



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

Prishtina, on 15 August 2022
Ref. no.:AGJ 2040/22

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI10/22

Applicant

Trade Union of the Institute of Forensic Medicine

**Constitutional review
of Judgment ARJ. no. 115/2021 of the Supreme Court of Kosovo of
18 November 2021**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërzhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge.

Applicant

1. The Referral was submitted by the Trade Union of the Institute of Forensic Medicine, which is represented by Bedri Zhegrova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [ARJ. no. 115/2021] of 18 November 2021, of the Supreme Court of Kosovo (hereinafter: the Supreme Court) in conjunction with the Decision [AA. no. 651/2021] of 6 August 2021, of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) and the Decision [A. no. 1430/21] of 5 July 2021 of the Basic Court in Prishtina (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged decision, whereby the Applicant alleges that its fundamental rights and freedoms guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have allegedly been violated.

Legal basis

4. The Referral is based on paragraph 4 of Article 21 [General Principles} and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 25 January 2022, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 27 January 2022, the Applicant completed his referral, also requesting the imposition of interim measure regarding the challenged decision.
7. On 3 February 2022, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Nexhmi Rexhepi.
8. On 15 February 2022, the Court notified the Applicant about the registration of the Referral, and requested him to complete the file by completing the referral form within 15 (fifteen) days.
9. On 15 February 2022, the Court notified (i) the Supreme Court, (ii) the Prime Minister of Kosovo; (iii) the Minister of Justice; and (iv) the Ombudsperson, for registration of the Referral and provided them a copy of the Referral.
10. On 4 March 2022, the Ombudsperson submitted to the Court *“The opinion of the Ombudsperson regarding the request for the constitutional review of Decision A. no. 1430/21, of the Basic Court in Pristina, Decision AA. no. 651/2021, of the Court of Appeals and Judgment ARJ no. 115/2021, of the Supreme Court, of the Trade Union of the Institute of Forensic Medicine”*
11. On 8 March 2022, the Applicant submitted the completed referral form to the Court.
12. On 4 April 2022, the Applicant submitted additional documents to the Court.

13. On 9 May 2022, the Review Panel considered the report of the Judge Rapporteur and requested the supplementation of the case.
14. On 18 July 2022, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

Summary of facts

15. On 3 July, 2020, Regulation MD-No. 01/2020 for the Internal Organization and Systematization of the Institute of Forensic Medicine (hereinafter: IFM Regulation) was published in the Official Gazette of the Republic of Kosovo which in Article 29 (Entry into force) established that this Regulation enters into force six months after publication in the Official Gazette, namely on 3 January 2021.
16. The IFM Regulation in its preamble, as a legal basis, had Article 16 of the Law on Forensic Medicine, which determined that the internal organization and systematization of the Institute is regulated by a special act, which is approved by the Minister of Justice in accordance with the Law on State Administration.
17. On 30 June 2021, the Applicant submitted a lawsuit for the initiation of the administrative conflict, where he requested the Basic Court to issue a judgment declaring the IFM Regulation unlawful after reviewing and analyzing all the evidence.
18. On 5 July 2021, the Basic Court by the Decision [A. no. 1430/21] rejected the lawsuit of the Applicant as inadmissible. In its reasoning, the Basic Court emphasized the following:

“Therefore, taking into account the legal references mentioned above, it appears that 'Regulation no. 01/2020 on the internal organization and systematization of IFM' - the annulment of which is requested by the claimant with this lawsuit, does not represent a final administrative act within the meaning of article 3 paragraph 1.2 of the Law on Administrative Conflicts and within the meaning of articles 47 and 48 of the Law on General Administrative Procedure no. 05/L-031 which provision defines the structure and mandatory elements of the administrative act. Likewise, the Regulation in question does not represent an administrative act on the basis of which an administrative conflict can be initiated and judicial protection provided within the meaning of Article 2 and 9 of the Law on Administrative Conflicts. Therefore, the court, in accordance with Article 15 paragraph 1, subparagraph 1.2 and 34 paragraph 1, subparagraph 1.2 of the Law on Administrative Conflicts, dismissed the claimant's lawsuit as in the enacting clause of this decision, as the act challenged by the lawsuit does not represent an administrative act”.

19. On 19 July 2021, the Applicant filed an appeal against the aforementioned Decision on the grounds of: essential violations of the provisions of the administrative conflict procedure and the contested procedure, with the proposal that the appeal be approved as grounded, while the appealed decision be quashed, and the matter be remanded for retrial and reconsideration.
20. On 6 August 2021, the Court of Appeals, by the Decision [AA. no. 651/2021] rejected the Applicant's appeal as ungrounded, while upholding the Decision [A. no. 1430/2021] of 5 July 2021, of the Basic Court. In the reasoning of its Decision, the Court of Appeals emphasized the following:

“In the present case, the Court of Appeals accepts the conclusion of the first instance court, because the court has sufficiently justified its conclusion for rejecting the claimant's lawsuit as admissible. Therefore, in this present case, the appellate court has assessed that the appealing allegations filed in the appeal do not stand, because Regulation No. 01/2020 on the Internal Organization and Systematization of the Institute of Forensic Medicine (IFM) is not a final act in the administrative procedure.”

