Prishtina, on 30 November 2021
Ref. No: RK 1908/21

RESOLUTION ON INADMISSIBILITY

in

Case No. KI173/20

Applicant

Yusuf Timurhan

Constitutional review of Judgment Rev.no.392/19 of the Supreme Court of Kosovo, of 2 June 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 Yusuf Timurhan from the Municipality of Prizren, who is represented by Miftar Qelaj, a lawyer from Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. no. 392/19] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) of 2 June 2020, in conjunction with Judgment [Ac. no.3309/16] of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) of 3 July 2019, and Judgment [C.no.329/15] of the Basic Court in Prizren (hereinafter: the Basic Court) of 8 June 2016.

3. The challenged Judgment was received by the Applicant on 10 July 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, which as alleged by the Applicant has violated his fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR).

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 the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 10 November 2020, the Applicant submitted the Referral via e-mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 17 November 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).

8. On 1 December 2020, the Court notified the Applicant about the registration of the Referral.

9. On 1 December 2020, the Court notified the Supreme Court about the registration of the Referral and sent a copy thereof to it.

10. On 15 April 2021, the Court requested from the Basic Court to be provided with the acknowledgment of the receipt, which proves the date/time when the Applicant had received the challenged Judgment.

11. On 29 April 2021, the Basic Court submitted to the Court the acknowledgment of receipt, which proves that the Applicant had received the challenged Judgment on 10 July 2020.

12. On 29 April 2021, the Court requested from the Basic Court to be provided with the complete case file.

13. On 12 May 2021, the Basic Court submitted the case file to the Court.

14. On 27 May 2021, the President of the Court appointed Judge Nexhmi Rexhepi as a member of the Review Panel instead of Judge Bekim Sejdiu, who resigned on 25 May 2021.

15. On 4 June 2021, the Court notified the State Advocacy Office, the Government of Kosovo, the Ministry of Internal Affairs, and the Kosovo Police in the capacity of an interested party, about the registration of the Referral and sent a copy of the Referral to it.

16. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of the President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.

17. On 22 July 2021, the Review Panel considered the report of the Judge Rapporteur and by majority vote recommended the supplementation of the case.

18. On 10 November 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

19. On 15 May 2009, the General Director of the Kosovo Police, by Decision [11/ SP/DP/2009], determined that the police officers who were suspended with pay do not enjoy allowances other than the basic salary.

20. On 22 August 2009, the Kosovo Police through Notification [KRH-02-086/ 09] suspended with full pay the Applicant who was a police officer in the Kosovo Police. The Applicant's suspension lasted until 15 May 2011.

21. Based on the case file it results that the Municipal Prosecution had filed the indictment [PP.nr. 874/12] of 28 December 2009, against the Applicant due to the criminal offence of failure to report criminal offences or the perpetrators as per Article 304, paragraph 1 of the Criminal Code of Kosovo.

22. On 3 May 2011, the Kosovo Police through Notification [09/NSP/DP/2011] terminated the Applicant’s suspension with pay, on the grounds that it had been established that there was no reasonable suspicion of a criminal offence being

committed, and therefore requested from him to report in the workplace starting from 16 May 2011.

23. From the case file it results that during the period of suspension with pay, the Applicant had several deductions in personal income which included payments in the name of job hazard, allowances, as well as compensation for annual leave.

24. On 14 June 2012, the Municipal Court in Prizren through Decision [P.no. 554/11] terminated the criminal procedure against the Applicant regarding the criminal offence of failure to report criminal offences or perpetrators as per Article 304, paragraph 1 of the Criminal Code of Kosovo, following the withdrawal of the Prosecution from the criminal prosecution.

25. On 20 February 2014, the Applicant had submitted to the Kosovo Police Human Resources Directorate a request for compensation of salary allowances from 22 August 2009 until 15 May 2011, with regard to the time period of suspension with pay according to the decision of the Director General of the Kosovo Police.

