



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

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Prishtina, 23 April 2021  
Ref.no.:RK 1755/21

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI68/20**

Applicant

**Hysen Thaqi**

**Constitutional Review of the Judgment Rev.no.383/2019 of the Supreme  
Court of Kosovo of 14 January 2020**

### **CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by Hysen Thaqi (hereinafter: the Applicant), represented by Afrim Krasniqi, a lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Judgment [Rev. no.383/2019] of the Supreme Court of 14 January 2020 in conjunction with the Judgment [4470/2016] of the Court of Appeals of 4 July 2019.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 3.2 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **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 Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (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 22 April 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 May 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 8 June 2020, the Applicant's representative was notified of the registration of the Referral and he was requested to submit the power of attorney of the Applicant to the Court.
8. On 12 June 2020, the Applicant's representative submitted the power of attorney of the Applicant regarding Referral no. KI68/20.
9. On 10 August 2020, a copy of the Referral was sent to the Supreme Court.
10. On 5 January 2021, the Court requested the Applicant to submit a document proving the filing date of the claim for material and non-material indemnification.
11. On 11 January 2021, the Applicant submitted the aforementioned document.

12. On 29 March 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

13. From the submitted documents it results that on 16 November 2008 on the road Prishtina-Podujevë in the village Prugovc, there was a traffic accident between the vehicles "Audi 89" driven by the Applicant and the vehicle "Volkswagen Van" driven by the person F.H. and as a result of this accident bodily injuries were suffered by the drivers of both vehicles and three passengers of the Applicant. In addition to these vehicles, in this accident was also involved the vehicle of the brand "VW Golf" in white colour that contributed in causing the accident but was not identified.
14. On 4 March 2009, the Public Prosecutor in Prishtina with the accusatory proposal PP.no.8-11/09 had alleged that the Applicant had committed the criminal offense according to Article 297 (1) and (3) [Endangering Public Traffic] of the Provisional Criminal Code of Kosovo, UNMIK/REG/2003/25 (hereinafter: CCK). The Public Prosecutor also alleged that based on traffic expertise, forensics and witness statements and taking into account the social danger and gravity of the criminal offense, the Applicant should be found guilty and sentenced to an "adequate" sentence.
15. On 13 December 2011, the Municipal Court in Prishtina with Judgment [P.no.502/09] acquitted the Applicant of the aforementioned charge filed by the Public Prosecutor in Prishtina. The Municipal Court had ascertained: (i) that the evidence obtained from the main trial did not fully establish that the defendant (the Applicant) had committed the criminal offense imposed on him by the Public Prosecutor; (ii) it has not been established that the Applicant had committed the criminal offense of endangering public traffic under Article 297 (1) and (3) of the CCK and that he has therefore been acquitted of the charge under Article 390 paragraph 1 and sub-paragraph (3) [untitled] of the Provisional Criminal Procedure Code of Kosovo UNMIK/REG/2003/26 (hereinafter: KCCP); and (iii) under Article 112.2 of the KCCP regarding property claims instructed the injured party to a civil dispute.
16. On 17 January 2012, the Applicant filed a claim for compensation of damages with the insurance company "SIGMA" based in Prishtina requesting that the request for "indemnification" of material and non-material damage suffered in the accident of 16 November 2011 be approved.
17. On 18 January 2012, the Applicant sued the Kosovo Insurance Bureau in the Basic Court in Prishtina for compensation of material and non-material damage related to bodily injury and vehicle damage. On 11 July 2016, the Applicant specified the claim seeking compensation for damages: (i) in the name of physical pain, the amount of € 20,000.00; (ii) in the name of fear, the amount of € 15,000.00; (iii) in the name of reducing the total life activity, the amount of € 27,000.00; (iv) in the name of the general working activity in capitalized form, the amount of € 30,398.07; (v) in the name of third party



assistance, the amount of € 700.00; (vi) in the name of climate rehabilitation, the amount of € 800.00; (vii) in the name of medical expenses, the amount of € 702.00; and, (viii) in the name of material damage to the accident vehicle, the amount of € 980.00.

