; IV. To pay all costs of the proceedings; and V. To pay all obligations for the Applicant to the Kosovo Pension Trust.

18. The Basic Court, in its Judgment, among other things, stated *"Having administered the evidence contained in the case file, the Court came to the conclusion that the respondent's decision whereby the claimant was imposed a disciplinary measure, dismissal from work, was taken in an unlawful manner, it is unfair and contrary to the legal provisions mentioned above, because the disciplinary measure of termination of employment relationship can be imposed on the employee according to the procedure in the manner and circumstances as provided for by the law, normative acts and collective contract [. ..] In the present case, the decision to terminate the employment relationship was taken in breach of the procedure provided by the above*

provisions, because the claimant [Applicant] has realized the employment rights and obligations, at the respondent company and with no single evidence have there been argued the reasons for termination of employment, for which as alleged by the respondent, a disciplinary procedure for determination of the employee's responsibility concerning the violation of job duties should be initiated and completed, within the legal deadlines and by respecting all the rights of the employee".

19. On an unspecified date, the Employer filed an appeal with the Court of Appeals of Kosovo against the aforementioned judgment of the Basic Court, alleging essential violations of the provisions of the contested procedure, erroneous determination of factual situation and erroneous application of substantive law.

20. On 2 July 2019, the Court of Appeals by Judgment [AC.NO.1597/17] rejected the Employer's appeal as ungrounded, by upholding the Judgment [C.no.127/16] of the Basic Court in Peja, and assessing the position of the latter as being fair and based upon legal arguments.

21. On 30 August 2019, the Employer submitted a request for revision to the Supreme Court, against the two aforementioned judgments, alleging essential violations of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law.

22. On 30 January 2020, the Supreme Court, by Judgment [Rev.no.457/2019], accepted the revision as partially grounded, by deciding as follows: I. Rejected the Applicant's statement of claim for reinstatement to the job position, as ungrounded II. Annulled the Judgment [C.no.127/16] of the Basic Court, by remanding for retrial the part relating to point III, IV and V of the enacting clause of the latter; and III. Rejected the Employer's revision as ungrounded, whereby it had sought the annulment of the Judgment of the Basic Court in conjunction with the Decision [no.11040], dated 23 December 2015, of the Employer, as being unlawful.

23. Further in its Judgment, the Supreme Court reasoned that on the basis of Article 67 of the Law on Labour, it is envisaged that the employment relationship is terminated on legal basis with the expiry of the duration of contract, and that beyond this, there is no provision in the Law on Labour which supports the reasoning provided in the Judgment [C.no. 127/16] of the Basic Court, of 7 February 2017.

Applicant's allegations

24. The Court recalls that the Applicant alleges that the challenged decision has violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution.

25. The Applicant initially states that he has not committed any breach of duty, for which his employment relationship was terminated, and that the decision on

termination of his employment relationship is in complete contradiction with Article 73 of the Law on Labour.

26. The Applicant, in essence, alleges that *"it is a fact clear for every jurist that when a legal act is ANNULLED (as is the case with decision no. 11040, of 23 December 2015, then all actions deriving therefrom are invalid, hence we do not know how to comment on the fact, namely, how can it be that when the Decision on Termination of the Employment Contract is first cancelled the reinstatement to job position is not allowed."*

27. The Applicant further adds *that "This cannot be justified at all even if it is alluded that there have existed reasons under the contract at the time, because these dilemmas are now removed since the fixed term contract is defined by the Law on Labour and the Collective Contract [...] The provisions of Article 10 of the Collective Contract under point 5 provide that if a fixed term employment contract, which is explicitly or tacitly renewed for a continued period of employment of more than (3) years shall be deemed to be a Contract for indefinite period of time. In our case we are speaking about a continued employment contract of more than 6 years."*

28. The Applicant further alleges that the Supreme Court was biased when deciding this case, stating that "*We consider that the Supreme Court was biased when rendering the decision, thus violating (has violated) in addition to the above provisions also two fundamental rights of the proposer [Applicant] which are guaranteed by the Constitution of the Republic of Kosovo: the right to a fair and impartial trial and the right to work and exercise profession, without analysing at all that the proposer was dismissed from work without any legal basis, and his employment contract was terminated even though he was the single provider and breadwinner of the family of 6 members, for the sole blame that he was a physical labourer."*

29. The Applicant requests that the challenged decision be considered unconstitutional.

Relevant Legal Provisions

Law No. 03/L-212 on Labour

Article 5
Prohibition of all Forms of Discrimination

1. Discrimination is prohibited in employment and occupation in respect of recruitment, training, promotion of employment, terms and conditions of employment, disciplinary measures, cancellation of the contract of employment or other matters arising out of the employment relationship and regulated by Law and other Laws into force.