21. On 29 September 2021, the Applicant submitted a request for an extraordinary review of the court decision on the grounds of essential violations of the provisions of the Law on Administrative Conflicts, with the proposal that the request be approved in its entirety as grounded and the Decision of the Basic Court and the decision of the Court of Appeals be annulled and the case be remanded to the Basic Court for retrial.
22. On 18 November 2021, the Supreme Court by the Decision [ARJ. no. 115/2021] rejected as ungrounded the request for extraordinary review of the Applicant's court decision filed against the Decision of the Court of Appeals. In the Reasoning of this Decision, the Supreme Court emphasized the following:

“From the provisions cited above and according to the situation determined by the courts of lower instances, the panel assesses that the courts of lower instances have decided correctly and on legal grounds by dismissing the claimant's lawsuit as inadmissible because it is not disputed that act Regulation no. 01/2020, for the Internal Organization and Systematization of the IFM, is not a final act issued in an administrative procedure against which an assessment of its Legality can be made in a court procedure, as provided by the above-cited provisions of the LAC- and LAP. By examining this case in a court procedure, the competence of the court would be exceeded because the disputed act is not an act issued in the form of a decision at the end of an administrative procedure of decision by a final decision against which the administrative conflict could be initiated by the natural or legal person if it considers that any right or legal interest has been violated.”

23. On 30 November 2021, the Ombudsperson submitted to the Supreme Court the Opinion regarding the request for the extraordinary review of the court decision, submitted to the Supreme Court (ARJ. no.115/2021) by the Trade Union of the Institute of Forensic Medicine, where it stated that *“the issue of the compatibility of sub legal acts with the basic laws is a legal issue and in these circumstances the legality of the sublegal acts should be assessed”*.
24. On 4 March 2022, the Ombudsperson submitted to the Court: *“The opinion of the Ombudsperson regarding the referral KI 10/22 of the Trade Union of the Institute of Forensic Medicine for the constitutional review of the Decision [A. no. 1430/21] of the Basic Court in Prishtina, of the Decision [AA. no. 651/2021] of the Court of Appeals and Judgment [ARJ. no. 115/2021] of the Supreme Court”*.

Opinion of the Ombudsperson regarding referral KI10/22 of the Trade Union of the Institute of Forensic Medicine

25. Initially, the Ombudsperson points out that the Applicant had submitted a complaint to the Ombudsperson Institution regarding the case raised in the Supreme Court for the extraordinary review of the court decision.
26. The Ombudsperson further emphasized that in the circumstances of this present case we are dealing with a referral from the Trade Union of the Institute of Forensic

Medicine for the assessment of the legality of a regulation before the regular courts in the Republic of Kosovo.

27. The Ombudsperson further notes that the request for the assessment of the legality of the IFM Regulation has been rejected as ungrounded by the regular Courts, making it unclear what institution is responsible for the assessment of sub-legal acts or whether the internal regulations are considered general acts, which may be subject to judicial review.
28. In the following, the Ombudsperson emphasizes that it continuously receives complaints through which it is requested to submit referrals to the Constitutional Court regarding the assessment of the legality of sub-legal acts (administrative instructions, regulations), approved by state or public administration authorities.
29. The Ombudsperson also expresses the position regarding the legal remedies for assessing the legality/constitutionality of the internal regulations of the institutions, which remain to be decided by the Constitutional Court, while the issue of assessment of the legality/constitutionality of administrative instructions is not completely clarified by Law No. 03/L-202 on Administrative Conflicts. In addition, the practice of the regular courts, specifically the Decision [A. no.2886/2019] of 11 June 2020, of the Basic Court [a case which was submitted to the Ombudsperson Institution by the Association of Pharmaceutical Distributors] according to which against the administrative instruction an administrative conflict cannot be conducted and that judicial protection outside the administrative conflict was provided for the case in question, *“[...] without providing any clarification as to what judicial protection is provided outside the administrative conflict, it creates an unclear legal situation, which requires a solution that would enable citizens to use legal remedies efficiently”*.
30. The Ombudsperson considers that it is very important to clarify the responsibility of the competent institution for assessing the legality of sub-legal acts. This would enable the assessment of the compliance of sub-legal acts with the law, but also the exercise of the constitutional right, namely Articles 54 [Judicial Protection of Rights] and Article 32 [Right to Legal Remedies].
31. Finally, the Ombudsperson considers that such situations should be clearly defined in the provisions of the laws (the Law on Normative Acts, which is currently under review in the Assembly of Kosovo, and the Law on Administrative Conflicts, which is in the stage of drafting in the Ministry of Internal Affairs and Public Administration). Consequently, this would create a clear overview of what are general normative acts, which of these acts are subject to judicial control and which are not, and to determine the competence of the competent body for assessing the legality/constitutionality of such acts. Therefore, the Ombudsperson considers the assessment of the Constitutional Court as necessary regarding the issues in question, which directly have an impact on the right to judicial protection and legal remedies.

Applicant's allegations

32. The Applicant alleges that the challenged Decision was rendered in violation of its fundamental rights and freedoms established by Article 31 [Right to Fair and Impartial Trial] 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
33. The Applicant emphasizes that the refusal by each court instance to assess the question of the merits of the legality of the IFM Regulation, has made it impossible for them to exercise a right guaranteed by Article 54 of the Constitution. Thus, according

to the Applicant, they are being denied the protection of their rights by the courts, which have been violated by the IFM Regulation.

