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

Prishtina, on 11 August 2022
Ref. no.:AGJ 2033/22

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI19/21

Applicant

Sadik Pllana

Constitutional review of Judgment Rev. No. 239/2019 of 26 November 2020 of the Supreme Court of Kosovo

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 Sadik Pllana from the village Kçiq i Madh – Municipality of Mitrovica (hereinafter: the Applicant), who with power of attorney is represented by lawyer Sheremet Ademi from Mitrovica.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment [Rev. No. 239/2019] of 26 November 2020 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment [Ac. No. 276/17] of 13 June 2019 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), and Judgment [C. No. 143/16] of 4 January 2017 of the Basic Court in Mitrovica – branch in Vushtrri (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, whereby the Applicant's fundamental rights and freedoms guaranteed by Articles 21 [General Principles] and 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR); Articles 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] and 56 [Fundamental Rights and Freedoms During a State of Emergency] of the Constitution have allegedly been violated.

Legal basis

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

Proceedings before the Constitutional Court

5. On 18 January 2021, the Applicant's representative submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which the latter accepted on 21 January 2021.

6. On 25 January 2021, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Safet Hoxha and Radomir Laban.

7. On 2 February 2021, the Court notified the Applicant's representative about the registration of the Referral and requested the representative to: (i) submit the power of attorney that proves that he is representing the Applicant before the Court; and (ii) complete the referral form.

8. On 15 February 2021, the Court received from the Applicant's representative the relevant power of attorney and the referral form.

9. On 15 February 2021, the Court notified the Supreme Court about the registration of the Referral.

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

President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi on 26 June 2021.

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

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

13. On 23 December 2021, the Court requested the Basic Court in Mitrovica - Branch in Skenderaj, the complete case file.

14. On 31 December 2021, the Court received the case file from the Basic Court in Mitrovica - Branch in Skenderaj.

15. On 11 May and 22 June 2022, the Review Panel considered the report of the Judge Rapporteur and unanimously requested the adjournment of the case for additional supplementations.

16. On 18 July 2022, the Review Panel considered the report of the Judge Rapporteur and by majority recommended to the Court the admissibility of the Referral. On the same date, the Court found by majority that (i) the Applicant's Referral is admissible; (ii) that there has been a violation of paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, regarding the right to fair and impartial trial within a reasonable time; (iii) that there has been no other violation of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR; and, (iii) Judgment [Rev. No. 239/2019] of 26 November 2020 of the Supreme Court of Kosovo, is effective.

Summary of facts

17. On 10 November 1998, the Applicant, based on the case file, suffered serious bodily injuries due to a defect in the electricity network and the explosion of a tank. This accident happened in the building of the "Enver Hadri" Primary School in Smrekonicë-Vushtrri.

Initiation of the lawsuit in 2000 against the Primary School "Enver Hadri", in Smrekonica of Vushtrri and then against the Ministry of Education, Science and Technology in Prishtina

18. On 2 November 2000, the Applicant filed a claim for compensation of damages in the Municipal Court. The respondent was the "Enver Hadri" Primary School in Smrekonicë-Vushtrri. According to the case file, the lawsuit was then initiated against another respondent, namely against the Ministry of Education, Science and Technology in Prishtina.

19. On 30 June 2003, the Municipal Court in Vushtrri rendered the Judgment [K. No. 143/2000] by which: (i) partially approved the statement of claim of the Applicant; (ii) obliged the Ministry of Education, Science and Technology in Pristina to pay him the

corresponding amount in the name of compensation for non-material damage. Another part of the statement of claim was rejected by the Municipal Court as ungrounded. Regarding the compensation for the non-material damage, the Municipal Court was based on evidence such as: (i) the expertise of the machinery expert; (ii) expertise of the neuropsychiatrist; and (iii) the expertise of the surgeon.

20. On 11 July 2003, the Ministry of Education, Science and Technology filed appeal against the decision of the Municipal Court [K. No. 143/2000], with the District Court, emphasizing that the Applicant has never been employed by the respondent, and moreover, he was paid by the Ministry of Education of the Republic of Serbia, because the administrative staff was paid by the latter. Regarding this point, the respondent emphasized that the Municipal Court has erroneously established its responsibility.

