Prishtina, 30 September 2021
Ref. no.: AGJ1853/21

JUDGMENT

in

Case No. KI82/21

Applicant

Municipality of Gjakova

Constitutional review of Judgment UPP-APP. No. 1/2020 of the Supreme Court of Kosovo of 28 October 2020

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, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by the Municipality of Gjakova, which is represented by Vjollca Shyti (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [UPP. APP-1/2020] of 28 October 2020 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

3. The Applicant was served with the challenged Judgment on 12 April 2021.

Subject matter

4. The subject matter is the request for constitutional review of the challenged Judgment, which, according to the Applicant's allegations, was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles} and 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 Court

6. On 29 April 2021, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court.

8. On 18 May 2021, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

9. On 24 May 2021, the Court notified the Applicant about the registration of the Referral and requested the completion of the referral form of the Court, as well as the specific power of attorney for representation before the Court.

10. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court.

11. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, appointed Judge Selvete Gërxhaliu-Krasniqi as member of the Review Panel replacing Judge

Bekim Sejdiu. Judge Selvete Gërxhaliu-Krasniqi was appointed as Presiding of the Review Panel.

12. On 1 June 2021, the interested party, Afrim Radoniqi, submitted a request for providing information regarding Referral KI82/21.

13. On 8 June 2021, the President of the Court Arta Rama-Hajrizi, by Decision No. KI82/21, appointed Judge Radomir Laban as Judge Rapporteur replacing Judge Gresa Caka-Nimani.

14. On 11 June 2021, the Applicant submitted to the Court by email the completed form as well as the specific power of attorney for representation before the Court.

15. On 24 June 2021, the Court notified the interested party, Afrim Radoniqi, about the registration of the Referral and provided the latter with a copy of the Referral.

16. On 24 June 2021, the Court notified the Supreme Court about the registration of the Referral and requested information that: *(1) have you notified the Applicant, in this case the Municipality of Gjakova, regarding the proposal for repetition of the procedure? What is the legal obligation for such a notice?; and (2) The Applicant - Municipality of Gjakova, alleges that the Supreme Court allowed the use of an unauthorized legal remedy, as the repetition of the procedure is not prescribed in the Law on Administrative Conflicts, but only. What is the position of the Supreme Court regarding this allegation of the Municipality of Gjakova?*

17. On 26 June 2021, pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.

18. On 1 July 2021, the interested party, Afrim Radoniqi, submitted to the Court his comments regarding the case KI82/21.

19. On 2 July 2021, the Supreme Court responded to the Court's request for additional information.

20. On 7 July 2021, the Court requested the Basic Court to notify the Court regarding the date on which the Applicant was served with the challenged Judgment of the Supreme Court.

21. On 9 July 2021, the Basic Court submitted to the Court the acknowledgment of receipt indicating that the Applicant was served with the challenged Judgment on 12 April 2021.

22. On 9 September 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the admissibility of the Referral.

Summary of facts

23. Initially, the interested party, Afrim Radoniqi, was a party before the Court also in the case KI32/17, in which the subject of review was the Judgment [Pml. No. 276/2016] of 5 December 2016 of the Supreme Court. In this case the Court by the Resolution on Inadmissibility had decided that the Referral is manifestly ill-founded on constitutional basis.

24. It follows from the case file that the interested party, Afrim Radoniqi, was employed in the Municipality of Gjakova in the position of Lawyer, starting from 2008. During the time the interested party was working, the Municipality of Gjakova had received notifications from the Prosecution for initiating the investigation actions against him for committing criminal offenses during the exercise of his function, due to the criminal offense of falsifying official document under Article 434 paragraph 1 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK), the offense of abusing official position or authority under Article 422 paragraph 1 of the CCRK and the criminal offense of conflict of interest under Article 424 paragraph 1 and paragraph 4 of the CCRK. Consequently, on 25 March 2014, the President of Municipality by Decision [01 No. 118-2664] decided to suspend Afrim Radoniqi with payment of 50% of his salary, until a decision is rendered by the Court, and that the employer after the completion of the court proceedings will act in accordance with the law on civil service of Kosovo. Against the Decision of the Municipality of Gjakova, the interested party, Afrim Radoniqi, filed a complaint with the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: IOBCSK).

25. On 22 October 2014, the IOBCSK by Decision [No. A.02/354/2014] rejected as ungrounded the appeal of the interested party Afrim Radoniqi, upholding the abovementioned Decision for preventive suspension of the Municipality of Gjakova.

26. On 18 November 2014, the interested party, Afrim Radoniqi, by a lawsuit requested the Basic Court to annul the Decision [No. A. 02/354/2014] of the respondent IOBCSK, of 22 October 2014, by which his appeal against the decision [no. 118-2624/2014] of the President of the Municiplaityof of Gjakova 25 March 2014 for preventive suspension was rejected. He alleged that the IOBCSK Decision contained violation of the provisions of the Law on Administrative Procedure and the Regulations on Rules and Complaints Procedures.

27. On 15 July 2016, the IOBCSK, in its capacity as a respondent, filed a response to the lawsuit challenging the aforementioned lawsuit alleging that it did not result from the facts and evidence presented and that the claimant could not substantiate by any evidence his allegations, proposing to reject the claimant's lawsuit as ungrounded, while upholding its decision.

28. On 13 September 2016, the Basic Court in Prishtina, by Judgment [A. No. 2306/14] decided to: (i) Approve the statement of claim of the interested party Afrim Radoniqi as grounded; and (ii) Decision [A02/354/2014] of 22 October 2014, of the respondent-IOBCSK is annulled and the case is remanded to the respondent for reconsideration and decision.

