



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

Prishtina, 23 December 2024
Ref. no.: AGJ 2594/24

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JUDGMENT

in

Case No. KI105/24

Applicant

Imrije Kadriu

**Constitutional review of Judgment Ac. no. 2125/22 of the Supreme Court, of 23
February 2024**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Selvete Gërzhaliu-Krasniqi, Judge
Bajram Ljatifi, 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 Imrije Kadriu, from the village of Reçak of the Municipality of Shtime (hereinafter: the Applicant), represented by Mr. Xhavit Mahmuti, a lawyer from the Municipality of Ferizaj.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [Ac. no. 2125/22] of 23 February 2024 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), in conjunction with Judgment [C. no. 1747/21] of 1 March 2022 of the Basic Court in Ferizaj (hereinafter: the Basic Court).

Subject matter

3. The subject matter of the Referral is the constitutional review of the contested Judgment of the Court of Appeals, whereby it is claimed that the Applicant's fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) and Article 1 (Protection of property) of Protocol No. 1 to the European Convention on Human Rights (hereinafter: ECHR) have been violated.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals) and 47 (Individual Requests) of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 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).

Proceedings before the Constitutional Court

5. On 30 April 2024, the Applicant submitted her Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 May 2024, the President of the Court, by Decision [GJR. KI105/24], appointed judge Remzije Istrefi-Peci as Judge Rapporteur and by Decision [No. KSH. KI105/24] appointed the Review Panel composed of judges: Remzije Istrefi-Peci (Presiding), Nexhmi Rexhepi and Enver Peci (members).
7. On 20 May 2024, the Court notified the Applicant and the Court of Appeals about the registration of the Referral.
8. On 14 June 2024, the Court requested the Basic Court to submit evidence to the Court on filing the response to the appeal of the Municipality of Shtime - Directorate of Education (hereinafter: the Municipality of Shtime) to the Applicant or to submit the complete case file.
9. On 28 June 2024, the Basic Court submitted the complete case file to the Court.
10. On 23 September 2024, the Applicant, through a submission, provided the Court with additional documents, namely 3 (three) Decisions of the Basic Court through which, by way of judicial settlement, the latter had decided in favor of teachers.

11. On 26 November 2024, the Review Panel considered the report of the Judge Rapporteur and, by majority recommended to the Court the admissibility of the Referral. On the same date, the full Court, after deliberation, by 6 (six) votes for and 3 (three) against, decided: (i) to declare the Referral admissible; and (ii) to hold that Judgment [Ac. no. 2125/22] of 23 February 2024 of the Court of Appeals is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR.

