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

Prishtina, on 2 December 2021
Ref. no.:AGJ 1909/21

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JUDGMENT

in

Case No. KI54/21

Applicant

Kamber Hoxha

Constitutional review of Decision Rev. No. 393/2020 of the Supreme Court of Kosovo, of 1 February 2021

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 Kamber Hoxha, residing in Podujeva, who is represented by Xhavit Bici, lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision [Rev. no. 393/2020] of 1 February 2021 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) in conjunction with Decision [Ac. no. 2980/2016] of 19 May 2020 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals).

3. The Applicant received the challenged Decision of the Supreme Court on 2 March 2021.

Subject matter

4. The subject matter is the constitutional review of the challenged Decision, whereby the Applicant alleges that his fundamental rights and freedoms guaranteed by Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals) and 47 (Individual Requests) of 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 16 March 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral, which he submitted by mail service on 16 March 2021.

7. On 22 March 2021, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama - Hajrizi, (Presiding), Gresa Caka-Nimani and Safet Hoxha.

8. On 24 March 2021, the Court notified the Applicant's legal representative about the registration of the Referral and requested him to submit to the Court: (i) the power of attorney for representation and (ii) copies of the decisions of the regular courts.

9. On 2 April 2021, legal representative submitted the power of attorney for representation and the documents requested by the Court.

10. 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. Based on paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court of 17 May 2021, it was determined that Judge Gresa Caka-Nimani will take over

the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.

11. On 20 May 2021, the Court notified the Supreme Court about the registration of the Referral.

12. 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 submitted his resignation from the position of judge in the Constitutional Court.

13. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision no. KK160/21, determined that Judge Gresa Caka-Nimani be appointed Presiding judge of the Review Panels in cases where she was appointed as a member of the Panel, including the current case.

14. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, of 17 May 2021, 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.

15. On 28 June 2021, the President of the Court Gresa Caka-Nimani, by Decision KSH.KI54/21 appointed Judge Selvete Gërxhaliu-Krasniqi a member of the Review Panel instead of Arta Rama-Hajrizi, whose term as a judge had ended on 26 June 2021.

16. On 4 November 2021, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the admissibility of the Referral. On the same day, the Court unanimously decided that the Applicant's Referral is admissible and that the Decision [Rev. no. 393/2020] of the Supreme Court, of 1 February 2021, is not in accordance with 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 (hereinafter: the ECHR).

Summary of facts

17. Starting from 1999, the Applicant was in employment relationship, as correctional officer in the Correctional Service, Detention Center in Lipjan (hereinafter: the Employer).

18. On 17 June 2004, the Employer issued a Decision on termination of the employment relationship as a result of a disciplinary violation during working hours established by the Internal Disciplinary Code of the Correctional Service. The notice on termination of employment relationship by the Employer specified that as a result of the Applicant's sleeping during working hours, one of the prisoners had committed suicide. The abovementioned decision on termination of the employment relationship was based on UNMIK Regulation 2001/36 on the Kosovo Civil Service. It is noted from the case file also that at the

time of termination of the Applicant's employment relationship, the Detention Centre in Lipjan was under the administration of the UNMIK Department of Justice.

19. On 13 July 2004, the Applicant filed an appeal with the second instance body of the Employer against the abovementioned decision of the Employer on the termination of the employment relationship.

20. On 26 January 2005, the second instance body of the Employer had rejected the Applicant's appeal. The decision of the second instance body of the Employer, based on UNMIK Regulation 2001/36, and signed by the chairperson of the appeals board did not contain legal advice.

21. On 2 February 2005, the Applicant filed a statement of claim with the Municipal Court in Lipjan (hereinafter: the Municipal Court) requesting the annulment of the decision of 17 June 2004 of the Employer on termination of the employment relationship and the Decision of 26 January 2005, of the Employer's second instance body for the rejection of his appeal.

22. On 29 March 2005, the Municipal Court by Judgment [C. no. 27/2005]: (i) approved the Applicant's statement of claim; (ii) annulled the abovementioned decisions of 17 June 2004 and 26 January 2005, respectively of the Employer; and (iii) obliged the Employer to reinstate the Applicant to his previous place of work by recognizing him all rights deriving from this employment relationship from 30 June 2004 until his reinstatement to his previous place of work.

23. On an unspecified date, the Employer filed an appeal against the abovementioned Judgment of the Municipal Court, with the District Court in Prishtina (hereinafter: the District Court).

24. On 24 November 2006, the District Court by Decision [Ac. no. 990/2005] approved the Employer's appeal as grounded and quashed the Judgment of the Municipal Court, C. no. 27/2005 of 29 March 2005, remanding the case for retrial to the first instance court. The District Court found that the Applicant has the status of a civil servant, and in this context, the Municipal Court has erroneously found and determined the factual situation. Subsequently, the District Court found that the Applicant against the Decision of 17 June 2004, of the Employer for termination of employment relationship, should file an appeal to the Independent Oversight Board of Kosovo (hereinafter: IOBK) as a second instance body.

25. As a result of the abovementioned instruction of the District Court, on 14 April 2007, the Municipal Court by Decision [C. no. 1/2007] decided to terminate the procedure regarding the Applicant's statement of claim, in this court, until the issuance of the decision by the IOBK.

26. On 10 December 2007, the IOBK by Decision [no. 02/344/2007] dismissed the Applicant's appeal and found that the instruction of the District Court given by the Decision [Ac. no. 990/2005] of 24 November 2006 does not stand, because at the time when the Applicant had committed the disciplinary violation, the IOBK has not yet been established.

