



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

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Prishtina, on 5 July 2024  
Ref. no.:MK 2473/24

## **CONCURRING OPINION**

of Judge

**RADOMIR LABAN**

in

**case no. KI154/23**

Applicant

**Afrim Tafarshiku**

### **Constitutional Review of Judgment AC. no. 8304/2021, of the Court of Appeals of Kosovo of 20 February 2023**

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: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on 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 regarding the effects of the judgment itself. I consider that there has been a violation of the right to equality of arms, but it is of a declarative nature.

Based on the above, and in accordance with Rule 57 of the Rules of Procedure of the Constitutional Court, I will briefly present my concurring opinion.

As a judge, I agree 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 has been a violation of the right to equality of arms, but that it is of a declarative nature from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR in the way it was presented in the judgment.

However, I do not agree with the legal effects of this judgment, namely point III. I consider that the Court should have found a violation of a declarative nature and uphold the judgment [AC. no. 8304/2021] of the Court of Appeals of Kosovo, of 20 February 2023, because declaring invalid the judgment [AC. no. 8304/2021] of the Court of Appeals of Kosovo, of 20 February 2023, nothing is achieved regarding the substantive right of the applicant.

I consider that no applicant would address the Constitutional Court just to exercise 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, namely an effective right that he considers belongs to him.

In the present case, the applicant turned to the court to exercise his property right, namely the statement of the claim whereby he requested the compensation of the jubilee salaries, proposing to the Basic Court to grant his statement of claim, recognize his right to the payment of 3 (three) jubilee salaries, in an unspecified amount, with legal interest of 8%, as well as reimburse his costs of proceedings.

The Court's task is initially to find whether there has been a violation and to remedy the latter by enabling the applicant to exercise his essential right as requested by the applicant and not to provide him with an ineffective procedural right.

I recall that on 20 February 2023, the Court of Appeals, in the Judgment [Ac. no. 8304/2021] approved as grounded the appeal filed by the employer and modified the Judgment of the Basic Court [C. no. 3804/2018] of 5 December 2019, whereby rejecting the applicant's claim as ungrounded. In the content of this Judgment, the Court of Appeals did not reflect the fact whether it examined the response to the appeal submitted by the applicant, which, based on the case file, it received on 19 October 2021. Furthermore, in the reasoning of its Judgment, the Court of Appeals assessed the following:

*“According to the assessment of the second instance court, the judgment is contrary to the evidence found in the case file, namely the judgment does not contain reasons for the decisive facts, - and in particular for the time of reaching the work experience of 30 years, respectively 40 years - in the name of which experience, the claimant requested the jubilee reward in the value of three basic salaries. Also, the factual situation determined by the first instance court does not exactly correspond to the evidence from the case file, since from the statements in the lawsuit and other evidence in the case file, it results that*

*the claimant from 1974 established an employment relationship with the respondent, from which fact results that he reached 40 years of work experience in 2014, while he initiated the contested procedure by the lawsuit of 21.12.2018, requesting the respondent's obligation to pay three salaries in the name of the jubilee reward.*

Furthermore, referring to the provisions of Article 87 of Law no. 03/L-212 on Labor (hereinafter: Law on Labor ), the Court of Appeals held that the applicant's request was time-barred after determining a different factual situation, namely that the applicant reached the jubilee part of the work in 2014, from which date the statute of limitation period began to run.

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 reasoned in the judgment itself, but I consider that the annulment of the contested 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 has been 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 present 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 not to unnecessarily expose him 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 essential right.

**Concurring Opinion is submitted by Judge;**

Radomir Laban, Judge

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On 28 May 2024 in Prishtina

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