21. On 15 March 2004, the District Court in Mitrovica, by the Judgment [AC. No. 373/2003], approved as grounded the appeal of the appellant (Ministry of Education, Science and Technology) and modified the Judgment of the Municipal Court [K. No. 143/2000], as of now, rejected the Applicant's statement of claim as ungrounded on the grounds that no legal provision stipulates that the Ministry of Education *" as a department of the Government of Kosovo established after the intervention of NATO forces in Kosovo in 1999, it is responsible to the former education workers before the establishment of this ministry, namely in the present case also for the compensation of the damage caused to the claimant on 10.11.1998, because there can be no question of legal succession of this ministry, as there was not in other executive and administrative state bodies, of Kosovo, established by UNMIK. There is no legal basis, which provides for compensation of damage to the claimant as a former employee of the school [...]".*

22. On 9 April 2004, the Applicant filed a revision with the Supreme Court, alleging essential violation of the contested procedure from Article 354 paragraph 1 and 2, point 5 and 13 of the Law on Contested Procedure (Official Gazette of the former SFRY no. 4/77) (hereinafter: LCP) *"where the claimant was injured at the working place where he worked continuously at the time of the injury at workplace".*

23. On 25 January 2005, the Supreme Court of Kosovo by Decision [Rev. No. 97/2004], annuls the Judgment of the District Court AC. No. 373/2003 and rejects the lawsuit of the Applicant as inadmissible. The Supreme Court emphasized that based on Article 77 paragraph 1 of the LCP, the Ministry of Education, Science and Technology does not have the procedural legitimacy to be a respondent.

Initiation of the second lawsuit in 2006, conducted against the Primary School "Enver Hadri" in Smrekonicë, Vushtrri

24. On 18 April 2006, the Applicant submitted the second lawsuit for compensation of damages, against the respondent Primary School in Smrekonicë-Vushtrri "Enver Hadri".

25. On 3 May 2006, the Municipal Court in Vushtrri held a preparatory session, in which case it decided by the Decision that the main session will be held on 18 May 2006. In this session, the Applicant and the representative of the Primary School participated.

26. On 18 May 2006, by the Decision, the main hearing in the Municipal Court in Vushtrri was postponed to 24 May 2006.

27. On 24 May 2006, the main hearing was held at the Municipal Court in Vushtrri, where the Applicant and the representative of the Primary School, and the public attorney of

the Municipality participated. The Applicant emphasized that he remains behind his statement of claim, while the attorney of the Municipality, among other things, emphasized that the lawsuit is time-barred.

28. On 24 May 2006, the Municipal Court in Vushtrri, by Decision [C. No. 196/2006], dismissed the lawsuit of the Applicant, on the grounds that the case has been adjudicated, as provided for in Article 333 of the LCP. The Municipal Court considered Decision AC.No.373/2003 of the District Court and Decision [Rev. No. 97/2004] of the Supreme Court to be final.

29. On 12 June 2006, the Applicant submits an appeal to the District Court, and states: *"I think that the Court has fully accepted the opinion of the public attorney of the municipality, where he says that this is an adjudicated issue [...]. It is true, but my case from the municipal legal entity in Vushtrri, when the first trial was held, was decided on 30.06.2003, he insisted and according to it was acted upon that the lawsuit: take the opposite direction in MEST and not in the school, where the lawsuit was directed because he knew that that debt falls to the municipality. It turns out that the judgment was made at the wrong address [...] It can be seen that the lawsuit [the first lawsuit] was addressed to the primary school "Enver Hadri" in Smrekonicë.[...] By the decision of the District Court in Mitrovica, it can be seen that the entire procedure was conducted at the wrong address".*

