



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 16 December 2022
Ref. No.:AGJ 2098/22

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case No. KO27/21

Applicant

The Supreme Court of the Republic of Kosovo

**Constitutional review of Article 94 [Supervision]
of Law No. 03/L-121 on Labour**

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 the Supreme Court of the Republic of Kosovo (hereinafter: the referring court), signed by its president, Enver Peci.

Challenged decision

2. The referring court challenges the constitutionality of Article 94 of Law No. 03/L-212 on Labour (hereinafter: Law on Labour) regarding the jurisdiction of the Labor Inspectorate.

Subject matter

3. The subject matter of the referral is the assessment of the constitutional compliance of Article 94 of the Law on Labour, with the allegation that this provision is not in compliance with Articles 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise of Profession] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as with the principles of legal certainty and legal order of the Republic of Kosovo.

Legal basis

4. The Referral is based on paragraph 8 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 51 [Accuracy of referral], 52 [Procedure before a court] and 53 [Decision] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 77 [Referral pursuant to Article 113.8 of the Constitution and Articles 51, 52 and 53 of the Law] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 5 February 2021, the referring court submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 February 2021, the President of the Court appointed Judge Bajram Ljatifi, as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gerxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 10 February 2021, the Court notified about the registration of the Referral the President of the referring court, Mr. Enver Peci, Secretary General of the Assembly of the Republic of Kosovo, Mr. Ismet Krasniqi, the acting Prime Minister of the Republic of Kosovo, Mr. Avdullah Hoti, the Ombudsperson, Mr. Naim Qelaj, Chief Inspector of the Labor Inspectorate, Mr. Ekrem Kastrati and acting Secretary General of the Ministry of Labor and Social Welfare, Mr. Feim Osmani.
8. On the same date, the referring court was notified that based on Article 52 of the Law on the Court and Rule 77 (5) of the Rules of Procedure, the procedure related to the case regarding the referral submitted to the Court should be suspended until the decision is taken by Constitutional Court.
9. On 12 February 2021, the Court notified her Excellency, Mrs. Vjosa Osmani-Sadriu, acting President of the Republic of Kosovo.
10. On the same date, the Court also notified Teuta Nuhiu-Sherifi, in the capacity of the procedural party, for the submission of the referral by the referring court.
11. On 23 February 2021, Teuta Nuhiu-Sherifi, through her representative, submitted additional information regarding the referral.

12. On 30 April 2021, the Ombudsperson, in the capacity of the interested party, submitted his comments regarding the referral.
13. On 17 May 2021, based on paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the 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 Court Decision KK-SP 71--2/21, it was determined that Judge Gresa Caka-Nimani will assume the position of President of the Court after the end of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 26 June 2021.
14. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court
15. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision KSH27/21, appointed judge Nexhmi Rexhepi as a member of the Review Panel instead of judge Bekim Sejdiu.
16. On 31 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision no. KK160/21 on the replacement of presiding judges in review panels, appointed the elected President of the Court, Gresa-Caka Nimani, presiding of the panel for the case KO27/21.
17. On 26 June 2021, pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP -2-2/21 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
18. On 29 July 2021 and on 23 September 2021, the Review Panel considered the report of the Judge Rapporteur and decided to postpone the review of the case for the next review session.
19. On 21 December 2021, the Review Panel considered the report of the Judge Rapporteur and by a majority of votes recommended to the Court the admissibility of the referral. On the same date, by a majority of votes, the Court voted that the referral is admissible for review and by a majority of votes, it found that Article 94 of the Law on Labour is in compliance with the Constitution.
20. On the same date, the Judge Rapporteur, based on paragraph (4) of Rule 58 (Deliberations and Voting) of the Rules of Procedure, requested the President of the Court to appoint another judge, from the majority, to prepare the draft Judgment according to the proposal of the majority of judges. Based on the aforementioned rule, the President of the Court appointed judge Nexhmi Rexhepi, as one of the members of the Review Panel, to prepare the draft Judgment, according to the deliberation and voting of the majority.
21. On 14 November 2022, the judge who prepared the draft Judgment submitted the latter to the full Court.

22. On 1 December 2022, the final draft of the Judgment was circulated to all judges in accordance with paragraph 8 of Article 22 of the Law and paragraph (2) of Rule 64 of the Rules of Procedure.
23. On 7 December 2022, the Court voted the final text of the Judgment, by which it was decided by a majority of votes that the referral be declared admissible for review on merits and that Article 94 [Supervision] of the Law on Labour is in compliance with the Constitution.

Summary of facts

24. On 1 November 2010, the Assembly of the Republic of Kosovo approved the Law on Labor, which was published in the Official Gazette by Decree No. DL-077-2010, of 18 November 2010. The Law on Labor entered into force on 15 (fifteen) days after its publication in the Official Gazette, namely on 2 December 2010.

Administrative procedure

25. On 8 November 2017, the Municipal Directorate for Education in Gjilan (hereinafter: MDE in Gjilan), announced public vacancy 05 no. 112825 for the establishment of the employment relationship for the position of “Educator” in the Dardania 1 (one) preschool institution in Gjilan.
26. On 15 February 2018, the MDE in Gjilan by Decision no. 15688, published the names of 10 (ten) successful candidates, who were selected for the position of educator.
27. On an unspecified date, the candidate Teuta Nuhiu-Sherifi submitted a complaint to the Complaints Review Commission of the Municipality of Gjilan (hereinafter: Complaints Commission), regarding irregularities in the vacancy.
28. On 28 February 2018, the Complaints Commission, by Decision no. 17367/2018, rejected as ungrounded the complaint of Teuta Nuhiu-Sherifi. The legal remedy in this case instructed the complainant to address the Ministry of Labor and Social Welfare (MLSW), namely the Labor Inspectorate in Gjilan.
29. On 6 April 2018, Teuta Nuhiu-Sherifi, based on the aforementioned legal advice, submitted a complaint [no. 04-118/18] to the Labor Inspectorate in Gjilan, against the Decision [no. 17367/2018] of the Complaints Commission, of 28 February 2018.
30. On 11 April 2018, the Labor Inspectorate in Gjilan, by Decision no. 02/c-134, rejected the complaint of Teuta Nuhiu-Sherifi and upheld the decision of the Complaints Commission, of 28 February 2018. The legal advice in this case instructed: “*Against this decision, an appeal can be submitted to the Ministry of Labor and Social Welfare - the Inspectorate of Labor in Prishtina within 8 days from the day of taking this decision - The complaint is sent through the Labor Inspector*”.
31. On 18 April 2018, Teuta Nuhiu-Sherifi filed a complaint with the Labor Inspectorate in Prishtina, within the framework of the MLSW, against the decision of [no. 02/c-134] of 11 April 2018 of the Labor Inspectorate in Gjilan, in conjunction with the decision of the MDE in Gjilan, of 15 February 2018 and the decision of the Complaints Commission of the Municipality of Gjilan, of 28 February 2018, on the grounds of violation of legal procedures during the selection of candidates for the position of “Educator” in the Dardania 1 (one) preschool institution in Gjilan.

