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

Prishtina, on 22 Aprila 2024
Ref. no: AGJ 2425/24

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JUDGMENT

in

case no. KI38/23

Applicant

Flamur Dylhasi

Constitutional review of Decision [Rev. no. 205/2022] of 10 October 2022 of the Supreme Court of the Republic of Kosovo

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
Nexhmi Rexhepi, Judge
Enver Peci, Judge and
Jeton Bytyqi, Judge

Applicant

1. The Referral was submitted by Flamur Dylhasi, residing in Gjakova (hereinafter: the Applicant), who is represented by Isamedin Dedinca, a lawyer in Prishtina.

Challenged decision

2. The Applicant challenges the Decision [Rev. no. 205/2022] of 10 October 2022 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

3. The contested Judgment was served on the Applicant on 1 November 2022.

Subject matter

4. The subject matter of the Referral is the constitutional review of the contested Decision, whereby the Applicant alleges that his rights, guaranteed by paragraphs 1 and 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and paragraph 1 of Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR) and Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR) have been violated.

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 Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 25 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

Proceedings before the Constitutional Court

7. On 10 February 2023, the Applicant submitted the Referral by mail service, which arrived and was registered in the Court on 13 February 2023.

8. On 16 February 2023, the President of the Court by Decision GJR. KI38/23 appointed Judge Enver Peci, as Judge Rapporteur and by Decision KSH. KI38/23 appointed the members of the Review Panel composed of Judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Radomir Laban (members).

9. On 28 February 2023, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

10. On 11 March 2024, Judge Jeton Bytyqi took an oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.

11. On 28 March 2024, the Review Panel considered the report of the Judge Rapporteur and by majority of votes recommended to the Court to declare the Referral admissible. On the same date, after deliberation and voting, the Court, with eight (8) votes for and

one (1) against, found violation of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

Summary of facts

12. Based on the case file, it results that on 30 June 2015 the applicant concluded an employment contract [No. 8418/15] with the Kosovo Insurance Bureau (hereinafter: BKS), for a fixed period of time, namely from 1 July 2015 to 30 June 2016, for the position of Physician-Censor, for the assessment of non-material damage resulting from compulsory motor liability insurance.

13. On 15 December 2015, the chairman of the administrative council of the BKS issued a decision to reduce the salaries of the employees due to the reorganization and budgetary implications.

14. On 19 January 2016, the administrative council of BKS issued the Decision [no. 172/16] for amendment of the employment contracts of employees, among others, also the applicant's contract, as a result of the aforementioned decision.

15. On an unspecified date, the applicant refused to sign the amendment to the employment contract due to the salary reduction.

16. On 11 February 2016, the BKS issued Decision [No. 331/16] on the termination of the employment relationship of the applicant.

17. On 10 March 2016, BKS notified the applicant via e-mail about the decision [No. 331/16] on termination of the employment relationship.

18. On 21 March 2016, the applicant submitted a complaint to the BSK authorities, against the Decision [No. 331/16] of 11 February 2016, on the grounds of essential violations of the provisions of the Law on Labor and the inability to declare his rights from the employment relationship. The applicant states that he never received a reply from the BKS in relation to the submitted complaint.

19. On 4 May 2016, the Applicant filed a statement of claim with the Basic Court in Prishtina against Decision [No. 331/16] of 11 February 2016 of BKS, whereby he requested the annulment of this decision and the approval of the claim in entirety, as well as compensation of salaries from 1 March 2016 to 30 June 2016.

20. On 25 January 2018, BKS submitted a response to the claim to the Basic Court in Prishtina, where, among other things, it also requested the dismissal of the claim as out of time, on the grounds of missing the 30-day deadline to seek judicial protection in the court.