30. On 14 March 2013, the Court of Appeals by the Decision [CA. No. 452/2012]: (i) approves the Applicant's appeal as grounded; (ii) annuls the decision of the Municipal Court in Vushtrri C. No. 196/2006 of 24 May 2006, and remands the case for retrial to the Basic Court in Mitrovica-branch in Vushtrri. The Court of Appeals first emphasized that: (i) the contested issue registered as C. No. 143/2000, the claimant was SadikPllana [the Applicant], and the respondent was the Ministry of Education, Science and Technology in Prishtina, but the respondent was not the same as in case C. No. 196/06. Therefore, the Court of Appeals emphasized that the legal requirements have not been created for the dismissal of the lawsuit as an adjudicated case, because the identity of the object of the dispute must exist between the same procedural parties; (ii) the procedural violation consists in the fact that the first instance court has not confirmed whether the Primary School in Smrekonica "Enver Hadri" can be a procedural party, which should be taken care *ex-officio*. Regarding the latter, the Court of Appeals he referred to Article 77 of the LCP , emphasizing that the first instance court has not established the fact that the respondent has assets to which the enforcement procedure can be applied; (iii) the first instance court had the duty to apply Article 83 of the LCP, to invite the claimant [the Applicant], to adjust the lawsuit or take other measures so that the procedure continues with the person that may be a party to the proceedings.

Retrial after Decision CA. no. 452/2012 of 14 March 2013 of the Court of Appeals, conducted against the Municipality of Vushtrri

31. On 23 May 2013, based on the case file, a preparatory hearing was held at the Basic Court in Vushtrri, and there the Applicant requested: "*that the respondent Municipality of Vushtrri, PS "Enver Hadri" in Village Smrekonicë-Vushtrri, be obliged towards [the applicant], to pay him in the name of compensation for the damage [...]*".

32. On 4 September 2013, the Basic Court issues an Order for the payment of the court fee. The Municipality of Vushtrri appeared in this document as the respondent.

33. On 4 September 2013, the Basic Court, by the Decision [C. No. 220/13], dismissed as out of time the lawsuit of the Applicant, on the grounds that the damage was caused to the Applicant on 10 November 1998, and the latter on 30 November 2000 filed a lawsuit in the competent court, and finally by Decision Rev. no. 97/2004 of 25 January 2005, the lawsuit of the Applicant was dismissed. Regarding the deadlines, the Basic Court referred to Article 376 (Claim for compensation of damage) of the Law on Obligations of 1978 (hereinafter: LOR), according to which the prescribing period is 3 years from becoming aware of causing the damage, and referring to this fact, the Basic Court found that the damage was caused to the Applicant on 11 November 1998, and the statute of limitations is 10 November 2003. The Basic Court emphasized that based on Article 389 (Waiver, dismissal or rejection of the claim) of the LOR, the rejection of the claim does not cause the interruption of the statute of limitation, therefore it was found that the Applicant's limitation period was not stopped due to the dismissal of the claim according to the Supreme Court decision, but the new claim of the Applicant, submitted in 2006, is out of time.

34. On 23 September 2013, the Applicant submitted an appeal to the Court of Appeal against the Decision of the Basic Court [C. No. 220/13], on the grounds of: (i) essential violations of the provisions of the contested procedure; (ii) erroneous and incomplete determination of the factual situation; and (iii) erroneous application of substantive law. The Applicant pointed out that the Basic Court did not implement the suggestions of the second-instance court (Decision [CA. no. 452/2012] of 14 March 2013 of the Court of Appeals), and "*as the first-instance court did not act according to the remarks of the second instance, the claimant acted in entirety according to the remarks of the second instance, and adjusted the lawsuit [...]*".

35. On 18 March 2016, the Court of Appeals, by the Decision [Ac. No. 3017/13], approved the Applicant's appeal as grounded and annulled the Decision of the Basic Court of 4 September 2013, and remanded the case for retrial to the latter. The Court of Appeals emphasized that it cannot accept the legal position of the court of first instance because the latter has confused the legal institutes where in the ruling it has rejected the lawsuit as unfit while the whole reasoning has been based on the provisions of the statute of limitations . The Court of Appeals further emphasized that based on Article 391 [No title] of the LCP, namely point f), it is foreseen that the lawsuit was filed after the deadline, but that the deadline for its filing is provided by special provisions, and that in the present case, regarding the claim for compensation of damages, no special provisions have been presented. The Court of Appeals also emphasized that if the first instance court deals with the claim of the respondent that the lawsuit was filed after the deadline, thus based on the statute of limitations, then this issue presents a material-legal issue, which must be decided on its merits.