27. On 25 September 2008, the Municipal Court by Decision [C. no. 1/2007], decided to suspend the procedure related to the Applicant's statement of claim filed in this court, as a result of the Employer's request for the annulment of the decision in duration of six (6) months.

28. Based on the case file, it is noted that the Municipal Court, on 21 January 2010, by Judgment [C. no. 1/2007] decided to: (i) approve the Applicant's statement of claim; and (ii) oblige the Employer to reinstate the Applicant to his previous place of work by recognizing all of his rights deriving from his employment relationship.

29. On an unspecified date, the Employer filed an appeal against the abovementioned Judgment of the Municipal Court.

30. On 7 March 2014, the Court of Appeals by Judgment [Ac. no. 1580/2012] partially accepted the Employer's appeal and quashed the Judgment of the Municipal Court only as regards to the enacting clause by which the Employer was obliged to recognize to the Applicant all the rights deriving from his employment relationship.

31. On an unspecified date, the Employer filed a revision with the Supreme Court against the second point of the enacting clause of the abovementioned Judgment of the Court of Appeals.

32. On 6 January 2015, the Supreme Court by Decision [Rev. no. 270/2014] accepted the Employer's revision and quashed the second point of the enacting clause of the Judgment of the Court of Appeals [Ac. no. 1580/2012] of 3 March 2014 and pertinent to this point remanded the case for retrial at the first instance court.

33. On 3 March 2016, the Basic Court in Prishtina, Branch in Lipjan (hereinafter: the Basic Court) by Judgment [C. no. 170/14] approved the Applicant's claim in entirety obliging the Employer to reinstate the Applicant to his work position as correctional officer with all rights from the employment relationship, compensating the monthly income from 30 June 2004 until the date of his reinstatement at his work place.

34. On an unspecified date, the Employer filed an appeal against Judgment [C. no. 170/14] of the Basic Court due to violation of the provisions of the contested procedure, erroneous and incomplete determination of the factual situation, and erroneous application of substantive law.

35. On 19 May 2020, the Court of Appeals by Decision [Ac. no. 2980/16]: (i) approved the Employer's appeal; (ii) quashed Judgment C. no. 170/14, of 3 March 2016 of the Basic Court; and (iii) dismissed the Applicant's claim after finding that the Applicant's claim based on Article 83, paragraph 1 of the Law on Basic Rights from Employment Relationship, of 28 September 1989 of the SFRY (hereinafter: LBRER) was filed out of the legal timeline set by this provision. Paragraph 1 of Article 83 of the LBRER stipulated that if an employee who is not satisfied with the final decision of the competent authority or if this authority does not render a decision within 30 (thirty) days from the date of submission

of the request, he has the right to seek the protection of his rights before the competent court within a time limit of 15 (fifteen) days.

36. In this case the Court of Appeals found that *"[...] the claim of [the Applicant] for the annulment of the decision and reinstatement to his work place with other rights from the employment relationship, is out of time, since from the case file is found that the claimant filed the claim with the first instance court for the annulment of the decision and for his reinstatement at his work place, on 02.02.2005, while the claimant filed the appeal against the decision of 17.06.2004, on 13.07.2004, from which it results that the claim was filed after the legal timeline for filing the claim has passed, the fact that the body according to the appeal has decided out of the prescribed legal timelines (26.01.2005) cannot reset the timelines provided by law for filing a claim, because the claimant had to wait 30 days from filing the appeal, if within this period the relevant body has not taken a decision on the appeal, he was obliged to have filed the claim within the next 15 days"*.

37. The Court of Appeals justified its reasoning for the application of Article 83 of the LBRER by stating that this law was in force at the time when the Applicant's employment relationship has been terminated.

38. On an unspecified date, against the Decision [Ac. no. 2980/16] of 19 May 2020, of the Court of Appeals, the Applicant filed a revision with the Supreme Court due to substantial violations of the provisions of the contested procedure and erroneous application of the substantive law, proposing that the Decision of the Court of Appeals be quashed and uphold the judgment of the first instance, namely the Judgment [C. no. 174/14] of 3 March 2016, of the Basic Court. In his revision, the Applicant regarding the finding of the Court of Appeals that his statement of claim filed in the Municipal Court, among other things had specified that *"the issue of filing a claim has been previously assessed by the first instance court with the Judgment C. no. 27/2005, of 29.03.2005, the District Court in Prishtina with Decision AC. No. 990/2005 of 24.11.2006, the Basic Court in Prishtina-Branch in Lipjan with Judgment C. no. 170/14 of 03,03.2016, the Court of Appeals of Kosovo with Judgment Ac. no. 1580/2012 of 07.03.2014, the Supreme Court of Kosovo with the Decision Rev. No. 270/2014 of 06.01.2015, and by many judges of all instances have reviewed this case and all have assessed the claim as timely, while the current panel after decades has found that the claim is out of time"*.

39. On 1 February 2021, the Supreme Court by Decision [Rev. no. 393/2020] rejected the Applicant's revision as ungrounded.

40. The Supreme Court found that the Court of Appeals had *"correctly applied the provisions of the contested procedure and the substantive law, when it approved the appeal of [the Employer] and decided to dismiss the claim of [the Applicant] as out of time, and that the court of second instance has given sufficient reasoning for the relevant facts for a fair trial of this legal matter, which is also accepted by this Court"*.

41. The Supreme Court found that the Applicant filed his claim of 2 February 2005 with the Municipal Court, against the Decision of the second instance body of

the Employer of 26 January 2005, out of time, on the grounds that the second instance body had decided outside the legal time limit of thirty (30) days. According to the Supreme Court, the time limit set forth in paragraph 1 of Article 83 of the LBRER *"is a preclusive time limit, and with the expiration of the timeline the judicial right is lost"* and that consequently this time limit cannot be restored.