21. On 12 June 2018, the Basic Court in Prishtina, by Judgment [C. no. 997/2016], (i) approved the claim of the applicant in entirety; (ii) annulled as unlawful Decision [No. 331/16] of 11 February 2016 of the BKS, and (iii) obliged the latter to compensate him on behalf of material damage in the amount of 3,508.80 euro, including legal interest in the amount of 543.86 euro. The Basic Court found in its judgment that the employer's decision was contrary to the employment contract and the provisions of Articles 70 and 71 of the Law on Labor. Among other things, the Basic Court found that the fact that the claimant had an employment relationship with the respondent was not disputable between the litigants, and that by the decision of 15 December 2015 of the chairman of the administrative council of BKS, it was decided to reduce the salaries for many positions, among others, also for the position of the applicant (claimant), offering the

latter a new employment contract. Further, in the reasoning it was emphasized that the claimant did not agree to sign such a contract, by contesting it with the BKS authorities, the latter rendered the contested decision by which the applicant's employment relationship was terminated, with the reasoning that the applicant refused to extend the employment relationship.

22. On an unspecified date, the BKS filed appeal against the Judgment of 12 June 2018 of the Basic Court with the Court of Appeals alleging that the latter contained essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of substantive law.

23. On 7 February 2022, the Court of Appeals, deciding on the BKS appeal, rendered Judgment [Ac. no. 4851/2017], by which it rejected the BKS appeal as ungrounded and upheld the appealed Judgment. The Court of Appeals, among other things, reasoned that the first instance court provided sufficient reasons for the way of deciding, reasoning all the decisive facts which influenced the latter to decide as in the enacting clause of the appealed judgment, which reasons were also accepted by the second instance court.

24. On 29 March 2022, the BKS submitted a request for revision to the Supreme Court against the Judgment of 7 February 2022 of the Court of Appeals, on the grounds of (i) essential violations of the provisions of the LCP, and (ii) erroneous application of substantive law. By the request for revision, the BKS requested the annulment of the judgments of the Basic Court and the Court of Appeals and the approval of the request for revision in entirety.

25. According to the case file, the applicant did not submit a response to the revision.

26. On 10 October 2022, the Supreme Court, by Decision [Rev. no. 205/2022], (i) approved the request for the revision of the BKS and rejected as out of time the Applicant's claim, and (ii) quashed the judgments of the lower instances in their entirety. The Supreme Court, in its decision, reasoned that the first instance court in fact decided according to the claim of the applicant, after the lapse of the deadline provided by law, because based on the case file, it was indisputable that the applicant was served with Decision [No. 331/16] of 11 February 2016 of the BKS on 10 March 2016, which in the legal remedy provided that the right of appeal could be filed against the latter within a period of 15 days, after receiving the decision of the BKS authority, whereas the applicant filed the complaint on 21 March 2016, and submitted the lawsuit to the court on 5 May 2016, which means that the lawsuit was filed after the 30-day deadline in accordance with Article 79 of the Law on Labor.

Applicant's allegations

27. The Applicant alleges that the contested Decision of the Supreme Court violated his rights guaranteed by paragraphs 1 and 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the ECHR, as well as Article 10 of the UDHR.

28. The applicant specifically claims that the contested Decision of the Supreme Court does not meet the standards of a reasoned judgment within the meaning of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR. In this context, the applicant alleges that the Supreme Court has not provided clear and sufficient reasoning regarding the deadline for submitting the lawsuit to the court. According to him, the Supreme Court has not clarified the date from which the deadline for filing the lawsuit began to run and when this deadline ended. *"The court, despite the fact that it has*

established that the respondent has not decided on the claimant's complaint, however, it has not provided clarifications on the deadline within which the respondent had to decide on the claimant's complaint, in order to calculate when the following legal deadline of 30 days for filing a lawsuit with court started to run, as provided by article 79 in conjunction with article 78 paragraph 2 of the Law on Labor. On this basis, the applicant claims that the decision of the Supreme Court remains unreasoned and unexplained in the matter of calculating the deadline for submitting the lawsuit to the court, while not clarifying and not reasoning as to how it found the fact that the lawsuit of the claimant is out of time, which fact was decisive in the case of the applicant, the Supreme Court violated Article 31 (1, 2) of the Constitution, because it denied the applicant, the claimant, the right guaranteed by the Constitution to a fair and impartial trial and to receive a well-reasoned, clear and law-based decision. This right is also guaranteed by Article 10 of the Universal Declaration of Human Rights and Article 6 (1) of the European Convention on the Protection of Fundamental Human Rights and Freedoms and its Protocols".

