Prishtina, on 6 June 2022
Ref. No.:AGJ 2004/22

JUDGMENT

in

Case No. KI55/21

Applicant

Muhamet Ademi

Constitutional review of Judgment Rev. no. 387/2020 of the Supreme Court, of 13 January 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 Muhamet Ademi, residing in Podujevë, who is represented by Xhavit Bici, a lawyer from Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Rev. no. 397/2020] of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 13 January 2021, in conjunction with the Judgment [Pr.no. 725/2016] of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals), of 16 April 2020.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which as alleged by the Applicant has violated his fundamental rights and freedoms guaranteed by Article 32[Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 16 March 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), received the Applicant's Referral, which he submitted by mail on 16 March 2021.

6. On 22 March 2021, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu Krasniqi.

7. On 26 March 2021, the Court notified the Applicant's legal representative about the registration of the Referral and requested from him to submit: (i) the power of attorney for representation before the Court, and (ii) copies of the challenged decisions of the regular courts.

8. On 4 April 2021, the legal representative submitted the power of attorney and the documents which were requested by the Court.

9. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Court Constitutional. Pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, of 17 May 2021, it was determined that Judge Gresa Caka-Nimani, shall assume the duty of President of the Court after the conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.

10. On 25 May 2021, based on point 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 a judge at the Constitutional Court.

11. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision no. KI55/21, appointed Judge Safet Hoxha as a member of the Review Panel instead of Judge Bekim Sejdiu following the resignation of the latter.

12. On 26 June 2021, based on paragraph (4) of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, of 17 May 2021, Judge Gresa Caka-Nimani assumed the duty of President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and judge of the Constitutional Court.

13. On 28 June 2021, the President of the Court, Gresa Caka-Nimani, by Decision KSH.KI55/21, appointed Judge Radomir Laban as the member of the Review Panel instead of Arta Rama-Hajrizi, whose mandate as a judge ended on 26 June 2021.

14. On 20 October 2021, the Court notified the Supreme Court about the registration of the Referral.

15. On 20 October 2021, the Court notified the Basic Court in Prishtina - Branch in Lipjan about the registration of the Referral and requested from it to submit to the Court the complete case file of the challenged decision.

16. On 27 October 2021, the Basic Court in Prishtina - Branch in Lipjan submitted to the Court the complete case file of the challenged decision.

17. On 10 March 2022, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the admissibility of the Referral. On the same day, the Court unanimously decided that the Applicant's Referral was admissible and that the Judgment [Rev. no. 387/2020] of the Supreme Court, of 13 January 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 ECHR.

Summary of facts

18. The Applicant has been in the employment relationship as a Correctional Officer of the Correctional Service, with Detention Center in Lipjan (hereinafter: the Employer).

19. On 26 June 2004, the Employer issued a decision on termination of employment relationship due to the disciplinary violation during working hours as defined by the Correctional Service Internal Code of Discipline. The Employer’s notification on termination of employment relationship specified that the decision on termination of employment relationship was the result of an incident that occurred on 21/22.05.2004, which involved an escape of a

prisoner and an attempted escape of three other prisoners, hence the claimant is considered to have committed a disciplinary violation of standard 1, point 6, 7 and 14 of the Disciplinary Code. The above decision on termination was based upon UNMIK Regulation 2001/36 on the Kosovo Civil Service. From the case file it also results that at the time of the termination of Applicant's employment relationship, the Detention Center in Lipjan has been under the administration of the UNMIK Department of Justice.

20. On 13 July 2004, the Applicant filed a complaint with the second instance body of the Employer against the above-mentioned decision of the Employer on termination of employment relationship.

21. On 26 January 2005, the second instance body of the Employer rejected the Applicant's complaint. The decision of the second instance body of the Employer, based on UNMIK Regulation 2001/36, signed by the chairman of the Complaints Board, did not contain the instruction on legal remedies.

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

23. On 7 April 2005, the Municipal Court, by Judgment [C.no.26/2005]: (i) approved the Applicant's statement of claim; (ii) annulled the above decisions of the Employer, of 26 June 2004 and 26 January 2005; and (iii) obliged the Employer to reinstate the Applicant to his previous job position, by recognizing all his rights stemming this employment relationship, from 30 June 2004 until his reinstatement to his previous job position.

24. On 12 July 2005 the Employer filed an appeal with the District Court of Prishtina (hereinafter: the District Court) against the aforementioned judgment of the Municipal Court.

25. On 29 August 2007, the District Court, by decision [Ac.no. 822/2005], approved the Employer's appeal as founded, and annulled the Judgment C. no. 26/2005 of the Municipal Court, of 7 April 2005, by 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 dispute the Municipal Court has erroneously determined the factual situation. The District Court further found that the Applicant should file an appeal with the Independent Oversight Board for Kosovo(hereinafter: the IOBK) against the Employer's decision on termination of employment relationship, of 26 June 2004 and the decision of the second instance body of the Employer rejecting his complaint, of 26 January 2005).

26. On 25 February 2010, the Municipal Court, in the retrial proceedings, by Judgment [C.no. 286/07] decided to: (i) approve the Applicant's claim; and (ii) oblige the Employer to reinstate the Applicant to his previous job by recognizing all his rights stemming from his employment relationship.

27. On 22 June 2010, the Employer filed an appeal with the District Court against the aforementioned judgment of the Municipal Court.