Summary of facts

12. Based on the case file, it follows that on 25 July 2013, the Applicant submitted a request to the Ministry of Education, Science and Technology (hereinafter: MEST) for a teaching license, a request which was approved by Decision [No. 1021050] on Teacher Licensing of MEST, dated 20 May 2014, through which she was issued a “career teacher license,” valid from 20 May 2014 until 20 May 2019. Furthermore, it follows that the Applicant is employed as a class teacher at the lower secondary school “Skënderbeu” in the village of Reçak, Municipality of Shtime, and has signed 2 (two) employment contracts with that municipality, respectively on 14 January 2016 and 1 September 2020.
13. On 23 June 2021, the Applicant filed a lawsuit with the Basic Court against the Municipality of Shtime, whereby she requested payment of the difference in additional salary related to licensing and compensation of additional salary for career advancement.
14. On 1 March 2022, the Basic Court, by Judgment [C. no. 1747/21]: (i) approved the statement of claim of the Applicant as grounded in part, thereby obliging the Municipality of Shtime to pay the Applicant €1,377.81 (one thousand three hundred seventy-seven euro and eighty-one cents) for the unpaid salary difference for licensing - grading, for the period from 1 June 2018 until 31 August 2020, and €276.75 (two hundred seventy-six euros and seventy-five cents) for the period from 1 September 2020 until 21 January 2021. Meanwhile, by the above-mentioned judgment, the Basic Court (ii) rejected the remaining part of the Applicant’s statement of claim for the payment of the salary difference for the period from 18 April 2017 until 30 May 2018, as time-barred pursuant to Article 87 (Timeline for Submission) of Law No. 03/L-212 on Labor (Official Gazette, no. 90, 1 December 2010) (hereinafter: the Law on Labor); and also rejected the payment of €680.00 (six hundred eighty euros) as compensation for career advancement for the period from 18 April 2017 until 20 May 2019.
15. Through the abovementioned judgment, the Basic Court found that the Municipality of Shtime was obliged to compensate the Applicant for the salary difference for licensing for the period from 1 June 2018 until 31 August 2020, pursuant to item 1.3 of paragraph 1 of Article 7 (Licensing) of the 2017 Collective Contract for Education, and that it had acknowledged this obligation when it had paid the Applicant, in the name of qualification, the amount of €58.32 (fifty-eight euro and thirty-two cents) each month. Meanwhile, regarding the refusal of the request for compensation in the name of career advancement in the amount of 10% of the base salary, in the reasoning of its judgment, the Basic Court, referring to item 1.5 of paragraph 1 of Article 7 (Licensing) of the Collective Contract, determined that no material evidence established that the Applicant had advanced, been graded, or qualified during the period from 18 April 2017 until 20 May 2019.
16. On 11 March 2022, the Applicant filed an appeal with the Court of Appeals against Judgment [C. no. 1747/21] of the Basic Court, claiming violations of the provisions of the

- Law on Contested Procedure, erroneous or incomplete determination of factual situation, and erroneous application of substantive law.
17. On 24 March 2022, the Municipality of Shtime submitted a response to the Applicant's appeal before the Court of Appeals, rejecting the Applicant's appealing allegations and proposing to the Court of Appeals to uphold the first instance court's judgment.
 18. On 23 February 2024, the Court of Appeals, by Judgment [Ac. no. 2125/22], rejected the Applicant's appeal as ungrounded and upheld Judgment [C. no. 1747/21] of 1 March 2022 of the Basic Court. The Court of Appeals reasoned that (i) the Applicant's request for compensation of the salary difference for the period from 18 April 2017 until 30 May 2018 was statute-barred under Article 87 (Timeline for Submission) of the Law on Labor; and that (ii) it was not proven by any material evidence that the legal condition for compensation in the name of career advancement pursuant to item 1.5 of paragraph 1 of Article 7 (Licensing) of the Collective Contract was met, respectively the Court of Appeals found that the Applicant had not proven that she had advanced, been graded, or qualified during the period from 18 April 2017 until 20 May 2019.

Applicant's allegations

19. The Applicant alleges that by the contested judgment of the Court of Appeals, her fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol No. 1 (Protection of Property) and Article 6 (Right to a fair trial) of the ECHR, have been violated.
 - I. *Regarding the allegation of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR*
20. Before the Court, the Applicant alleges that Judgment [Ac. no. 2125/22] of 23 February 2024 of the Court of Appeals violates her right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, specifically (i) the principle of equality of arms and adversarial proceedings; (ii) the right to a reasoned court decision; and (iii) the principle of legal certainty, as a result of inconsistent judicial decision-making.
21. The Applicant emphasizes that according to the ECtHR case law, the right to adversarial proceedings means that the parties must be aware of any document or remark submitted to the judge and to an independent magistrate, with the aim of influencing his or her decision. In this regard, the Applicant emphasizes that the principle of equality of arms and adversarial proceedings has been violated because the Court of Appeals, acting contrary to paragraph 2 of Article 187 (No title) of the Law on Contested Procedure (Official Gazette, no. 38, 20 September 2008) (hereinafter: LCP), did not serve her with the respondent's reply to her appeal, namely the response of the Municipality of Shtime to the appeal. Consequently, according to the Applicant, her right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR has been violated.
22. Further, the Applicant before the Court stresses that according to the ECtHR jurisprudence, the courts are obliged to provide reasons for their judgments, offering the parties an answer to arguments that are decisive for the outcome of the judicial proceedings. In this context, the Applicant alleges that the contested judgment of the Court

