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

**Prishtina, 11 October 2021**
**Ref. no:RK 1861/21**

***This translation is unofficial and serves for informational purposes only.***

# RESOLUTION ON INADMISSIBILITY

in

**Case No. KI55/20**

Applicant

**Arsim Biçaku**

**Constitutional review of Decision Rev. No. 359/2019 of the Supreme Court of 15 January 2020**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

## Applicant

1. The Referral was submitted by Arsim Biçaku (hereinafter: the Applicant), from Prizren.

## Challenged decision

2. The Applicant challenges Decision Rev. No. 359/2019 of the Supreme Court of 15 January 2020 in conjunction with Judgment (Ac. No. 3451/15) of the Court of Appeals of 24 June 2019.

## Subject matter

3. The subject matter is the constitutional review of the challenged decision, whereby the Applicant's rights and freedoms guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

## 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 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

5. On 26 March 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 19 May 2020, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (Presiding), Gresa Caka Nimani and Safet Hoxha.

7. On 6 February 2020, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. On 10 June 2020, the Applicant submitted additional documents to the Court.

9. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi on 26 June 2021.

10. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision No. KK 160/21 determined that Judge Gresa Caka-Nimani be appointed as Presiding in the Review Panels in cases where she was appointed as member of Panels, including the present case.

11. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.

12. On 28 June 2021, the President of the Court, Gresa Caka-Nimani, rendered Decision No. K.SH.KI55/20, replacing the previous President Arta Rama-Hajrizi as a member of the Review Panel with Judge Bajram Ljatifi.

13. On 9 September 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**

14. The Applicant was in employment relationship with Raiffeisen Bank of Kosovo (hereinafter: Raiffeisen Bank).

15. On 20 October 2003, the Applicant was notified by Raiffeisen Bank that his employment relationship would be terminated as of that date due to non-compliance with the obligations set out in the Rules.

16. On an unspecified date, the Applicant filed a lawsuit against the notice of termination of employment relationship of Raiffeisen Bank before the Municipal Court in Prizren requesting reinstatement to his previous job position and payment of personal income for the period when his employment relationship was terminated.

17. On 1 July 2004, the Municipal Court in Prizren (Judgment C. No. 769/03) approved the Applicant's statement of claim and ordered the Raiffeisen Bank to reinstate the Applicant in his previous job position and pay his personal income for the period when his employment relationship was terminated, reasoning, *"the respondent only established that the employee was absent from work without a reason and that he abused his work obligation, without establishing in the disciplinary procedure his absence from work as well as without establishing by indisputable evidence that the latter abused his work obligation. From all this, it was undoubtedly determined that the notification of the employee by the respondent, that the claimant's employment relationship was terminated, was unsustainable, unfounded on the rules and the law, and as such there is no important element of the meritorious decision to be rendered by the disciplinary commission. All conclusions of the respondent, which are placed on the burden of the claimant, should be the subject of discussion, determination and evaluation of the disciplinary commission or the authorized body of the respondent in order to conduct disciplinary proceedings in case of endangering work obligations by employees. From the above, the court decided as in the enacting clause of this judgment".*

18. On an unspecified date, Raiffeisen Bank filed appeal against the judgment of the Municipal Court in Prizren with the District Court in Prizren, *"on the grounds of essential violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law"*.

19. On 9 December 2004, the District Court in Prizren, by Decision (Ac. No. 361/2004), dismissed, as out of time, the appeal of Raiffeisen Bank.

20. On an unspecified date, Raiffeisen Bank filed a request for revision with the Supreme Court against the decisions of the District Court (Ac. No. 361/2004) of 9 December 2004.

21. On 24 March 2005, the Supreme Court, by Decision Rev. No. 51/2005, approved the request for revision of Raiffeisen Bank, and annulled the Decision of the District Court in Prizren (Ac. No. 361/2004) of 9 December 2004, and remanded the case to the same court for reconsideration, reasoning that, *" The appeal against the judgment of the first instance court was submitted to the Post of Prishtina on 18 October 2004 by registered mail R. no. 38806. The respondent's appeal was submitted pursuant to Article 112, paragraph 2 of the LCP, bearing in mind that the last day for sending the appeal was Sunday, when the court was not working, so that the last day of the appeal was 18.10.2004. The Supreme Court of Kosovo allegations from the revision that the challenged decision rendered with essential violations of the provisions of the contested procedure was assessed as grounded, because in the opinion of this Court, the second instance court has erroneously applied the provision from Article 366, paragraph 1, in conjunction with Article 384, paragraph 1 of the LCP, when dismissed the appeal as oput of time [...]."*.