29. On an unspecified date, the IOBCSK filed an appeal with the Court of Appeals on the grounds of: (i) essential procedural violations; (ii) erroneous and incomplete determination of factual situation; and (iii) erroneous application of the substantive law with the proposal that the above Judgment is repealed and the decision [A/02/354/2014] of 22 October 2014 of the IOBCSK be upheld. Response to the appeal was filed by the interested party, Afrim Radoniqi, with the proposal that the IOBCSK appeal be rejected as ungrounded, while the abovementioned judgment be upheld.

30. On 21 March 2017, the Court of Appeals by Judgment [AA. No. 20/2017] rejected as ungrounded the appeal of the respondent IOBCSK, while the Judgment of the Basic Court is upheld.

31. On 15 May 2017, in the review and reconsideration procedure, the IOBCSK by Decision [A/02/436/2016] decided: (i) to reject the complaint of 22 August 2014, submitted by the interested party, Afrim Radoniqi as ungrounded; and (ii) upheld the Decision on suspension [01 No. 118-2664) of 25 March 2014, of the Municipality of Gjakova.

Procedure of proposal for Enforcement of Judgment [AA. No. 20/2017] of 21 March 2017 of the Court of Appeals

32. On 2 November 2017, the interested party, Afrim Radoniqi, submitted a proposal for enforcement against the Applicant, Municipality of Gjakova, for the enforcement of the execution document, Judgment [A. No. 2306/14] of 13 September 2016 upheld by Judgment [AA. No. 20/2017] of 21 March 2017, of the Court of Appeals.

33. On 8 December 2017, the Applicant, the Municipality of Gjakova, filed an objection against the Enforcment Order stating that: (i) the Basic Court has no subject matter jurisdiction to grant the proposed enforcement; (ii) the execution of administrative decisions is done by the competent authority of the Administration. Consequently, the Applicant stated that the proposal for enforcement is premature and without subject of enforcement, because by the Judgment of the Court of Appeals does not recognize the right of the creditor Afrim Radoniqi, but it was decided to remand the case to the IOBCSK for review and reconsideration. The interested party, Afrim Radoniqi, did not respond to the objection.

34. On 26 December 2017, the Basic Court in Gjakova by Decision [CP. No. 279/17] approved as grounded: (i) the objection of the debtor, Municipality of Gjakova, of 8 December 2017; and (ii) annulled the Decision on enforcement of the Basic Court [CP. No. 279/17] of 2 November 2017, and quashed all enforcement actions taken by the latter.

Criminal proceedings against Afrim Radoniqi and his dismissal

35. On 18 July 2016, the Basic Court in Gjakova, by Judgment [PKR. No. 105/15] the interested party, Afrim Radoniqi: (i) acquitted of the charge for criminal

offense of falsifying an official document under Article 434 paragraph 1 of the Criminal Code; (ii) acquitted of the charge for the criminal offense of abuse of official position or authority under Article 422 paragraph 1 of the CCRK; (iii) found guilty of committing a criminal offense a conflict of interest under Article 424 paragraphs 1 and 4 of the CCRK, for which a fine in the amount of € 3,000 was imposed, which the accused was obliged to pay within 15 days after the entry into force of the Judgment.

36. On 9 August 2016, the interested party, Afrim Radoniqi, filed an appeal against point III of the abovementioned Judgment, on the grounds of: (i) essential violation of the provisions of the criminal procedure; (ii) erroneous and incomplete determination of factual situation; (iii) violation of the Criminal Law and the decision regarding the criminal sanction, with the proposal to approve his appeal as grounded; and (iv) modify point III of the above Judgment, or decide to remand the matter to the court of first instance for retrial and reconsideration.

37. On 20 September 2016, the Court of Appeals, by Judgment [PAKR. No. 497/16] decided that: (i) with the partial approval of the appeal of the interested party, Afrim Radoniqi, the Judgment of the Basic Court in Gjakova [PKR. no. 105/15] of 18 July 2016, only in relation to the decision on the criminal sanction so that the accused for a criminal offense Conflict of interest under Article 424 paragraph 1 in conjunction with paragraph 4 of the CCRK, is sentenced to a fine in the amount of 2000 (two thousand) euro, which fine is obliged to pay within (fifteen) days after the entry into force of this Judgment; (ii) in the acquittal part the judgment remains unaffected.

Procedure for dismissal of the interested party, Afrim Radoniqi

38. Municipality of Gjakova, based on Judgment [PAKR. No. 497/16] of the Court of Appeals, initiated disciplinary proceedings against Afrim Radoniqi. Thus, on 7 March 2017, the Disciplinary Commission in the Municipality of Gjakova by Decision [01/070-01/2927] decided to terminate the employment relationship, while the interested party, Afrim Radoniqi, was found guilty of committing the criminal offense of conflict interest.

39. On 30 March 2017, the interested party filed an appeal against the Decision of the Disciplinary Commission of the Municipality of Gjakova.

40. On 5 May 2017, the Dispute Resolution and Complaints Commission in the Municipality of Gjakova, by Decision [01-070-7914] found that Decision [01-070-7914] of the Disciplinary Commission, of 7 March 2017 is in accordance with paragraph 4 of Article 63 (Responsibilities) of the Law on Civil Service of Kosovo, which stipulates that *"If the Civil Servant is found guilty by final decision and is convicted of criminal offence with elements that comprise violations of civil service principles and rules from employer body should initiate the procedure for dismissal of the Civil Servant"*.

41. On an unspecified date, the interested party, Afrim Radoniqi, filed an appeal with the IOBCSK against the above-mentioned Decision of the Dispute

Resolution and Complaints Commission in the Municipality of Gjakova, requesting that he be reinstated to work.