32. In the meantime, on 24 April 2018, namely a week later, Teuta Nuhiu-Sherifi, in parallel with the complaint submitted to the Labor Inspectorate in Prishtina, a lawsuit according to the contested procedure to the Basic Court in Gjilan, against the decision of the MDE in Gjilan, of 15 February 2018 and the decision of the Complaints Commission, of 28 February 2018, which he had already challenged in the administrative procedure at the Labor Inspectorate in Gjilan and was awaiting the decision from the Labor Inspectorate in Prishtina, within the framework of the MLSW.
33. On 8 June 2018, the Labor Inspectorate in Prishtina, deciding upon the complaint of 18 April 2018, rendered Decision no. 218/2018: by which: 1) approved as grounded the complaint of Teuta Nuhiu-Sherifi; 2) annulled the Decision [no. 02/c-134] of the Labor Inspectorate in Gjilan, of 11 April 2018; and 3) obliged MDE in Gjilan to repeat vacancy 05 no. 112825 of 7 November 2017 for the establishment of the employment relationship for the position of “Educator” in the Dardania 1 (one) preschool institution in Gjilan. The decision-making of the Labor Inspectorate is based on: “... the provision of Article 94 of Law No. 03/L-212 on Labor, Article 24 of Law No. 04/L-161 on Safety and Health at Work, Article 19 of Law No. 04/L-156 on Tobacco Control, Articles 4 and 6 of Law No. 2002/9 on the Labor Inspectorate in Kosovo, Law No. 03/L-017 on Amending and Supplementing the Law on the Labor Inspectorate No. 2002/9, and Article 132 of Law No. 05/L-031 of LGAP”.
34. On 18 July 2018, the MDE in Gjilan, acting according to the decision of the Labor Inspectorate in Prishtina, of 8 June 2018, published announcement no. 74969, for the repetition of the public vacancy for the recruitment of 10 (ten) educators in the Dardania 1 (one) preschool institution in Gjilan, according to the decision of the Labor Inspectorate in Prishtina, of 8 June 2018.

Contested procedure

35. On 15 January 2019, acting according to the lawsuit of 24 April 2018, the Basic Court in Gjilan, by Judgment C. no. 404/18, rejected as ungrounded the lawsuit of Teuta Nuhiu-Sherifi, by which the annulment of the decisions of the authorities of the Municipality of Gjilan and the repetition of the vacancy announced by the MDE in Gjilan, on 8 November 2017, were requested. The aforementioned court rejected the lawsuit on the grounds that: “.. did not prove the violations claimed by the claimant that the respondent violated the criteria of waiting and work experience when scoring the other counter-candidates, since these two criteria are defined in the interview form under the equal conditions for each candidate, therefore, these criteria are not contrary to the general conditions of the vacancy or to the legal provisions of the MEST Administrative Instruction of no. 05/2015”.
36. On an unspecified date, Teuta Nuhiu-Sherifi filed an appeal with the Court of Appeals, against Judgment [C. no. 404/18] of the Basic Court in Gjilan, of 15 January 2019, on the grounds of erroneous determination of factual situation and erroneous application of the procedural law.
37. On 23 April 2019, the Court of Appeals, by Judgment Ac. no. 834/19, rejected as ungrounded the appeal of Teuta Nuhiu-Sherifi, and upheld the Judgment of the Basic Court in Gjilan, as fair and based on law.
38. On 17 May 2019, Teuta Nuhiu-Sherifi, within the legal deadline, filed a request for revision with the referring court, against the Judgment [Ac. no. 834/19] of the Court of Appeals, on the grounds of violations of the provisions of the procedural law.

39. On 2 February 2021, the referring court, by Decision Rev. no. 209/19, decided to suspend the request for revision of Teuta Nuhiu-Sherifi, in accordance with Article 52 [Procedure before the court] of the Law and to refer the case to the Constitutional Court, for assessment of compliance of Article 94 of the Law on Labor, with the principles of legal certainty and legal order of the Republic of Kosovo, as well as Articles 3, 24, 31, 49 and 54 of the Constitution.
40. On 5 February 2021, the referring court submitted the request to the Court, for assessment of the compatibility of Article 94 of the Law on Labor with the aforementioned constitutional provisions.
41. On 10 February 2021, the Court notified the referring court, that based on Article 52 of the Law on the Court and Rule 77 (5) of the Rules of Procedure, the procedure related to the case under consideration of Teuta Nuhiu-Sherifi, which is related to the referral KO27/21 submitted to the Court, should be suspended until the decision is taken by the Constitutional Court.

Allegations of the referring court

42. The referring court requests an assessment of the compatibility of Article 94 of the Law on Labour, with the principles of legal certainty and the legal order of the Republic of Kosovo, as well as with Articles 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise of Profession] and 54 [Judicial Protection of Rights] of the Constitution.
43. The referring court claims that: “... *the jurisdiction of the Labor Inspectorate to decide according to the demands of the employees, the employees regarding the legality of the employers’ decisions for the recruitment of employees, for salaries and other material requirements, for the return of the workers to work, for disciplinary measures, etc., with reference to provision 94 of the Law on Labor no. 03/212, regarding the jurisdiction of the Labor Inspectorate, ... is contrary to the constitutional provisions from Article 3 Equality Before the Law. Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 49 [Right to Work and Exercise the Profession] and Article 54 [Judicial Protection of Rights]*”.
44. The referring court further claims that: “*The Labor Inspectorate, referring to the provision of Article 94 of the Law on Labor, is deciding on merits in parallel with the courts on the issues and requests of employees regarding the rights from the employment relationship*”. In this context, the referring court asks the Court that: 1) *can two institutions decide in parallel on the same issues? 2) If so, is the legal certainty and legal order violated in this way and consequently is the Constitution of the Republic of Kosovo violated?*”
45. On this basis, the referring court claims that: “*The Labor Inspectorate, in addition to the fact that it is deciding in parallel with the courts for labor disputes, in many cases it is completely consuming the contested issue of the parties employer, employee in such a way that the decision of the Labour Inspectorate takes the character of an enforcement document, since decisions of this nature are subject to the clause of enforceability by the Labor Inspectorate itself*”.
46. Further, the referring court states that: “... *at the moment when decisions of this nature are given the clause of enforceability by the Labor Inspectorate, then the enforcement bodies due to the acceptance of “strict formal legality” do not have the authorization to enter the review of the material legality and regularity of the enforcement document on the basis of which enforcement is allowed*”. In relation to this and not

only the referring court, beyond the present case, as evidence has attached the request the decisions of the Labor Inspectorate, as follows: Decision 01. no. 60-27-1/2018, of 24 May 2018; Decision no. 56-14/2016-A1, of 12 April 2015; Decision 01. no. 60-68-1/2019 of 5 July 2019; and Decision 01/37-142/19 of 22 July 2019 and the supplement to this decision, of 10 February 2020.