34. In this line of argumentation, the Applicant emphasizes that it is the duty of the courts to assess the compliance with the law of the acts that have sub-legal force. This leads to judicial protection of rights and judicial control of administrative actions. Therefore, according to the Applicant, the sub-legal acts remain with the highest legal power, with a power even higher than the laws, because according to them *“there is no institution in the Republic of Kosovo that would assess their legality, and eventually their annulment if it assesses the illegality of those acts”*.
35. The Applicant also points out that such actions of the courts, in addition to violating the constitutional provisions related to judicial protection of rights, also contradict Law no. 06/L-054 on Courts, namely Article 4 (Independence and Impartiality of the Courts) which stipulates that *“The Courts established by this Law shall adjudicate in accordance with the Constitution of the Republic of Kosovo and the applicable Laws in the Republic of Kosovo.”* So, the Applicant reiterates its position that the courts must assess the compliance of sub-legal acts with the laws from which they derive, since otherwise the principle of legality in Kosovo will be only *“imaginary”*.
36. In relation to the Applicant’s allegations of violation of Article 32 of the Constitution, it is claimed that the continuous refusal to review the legality of the IFM Regulation produces ineffectiveness of the legal remedies. Therefore, such refusals by the courts directly violate the constitutional provision of the right to legal remedies. Even in this case, similar to the case above, the action of the courts is contrary to the constitutional right to legal remedies, because it prevents individuals from using legal remedies because they refuse to review them.
37. Furthermore, the Applicant alleges that by the challenged decision, its constitutional rights have been violated regarding the right to fair and impartial trial, as established in Article 31 of the Constitution in conjunction with Articles 32 and 54 of the Constitution.
38. The Applicant states that considering the fact that the challenged act before the regular courts is the IMF Regulation, which practically produces irreparable consequences for the personnel working at the IFM, and constantly produces violations for the personnel working at the IFM, the latter request the Court to impose an interim measure which will suspend the implementation of this challenged act until the final decision is rendered by the Constitutional Court.
39. Finally, the Applicant requests the Court to (i) declare the referral admissible; (ii) to hold that the Decision [A. no. 1430/21] of the Basic Court, Decision [AA. no. 651/2021] of the Court of Appeals and the Judgment [ARJ no. 115/202] of the Supreme Court, are not in compliance with Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution and annul the latter as unconstitutional; (iii) To oblige the Supreme Court to annul the Decision [A. no. 1430/21] of the Basic Court, Decision [AA. no. 651/2021] of the Court of Appeals and remand the case for reconsideration and to decide on merits for the assessment of the legality of the IFM Regulation; (iv) to notify the Constitutional Court about the actions taken, based on the Judgment of the Constitutional Court.

Relevant constitutional and legal provisions

The Constitution of the Republic Of Kosovo

Article 31 [Right to Fair and Impartial Trial]

- 1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
- 2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*
- 3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*

[...]

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.

Law on Administrative Conflicts

Article 2

Aim

The aim of this law is provision of judicial protection of rights and interests for legal and natural persons and other parties, the rights and interests that have been violated by individual decisions or by actions of public administrative authorities.

Article 3

Definitions

- 1. Terms used in this law have the following meaning:*

1.1 Body – public administration bodies, central government bodies and other bodies on their dependence, local government bodies and bodies on their dependence, when during exercising public authorizations decide on administrative issues.

1.2. Administrative act – every decision of the body foreseen in sub-paragraph 1.1 of this paragraph, which shall be taken in the end of the administrative procedure on exercising public authorizations and which effects, in favor or not favor manner legally recognized rights, freedoms or interests of natural or legal persons, respectively other party in deciding the administrative issues.

1.3. Administrative issue - according to this law is special uncontested situation and with public interest, in which directly from legal provisions, results the need to define the behavior of next party in legal-authoritative manner.

Article 9

The Court decides on lawfulness of the final administrative acts regarding the administrative conflict, with which acts in exercising of public authorizations shall decide for the rights, obligations and legal matters of legal and natural persons in administrative issues.

Article 10

1. Based on the Law, a natural and a legal person has the right to start an administrative conflict, if he/she considers that by the final administrative act in administrative procedure, his/her rights or legal interests has been violated.

2. Administration body, Ombudsperson, associations and other organizations, which protect public interests, may start an administrative conflict.

3. Administration body has the right to initiate the administrative conflict, against the decision taken based on complain in the administrative procedure, if he/she considers that any of his/her rights or interests have been violated.

4. If, by the administrative act the Law has been violated in the favor of a natural or legal entity, the conflict can be initiated by a competent public prosecutor or by other body authorized by the Law. All administration bodies are obliged to inform competent public prosecutor or the body authorized by the Law.

5. An administrative conflict can be initiated also by the competent public attorney or authorized person, if by an administrative act the Law has been violated in the disadvantage of central government bodies and other bodies on their dependence, local government bodies and bodies on their dependence, where the property rights of these bodies have been violated.

Article 13 **Administrative conflict**

1. An administrative conflict can start only against the administrative act issued in the administrative procedure of the court of appeals.

2. An administrative conflict can start also against the administrative act of the first instance, against which in the administrative procedure, complain is not allowed.

Article 14

An administrative conflict can also start when a competent body has not issued the relevant administrative act according to the request or complain of the party, under the conditions foreseen by this law.

Law No. 05/L-031 on General Administrative Procedure

Article 47

Structure and statutory elements of the written administrative act

1. A written administrative act shall consist of:

1.1. the introductory part, which indicates the name of the issuing public organ, legal basis, the name of the addressee, a brief note on the subject of the proceeding and date of issuance;

1.2. the decisional part (Decision), which indicates what was decided including the term, condition or obligation (if applicable) as well as the costs of the proceedings, if any. The decisional part may be divided into more points. The costs of proceedings are quantified under a separate point of the decisional part;

1.3. reasoning part (rationale);

1.4. the concluding part, indicating when the act enters into force, legal remedies, including the public organ or the court where the legal remedy may be lodged, its form, the deadline for lodging and the way such deadline is calculated (legal advice). In case the lodging of an administrative appeal, according to the law, does not suspend the enforcement of the administrative act, the concluding part shall also contain this information as well as the reference to legal grounds for such exception.

2. If the law does not provide otherwise, the written administrative act, shall also contain the signature or the written name and surname of the responsible official or the chair of the collegial body and the minutes-taker or in case if the latter is unable to sign, by any other member of the collegial organ.