22. On 10 August 2005, the District Court by decision (Ac. No. 164/2005) upheld the appeal of Raiffeisen Bank and annulled the judgment of the Municipal Court in Prizren (C. no. 769/2003) of 1 July 2004, and remanded the case to the same court for reconsideration, noting that the Municipal Court in the repeated procedure examined the employment contract concluded between Raiffeisen Bank and the Applicant and when rendering decisions relied on the UMNIK Regulation on Labor no. 2001/27 and assess the compliance of the rules of procedure of Raiffeisen Bank with this Regulation.

23. On 26 October 2006, the Municipal Court in Prizren, in the repeated (by Judgment C. No. 681/05), upheld the Applicant's statement of claim and ordered Raiffeisen Bank to reinstate the Applicant to his previous position and pay his personal income for the period when his employment relationship was terminated, reasoning that, *"In the court's opinion, the letter of dismissal of the respondent, which terminated the claimant's employment relationship, is unlawful due to the fact that Article 5, item 5.8; Article 9, items 9, 2 and 9.3; Article 11, item 11.5, sub items a) and b) of Regulation no. 2001/27 on the Essential Law on Labor of Kosovo, Articles 112 and 113 of the Law on Employment Relationship of Kosovo were not respected, as well as Articles 45 and 59 of the Law on Basic Rights from Employment were not applied, because Regulation no. 2001/27 regulates the disciplinary and material*

*responsibility of the employee as well as these last two laws, but in a different style, which is why the respondent was obliged to apply the latter".*

24. On an unspecified date, Raiffeisen Bank against the judgment of the Municipal Court in Prizren (Ac. No. 681/05) of 26 October 2006 submitted appeal to the District Court *"on the grounds of essential violations of the provisions of contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law".*

25. On 19 January 2007, the District Court in Prizren, by Judgment (Ac. No. 523/2006), rejected the appeal of Raiffeisen Bank as ungrounded and upheld the first instance judgment in entirety.

26. On an unspecified date, Raiffeisen Bank filed a request for revision with the Supreme Court against the decisions of the District Court in Prizren (Ac. No. 523/06) of 19 January 2007.

27. On 10 July 2008, the Supreme Court, by decision Rev. No. 99/2007, approved the request for revision of Raiffeisen Bank, and annulled the judgment (Ac. No. 523/2006) of the District Court in Prizren, of 19 January 2007, as well as the judgment (C. No. 681/2006) of the Municipal Court in Prizren of 26 October 2006 while remanding the case to the first instance court for reconsideration, ordering, *"In the retrial, the first-instance court is obliged to order the respondent to submit evidence to the court regarding the claimant's conduct at work, in what manner the claimant influenced the deterioration of interpersonal relations, how he did not respect the manual and whether the claimant explained his exits during the work time as emphasized by the respondent, to establish all relevant facts relating to the existence of breaches of employment obligations for which the claimant's employment relationship was terminated and whether the procedure provided for in the above provisions of UNMIK Regulation no. 2001/27, and after a fair assessment of evidence to render a lawful decision.".*

28. On 24 September 2010, the Municipal Court in Prizren, in the repeated procedure (by Judgment C. No. 697/08), approved the Applicant's statement of claim and ordered Raiffeisen Bank to reinstate the Applicant to his previous job position and pay his personal income for the period when his employment relationship was terminated, reasoning, *"The court found that no real written disciplinary proceedings were instituted against Arsim Biçaku, here the claimant, during which the employee would be notified in writing, would be allowed to give a statement, the right to defense according to the rules and the law, and based on the evidence presented and assessed by the disciplinary commission finding him guilty or acquitting him of endangering the work obligations he was charged with, and if he were found guilty, then he would be imposed a disciplinary measure for endangering the work obligation provided by the regulation and the law, having in mind the aggravating and mitigating circumstances in the disciplinary procedure. According to the Law on Basic and Rights of Employment Relationship, applicable in Kosovo, if a worker is absent from work and does not notify the authorized body where he works, the authorized person may render a decision to terminate the employment relationship without conducting*