36. On 13 April 2016, the Applicant submitted an "Urgency for acceleration of the procedure" to the Basic Court, emphasizing that he submits the urgency due to the necessary need for medical treatment, due to the injuries suffered. The Applicant emphasized that the matter has priority because it has been in the proceedings since 2000.

Retrial after Decision C. no. 220/13 of 18 March 2016 of the Court of Appeals

37. According to the case file, the Basic Court had scheduled a session which was then postponed to 12 July 2016, and in the latter, by the Decision, it was decided that the session for the main review should be scheduled for 5 August 2016.

38. From the case file on 31 October 2016, a hearing was held and by Decision it was decided that (i) the hearing is postponed; and (ii) the Basic Court in the next session will decide "*after the preliminary decision on the issue of prescription of the request*".

39. On 4 January 2017, the Basic Court, by the Judgment [C. No. 143/16], rejects the Applicant's lawsuit due to the expiry of the statute of limitation. The Basic Court emphasized that in cases of compensation for damage, according to Article 376 of the LOR, the limitation period is 3 years from becoming aware of the damage caused, and 5 years from the day the damage was caused. The damage was caused to the Applicant on 10 November 1998, and the limitation period is 10 November 2003, because 5 years have passed since the damage was caused. The Basic Court emphasized that, based on Article 389 of the LOR, the dismissal of the lawsuit does not cause the interruption of the statute of limitation, therefore, the deadline is not interrupted by the fact that the lawsuit was dismissed by the Supreme Court Decision [Rev. no. 97/2004]. Based on the reasons above, Applicant, by submitting the new lawsuit in 2006, it was statute-barred.

40. On an unspecified date, the Applicant submitted an appeal to the Court of Appeals, alleging essential violation of the provisions of the contested procedure and erroneous application of the substantive law, noting that the statute of limitation has not passed. The Municipality submitted an answer to the appeal, which supported its arguments in the statute of limitation based on paragraph 2 of Article 389 of the LOR.

41. On 13 June 2019, the Court of Appeals, by the Judgment [Ac. No. 276/17], rejected the Applicant\s appeal as unfounded, and upheld the Judgment of the Basic Court [C. No. 143/16]. The Court of Appeals emphasized that the position and legal conclusion of the first instance court is fair and lawful and: (i) the appealing allegations that the judgment contains violation of the provisions of the contested procedure are not grounded, because the provision is clear and in line with the reasons of the judgment, and also all the facts have been proven, on the basis of which a clear overview has been created, where it follows that the right to compensation for damage has been prescribed; and (ii) the appealing allegations related to the incorrect implementation of the substantive law do not stand because based on articles 154, 371, 376, of the LOR, the Applicant's is statute-barred. As for the allegation for interruption of the statute of limitation, due to the filing of the lawsuit in 2000, the Court of Appeals reasoned that based on Article 389 paragraphs 1 and 2 of the LOR, which defines the conditions for interruption of the statute of limitation, in cases where lawsuit by the courts dismissed, as is the case with the Decision of the Supreme Court Rev. No. 97/2004 of 25 January 2005.

42. On 16 July 2018, the Applicant submitted a revision to the Supreme Court, claiming: (i) essential violation of the provisions of the contested procedure, because according to him, the Judgment rejecting the statement of claim due to the statute of limitations is not a procedural decision, but a decision that is decided on merits; and (ii) erroneous application of the substantive law, because according to him, based on paragraph 3 of Article 392 (Statute of limitation in case of interruption) of the LOR, it is established that when the statute of limitation is interrupted by filing the lawsuit, it begins to run from the day when the dispute has definitively ended. Therefore, the Applicant in his revision considers that the interpretation of the provisions of the LOR, by the regular courts, by not taking into account the fact that the filing of the lawsuit interrupts the limitation period, represents legal uncertainty, regarding the exercise of the rights of citizens The Municipality submitted an answer to the appeal, which again supported its arguments in the statute of limitations..