18. The Respondent had objected to the Claimant's claim stating: (i) that the evidence presented is not a legal basis for admitting liability for damages; (ii) the hearing should be postponed until the issue regarding the eventual guilt-contribution of the participants in the accident is resolved; (iii) the passive legitimacy of the Respondent has not been established; and, (iv) the Claimant's claim is statute-barred.
19. On 20 July 2016, the Basic Court in Prishtina with Judgment [C.no.118/12] partially approved the Claimant's claim, stating: (i) the Respondent, the Kosovo Insurance Bureau Prishtina, is obliged in the name of compensation for damage to the amount of € 54,201.37 within 15 days from day of the rendered Judgment - under threat of execution; (ii) the Respondent is obliged to pay the amount of € 980.00 to the Claimant (Applicant) in the name of the damage caused to the vehicle brand "Audi 89" and in the name of the procedural costs to pay € 2,173.59 within 15 days from the day of the rendered Judgment under threat of execution; and (iii) the Claimant's claim beyond the amount adjudicated for compensation of non-material damage due to physical pain in the amount of € 10,000.00, due to fear experienced in the amount of € 8,000.00, for reduction of the general life activity in the amount of € 5,000.00, for reinforced food the amount of € 100.00, for care by someone else the amount of € 200.00, for climate rehabilitation € 800.00, for medical expenses the amount of € 720.00, is rejected as unfounded.
20. The Basic Court had reasoned: (i) that from the evidence obtained it can be concluded that in the traffic accident caused on 16.11.2008, the Claimant had suffered serious bodily injuries and with consequences caused to him by the driver of the unidentified vehicle; (ii) the Claimant's claim finds legal support in Article 20 [Compensation from operating unidentified vehicles] of Law 04/L-18 on Compulsory Motor Liability Insurance, the Kosovo Insurance Bureau is obliged to pay the damage caused by unidentified motor vehicle; (iii) the expertise of the medical experts confirms that the claimant had suffered a reduction in overall life activity by 35% and a reduction in working capacity by 40%; (iv) the claim of the Respondent that the Claimant's claim is statute-barred is rejected as unfounded, because the Claimant filed the claim on 18.11.2012, only a few months after the final criminal judgment P.nr.502/09, therefore in this case there can be no question of statute-barring; and, (v) compensation for material and non-material damage was determined based on the factual circumstances of the present case, the evidence obtained and the provisions of Articles 154 [Basis for liability], 178 [Liability in case of accident caused by moving motor vehicles] and 200 [Monetary compensation] of the Law on Obligational Relationships of 30 March 1978 (hereinafter: the old LOR).
21. On 11 October 2016, the Respondent filed an appeal against the aforementioned judgment with the Court of Appeals alleging a substantial



violation of the provisions of Law no.03/L-006 of the Contested Procedure (hereinafter: LCP), erroneous and incomplete determination of the factual situation and erroneous application of the substantive law with a proposal that the appeal be approved as founded and the challenged judgment be quashed and the case be remanded for retrial in the first instance.

22. On 4 July 2019, the Court of Appeals with Judgment [Ac.no.4470/16] determined: (i) the appeal of the respondent be partially approved by the Kosovo Insurance Bureau; (ii) the Judgment [C.no.118/12] of the Basic Court of 20 July 2016 be amended in the part regarding physical pain, fear and for the general reduction of life activity, for the Claimant Hysen Thaqi (Applicant) and be tried (iii) the Kosovo Insurance Bureau is obliged in the name of compensation of non-material damage, to pay the Claimant the amount of € 7,000.00 for physical pain, the amount of € 5,500.00 for fear, and the amount of € 18,000.00 for the reduction of general life activity; (iv) as to the remainder of the enacting clause, the Respondent's appeal is dismissed as unfounded while the challenged judgment is upheld; (v) the Judgment [C.no.118/12] of the Basic Court of 20 July 2016 be quashed regarding the royalties, and for this part the case be remanded to the same court for retrial.
23. The Court of Appeals had reasoned: (i) the Respondent's claim for an essential violation of the procedural provisions is unfounded because the court of first instance has given full and comprehensible reasons for the facts decisive for the fair trial of this contentious case; (ii) court of first instance has not correctly assessed the criteria that in the present case affect the Claimant to be awarded a monetary reward equivalent to the degree and consequences of the impaired good and the degree of contribution of the Claimant himself in causing the accident; (iii) pursuant to Article 376 [Claim compensation] of the old LOR the Claimant's claim is not statute-barred; (iv) point I of the enacting clause of the court of first instance has been quashed, for the part related to the royalties, because the opinion of the labour expert has not been taken, which is essential for determining the reduction of the working activity as well as the determination of the royalties.
24. On 30 July 2019, the Respondent filed for a revision with the Supreme Court alleging a substantial violation of the provisions of the contested procedure and erroneous application of substantive law with the proposal that the judgments of the lower instance courts be amended and the claimant's claim be rejected or the same to be quashed and the case remanded to the court of first instance for retrial.
25. On 6 August 2019, the Applicant filed for a revision with the Supreme Court alleging a substantial violation of the provisions of the contested procedure and erroneous application of substantive law with the proposal that the judgments of the lower instance courts be amended in order to increase the adjudicated amounts.