26. On 22 September 2014, the Human Resources Directorate of the Kosovo Police through *"response to the request of 20.02.2014"* [07/1/421/20147], rejected the Applicant's request on the grounds that the deduction of salary allowances was made according to the decision of the General Director of the Kosovo Police [11/SP/DP/2009] of 15 May 2009, which stated that all police officers who are suspended with pay do not enjoy additional allowances other than the basic salary.

27. On 11 February 2015, the Applicant had submitted a complaint to the Kosovo Police Complaints and Compensation Commission seeking approval of the payment of all benefits during the period of suspension with pay. He emphasized that this right belonged to him because by the Decision [P.nr.554/11] of the Municipal Court in Prizren, of 14 June 2012, the criminal procedure against him was terminated and consequently he was declared innocent.

28. On 26 February 2015, the Kosovo Police Complaints and Compensation Commission by Decision [o10-KA-A-2015] dismissed the Applicant's complaint as being filed out of the legal deadline. In the reasoning of the Decision, the Kosovo Police Complaints and Compensation Commission stated that on 22 September 2014, the Applicant had received the response from the Human Resources Directorate, whilst the complaint he had addressed to the Complaints and Compensation Commission on 11 February 2015, approximately four months late, in contradiction with Article 96, paragraph 1, point 1.2, of the Administrative Instruction no.07/2012 on Work Relationships in the Kosovo Police, which states: *"Police personnel who consider that an administrative decision has violated any of their employment rights, are entitled to file a complaint to the second instance body, which is sent directly to the Complaints and Compensation Commission or through the chain of command within a term of 15 days".*

29. On 20 March 2015, the Applicant had filed a claim with the Basic Court in Prizren (hereinafter: the Basic Court) against the respondent Government of Kosovo, Ministry of Internal Affairs - Kosovo Police, stating that he claims

compensation and payment of all personal income deductions for the time period of suspension, respectively from 22 August 2009 to 15 May 2011 and specifically the income in the name of additional allowances on the basic salary.

30. On 27 March 2015, the Kosovo Police submitted a response to the claim requesting from the Basic Court to deny the Applicant's claim as inadmissible, because he had requested judicial protection after the expiration of the legal deadline.

31. On 8 June 2016, the Basic Court through Judgment [C.no.329/15] (i) partially approved the Applicant's statement of claim, and obliged the Government of Kosovo, the Ministry of Internal Affairs - Kosovo Police, to compensate and pay the difference in personal income for the time period from 22 August 2009 to 15 May 2011, amounting to a total of 3,303.58 euros, along with the legal interest as per the time deposited funds deposited for more than one year without a specific destination, starting from the day of receipt of the present judgment, until the definitive payment, all this within 15 days after that this judgment becomes final; (ii) obliged the respondent to pay the procedural costs of the Applicant in the amount of 675.40 euros, within 15 days after that this Judgment becomes final, under the threat of forcible execution; (iii) rejected as ungrounded the rest of the Applicant's statement of claim, on the amounts approved as under point I of the enacting clause, up to the total amount sought, that is 4,523.35 euros.

32. On 15 August 2016, the State Advocacy Office, which represented the Kosovo Police in the capacity of an interested party, filed a complaint due to (i) essential violation of the provisions of the contested procedure; (ii) erroneous and incomplete determination of the factual situation; and (iii) erroneous application of the substantive law, by proposing to have the Judgment of the Basic Court amended, by dismissing the Applicant's claim as inadmissible.

33. On 3 July 2019, the Court of Appeals through Judgment [Ac.no.3309/16] rejected the appeal of the interested party: Government of Kosovo, Ministry of Internal Affairs - Kosovo Police as unfounded, whilst it upheld the Judgment [C.no.329/15] of the Basic Court.

34. On 28 August 2019, the interested party - Government of Kosovo, Ministry of Internal Affairs - Kosovo Police, filed a request for revision against the Judgment of the Court of Appeals, due to: (i) essential violations of the provisions of the contested procedure. ; and (ii) erroneous application of the substantive law, by proposing that the judgments of the Basic Court and the Court of Appeal be amended so that the Applicant's claim is dismissed as inadmissible. In the request for revision, the interested party stated that the Applicant had requested judicial protection after the legal deadline; respectively he had filed the complaint against the response to the request [07/1/421/20147] of 22 September 2014, of the Human Resources Directorate of the Kosovo Police, on 11 February 2015, namely around four (4) months late.