47. The referring court, following the arguments above, alleges that: *“...decisions of the Labor Inspectorate, of this nature, seriously violate legal certainty, especially equality before the law, the right to fair and impartial trial, the right to work, the right to exercise the profession and judicial protection of rights”. This is because, “acting as a parallel body for the matter in question, it is impossible or it is obviously difficult for at least one of the parties to realize the right to a fair and impartial trial, as well as in many cases it prevents the parties involved from protecting judicial rights”.*
48. The referring court further states that: *“The provision of Article 94 of the Law on Labor Law determines that the Supervision of the implementation of the provisions of this law, which regulate the labor relationship, safety at work and protection at work is done by the Labor Inspectorate on the basis of Law on Labor Inspectorate and Law no. 2003/9 on safety at work, protection of the health of employees and the working environment”. From the interpretation of the cited provision, it is implied that the Labor Inspectorate supervises the implementation of the provisions of the law in question based on the Law on the Labor Inspectorate and Law no. 2003/9 on Safety at work, health protection of employees and protection of the working environment. Based on the Law on the Labor Inspectorate in Kosovo, no. 2002/9, respectively Law no. 06/L-017, on the amending and supplementing the Law on the Labor Inspectorate, no. 2002/9, it results that the Labor Inspectorate by decision can impose a fine for the found violations, but it cannot decide on requests related to the rights of the employer, employees and referring to salary requests and other material requests, the legality of decisions, disciplinary measures, the return of workers to work, etc.”*
49. The referring court claims that: *“The Law on Labor has defined the procedure for the realization of rights from the employment relationship, such as: 1) the protection of the employees in court; 2) protection of the employee through mediation; 3) protection of employees by the Labor Inspectorate; and 4) Punitive measures”.*
50. In this regard, the referring court has referred to articles 78 (1, 2 and 3), 79, 81, 82 (1 and 2) and 83 of the Law on Labor and states that: *“The cited provisions of the Law on Labor clearly define the procedure for the exercise of rights from the employment relationship: 1) in court; 2) through the mediation; and 3) at the Labor Inspectorate. The referring court in this context argues that what is important and results from the interpretation of the provisions, referred to above, concerns the impossibility of parallel action of bodies that can provide protection for the exercise of rights from the employment relationship . With the provisions of Article 78 of the Law on Labor , the right of the employee to submit a request to the employer for the realization of the violated rights is foreseen, for which the employer is obliged to decide on the request within 15 (fifteen) days, while the employee, in case he is dissatisfied with the decision of the employer or due to the failure to decide within the deadline, has the right to seek judicial protection in the competent court”. In this respect, the referring court adds that: “The Labor Inspectorate is not a body placed either on a horizontal line, or parallel to the court, because the nature of the rights for which the employee can seek protection from the Labor Inspectorate is different from the rights whose protection is sought in court”.*
51. Furthermore, the referring court states that: *“The provisions of Article 82 of the Law on Labor are clear and refer to the jurisdiction of the Labor Inspectorate, defined by*

the Law on the Labor Inspectorate no. 2002/09, namely Law no. 06/LO017 on Amending and Supplementing the Law on the Labor Inspectorate no. 2002/9. According to the referring court, the Labor Inspectorate for the requests of employees who are under its jurisdiction, according to the Labor Law, Article 83, determines that the Labor Inspectorate can impose punitive measures, based on the Law on the Labor Inspectorate. The punitive measures are the fines imposed on the employer in accordance with the provisions of articles 4 and 5 of the Law on the Labor Inspectorate in Kosovo, no. 2002/9, namely Law no. 06/LO017 on Amending and Supplementing the Law on the Labor Inspectorate no. 2002/9”.

52. *In this context, the referring court states that: “The right to impose fines on the employer is not analogous to the jurisdiction to decide on the employee's requests, on the rights from the employment relationship, which are wages, the legality of disciplinary procedures, return of workers to work, etc. The problem, according to the referring court, also lies in the fact that some of the employers, due to the “practice created by the Labor Inspectorate” when deciding on the requests of employees or their complaints, with the instruction on the legal remedy, instruct the parties that in case of dissatisfaction address the Labor Inspectorate. This established practice not only violates the legal order with parallel institutions/bodies but simultaneously violates or affects the decision-making of the courts regarding the requests of employees. The legal remedies in many decisions of employers (even public institutions, e.g. municipalities), leave employees guessing about the procedure to seek judicial protection in court, and in this way directly affect the loss of deadlines for exercising the rights to work”.*
53. *In addition, the referring court states that: “For the specific case (and not only) it is important to assess the constitutional adequacy of the requested provision, because the possible decision of the Constitutional Court on this case will have a direct impact in the assessment of the permissibility of judicial protection in the present case. This is because the claimant in the present case, according to the instructions of the respondent, before seeking judicial protection in court, has exhausted the procedure in the Labor Inspectorate, and in this way has created an interruption of the employer-court procedure. The employer-court procedure is a legal procedure and the permissibility of the process is dictated by the exhaustion of the internal remedies at the employer as well as the submission of the lawsuit to the court within the specified period. Otherwise, the lawsuit will be dismissed as inadmissible. The regular courts have no possibility to exclude the assessment of the admissibility of the lawsuit for judicial protection of the rights from the employment relationship, without taking into account the respect of the procedure and the deadline for filing the lawsuit. This is because it is a legal obligation for matters of this nature to assess whether the lawsuit is permissible regarding the deadline and compliance with the procedure”.*
54. *This course of action, according to the referring court: “presents three issues for assessment by the regular courts: 1) can the Labor Inspectorate be presented in a vertical hierarchy in this case, namely, is the activity of the Labor Inspectorate legal; 2) will the deadline for filing the lawsuit be calculated from the last action of the employer or from the last action of the Labor Inspectorate; and 3) what are the employer’s legal options to challenge the decision of the Labor Inspectorate, when by the same decision the employer is ordered to take actions as is the case now regarding the conduct of interviews or tests”.*
55. *The referring court argues that: “In many cases, the interaction of the Labor Inspectorate for matters outside the jurisdiction defined by law, affects the loss of the legal opportunity to seek protection in court, or in cases where the disputed issue is exhausted in its entirety, then the employer is denied the right to fair and impartial*

trial. This situation comes to expression when the Labor Inspectorate annuls the employer's decision for recruiting employees or for other issues, obliging the employer to take certain actions (such as the specific case, where the respondent (MDE-Gjilan) was obliged to maintain written and oral test) whose decision (of the inspectorate) the employer cannot oppose even in an administrative conflict because it is not a final decision”.