[...]

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 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 73
Temporary suspension from work

1. An employee may be temporary suspended from work if:

1.1. Criminal procedures are initiated against an employee because of alleged criminal offence of any kind;

1.2. An employee is detained;

1.3. An employee conducts a serious violation of work related obligations defined by this Law.

Article 80
Court decision on Termination of Employment Contract

1. the court finds that the employer's cancellation of the employment contract is unlawful according to the provisions of this Law, the collective contract or the employment contract, it shall order the employer to do one of the following:
1.1. to pay the employee compensation, additional to any allowance and other amounts to which the employee may be entitled under this Law, the employment contract, a collective contracts or the Internal Act, in such amount as the court considers just and equitable, but which shall not be less than twice the value of any severance payment to which the employee was entitled at the time of dismissal; or
1.2. in cases where the dismissal is deemed unlawful under Article 5 of this Law, the court may reinstate the employee in his or her previous employment and orders compensation of all salaries and other benefits lost during the time of unlawful dismissal from work.

2. The employer is obliged, that within the defined term, to implement the decision of competent court.

Assessment of the admissibility of Referral

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

31. 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."

32. In the following, the Court also examines whether the Applicant has fulfilled the admissibility criteria, as provided by Law. In this respect, the Court first 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..."

33. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, who is challenging an act of a public authority, after having exhausted all legal remedies. The Applicant has also clarified the rights and freedoms which he alleges to have been violated, pursuamt to the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadline established in Article 49 of the Law.

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

(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.

35. The Court first notes that the Applicant alleges that his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Article 49 of the Constitution, has been violated, by alleging the challenged decision is contradictory.

36. In essence, the Applicant justifies his Referral regarding the erroneous application of procedural and substantive law, by stating that the Judgment of the Supreme Court is unlawful as:

(i) according to the Applicant, the challenged decision is contradictory, because according to him when a legal act is annulled, as defined in the challenged decision, specifically underpoint III of the enacting clause of the latter (as is the case with decision [no.11040] of 23 December 2015), then also all actions deriving from it are invalid.

(ii) The Applicant further alleges that the challenged decision is arbitrary due to the fact that it states that the Applicant's employment contract has expired, adding that *"The provisions of Article 10 of the Collective Contract under point 5 provide that if a contract for a fixed period of time that is expressly or tacitly renewed for a continued period of employment of more than three (3) years shall be deemed to be a contract for an indefinite period of time.In our case we are speaking about a constinued contract of more than 6 years"*

(iii) The Applicant alleges that the Supreme Court was biased when deciding on the revision of the Employer.

37. The Court, by 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 under Article 53 [Interpretation of Human Rights Provisions] of the Constitution, to interpret fundamental human rights and freedoms guaranteed by the Constitution in accordance with the judicial decisions of the ECtHR.

38. First, the Court recalls once again the first allegation of the Applicant's which states that when a legal act is annulled, as defined in the challenged decision, specifically under point III of its enacting clause (as is the case with decision [no.11040] of the Employer, of 23 December 2015), then all actions deriving therefrom are invalid.

39. In regard to this allegation of the Applicant, the Court recalls the reasoning of the Supreme Court's Judgment, where among other things the latter reasoned that *"Reinstatement to work after the expiration of the contract is without support in law and as such it is unsustainable. The employment contract clearly defines the time limit until 7 May 2016 and beyond that there are no legal remedies in the Law on Labour nor in any other provision to support this position of the Court of the First Instance. The Supreme Court of Kosovo considers that according to the provision of Article 80 para.1, point 1 of the Law on Labour the respondent has the obligation to pay the salaries to the claimant according to the employment contract, upon court decision but the finding of the court of the first instance that the respondent has the obligation to pay to the claimant monthly salaries in the amount of 388.5 Euros until his reinstatement to work does not stand, because the claimant is entitled only to unpaid salaries under the employment contract no. 12623/4193 of 1 September 2014 and the Annex to the siad Contract of 16 January 2015 [...] In relation to the revision claims that the decision of the respondent is lawful because the disciplinary procedure was initiated in accordance with the law the Supreme Court found that the position of the Court of the First Instance is correct and based upon Law. The procedure was initiated for a minor*

disciplinary violation and was completed with an adequate measure for a serious breach. The allegation of the respondent that the respondent was not at work and off duty with the permission of his superior makes the revision claim that the Court has issued a judgment in the part relating to the annulment of the decision of the respondent in violation of the provisions of procedural law and substantive law, to be invalid. The Court's position that the decision on terminatation of the contract should be annulled for the reasons provided in the reasoning is correct and based upon law. Moreover, based on the administered evidence and on the finding of the Executive Body of the Labour Inspectorate of Kosovo, it results that no violation of the provisions of the Law on Labour or the normative acts of KEDS has been ascertained. The procedure was conducted in accordance with the law and the revision claims were taken into consideration and as such are repeated at this stage of the procedure. Therefore, in this part, the revision is rejected as ungrounded".