35. On the basis of the case file, respectively the acknowledgment of receipt it results that on 16 October 2019 the Applicant had received the request for revision

submitted by the interested party. The Applicant did not submit a response to the request for revision.

36. On 2 June 2020, the Supreme Court by Judgment [Rev.no.392/19] accepted as grounded the revision of the interested party, the Government of Kosovo, the Ministry of Internal Affairs-Kosovo Police and amended the Judgment of the Basic Court [C.nr.329 / 2015] of 8 June 2016 and the Judgment [AC.nr.3309/ 2016] of the Court of Appeals, of 3 July 2019, by adjudicating as follows: Rejected as ungrounded the Applicant's statement claim, whereby it was requested to oblige the interested party, the Government of Kosovo, the Ministry of Internal Affairs-Kosovo Police, to pay the difference in the Applicant's personal income, for the time period from 22 August 2009 until 15 May 2011, amounting to a total of 3,303.58 euros, along with the interest as per the time deposited savings funds deposited for more than one year, without a specific destination, starting from the day of receipt of the judgment (8 June 2016) until the definitive payment, as well as the costs of proceedings in the amount of 675.40 euros; each party bears its own costs of the contested procedure.

37. In its judgment, the Supreme Court had reasoned as follows:

> *"According to this Court, the substantive law and specifically the Law on Labour Law were erroneously applied, for the fact that on 22 August 2009 the claimant was suspended and this suspension has lasted until 15 May 2011, when the respondent terminated the claimant's suspension and reinstated him to his job position and previous duties, whilst he has filed the claim on 20 March 2015. Judicial protection in the present case is out of time for the reasons relating to Article 87 of the Law on Labour No. 03/L-212, where it is envisaged that all requests(claims!) from the employment relationship involving money, are statute barred within three (3) years, from the date of submission of the request, which means that on the basis of the above mentioned article in this case the deadline has expired, hence according to the assessment of the Supreme Court, the courts of lower instance have erroneously applied the provisions of Article 78 para.1 and 2 and Article 79 of the Kosovo Law on Labour relating to judicial protection from the employment relationship. Therefore, the instruction on legal remedy given at the end of the procedure before the respondent is wrong and does not justify the claimant's delay. Article 87 of the Law on Labour provides that requests relating to the employment relationship and involving money are statute barred within 3 years from the date of submission of the request. In the present case from the moment of the claimant being reinstated to job position until the day of the claim being filed, have passed more than 3 years, therefore it turns out that the claimant's request(claim) for compensation of personal income is statute barred."*

> *"The Supreme Court does not accept as lawful the position of both courts because considering that the non-payment of personal income is a profit lost, which also represents damage caused to the claimant by the respondent, and considers that such a claim of the claimant based on the provision of article 376 para.1 of the LOR which provides that "Compensation claims for damage inflicted shall become statute-barred*

three (3) years after the injured party learnt of the damage and the person that inflicted it." In the present case from the day of suspension, that is 20 August 2009 until 20 March 2015 when the claimant has filed a claim with the court, have passed more than five years and since that time the claimant has been aware of the damage and the person who caused it. Hence, on this basis the request is statute barred and the judicial protection is belated, because the claimant has had the opportunity to seek judicial protection regardless of the delays in responding to his request."

Applicant's allegations

38. The Applicant alleges that the Judgment [Rev.no.392/19] of the Supreme Court, of 2 June 2020, was issued in violation of the fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution.

39. Initially, the Applicant alleges that: (i) he was not notified about the conduct of the proceedings before the Supreme Court of Kosovo, and consequently he was not given the opportunity to present his allegations and objections regarding the request for revision filed by the interested party.