29. In addition, the applicant claims that the decision of the Supreme Court was rendered with essential violation of the provisions of the contested procedure as established by article 182, paragraph 182.2 point n) of the LCP, in conjunction with paragraph 2 of article 78 and article 79 of the Law on Labor, which has resulted in the erroneous application of substantive law, since the decision of the Supreme Court lacks reasons on the decisive facts, the reasons provided are unclear, insufficient and contrary to the evidence presented by the applicant regarding the deadline for filing the lawsuit with the court. He emphasized that these violations have affected the applicant's rights to a fair and impartial trial guaranteed by paragraphs 1 and 2 of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR, as well as by Article 10 of the UDHR.

30. Finally, the Applicant requests the Court: *"To find violation of the Applicant's individual rights, guaranteed by Article 31 (1, 2) of the Constitution of the Republic of Kosovo, Article 10 of the Universal Declaration of Human Rights, and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as a result of violations by the Supreme Court of Kosovo of the rights guaranteed to the Applicant by these instruments and the Law on Contested Procedure; To declare invalid Decision Rev. no. 205/2022 of the Supreme Court of the Republic of Kosovo of 10.10.2022 contested with this Referral and to remand the case to the Supreme Court of the Republic of Kosovo for retrial".*

Relevant 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.
[...]

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.
[...]

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 10
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

LAW ON LABOUR No. 03/L-212

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.

Admissibility of the Referral

31. The Court first examines whether the admissibility requirements established by the Constitution, and further specified by the Law and the Rules of Procedure have been met.

32. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, in conjunction with paragraph 4 of Article 21 [General Principles] of the Constitution which establishes:

Article 113
[Jurisdiction and Authorized Parties]

"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".
[...]

33. The Court further examines whether the Applicant has fulfilled the admissibility requirements as provided by the Law, namely Articles 47, 48 and 49 of the Law, which stipulate:

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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...".

34. Regarding the fulfillment of these criteria, the Court finds that the Applicant is authorized party; he challenges the constitutionality of Decision [Rev. no. 205/2022] of 10 October 2022 of the Supreme Court, after exhausting all available legal remedies, in accordance with paragraph 7 of Article 113 of the Constitution and paragraph 2 of Article 47 of the Law; he specified the rights guaranteed by the Constitution, which he claims to have been violated, as stipulated by Article 48 of the Law; and submitted the referral in accordance with the deadline of 4 (four) months, in accordance with the requirements of Article 49 of the Law.

35. However, in addition, the Court considers whether the Applicants have met the admissibility criteria established in Rule 34 [Admissibility Criteria], respectively provisions (1) (d) and (2) of Rule 34 of the Rules of Procedure, which establish:

Rule 34
[Admissibility Criteria]

"(1) The Court may consider a referral as admissible if:
(...)
(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim."

36. The Court recalls that the abovementioned 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 related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on the analysis and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in sub-rule (2) of Rule 34 of the Rules of Procedure (see, case KI04/21, Applicant *Nexhmije Makolli*, Resolution on Inadmissibility of 12 May 2021, paragraph 26; see also case KI175/20, Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 27 April 2021, paragraph 37).