3. The signature requirement regarding electronic documents, under paragraph 2. of this Article shall be considered as fulfilled by an electronic signature in accordance with the special law. The electronic signature shall be based on a qualified certificate in which the identity of the public organ is expressed.

4. The Government of the Republic of Kosovo may define by special decision another safe method that secures the authenticity and the integrity of the sent electronic document, and its particulars. An electronic document secured according to a decision of the Government shall be deemed as signed.

Article 48

Reasoning of a written administrative act

1. The reasoning shall provide the party with the opportunity to properly understand the administrative act. The reasoning shall contain:

1.1. short description of the request of the party;

- 1.2. *explanation of the factual situation upon which the decision was taken;*
 - 1.3. *reasons that have been crucial to the assessment of the evidence;*
 - 1.4. *legal grounds for the decision and reason why they are applicable to each concrete case;*
 - 1.5. *reasons for which any of the requests of the parties were denied;*
 - 1.6. *in case of a discretionary power, explanation why it was exercised in the manner as done in the decision.*
2. *An obviously insufficient, inappropriate, contradictory or incomprehensible reasoning shall be deemed as lack of reasoning.*

LAW No. 04/-L-011 FOR ORGANIZING TRADE UNION IN KOSOVO

Article 15 The right of union after registration

1. *After the registration, the union has the right:*
 - 1.1. *. to enjoys all the rights of a legal person , in accordance with legal provisions;*
 - 1.2. *to represent its members before employers and public authorities in connection with any matter involving collective negotiations for employees, particularly in the promotion of social dialogue, economic and social rights, the labor relations;*
 - 1.3. *. to manage its resources for protecting the rights of employer's.*

Article 16 Legitimacy of the Trade Union

1. *Registered Trade Union shall have the quality of the legal person, with rights and duties specified by law, the Statute of the International Union Conventions and the ILO.*
2. *The union should have its harangue which will be engraving stamp and it is forbidden to be used by other unions.*
3. *The chairman of the union representing the Union.*
4. *The union should be the bank account with authorization for the financing of Trade Union activity.*

Article 30 Protection of Trade Union members in court

Every Trade Union organization recognized as a legal person may address the Court to protect the interests of each of its members, the employer required to act under the provisions of the Law in force.

Admissibility of the Referral

40. The Court first examines whether the Applicant has met the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
41. In this respect, the Court refers to paragraph 4 of of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

Article 21

[...]

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

Article 113

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.

42. In the following, the Court also refers to the admissibility requirements as established in the Law. In this regard, the Court refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

Article 47 (Individual Requests)

“1. Every individual is entitled to 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.”

[...]

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...”.

43. Initially, the Court assesses the issue of legitimacy as one of the main aspects related to the initiation of a constitutional process. The Court clarifies that, in accordance with Article 21.4 of the Constitution, the Applicant is entitled to file a constitutional complaint, referring to alleged violations of its fundamental rights and freedoms, which apply to individuals as well as to legal persons (see cases of the Court, K110/20, Applicant “*Regional Water-Supply Company “Hidroregjioni Jugor” J.S.C. - Unit Malësia e Re Prizren*, Resolution on Inadmissibility of 5 October 2020, paragraph 35; case KI41/09, Applicant *University AAB-RIINVEST L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).
44. In support of the reasoning above, the Court also referring to the case law of the European Court of Human Rights (hereinafter: ECtHR) notes that according to the national law, the trade unions should be enabled, under conditions that are not contrary to Article 11 of the Convention, to try to protect the interests of their members (see ECtHR case: *Sindicatul “Păstorul cel Bun” v. Romania*, no. 2330/09, Judgment of 9 July 2013, paragraph 134). The phrase “*for the protection of its interests*” cannot be interpreted to mean that only individuals and not trade unions can complain under this provision (see ECtHR case: *Federation of Offshore Workers’ Unions and Others v. Norway*, no 38190/97, Decision of 27 June 2002). Therefore, Article 11 of the Convention protects both workers and trade unions (see ECtHR case: *Federation of Yakut Republican Trade Unions v. Russia*, no. 29582/09, Judgment of 7 December 2021, paragraph 30).
45. In the circumstances of the present case, the Court assesses that the Applicant (IFM TradeUnion) in capacity of a legal entity, registered under the Law on Trade Union Organization, as well as based on Article 10 of the Law on Administrative Conflicts, has legitimacy to protect the interests of its members before regular courts and the Constitutional Court. Therefore, the Applicants have proven that their interest consists in ascertaining that the IFM Regulation is not in compliance with the premises of the organizational structure of the IFM, established in Article 15 of the Law on Forensic Medicine.
46. Furthermore, regarding the fulfillment of the procedural criteria above, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely the Judgment [ARJ. no. 115/2021] of 18 November 2021, of the Supreme Court after exhausting all legal remedies provided by law. The Applicant has also clarified the rights and freedoms that it claims to have been violated in accordance with the requirements of Article 48 of the Law and submitted the referral in accordance with the deadline set in Article 49 of the Law.
47. At the end and after reviewing the Applicant's constitutional complaint, the Court finds that the referral meets the admissibility criteria established in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure and that the latter cannot be declared inadmissible on the basis of the requirements established through paragraph (3) of Rule 39 of the of the Rules of Procedure. The Court also points out that the Referral is not manifestly ill-founded on constitutional basis, as provided by paragraph (2) of Rule 39 of the Rules of Procedure, therefore it must be declared admissible and its merits must be examined.