40. In the following, the Applicant alleges that: (ii) in this case the revision was examined even though it was not permitted by law under Article 211 of the Law on Contested Procedure, because the value of the dispute according to the claim was 500 euros, while the dispute was not initiated against the decision on termination of employment relationship, therefore in this case the revision was not permitted.

41. The Applicant also alleges that the Supreme Court decided to reject the claim (iii) due to the statute barring of the request, but the interested party did not refer to it in the response to the claim during the entire course of the proceedings in the first instance or in the appeal filed against the judgment of the first instance. So, he further claims that he had no knowledge what the request for revision submitted by the interested party contained, since according to him he did not possess it, as a result of being not submitted. Despite this, the Applicant states that on the basis of the provisions of the Law on Obligational Relationships, namely Article 341, paragraph 3 *"The court may not take notice of statute barring if the debtor makes no reference thereto."* Consequently, the Applicant alleges that in no case in the court proceedings that preceded the issuance of the challenged judgment, has the interested party referred to the statute barring, consequently the court decided on the statute barring without this issue being raised to by the interested party.

42. Finally, the Applicant requests from the Constitutional Court to (i) declare the Referral admissible; (ii) to find that the Supreme Court of Kosovo by Judgment [Rev.no.392/19] of 2 June 2020, has violated the Applicant's fundamental rights and freedoms, respectively Article 31 of the Constitution and Article 6 of the European Convention on Human Rights and Article 54 (Judicial Protection of Rights) of the Constitution; as well as to (iii) declare invalid the Judgment [Rev.no.392/19] of the Supreme Court of Kosovo, of 2 June 2020.

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

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 54 [Judicial Protection of Rights]

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

European Convention on Human Rights

Article 6
(Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
(…)

Law No. 03/L-006 on Contested Procedure

CHAPTER XIV
EXTRAORDINARY MEANS OF STRIKE (ADDRESSING)

REVISION

Article 211

211.1 Against the decision of the court of second instance, sides can present a revision within a period of thirty (30) days from the day the decision was brought.

211.2 Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €.

211.3 Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €.

211.4 Excluding, when dealt with the charge claim from the paragraph 2 and 3 of this article, the revision is always permitted:

a) food contests;

b) contests for damage claim for food lost due to the death of the donator of fond;

c) contests in work relations initiated by the employee against the decision for break of work contract.

Law of Contract and Torts 1978

SECTION 4
UNENFORCEABILITY DUE TO STATUTE OF LIMITATIONS
Subsection 1
GENERAL PROVISIONS

General Rule

Article 360

A right to request fulfilment of an obligation shall come to an end if time barred by statute of limitations.

Unenforceability due to the statute of limitations shall follow the expiration of the period specified by statute during which the creditor was entitled to request fulfilment of the obligation.

The court shall not consider the fact of an obligation being time barred should the debtor fail to invoke it.

Claiming damages for Loss
Article 376

A claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor.

In any event, such claim shall expire five years after the occurrence of injury or loss.

A claim for damages for loss caused by violation of a contractual obligation shall expire within the time specified for unenforceability due to the statute of limitations of such obligation.

Law No. 04/L-077 on Obligational Relationships (published on 19.06.2012 and entered into force on 19.12.2012)

CHAPTER 4
STATUTE BARRING

SUB-CHAPTER 1

GENERAL PROVISIONS

Article 341
General rule

1. The right to demand performance of an obligation shall expire through statute-barring.

2. Statute-barring occurs when the period stipulated in the statute of limitations during which the creditor could demand performance of the obligation expires.

3. The court may not take notice of statute-barring if the debtor makes no reference thereto.

Filing of suit

Article 388

Statute-barring shall discontinue with the filing of a suit or any other act by the creditor against the debtor before the court or other relevant authority to determine, secure or collect a claim.

Law No. 03/L-212 on Labour

CHAPTER IX
Procedures for the exercise of rights deriving from employment relationship

Article 78
Protection of Employees' Rights

1. An employee considering that the employer has violated labour rights may submit a request to the employer or relevant bodies of the employer, if they exist, for the exercise of rights violated.

2. Employer is obliged to decide on the request of the employee within fifteen (15) days from the day the request was submitted.