43. On 26 November 2020, the Supreme Court rendered Judgment [Rev. No. 239/2019], and rejected as ungrounded the Applicant's revision, submitted against the Judgment [Ac. No. 276/17], of the Court of Appeals. The Supreme Court accepted as founded the legal position of the first and second instance courts, and emphasized that the second

instance court has examined all appealing allegations important for decision-making. As for the appealing allegations related to the substantive law, related to the statute of limitation, and the issue of the expiration of the deadline, the Supreme Court emphasized that for the latter, the lower instance courts have given full clarifications of the legal provisions, and the Supreme assesses that by article 389 paragraphs 1 and 2 of the LOR, it is clearly defined when the procedure ends with the dismissal of the lawsuit as is the case with the Decision of the Supreme Court [Rev. No. 97/2004], it is considered that this procedure did not cause the interruption of the limitation period. The Supreme Court also emphasized that in this case Article 390 paragraph 1 of the LOR cannot be either applied and *"The claimant accepts that he was served with Decision Rev. no. 97/2004, o 25.01.2005, of the Supreme Court of Kosovo on 22.04.2005, while the new lawsuit was filed on 18.04.2006, namely after the three-month deadline, provided by this provision, therefore, it cannot be considered that we have an interruption of the prescription according to the lawsuit filed on 3.11.2000".*

Applicant's allegations

44. The Applicant alleges that by the challenged decision, namely the Judgment of the Supreme Court, his fundamental rights and freedoms as guaranteed by Articles 21 [General Principles] and 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR; as well as by Articles 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] and 56 [Fundamental Rights and Freedoms During a State of Emergency] of the Constitution have been violated.

45. The Applicant, regarding his allegations of violation of the right to fair and impartial trial, complains about the statute of limitation and the duration of the procedure.

46. First, regarding the limitation period, the Applicant reiterates: *"In accordance with Article 376 of the LOR (1978), the limitation period is 3 years from becoming aware of the cause of the damage and 5 years from the day the damage was caused. The statute of limitations for the claimant has not been interrupted by the fact that the lawsuit was rejected according to Decision Rev. no. 97/2004 of the Supreme Court of Kosovo".*

47. The Applicant also states that the Supreme Court: *"in the reasoning of the judgment, upholding the allegations and reasoning of the lower courts, it has found that the claimant's lawsuit is statute-barred and it has come to this conclusion without considering that there was an interruption of the statute of limitation period, with the submission of the claimant's legal remedies, initially the first lawsuit of 02.11.2000 and the lawsuit of 18.04.2006. We consider that the courts with such finding did not decide on the grounds of the lawsuit, but rather examined the legal deadlines, which, in our opinion, were interrupted by the filing, namely by the exercise of legal remedies".*

48. Further, the Applicant alleges that the lawsuit filed on 2 November 2000, regardless of whether it was rejected by revision, represents a legal remedy filed against the respondent, therefore, according to the LOR, with the submission of the legal remedy - filing of lawsuit, the statute of limitations is interrupted also by any other action taken by the creditor against public authorities.

49. The Applicant emphasizes that the injured party in the procedure must know about the damage caused to him but *"[...] I cannot file a lawsuit without knowing the person who caused the damage [...] to find out who is the physical or legal person who caused the damage".*

50. Secondly, regarding the length of the procedures, the Applicant considers that: *"The inefficiency of the courts and the delays caused through no fault of the applicant in timely address of this case have caused harmful consequences for the applicant, who, after filing the case in the Court, has created dependency- litispendece, making it impossible to continue the legal and court procedures in time".* In this aspect, the Applicant, in the case file, in particular states that the Court of Appeals kept the case for seven (7) years (Decision CA. no. 452/2012 of 14 March 2013).

51. Finally, the Applicant requests the Court to declare the Referral admissible and: (i) to find that there has been a violation of the Constitution and Article 6 of the ECHR; and (ii) to declare invalid and remand for retrial Judgment Rev. No. 239/2019 of the Supreme Court of 26 November 2020.