Merits of the Referral

48. The Court recalls that the Applicant alleges that the regular courts violated the rights guaranteed by Articles 31, 32 and 54 of the Constitution. The Court notes that the essential allegations of the Applicant are related to the non-granting of adequate judicial protection by the regular courts, as a result of the non-consideration on the

merits of the issue of assessing the legality of the IFM Regulation, namely Article 15 [Activity of the Institute] of Law on Forensic Medicine. Thus, the Applicant emphasized that the regular courts have failed to fulfill their duty of assessing the legality of sub-legal acts.

49. In this context, the Court recalls that the regular courts had used the same reasoning in the case of dismissing the statement of claim, rejecting the appeal and the request for an extraordinary review of the court decision, when they emphasized that the IFM Regulation *does not represent a final act in the administrative procedure* against which the assessment of its legality may be made in the judicial procedure as provided for in the Law on Administrative Conflicts and the Law on General Administrative Procedure.
50. In light of the facts and allegations of the referral, the Court considers that its essential aspects relate to the rights of the Applicant to (i) fair and impartial trial, in conjunction with (ii) the right to effective legal remedies and (iii) the right to judicial protection of rights.
51. Therefore, Court will further focus on examining the Applicant's allegations of violation of the procedural guarantees of Articles 31, 32 and 54 of the Constitution, in conjunction with Articles 6 and 13 of the ECHR.

General principles regarding the right of “access to justice”

52. The Court first clarifies that Article 6 of the ECHR is a *lex specialis* in relation to Article 13 of the ECHR: the requirements of Article 6 paragraph 1 of the Convention, which imply the full scope of a judicial procedure, are stricter and absorb those of Article 13 (see ECtHR case: *Kudła v. Poland*, no. 30210/96, Judgment of 26 October 2000, paragraph 146). In such circumstances, the safeguards of Article 6 paragraph 1 of the Convention, which imply the full extent of a judicial procedure, are stricter and absorb those of Article 13 (see ECtHR cases: *Sporrong and Lönnroth v. Sweden*, no 7151/75 and 7152/75, Judgment of 23 September 1982, paragraph 88; *Silver and Others v. the United Kingdom*, Nos. 947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113 /75; 7136/75, Judgment of 25 March 1983, paragraph 110; *Campbell and Fell v. the United Kingdom*, Nos. 7819/77 and 7878/77, Judgment of 28 June 1984, paragraph 123; *Brualla Gómez de la Torre v. Spain* , No. 26737/95 1997, paragraph 41).
53. In this regard, the Court recalls that the right of access to court for the purposes of Article 6 of the ECHR is defined in case *Golder v. the United Kingdom* (see case of ECtHR, *Golder v. the United Kingdom*, Judgment of 21 February 1975, paragraphs 28-36). Referring to the principle of the rule of law and the avoidance of arbitrary power, the ECtHR found that the “*right of access to court*” is an essential aspect of the procedural guarantees enshrined in Article 6 of the ECHR (on the general principles of right to a court, see also ECtHR Guide of 31 December 2018 to Article 6 of the ECHR, Right to Fair and Impartial Trial, Civil Aspects, Part II, Right to a court and also, the case of the ECtHR, *Zubac v. Croatia*, Judgment of 5 April 2018, paragraph 76). According to the ECtHR, this right provides everyone with the right to address respective issue related to “civil rights and obligations” before a court (See ECtHR case, *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 84 and references therein).
54. The Court in this regard notes that the right 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 Article 6 of the ECHR, provides that all litigants should have an

effective legal remedy enabling them to protect their civil rights (See cases of the ECtHR, *Běleš and Others v. the Czech Republic*, Judgment of 12 November 2002, paragraph 49; and *Nait-Liman v. Switzerland*, Judgment of 15 March 2018, paragraph 112).

55. Therefore, based on the case law of the ECtHR, everyone has the right to file a 'lawsuit' related to their respective "civil rights and obligations" with a court. Article 31 of the Constitution in conjunction with Article 6 of the ECHR embody the "right to a court", that is, "the right of access to a court", which implies the right to institute proceedings before the courts in civil matters (see ECtHR case *Golder v. the United Kingdom*, cited above, paragraph 36). Therefore, anyone who considers that there has been unlawful interference with the exercise of his/her civil rights and claims to have been denied the opportunity to challenge such a claim before a court, may refer to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, invoking the relevant right of access to a court.
56. Moreover, according to the ECtHR case law, the Convention does not aim at guaranteeing the rights that are "*theoretical and false*", but the rights that are "*practical and effective*" (see, for more on "practical and effective" rights, ECtHR Guide of 31 December 2018 to Article 6 of the ECHR, The Right to Fair and Impartial Trial, Civil Aspects, Part II. Right to Court, A. Right and Access to Court, 1. A practical and effective right; and the ECHR cases *Kutić v. Croatia*, cited above, paragraph 25 and the references cited therein; and *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein).
57. Therefore, within the meaning of these rights, Article 31 of the Constitution in conjunction with Article 6 of the ECHR, guarantee not only the right to institute proceedings but also the right to obtain a determination of the "*dispute*" by a court (See ECHR cases, *Kutić v. Croatia*, Judgment of 1 March 2002, paragraphs 25-32; *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 86 and references therein; *Aćimović v. Croatia*, Judgment of 9 October 2003, paragraph 41; and *Beneficio Cappella Paolini v. San Marino*, Judgment of 13 July 2004, paragraph 29).
58. The abovementioned principles, however, do not imply that the right to court and the right of access to court are absolute rights. They may be subject to limitations, which are clearly defined by the ECtHR case law (See ECHR Guide of 31 December 2018, Article 6 of the ECHR, Right to Fair and Impartial Trial, Civil Aspects, and specifically with respect to limitations on the right to court, Part II. Right to Court, A. Right and Access to Court 2. Limitations). However, these limitations cannot go so far as to restrict the individual's access so as to impair the very essence of the right (see, in this context, ECtHR case, *Baka v. Hungary*, Judgment of 23 June 2016, paragraph 120; and *Lupeni Greek Catholic Parish and Others v. Romania*, Judgment of 29 November 2016, paragraph 89 and references therein). Whenever access to the court is limited by the relevant law or respective case law, the Court examines whether the limitations touches on the essence of the law and, in particular, whether that limitation has pursued a "*legitimate aim*" and whether there is "a reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (see ECHR cases, *Ashingdane v. the United Kingdom*, Judgment of 28 May 1985, paragraph 57; *Lupeni Greek Catholic Parish v. Romania*, cited above, paragraph 89; *Nait-Liman v. Switzerland*, cited above, paragraph 115; *Fayed v. the United Kingdom*, Judgment of 21 September 1990, paragraph 65; and *Marković and Others v. Italy*, Judgment of 14 December 2006, paragraph 99).