3. The decision from paragraph 2 of this Article shall be delivered in a written form to the employee within the term of eight (8) days.

Article 79
Protection of en Employee by the Court

Every employee who is not satisfied with the decision by which he/she thinks that there are breached his/her rights, or does not receives an answer within the term from Article 78 paragraph 2 of this Law, in the following term of thirty (30) days may initiate a work dispute at the Competent Court.

Article 87
Timeline for Submission

All requests involving money from employment relationship shall be submitted within three (3) years from the day the request was submitted.

Assessment of the admissibility of Referral

43. 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.

44. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which provide:

"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. The Court further refers to the admissibility criteria, as specified in the 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 [...]."

46. As to the fulfillment of these criteria, the Court first notes that the Applicant is an authorized party, who is challenging an act of a public authority, namely the Judgment [Rev.no.392/19] of The Supreme Court, of 2 June 2020, after having exhausted all legal remedies provided by law. The Applicant has also specified the rights and freedoms which he alleges to have been violated, pursuant to the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

47. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement for the Referral not to be manifestly ill-founded. Specifically, Rule 39 (2) stipulates 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".

48. The above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons relating to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as provided in paragraph (2) of Rule 39 of the Rules of Procedure.

49. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as *"manifestly ill-founded"* in its entirety or only with respect to any specific claim that a referral may contain. In this respect, it is more accurate to refer to the same as *"manifestly ill-founded claims"*. The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as *"fourth instance"* claims; (ii) claims that are categorized as *"clear or apparent absence of a violation"*; (iii) *"unsubstantiated or unjustified"* claims; and finally, (iv) *"confused or far- fetched"* claims. (See, more precisely, on the concept of inadmissibility on the basis of a referral assessed as *"manifestly ill-founded"*, and the specifics of the four above-mentioned categories of claims qualified as *"manifestly ill-founded"*, the Practical Guide to the ECtHR on Admissibility Criteria of 28 February 2021; Part III. Inadmissibility based on the merits; A. Manifestly ill-founded applications, paragraphs from 275 to 304).

50. In this context, and in the following, in order to assess the admissibility of the Referral, namely, in the circumstances of the present case to assess whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case that this Referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of 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.

51. The Court recalls that the Applicant alleges a violation of his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.

52. In this context, the Court initially recalls that the circumstances of the case relate to the Applicant's request for compensation of salary allowances for the time period during which he has been suspended (from 22 August 2009 to 15 May 2011) addressed to the Kosovo Police Human Resources Directorate, since the Prosecution had withdrawn from the criminal prosecution and the Municipal Court through a decision had terminated the proceedings against him. This request of the Applicant was rejected by the Kosovo Police Human Resources Directorate on 22 September 2014. Subsequently, on 15 February 2015, the Applicant filed a complaint with the Complaints and Compensation Commission of the Kosovo Police, a complaint which was rejected by the said Commission on the grounds that it was filed out of the legal deadline. Subsequently, the Basic Court had partially approved the Applicant's statement of claim, filed against the interested party, namely the Government of Kosovo, the Ministry of Internal Affairs - Kosovo Police, seeking compensation and payment of the difference in the personal income for the time period from 22 August 2009 to 15 May 2011, amounting to a total of 3,303.58 euros, along with the legal interest as per the time deposited funds deposited for a period over one year without a specific destination. Acting upon the respective appeal of the interested party, the Court of Appeals rejected its appeal as unfounded, while it confirmed the Judgment of the Basic Court. The interested party filed a request for revision against the Judgment of the Court of Appeals, which is accepted by the Supreme Court as grounded, whilst the Judgment of the Basic Court and the Judgment of the Court

of Appeals are amended, by adjudicating as follows: The Applicant's statement of claim whereby he had requested obliging of the interested party, the Government of Kosovo, the Ministry of Internal Affairs-Kosovo Police, to pay to him the difference in the personal income, for the time period from 22 August 2009 to 15 May 2011, amounting to a total of 3,303.58 euros, is rejected as unfounded.