28. On 28 June 2013, the Court of Appeals, by decision [CA.no. 1859/2012] approved the appeal of the Employer, as founded, and annulled the Judgment C. no. 286/2007 of the Municipal Court, of 25 February 2010, by remanding the case for retrial to the first instance court. The Court of Appeals found that the first-instance court did not act as per the recommendations of the second-instance court, namely it did not determine whether the Applicant filed an appeal with the IOBK and thus failed to fully determine the factual situation.

29. On 30 July 2015, the Basic Court, in the retrial proceedings, by Judgment [C.no. 329/13] decided to: (i) approve the Applicant's claim and annul the decisions of the Employer of 26 June 2004 and 26 January 2005; and (ii) oblige the employer to reinstate the Applicant to his or her previous job position by recognizing all rights stemming from his employment relationship.

30. As regards the exhaustion of legal remedies, namely the appeal to the IOBK against the Employer's decision, the Basic Court reasoned *"[...] In the retrial proceedings, the court assessed the instructions of the second instance court and those from the Decision no.02/344/2007 of the Independent Oversight Board of Kosovo, of 10 December 2007, and found that this Board is not competent to review complaints of correctional officers because during 2004, the Board did not have jurisdiction to review complaints of correctional officers since this service as a reserved competence was under UNMIK's jurisdiction, hence for these reasons, he did not address the IOBK at all, instead he submitted the case directly to the Court, in the absence of the Board's jurisdiction. (A similar case Mr. Kamber Hoxha, an officer of the Correctional Center in Lipjan)."*

31. On 1 December 2015, the Employer filed an appeal with the Court of Appeals against the above judgment of the Basic Court.

32. On 16 April 2020, the Court of Appeals, by decision [Ac.no.725/16]: (i) approved the Employer's complaint, as founded; (ii) annulled the Judgment C. no. 329/13 of the Basic Court, of 30 July 2015, and (iii) rejected the Applicant's claim as being submitted out of time.

33. On 30 June 2020, the Applicant filed a revision with the Supreme Court against the decision [Ac.no. 725/16] of the Court of Appeals, of 16 April 2020, due to essential violations of the provisions of the contested procedure and erroneous application of the substantive law, by proposing that the decision of the Court of Appeals be annulled while the judgment of the first instance, namely the Judgment [C. no. 329/13] of the Basic Court, of 30. July 2015, be upheld. In his revision, in relation to the finding of the Court of Appeals, the Applicant stated that the statement of claim was submitted to the Municipal Court, and among other things, specified that *"the issue of filing the claim was previously assessed by the first instance court by Judgment C. no. 26/2005 of 07.04.2005; the District Court in Pristina by Decision AC. no. 286/2005 of 29.08.2007; the District Court in Pristina by Decision AC. no. 822/2007 of 25.02.2010; the Basic Court in Prishtina- Branch in Lipjan by Judgment*

C.no.170/14 of 03.03.2016; the Court of Appeals of Kosovo by Judgment Ac.no.1580/2012 of 07.03.2014; as well as the Supreme Court of Kosovo by Decision Rev. no. 270/2014 of 06.01.2015, where the Applicant is Kamber Hoxha, review panels as well as a large number of judges of all levels, and all of them after examining this case have assessed that the claim was submitted within the deadline, whereas the current panel after decades has found that the claim is out of time."

34. On 13 January 2021, the Supreme Court, by Judgment [Rev.no.387/2020], rejected the Applicant's revision, as unfounded.

35. The Supreme Court found that the Court of Appeals *"in its judgment has provided sufficient and convincing reasons for rendering a correct and lawful decision, which have also been accepted by this Court. The second instance court has correctly assessed that the claimant's claim seeking the annulment of a decision and reinstatement to the job positition with all rights from the employment relationship is out of time because the claimant filed the complaint against the decision of the first instance body of the respondent of 26.06.204... on 13.07.2004, while the second instance body of the respondent decided on 26.01. 2005, whereas the claim was filed by the claimant on 02.02.2005 and the fact that the second instance body of the respondent, decided out of the legal deadlines, cannot postpone the deadlines provided by the law for filing a claim, that is 30 days after filing the complaint, and if the issue is not decided upon complaint, then he must file the claim within the following 15 days, hence, the revision allegations that the claim was filed within the legal deadline, do not stand."*

36. The Supreme Court found that, *"The revision allegations that there were not met the conditions of Article 67.1.6 of the Law on Labour No. 03 / L-212, determinining that one of the reasons for termination of employment contract on legal basis is when the employee goes to serve a sentence which shall last more than 6 months, do not stand, and given that the termination of claimant's employment relationship was done due to serious violations of job duties as per Article 11.3 and since the proceedings were conducted on the basis of Article 11.5 of the Law on Labour, Regulation no.2001/27 which was in force at the time when the violation of job duties was committed by the claimant. In the revision, the claimant claims that no disciplinary procedure has been conducted against the claimant, which does not stand, because as stated above, the respondent as the Employer, on the occasion of termination of employment relationship, has applied the provisions of Article 11.5 of the Basic Law on Labour, when a written notification in this respect was served beforehand, and the case file there contains the delivery note which proves that the claimant was informed about the termination of employment relationship, and since there is evidence in the case file in this regard, the revision allegations in this respect are unfounded.*

The deadline provided by the provision of Article 83, paragraph 1 of the Law on Basic Rights from the Employment Relationship (adopted by the Assembly of the SFRY on 28 September 1989) applicable at the time when the legal report was created, is a preclusive deadline, and with the expiry of the deadline the right to judicial protection is lost; the revision allegations that the claimant has filed the claim within the legal deadline, following the receipt

the decision of the second instance do not stand, for the fact that the decision-making concerning the claimant's appeal after the legal deadline does not renew the legal deadlines."

