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

Prishtina, on 8 May 2023
Ref. no.:MK 2160/23

This translation is unofficial and serves for informational purposes only.

CONCURRING OPINION

of Judge

RADOMIR LABAN

in

case no. KI67/22

Applicant

Zeqirja Prebreza

Constitutional Review of Judgment CA.no.1343 of the Court of Appeals of Kosovo of 21 December 2021

Expressing from the beginning my respect and agreement to the opinion of the majority of judges that in this case there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights (hereinafter: the ECHR),

I as an individual judge, however, have a concurring opinion regarding the conclusion of the majority and I do not agree with the opinion of the majority. I consider that there is a violation of the right to equality of arms, but it is declarative from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of ECHR as presented in the judgment.

As a judge, I concur with the factual situation as stated and presented in the judgment and I find the same factual situation correct. I as a judge also agree with the way how the applicant's allegations were submitted and presented in the judgment and I find them correct.

I also agree with the legal analysis regarding the admissibility of the case and the position of the majority that there is a violation of the right to review as stated and presented in the judgment, but I do not agree with its enacting clause.
Based on the foregoing, and in accordance with Rules 62 and 63 of the Rules of Procedure of the Constitutional Court, I will briefly present my concurring opinion.

I consider that no applicant would address the Constitutional Court just to realize the right to equality of arms or some other strictly procedural right, on the contrary, each applicant would turn to the court in order to exercise an essential right, i.e. an effective right that he believes belongs to him.

In the present case, the applicant turned to the court to realize his property right, namely the statement of the claim through which he requested the compensation of the jubilee salaries, motioning the Basic Court to grant his statement of claim, recognize his right to the payment of three jubilee salaries amounting to 2,460.98 Euro, with legal interest of 8%, reimburse his costs of proceedings, as well as motioning the regular courts to give him the opportunity to submit his evidence, which the applicant actually did.

The court's task is initially to establish whether there is a violation and to remedy the same by enabling the applicant to exercise his essential right as requested by the applicant and not to provide him with an ineffective procedural right.

On 29 December 2021, the Court of Appeals issued the judgment [CA. no. 1343/2021] whereby it granted as founded KEK's appeal and amended the judgment [C. no. 645/2020] of 14 January 2021 of the Basic Court, rejecting the applicant's statement of claim as unfounded. In the reasoning of its judgment, the Court of Appeals, referring to the time when the GCAK was applicable, found that the applicant's lawsuit and his claim submitted to the employer were belated. In this regard, the Court of Appeals assessed as follows:

> *"The Panel finds that the claimant in this case could have filed a claim for a jubilee reward, for his uninterrupted work experience, to the respondent for 10 years, from 01.01.2015 (when GCAK entered into force) to 31.12.2017, (when the GCAK term expired).*
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> *The claimed filed a lawsuit against the respondent because of jubilee compensation to the first instance court on 10.02.2020, while his claim to the employer for the realization of this claim was submitted on 18.11.2019, (decision of respondent no. 11356 of 05.12.2019 in the case files), which means that the claimant in this case, submitted a claim to the employer for the realization of his claim for jubilee reward, as a monetary claim, after the expiry of the legal deadline (from 01.01.2015 to 31.12.2017), within which the claimant could have sought the realization of his claim against the respondent through judicial protection because the claimant, in this case, reached his 30 years of experience of uninterrupted work with the respondent before 01.01.2015."*

I conclude that in the circumstances of the case at stake, the violation of the right to equality of arms has been established because the response to the applicant's claim was not assessed as it was justified in the judgment itself, but I consider that the annulment of the challenged judgment is completely unnecessary because the applicant will not be able to exercise the essential right he requested even if the proceedings is reopened because the same is clearly prescribed, namely the applicant's claim was submitted after the expiry of the time limit.

In the light of the foregoing, I conclude that there is a violation of the right to equality of arms from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of ECHR, but taking into account the circumstances of the concrete case, the majority of judges should have found in the judgment the violation of the

declaratory nature as a moral satisfaction for the applicant, in order to for him not to be unnecessarily exposed to new court proceedings and additional costs, which are strictly formal in terms of holding new court hearings without the possibility for the applicant to exercise his fundamental right.

Concurring Opinion submitted by Judge:

Radomir Laban, Judge

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04 April 2023 in Prishtina

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