37. The Court also considers that the referral cannot be considered as manifestly ill-founded on constitutional basis, as provided by paragraph (2) of Rule 34 of the Rules of Procedure, and consequently, the referral is declared admissible for review on merits (see also the ECtHR case, *Alimuçaj v. Albania*, no. 20134/05, Judgment of 9 July 2012, paragraph 144, and see cases of the Court KI75/21, Applicants "*Abrazen LLC", "Energy Development Group Kosova LLC", "Alsi & Co. Kosovë LLC" and "Building Construction LLC",* Judgment of 19 January 2022, paragraph 64; KI27/20, Applicant, *VETËVENDOSJE! Movement*, Judgment of 22 July 2020, paragraph 43, and recently KI82/22, Applicant *Valon Loxhaj,* Judgment, of 7 June 2023, paragraph 59).

38. Therefore, the Court notes that the Applicant's Referral meets the requirements for the assessment of merits.

Merits of the Referral

39. The Court recalls that the Applicant signed an employment contract with BKS, for a fix period of time, initially from 5 June 2012 to 30 June 2016. In February 2016, BKS rendered Decision [No. 331/16], which terminated the Applicant's employment contract, for which decision the latter was notified on 10 March 2016. After receiving the decision on termination of the contract, the Applicant complained to the BKS authorities on 21 March 2016, but in relation to this complaint he had not received any reply. As a result, on 4 May 2016, he filed a lawsuit with the Basic Court. The latter approved his claim and annulled the Decision [No. 331/16] of the BKS. The judgment of the Basic Court was appealed to the Court of Appeals by the BKS. The Court of Appeals, deciding according to the appeal of BKS, rejected the same, upholding the Judgment of the Basic Court. Dissatisfied with the Judgment of the Court of Appeals, the BKS filed a request for revision with the Supreme Court, which, by the contested Judgment, quashed the contested judgments, finding that the claim was filed out of the deadline established in law.

40. Referred to the case law of the ECtHR and its own case law, the Court initially recalls that the fairness of the procedure is assessed on the basis of the procedure as a whole (see Court cases KI62/17, Applicant *Emine Simnica*, Judgment of 29 May 2018; paragraph 41 and KI20/21, Applicant *Violeta Todorović*, Judgment of 13 April 2021, paragraph 38; see also ECtHR Judgment *Barbera, Messeque and Jabardo v. Spain*, no. 10590/83, Judgment of 6 October 1988, paragraph 68). Therefore, the Court will adhere to these principles in the procedure of assessing the merits of the Applicant's claims.

41. Following this, the Court, based on the case file and the claims filed, by the applicant, notes that the essence of the claims contained in this referral is related to the right to "*access to the court*" as an integral part of the rights guaranteed by paragraph 1 of Article

31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR.

42. In this regard, the Court recalls that the right to a fair trial guaranteed by the aforementioned provisions, and their application has been widely interpreted by the ECtHR through its case law, in accordance with which, the Court based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, and not only, is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution.

43. Therefore, the Court will elaborate on the general principles regarding the right to *"access to the court and justice*", as one of the basic principles of a fair trial in accordance with the provisions of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR.

i. General principles regarding the right to "access to the court and justice"

44. In this context, the Court recalls that the right to have an "*access to justice*" for the purposes of paragraph 1 of Article 6 of the ECHR is clarified in ECtHR case *Golder v. United Kingdom*, no. 4451/70 Judgment of 21 February 1975, paragraphs 28-36. With reference to the principle of the rule of law and the avoidance of arbitrary power, the ECtHR has found that "*the right to access to justice*" is an essential aspect of the procedural guarantees embodied in paragraph 1 of Article 6 of the ECHR (see, *inter alia*, pertaining to the right to access to justice, the ECtHR case *Zubac v. Croatia*, no. 40160/12, Judgment of 5 April 2018, paragraph 76). Moreover, according to the ECtHR, this right provides everyone with the right to address the relevant issue related to "*his/her civil rights and obligations*" before a national court established by law (see, in this connection, the ECtHR case *Lupeni Greek Catholic Parish and others v. Romania*, no. 76943/11, Judgment of 29 November 2016, paragraph 84 and references thereto, as well as the Court case *KI214/21*, Applicant *Avni Kastrati,* Judgment of 7 December 2022, paragraph 79).