59. In the following, the Court notes that Article 6 of the Convention does not guarantee the right of access to a court with competence to repeal or annul a law adopted by the legislator. However, where a decree (issued based on a law), decision or other measure, albeit not formally addressed to any individual natural or legal person, affects in substance the “*civil rights*” or “*obligations*” solely of such a person or group of persons in a similar situation, whether because of certain attributes specific to them or because of a factual situation which differentiates them from all other persons, Article 6 paragraph 1 may require that the substance of the measure in question is capable of being challenged before a “*tribunal*” that meets the requirements of that provision (See ECtHR case: *Posti and Rahko v. Finland*, no. 27824/95, Judgment of 24 February 2002, paragraphs 53-54). This applies *a fortiori* to a measure applying the relevant legislation solely to a particular case. (See ECtHR case: *Project-Trade d.o.o. v. Croatia*, no. 1920/14, Judgment of 19 November 2020, paragraphs 67-68).
60. In the specific circumstances of a case, the practical and effective nature of the right of access to a court may be impaired, for example: by the available limits of judicial review, for example where an appeal to the administrative courts against a presidential decree could cause only a review of the observance of external formalities in the adoption of the decree, while the applicant's appeal required the examination of the ground and internal legality of the decree (see ECtHR case: *Kövesi v. Romania*, no. 3594/19, Judgment of 5 of May 2020, paragraphs 153-154, regarding the early dismissal of a prosecutor), and *a fortiori* by the unavailability of a judicial review (see ECtHR case: *Camelia Bogdan v. Romania*, no. 36889/18, Judgment of 20 October 2020, paragraphs 76-77, regarding the automatic temporary suspension of a judge pending consideration of her appeal against the decision to remove her from office).

Application of general principles in the circumstances of the present case

61. The Court recalls that the essential allegations of the Applicant are related to the non-granting of adequate judicial protection by the regular courts, as a result of the non-examination on the merits of the issue of assessing the legality of the IFM Regulation, namely Article 15 [Activities of the Institute] of the Law on Forensic Medicine. Consequently, the regular courts used the same reasoning in the case of dismissing the statement of claim, rejecting the appeal and the request for an extraordinary review of the court decision, when they emphasized that the IFM Regulation *does not represent a final act in the administrative procedure* against which the review of its legality in court proceedings can be conducted as provided for in the Law on Administrative Conflicts and the Law on General Administrative Procedure.
62. In this regard, insofar as Article 6 of the Convention and Article 31 of the Constitution are applicable, it remains to be verified whether the applicant had effective access to the court for the purpose of challenging the legality of the IFM Regulation with Article 15 of the Law on Forensic Medicine.
63. The Court further recalls the case law of the ECtHR which specifies that Article 6 of the Convention, namely the component of the right of access to the court aims to protect rights that are “*practical and effective*” compared to “*theoretical*” or “*illusory*” rights (see ECtHR case: *Papamichalopoulos and others v. Greece*, no. 14556/89, Judgment of 24 June 1993, paragraph 42).
64. It follows from the above that when a Government Regulation as in the circumstances of the present case, although not formally addressed to any natural or legal person, essentially affects the “*civil rights*” or “*obligations*” of the IFM in a situation similar, either because of some special attributes for IFM or because of a factual situation that distinguishes IFM employees from all other persons. Consequently, Article 6

paragraph 1 of the Convention may require that the substance of the Regulation or measure in question may be challenged by that person or group before a “tribunal” that meets the requirements of that provision. This elaboration is strengthened even more when it is taken into account that the Regulation in question, as in the circumstances of this particular case, is a sub-legal act which implements the relevant legislation, namely the Law on Forensic Medicine (see *mutatis mutandis* ECtHR case: *Project-Trade d.o.o. v. Croatia*, cited above, paragraph 68).

65. The Court finds that the position of the ECtHR in this respect is similar to that adopted in the EU law, where a general measure such as an EU Regulation, in certain circumstances, may affect individual interest, therefore, it enables natural and legal persons to submit a claim for the annulment of the EU Regulation before the Court of Justice of the European Union - ECJ (see former Article 230 of the EC Treaty and Article 263 of the Treaty on the Functioning of the European Union (TFEU); see also ECtHR cases: C-358/89, *Extramet Industrie SA v Council of the European Communities* [1991] ECR I-2501, paragraph 13; Joined Cases 239 and 275/82 *Allied Corporation v Commission* [1984] ECR 1005, paragraph 11, and in Case 53/83 *Allied Corporation v Commission* [1985] ECR 1621, paragraph 4).
66. Based on the above, it results that the IFM Regulation, without losing its character as a sub-legal act, regulates the rights and obligations for the employees of the Institute of Forensic Medicine in certain circumstances, who therefore have the right, respectively, are legitimized to file a lawsuit for the annulment of this Regulation.
67. In this regard, based on the circumstances of the present case, the Court finds that an important issue that requires meritorious treatment to determine the issue of access to the court is also (i) the issue of the hierarchy of legal acts in the constitutional system of the Republic of Kosovo , as well as (ii) the issue of controlling the constitutionality and legality of legal acts.