Applicant's allegations

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

38. In connection with the decisions of the Court of Appeals and Supreme Court, the Applicant states: *"Both courts, of the second and third instance, have violated the right to file a claim, thus denying him the right to file a claim because the second instance body of the respondent had provided the legal instruction that following the receipt of the decision of the second instance, the claimant has the right to file a claim with the court. The claimant filed the claim within the provided deadline as per the legal instruction given to him. The second instance body rendered its decision on 26.01.2005 whilst the claim was submitted on 02.02.2005, after five days, namely within the deadline given by the decision of the second instance body. Here, we are dealing with a violation of the provisions of Article 32 and Article 54 of the Constitution of Kosovo."*

39. The Applicant further states, *"After having a legal instruction given by the second instance body that the claimant has the right to file a claim to the court within 30 days, on that occassion the required deadline for filing a claim 15 + 30 days cannot be applied when an additional deadline is given by the second instance court."*

40. Finally, the Applicant requests from the Court, *"The Constitutional Court of Kosovo to approve the Referral of Muhamet Ademi and annul the Judgment Rev.no.387/2020 of the Supreme Court of Kosovo, of 13.01.2021, whilst the case to be decided as by the Judgment C.no. 329/13, of 30 June 2015."*

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31
[Right to Fair and Impartial Trial]

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

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

Article 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."

Article 13
(Right to an effective remedy)

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

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

"Article 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 a conflict, 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 the Employment Relationship of SFRY, of 28 September 1989

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

Assessment of the admissibility of Referral

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

42. 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."

43. The Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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 [...]."

44. As to the fulfilment of these criteria, the Court first emphasizes that the Applicant is an authorized party, who is challenging an act of a public authority, namely the Decision [Rev.no. 387/2020] of the Supreme Court, of 13 January 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.

45. The Court also determines whether the Applicant's Referral meets the admissibility criteria as established in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. The same may not be declared inadmissible on the basis of the conditions provided in paragraph (3) of Rule 39 of the Rules of Procedure.

46. Moreover, and finally, the Court considers that this Referral is not manifestly ill-founded, as provided for in paragraph (2) of Rule 39 of the Rules of Procedure and, therefore, it must be declared admissible and have its merits considered.

Merits of the Referral

47. The Court recalls that on 26 June 2004, the Applicant's Employer brought a decision to terminate his employment relationship due to a disciplinary violation during working hours. For this reason, on 13 July 2004, the Applicant filed a complaint with the second-instance body of the Employer against the Employer's decision on termination of his employment relationship. On 26 January 2005, respectively more than 6 (six) months later, the second instance body rejected the Applicant's complaint. As a result of the decision of the second instance body of the Employer, the Applicant filed a claim with the Municipal Court, seeking the annulment of the Employer's decision on termination of employment relationship, of 26 June 2004. The Municipal Court, by Judgment [C.no.26/2005] of 7 April 2005: (i) approved the

Applicant's statement of claim; (ii) annulled the above decisions of the Employer of 26 June 2004 and 26 January 2005; and (iii) obliged the Employer to reinstate the Applicant to his previous job position, by recognizing all his rights stemming from this employment relationship, starting from 30 June 2004 until his reinstatement to his previous job position. As a result of the Employer's appeal filed against the judgment of the Municipal Court, the District Court, by Decision [Ac.no.822/2005] of 29 August 2007, approved the Employer's appeal, as founded, and remanded the case to the first instance court for reconsideration purposes, after having found that the Applicant used to have the status of a civil servant and therefore he was obliged to file an appeal with the IOBK, as a second instance body. On the basis of the case file, it results that the issue of the Claimant's statement of claim was returned for adjudication to the Municipal Court and the latter by the Judgment [C.no.286/07] of 25 February 2010 approved the Applicant's statement claim and decided to reinstate the Applicant to his previous job position. As a result of an appeal lodged by the Employer, the Court of Appeals, by Judgment [CA.no.1859/2012] of 28 June 2013 approved the appeal of the latter and annulled the judgment of the Municipal Court of 25 February 2010. The Court of Appeals found that the first instance court did not act upon the recommendations of the second instance court; respectively it did not determine whether the Applicant has filed an appeal with IOBK and thus failed to completely establish the factual situation. After that, the Basic Court in the repeated proceedings, by the Judgment [C. no. 329/13] of 30 July 2015: (i) approved the Applicant's statement of claim and annulled the Employer's decisions of 26 June 2004 and 26 January 2005; and (iii) obliged the Employer to reinstate the Applicant to his previous job position, by recognizing all his rights stemming from this employment relationship. As regards the issue of the recommendation of the Court of Appeals concerning the appellate procedure before the IOBK, the Basic Court found that the IOBK was not competent to review complaints of correctional officers because during 2004, the IOBK did not have jurisdiction to consider complaints of correctional officers since this service was under the jurisdiction of UNMIK. As a result of the appeal filed by the Employer, the Court of Appeals, by Decision[Ac.no.725/2016] of 16 April 2020, (i) approved the Employer's appeal, as founded; (ii) annulled the Judgment C. no. 329/13 of the Basic Court, of 30 July 2015, (iii) in the following it determined that the Applicant's claim, on the basis of Article 391, item (f) of the LCP, is out of time. Consequently, the Applicant filed a revision with the Supreme Court against the decision of the Court of Appeals and the abovementioned court, by Judgment [Rev.no.387/2020] of 13 January 2021, rejected his revision, as unfounded; The Supreme Court found that the Applicant had submitted his statement of claim, of 2 February 2005, to the Municipal Court, against the decision of the second instance of the Employer, of 26 January 2005, out of the deadline envisaged in paragraph 1, of Article 83 of the LBRER. The Supreme Court also found that LBRER has been the applicable law at the time when the Applicant had established his employment relationship with the Employer and pursuant to the above provision of this Law, the deadline specified in this provision, namely paragraph 1 of Article 83 of the LBRER "*applicable at the time when the legal report was created, is a preclusive deadline, and with the expiry of the deadline the right to judicial protection is lost; revision allegations that the claimant has filed the claim within the legal deadline,*

following the receipt the decision of the second instance do not stand, for the fact that the decision making concerning the claimant's appeal after the legal deadline does not renew the legal deadlines."