of Appeals does not meet the criteria of a reasoned court decision and that by this judgment, the Court of Appeals avoided examining and assessing as material evidence the Decision [No. 1021050] on teacher licensing and the teacher's license certificate, which she had submitted in support of the statement of claim.

23. Regarding the alleged violation of the principle of legal certainty, the Applicant emphasizes that the Basic Court violated this principle due to its inconsistent approach in rendering decisions. More specifically, the Applicant submitted to the Court 2 (two) judgments of the Basic Court, in the cases of SH.A. and B.O., in relation to which she claims that the decisions were rendered differently even though they involve factual and legal circumstances similar to those of the Applicant.

II. *Regarding the allegation of violation of Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR*

24. The Applicant states that by the judgments of the Basic Court and the Court of Appeals, her property right guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 of the ECHR has been violated.
25. In this respect, the Applicant alleges that in the proceedings before the regular courts, she submitted sufficient evidence to argue a "legitimate expectation" to enjoy the property right, specifically the realization of income. According to the Applicant, in addition to the employment contract, her university diploma, and the monthly payroll, she substantiated her "legitimate expectation" with the Decision on teacher licensing and the teacher's license certificate. Furthermore, the Applicant emphasizes that compensation related to career advancement, at the rate of 10% per month, is determined by item 1.5 of paragraph 1 of Article 7 (Licensing) of the Collective Contract for Education and that she had obtained this right following a series of trainings.
26. Finally, the Applicant requests the Court to (i) declare the Referral admissible; (ii) hold that Judgment [Ac. no. 2125/22] of the Court of Appeals in conjunction with Judgment [C. no. 1747/21] of the Basic Court are contrary to Articles 31 and 46 of the Constitution in conjunction with Article 6 and Article 1 of Protocol No. 1 of the ECHR; (iii) declare invalid the judgments of the Court of Appeals and the Basic Court; (iv) remand the judgment of the Court of Appeals for retrial in accordance with the Court's judgment; and (v) order the Court of Appeals to notify the Court about the measures taken to implement the Court's judgment.

RELEVANT CONSTITUTIONAL AND LEGAL PROVISIONS

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31 [Right to Fair and Impartial trial]

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

[...]"

Article 46
[Protection of property]

- “1. The right to own property is guaranteed.*
- 2. Use of property is regulated by law in accordance with the public interest.*
- 3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.*
- 4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*
- 5. Intellectual property is protected 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.”

Article 1 of Protocol No. 1
(Protection of property)

“1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

LAW NO. 03 / L-006 ON CONTESTED PROCEDURE

Article 187
(No title)

“187.1 A sample of the complaint presented timely, legally and complete, is sent within seven days to the opposing party by the court of the first degree complain, that can be replied with presentation of a complaint within seven days.

187.2 A sample of the reply with complaint the first degree court sends to the complainer immediately or at the latest within the period of seven days from its arrival to the court.

[...]”

LAW NO. 03/L-212 ON LABOUR

Article 87 (Timeline for Submission)

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

COLLECTIVE AGREEMENT ON EDUCATION IN KOSOVO (2017)

Article 7 Licensing

“With licensing, the right to work, career advancement and professional development is acquired based on the applicable labor legislation. Employees are allowed to qualification without interruption from work according to the applicable education legislation, and on the basis of qualification, and on the basis of qualification and that

[...]”

1.5. Career advancements, the salary level is determined and the movement in grading is accompanied by a 10% salary increase.

[...]”

Admissibility of the Referral

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

28. The Court refers to paragraphs 1 and 7 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.

[...]”