*disciplinary proceedings. If the employee later presents valid reasons for absence from work, then the decision on termination of employment relationship is revoked, while disciplinary proceedings are initiated against the employee due to untimely reporting that he was absent from work and the disciplinary commission may impose a disciplinary measure provided by the regulation. Also, if a worker is charged with endangering his work obligation due to abuse of work obligation, then his guilt would be determined in a regular disciplinary procedure and an appropriate disciplinary measure would be imposed on him in accordance with the rules and the law. From the above, the court came to the conclusion that the respondent did not establish the guilt of the worker, here the claimant. The case file shows that the respondent only established that the worker was absent from work without reason and that he abused his work obligation, without establishing his absence from work in the disciplinary procedure and without establishing by indisputable evidence that he abused his work obligation. From all this, it was undoubtedly established that the notification of the employee by the respondent, that the claimant's employment relationship was terminated, was unsustainable, unfounded on the rules and the law and as such has no significant element of a meritorious decision to be rendered by the disciplinary commission.".*

29. On an unspecified date, Raiffeisen Bank and the Applicant filed appeal against the Judgment of the Municipal Court (Ac. No. 697/08) of 24 September 2010 with the District Court in Prizren, *"on the grounds of essential violations of the provisions of contested procedure, erroneously and incompletely determined factual situation and erroneous application of substantive law".*

30. On 10 September 2012, the District Court in Prizren, by Decision (Ac. No. 666/2010), approved the appeal of Raiffeisen Bank as well as the Applicant's appeal, and annulled the judgment of the Municipal Court in Prizren, (C. No. 697/2008) of 24 September 2010, and remanded the case to the same court for reconsideration with a reasoning, *"the first instance court in the enacting clause under item II accepts the amount of 16,962.00 euro in the name of compensation of personal income with the reasoning that the judgment refers to the report given by the hired expert B. I. Insight into the expertise of expert B. I. of 31.05.2010, it follows that the debt of the respondent to the claimant in the total amount of 28,263.48 euro. From what has been said, it follows that the judgment is incomprehensible and contradictory to the reasons of the judgment. Also in the enacting clause under point III of the judgment, the first instance court obliged the respondent to pay the costs of the procedure, without emphasizing the total amount and without specifying in the reasoning what costs it accepts, namely what costs the respondent is obliged to pay. And this is an essential violation of the provisions of the contested procedure because it makes this part of the judgment unenforceable. At the same time, the factual situation has not been correctly determined, especially the facts requested by the Supreme Court of Kosovo by Decision Rev. No. 99/2007 of 10 July 2008 where the first instance court was obliged to instruct the respondent in the retrial to submit evidence to the court regarding the claimant's conduct at work, how the claimant influenced the deterioration of interpersonal relations, how he did not respect the*

*manual and whether justified the claimant's leaving from work during working hours as the respondent emphasizes".*

31. On 12 May 2015, the basic Court in Prizren, in a retrial (by Judgment C. No. 899/12), approved the Applicant's statement of claim and ordered Raiffeisen Bank to reinstate the Applicant to his previous job position and pay his personal income for the period when his employment relationship was terminated, reasoning,
*"During the trial, the court took these matters as the basis of the recommendation of the Supreme Court, which requests that violations of work tasks and misconduct be established. However, from the evidence presented by the respondent during the hearing sessions, one such allegation was not established, and as the respondent itself claimed, no previous disciplinary proceedings were conducted against the claimant. Based on these facts, the court decided to approve the statement of claim. As for the amount of compensation for unpaid salaries, the court gave full trust in the expertise of the financial expert, since that expertise is complete and neither the claimant nor the defendant made any objections to any of the findings made in that expertise. In connection with the claims of the respondent that the claimant resigned, the court found that the notification of the claimant that he would not work until there was a legal basis, could not be considered as an act of resignation by the employee. In the present case, the claimant rightly assessed that further continuation in the working place, after the decision of the Supreme Court which annulled the decision of the Municipal Court and the District Court for reinstatement to work, did not allow the claimant to continue working, without having a new contract with respodent. Regulation 2001/27 in Article 11 provides for the termination of the contract by a written agreement between the employee and the employer, however, the agreement is required to be in writing, which in this case, there was no single written agreement. Therefore, having in mind that banking operations can be followed by severe consequences for the employee, the court assesses that the claimant did not have a legal basis to remain in that position, without having a new contract beforehand. In terms of Article 452 in conjunction with Article 463 of the Code on Contested Procedure, it decided to oblige the respondent to reimburse the costs of the proceedings, partially accepting the respondent the total amount of € 562.00, as the full amount of € 705.00 is not specified".*