Applicant's allegations

42. The Applicant alleges that the challenged Decision violated his fundamental rights and freedoms guaranteed by Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.

43. The Applicant in his Referral states that *"the Supreme Court has violated the provisions of Articles 32 and 54 of the Constitution of Kosovo, denying him the right to file a claim according to the deadline given to the claimant when deciding by the body of the second instance, hence the claim was filed on time because the body of the second instance decided on 26.01.2005, while the claim was filed on 02.02.2005, respectively six days after it was decided as per the appeal"*.

44. Consequently, the Applicant specifies that the non-acceptance of the deadline of the claim by the Supreme Court constitutes *"a violation of the rights to appeal, file a claim or defence, hence the law has been violated to the detriment of the Applicant"*.

45. Finally, the Applicant requests the Court to: (i) declare the Referral admissible; (ii) annul the Decision of the Supreme Court [Rev. no. 393/2020] of 1 February 2021 and the Decision [Ac. no. 2980/2016] of the Court of Appeals of 19 May 2020.

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31
[Right to Fair and Impartial Trial]

"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law".

Article 32
[Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

Article 54
[Judicial Protection of Rights]

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

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".

UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, amended by Regulation 2000/592000/59

"Section 1
Applicable Law

1.1 The law applicable in Kosovo shall be:
(a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder and

(b) The law in force in Kosovo on 22 March 1989.

In case of conflicts, the regulations and subsidiary instruments issued thereunder shall take precedence.

1.2. If a court of competent jurisdiction or a body or person required to implement a provision of the law determines that a subject matter or situation is not covered by the laws set out in section 1.1 of the present regulation but is covered by another law in force in Kosovo after 22 March 1989 which is not discriminatory and which complies with section 1.3 of the present regulation, the court, body or person shall, as an exception, apply that law.

1.3. In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards [...]."

Law on Basic Rights from Employment Relationship, of the SFRY of 28 September 1989

"An employee who is not satisfied with the final decision of the competent authority or if this authority does not render a decision within 30 (thirty) days from the date of submission of the request, he/she has the right to seek the protection of his rights before the competent court within a time limit of 15 days..."

Assessment of the admissibility of Referral

46. The Court first examines whether there are fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

47. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]
7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

48. In addition, the Court also refers to the admissibility criteria, as further specified in the Law. In this respect, the Court first 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 [...]."

49. As to the fulfilment of these criteria, the Court first states that the Applicant is an authorized party, who is challenging an act of a public authority, namely the Decision [Rev. no. 393/2020] of the Supreme Court, of 1 February 2021, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which he alleges to have been violated pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

50. The Court also finds that the Applicant's Referral has fulfilled the admissibility criteria set out in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. The same cannot be declared inadmissible on the basis of the conditions set out in paragraph (3) of Rule 39 of the Rules of Procedure.

51. Furthermore and finally, the Court considers that this Referral is not manifestly ill-founded as set out in paragraph (2) of Rule 39 of the Rules of Procedure and, consequently, it must be declared admissible and its merits examined.

Merits of the Referral

52. The Court recalls that on 17 June 2004, the Applicant's Employer issued a Decision on termination of his employment relationship as a result of a disciplinary violation during working hours. As a result, on 13 July 2004, the Applicant filed an appeal with the second instance body of the Employer against the Employer's decision on termination of the employment relationship. On 26 January 2005, respectively, more than six (6) months later, the second instance body rejected the Applicant's appeal. As a result of the decision of the second instance body of the Employer, the Applicant filed a claim in the Municipal Court, requesting the annulment of the Decision of 17 June 2004 of the Employer for termination of employment relationship. The Municipal Court by Judgment [C. no. 27/2005] of 29 March 2005 had: (i) approved the Applicant's statement of claim; (ii) annulled the abovementioned decisions of 17 June 2004 and 26 January 2005, respectively of the Employer; and (iii) obliged the Employer to reinstate the Applicant to his previous place of work, acknowledging to him all the rights deriving from this employment relationship starting from 30 June 2004, until his return to his previous place of work. As a result of the Employer's appeal against the Judgment of the Municipal Court, the District Court by the Decision [Ac. No. 990/2005] of 24 November 2006, approved the Employer's appeal as grounded and remanded the case for retrial to the Municipal Court, finding that the Applicant had the status of a civil servant and was therefore obliged to file an appeal at the IOBK as a second instance body. As a result of the abovementioned instruction of the District Court, the Municipal Court, on 14 April 2007, terminated the procedure with regard to the Applicant's statement of claim, until the issuance of the decision by the IOBK. However, on 10 December 2007, the IOBK rejected the Applicant's appeal with