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.”

29. The Court also examines whether the Applicant fulfilled the admissibility requirements, as established in the Law. In this respect, the Court refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which stipulate:

Article 47
(Individual Requests)

“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.

“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 ...”.

30. In assessing the fulfillment of the admissibility criteria as referred above, the Court notes that the Applicant specified that she challenges an act of public authority, namely the Judgment [Ac. no. 2125/22] of the Court of Appeals, of 23 February 2024, after having exhausted all legal remedies established by law. The Applicant also clarified the rights and freedoms she claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadline set in Article 49 of the Law.
31. In addition, the Court also finds that the Applicant’s Referral meets the admissibility criteria set out in paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the conditions set out in paragraph (3) of Rule 34 of the Rules of Procedure. Furthermore, and finally, the Court considers that this Referral is not manifestly ill-founded as established in paragraph (2) of Rule 34 of the Rules of Procedure and, therefore, it must be declared admissible and its merits be examined.

Merits

32. The Court notes that the essence of this case relates to the Applicant’s request for compensation in the name of career advancement. In this regard, the Applicant filed a lawsuit with the Basic Court against the Municipality of Shtime, requesting payment of the salary difference for grading and the payment of an additional salary for career advancement. The Basic Court approved the statement of claim of the Applicant as grounded in part, thereby approving the Applicant’s request for compensation in the name of unpaid salary difference for licensing – grading but rejected the remaining part of the statement of claim for compensation in the name of career advancement, reasoning that it

had not been able to establish, by any material evidence, that the Applicant had advanced in career, grading, or qualification during the period from 18 April 2017 to 20 May 2019. Against the Basic Court's judgment, the Applicant filed an appeal with the Court of Appeals, claiming violations of the provisions of the Law on Contested Procedure and erroneous determination of factual and legal situation, to which the Municipality of Shtime subsequently submitted a response. The Court of Appeals, by its judgment, rejected the Applicant's appeal as unfounded and upheld the Basic Court's judgment, holding that it had not been proven by any material evidence that the legal condition for compensation in the name of career advancement pursuant to item 1.5 of paragraph 1 of Article 7 (Licensing) of the Collective Contract had been met, namely that the Applicant had advanced in career, grading, or qualification during the period from 18 April 2017 to 20 May 2019.

33. The Applicant challenges the aforementioned findings of the Basic Court and the Court of Appeals, claiming that her right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR has been violated on the grounds (i) violation of the principle of equality of arms and the principle of adversarial proceedings; (ii) failure to reason the court decision; and (iii) infringement of the principle of legal certainty as a result of inconsistency in judicial decision-making. The Applicant also alleges a violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR.
34. In addition, the Court will assess the Applicant's allegation regarding the violation of the right to a fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and then proceed with the assessment of the allegation regarding the violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR.

Regarding the allegation of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

- (i) *Regarding the allegation of violation of the principle of equality of arms and adversarial proceedings*

General principals

35. The principle of equality of arms is inherent in the broader concept of a fair and impartial trial and is closely related to the principle of adversarial proceedings (see the ECtHR case [Regner v. Czech Republic](#), no. 35289/11, Judgment of 19 September 2017, paragraph 146). The criterion of "equality of arms," in the sense of a "fair balance" between the parties, in principle applies to both civil and criminal cases (see, the ECtHR case [Werner v. Austria](#), no. 21835/93, Judgment of 24 November 1997, paragraph 66; and the Court's case [KI84/21](#), Applicant *Telecom of Kosovo J.S.C.*, Judgment of 17 December 2021, paragraph 103).
36. Initially, the Court notes that, according to the ECtHR case law, Article 6 of the ECHR requires the courts to properly examine the submissions, arguments, and evidence submitted by the parties and to assess, without prejudice, whether they are relevant and significant for its decision (see the ECtHR case [Kraska v. Switzerland](#), no. 13942/88, Judgment of 19 April 1993, paragraph 30). Such an obligation on the courts is implemented, *inter alia*, through the application of the principle of equality of arms and the principle of adversarial proceedings during the court review.