32. On an unspecified date, Raiffeisen Bank filed appeal against the judgment of the Basic Court in Prizren (Ac. No. 899/12) of 12 May 2015 with the Court of Appeals *"on the grounds of essential violations of the provisions of contested procedure, erroneously and incompletely determined factual situation and erroneous application of substantive law".*

33. On 24 June 2019, the Court of Appeals, by Judgment (Ac. No. 3451/15), partially approved the appeal of Raiffeisen Bank, modifying the Judgment of the Basic Court in Prizren, (C. No. 899/2012) of 12 May 2015, in such a way that, despite the established irregularities in allowing the Applicant, his request to remand to his previous job was rejected by the Basic Court. While in the part concerning the payment of unpaid personal income, the adjudicated amount from the first instance decision was reduced.

34. The reasoning of the part of the judgment of the Court of Appeals concerning the reinstatement to the previous position is stated, *"In this case, the claimant submitted an act of resignation, under the pretext that the decision of the Supreme Court annulled the decisions of lower courts to reinstate the claimant to work, and further stay of the claimant in the working place would be without basis, but in the assessment of the Court of Appeals, this the form of excuse for the act of resignation does not justify his request for reinstatement to work. If, after the annulment of the decisions of lower instances by the Supreme Court, there would be no legal basis for the claimant to remain employed, then the respondent would have the right to inform the claimant about the termination of the employment contract, referring to the decision of the Supreme Court. Based on these findings, the Court of Appeals finds that the claimant's statement of claim for reinstatement to his previous working place is ungrounded".*

35. In the reasoning of the part of the Judgment concerning the determination of the amount of monetary compensation in connection with the compensation of salaries, the Court of Appeals states, *"the decision of the first instance court on the claimant's request regarding the compensation of salaries is modified, recognizing the same compensation only in the period from 10.10.2003 until 27 March 2007, because the right to salary compensation for this period arises from the unlawfulness of the notice of termination of employment. After this period, the claimant is not entitled to salary compensation because he was remanded to his job and voluntarily left the same position".*

36. On an unspecified date, the Applicant filed a request for revision with the Supreme Court against the judgment of the Court of Appeals (Ac. No. 3451/15) of 24 June 2019.

37. On 15 January 2020, the Supreme Court, by Judgment Rev. No. 359/2019, rejected the request for revision of the Applicant as ungrounded and fully upheld the judgments of the Municipal court and Court of Appeals, reasoning, *"The claimant's allegations in the revision that the job position, namely the act of resignation was not done by his will and desire, but due to failure to provide him the employment contracts, not creating conditions and legal basis, the respondent made statements about termination of employment relationship, this court considers them as ungrounded and irrelevant and have no influence in any other decision-making of this legal matter. Initially, while the claimant was employed, he had an employment contract with the respondent concluded on 26 June 2002 for indefinite period of time. When reinstating to work, it is a matter of extension of employment, namely the employment contract concluded before, a contract that is valid upon reinstatement, therefore the claims of the claimant that termination of employment relationship provided due to lack of legal basis for employment, this Court cannot consider as grounded. For these reasons, the allegations made in the revision regarding the erroneous application of substantive law by the second instance court were considered unfounded".*

## Applicant's allegations

38. The Applicant alleges that the challenged decisions violated his rights guaranteed by Article 49 of the Constitution.

39. As to the violation of Article 49 of the Constitution, the Applicant alleges that since he was not offered any new contract by Raiffeisen Bank until 26 January 2009, he was forced to notify Raiffeisen Bank about the termination of employment relationship on 29 January 2009, that is, dismissal because based on his allegations, *"termination of employment relationship is logical, because in order to prepare for court sessions, a person needs time. Therefore, bank employees, that's why they don't fire me, trying to totally block me from defending myself"*.