26. On 14 January 2020, the Supreme Court by Judgment [Rev. no.383/2019] decided: (i) the revision of the Respondent is approved, the Judgment AC.no.4470/2016 of the Court of Appeals of 4 July 2019 and the Judgment C.no.118/12 of the Basic Court of 20 July 2016 are amended, thus rejecting the Claimant's claim that the Respondent in the name of non-material damage pay for physical pain suffered the amount of € 7,000.00, due to fear suffered the amount of € 5,500 and in the name of spiritual pain due to the reduction of general life activity the amount of € 18,000.00 and in the name of material damage for reinforced food the amount of € 400, for care by the third party the amount of € 500 as well as in the name of the material damage caused to the Claimant's vehicle with the interest paid by the banks on the assets deposited over one year without a specific destination, calculated from the day of receiving the judgment of the first degree as an unfounded claim; (ii) the Claimant's revision is rejected as unfounded.
27. The Supreme Court had reasoned: (i) that it could not approve as lawful the legal position of the lower instance courts according to which the Respondent is obliged to pay the Claimant the amounts adjudicated in the name of the material and non-material damage, because the challenged judgments have been characterized by erroneous application of substantive law; (ii) the Claimant's claim is statute-barred and according to Article 376.1 of the old LOR it is determined that the claim for damages is statute-barred within three years from the day when the injured party was aware of the damage and the person who caused the damage; (iii) the Claimant was aware from the moment he received the accident report from the police with case number 08AR no. 02374 of 16 November 2008; (iv) the Claimant in this legal matter filed the lawsuit claim on 18 January 2012, after the legal deadline provided by the provision of Article 376.1 of the old LOR; and that, (v) in the present case neither the objective time limit from Article 376.2 nor the privileged statute of limitation from Article 377 of the old LOR can be applied.

### **Applicant's allegations**

28. The Applicant alleges that his fundamental rights and freedoms guaranteed by Articles 3.2 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution of the Republic of Kosovo have been violated.
29. The Applicant alleges: *"The Claimant through his authorized representative considers that the Supreme Court of Kosovo during the procedure conducted regarding the Respondent's revision has violated the right guaranteed by Article 3.2 of the Constitution where this right is based on the principles of equality before the law of all individuals and in full respect of internationally recognized human rights and fundamental freedoms [...] has violated Article 31 of the Constitution where everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers, Article 46 of the Constitution of the Republic of Kosovo [...] violation of the right to material and non-material compensation of the claimant by the Supreme Court of Kosovo as a fundamental right [...]."*



30. Regarding the statute of limitations of his claims, the Applicant alleges: *"The Supreme Court in the reasoning presented, among others, presents reasons which are completely contrary to the material evidence because the Claimant's claim in this case was filed within the legal deadline, that is on 16.01.2012 and that after the Claimant had received the criminal judgment of 13.12.2011 which is final and with which the Claimant in the concrete case the defendant IS RELEASED FROM THE CHARGES, and with which judgment is instructed to realize the civil dispute in civil procedure. The Claimant has not previously been able to file a claim for compensation due to the fact that he has already been charged with the criminal offense of endangering public traffic."*
31. The Applicant alleges that he has filed the claim in accordance with the relevant legal provisions stipulating that in case of bodily injury or health damage, caused by the unidentified vehicle, the burden of compensation falls upon the Kosovo Insurance Bureau.
32. The Applicant requests that the challenged Judgment of the Supreme Court be annulled and that the case be remanded for retrial due to the violation of the right to material and non-material compensation.

### **Relevant legal provisions**

#### **Law 04/L-18 on Compulsory Motor Liability Insurance**

##### *Article 20*

##### *Compensation from operating unidentified vehicles*

- 1. A natural person to whom the damage is caused from operating an unidentified motor vehicle shall be entitled to file a compensation claim to the Bureau.*
- 2. A natural person to whom the damage is caused shall be entitled to compensation for damages incurred as a result of death, bodily injuries or deterioration of health condition by the amount established under Article 13 of this Law.*
- 3. The injured party shall be entitled to compensation claim for damages caused to belongings, excluding damages to motor vehicles, caused from operating an unidentified motor vehicle by the amount established under Article 13 of this Law.*
- 4. The injured party shall be obliged to report to the Traffic Police the damages caused by the unidentified motor vehicle, within 7 (seven) days when the damage has been caused to the property and within 30 (thirty) days from the accident day when the damage has been caused to persons. The injured party shall also be obliged to report the case to the Bureau within 90 (ninety) days.*

5. In case of a later identification of the vehicle causing the accident, or the liable insurer, the Bureau shall be entitled to regress from the liable person or from the liable insurer by the amount paid for the damage, costs and interest rates.