37. On the other hand, the principle of adversarial proceedings means that the parties must be aware of and have the opportunity to comment on and challenge the arguments and evidence presented during the judicial examination (see, *inter alia*, the ECtHR cases [Brandstetter v. Austria](#), nos. 11170/84, 2876/87, 13468/87, Judgment of 28 August 1991; and [Vermeulen v. Belgium](#), no. 19075/91, Judgment of 20 February 1996, paragraph 33; and the Court's case [KI84/21](#), cited above, paragraph 101).
38. Referring to the ECtHR case law, the Court emphasizes that the principle of equality of arms and the principle of adversarial proceedings are closely linked, and in many cases, the ECtHR has addressed them together (see the ECtHR cases, [Rowe and Davis v. the United Kingdom](#), no. 28901/95, Judgment of 16 February 2000; [Zahirović v. Croatia](#), no. 58590/11, Judgment of 25 July 2013; and the Court's cases [KI67/22](#), cited above, paragraph 54; and [KI84/21](#), cited above, paragraph 102).
39. However, the ECtHR has emphasized that the right of the parties to a fair trial, including the principle of "equality of arms," is not absolute. The ECtHR has consistently held that it must determine whether the proceedings as a whole were conducted in conformity with the Convention, including Article 6 thereof. In this context, according to the ECtHR case law and that of the Court, paragraph 1 of Article 6 of the ECHR obliges courts to properly examine the submissions, arguments, and evidence presented by the parties, without prejudging their impact on the court's decision (see the ECtHR cases [Kraska v. Switzerland](#), cited above, paragraph 30; [Barberà, Messegué and Jabardo v. Spain](#), no. 10590/83, Judgment of 6 December 1988; and the Court's case [KI67/22](#), cited above, paragraph 57).
40. In this regard, the ECtHR has emphasized that under the principle of "equality of arms" and adversarial proceedings, it is unacceptable for one party in the proceedings to submit comments or remarks before the regular courts aimed at influencing the court's decision, without the knowledge of the other party and without giving the other party the opportunity to respond to them. According to the ECtHR's and the Court's case law, it is then up to the involved party to decide whether the remarks or comments submitted by the other party merit a reaction (see the ECtHR cases [APEH Üldözötteinek Szövetsége and others v. Hungary](#), no. 32367/96, Judgment of 5 January 2011, paragraph 42; [Guigou and SGEN-CFDT v. France](#), no. 59821/00, Decision of 6 January 2004; and the Court's case [KI84/21](#), cited above, paragraph 104).

Application of general principles to the circumstances of the present case

41. The Court recalls that the Applicant alleges a violation of the right to a fair and impartial trial, specifically a violation of the principle of equality of arms and adversarial proceedings, arguing that the Court of Appeals did not serve her with the response to her appeal submitted by the Municipality of Shtime.
42. In this context, the Court first notes that on 11 March 2022, the Applicant submitted an appeal to the Basic Court against the judgment of the Basic Court, which, according to the acknowledgment of receipt, was served on the Municipality of Shtime on 16 March 2022. On 24 March 2022, against the Applicant's appeal, the Municipality of Shtime submitted a response to the appeal before the Court of Appeals.