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..

[...]

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6
(Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
[...]

LAW ON CONTRACT AND TORTS OF 1978

Article 371
General Time Limit for Unenforceability due to Statute of Limitations

"Claims shall become unenforceable after a ten year period, unless some other unenforceability time limit be provided by statute."

Article 376
Claiming Damages for Loss

"A claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor.
In any event, such claim shall expire five years after the occurence of injury or loss.
A claim for damages for loss caused by violation of a contractual obligation shall expire within the time specified for unenforceability due to the statute of limitations of such obligation.."

Article 389
Desisting, Renouncing or Rejecting Legal Proceedings

"Should a creditor desist from legal proceedings or other motion undertaken by him, it shall be held that there was no interruption of the limitation period by instituting legal proceedings or undertaking other motion against the debtor at the court or other competent agency, with the aim of confirming, guaranteeing or realizing the claim.
It shall also be held that there was no interruption should the creditor's action or claim be rejected or renounced, or should an obtained or undertaken measure of execution or guarantee be cancelled."

Article 390
Renouncing an Action on the Ground of Lack of Jurisdiction

"Should an action against a debtor be renounced on the ground of lack of jurisdiction of the court, or by some other reason not related to the substance of the matter, if the creditor files another action within a three month period after the final decision renouncing the action, it shall be held that the limitation period was interrupted by the first action.
The same shall also apply to invoking protection and claiming offset of amounts due in a dispute, as well as in the event of the court or other agency directing the debtor to effect his claim in the litigation proceedings."

Article 392
Time Limit of Unenforceability due to Statute od Limitations in Case of Interruption

"After the interruption the limitation period shall start to run anew, while the time expired prior to interruption shall not be accounted for into the statutory limitation period.
If the limitation period is interrupted by debtor's acknowledgment, it shall start to run anew from the date of such acknowledgment.
Should the limitation period be interrupted by instituting legal proceedings or invoking protection, or claiming setoff of claims in litigation, or by filing the claim within some other proceedings, the limitation period shall begin to run anew from the day of closing the litigation in a regular or some other way.
Should the limitation period be interrupted by filing a claim in bankruptcy proceedings, the expiration period shall begin to run anew from the day of closing of such proceedings.
The same shall also apply should the limitation period be interrupted by a request for compulsory execution or for obtaining a guarantee

The limitation period beginning to run anew after the interruption shall be completed on the expiration of the limitation period which was interrupted."

CIVIL PROCEDURE LAW of 1977

Article 77
[no title]

" [1]. Any natural person or legal entity may be a party to the proceedings.
[2]. Specific regulations shall enact who may be a party to the proceedings, in addition to natural persons and legal entities.
[3]. A civil court may exceptionally, and with legal effect in the particular case, recognise attributes of a party to the proceedings to such forms of associations that do not hold capacity to be a party within the meaning of the paragraphs 1 and 2 of this Article if it determines that, with regard to the matter of dispute, they comply with the essential requirements for acquiring the capacity to be a party, and, in particular, if they dispose with property on which enforcement may be carried out.
[...]"

Article 83
[no title]

"[1]. When the court determines that a person appearing as a party cannot be a party to the proceedings, and such deficiency may be corrected, the court shall order a plaintiff to perform necessary corrections in the complaint."
[...]

Article 333
Legal effectiveness of a judgment

"[1]. A judgment not eligible for further appeal becomes effective if it adjudicates on a claim or a counter complaint.
[2]. In the course of the entire proceedings, the court shall take due care ex officio whether the matter has already been adjudicated effectively, and if the court establishes that the litigation was initiated pertaining to the claim that has already been ruled effectively, it shall reject the complaint.
[3]. If a judgement rules on a claim that the respondent put forward in a plea for a set-off, the ruling on establishing either existence or non-existence of such claim shall become legally effective."

[...]