40. In relation to what is stated above, the Court found that the Supreme Court had clarified to the Applicant that he had a valid contract with the Employer until 30 November 2016, and according to Article 67 of the Law on Labour it is clearly defined that the employment relationship is terminated on legal basis with the expiry of the contract term. In relation to the case before us, the Supreme Court in its Judgment, stated that the employment contract as an instrument of realization of employment relationship has expired, the reinstatement to work has become unrealizable, due to the fact that the employment contract has expired, whilst the claim of the Employer that its Decision [No. 11040] on termination of employment was correct, is rejected as unfounded by the Supreme Court and in this point the latter considered that the reasonings of the decisions of the lower courts were correct and based upon law.

41. Therefore, based on what is stated above, the Court considers that the reasoning given in the Judgment [Rev. no. 457/2019] of the Supreme Court of 30 January 2020 accepting the employer's revision, is clear as regards the issue raised by the Applicant for his reinstatement to work, and after having reviewed all the proceedings, the Court also found that the proceedings before the Supreme Court and the lower courts were not unfair or arbitrary (see, the case *Shub v. Lithuania*, No. 17064/06, ECtHR Decision, of 30 June 2009).

42. Based on the foregoing, the Court point out that the Applicant has been enabled to have the proceedings conducted based on the principle of adversarial proceedings; that he has been able to submit arguments and evidence which he considers relevant to his case at the various stages of the proceedings; that he has been given the opportunity to effectively challenge the arguments and evidence presented by the opposing party; and that all the arguments, viewed objectively, relevant for the resolution of his case have been duly heard and examined by the courts; that the factual and legal reasons against the challenged decisions were examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in their entirety, were fair (see, inter alia, the case of Court No. KI118/17, Applicant *Sani Kervan and Others*, Resolution on Inadmissibility, 16 February 2018, paragraph 35; see

also, *mutatis mutandis*, the case *Garcia Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 29).

43. Secondly, with respect to the Applicant's allegation that in the case before us the Supreme Court should have applied Article 10 of the Collective Contract, the Court once again recalls the Applicant's allegation which states, inter alia, that the Supreme Court in his case was supposed to take into account Article 10.5 of the Collective Contract, which provides that if a contract for a fixed period of time that is expressly or tacitly renewed for a continued period of employment of more than three (3) years it shall be deemed to be a contract for an indefinite period of time, and that in Applicant's case the latter used to have a continued contract for more than 6 years.

44. When examining these allegations, the Court notes that, in essence, they relate to the erroneous application of the applicable law by the Supreme Court, allegations which the Court, in accordance with its case-law and that of the ECHR, considers as *"fourth instance claims."*

45. In the context of this category of claims, the Court emphasizes that based on the case law of the ECtHR, but also taking into account its peculiarities, as are determined through the ECHR, the principle of subsidiarity and the doctrine of the fourth instance, it has consistently emphasized the difference between *"constitutionality"* and *"legality"* and has asserted that it is not its duty to deal with errors of facts or erroneous interpretation and application of the law, which allegedly are committed by a regular court, unless and in so far as such errors may have infringed the rights and freedoms protected by the Constitution and/or the ECHR. (see, in this context, inter alia, the cases of Court KI179/18, Applicant *Belgjyzar Latifi*, Resolution on Inadmissibility of 23 July 2020, paragraph 68; KI49/19, Applicant *Joint Stock Company Limak Kosovo International Airport J.S.C., "Adem Jashari"*, Resolution of 31 October 2019, paragraph 47; KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility, of 12 August 2019, paragraph 60).

46. The Court has consistently reiterated that it is not its duty to review the conclusions of the regular courts concerning the factual situation and the implementation of the substantive law and that it cannot of itself assess the facst which have led a regular court to adopt one decision rather than another. Otherwise, the Court would act as a court of *"fourth instance"*, which would result in exceeding the limits imposed on its jurisdiction (see, in this context, the case of the ECtHR *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and the references used therein, and see also the cases of the Court, KI49/19, cited above, paragraph 48, and KI154/17 and KI05/18, cited above, paragraph 61).