42. On 18 July 2017, the IOBCSK by Decision [A/02/250/2017] rejected the appeal of the interested party and upheld the decisions of the Disciplinary Commission and the Dispute Resolution and Complaints Commission of the Municipality of Gjakova.

43. On 17 August 2017, the interested party, Afrim Radoniqi, filed a lawsuit with the Basic Court in Prishtina requesting the annulment of the decisions of the respondent IOBCSK, namely: (i) Decision [A/02/436/2016] of 15 May 2017 (mentioned in paragraph 30, which upheld the Decision of the President of Municipalityfor suspension); and (ii) Decision [A/02/250/2017] of 18 July 2017 (which upheld Decision [01-070-7914] of the Dispute Resolution and Complaints Commission).

44. The Basic Court in Prishtina (hereinafter: the Basic Court) initially joinder the two cases, as the subject of the statement of claim and the parties were the same, and on 9 August 2018, by Judgment [A. No. 975/2017] decided to: (i) Approve in part as grounded, the statement claim of the interested party, Afrim Radoniqi; (ii) to annul the Decision [A02/250/20 17] of 18 July 2017, of the respondent IOBCSK and the decisions of the Municipality of Gjakova, the Decision of the Dispute Resolution and Complaints Commission [no. 01-070-7914], of 5 May 2017 and the Decision of the Disciplinary Commission [01-070-01-2927] of 7 March 2017 and obliges the Municipality of Gjakova to return the claimant, Afrim Radoniqi, to his working place, Municipal Public Lawyer with all rights from the employment relationship according to the Appointment Act [01-118-143-9] of 1 June 2013 from the moment of leaving the employment relationship according to the decision of the Municipality of Gjakova of 7 March 2017; (iii) The part of the claimant's statement of claim, requesting the annulment of the Decision [A02/436/2017] of 15 May 2017 of the respondent, the IOBCSK and the Decision of the Municipality of Gjakova [118-2624/2014], of 25 March 2014, is rejected as ungrounded.

45. On 14 September 2018, the Applicant, Municipality of Gjakova, filed an appeal against the approving part, namely points I and II of the enacting clause of the abovementioned Judgment, on the grounds of essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law, with the proposal that the Court of Appeals approve as grounded the appeal filed by him and the case be remanded to the first instance court for retrial and reconsideration.

46. On 17 September 2018, the interested party, Afrim Radoniqi, filed an appeal against point III of the abovementioned Judgment of the Basic Court, on the grounds of violation of the provisions of the court procedure; erroneous and incomplete determination of factual situation and erroneous application of substantive law, with the proposal that the appeal be approved as grounded, the point III of the Judgment [A. No. 975/18] of the Basic Court be modified, the Municipality of Gjakova be obliged to compensate to claimant Afrim Radoniqi the unpaid personal income in the amount of 50% by calculating the legal

interest starting from 25 March 2014 until 5 May 2017 and the compensation of all other benefits from the employment relationship.

47. On 21 September 2018, the IOBCSK filed an appeal against the aforementioned Judgment of the Basic Court, on the grounds of violation of the provisions of the administrative procedure; erroneous determination of factual situation and erroneous application of substantive law, with the proposal that the appealed Judgment be annulled as non based on law.

48. On 26 September 2018, the Municipality of Gjakova submitted a response to the appeal, stating that the Basic Court, when deciding on point III of its Judgment, provided sufficient reasons, clear and based on legal provisions, and that the substantive law was correctly applied.

49. On 5 November 2019, the Court of Appeals by Decision [AA. No. 505/2018]: (i) rejects as ungrounded the appeal of the interested party, Afrim Radoniqi, of 17 September 2018, while upholds point III of the Judgment of the Court Basic; (ii) approves as grounded the appeals of the respondent IOBCSK and the Applicant, Municipality of Gjakova, while point II of the Judgment of the Basic Court is quashed and the case is remanded to the first instance court for retrial and reconsideration; and (iii) In the other part, the enacting clause of the appealed Judgment remains unchanged.

50. On 29 November 2019, the interested party, Afrim Radoniqi, filed a request for extraordinary review of the court decision, of the Decision [AA. No. 505/2018] of the Court of Appeals, on the grounds of violations of the provisions of the procedure and erroneous application of substantive law, with a proposal to approve the request and modify the challenged decision.

51. On 16 December 2019, the Applicant, Municipality of Gjakova, through the response to the request for extraordinary review, challenged the allegations of the interested party, Afrim Radoniqi, in entirety with a proposal that the request be rejected as ungrounded.

52. On 20 January 2020, the Supreme Court of Kosovo (hereinafter: the Supreme Court) by Decision [ARJ-UZVP. No. 15/2020] rejected as inadmissible the request of the interested party, Afrim Radoniqi, for extraordinary review of the court decision, filed against the Decision of the Court of Appeals [AA. No. 505/2018] of 9 August 2018. In its reasoning the Supreme Court states that: *"[...] by the challenged judgment of the Court of Appeal [AA. No. 505/2019] of 5 November 2019, in point II of the Decision, the Judgment of the Basic Court in Prishtina [A. No. 975/2017] of 9 August 2018 was annulled and the case was remanded to the first instance court for retrial and reconsideration. Since the court decision has not become final, as the case has been returned to the first instance court for retrial and reconsideration, this Court has dismissed the request as inadmissible".*

53. The interested party, Afrim Radoniqi, filed a request for repetition of the procedure challenging the legality of the Decision [ARJ-UZVP no. 15/2020] of 20 January 2020, of the Supreme Court. The interested party claims that by the challenged Decision, deciding upon the request for extraordinary review of the

court decision, whereby the interested party, Afrim Radoniqi, had challenged the decision of the second instance in the part where the decision of the first instance was upheld, which rejected the appeal of the interested party to annul the Decision [A/02/436/2017] of 15 May 2007 of the IOBCSK, in the part which annulled the decision of the first instance by the second instance court and it was not decided in the part where the claimant's appeal was rejected.