43. The Court recalls that the Applicant before the Court claims that the Court of Appeals did not serve her with the response to the appeal submitted by the Municipality of Shtime, as required by paragraph 2 of Article 187 of the LCP.
44. In this regard, the Court refers to paragraph 2 of Article 187 of the LCP, which stipulates that: “*A sample of the reply with complaint the first degree court sends to the complainant immediately or at the latest within the period of seven days from its arrival to the court*”.
45. With respect to the Applicant’s aforementioned allegation, the Court initially recalls that, through the letter of 14 June 2024, it requested the Basic Court to submit evidence regarding the service of the Municipality of Shtime’s response to the appeal on the Applicant or to submit the complete case file. On 28 June 2024, the Basic Court submitted the complete case file to the Court.
46. In the context of the Applicant’s allegation, the Court notes that from the complete case filed by the Basic Court, there is no acknowledgment of receipt proving that the response to the appeal, filed with the Court of Appeals by the Municipality of Shtime, was served on the Applicant.
47. In light of these facts and circumstances, the Court emphasizes that Article 187 of the LCP is in compliance with the requirements of Article 31 [Right to Fair and Impartial Trial] of the Constitution, which relate to the guarantee of implementing the principle of equality of arms and the principle of adversarial proceedings before the courts. Adherence to these requirements and standards, deriving from these two principles, serves the purpose of providing more effective protection of the opposing parties in civil proceedings, who stand on equal footing.
48. The Court recalls that, according to the case law of the ECtHR and this Court, it is unacceptable for one party in the proceedings to submit remarks or comments before the regular courts, intended to influence the court’s decision, without the other party’s knowledge and without giving the latter the opportunity to respond to them. Consequently, it is then up to the involved party to assess whether the remarks or comments submitted by the other party merit a reaction (see the ECtHR cases [APEH Üldözötteinek Szövetsége and others v. Hungary](#), cited above, paragraph 42; and [Guigue and SGEN-CFDTv. France](#), no. 59821/00, Decision of 6 January 2004; as well as the Court’s case [KI84/21](#), cited above, paragraph 104).
49. More specifically, the Court refers to the above-mentioned ECtHR case [APEH Üldözötteinek Szövetsége and others v. Hungary](#), in which the applicants alleged a violation of paragraph 1 of Article 6 of the ECHR because the Regional Court had not informed them of the letter from the President of the Hungarian Tax Authority (hereinafter: APEH) and the submissions submitted by the Public Prosecutor’s Office at the first and second instances. With regard to that claim, the ECtHR found that although the Prosecutor’s submission at the second instance may not have affected the merits of the case, under the principle of equality of arms, it is for the parties to decide whether a submission deserves a response, and that it is unacceptable for one party to file submissions with the court without the other’s knowledge and without giving them an opportunity to comment. As a result, through the judgment in the case [APEH Üldözötteinek Szövetsége and others v. Hungary](#), the ECtHR found a violation of the principle of equality of arms, and consequently, a violation of paragraph 1 of Article 6 of the ECHR.

50. In this regard, the Court considers that the failure to notify the Applicant of the response to the appeal submitted by the Municipality of Shtime is contrary to the principle of adversarial proceedings, i.e., the procedural obligation of the Court of Appeals to serve the response to the appeal on the Applicant pursuant to paragraph 2 of Article 187 of the LCP, because the Applicant was placed at a disadvantage compared to the opposing party by not being aware of the submission filed by the latter, and consequently, this is contrary to Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
51. In addition to the procedural obligation of the court under paragraph 2 of Article 187 of the LCP, the Court also draws attention to paragraph 4 of Article 187 (No title) of the LCP, which emphasizes that although submissions arriving at the court after receipt of the response to the appeal are not examined by the court, it is at the court's discretion to request a supplementary statement regarding them. Therefore, in view of the aforementioned provision, which states that submissions arriving at the court after receipt of the response to the appeal are not examined by the court, unless expressly requested by it, the Court considers that the violation in the present case is of a declaratory nature.