53. Consequently, the Applicant alleges before the Court that the challenged Decision violates his rights guaranteed by: (i) Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 [Right to a fair trial] of the ECHR; as well as allegations of violation of Article 54 [Judicial Protection of Rights] of the Constitution.

I) In relation to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

54. The Applicant has raised three main allegations before the Court regarding the alleged violations of Article 31 of the Constitution: (i) that he has not received the request for revision filed by the interested party, and consequently he was not able to present his objections regarding the content of this request; (ii) Based on Article 211 of the Law on Contested Procedure, the revision was not permitted in this case, because the value of the dispute as per the claim was 500 euros, whereas the dispute was not initiated against the decision on termination of the employment relationship; and (iii) the allegation that the Supreme Court has decided to reject his claim due to the statute of limitations, without this issue being raised by the interested party.

55. In this respect, the Court, based on the case law of the ECHR, but also taking into account its characteristics, as defined in the ECHR, as well as the principle of subsidiarity and the doctrine of the fourth instance, has consistently pointed out the difference between *"constitutionality"* and *"legality"* and has emphasized that it is not its duty to deal with errors of fact or erroneous interpretation and application of laws allegedly committed by a regular court, unless and in so far as such errors may have violated the rights and freedoms protected by the Constitution and/or the ECHR (see in this context the cases of Court KI128/18, Applicant: *Limak Kosovo International Airport J.S.C., "Adem Jashari"*, Resolution of 28 June 2019, paragraph 55; KI62/19, Applicant: *Gani Gashi*, Resolution on Inadmissibility of 19 December 2019, paragraphs 56-57; KI110/19, Applicant: *Fisnik Baftijari*, Resolution on Inadmissibility of 7 November 2019, paragraph 40).

56. The Court has also consistently reiterated that it is not the role of this Court to review the findings of the regular courts in respect of the factual situation and application of the substantive law and that it may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of *"fourth instance"*, which would result in exceeding the limits set on its jurisdiction. (See: in this respect, the ECtHR case *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and the references used therein; and see also the cases KI128/18, cited above, paragraph 56; and KI62/19, cited above, paragraph 58).

57. The Court notes that the substance of the Applicant's allegations relates to the erroneous determination of the factual situation and the erroneous interpretation of the applicable laws by the Supreme Court. The Court notes that the Supreme Court has reasoned in detail the evidence and the substantive provisions on the basis of which it has rendered the respective judgment, thus responding to the Applicant's allegations concerning the erroneous application of the substantive law.

(i) In relation to the allegation of non-receipt of the request for revision submitted by the interested party

58. The Court recalls that the Applicant alleges that he was not notified about the conduct of the proceedings before the Supreme Court of Kosovo, consequently he was not given the opportunity to present allegations and objections concerning the request for revision filed by the interested party.

59. As regards the above allegation, the Court notes that in the reasoning of the Judgment of the Supreme Court it was stated that there was no response to the revision. Moreover, the Court notes that in the case file there is the acknowledgment of receipt which proves that the request for revision was received by the Applicant's representative, on 16 October 2019.

60. Consequently, while the Applicant has duly received the revision, he did not use his right to file a response to the revision before the Supreme Court; therefore this allegation of the Applicant's is manifestly ill-founded.

(ii) In relation to the allegation that the revision was not permitted in the present case

61. In the following, the Court recalls that the Applicant alleged that in the present case the revision was examined even though it was not permitted under Article 211 of the Law on Contested Procedure, because the value of the dispute according to the claim was 500 euros, whereas the dispute was not initiated against the decision on termination of the employment relationship, therefore according to him in this case the revision was not permitted.

62. Further, in relation to the above allegation of the Applicant, the Court notes that paragraph 2 of Article 211 of the Law on Contested Procedure provides that: "*Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €*".

63. Consequently, in the present case the Court notes that the revision filed by the interested party was exercised in the procedure in which the value of the subject matter of the dispute in the stricken part of the Judgment was 3,303.58 euros. Consequently, the Court finds that the minimum limit required by this legal provision has been met. Therefore, also this allegation of the Applicant is manifestly ill-founded.