54. On 28 October 2020, the Supreme Court by Judgment [UPP-APP. No. 1/2020] allowed as grounded the proposal for repetition of the procedure of the claimant Afrim Radoniqi, filed against the Decision of the Supreme Court [ARJ-UZVP. No. 15/2020] of 20 January 2020, thus annulling the said Decision.

55. On 14 May 2021, the Basic Court by Decision [A. No. 2691/2019] approves as grounded the proposal of the Municipality of Gjakova, given in the submission of 11 May 2021, and the procedure according to the lawsuit of Afrim Radoniqi is terminated until the Constitutional Court of the Republic of Kosovo decides regarding the appeal of the Municipality of Gjakova of 28 April 2021, filed against the Judgment of the Supreme Court of Kosovo [UPP-APP. No. 1.2020] of 28 October 2020.

Comments of interested party Afrim Radoniqi

56. On 24 June 2021, the interested party, Afrim Radoniqi, through the comments submitted to the Court states that *"the Applicant's complaint -the Municipality of Gjakova in the Constitutional Court is an abuse of procedural rights and has the sole purpose of prolonging the decision on merits of the labor dispute, which dispute has been initiated since 2014 and for the same subject of the statement of claim so far a total of 5 (five) Judgments/Decisions by the of first, second and third instance courts have been issued resulting in violation of the provisions of the Constitution, namely Article 34 (Right not to be tried two (2) times for the same criminal act)".*

Response of the Supreme Court of Kosovo

57. On 2 July 2021, the Court received from the Supreme Court the answers to the questions posed: *(1) have you notified the Applicant, in this case the Municipality of Gjakova, regarding the proposal for repetition of the procedure? What is the legal obligation for such a notice?; and (2) The Applicant - Municipality of Gjakova, alleges that the Supreme Court has allowed the use of an unauthorized legal remedy, as the repetition of the Procedure is not defined in the Law on Administrative Conflicts, but only. What is the position of the Supreme Court regarding this allegation of the Municipality of Gjakova?*

58. The Supreme Court, in relation to the answer to the first question (1), stated that: *"regarding the requested information, we found that the claimant addressed this court with a request to review the decision [ARJ-UZVP. No. 15/2020] on 20.10.2020, because, according to the claimant, the Supreme Court has erroneously proceeded and reconsidered point II of the enacting clause of Decision AA. UZH. No. 505/2018 of 05.11.2019, of the Court of Appeals.*

In the case file the Municipality of Gjakova was not a party to the proceedings and there is no evidence that this request was sent to the latter."

59. The Supreme Court regarding the answer to the second question (2) stated that: *"as to the information for point 2) of your request, as a court administration we cannot comment on the court decision of the panel of this court and give any professional answer regarding the allegations of the Municipality of Gjakova, whether the use of this legal remedy is allowed, this it is a matter of professional assessment and competence of the panel of judges. The position of this court, according to the challenged judgment, until it is proven otherwise".*

Applicant's allegations

60. The Applicant alleges that the challenged Judgment [UPP-APP. No. 1/2020] of 28 October 2020 of the Supreme Court, was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR. Consequently, the Applicant alleges that by the challenged Judgment, the following have been violated: (i) the principle of adversarial proceedings and the principle of equality of arms in the proceedings; and (ii) the principle of legal certainty related to the right to a reasoned court decision.

(i) Regarding the Applicant's allegation of violation of the principle of adversarial proceedings and equality of arms in the proceedings

61. Initially, the Applicant states that while the interested party, Afrim Radoniqi, submitted a request for repetition of the procedure, the latter should be sent to the Applicant, namely the Municipality of Gjakova, as they had the status of "*the interested party*" in all proceedings conducted before the regular courts. Therefore, the Applicant, the Municipality of Gjakova, was prevented and denied the filing of response to that request and was prevented from submitting counter-evidence.

62. Accordingly, the Applicant states that as a result of not notifying the Municipality of Gjakova with the claimant's proposal for repetition of the procedure, the principle of equality of arms and the principle of adversarial proceedings have been violated. The Applicant states that according to the ECtHR, Article 6.1 of the Convention obliges the courts to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice of whether they are relevant to its decision (see, *similarly*, the ECtHR case, *Kraska v. Switzerland*, Judgment of 19 April 1993; *Barberà, Messegué and Jabardo v. Spain*, Judgment of 6 December 1988).

63. The Applicant states that in such an analogous situation, the Constitutional Court decided with Judgment in case no. KI193/19, Applicant *Salih Mekaj*. According to the Applicant, in the summary of this Judgment, the Court stated that that the principle of equality of arms and the principle of adversarial proceedings, as essential elements of the right to a fair and impartial trial, require the courts to strike a fair balance between the parties to the proceedings, as well as to enable them to have a substantive confrontation of claims and arguments.

64. Therefore, the Applicant further states that the analogy between the cases related to the procedural violations that preceded the challenged Judgment and the case KI193/19, with the Applicant *Salih Mekaj* is present. Article 6 of the ECHR [Right to a fair trial] in defining his civil rights and obligations states that "*everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*".

(ii) Regarding the allegation of violation of the principle of legal certainty related to the right to a reasoned court decision

65. The Applicant initially states that the challenged Decision is arbitrary, which violates the principle of legal certainty, since in the reasoning of the challenged decision is not mentioned any reasoning regarding the permission to repeat the procedure. Such an action, namely silence, the total lack of justification of the admissibility of the request for repetition of the procedure by the Supreme Court, is an unconstitutional action.