45. The Court in this context reiterates that the right to a court, as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, stipulates that the parties (litigants) must have an effective legal remedy that enables them to protect their civil rights (see, ECtHR cases *Běleš and others v. Czech Republic* , no. 47273/99, Judgment of 12 November 2002, paragraph 49; and *Naït-Liman v. Switzerland*, no. 51357/07, Judgment of 15 March 2018, paragraph 112, KI214/21, cited above, paragraph 80).

46. Furthermore, the ECtHR in the above case, *Lupeni Greek Catholic Parish and others v. Romania,* (paragraph 85), highlights that *"anyone may rely on Article 6.1 of the ECHR, when he or she considers that there is an unlawful interference in the exercise of one of his or her (civil) rights and he or she complains that he or she has not had the opportunity to submit his or her claim to the court, in accordance with the requirements of Article 6.1 of the ECHR. Where there is a serious and genuine dispute as to the legality of such an intervention, Article 6.1 entitles the individual concerned to have the questions of law (legality) decided by a local court" (see, in ECtHR case, Z and others v. United Kingdom* no.29392/95, Judgment of 10 May 2001, paragraph 92; see also case *Markovic and others v. Italy*, [GC], no. 1398/03, Judgment of 14 December 2006, paragraph 98).

47. Therefore, based on the ECtHR case law, everyone has the right to file a "*lawsuit*" regarding their respective "*civil rights and obligations*" with a court. Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR enshrines the "*right to a court*", namely the "*right of access to a court*", which means the right to

initiate proceedings before the courts in civil matters (see ECtHR case *Golder v. United Kingdom*, cited above, paragraph 36). Therefore, anyone who considers that there has been unlawful interference with the exercise of his/her civil rights and claims that he/she has been restricted the possibility to challenge such a claim before a court may refer to Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, invoking the relevant right of access to the court.

48. More specifically, according to the case law of the ECtHR, there must first be a "*civil right*" and secondly, there must be a "*dispute*" regarding the legality of an intervention, which affects the very existence or scope of the protected "*civil right*". The definition of both of these concepts should be substantial and informal (see, *inter alia*, ECtHR cases *Le Compte, Van Leuven and De Meyere v. Belgium*, no. 6878/75, 7238/75, Judgment of 23 June 1981, paragraph 45; *Moreira de Azevedo v. Portugal*, no. 11296/84, Judgment of 23 October 1990, paragraph 66; *Gorou v. Greece* (no.2), no. 12686/03, Judgment of 20 March 2009, paragraph 29; and *Boulois v. Luxemburg*, no. 37575/04, Judgment of 3 April 2012, paragraph 92). The "*dispute*", however, based on the ECtHR case law, should be: (i) "*true and serious*" (see, in this context, ECtHR cases *Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982, paragraph 81; and *Cipolletta v. Italy*, Judgment of 11 January 2018, paragraph 31); and (ii) the results of the proceedings before the courts should be "*decisive*" for the civil right in question (see, in this context, ECtHR case *Ulyanov v. Ukraine*, no. 16742/04, Decision of 5 October 2010). According to the ECtHR case law, "*unstable links*" or "*distant consequences*" between the civil right in question and the outcome of these proceedings are not sufficient to fall within the scope of Article 6 of the ECHR (see, in this context, ECtHR cases *Lovrić v. Croatia*, Judgment of 4 April 2017, paragraph 51, and *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 71 and references thereto, and the case of the Court KI214/21, cited above, paragraph 83).

49. In such cases, when it has been found that there is a "*civil right*" and a "*dispute*", Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR guarantee the individual the right "*to have the case resolved by a tribunal*" (see ECtHR case *Z and others v. United Kingdom*, cited above, paragraph 92). The refusal of a court to review the claims of the parties regarding the compliance of a procedure with the basic procedural guarantees of fair and impartial trial limits their access to the court (see ECtHR case *Al Dulimi and Montana Management Inc v. Switzerland*, no. 5809/08, Judgment of 21 June 2016, paragraph 131).