(iii) In relation to the allegation that the Supreme Court has decided on the rejection of the statement of claim due to the statute barring of the request, without this issue being raised by the interested party

64. The Applicant also alleges that the Supreme Court decided to accept the revision of the interested party, on which occasion it resulted with the rejection of his statement claim due to the statute barring of the request, but the interested party has not referred to this in the response to the claim during the entire procedure in the first instance nor in the appeal filed against the judgment of the first instance. So, he further claims that he had no knowledge about what the request for revision submitted by the interested party contained, since according to him he did not possess the same, as a result of this request being not submitted to him.

65. With regard to this Applicant's allegation, the Court initially recalls that the issue of statute barring had been dealt with by the regular courts since the rendering of the Judgment [C.no.329/15] of the Basic Court, which in its reasoning stated:

"Also in Article 87 of the Law on Labour it is provided that all requests from the employment relationship involving money are statute barred within three (3) years, from the day of submission of the request, while in the court's assessment, the claimants' request has been filed within the legal deadline foreseen under this provision and therefore it decided as in the enacting clause."

66. The Court notes that the State Advocacy Office in the request for revision, requested from the Supreme Court to reject the Applicant's statement of claim as inadmissible by law: since through it the Applicant sought judicial protection after the expiration of the provided legal deadline, within which he could have sought judicial protection.

67. The Court also recalls Article 341 of the Law No.04/L-077 on Obligational Relationships which stipulates that *"the court may not take notice of statute-barring if the debtor makes no reference thereto."* In this respect, the Court notes that the State Advocacy Office in the request for revision, did not call upon the rejection of the Applicant's claim on the basis of statute barring, but nevertheless it had specifically raised the issue of judicial protection after the expiration of the legal deadline.

68. Consequently, the Supreme Court through Judgment [Rev.no.392/19] of 2 June 2020, accepted the revision of the respondent as founded, by ascertaining that the substantive law had been erroneously applied by the lower instance courts, given that the Applicant had submitted the judicial protection out of the legal deadline. Among other things, the Supreme Court has stated the following reasons for accepting the revision:

"According to this Court, the substantive law, more specifically the Law on Labour Law was erroneously applied, for the fact that on 22 August 2009

the claimant was suspended from work and this suspension has lasted until 15 May 2011, when the respondent terminated the claimant's suspension and reinstated him to his job position and previous duties, whilst he has filed the claim on 20 March 2015. Judicial protection in the present case is out of time for the reasons relating to Article 87 of the Law on Labour No. 03/L-212, where it is envisaged that all requests(claims!) from the employment relationship involving money, are statute barred within three (3) years, from the date of submission of the request, which means that on the basis of the above mentioned article in this case the deadline has expired, hence according to the assessment of the Supreme Court, the courts of lower instance have erroneously applied the provisions of Article 78 para.1 and 2 and Article 79 of the Kosovo Law on Labour relating to judicial protection from the employment relationship. Therefore, the instruction on legal remedy given at the end of the procedure before the respondent is wrong and does not justify the claimant's delay. Article 87 of the Law on Labour provides that requests related to the employment relationship involving money are statute barred within 3 years from the date of submission of the request. In the present case from the moment of the claimant being reinstated to job position until the day of the claim being filed, have passed more than 3 years, therefore it turns out that the claimant's request(claim) for compensation of personal income is statute barred."

69. Therefore, in view of the above, the Court finds that the Applicant has had the opportunity to benefit from the adversarial proceedings as well as the opportunity to present the arguments and evidence which he considered relevant to his case, at the various stages of the proceedings; he has had the opportunity to effectively challenge the arguments and evidence presented by the opposing party; all his allegations, which viewed objectively, were relevant for the resolution of the case have been heard and reviewed by the regular courts, and the factual and legal reasons for the challenged decision have been presented in detail; therefore, the proceedings , viewed in their entirety, were fair (see: *mutatis mutandis*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraphs 29 and 30; see also the case of Court KI22/19, Applicant *Sabit Ilazi*, Resolution of 7 June 2019, paragraph 42 and the case of Court KI128/18, cited above, paragraph 58).