40. The Applicant also alleges erroneous application of the law, in particular, *UNMIK Regulation no. 1999/24, Article 1, item 1.2, UNMIK Regulation on the Basic Law of Kosovo no. 2001/27, Article 11, item 11.1, under (e) as well as the Law on Fundamental Rights from the Labor Relations of the SFRY no. 60/89, 42/90 of 31 December 1989.*

41. The Applicant also alleges, *I was not provided with legal conditions for defense (legal representative)* in support of this claim, the Applicant submitted a written statement of lawyer Myrveta Çollaku.

42. Finally, the Applicant requests the Court to reinstate him to working place and compensation of personal income based on the judgment of the Basic Court in Prizren (Ac. No. 899/12) of 12 May 2015.

## Admissibility of the Referral

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

44. 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".*

45. In addition, the Court also examines whether the Applicant has fulfilled 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. [...]."*

46. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, which is challenging an act of a public authority and that he has exhausted all legal remedies provided by law. The Applicant has also specified the rights and freedoms, which he claims to have been violated, pursuant to the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

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

*(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.*

48. The Court recalls that the dispute was initiated as a result of the termination of the Applicant's employment relationship by Raiffeisen Bank regarding the right to compensation and reinstatement to work after several repeated proceedings and trials, the Basic Court first approved the Applicant's request, and then the Court of Appeals upheld the first-instance decision with certain corrections, as it considered that the Applicant informed at a certain point in time Raiffeisen Bank about the termination of employment relationship after that date, the Applicant is not entitled to compensation for lost earnings (salary). The conclusions of these courts, after the submission of the revision by the Applicant, were approved by the Supreme Court, which essentially emphasized that when returning to work, it is a matter of continuity of employment, namely employment contract concluded before, a contract valid upon return, according to the claimant that the termination of employment relationship provided due to lack of legal basis for employment, the Supreme Court considered as ungrounded.

49. Accordingly, the essence of the Applicant's allegation are as follows: (i) the allegations of a violation of the rights guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution and (ii) allegations of erroneous application of the law and (iii) allegations of a violation of the rights of the defense.

50. Taking into account the Applicant's allegations, the Court will refer to the case law of the ECtHR, which obliges the Court that pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution interprets fundamental human rights and freedoms guaranteed by the Constitution in accordance with court decisions of the ECtHR.

### *(i) Regarding the allegation of violation of Article 49 of the Constitution*

51. Regarding the Applicant's allegation of violation of Article 49 of the Constitution, the Constitution provides a standard definition that specifies the guarantees and rights to work, the employment opportunities and the provision of equal 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; and KI70/17, Applicant *Rrahim Ramadani*, Resolution on Inadmissibility, of 8 May 2018, paragraph 48).

52. The Court notes that Article 49 [Right to Work and Exercise Profession] of the Constitution, stipulates:

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

53. Accordingly, and on the basis of the above, the Court finds that the right to work is guaranteed, as long as the individual acts in accordance with the applicable laws governing this field. In the procedure before the regular courts, it was determined that the Applicant was unlawfully dismissed from work, which is why a monetary compensation was ordered for that period. In one part of the proceedings, Raiffeisen Bank offered the Applicant reinstatement to his working place, but the Applicant rejected such an offer, accordingly the Court of Appeals and the Supreme Court reasoned that after this period, the claimant was not entitled to salary compensation because the latter was reinstated to his working place and voluntarily left the same place. Therefore, there is no evidence that the Applicant has been deprived of the right to legal work in accordance with the internal regulative.

54. The Court considers that the challenged decisions of the regular courts does not in any way prevent the Applicant from working or exercising a profession. As such, there is nothing in the Applicant's allegation that would justify a conclusion that her constitutional rights, guaranteed by Article 49 have been violated (see, *inter alia*, the cases of the Court KI136/14 and KI42/17,

Applicant *Kushtrim Ibraj*, Resolution on Inadmissibility of 5 December 2017, paragraph 53).

55. The Court notes that it is the Applicant's obligation to substantiate his constitutional allegations, and submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (See: case of the Constitutional Court No. K119/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Syla*, of 5 December 2013).