50. Moreover, according to the ECtHR case law, the Convention is not intended to guarantee rights that are "*theoretical and false*", but rights that are "*practical and effective*" (see, moreover, about the "*practical and effective*" rights in the cases of ECtHR *Kutić v. Croatia*, cited above, paragraph 25 and references cited therein; and *Lupeni Greek Catholic Parish and others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein).

51. Therefore, within the meaning of these rights, Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, guarantees not only the right to initiate proceedings, but also the right to get a resolution of the relevant "*dispute*" from a court (see ECtHR cases *Kutić v. Croatia*, no. 48778/99, Judgment of 1 March 2002, paragraphs 25-32; *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 86 and references therein; *Aćimović v. Croatia*, no. 61237/00, Judgment of 9 October 2003, paragraph 41; and *Beneficio Cappella Paolini v. San Marinos*, no. 40786/98, Judgment of 13 July 2004, paragraph 29).

52. The aforementioned principles, however, do not imply that the right to a court and the right of access to a court are absolute rights. They may be subject to limitations, which

are clearly defined by the ECtHR case law. However, these limitations cannot go so far as to restrict the individual's access by undermining the very essence of the right (see, in this context, the ECtHR case *Baka v. Hungary*, no. 20261/12, Judgment of 23 June 2016, paragraph 120; and *Lupeni Greek Catholic Parish and others v. Romania*, Judgment of 29 November 2016, paragraph 89 and references therein). Whenever access to the court is limited by the relevant law or case law, the Court examines whether the limitation affects the essence of the right and, in particular, whether this limitation has pursued a "*legitimate purpose*" and whether there is "*a reasonable relation of proportionality between the means used and the purpose intended to be achieved*" (see ECtHR cases *Ashingdane v. United Kingdom*, no.8225/78, Judgment of 28 May 1985, paragraph 57; *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 89; *Naït-Liman v. Switzerland*, cited above, paragraph 115; *Fayed v. United Kingdom*, no. 17101/03, Judgment of 21 September 1990, paragraph 65; and *Marković and others v. Italy*, no. 1398/03, Judgment of 14 December 2006, paragraph 99; and case of the Court KI214/21, cited above, paragraph 87).

ii. Application of the above principles in the circumstances of the present case

53. The Court notes that the main reason for the rejection of the claim of the applicant by the Supreme Court, by the revision filed by the respondent BSK, was because the latter considered that the claim of the applicant was submitted to the first instance first court out of the 30-day deadline, according to the provisions of the Law on Labor, therefore its merits should not be examined.

54. Before entering into the analysis of the circumstances of the present case, the Court emphasizes that the right of access to justice is, in principle, guaranteed in relation to "*disputes*" related to a "*civil right*". In this line, the Court assesses that in order to determine the applicability of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, it should be taken into account that we are dealing with two essential issues, the first is related to the existence of a "*dispute*" or real dispute, while the second that the nature of the subject of the dispute falls under "*civil right*".

55. Regarding the existence of a "*dispute*". the Court notes that the Applicant is in dispute with the respondent BSK, regarding a labor dispute, where he had requested salary compensation, as a result of the "*unlawful*" termination of the employment contract. In this regard, the existence of a dispute between the Applicant and the BSK, led to the initiation of the lawsuit with the Basic Court by the Applicant.

56. Whereas, with regard to the other criterion, if the nature of the subject of the dispute falls under "*civil law*", the Court recalls that the subject of the claim, which the Applicant filed falls within the framework of the civil rights. Having said this, the Court considers that in the present case both criteria have been met in terms of the issue of whether we are dealing with a "*dispute*" or real dispute and with "*civil rights*", within the meaning of paragraph 1 of Article 6 of ECHR.