48. The Applicant challenges the above conclusions of the decision of the Court of Appeals and the Supreme Court, by alleging a violation of Article 32 of the Constitution in conjunction with Article 54 of the Constitution. In his request, the Applicant specifies that *"Both courts, of the second and third instance, have violated the right to file a claim, thus denying him the right to file a claim because the second instance body of the respondent had provided the legal instruction that following the receipt of the decision of the second instance, the claimant has the right to file a claim. The claimant filed the claim within the provided deadline as per the legal instruction given to him. The second instance body rendered its decision on 26.01.2005 whilst the claim was submitted on 02.02.2005, namely after five days, within the deadline given by the decision of the second instance body. Here, we are dealing with a violation of the provisions of Article 32 and Article 54 of the Constitution of Kosovo."* Consequently, the Applicant specifies that non-acceptance of the deadline for the claim by the Court of Appeals and Supreme Courts constitutes a violation of his right to file a claim.

49. 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, on the basis of factual and legal circumstances of the case, the Court notes that in addition to the allegations of violation of Article 32 of the Constitution in conjunction with Article 54 of the Constitution, the allegations made by the Applicant contain elements of the right of "access to the court" as an integral part of the rights guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

50. In terms of the examination of the Applicant's allegations within the scope of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court, referring to its case law and the case law of the European Court of Human Rights (ECtHR), emphasizes that it does not consider itself to be bound by the characterization of the alleged violations given by the Applicant. By virtue of the *juria novit curia* principle, the Court itself is the master of the characterisation of the constitutional issues that a particular case may include, and may consider of its own motion the relevant complaints, relying on provisions or paragraphs which the parties have not expressly invoked (see, in this sense, the case of Court: KI48/18, Applicant: *Ahmet Frangu*, Judgment of 22 July 2020, para.81).

51. In addition, pursuant to the case-law of the ECtHR, the complaint is characterised by the facts alleged in it and not merely by the legal grounds and arguments on which the parties have expressly relied (see, the ECtHR case: *Talpis v. Italy*, Judgment of 18 September 2017, paragraph 77 and references cited therein).

52. Therefore, the Court will continue to review 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, by applying the principles established through the case law of the ECtHR, on the basis of which and pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged, as follows: *"Fundamental rights and freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*

53. In this connection, the Court first notes that the case law of the ECtHR and the Court has consistently held that the fairness of the proceedings is assessed on the basis of the proceedings as a whole (see, the cases of Court: KI62/17, Applicant: *Emine Simnica*, Judgment of 29 May 2018, paragraph 41 and KI 20/21, Applicant: *Violeta Todorović*, Judgment of 13 April 2021, paragraph 38; see also the case of the ECtHR: *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 October 1988, paragraph 68). Therefore, in the procedure of the assessment of the merits of the Applicant's allegations, the Court villll adhere to these principles.

54. In this respect and in order to review the Applicant's allegations, the Court will elaborate general principles with respect to the right of "access to the court", guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, to the extent relevant for the circumstances of this case, in order to assess the applicability of these articles, and proceed with the application of these general principles to the circumstances of the present case.

I. General principles with regard to the right of "access to the 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

55. As 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, *Golder v. The United Kingdom*, Judgment of 21 February 1975; *Běleš and Others v. the Czech Republic*, Judgment of 12 November 2002; *Miragall Escolano and Others v. Spain*, Judgment of 25 January 2000 and *Nait-Liman v. Switzerland*, Judgment of 15 March 2018.) However, the court cases through which the Court has confirmed the principles established by the ECtHR and applied them in the cases before it, including but not limited to the cases KI 54/21, with Applicant *Kamber Hoxha* [judgment of 4 November 2021]; KI 62/17, with Applicant *Emine Simnica* [judgment of 29 May 2018]; KI 224/19 with Applicant *Islam Krasniqi* [judgment of 10 December 2020] and KI 20/21 with Applicant *Violeta Todorović* [judgment of 13 April 2021].

56. In this sense, the Court first refers to the case-law of the ECtHR, namely the case *Golder v. The United Kingdom*, wherein it is stated that the *"right of access to the court constitutes an element which is inherent in the right stated by Article 6, paragraph 1 [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, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only" (see, the ECtHR case: Golder v. The United Kingdom, cited above, paragraphs 28-36).

57. The Court also refers to its case-law, namely the case KI54/21, with Applicant *Kamber Hoxha*, wherein it is stated that "*excessively formalistic interpretation and finding on the applicability of paragraph 1 of Article 83 of LBRER in the circumstances of the Applicant and their finding through the challenged judgment of the Supreme Court that his statement of claim is out of time, in the circumstances of the Applicant, is disproportionate to the goal of ensuring legal certainty and proper administration of justice, as one of the basic principles of the rule of law in a democratic society; (ii) that as a result of this interpretation and the finding of the Supreme Court, in its challenged decision, the Applicant was denied the "right of access to the court", within the meaning of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, thus preventing him from continuing to have his case reviewed based on the merits of the Referral" (*see, the case KI 54/21*,* with Applicant *Kamber Hoxha*, cited above, paragraph 92).