56. Accordingly, the Court these allegations of the Applicant, which he brings in connection with violation of Article 49 of the Constitution, rejects as ungrounded, and should be declared inadmissible in accordance with paragraph (2) of Rule 39 of the Rules of Procedure.

***(ii) Allegations of erroneous application of substantive law***

*(a) General principles related to manifestly erroneous and arbitrary application of law*

57. The Court firstly 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 fourth instance doctrine, 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 law, allegedly committed by a regular court, unless and insofar such errors may have violated 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 *Limak Kosovo Joint Stock Company International Airport JSC, "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).

58. 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 Court KI154/17 and KI05/18, cited above, paragraph 63).

59. In this regard, the Court in accordance with the case law of the ECtHR has stated that, even though the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take measures where it observes that a court has applied the law manifestly erroneously in a particular case or so as to reach *"arbitrary conclusions"* or *"manifestly unreasoned"* for the respective Applicant (See also the cases of the ECtHR: *Anheuser-Busch Inc.*,

Judgment of 11 January 2007, paragraph 83; *Kuznetsov and Others v. Russia*, Judgment of 11 January 2007, paragraphs 70-74 and 84; *Păduraru v. Romania*, Judgment of 5 December 2005, paragraph 98; *Sovtransavto Holding v. Ukraine*, Judgment of 25 July 2002, paragraphs 79, 97 and 98; *Beyeler v. Italy* [GC], Judgment of 5 January 2000, paragraph 108; *Koshoglu v. Bulgaria*, Judgment of 10 May 2007, paragraph 50; see also the above cited case KI122/16, Applicant *Riza Dembogaj*, paragraph 57; cases KI154/17 and KI05/18, Applicant *Basri Deva, Aferdita Deva and Limited Liability Company "BARBAS"*, paragraphs 60 to 65; as well as case KI121/19, Applicant *Ipko Telecomunications*, Resolution on Inadmissibility of 29 July 2020, paragraph 58; and KI 195/20 Applicant *Aigars Kesengfelds, owner of the non-banking financial institution "Monego"*, Judgment of 29 March 2021, paragraph 97).

*(b) Application of aforementioned principles in the present case*

60. The Court recalls that the Applicant refers to the provisions of UNMIK Regulation no. 1999/24 on the Basic Law of Kosovo no. 2001/27 as well as the Law on Fundamental Rights from the Labor Relations of the SFRY no. 60/89, 42/90, namely the fact that the Court of Appeals and the Supreme Court, in his opinion, erroneously applied the law in their decisions.

61. The Court recalls, first of all, that the Court of Appeals and the Supreme Court, relying on UNMIK Regulation no. 2001/27 approved the statement of claim of the Applicant with certain corrections in relation to the first instance decision, applying Article 154 and Article 155 of the Law on Obligations.

62. Following an appeal by Raiffeisen Bank, the Court of Appeals (Judgment Ac. No. 3451/15) modified the judgment of the Basic Court and reasoned the following:

> *"According to the applicable provisions (at the time the dispute was initiated for annulment of the decision) of UNMIK Regulation 2001/27, sections 12, 14 and 15, in this case the basic rights of workers is payment of salaries, in this case the basic right of the claimant is the payment of salary, which the respondent did not achieve due to the unlawful decision of the respondent, which terminated the employment relationship of the respondent (the unlawfulness of the decision to terminate the employment is now a established circumstance). According to the provision of Article 154 of the Law on Obligations (LOR), it is stipulated that "Any person who inflicts damage on another shall be liable for the damage, unless it is shown that the person did not enter such state through any fault of his/her own", while the provision of Article 158 stipulates that "guilt exists when the injurer caused the damage intentionally or negligently", while the provision of Article 155 of the Law on Obligations stipulates that "damage reduces someone's property (ordinary damage) and prevention of its increase (lost benefit)", therefore, based on the above provisions, the Court of Appeals assesses that the approval of salaries for the period from 10.10.2003 until 27.03.2007 has a legal basis and the second part is ungrounded because the claimant was denied a request for reinstatement to work. ".*