the reasoning that the instruction of the District Court was erroneous and that the Applicant is not entitled to file an appeal with the IOBK, as the latter had not been established at the time when the Applicant committed the disciplinary violation. Based on the case file, it results that the matter of the Applicant's statement of claim was remanded to the Municipal Court for trial, and the latter by Judgment [C. no. 1/2007] of 21 January 2010 approved the Applicant's statement of claim and had decided to reinstate the latter to his previous place of work. As a result of the appeal filed by the Employer, the Court of Appeals by Judgment [Ac. no. 1580/2012] of 7 March 2014 has partially approved the appeal of the latter, and quashed the Judgment of the Municipal Court, of 21 January 2010, only with regard to the second point of the enacting clause which was related to the obligation of the Employer to recognize all his rights deriving from his employment relationship. The Employer had submitted a revision against this Judgment of the Court of Appeals, to the Supreme Court and the latter by Decision [Rev. no. 270/2014] of 6 January 2015, had accepted his revision as grounded and had quashed the second point of the enacting clause of the Judgment of the Court of Appeals [Ac. no. 1580/2012] of 7 March 2014 remanding the case with regard to this point for retrial to the first instance. The Basic Court again, by Judgment [C. no. 174/14] of 3 March 2016, had approved the Applicant's statement of claim in its entirety and had obliged the Employer to reinstate the Applicant to his previous place of work with all rights from his employment relationship. The Court of Appeals by Decision [Ac. no. 2980/16] of 19 May 2020: (i) approved the Employer's appeal; (ii) quashed Judgment [C. no. 170/14] of 3 March 2016 of the Basic Court; (iii) dismissed the Applicant's claim after finding that the Applicant's claim, pursuant to Article 83, paragraph 1 of the LBRER of 28 September 1989 of the SFRY, had been filed out of the legal time limit set by this provision. Respectively, based on this provision, the Court of Appeals had interpreted and subsequently found that if the employee, respectively the Applicant is not satisfied with the final decision of the competent body, namely the Decision of 17 June 2004, or if this authority does not issue a decision, namely the second instance body, within 30 (thirty) days from the date of submission of the request, he/she has the right to seek the protection of his rights before the competent court within a time limit of 15 days. Consequently, the Court of Appeals found that the Applicant based on this provision had to submit the request to the Municipal Court within fifteen days from the expiration of the thirty-day period from the day of filing his appeal with the second instance body of the Employer. As a result, the Applicant filed a revision against the Decision of the Court of Appeals, in the Supreme Court, and the latter by Decision [Rev. no. 393/2020] of 1 February 2021 had rejected his revision as ungrounded. Similar to the Court of Appeals, the Supreme Court found that the Applicant filed his statement of claim of 2 February 2005 in the Municipal Court, against the decision of the second instance body of the Employer of 26 January 2005, out of the time limit set out in paragraph 1 of Article 83 of LBRER. The Supreme Court also confirmed that the LBRER was the law in force at the time when the Applicant had established his employment relationship with the Employer, and according to the aforementioned provision of this law, the time limit set out in this provision, namely paragraph 1 of Article 83 of LBRER *"is a preclusive deadline, and after the deadline the judicial right is lost"* and consequently this deadline cannot be restored.

53. The Applicant challenges the abovementioned findings by the Decisions of the Court of Appeals and the Supreme Court alleging violation of Article 32 of the Constitution, in conjunction with Article 54 of the Constitution. The Applicant in his Referral specifies that he was *"[...] denied [the right] to file a claim according to the deadline given to the claimant when deciding by the body of the second instance, hence the claim was filed on time because the body of the second instance decided on 26.01.2005, while the claim was filed on 02.02.2005, respectively six days after it was decided as per the appeal"*. Consequently, the Applicant specifies that the non-acceptance of the deadline of the claim by the Supreme Court constitutes a violation of his right *"to appeal, file a claim or defence, hence the law has been violated to the detriment of the Applicant"*.

54. The Court further notes that the Applicant has not alleged a violation of his right to a fair and impartial trial, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR. However, based on the factual and legal circumstances of the case, the Court notes that in addition to his allegation of violation of Article 32 of the Constitution, in conjunction with Article 54 of the Constitution, the allegations raised by the Applicant in his Referral incorporate elements of the right of "access to court" as an integral part of the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

55. In terms of dealing with the allegations of the Applicant within the scope of Article 36 of the Constitution in conjunction with Article 6 of the ECHR, the Court, referring to its case law and that of the European Court of Human Rights (hereinafter: the ECtHR) emphasizes that it does not consider itself bound by the characterisation of the alleged violations given by the Applicant. By virtue of the *juria novit curia* principle, the Court is the master of the characterisation of the constitutional issues that a case may include, and may consider of its own motion the respective complaints, relying on provisions or paragraphs which the parties have not expressly invoked (see in this context the case of the Court, KI48/18, Applicant *Ahmet Frangu*, Judgment of 22 July 2020, paragraph 81).

56. In addition, based also on the case law of the ECtHR, a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments expressly relied on by the parties (see the case of the ECtHR *Talpis v. Italy*, Judgment of 18 September 2017, paragraph 77 and references cited therein).

57. Therefore, and in the following, the Court will address the Applicant's allegations from the point of view of the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, applying the principles established with the case law of the ECtHR, in which case the Court in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged that *"human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights"*.

58. In this regard, the Court first notes that the case law of the ECtHR and of the Court has consistently considered that the fairness of the proceedings is assessed

based on the proceedings as a whole (see case of the Court KI62/17, Applicant: *Emine Simnica*, Judgment of 29 May 2018, paragraph 41; and KI20/21, Applicant *Violeta Todorović*, Judgment of 13 April 2021, paragraph 38; see also, ECtHR Judgment, *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 October 1988, paragraph 68). Therefore, in the procedure of assessing the grounds of the Applicant's allegations, the Court will adhere to these principles.

59. In this regard and in order to address the Applicant's allegations, the Court will elaborate on the general principles regarding the right of "access to a court" guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, insofar as they are relevant to the circumstances of the present case, in order to assess the applicability of these Articles, and then to proceed with the application of these general principles, in the circumstances of the present case.

I. General principles regarding the right of "access to a court" guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR as well as the relevant case law

(i) General principles

60. With regard to the right of "access to a court", a right guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, the Court first notes that it already has a case law, which is built on the principles established by the case law of the ECtHR (including but not limited to cases *Golder v. The United Kingdom,* Judgment of 21 February 1975; *Běleš and Others v. Czech Republic,* Judgment of 12 November 2002; *Miragall Escolano and Others v. Spain,* Judgment, 25 January 2000; and *Naït-Liman v. Switzerland,* Judgment of 15 March 2018.) Having said that, the cases of the Court in which the Court has affirmed the principles established by the ECtHR and has applied the same in the cases for review before the Court, including but not limited to cases KI62/17, Applicant *Emine Simnica* [Judgment of 29 May 2018]; KI224/19 Applicant *Islam Krasniqi* [Judgment of 10 December 2020] and KI20/21 Applicant *Violeta Todorović* [Judgment of 13 April 2021].