57. The Supreme Court, in its decision, reasoned that the first instance court in fact decided according to the statement of claim of the applicant, after the deadline provided by law had expired, because based on the case file, it was undisputed that the applicant was served with the Decision [No. 331/16] of 11 February 2016 of the BKS on 10 March 2016, which in the legal remedy provided that the right of appeal could be filed against the latter within a period of 15 days, after receiving the decision of the BKS authority, while the applicant filed the complaint on 21 March 2016, and submitted the lawsuit to the court on 5 May 2016, which means that the lawsuit was filed after the 30-day deadline in accordance with Article 79 of the Law on Labor .

58. The Court noted that the applicant on 4 May 2016 filed a claim with the Basic Court, against the Decision [No. 331/16] of 11 February 2016 of the BSK, for the termination of the employment contract. In this case, the Basic Court examined the merits of the claim and decided to approve the claim of the applicant and annul the cited Decision of the KSB as unlawful. The judgment of the Basic Court was upheld by the Court of Appeals with the Judgment [Ac. no. 4851/2017] of 7 February 2022. Against this judgment, the respondent BSK filed a request for revision with the Supreme Court, where one of its claims, as a responding party was that the applicant's claim should have been rejected by the courts of lower instance as out of time.

59. In this context, the Court refers to the relevant parts of the contested Decision of the Supreme Court, and the fact that the latter reasoned its decision-making, as follows: *"...the judgment of the first instance court was rendered contrary to the provisions of the contested procedure from article 182 paragraph 1, in conjunction with article 391 paragraph 1, point t), article 182 paragraph 2 point e) of the LCP, in conjunction with article 79 of the Law on Labor, which led to erroneous implementation or application of substantive law"*. Further, the Supreme Court reasoned that *"The essential violation of the provisions of the contested procedure from Article 182 paragraph 2 point e) of the LCP, lies in the fact that in this case, the first instance court has decided according to the lawsuit filed after the deadline set by law,"* further stating that, *"From the case file, it is undisputed that the claimant was served with the decision number 331 of 11.02.2016 on 10.03.2016, which decision is followed by the instruction on the legal remedy, where it is emphasized that: against this decision the employee has right to file a complaint within 15 days after receiving the latter, to the competent authorities of the BKS... the claimant filed a complaint against this decision on 21.03.2016. The respondent has not decided on the claimant's complaint. The claimant submitted the lawsuit to the court on 05.05.2016, which means that the claimant's lawsuit in this case was filed after the legal deadline of 30 days"*.

60. On the other hand, the Court recalls that the applicant before the Court claims that the Supreme Court, *"...has not provided clarifications on the deadline within which the respondent had to decide on the claimant's complaint, in order to calculate when the following legal deadline of 30 days for filing a lawsuit with court started to run, as provided by article 79 in conjunction with article 78 paragraph 2 of the Law on Labor.*

61. The Court, considering the nature of the dispute, refers to the applicable law, respectively the provisions of Article 78 [Protection of Employees' Rights] and 79 [Protection of an Employee by the Court] of Law No. 03/L-212 on Labor, 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.

62. From the reading of the content of Article 78, the Court notes that the legislator, through the provisions of this Article, has defined the procedural steps that the employee must take, in advance, with the employer, before seeking judicial protection of rights in court. Paragraphs 2 and 3 of Article 78 of the Law on Labor expressly stipulate the terms within which the employer must respond to the employee, by a decision in written form.

63. While the content of Article 79 of the Law on Labor establishes the employee's right to seek judicial protection of rights in court, after the employee has exhausted all internal legal remedies with his employer. In this context, Article 79 of the Law on Labor clearly establishes that if the employee is not satisfied with the employer's decision, or has not received an answer from his employer, within the meaning of paragraph 2 of Article 78 of the Law on Labor, he/she she has at her disposal an additional period of thirty (30) days to seek judicial protection of rights in court, namely to file a claim against the acts of the employer.