58. In this context, the Court notes that the "right of access to the court", as an inherent part of the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with paragraph (1) of Article 6 of the ECHR, provides that all litigants should have an effective remedy enabling them to assert their civil rights (see, the Cases cited above, KI54/24, with the abpvementioned Applicant *Kamber Hoxha*, paragraph 62 ; KI 224/19, with the abovementioned Applicant *Islam Krasniqi*, paragraph 35; and KI 20/21, with the above-mentioned Applicant *Violeta Todorović*, paragraph 41, see in this context also of the ECtHR mentioned above, *Běleš and Others v. the Czech Republic*, paragraph 49, and *Naït-Liman v. Switzerland*, paragraph 112).

59. The Court further notes that the right of access to the court is not absolute one, and it may be subject to limitations, since by its nature it calls for regulation by a State which enjoys a certain margin of discretion in this regard (see in this respect, the abovementioned case KI54/21, with the above-mentioned Applicant *Kamber Hoxha*, paragraph 64 as well as KI20/21, with Applicant *Violeta Todorović*, paragraph 44).

60. However, any limitation on the right of access to the 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 the court"* is impaired. Such restrictions will not be justified if they do not pursue a legitimate aim or if there is not reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, the above case of Court KI20/21, Applicant *Violeta Todorović*, paragraph 45; and see 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) Case law of the ECtHR

61. On the basis of the circumstances of the present case, the Court also refers to the relevant case law of the ECtHR, which relates to the right of access to the court, from the aspect of guaranteeing the principles of legal certainty and the proper administration of justice, as fundamental principles of the rule of law in a democratic society.

62. In its case-law, the ECtHR has specified that the rules which determine the formal steps to be taken and the time-limit to be complied with in lodging an appeal are aimed at ensuring a proper administration of justice and must be reviewed in compliance, in particular with the principles of legal certainty (see, the case *Canete de Goni v. Spain*, judgment of 15 October 2002, paragraph 36). In this respect, the ECtHR has specified that the relevant rules or their application should not prevent the 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). Moreover, the ECtHR has underlined that each case must be reviewed in the light of the special features of the proceedings in question (see, the ECtHR case *Kurşun v. Turkey*, judgment of 30 October 2018, paragraphs 103-104). In this regard, the ECtHR further underlined that in applying procedural rules, the courts must avoid excessive formalism that would impair fairness of the proceedings and excessive flexibility which would render nugatory the procedural requirements established by law(see, the case *Hasan Tunç et al. V. Turkey*, judgment of 31 January 2017, paragraphs 32-33).

63. The ECtHR in the case *Zubac v. Croatia* has emphasized in a concise manner that the "*observance of formalised rules of procedure in civil proceedings [...] is valuable and important as it is capable of preventing arbitrariness and securing the rendering of decisions within a reasonable time, as well as ensuring legal certainty and respect for the court (see, the case Zubac v. Croatia [GC], judgment of 5 April 2018, paragraph 96).* In this case, the ECtHR also underlined that "*however, the right of access to the court is considered to have been impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and consequently form a sort of barrier preventing the litigant from having his or her case determined based on the merits by the competent court* (paragraph 98 of the judgment in the case of *Zubac v. Croatia*). In the context of the latter, the ECtHR has noted that in cases where public authorities have provided inaccurate or incomplete information, local courts must take into account to a sufficient extent the specific circumstances of the case in order not to have the rules applied and practiced in a very harsh manner (see, in this sense the case of ECtHR *Clavien v. Switzerland*, judgment of 12 September 2017, paragraph 27 and *Gajtani v. Switzerland*, judgment of 9 September 2014, paragraph 75).

64. On the other hand, in the case of *Ivanova and Ivashova v. Russia* [judgment of 26 January 2017], the ECtHR found that the national courts should not interpret the domestic law in an inflexible manner with the effect of imposing an obligation with which the litigants could not possibly comply. According to the ECtHR, requiring an appeal to be lodged within one month from the date upon which the registry office drew up a full copy of the court's decision – rather than the point at which the claimant actually had knowledge of the decision - amounted to making the expiry of the relevant deadline dependent

on a factor entirely out of the claimant's control. Therefore, the ECtHR found that the right to appeal must be valid from the day upon which the claimant was informed about the full text of the decision. In the present case, the ECtHR concluded that the disputable action was not proportionate to the aim of guaranteeing legal certainty and the proper administration of justice, and therefore found that his right of access to the court is guaranteed by Article 6, paragraph 1 of the ECHR (see, paragraphs 52- 58 of the judment in case *Ivanova and Ivashova v. Russia*).