61. In this regard, the Court first refers to the case law of the ECtHR, respectively case *Golder v. the United Kingdom*, where was emphasized that *"the right of access to the court constitutes an element which is inherent in the right stated by Article 6 paragraph 1 [of the ECHR]. Article 6 paragraph 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way this Article embodies the "right to a court", of which the right of access, respectively the right to institute proceedings before courts in civil matters, constitutes one aspect of this right only". (See the case of the ECtHR, Golder v. the United Kingdom*, cited above, paragraphs 28-36).

62. In this context the Court emphasizes that the "right of access to a court" as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, stipulates that the parties to the proceedings must have an effective legal remedy that enables them to protect their civil rights (see cases of the Court K224/19, Applicant *Islam Krasniqi*, cited above, paragraph 35; and KI20/21, Applicant

Violeta Todorović, cited above, paragraph 41; see in this context also the cases of the ECtHR, *Běleš and Others v. Czech Republic,* cited above, paragraph 49; and *Naït-Liman v. Switzerland*, cited above, paragraph 112).

63. The Court further states the right of access to a court is not absolute, but it can be subject to limitations, since by its very nature it calls for regulation by the state, which enjoys a certain margin of appreciation in this regard (see in this regard the case of the Court KI20/21, Applicant *Violeta Todorović*, cited above, paragraph 44).

64. However, any limitations on the right of access to a court must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the "right to a court" is impaired. Such limitations will not be compatible if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see case of the Court KI20/21, Applicant *Violeta Todorović*, cited above, paragraph 45, and the ECtHR cases: *Sotiris and Nikos Koutras, ATTEE v. Greece*, Judgment of 16 November 2000, paragraph 15, and *Běleš and Others v. the Czech Republic,* Judgment of 12 November 2002, paragraph, 61).

(ii) The case law of the ECtHR

65. The Court, based on the circumstances of the present case, also refers to the relevant case law of the ECtHR, which refers to the right of access to a court, from the point of view of guaranteeing the principle of legal certainty and proper administration of justice, as basic principles of rule of law of law in a democratic society.

66. In its case law the ECtHR had specified that the rules which set out the formal steps to be taken and the time limit to be observed in filing a complaint were intended to ensure a proper administration of justice and were to be examined accordingly, and in particular the principles of legal certainty (see the case of *Cañete de Goñi v. Spain*, Judgment of 15 October 2002, paragraph 36). That being so, the ECtHR had specified that rules in question, or their application, should not prevent litigants from using an available legal remedy (see in this context the case of the ECtHR *Miragall Escolano and Others v. Spain*, Judgment of 25 January 2000, paragraph 36). The ECtHR also noted that each case should be considered in the light of the circumstances and specific elements of the proceedings in that case (see case *Kurşun v. Turkey*, Judgment of 30 October 2018, paragraphs 103-104). In this context, the ECtHR further emphasized that in applying the procedural rules, the courts should avoid both excessive formalism that would preclude fair process and excessive flexibility that would make the procedural criteria set by law as invalid (see the case of *Hasan Tunç and Others v. Turkey*, Judgment of 31 January 2017, paragraphs 32-33).

67. In summary, the ECtHR in the case of *Zubac v. Croatia* stated that *"observance of formalised rules of civil procedure [...] is valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and*

respect for the court (see the case of *Zubac v. Croatia* [GC], Judgment of 5 April 2018, paragraph 96). The ECtHR in this case had also underlined that "*however, the right of access to court is considered to have been violated at the moment when the rules cease to be in the service of legal certainty and proper administration of justice and consequently create a barrier which prevents the litigants from having their case tried on their merits by the competent court* (paragraph 98 of the Judgment in case *Zubac v. Croatia*). In the context of the latter, the ECtHR noted that in cases where public authorities have provided inaccurate or incomplete information, local courts should sufficiently take into account the specific circumstances of the case in order not to apply rules and their practice very rigidly (see in this context also the case of the ECtHR *Clavien v. Switzerland*, Judgment of 12 September 2017, paragraph 27 and *Gajtani v. Switzerland*, Judgment of 9 September 2014, paragraph 75).

68. On the other hand, the ECtHR in the case *Ivanova and Ivashova v. Russia* [Judgment of 26 January 2017] found that domestic courts should not interpret the law in an inflexible manner, which results in the imposition of an obligation which the litigants find unable to comply with. According to the ECtHR requesting that an appeal be lodged within one month of the date on which the registry office drafted a complete copy of the court decision - instead of the date from which the plaintiff was notified of the decision - resulted in that, that the expiration of the appeal period depended on a factor completely beyond the control of the plaintiff. Consequently, the ECtHR found that the right of appeal had to be effective from the day the plaintiff was informed about the complete text of the decision. In this case, the ECtHR had concluded that the challenged action was not proportionate to the aim of ensuring legal certainty and the proper administration of justice, and consequently found that it was her right of access to a court guaranteed by Article 6, paragraph 1 of the ECHR (see paragraphs 52-58 of the Judgment in case *Ivanova and Ivashova v. Russia*).