Regarding the hierarchy of legal acts in the legal system of Kosovo

68. The Court further recalls the hierarchy of legal norms and the role of the regular courts in the direct application of constitutional norms, according to the provisions of the Constitution. In this regard, the Court first refers to Article 16 [Supremacy of the Constitution] which stipulates that: “1. *The Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution. [...]*”.
69. From the abovementioned provisions of the Constitution, it is clear that the Constitution is the highest legal act in Kosovo and that all other legal norms must comply with it. Such a finding has already been expressed and supported by the case law of this Court. More specifically, in this respect the Court refers to its case law where it has found that the above-mentioned constitutional Articles also guarantee the principle of “*constitutional supremacy*”, according to which the Constitution, in hierarchical terms, stands at the top of the pyramid and is the source of all laws and sub-legal acts in the Republic of Kosovo. In the latter, the “*supremacy*” of the Constitution is also ensured through the application of a mechanism for controlling the constitutionality of laws and verifying their compatibility with the Constitution, always in the manner provided by the Constitution (see cases of the Constitutional Court KI207/19, Applicant *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, Judgment of 5 January 2021, paragraph 120; KI48/18, Applicant *Arban Abrashi and the Democratic League of Kosovo*, cited above, paragraph 182).

Regarding the issue of control of constitutionality and legality of legal acts

70. In this regard, the Court recalls that there are different practices in how the legal systems of other countries regulate the issue of constitutional review of legal norms. According to a study by the Venice Commission, the legal systems of the members of the Venice Commission are divided into certain groups when it comes to the issue of constitutional control of legal norms. Regarding the determination of which system of constitutional review is applied in different countries, the study states that the classification of a legal system as “diffuse” on the one hand, or as “concentrated” on the other hand is difficult and that, consequently, the nature of the legal system is determined by the material jurisdiction of specific courts within a given system (see cases of the Court KI207/19, Applicant *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, cited above, paragraph 115; see more on this aspect, Study on the Access of Individuals to Constitutional Justice, adopted by the Venice Commission at the 85th Plenary Session 17-18 December 2010, CDL-AD (2010) 039rev, page 12).
71. Regarding the role of regular courts in the direct implementation of constitutional norms, the Court reiterates its practice, according to which it results that the regular courts have the right and moreover the obligation to adjudicate in the exercise of their functions, first in accordance with the Constitution, and then in accordance with the law. Also, given the hierarchy of legal norms explained above, that the Constitution is the highest legal act in Kosovo and that laws and other acts must be in compliance with the Constitution, the Court notes that regular courts are obliged to interpret the legal norms in accordance with constitutional norms (see case of the Court KI207/19, Applicant *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, cited above, paragraph 124-125).
72. Therefore, the Court notes that the right and obligation to apply and interpret the Constitution is recognized to all courts of the Republic of Kosovo. The latter, including the Supreme Court as the highest judicial instance at the level of the Republic, have the obligation to interpret laws in accordance with the Constitution. Therefore, the Constitution recognizes the authority to interpret the Constitution as well as the authority to interpret laws in accordance with the Constitution to all courts and other public authorities in the Republic of Kosovo. However, the Constitutional Court is the only authority in the Republic of Kosovo with exclusive constitutional authority to repeal a law or legal norm as well as to make the final interpretation of the Constitution and the compatibility of laws with it (see case of the Court KI207/19, Applicant *The Social Democratic Initiative, New Kosovo Alliance and the Justice Party*, cited above, paragraph 129-130).
73. Finally, regarding the principle of “constitutional supremacy”, the Court reiterates that the Constitution stands at the top of the pyramid and is the source of all laws and sub-legal acts in the Republic of Kosovo. In the latter, the “supremacy” of the Constitution is also ensured through the application of the mechanism of “constitutionality control” of the laws and the verification of their compatibility with the Constitution, always according to the manner established in the Constitution, by the Constitutional Court.
74. Therefore, from the Court’s point of view, it is established that there is a clear position in terms of the functions of the regular judiciary and the constitutional one: the first takes care of preserving *the legal supremacy of the law*, namely the compatibility of sub-legal acts with the law, while the second *preserves the legal supremacy of the*

constitution, through the control of the constitutionality of laws and sub-legal acts with the Constitution in the manner defined by the Constitution.