66. The Applicant further states that the Constitutional Court in its decision found that the essential function of a reasoned decision, according to the ECtHR, is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision gives an opportunity to the party to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be a public scrutiny of the administration of justice (see, *Hirvisaari v. Finland*, no. 49684/99, Judgment of 27 September 2001, paragraph 30; T*atishvili v. Russia*, application no. 1509/02, Judgment of 22 February 2007, paragraph 58; case of Court K197/16, Applicant "*IKK Classic*", Judgment of 9 January 2018, paragraph 46; and KI22/16, *N. Husaj*, Judgment of 9 June 2017, paragraph 40). Due to the failure to notify the Municipality of Gjakova about the claimant's proposal for repetition of the procedure, the principle of equality of arms and the principle of adversarial procedure have been violated. According to the ECtHR, Article 6.1 of the Convention obliges the courts to conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice of whether they are relevant to its decision (see, the ECtHR case, *Kraska v. Switzerland*, Judgment of 19 April 1993; *Barbera, Messegue and Jabardo v. Spain, judgment of 6 December 1988).* According to the Applicant, this failure of the Supreme Court is a sufficient basis for the Constitutional Court to approve this constitutional complaint.

67. The Applicant further states that the challenged Judgment in its enacting clause states: *"The proposal of the claimant for repetition of the procedure is allowed, …"*, whereas according to the Law on Administrative Conflicts, the legal institution of repetition of the procedure is not foreseen. The application of this non-existent institution in the administrative conflict procedure is not defined, since Law No. 03/L-202 on Administrative Conflicts, in Article 55, provides for review (not repetition of the procedure).

68. In addition, the Applicant states that the Supreme Court in this procedure, as there was no legal or factual basis to review the procedure or to repeat the procedure, has not provided any legal basis for review under Article 55 of the

LAC. The absolute lack of reasons why the "*proposal for repetition of the procedure*" is allowed represents a sufficient factual and legal basis that makes the challenged Judgment unlawful, creates legal uncertainty that represents a violation of basic constitutional principles.

69. The Applicant further states that even for the review estabished in Article 55 of the LAC, there is no basis for its admissibility, as the Supreme Court would have to consider the requirements of admissibility and effectiveness set out in Article 55.2 and articles 56 and 57 of the LAC. Whereas, the Supreme Court is satisfied with giving a general reasoning: *"Since this judgment annulled the judgment of the Supreme Court of Kosovo [ARJ UZVP. No. 15/2020] of 20 January 2020, by which the request for extraordinary review of the court decision was rejected as inadmissible, this court, assessing the reasons of the claimant given in the request for extraordinary review of the court decision, found that the latter are grounded".*

70. In the same line of argument, the Applicant states that the Constitutional Court must decide in this case that the Supreme Court of Kosovo "*applied the law in a manifestly erroneous manner*" and consequently had resulted in arbitrary and manifestly unreasonable conclusions towards it and that this arbitrary position of the Supreme Court sets a bad precedent, harmful to the legal system in the Republic of Kosovo.

71. Finally, the Applicant requests the Court: (I) to declare the constitutional complaint admissible; (II) to find a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, namely a violation of the principle of a fair trial under Article 6 of the ECHR; Article 31 [Right to a Fair and Impartial Trial] of the Constitution, the principle of legal certainty, the lack of necessary reasoning for a court decision, the violation of the principle of equality of arms and the principle of adversarial proceedings and the lack of reasoning of a court decision; (III) to declare invalid the Judgment of the Supreme Court of Kosovo [UPP-APP. No. 1/2020] of 28 October 2020; (IV) to remand the Judgment of the Supreme Court [UPP-APP. No. 1/2020] for reconsideration in accordance with the findings of this Judgment of the Constitutional Court; (V) to order the Supreme Court to notify the Constitutional Court, as soon as possible about the measures taken to implement the Judgment of the Court.

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.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with 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.
[….]

Law No. 03/L-202 on Administrative Conflicts

Article 21

The position of the party in an administrative conflict has the person, to whom the annulment of contested administrative act shall cause direct or indirect damages.

Article 30

1. The name of the court where the indictment is submitted, name, surname and residence, respectively the residence of the plaintiff shall be included in the indictment, the administrative act against which the indictment was addressed, and in which direction and volume the annulment of

administrative act has been proposed. Together with the indictment the original or a copy of the contested act shall be attached.

2. If through indictment return of thing or compensation of harm is required, a certain request shall be submitted in the viewpoint of the thing or amount of harm.

3. Together with the indictment, a copy of the indictment and attached documents shall be presented for the indicted body and to any interested person, if there is such.

Article 55
Reviewing

1. The interested party may request reviewing of the decision in effect, when:

1.1. the party is informed about new facts, or if it finds or creates opportunities to use new proves, on which base the conflict shall be solved in more favorable manner for it, if this facts or proofs were raised or used in previous court procedure;

1.2. the court decision came as a consequence of judge's penal act, the court employee or the decision has been issued by fraudulence act of the representatives or the authorizer of the party, his/her objector, representative or by the objector authorizer, whereas this action presents penal act;

1.3. the decision is based on issued act decision on penal or civil matter, whereas this judgment has been annulled later by a final court decision;

1.4. the document, on which the decision is based is falsified, or if the witness, expert or party during the hearing before the court has given a mendacity declaration and the court decision was based on this declaration;

1.5. the party finds or creates opportunities to use the previous decision issued in the same administrative conflict; and

1.6. the interested person was not allowed to take part in the administrative conflict.

2. Because of the circumstances under sub-paragraph 1.1 and sub-paragraph 1.5 of this paragraph the reviewing shall be allowed only if the party, without her/his blame, was not able to raise these circumstances in the previous procedure.