(iii) The case law of the Constitutional Court regarding the right of access to a court

69. The Court, as specified above, has applied the abovementioned principles established by the case law of the ECtHR in its case law. Specifically, the Court, same as above, referred to three cases of the Court, namely cases KI62/17 Applicant *Emine Simnica*, KI224/19 Applicant *Islam Krasniqi*, and KI20/21 Applicant *Violeta Todorović*, in which cases, the Court found violation of the right of access to a court guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

70. In this context, the Court refers to its last case, in which the latter, referring to and applying the abovementioned principles established by the case law of the ECtHR, found violation of the right of access to a court, as one of the principles of a fair trial in accordance with Article 31 of the Constitution and Article 6 of the ECHR. The circumstances of the Applicant's case in case KI20/21 are related to the fact that on 21 October 2019, the Applicant filed a request with the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, for the correction of a clear technical error of the Judgment of the Appellate Panel of 4 October 2019, claiming that she received the Judgment of the Specialized Panel of 24 May 2016, on 3 June 2016,

whilst she filed the appeal against this Judgment to the Appellate Panel on 15 June 2016, within the timeline of 21 days. On 1 October 2020, the Appellate Panel by the Decision had dismissed the Applicant's request as inadmissible, adding that the Judgment of the Appellate Panel of 4 October 2019 is final, although it concluded that the Applicant's statement that the Applicant received the Judgment of the Specialized Panel on 3 June 2016 was correct. The Court in examining the Applicant's allegation regarding the right of "access to a court" found that the Appellate Panel despite the fact that it found that the Applicant's allegations were correct, and consequently that her appeal has been filed according to the time limits defined by the law in force, the latter rejected the Applicant's request for the correction of error of the Appellate Panel with the Judgment of 4 October 2019, considering her request as a request for reconsideration of the court decision. As a result, the Constitutional Court found that the challenged Decision of the Appellate Panel made unable for the Applicant from having her appeal against the Judgment of the Specialized Panel handled on the merits despite the fact that her appeal was filed within the legal timeline. Consequently, the Court found that the Appellate Panel had restricted the Applicant's access to a court, which restriction had resulted in violation of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

II. Application of the abovementioned principles in the circumstances of the present case

71. The Court recalls that on 13 July 2004 the Applicant filed an appeal with the second instance body of the Employer against the Employer's decision on termination of the employment relationship of 17 June 2004. On 26 January 2005, respectively, more than six (6) months later, the second instance body issued a decision, by which it rejected the Applicant's appeal, and as a result of the decision of the second instance body of the Employer, the Applicant within fifteen (15) days had filed a claim in the Municipal Court, requesting the annulment of the Decision of 17 June 2004 of the Employer on the termination of employment relationship. The court in this case points out that the decision of the second instance body of the Employer did not contain legal advice regarding legal remedies. In addition, the Court also notes that the legal basis for the issuance of this Decision, which was mentioned in the preamble to this Decision, was UNMIK Regulation 2001/36 on the Civil Service. As a consequence of the Applicant's statement of claim, the Municipal Court considering his statement of claim on merits by Judgment C. no. 27/2005, of 29 March 2005, approved his statement of claim, obliging the Employer to reinstate the Applicant to his previous place of work. From the moment of filing the appeal against this Judgment of the Municipal Court by the Employer at the District Court respectively in 2005 until the issuance of the challenged Decisions [Ac. no. 2980/16] of 19 May 2020 of the Court of Appeals and [Rev. no. 393/2020] of 1 February 2021 of the Supreme Court, the issue of the Applicant's statement of claim as elaborated in detail as above for fifteen (15) years was handled before the regular courts both in terms of permissibility and in terms of the merits of the statement of claim.

72. In this context, the Court, based on the procedural chronology of this case before the regular courts, and in terms of the "right of access" to a court, notes that the

Applicant has had access to the court throughout this period, up to the time of issuance of the Decision [Ac. no. 2980/16] of 19 May 2020, of the Court of Appeals by which it was decided that the Applicant's statement of claim be dismissed as out of time as this court based on Article 83, paragraph 1 of the LBRER, of 28 September 1989 of the SFRY had found that his statement of claim had been filed outside the legal time limit set by this provision. Respectively, the Court of Appeals, based on this provision, found that the Applicant had to file his statement of claim in the Municipal Court within fifteen (15) days from the expiration of the time limit of thirty (30) days, from the moment of filing his appeal to the second instance body of the Employer. In addition, the Supreme Court in rejecting the revision filed by the Applicant had confirmed the finding of the Court of Appeals by the abovementioned Decision of 19 May 2020.

73. The Court reiterates that the main reason for the rejection of the Applicant's statement of claim by the Court of Appeals and the Supreme Court, respectively, was because the latter interpreting and applying Article 83, paragraph 1 of the LBRER, of 28 September 1989 of the SFRY had concluded that his statement of claim had been filed outside the time limit set by this provision. According to the interpretation of the Court of Appeals and the Supreme Court, the Applicant should have filed his statement of claim in the Municipal Court within fifteen (15) days from the expiration of the time limit of thirty (30) days for submitting his appeal to the second instance body.

74. Having said that, the Court recalls that in the Applicant's circumstances: (i) the second instance body of the Employer had not issued a decision within thirty (30) days from the date of filing the Applicant's appeal against the Decision on termination of employment relationship, of 17 June 2004 of the Employer; (ii) but had issued a decision on 26 January 2005, respectively six (6) months after the submission of the Applicant's appeal to this body; and (iii) the Applicant against this Decision of the second instance body, issued on 26 January 2005 within fifteen (15) days, respectively on 2 February 2005 had filed a statement of claim with the Municipal Court.