(iii) Case law of the Constitutional Court in relation to the right of access to the court

65. As stated above, the Court has applied the aforementioned principles established through the case law of the ECtHR in its case law. Specifically, the Court has referred, as mentioned above, to four cases of the Court, namely the cases KI54/21, with Applicant *Kamber Hoxha*, KI 62/17, with *Applicant Emina Simnica*, KI224/19 with Applicant *Islam Krasniqi*, and KI20/21 with Applicant *Violeta Todorović*, in which in some points the Court found a violation of the right of access to the court, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

66. In this regard, the Court refers to its last case, on which occasion the latter, by having referred to and applied the above principles determined through the case law of the ECtHR, found a violation of the right of access to the court as one of the principles of a fair trial under Article 31 of the Constitution and Article 6 of the ECHR. The circumstances of the Applicant's case in case KI54/21 relate to a decision of the Employer, namely the Correctional Service, Detention Center in Lipjan, of 2004, on termination of employment relationship as a result of disciplinary violations during working hours. The Applicant first challenged this decision before the second instance body of the Employer, which after a period of 6 (six) months rejected the Applicant's complaint. The Applicant initiated proceedings before the regular courts against this decision. The Municipal Court in Lipjan decided in favour of the Applicant, by obliging the employer to reinstate him to his previous job position, and recognizing all his rights stemming from this employment relationship. However, as a result of the Employer's appeal regarding the Applicant’s statement of claim during the period from 2006 to 2015, proceedings were conducted before the District Court, the Independent Oversight Board for Civil Service, and the Court of Appeals, where this statement of claim was reviewed both in terms of procedural aspect as well as the merits of the statement of claim. Finally, the case was remanded for reconsideration to the Basic Court, which again approved the Applicant's statement of claim, in its entirety. However, deciding upon the Employer's appeal, the Court of Appeals annulled the judgment of the Basic Court, by rejecting the Applicant’s statement of claim, this time, after finding that the initial claim was filed out of the legal deadlines, as envisaged in the Law on Basic Rights from the Employment Relationship of the SFRY, of 28 September 1989. Acting upon the request for revision, the Supreme Court upheld the position of the Court of Appeals. Consequently, the Constitutional Court found that the challenged decision of the Court of Appeals and the Supreme Court was rendered in contravention with the procedural guarantees guaranteed in

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, and therefore declared it invalid, by remanding the matter for reconsideration in accordance with the conclusions of the Constitutional Court.

I. Application of the aforementioned principles to the circumstances of this case

67. The Court recalls that on 13 July 2004 the Applicant lodged an appeal with the second instance body of the Employer against the Employer's decision on termination of his employment relationship, of 26 June 2004. On 26 January 2005, respectively more than six (6) months later, the second instance body issued a decision rejecting the Applicant's complaint, and as a result of the decision of the second instance body of the Employer, the Applicant within the deadline of fifteen (15) days, filed a claim with the Municipal Court seeking annulment of the Employer's decision on termination of his employment relationship, of 26 June 2004. On this occasion, the Court points out that the decision of the second-instance body of the Employer did not contain the instruction on the legal remedies. In addition, the Court also notes that the legal basis for rendering this decision, which is mentioned in the preamble of this decision, was the UNMIK Regulation 2001/36 on the Civil Service. As a consequence of the Applicant's claim, the Municipal Court, after having reviewed the statement of claim based on its merits, by Judgment C.no. 26/2005, of 7 April 2005, approved his statement claim of whereby it obliged the Employer to have the Applicant reinstated to his previous job position. From the moment of the appeal being filed by the Employer with the District Court against this judgment of the Municipal Court, namely from 2005 until the rendering of the challenged decision [Ac. no. 725/16] of the Court of Appeals, of 16 April 2020, and Judgment [Rev. no. 387/2020] of the Supreme Court, of 13 January 2021, the issue of the claimant's claim, as elaborated in detail, has been dealt with before the regular courts both in terms of admissibility and in terms of the merits of the claim, for fifteen (15) years.

68. In this context, the Court, based on the procedural chronology of this case before the regular courts, and in the sense of the *"right of access"* to the court, notes that the Applicant had access to the court during this period, pending a decision [Ac.no.725/16], of the Court of Appeals, of 16 April 2020, which decided to reject the Applicant's statement of claim as out of time. Also, the Supreme Court, rejected the revision submitted by the Applicant after finding that on the basis of Article 83, paragraph 1 of the LBRER of the SFRY, of 28 September 1989, his request was submitted out of the legal deadline provided by this provision, and thus confirmed the conclusion of the Court of Appeals through the above decision, of 16 April 2020.

69. The Court reiterates that the main reason for rejection of the Applicant's claim by the Court of Appeals, respectively the Supreme Court was that the latter by interpreting and applying Article 83, paragraph 1 of the LBRER of SFRY, of 28 September 1989, came to the conclusion that his request was submitted out of the deadline envisaged by this provision. According to the interpretation of the Court of Appeals and Supreme Court, the Applicant should have filed the claim with the Municipal Court within fifteen (15) days from the expiration of thirty

(30) days deadline from the date of the appeal being filed with the second instance body.

70. Having said that, the Court recalls that in the Applicant's circumstances: (i) the second instance body of the Employer did not render the decision within thirty (30) days from the date of the Applicant's appeal being filed against the Employer's decision on termination of the Applicant's employment relationship, of 26 June 2004; (ii) it rather rendered the decision on 26 January 2005, namely six (6) months after the Applicant's complaint being submitted to this body; and (iii) On 2 February 2005, namely within the term of fifteen (15) days, the Applicant filed a claim with the Municipal Court against this decision of the second instance, rendered on 26 January 2005.

71. Having that in mind, it remains to be determined whether the Decision [Ac.no. 725/16] of the Court of Appeals, of 16 April 2020, and Judgment [Rev. no. 387/2020] of the Supreme Court, of 13 January 2021, whereby it was established that the claim was out of the time and if the Applicant was practically denied the *"right of access to the court"* from the point of view of the rule of law in a democratic society, as well as the guarantee established by Article 31 of the Constitution and Article 6 of the ECHR. In this connection and based on the circumstances of this case, the Court will assess whether (i) the interpretation and application of paragraph 1 of Article 83 of LBPLR by the Court of Appeals and the Supreme Court dismissing the Applicant's claim after fifteen (15) years from the conduct of contested proceedings regarding his statement of claim, in this case, have violated his right of access to the court and as a consequence (ii) have prevented the Applicant from continuing with his case based on the merits of the claim.