75. Consequently, in terms of control of the constitutionality of normative sub-legal acts, the Constitution defines two types of jurisdiction for the Court, firstly the exercise of an *initial* and *exclusive* jurisdiction and then the exercise of a *revisional* and *subsidiary* jurisdiction. In this regard, the Court has initial and exclusive jurisdiction when examining the cases defined by Article 113.2 and 113.4 of the Constitution (with the exception of Article 113.7), where all the listed cases are examined for the first time by the Court, which has full and exclusive jurisdiction on the matters presented.
76. On the other hand, the Court, based on Article 113.7, puts into operation its revisional and subsidiary jurisdiction for all individual requests on the respect of constitutional rights, which also have normative sub-legal act as the subject of dispute. Revisional jurisdiction as such is activated after the exhaustion of legal remedies. According to the Court's point of view, the border where the jurisdiction of judicial control over normative sub-legal acts begins and ends and where the jurisdiction of the Constitutional Court begins is well defined when it comes to the exercise of the Court's subsidiary (revision) jurisdiction. In this regard, as the applicants have received a final answer from the regular courts, on the basis of their lawsuit on their dispute against the legality of the sub-legal normative act, then they are legitimized that the claims for the violation of the fundamental rights and freedoms articulate in the individual constitutional complaint.
77. During the judicial control of the legality of the sub-legal normative act, in the specific case of the IFM Regulation, the regular courts must take into account several factors that include but are not limited to the following issues: i) if the sub-legal act was approved by an authorized body, (ii) if the approving body had the necessary legal basis to approve that sub-legal act; and (iii) if the content of the sub-legal act is within the limits set by law. Also, it should be taken into account that sub-legal acts cannot replace the law or create new legal rules of a general nature that would compete with the rules established by law (regarding the types of legal acts, see the characteristics of normative sub-legal acts that are divided into normative acts of an external character and normative acts of an internal character, in Opinion [CDL-AD(2019)025] of the Venice Commission regarding the Draft Law on legal acts, approved on 11-12 October 2019, paragraphs 23-31).
78. Consequently, the following Court also emphasizes the study of the Venice Commission, which assesses that in relation to the types of norms that can be presented for constitutional review, the constitutional court should be tasked only with verifying the constitutionality of legal acts, leaving in principle the control of sub-legal acts to regular courts, in order to avoid its backlog (see study no. 538/2009 [CDL-AD(2010)039rev.] on the individual approach to the constitutional judiciary, adopted by the Venice Commission at its 85th session (December 17-18 2010), paragraph 6).
79. Therefore, based on the above, the Court finds that the regular courts of the legal system of Kosovo, by not performing control of the legality of the IFM Regulation with Article 15 of the Law on Forensic Medicine, denied the Applicant 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; and as a result, prevented the case of the Applicants from being examined on the merits of the request.
80. Finally, the Court finds that the finding of the regular courts through their decisions when they emphasized that the IFM Regulation *does not represent a final act in the*

administrative procedure against which the assessment of its legality can be conducted in the judicial procedure as provided for in the Law on Administrative Conflicts and the Law on General Administrative Procedure were rendered in violation of the Applicant's right to access the court. Therefore, the Court finds that the challenged decision is not in compliance with paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

81. Furthermore, the Court 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 to access to the 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 following this after the elaboration and examination of his allegations and the proceedings conducted before the regular courts found that the challenged Judgment of the Supreme Court violated its right for access to the court. Consequently, as a result of this finding, the Court does not consider it necessary to examine separately the allegations of violation of the rights guaranteed by Articles 32 and 54 of the Constitution.

Assessment of the request for interim measure

82. The Court notes that the Applicant in the referrals requests the Court to impose an interim measure which will suspend the implementation of the IFM Regulation until the final decision is rendered by the Constitutional Court.
83. In order to allow the interim measure, in accordance with Rule 57 (5) of the Rules of Procedure, it must be established that:

“(5) If the party requesting interim measures has not made this necessary showing, the Court shall deny the request for interim measures”.

84. Given that the Applicant did not present the necessary evidence for the imposition of the interim measure, and based on what the Court decided on the merits of the referral and found that in the present case there is a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the latter finds that the imposition of an interim measure is unnecessary.
85. For these reasons, the request for interim measure is to be rejected.

Conclusions

86. The Court has dealt with the Applicant's allegations, and despite the fact that the Applicant in his referral alleged a violation of articles 6, 32 and 54 of the Constitution, found that the circumstances of the present case contain elements that are substantially related to allegation of violation of the right to access to 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 examining this allegations, the Court has applied for assessment, the case law of the Court and that of the ECtHR in the circumstances of the Applicant's case.
87. The Court, after the elaboration and review of the conducted procedure and the reasoning of the decisions of the regular courts, concluded that: (i) there is a clear position in terms of the functions of the regular and constitutional courts: the first

takes care of the *preservation of the legal supremacy of the law*, namely the compatibility of sub-legal acts with the law, while the second is for *preserving the legal supremacy of the constitution*, through the control of the constitutionality of laws and sub-legal acts with the Constitution in the manner established in the Constitution; and (ii) the regular courts of the legal system of Kosovo, by not controlling the legality of the IFM Regulation with Article 15 of the Law on Forensic Medicine, denied the Applicant 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; and as a result, they prevented the case of the Applicants from being examined on the merits of the request.

88. Finally, the Court, 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, did not assess it as necessary to examine separately the allegation of violation of its rights guaranteed by Articles 32 and 54 of the Constitution and decided to reject the request for interim measure while the latter decided on the merits of the referral and found that in the present case there is a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 21.4, 113.1 and 113.7 of the Constitution, Articles 20 and 27 of the Law and Rules 57 (5) and 59 (1) of the Rules of Procedure, on 18 July 2022, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO DECLARE invalid Judgment [ARJ. no. 115/2021] of 18 November 2021, of the Supreme Court of Kosovo, Decision [AA. no. 651/2021] of 6 August 2021, of the Court of Appeals, as well as Decision [A. no. 1430/21] of 5 July 2021 of the Basic Court in Prishtina.
- IV. TO REMAND Decision [A. no. 1430/21] of 5 July 2021 of the Basic Court for reconsideration in accordance with the Judgment of this Court;
- V. TO REJECT the request for imposition of the interim measure.
- VI. TO ORDER the Basic Court to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, by 18 January 2023 about the measures taken to implement the Judgment of this Court;
- VII. TO REMAIN seized of the matter pending compliance with that order;
- VIII. TO NOTIFY this Judgment to the Parties, and in accordance with Article 20.4 of the Law, to publish it in the Official Gazette;
- IX. This Judgment is effective immediately

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.