56. Finally, the referring Court states: “From the above-mentioned reasons, we note that the admission of this referral for consideration in the Constitutional Court will affect the fair and legal decision of the present case, but at the same time it will affect the restoration of the constitutional and legal standard for the right to seek judicial protection by everyone as well as the right to fair and impartial judicial process”

Comments of Ombudsperson

57. The Ombudsperson on 24 April 2021, submitted his comments regarding the claims of the referring court, where it is emphasized: “The Ombudsperson notes that it is about the practical problems of the implementation of the Law on Labor, which have resulted in raising concern by the Supreme Court, regarding the jurisdiction of the Labor Inspectorate, in the supervision of the implementation of the provisions of the Law on Labor , namely Article 94 of the Labor Law, emphasizing in this regard that ... according to this provision, the Labor Inspectorate is competent for the supervision of the implementation of the provisions of the Labor Law that fall under his competence, based on the Law on the Labor Inspectorate and Law no. 2003/19 on Safety at Work, Health Protection of Employees and Protection of the Working Environment (repealed by Law no. 04/L-161 on Safety and Health at Work)”.
58. Regarding the principle of separation of powers, the Ombudsperson: “... draws attention to the Constitution of the Republic of Kosovo, namely to Article 4, paragraph 5, according to which: “The judicial power is unique and independent and is exercised by courts”. In this regard, the constitutional provisions have clearly and explicitly defined that the judicial power is exercised by the courts. As long as a body that acts within the framework of the executive power examines and decides on the cases that fall under the competence of the courts, the Ombudsperson considers that it is not only acted against the principles of the separation of powers, but also violates the right of employees to a fair and impartial trial as well as the right to judicial protection of rights”.
59. The Ombudsperson further emphasizes: ”According to Article 2 of Law no. 03/L-017 on Amending and Supplementing Law no. 2002/9 for the Labor Inspectorate, the Labor Inspectorate is an executive body of the Ministry of Labor and Social Welfare. Therefore, according to the definition of the law itself, the Labor Inspectorate is a body that operates within the Ministry of Labor and Social Welfare, so the Labor Inspectorate operates within the executive power”.
60. Therefore, the Ombudsperson points out that: “The Labor Inspectorate does not meet the criteria to be a "court" or "independent tribunal" and, in addition, the law does not give it jurisdiction to decide on issues raised by the Supreme Court. Therefore, any action of the Labor Inspectorate to decide on matters over which the court is authorized by law constitutes a violation of Article 31 of the Constitution and Article 6 of the European Convention on Human Rights. Undoubtedly, the actions of the Labor Inspectorate, which decides outside the jurisdiction of the cases raised by the Supreme Court, creates the conviction among citizens that the case will ultimately be decided by the Labor Inspectorate, in which case the employee is prevented from addressing the competent body, which in this case is the court, and thereby miss the legal deadline

for initiating court proceedings, according to provisions 78 and 79 of the Law on Labor . The Constitution in principle guarantees protection in court, as the most important form of protection of human rights in domestic law. Anyone whose right guaranteed by the Constitution has been violated or denied has the right to defense in court. In addition, Article 54 of the Constitution contains the provision which guarantees every individual the right to effective legal measures, if it is established that the right has been violated. It follows that everyone is guaranteed the right to an independent, impartial and law-based trial, which means that in this way the right to a fair trial (Article 31 of the Constitution) and the right to equal protection in the courts are guaranteed”.

Relevant provisions

Constitution of the Republic of Kosovo

Chapter I [Basic Provisions]

Article 3 **[Equality Before the Law]**

- 1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.*
- 2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.*

Article 4 **[Form of Government and Separation of Power]**

- 1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution. The Assembly of the Republic of Kosovo exercises the legislative power.
[...]
The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentarian control.
The judicial power is unique and independent and is exercised by courts.
[...]*

Article 102 **[General Principles of the Judicial System]**

- 1. Judicial power in the Republic of Kosovo is exercised by the courts.
[...]*

Chapter II [Fundamental Rights and Freedoms]

Article 24 **[Equality Before the Law]**

- 1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*
- 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.*

3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions.

Article 31

[Right to Fair and Impartial Trial]

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

Article 49

[Right to Work and Exercise Profession]

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

Article 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.

Law No. 06/L-054 on Courts

Article 3

[Exercise of Judicial Power]

1. Judicial power in the Republic of Kosovo shall be exercised by the courts established by this Law.
2. Judicial power in the Republic of Kosovo shall be unique, independent, fair, apolitical, impartial, and shall provide equal access to the courts

Article 4

[Independence and Impartiality of the Courts]

1. The Courts established by this Law shall adjudicate in accordance with the Constitution of the Republic of Kosovo and the applicable Laws in the Republic of Kosovo.
- [...]

Law No. 03/L-006 on Contested Procedure

Article 49

[Competencies in labour relationship disputes]

If the employee is the claimant on the labour relations dispute, apart from the court with general jurisdiction over the defendant, it is also competent the court in whose territory the labour has or should have taken place, and the court in whose territory is established the labour relationship.

Article 475

In contentious procedures in work environment, especially in setting the deadlines and court sessions, the court will always have in mind that these cases need to be solved as soon as possible.

Article 486

Small value contentious procedure is not considered real estate property, work environment disputes and disputes because of the possession refusal.

LAW No.03/L –212 ON LABOUR

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 an 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 82

[Protection of Employee by the Labour Inspectorate]

1. An employee may submit an appeal to the Labour Inspectorate at any time for issues falling under the competencies of this body.

2. Labour Inspectorate is obliged to issue a decision regarding the appeal of the employee within thirty (30) days or inform the submitter of the appeal regarding the extension of the term when the decision shall be reached.

Article 83

[Disciplinary Measures]

The disciplinary measures related to the violation of the provisions of this Law by the employer, shall be issued by the Labour Inspectorate according to the Law on Labour Inspectorate.

Article 94

[Supervision]

Supervision of implementation of the provisions of this Law regulating employment relationship as well as occupational safety and protection at shall be conducted by the Labour Inspectorate on the basis of the Law on labour Inspectorate and Law on Occupational Safety, Health and the Working Environment No. 2003/19.

Law No. 2002/9 on Labor Inspectorate, approved in December 2002, supplemented and amended by Law No. 03/L-017

Note: below is the consolidated version of the text of Law 2002/9 on the Labor Inspectorate.