Regarding other allegations of the Applicant

52. The Court recalls that the Applicant also claimed before the Court a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR on the grounds of (i) the lack of reasoning of the court decision by the contested Judgment of the Court of Appeals, and (ii) the violation of the principle of legal certainty resulting from the inconsistent approach of the regular courts with regard to judicial decision-making, by submitting 2 (two) judgments of the Basic Court in other cases. The Applicant also alleges a violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol No. 1 of the ECHR, arguing that she had a "legitimate expectation" to obtain financial income.
53. With regard to the Applicant's allegations of a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR, as a result of the lack of reasoning in the judicial decision and inconsistency in judicial decision-making, the Court finds that (i) the Court of Appeals and the Basic Court, by their judgments, rejected the Applicant's request for compensation in the name of career advancement, providing sufficient reasoning, namely by explaining that the Applicant did not prove by any material evidence that she was advanced, graded, or qualified during the period from 18 April 2017 until 20 May 2019; and (ii) based on its case law, the Court cannot find the existence of "profound and long-standing" differences in the case law of the Court of Appeals and the Supreme Court that would violate the principle of legal certainty by referring to 2 (two) judgments of the Basic Court (see the Court's cases [KI29/17](#), Applicant *Adem Zhegrova*, Resolution on Inadmissibility of 5 September 2017, paragraph 58; and [KI164/23](#), [KI173/23](#), [KI174/23](#), [KI175/23](#), [KI176/23](#) and [KI201/23](#), Applicants *Murat Sylja*, *Gentian Sylja*, *Shqipe Kelmendi*, *Rinor Sogojeva*, *Asdren Mustafaj*, and *Besnik Elshani*, cited above, paragraph 166).
54. Based on the above, the Court finds that the Applicant's allegation of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR due to lack of judicial reasoning and violation of the principle of legal certainty as a result of inconsistency in judicial decision-making falls into the category of "unsubstantiated or unreasoned" allegations and, as such, is manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 34 of the Rules of Procedure.

55. Further, regarding the Applicant's allegation relating to the violation of the property right guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR, arguing that she had a "*legitimate expectation*" to realize financial income, the Court stresses that in order for the "*expectation*" to be legitimate, it must be more concrete than a "*mere hope*" and must be based on a legal provision or a legal act, such as a judicial decision, concerning the property interest at stake (see the ECtHR cases [*Pressos Compania Naviera S.A. and others v. Belgium*](#), no. 17849/91, Judgment of 20 November 1995, paragraph 31; and [*Kopecký v. Slovakia*](#) no. 44912/98, Judgment of 28 September 2004, paragraph 50). In the present case, the Applicant referred to item 1.5 of paragraph 1 of Article 7 (Licensing) of the Collective Contract, based on which she claims that compensation in the name of career advancement belongs to her. However, the Court recalls that the regular courts had found that the Applicant did not fulfil the legal condition under item 1.5 of paragraph 1 of Article 7 (Licensing) of the Collective Contract, since it had not been established that the Applicant was advanced, graded, or qualified during the specified period. Consequently, the Court considers that the Applicant's allegation of a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the ECHR falls into the category of "*unsubstantiated or unreasoned*" allegations and is, therefore, manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 34 of the Rules of Procedure.

Conclusion

56. As a result, the Court finds that the failure to notify the Applicant of the response to the appeal filed by the Municipality of Shtime is contrary to the principle of adversarial proceedings and, consequently, contrary to Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
57. However, based on the above elaboration and findings, where according to the applicable law, the submissions received by the court after the response to the appeal is received are not examined by the court unless explicitly requested by it, and the finding that the other allegations of the Applicant are unsubstantiated and unreasoned, the Court finds that in the present case, the contested judgment should not be repealed, and that the violation is of a declaratory nature.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 48 (1) (a) of the Rules of Procedure, on 26 November 2024, by majority

DECIDES

- I. TO DECLARE, by six (6) votes for and three (3) against, the Referral admissible;
- II. TO HOLD, by 6 (six) votes for and 3 (three) votes against that Judgment [Ac. no. 2125/22] of 23 February 2024 of the Court of Appeals is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO NOTIFY this Judgment to the parties and, in accordance with paragraph 4 of article 20 of the Law, to publish it in the Official Gazette;
- IV. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërzhaliu-Krasniqi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.