47. The Court, however, states that the case law of the ECtHR and the Court also provide for the circumstances under which exceptions from this position must be made. As stated above, while it is primarily for the regular courts, to resolve the problems in respect of interpretation of the applicable law, the role of the

Court is to ensure and verify whether the effects of such interpretation are compatible with the Constitution and the ECHR. (See the ECtHR case, *Miragall Escolano and Others v. Spain,* Judgment of 25 May 2000, paragraphs 33-39; and see also the case of Courts KI154/17 and KI05/18, cited above, paragraph 63). In principle, such an exception relates to cases which result to be apparently arbitrary, including those in which a court has *"applied the law manifestly erroneously"* in a particular case and which may have resulted in *"arbitrary conclusions"* or *"manifestly unreasoned"* for the respective applicant. (For a more detailed explanation regarding the concept of "application of law in a manifestly erroneous manner", see, inter alia, the ECtHR Guide on Article 6 of the ECHR (civil limb), of 31 August 2020, part IV. Procedural requirements; 3. Fourth instance; b. Scope and limits of the Court's supervision, paragraphs 329-333; and the case of Court KI154/17 and KI05/18, cited above, paragraphs 60 to 65 and the references used therein).

48. In this context, the Court recalls that in the circumstances of the present case, the main claims of the Applicant relate to the allegation that the Supreme Court had not applied Article 10 of the Collective Contract.

49. The Court notes that the Supreme Court had clarified to the Applicants that *"In these circumstances when the employment contract as an instrument of realization of employment relationship has expired, the reinstatement to work has become unrealizable, due to the fact that the employment contract has expired."*

50. The Court finds that the Supreme Court clearly states that pursuant to Article 67 para. 1, point 3 of the Law on Labour it is provided that the employment relationship may be terminated on legal basis with the expiry of the duration of employment.

51. In such circumstances, taking into consideration the Applicant's allegations and the facts presented by him, as well as the reasonings of the regular courts elaborated above, the Court considers that the Applicant does not sufficiently prove or substantiate sufficiently his claim that the regular courts may have *"applied the law in a manifestly erroneous manner"*, thus resulting in *"arbitrary conclusions"* or *"manifestly unreasoned"* for the Applicant, and consequently his allegations for erroneous interpretation and application of applicable law, qualify as claims pertaining to the category of *"fourth instance claim"* and as such, they reflect claims at the level of *"legality"* and are not argued at the level of *"constitutionality"*. Consequently, they are manifestly ill founded on constitutional basis, as defined by paragraph (2) of Rule 39 of the Rules of Procedure.

52. Finally, in relation to this allegation, the Court also points out that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim for violation of the fundamental rights and freedoms guaranteed by the Constitution (see, the case of the ECtHR, *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21)

53. Thirdly, in regard to the Applicant's allegation that the Supreme Court has been biased on the occasion of the decision-making process in respect of the Employer's revision, the Court once again recalls the Applicant's allegation that *"the Supreme Court was biased when rendering the decision, thus violating (has violated) in addition to the above provisions also two fundamental rights of the proposer [Applicant] which are guaranteed by the Constitution of the Republic of Kosovo: the right to a fair and impartial trial and the right to work and exercise profession, without analysing at all that the proposer was dismissed from work without any legal basis, and his employment contract was terminated even though he was the single provider and breadwinner of the family of 6 members, for the sole blame that he was a physical labourer."*

54. The Court notes that the Applicant, apart from mentioning it as a fact, did not further elaborate on how has the Supreme Court been biased when deciding the case, moreover, why has this fact caused a constitutional violation. The Applicant failed to substantiate this allegation with any argument.

55. Therefore, the Court finds that this Applicant's allegation is rejected as unsubstantiated and is consequently unfounded.

56. In the present case, the Court considers that the Applicant does not prove that he is a victim of an unfair or arbitrary act of a public authority, which has resulted in an infringement of his right protected by Article 49 of the Constitution, namely the right to work and exercise profession, or any other constitutional right.

57. The Court considers that the Applicant has failed to substantiate the allegations that the relevant proceedings have in any way been unfair or arbitrary and that the challenged decision has violated the rights and freedoms guaranteed by the Constitution and the ECHR (see, mutatis mutandis, the case of the ECtHR, *Shub v. Lithuania*, no. 17064/06, Decision of 30 June 2009).

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

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.1 and 113.7 of the Constitution, and Rule 39 (2) of the Rules of Procedure, on 20 May 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**

Bajram Ljatifi

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.