72. In this context, the Court refers to the conclusions of the ECHR through its case-law, where it has stated, inter alia: (i) the rules which set out formal criteria that are to be respected in relation to the time limit for lodging an appeal are aimed at ensuring a proper administration of justice and must be reviewed in compliance, in particular with the principles of legal certainty (see, the above cited case of the ECtHR *Cnete de Goni v. Spain*, paragraph 36) ; (ii) the relevant rules or their application should not prevent the litigants from using an available legal remedy (see, in this context the case of the ECtHR *Miragall Escolano and Others v. Spain*, cited above, paragraph 36); (iii) each case must be reviewed in the light of the special features of the proceedings in question (see, the above case of the ECtHR *Kurşun v. Turkey*, paragraphs 103-104; (iv) the courts must avoid excessive formalism that would impair fairness of the proceedings and excessive flexibility which would render nugatory the procedural requirements established by law (see, the case *Hasan Tunç et al. v. Turkey*, the above cited judgment, paragraphs 32-33).

73. Therefore, by relying on the standpoints stated in the case law of the ECtHR, the Court will assess whether the Court of Appeals and the Supreme Court from the point of view of proper administration of justice and observance of the principle of legal certainty during the interpretation and application of relevant legal provisions of Article 83 of the LBPLR concerning the time limits of the claim: (i) took as the basis the specific circumstances of the case, respectively

the circumstances of the proceedings conducted before the regular courts, and in that sense (ii) whether they avoided excessive formalism.

74. The Court, by referring initially to the case file, noted that the Employer's decision on termination of the employment relationship, of 26 June 2004, was based upon the Law on the Civil Service [UNMIK Regulation no. 2001/36], and also notes that the decision of the second instance body, which is also based on this law, did not contain the legal instruction. Moreover, during the proceedings before the regular courts, as far as it can be determined from the case file, the regular courts had not previously established that in the Applicant's case the applicable law was LBRER. The conclusion of the regular courts that the applicable law in the Applicant's case was LBRER was given for the first time through the Judgment [Rev. no. 387/2020] of the Supreme Court, of 13 January 2021.

75. In this context, the Court refers to the Decision [Ac. no. 725/16] of the Court of Appeals, of 16 April 2020, whereby the Applicant's claim was dismissed as out of time, since on the basis of the deadline for filing an appeal, it was filed after the deadline and consequently in such circumstances the provision of Article 391 item (f) LCP, has envisaged that: *"after the pre examination the court can drop charges as unnecessary if it determines that: charges are presented after the deadline, if it was set by legal provisions."*

76. In the following, the Court also recalls the conclusion of the Supreme Court given in the judgment [Rev.no.387/2020] of 13 January 2021, whereby it was determined that the Court of Appeals has correctly applied the provisions of contested procedure and substantive law, *the deadline provided by the provision of Article 83, paragraph 1 of the Law on Basic Rights from the Employment Relationship (adopted by the Assembly of the SFRY on 28 September 1989) applicable at the time when the legal report was created, is a preclusive deadline, and with the expiry of the deadline the right to judicial protection is lost; revision allegations that the claimant has filed the claim within the legal deadline, following the receipt the decision of the second instance do not stand, for the fact that the decision making concerning the claimant's claim after the legal deadline does not renew the legal deadlines*". The Supreme Court found that the Applicant has filed the claim with the Municipal Court against the decision of the second instance of the Employer, of 26 January 2005, on 2 February 2005 due to the fact that the second-instance body had decided out of the thirty (30) day deadline. According to the Supreme Court, the deadline referred to in paragraph 1 of Article 83 of the LBRER "*is a preclusive deadline, and with the expiry of the deadline the right to judicial protection is lost",* consequently this deadline cannot be re-set.

77. In regard to the conclusions of the Court of Appeals and the Supreme Court, the Court points out that it neither challenges nor calls into question the content of the relevant legal provision and the conclusion of these courts concerning the application of that law, a conclusion which falls under the scope of the legality.

78. Furthermore, in terms of the proper administration of justice, the Court emphasizes that the application of formal and procedural rules with respect to

the admissibility of cases is of such importance as to serve legal certainty in the conduct of proceedings before the regular courts.

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

80. In the following, the Court also would like to point out that in cases where public authorities have provided inaccurate or incomplete information, regular courts during the interpretation and application of formal and procedural rules should sufficiently take into account this fact or specific circumstances relating to the conduct of the proceedings. In the context of the Applicant's case, the Court should assess whether the regular courts, namely the Court of Appeals and the Supreme Court, took as the basis the specific circumstances of the Applicant's case, namely whether they took as the basis the fact that the Decision on termination of employment relationship , of 26. December 2004, and the decision of the second instance body of the Employer, of 26 January 2005, was based on UNMIK Regulation 2001/36 on the Civil Service, where the last decision did not even contain the legal remedy and (ii) the procedure that has been conducted for fifteen years, and in which procedure the Applicant’s case was reviewed both in the procedural aspect and on the merits of the case, but in which procedure the question of the time limits of his statement of claim was not reviewed until the rendering of the decision of the Court of Appeals, of 16 April 2020.