Article 60

1. On request for reviewing the court shall decide in a closed session.

2. The Court shall overrule the request with the decision if the court verifies that the request was submitted by an unauthorized person or the request was not submitted on time, or that the party has not made believable the existence of legal basis for reviewing.

3. If the court does not overrule the request under paragraph 2 of this Article, then the request shall be delivered to the contested party and interested persons, and shall ask them to respond to the request within fifteen (15) days.

Article 61

1. After the time-limit for response to the request for reviewing expires, the court shall decide on the request for reviewing by a judgment.

2. If the reviewing is allowed, the previous decision shall be in whole or partly annulled.

3. Previous procedural actions, which does not influence in reviewing reasons shall not be repeated.

4. By the judgment, by which the reviewing is allowed, shall be also decided on key issues.

Article 63
Other procedure provisions

If this law does not contain provisions for the procedures on administrative conflicts, the law provisions on civil procedures shall be used.

Article 53
[no title]

The court shall decide on the request for extraordinary review or the request for legal defense, as a rule, in a closed session, whereas the objected decision shall be reviewed only within the limits of the request.

Law Nr. 03/L-006 on Contested Procedure

Article 160
[no title]

160.1 A verdict compiled in written should have: summary, disposition, justification and guide on the right to file a complaint against the verdict.
160.2 The summary of the verdict should have: the name of the court, the name of the judge, the names of the parties and their address, the names of their legal representatives, brief narrative of the contesting issue and the amount, the ending day of the main hearing, the narrative of the parties and their legal representatives and with proxy that were present in the session of the kind as well as the day when the verdict was issued.
160.3 The verdict disposition consists of: decision which approves or rejects special requests dealing with issue at stake and accessing requests, decision for existence or non-existence of the proposed requests to compensate it with statement of claim as well as the decision on procedural expenses.
160.4 Justification of the verdict consists of: requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated.
160.5 The court specifically should show which provisions of the material right are applied in the case of deciding upon the requests from the parties. If necessary, the court will pronounce on the standing of the parties regarding the judicial basis for the contests, as well as for their proposals and turndowns, for which the court hasn't justified decisions issued earlier in the process.
160.6 In the contumacy verdict, verdict on the basis of pleading guilty, verdict on the basis of withdrawing the charges, or the verdict due to the lack of attendance, the justification consists of only the reasons for issuing the verdict of the kind.

Article 182

[…]

182.2 2 Basic violation of provisions of contested procedures exists always:

[…]

n) if the decision has leaks due to which it' can't be examined, especially if the disposition of the decision is not understandable or contradictory in itself with the reasoning of the verdict, or when the verdict has no reason or which gives no justification for the final facts, or which reasoning are unclear, contradictory, or if in the final facts there are contradictions between what is said in the verdict, the main document or the procedural records and of the document or the minutes of proceeding;

Admissibility of the Referral

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

73. In this respect, the Court initially refers to paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

Article 21

"[...]

4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

Article 113

"*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."

74. In addition, the Court also examines whether the Applicant has met the admissibility requirements as established in the Law. In this regard, the Court 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 requestfrom 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...".

75. Initially, The Court clarifies that, in accordance with Article 21.4 of the Constitution, the Applicant is entitled to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms, which apply to individuals as well as to legal persons (see cases of the Court, K110/20, Applicant "*Regional Water-Supply Company "Hidroregjioni Jugor" J.S.C. - Unit Malësia e Re Prizren*, Resolution on Inadmissibility of 5 October 2020, paragraph 35; case KI41/09, Applicant *University AAB-RIINVEST L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

76. Further, regarding the fulfillment of the abovementioned procedural criteria, the Court notes that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [UPP-APP. No. 1/2020] of 28 October 2020 of the Supreme Court, after having exhausted all legal remedies provided by Law. The Applicant has also clarified the fundamental rights and freedoms it alleges to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

77. Finally and after the review of the Applicant's constitutional complaint, the Court considers that the Referral cannot be considered as manifestly ill-founded on constitutional basis as established in paragraph (2) of Rule 39 of the Rules of Procedure (see, also ECtHR case *Alimuçaj v. Albania*, Application No. 20134/05, Judgment of 9 July 2012, paragraph 144, and see similarly the case of Court KI27/20, Applicant *Movement VETËVENDOSJE!*, Judgment of 22 July 2020, paragraph 43).

78. The Court also finds that the Applicant's Referral meets the admissibility criteria established in paragraph (1) of Rule 39 of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the criteria set out in paragraph (3) of Rule 39 of the Rules of Procedure.

Merits of the Referral

79. The Applicant alleges that the challenged Judgment [UPP-APP. No. 1/2020] of 28 October 2020 of the Supreme Court, was rendered in violation of its fundamental rights and freedoms guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. Consequently, the Applicant alleges that by the challenged Judgment the following have been violated: (i) the principle of adversarial proceedings and the principle of equality of arms in proceedings; and (ii) the principle of legal certainty as to the right to a reasoned court decision. In assessing the admissibility of these allegations, the Court will also apply the case law of the European Court of Human Rights (hereinafter: ECtHR), in accordance with which, the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

80. The Court first recalls that the Applicant alleges that the challenged Judgment of the Supreme Court violated its right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, namely the Applicant specifies that in its case have been violated: I. The principle of adversarial proceedings and the principle of equality of arms in the procedure, as a result of failure to notify it about the request for repetition of the procedure filed by the interested party, Afrim Radoniqi; and II. The principle of legal certainty related to the right to a reasoned court decision, regarding the reasoning for allowing the claimant's proposal for repetition of the procedure.