LAW No. 03/L-006 ON CONTESTED PROCEDURE

Article 390
[no title]

If the court decides that the charges are unclear, or that there are deficiencies that the party becomes an involved party at the court, or with its legal representative, or there are deficiencies in representative authorization to initiate contentious procedure, and this authorization is requested by law, it can take necessary means determined in this law (articles 79 and 102 of this law).

Article 391
[no title]

After the pre examination the court can drop charges as unnecessary if it determines that*:*

f) charges are presented after the deadline, if it was set by legal provisions*;*

Admissibility of the Referral

52. 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.

53. 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."*

54. The Court further examines whether the Applicant has met the admissibility requirements as established in the Law. In this regard, the Court refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

Article 47
(Individual Requests)

> *"1. Every individual is entitled to requestfrom the Constitutional Court legal protection when he considers that his/ her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*

Article 48
(Accuracy of the Referral)

> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

Article 49
(Deadlines)

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...".*

55. Regarding the fulfillment of the abovementioned criteria, the Court notes that the Applicant is an authorized party, who challenges an act of public authority, after having exhausted all available legal remedies established by law. The Applicant has also clarified the fundamental rights and freedoms he claims to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

56. The Court also notes that the Applicant's Referral meets the admissibility criteria established in paragraph (1) of Rule 39 of the Rules of Procedure and that the latter cannot be declared inadmissible based on the requirements set in paragraph (3)) of Rule 39 of the Rules of Procedure. The Court also reiterates that the Referral is not manifestly ill-founded on constitutional basis, as stipulated in paragraph (2) of Rule 39 of the Rules of Procedure, therefore it must be declared admissible and its merits must be examined.

Proceedings conducted in the period from 2 November 2000 to 25 January 2005

57. In the following text, the Court-before assessing the merits of the Applicant's case-must, as a preliminary matter, assess whether the proceedings conducted in the period from 2 November 2000 to 25 Januar, 2005 fall within the temporal jurisdiction (*ratione temporis*) of the Court.

58. In relation to the proceedings conducted in the period from 2 November 2000 to 25 January 2005, the Court recalls that the case includes a dispute initiated with the first lawsuit since 2 November 2000. In this respect, the Court refers to the provisions of the Rules of Procedure, namely Rule 39 (Admissibility Criteria) which establishes that:

> *"(3) The Court may also consider a referral inadmissible if any of the following conditions are present:*
> *[...]*
> *(d) the Referral is incompatible ratione temporis with the Constitution;"*

59. Following an analysis of the case file it is established that the first lawsuit was initiated by the Applicant on 2 November 2000, and the proceedings regarding it ended on 25 January 2005, so, date back to the period before the Constitution of the Republic of Kosovo entered into force on 15 June 2008.

60. Therefore, the Constitutional Court cannot assess the constitutionality of legal acts that are presumed to have violated a constitutionally guaranteed right, because at that time those rights were neither specified nor guaranteed by the Constitution due to the fact that the Constitution itself did not exist (see, *mutatis mutandis,* Court case KI170/18, applicant *Draško Šćekić,* Resolution on Inadmissibility of 13 November 2019, paragraph 37).

61. Therefore, the Court finds that the period from 2 November 2000 until 25 January 2005 is *ratione temporis* inadmissible with the Constitution (see, ECtHR cases, *Blecic v. Croatia*, No. 59532/00, ECtHR Judgment of 29 July 2004. In *Blecic v. Croatia* the ECtHR declared the request inadmissible because the provisions of the ECHR do not oblige the signatory states with respect to any act or legal situation which was rendered or a legal situation which has ceased to exist before the ECHR came into force.

62. Therefore, the Court finds that the allegations related to this period are not *ratione temporis* admissible with the Constitution and as such should be declared inadmissible based on Rule 39 (3) (d) of the Rules of Procedure.

Merits

I. Introduction

63. The Court recalls that the essence of the present case derives from the serious bodily injury of the Applicant, due to a defect in the network electrical energy, at his workplace in the facility of the Primary School in Smrekonica - Vushtrri Enver Hadri", on 10 November 1998. As a result, the Applicant first filed a lawsuit on 2 November, 2000 for compensation in the Municipal Court in Vushtrri, and then a lawsuit on 18 April 2006. As for the first lawsuit, the procedure ends with judgment of the Supreme Court [Rev. no. 97/2004], by which the lawsuit of the Applicant is dismissed because based on Article 77 paragraph 1 of the LCP, the Ministry of Education and Technology does not have the capacity of a legal entity, therefore it does not have the ability to be a party to the proceedings.