**Rule 3 on amending the Rule on Compulsory Motor Liability Insurance of the Central Bank of Kosovo adopted on 25 September 2008**

*Section 4  
Guarantee Fund*

*4.1 General Provisions*

*The Guarantee Fund shall be funded by the contributions paid by insurance companies in accordance with this Rule. The money or fund constituting the Guarantee Fund shall be deposited and maintained in a commercial bank duly licensed by the CBK.*

*Guarantee Fund should be used towards paying indemnity for:*

*[...]*

*c. Damage/loss because of death, bodily injury or impairment of health, caused by the use of an unidentified motor vehicle.*

**Law on Obligational Relationship of 30 March 1978**

*Article 154  
Basis for liability*

*Persons shall be liable for material damage and activities that result in major risk of damage to the environment, irrespective of culpability.*

*For damage from objects or activities, from which derives the increased risk of damage to the environment is liable regardless of fault.*

*Persons shall also be liable for damage irrespective of culpability in other cases defined by law.*

*Article 178  
Liability in case of accident caused by moving motor vehicles*

*The rules on culpable liability shall apply to an accident involving moving motor vehicles caused exclusively through the fault of one vehicle holder.*

*If the fault is mutual the holders shall each be liable for all the damage incurred thereby, in proportion to each holder's level of fault.*



*If nobody is at fault the holders shall be liable for equal shares, unless justice demands otherwise.*

*If the two holders of the motor vehicles are partly or fully liable for damage suffered by others the liability shall be joint and several.*

#### *Article 200*

##### *Monetary compensation*

*Just monetary compensation independent of the reimbursement of material damage shall pertain to the injured party for physical distress suffered, for mental distress suffered owing to a reduction in life activities, disfigurement, the defamation of good name or reputation, the truncation of freedom or a personal right, or the death of a close associate, and for fear, if the circumstances of the case, particularly the level and duration of distress and fear, so justify, even if there was no material damage.*

*Upon the decision on the request for the compensation of immaterial damage, as well as for the amount of the compensation, the court shall evaluate the importance of the violation of goods and the purpose to which this compensation shall serve, also in order not to support the tendencies that are not compatible with the nature and the social purpose thereof.*

#### *Article 376*

##### *Compensation claims*

*Compensation claims for damage inflicted shall become statute-barred three years after the injured party learnt of the damage and of the person that inflicted it.*

*However, this claim shall become statute-barred five years after the damage occurred.*

*Compensation claims for damage that occurred through the breach of a contractual obligation shall become statute-barred after the period stipulated for the statute-barring of the obligation.*

#### *Article 377*

##### *Compensation claims for damage inflicted by criminal offence*

*When the damage was inflicted by a criminal offence and a longer statute-barring period is stipulated for criminal prosecution, a compensation claim against the person responsible shall become statute-barred when the period stipulated for the statute-barring of criminal prosecution expires.*

*The discontinuance of statute-barring of criminal prosecution shall have as a consequence the discontinuance of statute-barring of the compensation claim.*

*This shall also apply to the suspension of statute-barring.*

**Provisional Criminal Procedure Code of Kosovo  
UNMIK/REG/2003/26**

*Article 112*

*(1) The court shall decide on property claims.*

*(2) In a judgment pronouncing the accused guilty the court may award the injured party the entire property claim or may award him or her part of the property claim and refer him or her to civil litigation for the remainder. If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court shall instruct the injured party that he or she may pursue the entire property claim in civil litigation.*

*(3) If the court renders a judgment acquitting the accused of the charge or rejecting the charge or if it renders a ruling to dismiss criminal proceedings, it shall instruct the injured party that he or she may pursue the property claim in civil litigation. When a court is declared not competent for the criminal proceedings, it shall instruct the injured party that he or she may present his or her property claim in the criminal proceedings commenced or continued by the competent court.*

**Assessment of the admissibility of the Referral**

33. The Court first reviews if the Referral has met the admissibility criteria set out in the Constitution and further specified in the Law and the Rules of Procedure.

34. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

*“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.”*

35. In addition, the Court also examines whether the Applicant has met the admissibility criteria as set out in the Law. In this regard, the Court initially refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) 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 ...”.*

36. In assessing the fulfilment of the admissibility criteria as mentioned above, the Court notes that the Applicant has specified that he challenges an act of a public authority, namely the Judgment [Rev. no.383/2019] of Supreme Court of 14 January 2020, after the exhaustion of all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms that he alleges to have been violated, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

37. In addition, the Court examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may examine the Referral, including the criterion that the Referral is not manifestly ill-founded. Rule 39 (2) provides in particular that:

*“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.”*

38. The Court recalls that the Applicant was charged by the Public Prosecutor with the charge of committing the criminal offense of endangering the public traffic of the CCK but that the Municipal Court in Prishtina later acquitted him of the charge raised by the Public Prosecutor. Subsequently, the Applicant had sued the Kosovo Insurance Bureau for material and non-material damages. The Basic Court had partially approved the Claimant's claim and awarded him

compensation in certain amounts for the damage suffered. Meanwhile, the Respondent, Kosovo Insurance Bureau, filed an appeal with the Court of Appeals alleging, inter alia, that the Claimant's claim was statute-barred. The Court of Appeals partially upheld the appeal of the Kosovo Insurance Bureau regarding the physical pain, the overall reduction of the Applicant's life activity and the royalty. Following the revision filed by the Claimant and the Respondent, Kosovo Insurance Bureau, the Supreme Court decided to approve the Respondent's revision, Kosovo Insurance Bureau, as founded, amend the decisions of the lower instance courts and reject the Claimant's claim for compensation of the damage suffered.

39. The Court notes that the essence of the Applicant's appeal is that the Supreme Court erroneously assessed the material evidence because he submitted the claim for damages in accordance with the legal deadline. The Applicant adds that he could not file a claim for damages before being acquitted of the charge by acquittal of the Basic Court and therefore his rights guaranteed by Articles 3.2 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution have been violated.
40. The Court shall further address the Applicant's allegations by applying the case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the rights and fundamental freedoms guaranteed by the Constitution.
41. In this regard, the Court notes that the Supreme Court had found: (i) that it could not approve as lawful the legal position of the courts of lower instance according to which the respondent is obliged to pay the claimant the amounts adjudicated in name of material and non-material damage, because the challenged judgments were characterized by erroneous application of substantive law; (ii) the Claimant's claim is statute-barred and according to Article 376.1 of the old LOR it is determined that the claim for damages is statute-barred within three years from the day when the injured party was aware of the damage and the person who caused the damage; (iii) the Applicant was aware from the moment he received the accident report from the police with case number 08AR no. 02374 of 16 November 2008; (iv) the Applicant in this legal matter filed the lawsuit claim on 18 January 2012, after the legal deadline provided by the provision of Article 376.1 of the old LOR; and that, (v) in the present case neither the objective time limit from Article 376.2 nor the privileged statute of limitation from Article 377 of the old LOR can be applied.
42. In this regard, the Court highlights the relevant parts of the judgment of the Supreme Court:

*"The Claimant's claim is statute-barred and according to Article 376.1 of the Law on Obligations, it is determined that the statute of limitations for the claim for damages is statute-barred within three years from the date when the injured party became aware of the damage and the person who*



*has caused the damage, in this case we are dealing with a subjective deadline. For the implementation of the subjective statute of limitations, two subjective conditions must be met, that the damage was caused and that the claimant knew about the damage caused and the person who caused the damage, the claimant knew from the moment he received the accident report from the police and from the additional report of the Kosovo Police-Regional Traffic Unit-Prishtina with case number 08AR no. 02374 of 16.11.2008. The claim filed on 18.11.2012 in this legal case is after the legal deadline according to the provision of Article 376.1 of the LOR. In the present case, neither the objective deadline from Article 376.2 of the LOR nor the privileged statute of limitation from Article 377 of the LOR can be applied.”*