Article 1

[Scope of Labor Inspection]

1.1 The Authority of Labor Inspection shall uniquely apply to all workplaces,

irrespective of the applicable legal provisions relating to conditions of work, occupational safety and health protection of all workers in general.

Article 2

[Functions of Labor Inspection]

2. The Labor Inspection:

(a) Insure implementation of the labor law, "Law on Safety at Work, Protection of Employees' Health and Work Environment, and also other applicable provisions from the field of employment and protection at work

(b) Provide technical information and advice to employers and employees on the most effective means of observing the legal provisions.

(c) Notify the Minister of Labor and Social Welfare or other competent authorities on any deficiencies in the applicable law.

(d) Supply information and advice to employers and employees and which would comply with the law and forewarn the competent authorities on any defects or abuses not covered by existing legal provisions.

(e) Give advice on issues relating to labor law and protection of employees in a case or reorganization or restructuring of an enterprise.

Article 3

[Labor Inspection Authority]

3.1 Labour Inspectorate is established by Ministry of Labour and Social Welfare and is responsible to this Ministry in relation to the coordination of executive actions regarding the Labour Inspectorate in Kosovo.

3.2 The Labor Inspection Authority shall consist of the Chief Labor Inspector and labor inspectors who exercise their functions throughout Kosovo.

3.3 "Labour Inspectorate is comprised of Chief in Charge of Labour Inspectorate and Labour Inspectors who exercise their function throughout the territory of the Republic of Kosovo".

3.4 For the purpose of implementation of the law, in its activities the Labor Inspection Authority shall co-ordinate and co-operate with municipal governments, tax inspectors, health inspection and other relevant authorities as well as with Kosovo Police.

3.5 The Chief Labor Inspection shall be appointed by the Government upon the proposal of the Ministry of Labor and Social Welfare.

3.6 Municipal inspectors shall be appointed by the Municipal Assembly.

Law No. 04/L-161 on Safety and Health at Work, approved on 16 May 2013

Article 24

[Supervision]

Supervision of implementation of the provisions of this Law is carried out by the Labour Inspectorate.

Article 25

[Fines]

1. Natural person and legal person, who do not implement provisions of the present Law, in legal procedure will be fined in money for each violated provision.

Admissibility of the Referral

61. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution and as further specified in the Law and Rules of Procedure.

62. In this respect, the Court refers to paragraphs 1 and 8 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;

[...]

8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court’s decision on that case depends on the compatibility of the law at issue.”

[...]

63. The Court also refers to Articles 51, 52 and 53 of the Law, which stipulate:

Article 51

[Accuracy of referral]

“1. A referral pursuant to Article 113, Paragraph 8 of the Constitution shall be filed by a court only if the contested law is to be directly applied by the court with regard to the pending case and if the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.

2. A referral shall specify which provisions of the law are considered incompatible with the Constitution.

Article 52

[Proceedings before a court]

“After the submission of a referral pursuant to Article 113, Paragraph 8 of the Constitution, the procedure before the referring court shall be suspended until a decision of the Constitutional Court is rendered.”

Article 53

[Decision]

“The Constitutional Court shall decide only about the compliance of the legal provision with the Constitution and shall not decide on other factual or legal matters related to the dispute before the referring court.”

64. The Court also takes into account the provisions of Rule 77 of the Rules of Procedure, which stipulates:

Rule 77

[Referral pursuant to Article 113.8 of the Constitution
and Articles 51, 52 and 53 of the Law]

(1) A referral filed under this Rule must fulfill the criteria established under Article 113.8 of the Constitution and Articles 51, 52 and 53 of the Law.

(2) Any Court of the Republic of Kosovo may submit a referral under this Rule provided that:

(a) the contested law is to be directly applied by the court with regard to the pending case; and

(b) the lawfulness of the contested law is a precondition for the decision regarding the case pending with the court.

(3) The referral under this Rule must specify which provisions of the contested law are considered incompatible with the Constitution. The casefile under consideration by the court shall be attached to the referral.

(4) The referring court may file the referral ex officio or upon the request of one of the parties to the case and regardless of whether a party in the case has disputed the constitutionality of the respective legal provision.

(5) After the filing of the referral, the Court shall order the referring court to suspend the procedure related to the case in question until a decision of the Constitutional Court is rendered.

65. In light of the aforementioned provisions, it follows that any referral submitted under Article 113, paragraph 8 of the Constitution, to be admissible, must meet the following criteria:

- 1) The referral to be submitted by a court;
- 2) The referring court is uncertain as to the compatibility of the challenged law with the Constitution;
- 3) The referring court must specify what provisions of the law are considered incompatible with the Constitution;
- 4) The law must be applied directly by the referring court in the case before it;
- 5) The constitutionality of the Law on Labour is a prerequisite for rendering a decision in the case under consideration.

66. The Court draws attention to its judicial practice which confirms the above-mentioned criteria regarding the admissibility of the requests presented on the basis of Article 113, paragraph 8, of the Constitution (see, mutatis mutandis, the case of the Court, [KO126/16](#), Applicant *Specialized Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters*, of 27 March 2017, paragraph 62; as well as case of the Constitutional Court [KO142/16](#), Applicant *Appellate panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo related matters*, of 9 May 2017, paragraph 58).

As for the first criterion

67. The court recalls that the referral was submitted by the Supreme Court and signed by its president, within the authorizations related to his function. In the referral, it is clearly stated that it is filed by the Supreme Court, which must decide on the “request for revision” of the claimant Teuta Nuhiu-Sherifi. Therefore, the Court considers that the referral KO27/21 was submitted by a “court” within the meaning of Article 113.8 of the Constitution (see the case of the Constitutional Court, [KO04/11](#), Applicant: *The Supreme Court of Kosovo*, of 1 March 2011).

As for the second criterion

68. The Court also notes that the referring court raised doubts about the constitutionality of the provision of the Law on Labour regarding the jurisdiction of the Labor Inspectorate. So, the referring court is not certain about the compatibility of the relevant provision of the Law on Labor with the Constitution, as established in Article 113.8 of the Constitution.

As for the third criterion

69. Regarding the fulfillment of this criterion, the Court notes that the referring court has specifically specified the provision of Article 94 of the Law on Labor, as a provision which it considers incompatible with the Constitution. Also, the referring court has mentioned the constitutional provisions with which it claims that Article 94 of the Law on Labor conflicts, namely articles 3, 24, 31, 49 and 54 of the Constitution.