75. Having said that, it remains to be determined whether the Decision [Ac. no. 2980/16] of 19 May 2020, of the Court of Appeals and the Decision [Rev. no. 393/2020] of 1 February 2021 of the Supreme Court, by which his statement of claim was found as out of time, effectively denying the Applicant the "right of access to a court" from the point of view of the principle of the rule of law in a democratic society, as well as the guarantees set out in Article 31 of the Constitution and Article 6 of the ECHR. In this regard and based on the circumstances of the present case, the Court will assess whether the interpretation and application of paragraph 1 of Article 83 of the LBRER by the Court of Appeals and the Supreme Court to dismiss the Applicant's statement of claim after fifteen (15) years of conduct of the contested procedure with regard to his statement of claim in this case (i) have denied him the right of access to a court and consequently (ii) have made unable for the Applicant from continuing the review of his case on the merits of Referral.

76. In this context, the Court refers to the findings made by the ECtHR by its case law, which, inter alia, stated that: (i) the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at

ensuring a proper administration of justice and the same are to be reviewed in compliance, in particular, with the principle of legal certainty (see the case of the ECtHR *Cañete de Goñi v. Spain*, cited above, paragraph 36); (ii) each case should be considered in the light of the circumstances and specific elements of the proceedings in that case (see case *Kurşun v. Turkey*, cited above, paragraphs 103-104); and (iii) courts should avoid both excessive formalism that would preclude fair process and excessive flexibility that would make the procedural criteria set by law as invalid (see case *Hasan Tunç and Others v. Turkey*, Judgment, cited above, paragraphs 32-33).

77. In addition, the Court, based on the views expressed by the case law of the ECtHR, will assess whether the Supreme Court from the point of view of proper administration of justice and respect for the principle of legal certainty in interpreting and applying the relevant provisions, respectively paragraph 1 of Article 83 of the LBRER regarding the time limit of the statement of claim: (i) has taken into account the specific circumstances of the case, namely the circumstances of the procedure conducted before the regular courts, and in terms of the latter (ii) has avoided excessive formalism.

78. The Court referring initially to the case file, notes that the Decision on termination of the employment relationship of 17 June 2004 of the Employer was based on the Law on Civil Service [UNMIK Regulation 2001/36], and also notes that the Decision of the second instance body which was also based on this law did not contain a legal advice. Moreover, during the proceedings conducted before the regular courts, as far as it can be concluded from the case file, the regular courts had not previously found that in the Applicant's case the law in force was the LBRER. The finding of the regular courts that the law applicable in the Applicant's case is the LBRER, was first provided by the Decision [Ac. no. 2980/16] of 19 May 2020, of the Court of Appeals, which finding was also confirmed by the Supreme Court by Decision [Rev. no. 393/2020] of 1 February 2021.

79. In this context, the Court refers to the Decision [Ac. no. 2980/16] of 19 May 2020, of the Court of Appeals, by which it was initially (i) found that paragraph 1 of Article 83 of the LBRER was applicable in the case of the Applicant, as this law was in force at the time of termination of his employment relationship and as a result (ii) had concluded that *"[...] the claim of [the Applicant] for the annulment of the decision and reinstatement to his work place with other rights from the employment relationship, is out of time, since from the case file is found that the claimant filed the claim with the first instance court for the annulment of the decision and for his reinstatement at his work place, on 02.02.2005, while the claimant filed the appeal against the decision of 17.06.2004, on 13.07.2004, from which it results that the claim was filed after the legal timeline for filing the claim has passed, the fact that the body according to the appeal has decided out of the prescribed legal timelines (26.01.2005) cannot reset the timelines provided by law for filing a claim, because the claimant had to wait 30 days from filing the appeal, if within this period the relevant body has not taken a decision on the appeal, he was obliged to have filed the claim within the next 15 days.*

80. In the following, the Court also recalls the finding given in the Decision [Rev. no. 393/2020] of 1 February 2021, of the Supreme Court, by which it was established that the Court of Appeals has *"correctly applied the provisions of the contested procedure and the substantive law, when it approved the appeal of [the Employer] and decided to dismiss the claim of [the Applicant] as out of time, and that the court of second instance has given sufficient reasons for the relevant facts for a fair trial of this legal matter, which are also accepted by this Court"*. The Supreme Court found that the Applicant has filed his claim of 2 February 2005 with the Municipal Court, against the Decision of the second instance body of the Employer of 26 January 2005, outside the timeline, on the grounds that the second instance body had decided outside the legal time limit of thirty (30) days. According to the Supreme Court, the time limit set forth in paragraph 1 of Article 83 of the LBRER *"is a preclusive time limit, and with the expiration of the timeline the judicial right is lost"* and that consequently this time limit cannot be restored.

81. With regard to the findings of the Court of Appeals and the Supreme Court, the Court states that it does not challenge or question the content of the relevant legal provision, as well as the finding of these courts in relation to the application of this law, which finding falls within the scope of legality.

82. Furthermore, the Court in terms of proper administration of justice emphasizes that the application of formal and procedural rules related to the permissibility of the case is of such importance that it serves to legal certainty during the conduct of the court proceedings before the regular courts.

83. However, as interpreted in the case law of the ECtHR, the Court considers that when the interpretation of the procedural rules results in excessive formalism then this interpretation ceases to be in the service of legal certainty and proper administration of justice and consequently may jeopardize the Applicants' access to a court.

84. The Court further notes that in cases where public authorities have provided inaccurate or incomplete information, the regular courts in interpreting and applying formal and procedural rules sufficiently need to take this into account this fact or specific circumstances related to the conduct of the proceedings. In the context of the Applicant's case, the Court must assess whether the regular courts, namely the Court of Appeals and the Supreme Court have taken into account (i) the specific circumstances of the Applicant's case, respectively have taken into account the fact that the Decision on the termination of employment relationship of 17 June 2004 and the Decision of the second instance body of the Employer of 26 January 2005, respectively were based on UNMIK Regulation 2001/36 on the Civil Service, and the latter did not contain neither legal advice; and (ii) the proceeding conducted during the fifteen (15) years, in which proceeding the Applicant's case was reviewed in procedural aspect and that of the merits of the case, but in which proceeding the issue of the time limit of his statement of claim has not been considered until the issuance of the Decision of the Court of Appeals of 19 May 2020.