63. The Supreme Court (by Judgment Rev. No. 359/2019) fully upheld the Judgment of the Court of Appeals and stated:

> *"The Supreme Court of Kosovo accepts as fair and lawful the reasoning of the second instance court on the rejection of the claimant's statement of claim for reinstatement to work as well as the compensation of salaries after 27.03.2007. This is because the claimant informs the respondent about the termination of employment relationship with the submission. The basis for termination of employment relationship is the statement of the claimant on termination of employment so that the employee's employment relationship is terminated (ipso iure). Since the basis for termination of employment is the statement of the employee, the legal effect of termination does not depend on whether or not a decision has been rendered to terminate the employment relationship. This is because the decision to terminate the employment relationship according to the statement of the employee, has a declarative character and not a constitutive one. The claimant while the contested proceedings were conducted, namely on 27.3.2007, before he resigned in writing, he was reinstated to work, earning income, therefore, after this period, the claimant is not entitled to compensation of salaries because the latter returned to work, from which he later voluntarily resigned".*

64. Based on the foregoing, the Court notes that the Court of Appeals and the Supreme Court, referring to the factual situation in the present case, explained to the Applicant that he had subsequently lost his right to compensation of personal income and reinstatement to his working place by submitting his voluntary resignation.

65. The Court of Appeals further explained to the Applicant (i) that the notice of termination of employment relationship of the Applicant was unlawful and contrary to Articles 12, 14 and 15 of UNMIK Regulation no. 2001/ accordingly, the compensation of salaries for the period from 10.10.2003 until 27.03.2007 was approved; and (ii) as regards the period thereafter and the reinstatement to his previous job position, the Applicant is not entitled to salary compensation because he has been reinstated to his working place and has voluntarily left the same position.

66. Therefore, the Court finds that the Applicant's allegations of violation of his right, due to the manifestly erroneous or arbitrary application of the law are ungrounded on constitutional basis as established in Rule 39 (2) of the Rules of Procedure.

### *(iii) Alleged violations of the right to defense*

67. Finally, with regard to the allegations of violation of the right to defense, the Court emphasizes that the Applicant alleges this violation without arguing or reasoning this violation by the challenged Judgment of the Court of Appeals and the Supreme Court. The allegations of the Applicant are essentially based on the violation of Article 49 of the Constitution and on erroneous application of the law, and these allegations have already been assessed by the Court as manifestly ill-founded on constitutional basis.

68. The Court recalls its case law, according to which only the mention of a certain right, 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 KI02/18, 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, paragraphs 30-31; and KI99/19, Applicant *Persa Raičević,* Resolution on Inadmissibility of 7 November 2019, paragraph 52).

69. Such a position of the Court is based on the case law of the ECtHR, on the basis of which, unreasoned allegations or complaints, which are not substantiated with arguments and evidence are declared inadmissible as manifestly ill-founded. (See ECtHR Guide of 30 April 2019 on Admissibility Criteria; part I. Procedural Grounds for Inadmissibility; A. Manifestly ill-founded applications; 4. Unreasoned complaints: lack of evidence, paragraphs 280 to 283). In addition, such allegations which do not adequately emphasize the alleged violation are also inadmissible under Article 48 of the Law in conjunction with item (d) of paragraph 1 of Rule 39 of the the Rules of Procedure, under which the Applicants are required to clarify their claims accurately and adequately. present facts and allegations of fundamental rights and freedoms that have allegedly been violated.

70. In the circumstances of the present case, the Court finds that the Applicant has not clearly clarified the facts and allegations of violation of the abovementioned Articles of the Constitution and the ECHR and that as a result, these allegations must be declared inadmissible as manifestly ill-founded on constitutional basis, as established in paragraph 2 of Rule 39 of the Rules of Procedure.

**Conclusion**

71. The Court considers that the Applicant's allegations of violation of his constitutional right to work and exercise profession due to a manifestly erroneous and arbitrary application of the law and a violation of his right to a defense constitute allegations which are unfounded on constitutional basis.

72. In conclusion, the Court considers that the Applicant has not presented evidence, facts and arguments indicating that the proceedings before the regular courts constituted in any way constitutional violations of the rights guaranteed by the Constitution, in which his rights guaranteed by Article 49 of the Constitution have allegedly been violated.

73. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and declares it inadmissible, pursuant to Article 113 paragraph 7 of the Constitution and Rule 39 (2) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 39 (2) of the Rules of Procedure, on 9 September 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**

Remzije Istrefi-Peci | Gresa Caka-Nimani



***This translation is unofficial and serves for informational purposes only.***