I. Regarding the allegation of violation of the principle of adversarial proceedings and equality of arms in the procedure

81. The Court first recalls that the Applicant relates its allegation of violation of the principle of equality of arms and the principle of adversarial proceedings to the failure to send a proposal for repetition of the proceedings submitted by the interested party, Afrim Radoniqi, and not giving the opportunity to submit a response to this request.

82. Consequently, in the light of the Applicant's allegations, the Court will elaborate on the general principles developed in the case law of the ECtHR regarding the adversarial principle and the principle of equality of arms.

83. Finally, the Court, in considering and elaborating on the general principles established through the case law of the ECtHR regarding the principle of adversarial proceedings and equality of arms, will consider and assess whether the cases of the ECtHR and of the Court mentioned by the Applicant in its Referral refers to similar factual and legal circumstances as those in its case and will also assess whether these cases are applicable in its case.

a. General principles according to the case law of the Court and of the ECtHR regarding adversarial principle and the equality of arms

84. The concept of a fair trial includes the fundamental right to a trial based on the principle of adversarial proceedings. At the same time, this principle is closely related to the principle of equality of arms (see, the ECtHR case *Regner v. Czech Republic*, Judgment of 19 September 2017, paragraph 146).

85. The Court, referring also to the case-law of the ECtHR, first reiterates that the principle of "*equality of arms*" is an element of a broader concept of a fair trial (see ECtHR case *Borgers v. Belgium*, no. 12005/86, Judgment of 30 October 1991, paragraph 24).

86. The ECtHR and the Court in case law emphasized that the principle of *"equality of arms"*, requires *"fair balance between the parties"* where each party must be afforded a reasonable opportunity to present his or her case, under conditions that do not place him/her at a substantial disadvantage *vis-a-vis* his/her opponent (see the cases of the ECtHR *Yvon v. France*, application no. 44962/98, Judgment of 24 July 2003, paragraph 31 and *Dombo Beheer B.V. v. the Netherlands*, application no. 14448/88, Judgment of 27 October 1993, paragraph 33 see also other references in this Judgment, *Öcalan v. Turkey* [GC],

paragraph 140, *Grozdanoski v. Former Yugoslav Republic of Macedonia,* application no. 2150/03, Judgment of 31 May 2007, see also the cases of the Court: KI230/19, with Applicant *Albert Rakipi,* Judgment of 8 January 2021, paragraph 98; KI239/19, with Applicant *Hakif Veliu,* Resolution on Inadmissibility of 19 March 2021, paragraph 112; KI52/12, Applicant *Adije Iliri,* Judgment of 5 July 2013, KI103/10, Applicant *Shaban Mustafa,* Judgment of 20 March 2012, paragraph 40*).*

87. The Court further recalls that the case law of the ECtHR has established that the requirement of equality of arms, in terms of a fair balance between the parties, applies in principle to both civil and criminal cases (see the case of the ECtHR). of: *Dombo Beher BV v. the Netherlands*, Judgment of 27 October 1993, paragraph 33). Also, the claims arising from the right to adversarial proceedings are in principle the same in both civil and criminal cases (see ECtHR case: *Werner v. Austria*, Judgment of 24 November 1997, paragraph 66).

88. In addition, the Court also notes that a fair trial also includes the right to a trial in accordance with the "*principle of adversarial proceedings*", a principle which is linked to the principle of "*equality of arms*". In this context, there has been considerable development in the case law of the ECtHR, in particular as regards the importance attached to appearances and the increase in public attention or sensitivity to the proper administration of justice (see *Borgers v. Belgium*, cited above, paragraph 24).

89. The right to adversarial proceedings means in principle the possibility for the parties to a criminal or civil trial to have knowledge of and comment on all evidence received or submissions submitted, even by an independent member of the national legal service, in order to influence the court decision (see ECtHR cases: *Ruiz-Mateos v. Spain*, Judgment of 23 June 1993, paragraph 63; *McMichael v. United Kingdom*, Judgment of 24 February 1995, paragraph 80; *Vermeulen v. Belgium*, Judgment of 20 February 1996, paragraph 33; *Lobo Machado v. Portugal*, Judgment of 20 February 1996, paragraph 31; *Kress v. France*, Judgment of 7 July 2001, paragraph 74). This request can also be applied before a Constitutional Court (see ECtHR case: *Milatová and Others v. the Czech Republic*, Judgment of 21 June 2005, paragraphs 63-66; *Gaspari v. Slovenia*, Judgment of 21 July 2009, paragraph 53).

90. Examples of non-compliance with the principle of equality of arms, namely the ECtHR found that this principle had been violated in cases where one of the parties had been placed at a clear disadvantage: the complaint of one party was not given to the other party, which there was therefore no opportunity to respond (see ECtHR case: *Beer v. Austria*, Judgment of 6 February 2001, paragraph 19).

b. Application of these principles in the case of the Applicant

91. The Court first recalls the allegation of the Applicant, the Municipality of Gjakova, of violation of the principle of equality of arms and the principle of adversarial proceedings as a result of not submitting the proposal for repetition of the procedure submitted by the interested party, Afrim Radoniqi, and not giving it the opportunity to submit a response to this request.

92. With regard to this allegation of the Applicant, the Court recalls that it requested information from the Supreme Court whether it had notified the Applicant, the Municipality of Gjakova, regarding the proposal to repeat the proceedings? How and what was the legal obligation for such a notice?