85. In the light of the above, the Court, applying the positions and findings of the ECtHR, notes that the regular courts, respectively the Court of Appeals and the

Supreme Court during the interpretation and application of Article 83, paragraph 1 of the LBRER from the point of view of proper administration of justice should have taken into account in the present case: (i) the specific circumstances of the Applicant's case, respectively to take into account the fact that the Decision on termination of employment relationship of 17 June 2004 and the Decision of the second instance body of the Employer, of 26 January 2005, were based on UNMIK Regulation 2001/36, and the latter did not contain a legal advice; (ii) that the proceedings conducted before the regular courts had lasted more than fifteen (15) years from the filing of his statement of claim in the Municipal Court and that during these proceedings his case had been examined both in terms of permissibility and on the merits of the statement of claim; (iii) that the permissibility of this statement of claim in terms of time limit, namely the applicability of the LBRER was not raised until the issuance of the Decision [Ac. no. 2980/2016] of 19 May 2020 of the Court of Appeals; and as a result of the latter (iv) they should have avoided excessive formalism in interpreting the relevant provision of the LBRER in the Applicant's circumstances.

86. As a result of the above, the Court finds that due to the formalistic interpretation and application of paragraph 1 of Article 83 of the LBRER, their finding with regard to the time limit of the statement of claim has ceased to be in the service of the principle of legal certainty, which consequently violated the Applicant's "right of access" to a court.

87. The Court further notes that the interpretation and application of the provisions of the LBRER of 1989 by the Court of Appeals and the Supreme Court in the Applicant's circumstances is not proportionate to the purpose pursued to ensure legal certainty, and proper administration of justice, as one of the basic principles of the rule of law in a democratic society.

88. Therefore, based on the above, the Court considers that the Court of Appeals and the Supreme Court, interpreting and applying paragraph 1 of Article 83 of the LBRER of 1989, in relation to the Applicant: (i) have denied him "the right of access to a court" within the meaning of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR; and (ii) consequently made unable for his case to continue to be considered on the merits of the Referral.

89. Finally, the Court finds that the finding of the Court of Appeals and the Supreme Court by the abovementioned decisions for dismissing the Applicant's statement of claim as out of time have been issued in violation of the Applicant's right of access to a court. Consequently, the Court finds that the Decision [Rev. no. 393/2020] of 1 February 2021 of the Supreme Court is not in accordance with paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

90. The Court further recalls that the Applicant in his Referral also alleged violation of Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution. In this regard, as elaborated above, the Court found that the circumstances of the Applicant's case contain elements related to the Applicant's right of access to a court, as one of the principles guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of

Article 6 of the ECHR and consequently after elaborating and reviewing his allegations and the proceedings conducted before the regular courts, found that the challenged Judgment of the Supreme Court violated his right of access to a court. Consequently, as a result of this finding, the Court does not consider it necessary to separately review the allegations of violation of the rights guaranteed by Articles 32 and 54 of the Constitution.

Conclusions

91. The Court has treated the allegations of the Applicant, and despite the fact that the Applicant in his Referral had alleged violation of Article 32 and Article 54 of the Constitution, found that the circumstances of the present case contain elements related to the alleged violation of his right of access to a court, as one of the principles guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR. The Court subsequently, and for the purpose of assessing and reviewing this allegation, has applied for assessment, the case law of the Court and that of the ECtHR in the circumstances of the Applicant's case.

92. The Court, after elaborating and reviewing the procedure conducted and reasoning of the decisions of the regular courts, respectively the Court of Appeals and the Supreme Court, found that: (i) the very formalistic interpretation and the finding regarding the applicability of paragraph 1 of Article 83 of the LBRER in the circumstances of the Applicant and their finding that his statement of claim is out of time, by the challenged Judgment of the Supreme Court in the circumstances of the Applicant is not proportionate to the purpose pursued to ensure legal certainty and proper administration of justice, as one of the basic principles of the rule of law in a democratic society; (ii) as a result of this interpretation and finding of the Supreme Court, by its challenged Decision, the Applicant has been denied "the right of access to a court" within the meaning of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR making it unable for his case to continue to be considered on the merits of the Referral.

93. Finally, the Court found that the challenged Decision [Rev. no. 393/2020] of 1 February 2021, of the Supreme Court was issued in violation of the Applicant's right of access to a court, guaranteed by Article 31, paragraph 1 of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR.

94. Finally, the Court, as a result of its finding of violation of the Applicant's right of access to a court, guaranteed by Article 31, paragraph 1 of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR, has not considered as necessary to examine separately the allegations of violation of his rights guaranteed by Articles 32 and 54 of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in the session held on 4 November 2021, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that Decision [Rev. no. 393/2020] of the Supreme Court of 1 February 2021, is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO DECLARE invalid the Decision [Rev. no. 393/2020] of the Supreme Court of Kosovo, of 1 February 2021;

IV. TO REMAND the Decision [Rev. no. 393/2020] of the Supreme Court of Kosovo, of 1 February 2021, for reconsideration in compliance with the Judgment of this Court;

V. TO ORDER the Supreme Court to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court, not later than 4 May 2022;

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

VII. TO NOTIFY this Decision 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**

Remzije Istrefi-Peci Gresa Caka-Nimani

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