81. In the light of what is stated above, the Court, by applying the standpoints and findings of the ECtHR, notes that the regular courts, namely 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 true administration of justice, in this particular case should have taken into account, the following: (i) the specific circumstances of the Applicant's case, namely to take into consideration the fact that the Employer’s decision on termination of employment relationship, of 26 June 2004, and the decision of the second instance body of the Employer, of 26 January 2005, were based upon UNMIK Regulation 2001/36 and that the last decision did not contain the legal remedy remedy; (ii) that the proceedings before the regular courts have lasted for more than fifteen (15) years from his statement of claim being filed with the Municipal Court and that during these proceedings his case was considered both in terms of admissibility and on the merits of the statement of claim; (iii) that the admissibility of this claim in terms of time limit, namely the applicability of LBRER was not initiated until the rendering of the Decision [Ac. no. 725/2016] of the Court of Appeals, of 16 April 2020, and that the question of the applicability of the LBPLR was not mentioned during the conduct of the court proceedings up the rendering of the aforementioned decision of the Court of Appeals; and and as a result of the latter (iv) to avoid excessive formalism in the interpretation of the relevant provision of the LBRER in the Applicant’s circumstances.

82. In view of what is stated above, the Court finds that as a result of the formalistic interpretation and application of Article 83, paragraph 1 of the LBRER, their finding regarding the time limits of the claim ceased to serve the principle of legal certainty, and thus violated the Applicant's *"right of access"* to the court.

83. In addition, the Court notes that the interpretation and application of the provisions of the LBRER of 1989 by the Court of Appeals and Supreme Court in the Applicant's circumstances is disproportionate to the aim of ensuring legal certainty and the proper administration of justice, as one of the fundamental principles of the rule of law in a democratic society.

84. Therefore, on the basis of what is stated above, the Court considers that the Court of Appeals and the Supreme Court, by interpreting and applying paragraph 1 of Article 83 of the LBRER of 1989, have: (i) denied the Applicant's *"right of access to the court"*, in the sense of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR; and (ii) consequently, have prevented him from continuing to have his case reviewed based on the merits of the request.

85. Finally, the Court finds that the conclusion of the Court of Appeals and Supreme Court through the decisions, of which the Applicant's statement of claim is rejected as inadmissible, were rendered in violation of the Applicant's right of access to the court. Consequently, the Court finds that the Decision [Ac. no. 725/2016] of the Court of Appeals, of 16 April 2020, and the Judgment [Rev. no. 387/2020] of the Supreme Court, of 13 January 2021, are not in accordance with paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

86. The Court further recalls that the Applicant in his Referral also alleged a violation of Article 32[Right to Legal Remedies] and Article 54[Judicial Protection of Rights] of the Constitution. In this connection, as elaborated above, the Court found that the circumstances of the Applicant's case include elements relating 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 after elaborating and reviewing his allegations as well as the proceedings conducted before the regular courts, found that the challenged judgment of the Supreme Court violated his right of access to the court. Consequently, as a result of this conclusion, the Court does not deem it necessary to separately review the allegations of violation of the rights guaranteed by Articles 32 and 54 of the Constitution.

Conclusions

87. The Court has reviewed the Applicant's allegations and despite the fact that the Applicant in his Referral has alleged violations of Article 32 and Article 54 of the Constitution, the Court finds that the circumstances of this case relate to elements concerning the violation of his right of access to the court, as one of the principles guaranteed in paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR. In the following, and for the purpose of assessing and reviewing this allegation, the Court has

applied the case law of the Court as well as that of ECtHR to the circumstances of the Applicant's case.

88. The Court, after having elaborated and reviewed the proceedings and reasoning of the decisions of the regular courts, respectively the Court of Appeals and the Supreme Court, found that: (i) excessive formalistic interpretation and finding on the applicability of paragraph 1 of Article 83 of the LBRER in the Applicant's circumstances and their finding through the challenged decisions of the Court of Appeals and Supreme Courts that his statement of claim is out of time, in the Applicant's circumstances, is disproportionate to the goal of ensuring 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 the findings of the Court of Appeals and Supreme Court, in their challenged decision, the Applicant was denied his *"right of access to the court"*, in the sense of paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, thus preventing him from continuing to have his case reviewed based on the merits of the request.

89. In the end, the Court concluded that the challenged Judgment [Rev. no. 387/2020] of the Supreme Court, of 13 January 2021, was issued in violation of the Applicant's right of access to the court, which is guaranteed by Article 31, paragraph 1 of the Constitution, and in conjunction with Article 6, paragraph 1 of the ECHR.

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

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and in accordance with Rule 59 (1) of the Rules of Procedure, in the session held on 10 March 2022, unanimously:

DECIDES

I. TO DECLARE unanimously the Referral admissible;

II. TO FIND that the Judgment [Rev.no.387/2020] of the Supreme Court, of 13 January 2021, is not in accordance 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 Judgment[Rev.no.387/2020] of the Supreme Court , of 13 January 2021;

IV. TO REMAND the Judgment [Rev.no.387/2020] of the Supreme Court, of 13 January 2021, for reconsideration purposes in accordance with the judgment of this Court;

V. TO ORDER the Supreme Court to notify the Constitutional Court, pursuant to Rule 66 (5) of the Rules of Procedure, by 12 September 2022, about the measures taken to enforce the judgment of this Court;

VI. TO REMAIN seized of this matter, pending compliance with this order;

VII. TO NOTIFY this Judgment to the parties and, in accordance with Article 20.4 of the Law, to have it published in the Official Gazette;

VIII. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Nexhmi Rexhepi	Gresa Caka-Nimani