As for the fourth and fifth criteria

70. Furthermore, the Court assesses whether the Law on Labor or its specific provision should be applied directly by the referring court in the case under consideration before it, and whether the constitutionality of the Law on Labor is a prerequisite for the decision by the referring court. The Court considers that the “direct application” of the present norm means that the outcome of the decision by the referring court depends on its application or non-application. Accordingly, as a consequence of the direct application or non-application of the concrete norm, the regular courts could render decisions with different results (see Court cases, [KO126/16](#), cited above and [KO157/18](#), with Applicant *The Supreme Court of the Republic of Kosovo*, Judgment of 13 March 2019).
71. Therefore, in order for there to be a direct connection, there must be a necessary relationship between the decision of the Constitutional Court, the resolution of the issue of constitutionality of the law by this Court and the resolution of the main issue by the referring court, in the sense that the adjudication by the referring court cannot be completed independently without the decision of the Constitutional Court (see, *mutatis mutandis*, court cases, [KO126/16](#), cited above, paragraph 65; [KO142/16](#), cited above, paragraph 62; and [KO157/18](#), cited above, paragraph 53).
72. In the context of the fulfillment of the fourth and fifth criteria, that the law must be applied directly by the referring court in the case under consideration before it, and that the constitutionality of the challenged law is a prerequisite for rendering a decision in the case under review, the referring court reasons: “*...For the specific case (and not only) it is important to assess the constitutional adequacy of the requested provision, because the possible decision of the Constitutional Court on this case will have a direct impact in the assessment of the permissibility of judicial protection in the present case. This is because the claimant in the present case, according to the instructions of the respondent, before seeking judicial protection in court, has exhausted the procedure in the Labor Inspectorate, and in this way has created an interruption of the employer-court procedure... the permissibility of the process is dictated by the exhaustion of the internal remedies at the employer as well as the submission of the lawsuit to the court within the specified period...This is because it is a legal obligation for matters of this nature to assess whether the lawsuit is permissible regarding the deadline and compliance with the procedure*”.
73. The essence of the connection of the present case with the need to assess the constitutionality of Article 94 of the Law on Labor and the implementation of this provision by the referring court, in the circumstances of the present case, is related to the fact that the decision-making of the Constitutional Court will have influence on the

approval of the request for revision and examination of the merits of the statement of claim of Teuta Nuhiu-Sherifi, or the dismissal of her claim as out of time, due to the interruption of the proceedings, namely the loss of the deadline to seek judicial protection in court, in accordance with Article 79 of the Law on Labor, which would result in modification of the judgments of the lower instance courts. From the case file, the Court notes that the parallel initiation of proceedings, namely the parallel exercise of legal remedies on the one hand at the Labor Inspectorate, according to the administrative procedure and on the other hand at the Basic Court in Gjilan, according to the contested procedure, in the case of Teuta Nuhiu-Sherifi has resulted as a consequence of the legal remedy given in Decision [no. 17367/2018], of 28 February 2018, by the Complaints Commission of the Municipality of Gjilan.

74. For this reason, and not only, the referring court states: *“From the above, we note that the admission of this referral for consideration in the Constitutional Court will affect the fair and legal decision of the present case, but at the same time it will affect the restoration of the constitutional and legal standard for the right to seek judicial protection by everyone as well as the right to fair and impartial judicial process”*.
75. Therefore, the Court considers that the constitutional review of Article 94 of the Law on Labor will have a decisive influence on the decision of the referring court in the case of Teuta Nuhiu-Sherifi.
76. Therefore, regarding the fulfillment of the admissibility criteria, the Court finds: 1) that the referral was submitted by the Supreme Court, as the referring court, which is an authorized party; 2) that the referring court is not certain about the compatibility of Article 94 of the Law on Labor with constitutional provisions; 3) that the referring court has also specified the constitutional provisions, with which Article 94 of the Labor Law is incompatible; 4) it also argued that Article 94 of the Law on Labor should be applied directly in the case under consideration before it; and 5) that the constitutionality of Article 94 of the Law on Labor is a prerequisite for rendering a decision in the case under consideration.
77. Furthermore, the Court also notes that the referral is not inadmissible on any of the other grounds contained in Rule 39 [Admissibility Criteria] of the Rules of Procedure, therefore, the Court declares that the referral is admissible for review on its merits.

Merits of the Referral

78. The Court notes that the referring court has before it a request for revision submitted by Teuta Nuhiu-Sherifi, which procedure has been suspended in accordance with Article 52 of the Law on the Constitutional Court, until the Court decides on the compatibility of Article 94 of the Law on Labor with specific provisions of the Constitution. The Applicant, Teuta Nuhiu-Sherifi, had exercised legal remedies in parallel, in administrative procedure and in contested procedure, to seek the protection of her rights. Initially, she challenged the legality of the decisions of the MDE-Gjilan, at the Labor Inspectorate in Gjilan, which by Decision no. 17367/2018, rejected her complaint and upheld the Decision of the Complaints Commission, of 28 February 2018. Dissatisfied with this decision, she submitted an appeal to the Labor Inspectorate in Prishtina (second instance), which by Decision no. 218/2018 approved her appeal and ordered the Municipality of Gjilan to repeat the vacancy for the position of “Educator” at Dardania 1 (one) school. However, Teuta Nuhiu-Sherifi, in addition to filing a complaint at the Labor Inspectorate in Prishtina, just a week later, also filed a lawsuit with the Basic Court in Gjilan. The Basic Court, by Judgment C.no. 404/18, rejected the lawsuit and upheld the decisions of the bodies of the municipality of Gjilan.

This Judgment was upheld by the Court of Appeals by Judgment Ac. no. 834/19, of 23 April 2019.

79. The judgments of the lower instance courts were challenged by Teuta Nuhiu-Sherifi by filing the request for revision, with the Supreme Court (the referring court). However, the referring court, by Decision Rev. no. 209/19, suspended the decision-making and referred the case to the Constitutional Court, clarifying that *"it cannot decide on the revision until the Constitutional Court renders a decision on merits regarding this referral"*, because Article 94 of the Law on Labor, which had to be applied in the present case, raises grounded allegation of its incompatibility with the principles of legal certainty and the legal order of the Republic of Kosovo, as well as articles 3, 24, 31, 49 and 54 of the Constitution.
80. The Court, based on the analysis of the allegations raised in the referral by the referring court, notes that the essence of the allegations of the referring court actually has to do with the jurisdiction of the Labor Inspectorate, namely with the parallel exercise of the competences of the latter, through Article 94 of the Law on Labor, as if it were a court established by law.

Constitutional review of Article 94 of the Law on Labour, with the Constitution

81. The Court, based on the essence of the allegations raised by the referring court, will analyze whether in the circumstances of the present case the interference of the Labor Inspectorate with the competencies of the judiciary occurred as a result of the incompatibility of the norm of the law with the Constitution, or as a result of the interpretation and implementation of the norm in question.
82. In this context, the Court initially refers to the content of Article 94 of the Law on Labor, which establishes:

Article 94
[Supervision]

"Supervision of implementation of the provisions of this Law regulating employment relationship as well as occupational safety and protection at shall be conducted by the Labour Inspectorate on the basis of the Law on labour Inspectorate and Law on Occupational Safety, Health and the Working Environment No. 2003/19."