43. The Court notes that the Applicant was aware of the right to compensation from the moment he received the accident report from the Kosovo Police with case number 08AR no. 02374 of 16 November 2008. The Applicant on 17 January 2012 filed a claim for compensation with the insurance company “SIGMA” in Prishtina and then, a day later, on 18 January 2012, sued the Kosovo Insurance Bureau in the Basic Court claiming compensation, which the Supreme Court has considered outside the legal term of three (3) years provided by Article 376.1 of the old LOR.
44. The Court understands the subjective disappointment of the Applicant for denial of compensation for the damage suffered in the accident of 16 November 2008, but the subjective aspect of this constitutional claim is outside the jurisdiction of the Court. The Court notes that in this case we are dealing with a different assessment of the legal deadline for filing a claim for damages in which case on the one hand, the Basic Court and the Court of Appeals have ruled that the legal deadline derives from the day of acquittal and on the other hand the Supreme Court has ruled that the legal time limit for a claim for damages derives from the day when the claimant was aware of the accident.
45. The Court notes that with regard to the regular judiciary, the Supreme Court is the highest judicial authority in the Republic of Kosovo (see Article 103.2 of the Constitution) and that its interpretation of legal deadlines but also other matters of law prevails over legal interpretations of the Basic Courts and the Court of Appeals.
46. From the abovementioned, the Court has repeatedly reiterated that it is not its duty to deal with errors of fact or law alleged to have been committed by the regular courts in assessing evidence or law enforcement (*legality*), unless and to the extent such may have violated the rights and freedoms protected by the Constitution (*constitutionality*). The Court itself cannot review the law that has made a regular court adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “*fourth instance*”, which would result in exceeding the limits imposed on its jurisdiction. Indeed, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law. (See the ECtHR case, *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, also, inter alia, the Court cases: KI70/ 11, Applicant *Faik Hima, Magbule Hima and Besart Hima*,

Resolution on Inadmissibility, of 16 December 2011, paragraph 29; KIO6/ 17, Applicant *L.G. and five others*, Resolution on Inadmissibility, of 20 December 2017, paragraph 37; and KI122/ 16, Applicant *Riza Dembogaj*, Resolution on Inadmissibility, of 19 June 2018, paragraph 57).

47. The Court has continuously maintained this position based on the case law of the ECtHR which clearly states that it is not the role of this Court to review conclusions of regular courts regarding the factual situation and the application of substantive law. (See the ECtHR case, *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and Court cases KIO6/17, Applicant *L.G. and five others*, cited above, paragraph 38; and KI122/16, cited above, paragraph 58).
48. The Court further reiterates that, in principle, the interpretation of the law is the competence of the regular courts. Furthermore, “fairness” required by Article 31 of the Constitution in conjunction with Article 6 of the ECHR is not “substantive” fairness, but “procedural” fairness. In practical terms, this is expressed through adversarial proceedings, where the parties are heard and placed on an equal footing before the court. (See, in this context, the Court case no. KI42/16 Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 41 and other references mentioned therein).
49. The Court also notes that Article 31 of the Constitution in conjunction with Article 6 of the ECHR, does not guarantee anyone a favourable outcome in a litigation nor does it stipulate for the Court to challenge the application of substantive law by regular courts in a civil dispute, where mainly one of the parties to the proceedings wins and the other loses. (See, in this context, the Court cases, KI118/ 17, *Şani Kervan and others*, Resolution on Inadmissibility, paragraph 36; and KI142/ 15, the Applicant *Habib Makiqi*, Resolution on Inadmissibility, of 1 November 2016, paragraph 43).
50. The Court concludes that the Applicant’s dissatisfaction with the outcome of the proceedings before the regular courts cannot by itself raise a substantive claim for a violation of the right to a fair and impartial trial. (see the Court case no. KI118/ 18 Applicant *Eco Construction sh.p.k.*, cited above, paragraph 53; and see also the ECtHR case *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and, inter alia, KI56/ 17, cited above, paragraph 42).
51. From the abovementioned, the Court, based on the standards set in its case law in similar cases and the ECtHR case law, finds that the Applicant has not proved and has not sufficiently substantiated his allegation of violation of fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
52. Finally, the Court notes that the Applicant alleges a violation of Articles 3 and 46 of the Constitution, but without arguing how and why his rights guaranteed by these Articles have been violated. In line with its consolidated case law, the Court further notes that the Applicant’s dissatisfaction with the outcome of the



proceedings by the regular courts, or merely the mentioning of Articles of the Constitution, cannot in itself raise a substantiated allegation of a constitutional violation. When such violations of the Constitution are alleged, the Applicants must provide reasoned allegations and convincing arguments (See, *mutatis mutandis*, *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; and see also case KI56/ 17, Applicant Lumturije Murtezaj, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

53. Consequently, the Referral is manifestly ill-founded on constitutional grounds, and must be declared inadmissible, as stipulated by Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 29 March 2021, unanimously

### **DECIDES:**

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this decision to the parties;
- III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi



Arta Rama-Hajrizi

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