93. The Supreme Court in its response to the Court of 2 July 2021 stated the following:

> *"Regarding the requested information, we found that the claimant addressed this court with a request to review the decision [ARJ-UZVP. No. 15/2020] on 20.10.2020, because, according to the claimant, the Supreme Court has erroneously proceeded and reconsidered point II of the enacting clause of Decision [AA. UZH. No. 505/2018] of 05.11.2019, of the Court of Appeals.*
>
> *In the case file the Municipality of Gjakova was not a party to the proceedings and there is no evidence that this request was sent to the latter."*

94. The Court further places emphasis on (i) paragraph 3 of Article 60; and (ii) paragraph 1 of Article 61 of the Law on Administrative conflicts, which establish:

> *Article 60*
>
> *[...]*
>
> *3. If the court does not overrule the request under paragraph 2 of this Article, then the request shall be delivered to the contested party and interested persons, and shall ask them to respond to the request within fifteen (15) days.*
>
> *[...]*
>
> *Article 61*
>
> *1. After the time-limit for response to the request for reviewing expires, the court shall decide on the request for reviewing by a judgment.*

95. First, the Court notes that the Supreme Court in its reply of 2 July 2021, states that it has not submitted a request for repetition of the procedure to the Municipality of Gjakova. Also, the Supreme Court declares that the Municipality of Gjakova was not a party to the proceedings. Despite the answer given, the Court notes that there was an obligation to send the request for repetition of the procedure to the opposing party and interested persons, which derived from the abovementioned provisions of the Law on Administrative Conclicts

96. The Court recalls that the ECtHR and the Court in their case-law have emphasized that the principle of "*equality of arms*" requires "*a fair balance between the parties*", where each party must be given a reasonable opportunity to present its case in conditions which do not place it in considerably unequal position *vis-à-vis* the opposing party. In this regard, the Court considers that the

Supreme Court has failed to guarantee the application of the principle of equality of arms and the principle of adversarial proceedings, because the Applicant has been placed at a considerable disadvantage *vis-à-vis* the claimant, the interested party Afrim Radoniqi, being deprived of the opportunity to have a real and substantive confrontation with the arguments and allegations presented by the interested party, as an opposing party in the procedure.

97. The right to adversarial proceedings in principle means the possibility for the parties in the criminal or contested proceedings to be aware of and comment on all the evidence administered or on the submissions submitted, even by an independent member of the national legal service, as well as to influence the court decision. Thus, the Court considers that the obligation to notify the opposing party, by the courts, of the exercise of legal remedies against them, is not an end in itself. This obligation is a necessary procedural step to enable the parties to be treated equally, to be able to challenge the claims and arguments of the opposing party and to present their case effectively (see the case of Court KI193/19, with Applicant *Salih Mekaj*, Judgment of 31 December 2020, paragraph 59).

98. Therefore, the Court considers that this non-submission of the abovementioned request and the lack of any opportunity for the Applicant, the Municipality of Gjakova, to respond to the request for repetition of the procedure of the interested party, Afrim Radoniqi, constitutes a violation of principles of adversarial proceedings and equality of arms as guaranteed by Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the ECHR (see, *mutandis mutandis*, case of Court KI209/19, by Applicant *Memli Krasniqi*, Judgment of 26 November 2020, paragraph 57).

99. The Court reiterates that examples of non-compliance with the principle of equality of arms, namely the ECtHR has found that this principle has been violated in cases where one of the parties has been placed in a clearly unfavorable position: the complaint of one party has not been served on the other; which thus failed to respond (see, case of ECtHE: *Beer v. Austria*, Judgment of 6 February 2001, paragraph 19).

100. Accordingly, the Constitutional Court considers that this failure of the Supreme Court constitutes an insurmountable procedural flaw, as the Applicant has been deprived of his right to a fair trial, which is guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR.

101. Therefore, the Court finds that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the ECHR.

102. The Court further clarifies that when it examines the proceedings as a whole, in conjunction with Article 31 of the Constitution, first of all assesses: 1) whether the Applicant has had the opportunity to present arguments and evidence, which it considers relevant to its case during the various stages of the proceedings; 2) if it has been given the opportunity to effectively challenge the arguments and evidence presented by the opposing party, and if all the arguments which were relevant to the resolution of its case, viewed objectively, were duly heard and examined by the courts; 3) whether the factual and legal reasons against the

challenged decisions were examined in detail; 4) if according to the circumstances of the case, the proceedings, viewed in their entirety, were fair (see, *mutatis mutandis*, the case of the Court: KI193/19, Applicant *Salih Mekaj*, cited above, paragraph 62; no. KI118/17, Applicant *Sani Kervan and others*, Resolution on Inadmissibility, of 16 February 2018, paragraph 35; see also *Garcia Ruiz v. Spain*, ECtHR, Application no. 30544/96, Judgment of 21 January 1999, paragraph 29).

103. Given that the Court has found a violation of the principles of adversarial proceedings and of equality of arms in the context of the right to a fair trial guaranteed by Article 31 of the Constitution and in conjunction with Article 6 of the ECHR, it does not consider it necessary to examine separately the allegations regarding the principle of legal certainty related to the right to a reasoned court decision, regarding the reasoning for allowing the claimant's proposal for repetition of the procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in its session held on 9 September 2021, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO DECLARE Judgment [UPP-APP. No. 1/2020] of 28 October 2020, of the Supreme Court of Kosovo invalid;

IV. TO REMAND Judgment [UPP-APP. No. 1/2020] of 28 October 2020, of the Supreme Court of Kosovo, for reconsideration in accordance with the Judgment of this Court;

V. TO ORDER the Supreme Court of Kosovo to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, by 9 March 2022, about the measures taken to implement the Judgment of this Court;

VI. TO REMAIN seized of the matter pending compliance with that order;

VII. TO NOTIFY this Judgment to the parties, and in accordance with Article 20 (4) of the Law, to publish it in the Official Gazette;

VIII. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Radomir Laban	Gresa Caka-Nimani