83. The Court notes that the content of this article refers to the Labor Inspectorate, as an institution that supervises the implementation of the provisions of the Labor Law, which regulate the employee/employer work relationship, the safety and health of employees in workplace. This supervision according to the meaning of this norm, the Labor Inspectorate must do on the basis of the competences defined by the legislator with the Law on the Labor Inspectorate and the Law on Safety and Health at Work.
84. The Court recalls that Law no. 2003/9 on Safety at Work, Health Protection of Employees and Protection of the Working Environment, to which article 94 of the Labor Law refers, has been repealed and replaced by Law no. 04/L-161 on Safety and Health at Work, approved by the Assembly of the Republic of Kosovo on May 16, 2013. In this regard, the Court recalls that Article 94 of the Labor Law must reflect Law no. 04/L-161, in force.
85. Given that the Law on Labor contains other provisions that are related to the Labor Inspectorate also in relation to the understanding of the language of Article 94 of this

Law, the Court further refers to the content of Articles 82 and 83 of the Labor Law, which define:

Article 82

[Protection of Employee by the Labour Inspectorate]

1. *An employee may submit an appeal to the Labour Inspectorate at any time for issues falling under the competencies of this body.*
2. *Labour Inspectorate is obliged to issue a decision regarding the appeal of the employee within thirty (30) days or inform the submitter of the appeal regarding the extension of the term when the decision shall be reached.*

Article 83

[Disciplinary Measures]

The disciplinary measures related to the violation of the provisions of this Law by the employer, shall be issued by the Labour Inspectorate according to the Law on Labour Inspectorate.

86. The Court notes that paragraph 1 of Article 82 defines the employee's right to complain to the Labor Inspectorate, for issues that are within its competence. While the following sentence of paragraph 1, determines the deadline within which the Labor Inspectorate must decide on the complaint submitted to it. Furthermore, Article 83 of the Law on Labor defines the punitive measures that the Labor Inspectorate can impose on the employer, for the irregularities found, within the scope and in accordance with the functions expressly defined by law. From the content of these articles, it is self-evident that the Labor Inspectorate can offer employees protection only within the powers defined by the founding law, namely by Law no. 2002/9 for the Labor Inspectorate.
87. The Court, from the content of the above-mentioned norms, concluded that the role of the Labor Inspectorate, as "**inspection body**" is the supervision of the implementation of the provisions of the Law on Labor. Accordingly, the legislator has authorized the Labor Inspectorate, through articles 82, 83 and 94 of the Law on Labor, to perform "**supervision**" of the implementation of the provisions of the Law on Labor, which regulate the employment relationship between the employee and the employer, as well as the supervision and implementation of the Law on Safety and Health at Work, namely to supervise the implementation of measures to improve the level of safety and health of employees at work.
88. However, the Law on Labor, in addition to protecting employees from the Labor Inspectorate, also defines, among other things, the right of employees to seek "**judicial protection**" of rights in court. This right is expressly regulated by articles 78 and 79 of the Law on Labor, the provisions of which establish:

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 an 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.

89. From the reading of the content of Article 78, the Court notes that the legislator through this article has determined the steps that the employee must take, first before the employer, before seeking judicial protection of his rights from the employment relationship. The following paragraphs 2 and 3 of Article 78 of the Law on Labor, define the terms within which the employer must respond to the employee, through a decision in written form.
90. While Article 79 of the Law on Labor determines the right of the employee to seek judicial protection of rights in court, after the employee has exhausted the internal legal remedies at his employer. In this context, Article 79 of the Law on Labor defines the court as the only authority in the Republic of Kosovo that decides and resolves “*labor disputes*” (subject matter competence), between the employee and the employer. This provision as such appears to be in compliance with the requirements of Article 54 [Judicial Protection of Rights] of the Constitution.
91. The Court, by analyzing articles 78, 79, 82, 83 and 94 of the Law on Labor and also always bearing in mind the general principles regarding legal certainty, assesses that the articles in question, in terms of their purpose, clarity and predictability are understandable, because there is no ambiguity or contradiction between them. The latter are also clear, regarding the provision of relevant protection by the Labor Inspectorate and the court. This is due to the fact that the Labor Inspectorate, according to the meaning of the provisions of the Law on Labor, is defined as a body that “supervises” the implementation of the provisions that regulate the field of work, the safety and health of employees at the workplace and in case of finding irregularities applies punitive measures (fines) to the employer, in accordance with the legal functions. While, unlike the Labor Inspectorate, Article 79 of the Law on Labor defines the court as the only authority in the Republic of Kosovo to resolve “labor disputes” from labor law, between employees and their employers. Any other interpretation would be contrary to the principle of separation of powers as defined in Article 4 of the Constitution.
92. In this regard, the Court considers that there is no ambiguity or contradiction in who “supervises” the implementation of the provisions of the Law on Labor and the Law on Safety and Health at Work, and which decides and resolves “*labor disputes*” and offers judicial protection of rights, from the right to employment, according to the law in question.
93. Moreover, the Court notes that the status and jurisdiction on Labor Inspectorate is determined by Law No. 2002/9 for the Labor Inspectorate, amended and supplemented by Law No. 04/L-161, of 16 May 2013.
94. In this context, the Court refers to Article 1.1 [Scope of the Labor Inspection], which establishes:

Article 1

[Scope of Labor Inspection]

*“1.1 With this law is established Labour Inspectorate as an Executive Agency of the Ministry of Labour and Social Welfare. Labour Inspectorate **oversees** implementation of legal and sub-legal provisions, in overall manner of*

employment field including employment relationships, safety at work, protection of employees' health and work environment."