64. In this respect, the Court refers to the case file and notes that the applicant on 10 March 2016 became aware of the Decision [No. 331/16] of 11 February 2016 of BSK. After this date, the latter, against the decision in question, on 21 March 2016, submitted a complaint to the BSK authorities. The latter, based on the legal provisions in force, should have responded to the applicant's complaint within a period of fifteen (15) days, respectively no later than 4 April 2016. However, within this fifteen (15) day period, the applicant had not received any reply from the BSK. For this reason, the applicant in full compliance with the requirements of Article 79 of the Law on Labor, the provision which expressly stipulate that, if the employee: "*...does not receive 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*.

65. Therefore, based on the requirements of Article 79 of the Law on Labor, the Court notes that the applicant on 4 May 2016 submitted a claim to the Basic Court in Prishtina, which falls on the thirtieth (30) calendar day, after the fifteen (15) day deadline to receive an answer to the complaint filed on 21 March 2016 with the BSK authorities had passed, a deadline which would legally end on 4 April 2016. From this date, the applicant had at his disposal thirty (30) additional days, namely until 4 May 2016, to submit a claim to the Basic Court, against the employer's decision, which he did in full compliance with the deadlines established by the provisions of articles 78 and 79 of the Law on Labor, the law which is applicable in the circumstances of the present case, based on which the criteria of permissibility are assessed, including the deadline for a civil lawsuit.

66. Based on the above, the Court emphasizes that the applicant, faced with these factual and legal circumstances, did not expect that his request, at least in the formal-procedural aspect, would be dismissed as out of time by the Supreme Court, as the same had passed through the procedural filters of the first and second instance court. In this context, the Court assesses that the burden of responsibility in this case falls on the Supreme Court, which did not carefully examine the case file, when calculating the legal deadlines, as stipulated by the provisions of Article 78 and 79 of the Law on Labor. As a result, in modifying the judgments of the lower instance courts, which were in favor of the Applicant, the Supreme Court denied him the right of access to justice and effective resolution of the dispute.

67. Having said this, the Court finds that the Decision [Rev. no. 205/2022] of 10 October 2022 of the Supreme Court, which dismissed the applicant's claim as out of time, does not meet the standards of a fair trial, according to the meaning of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR. In addition, the Supreme Court has not provided convincing reasons why the applicant's claim was out of time, , and why, according to it, the thirty (30) day deadline to seek judicial protection in the first instance court had passed.

68. The Court in relation to this matter and based on the reasoning given in this Judgment, expects the Supreme Court to eliminate in the retrial proceedings the causes that resulted in violation of the applicant's rights, guaranteed by Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

Conclusions

69. In sum, the Court, based on the above analysis, concludes that the Decision [Rev. no. 205/2022] of 10 October 2022 of the Supreme Court, is not in compliance with the constitutional rights of the Applicant guaranteed by the provisions of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraphs 1 and 7 of Article 113 and paragraph 1 of Article 116 of the Constitution, articles 20 and 47 of the Law and rules 34 (1) d) and 48 (1) a) of the Rules of Procedure, on 28 March 2024:

DECIDES

I. TO DECLARE, with eight (8) votes for and one (1) against, the Referral admissible;

II. TO HOLD, with eight (8) votes for and one (1) against, that there has been a violation of paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO DECLARE, with eight (8) votes for and one (1) against, invalid Decision [Rev. no. 205/2022] of 10 October 2022 of the Supreme Court;

IV. TO REMAND, with eight (8) votes for and one (1) against, the case for retrial to the Supreme Court, in accordance with this Judgment;

V. TO ORDER the Supreme Court to notify the Court, in accordance with, paragraph 5 of Rule 60 (Enforcement of Decisions) of the Rules of Procedure, by 28 October 2024, about the measures taken to implement this Judgment;

VI. TO NOTIFY, this Judgment to the parties;

VII. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;

VIII. TO HOLD that this Judgment enters into force on the day of its publication in the Official Gazette, in accordance with Article 20 (5) of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Enver Peci	Gresa Caka-Nimani

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