70. The Court notes that in the circumstances of the present case, the Applicant, beyond the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous interpretation of the law, because the regular courts have applied the law *"to the detriment of this Applicant"*, does not sufficiently substantiate or argue before the Court how this interpretation of the applicable law by the regular courts may have been *"manifestly erroneous"*, resulting in *"arbitrary conclusions"* or *"manifestly unreasonable"* for the Applicant, or how the proceedings before the regular courts, viewed in their entirety, may have not been fair or even arbitrary. In addition, the Court finds that the regular courts have taken into account all the facts and circumstances of the case, the allegations of the Applicant and have clearly reasoned the same (See: in this respect, the case of Court KI64/20, Applicant: *Asllan Meka*, Resolution on Inadmissibility of 3 August 2020, paragraph 41 and KI22/19, cited above, paragraph 43).

71. Finally, the Court concludes that the Applicant's allegations of a violation of the right to a fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR due to erroneous interpretation and application of the applicable law are (i) claims that pertain to the category of *"fourth instance"* claims and as such, these claims of the Applicant are manifestly ill-founded on constitutional basis, as provided in paragraph (2) of Rule 39 of the Rules of Procedure.

72. Therefore, these allegations are manifestly ill-founded on constitutional basis and are declared inadmissible, as provided in Article 113.7 of the Constitution and further specified in Rule 39 (2) of the Rules of Procedure.

(II) In relation to the allegation of violation of Article 54 of the Constitution

73. The Court recalls that the Applicant also states that the challenged decision was issued in violation of the rights guaranteed by Article 54[Judicial Protection of Rights] of the Constitution.

74. In the present case, the Applicant alleges that the Judgment of the Supreme Court has *"arbitrarily"* violated his individual rights thus resulting in a violation of Article 54 of the Constitution, but he does not specifically explain how the violation of this article of the Constitution resulted. In this respect, the Court recalls that it has consistently emphasized that the mere reference to the Articles of the Constitution and the ECHR is not sufficient to build an arguable allegation of a constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, cases KI175/20, with Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 22 April 2021, paragraph 81; KI166/20 cited above, paragraph 52; KI04/21, with Applicant: *Nexhmije Makolli*, Resolution on Inadmissibility of 11 May 2021, paragraphs 38- 39).

75. Therefore, the Court finds that as regards the Applicant's allegation of a violation of Article 54 of the Constitution, the Referral must be declared inadmissible as manifestly ill-founded, because this allegation is considered as a claim which pertains to the category of *"unsubstantiated or unjustified"* claims, since the Applicant has merely cited a provision of the Constitution and the ECHR, without explaining how it was violated. Therefore, this allegation is manifestly ill-founded on constitutional basis, as provided in paragraph (2) of Rule 39 of the Rules of Procedure.

Conclusion

76. Finally, the Court finds that the Applicant's Referral is inadmissible because (I) the allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR with respect to the Applicant's allegations (i) that he has not received the request for revision submitted by the interested party, and consequently had no opportunity to present his objections regarding the content of this request; (ii) the revision, according to Article 211 of the Law on Contested Procedure, was not permitted in this case, because the value of the dispute

according to the claim was 500 euros, while the dispute was not initiated against the decision on termination of the employment relationship; and (iii) the allegation that the Supreme Court has decided to reject his statement of claim due to the statute barring, without this issue being raised by the interested party; are claims that qualify as *"fourth instance"* claims; and as such these allegations of the Applicant are manifestly ill-founded on constitutional basis; and (II) the Applicant's allegation of a violation of Article 54 of the Constitution is manifestly ill-founded, because it is qualified as a claim pertaining to the category of *"unsubstantiated or unjustified" claims*. Therefore, the Referral must be declared inadmissible as manifestly ill-founded on constitutional basis, in its entirety, as provided in paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, in the session held on 10 November 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	Gresa Caka Nimani