95. From the above, the Court notes that the first sentence of paragraph 1 defines the Labor Inspectorate as an "executive body" established within the Ministry of Labor and Social Welfare (MLSW). While the second sentence of the same paragraph defines the scope of the Labor Inspectorate, as an executive body, which will "oversee" the implementation of primary and secondary legislation in the field of work, including the regulation of the employment relationship between the employee and the employer, the safety and health of the employee at the workplace.
96. Further, the Court refers to Article 2 [Functions of the Labor Inspectorate] of Law no. 2002/9 for the Labor Inspectorate, which determines:

Article 2
[Functions of the Labor Inspectorate]

2. Labour Inspectorate

- (a) Insure implementation of the labor law, "Law on Safety at Work, Protection of Employees' Health and Work Environment, and also other applicable provisions from the field of employment and protection at work*
- (b) Provide technical information and advice to employers and employees on the most effective means of observing the legal provisions.*
- (c) Notify the Minister of Labor and Social Welfare or other competent authorities on any deficiencies in the applicable law.*
- (d) Supply information and advice to employers and employees and which would comply with the law and forewarn the competent authorities on any defects or abuses not covered by existing legal provisions.*
- (e) Give advice on issues relating to labor law and protection of employees in a case or reorganization or restructuring of an enterprise..*

97. The Court notes that Article 1 of the Law on Labor Inspectorate determines within which power the Labor Inspectorate is established, what legal regulations it supervises, and in which segments in the field of work.
98. According to the regulation of Article 2 of the Law on the Labor Inspectorate, the Court notes that the functions of the Labor Inspectorate are: 1) effective supervision of the implementation of primary and secondary legislation from the labor relationship, safety and health at work; 2) providing information and advice of a technical nature, for the employee and the employer; 3) notifying the MLSW or any other competent body for non-implementation or possible non-compliance with the applicable law; 4) identifying deficiencies that are not covered by existing legal provisions; as well as 5) providing information and advice to employees and employers in cases of reorganization or restructuring of an enterprise.
99. Having said this, the Court considers that the functions, namely the responsibilities or jurisdiction of the Labor Inspectorate is specifically defined in Law no. 2002/9 on the Labor Inspectorate. This is due to the fact that the supervision of the implementation of the provisions of the Law on Labor and the Law on Safety and Health at Work (Articles 82 and 94 of the Law on Labor) will be exercised by the Labor Inspectorate within the framework of the responsibilities given to it by the legislator by Law no. 2002/9 on the Labor Inspectorate. What has been allowed to the Labor Inspectorate by Article 83 [Disciplinary Measures] of the Law on Labor and Article 25 [Fines] of the Law on Safety and Health is the possibility of applying punitive measures (fines) in case of finding irregularities by employers, as well as reporting these irregularities to the MLSW or to any other competent authorities.

100. In the light of the above analyses, the Court assesses that the Labor Inspectorate is an executive body of the MLSW and as such a part of the executive power, and is clearly defined as such by Law no. 2002/9 on the Labor Inspectorate. Furthermore, no norm of the Law on Labor and Law no. 2002/9 on Labor Inspectorate, does not foresee or imply that the Labor Inspectorate is given authority with the attributes of a “court” or an “independent tribunal”. The Court recalls that Article 79 of the Law on Labor would be meaningless and unenforceable, because this provision defines the court as the only public authority in the Republic of Kosovo that will decide on “labor disputes” and the labor rights guaranteed by the Constitution and the Law on Labor. In this respect, it seems clear that the legislator formulated the content of this article in full compliance with the provisions of Articles 31 and 54 of the Constitution, which stipulate:

Article 31

[Right to Fair and Impartial Trial]

[...]

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.

101. The Court draws attention to the fact that in order for an institution to have the attributes of a “court” or one “independent tribunal”, first of all, it must fulfill several criteria, one of which is being completely independent from the executive (see ECHR, case [Beaumartin v. France](#), no. 15287/89, Judgment of November 24, 1994, paragraph 38, where it is quoted that “only an institution that has full jurisdiction and satisfies a number of requirements, such as independence of the executive ..., merits the designation “tribunal” within the meaning of Article 6 par. 1”. Independence from the executive is an indisputable criterion (see ECtHR, case [Belilos v. Switzerland](#), no. 10328/83, Judgment of 29 April 1988, paragraph 64, and recently the case [Beg S.P.A. v. Italy](#), no. 5312/11, Judgment of 20 May 2020, paragraph 128, and the cases cited therein). Having said this, the Court recalls that the criteria defined by the ECtHR are also reflected in the Constitution in its Article 4.
102. Therefore, taking into account the elaborations above, the Court considers that in the present case the claim of interference with the competencies of the judiciary, by the Labor Inspectorate, does not result in the incompatibility of Article 94 of the Law on Labor with the Constitution, namely with articles 3, 24, 31, 49 and 54 of the Constitution, but as a result of the interpretation and erroneous interpretation and application of Article 94 of the Law on Labor and Law no. 2002/9 on the Labor Inspectorate, by the Labor Inspectorate.
103. In this regard, the Court recalls that the Constitution, in paragraph 3 of Article 102 [General Principles of the Judicial System], has vested the regular courts with full jurisdiction, expressly determining that: “3. *Courts shall adjudicate based on the Constitution and the law*”. According to the meaning of this provision of the Constitution, the referring court, but also the courts of lower instances, enjoy full jurisdiction, in situations where they face with conflicts of laws, with erroneous or arbitrary interpretation or application of applicable laws, by exceeding the powers

defined by law by a public authority, or by any other action that contradicts the law, declare their decisions and actions illegal.

Conclusion

104. The Court notes that the Law on Labor, the Law on the Labor Inspectorate, the Law on Safety and Protection at Work, mandate the Labor Inspectorate to supervise the implementation of these laws in accordance with the scope and functions defined in Article 1 and 2 of Law no. 2002/9 on the Labor Inspectorate. However, neither in the provisions of this law, other laws, nor from the language of Article 94 of the Law on Labor, can it be understood or implied that an inspection body can assume judicial functions. The language of the constitutional norm is clear. Judicial functions can only be exercised by the courts, according to the principles defined by the Constitution and relevant laws.
105. Inspection bodies, according to the nature of the functions they exercise and the institutional status determined by the acts that established them, are part of the executive power and as such cannot exercise functions of a judicial nature. If this were to be done, it would constitute a violation of the principle of separation of powers and would also result in the violation of the fundamental constitutional guarantees established in Chapter II and Chapter VII of the Constitution.
106. The judiciary has been entrusted with the authority to exercise an important social function, that of resolving disputes and disputes of a legal nature, therefore it is up to it to fulfill this social function through judicial decision-making in accordance with the applicable norms.
107. Taking into account the aforementioned reasons, the Court concludes that Article 94 of the Law on Labour is compatible with the Constitution, namely with the principle of legal certainty and the legal order of the Republic of Kosovo, as well as with Articles 3 and 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 49 [Right to Work and Exercise of Profession] and 54 [Judicial Protection of Rights] of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.8 of the Constitution, Articles 20, 51, 52 and 53 of the Law, and Rules 59 (1) and 77 of the Rules of Procedure, on 7 December 2022:

DECIDES

- I. TO DECLARE, by majority vote, the Referral admissible;
- II. TO HOLD, by majority vote, that Article 94 of Law no. 03/L-212 on Labour is in compliance with the Constitution.
- III. TO NOTIFY this Judgment to the parties;
- IV. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.