64. As for the second lawsuit, the Municipal Court in Vushtrri, by Decision, dismissed the lawsuit of the Applicant, emphasizing that the case is adjudicated based on Article 332 of the LCP, and then, the Court of Appeals annulled the Decision of the Municipal Court, and the case is remanded to the Basic Court for retrial, emphasizing, among other things, that the procedural violation consists in the fact that the court of first instance has not confirmed whether the Primary School "Enver Hadri" in Smrekonica can be a procedural party, for which it would have to take care *ex-officio*. The Basic Court in the retrial was based on the limitation period relying on Article 389 of the LOR and emphasizing that the dismissal of the lawsuit does not cause the interruption of the limitation period. After the submission of the appeal by the Applicant, the Court of Appeals by the Decision, once again remanded the case to a retrial, emphasizing that: (i) the first instance court confused the legal institutes where in the enacting clause it dismissed the lawsuit as out of time, while basing his entire reasoning on the provisions of the statute of limitations; and (ii) based on Article 391 of the LCP, namely point f), it is foreseen that the lawsuit was filed after the deadline, but that the deadline for its submission is provided by special provisions, and that in the present case, there are no special provisions. Consequently, in the retrial, the Basic Court emphasized by the Judgment that: (i) in accordance with Article 376 of the LOR, the limitation period is 3 (three) years from the knowledge of the damage caused, and 5 (five) years from the day of causing damage, and that for the Applicant the deadline was 10 November 2003; (ii) based on article 389 of the LOR, the dismissal of the lawsuit does not cause the interruption of the limitation period, therefore, the deadline is not interrupted by the fact that the lawsuit was dismissed by Decision of the Supreme Court [Rev. no. 97/2004]. In the appeal procedure, the Court of Appeals reasoned based on Article 389 paragraphs 1 and 2 of the LOR, which defines the conditions for interruption of the prescription. In the end, in the revision procedure, the Supreme Court by Judgment [Rev. no. 239/2019] was also based on article 389 paragraphs 1 and 2 of the LOR, and emphasized that Article 390 paragraph 1 of the LOR cannot be applied.

65. The essence of the Applicant's allegations consists in his allegation that: (i) in accordance with Article 376 of the LOR, the limitation period is 3 (three) years from becoming aware of the damage caused and 5 (five) years from the day the damage was caused. According to him, the statute of limitations has not been interrupted by the fact that his lawsuit was rejected according to the Decision [Rev. no. 97/2004] of the Supreme Court; (ii) the injured party in the procedure must know about the damage caused to him but *"I cannot file a lawsuit without knowing the person who caused the damage [...] to find out who is the natural or legal person who caused the damage"*. The Applicant considers that the limitation period begins to run from this; and (iii) the inefficiency of the courts and the delays caused through no fault of his in the timely treatment of this case have caused harmful consequences for the Applicant, who, after filing the case in the courts, has created subordination- lispedence, making it impossible to continue the legal and judicial procedures in time.

66. Based on the specifics of the present case, the Court will apply the standards of the ECtHR case law, in accordance with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

67. The Court also recalls that the Applicant claims a violation of Articles 32 [Right to Legal Remedies], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] and 56 [Fundamental Rights and Freedoms During a State of Emergency] of the Constitution, however, it does not reason them at all. Consequently, the Court in its assessment will focus only on the Applicant's allegations regarding the violation of his right to fair and impartial trial.

68. The Court will further deal with the Applicant's allegations of violation of his right to fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 (1) of the ECHR in two aspects: (i) regarding the issue of prescription and the party to be sued, which is related to the interpretation of the law by the regular courts; and (ii) with respect to the right to a fair trial within a reasonable time.

I. Constitutional review regarding the allegation of erroneous interpretation of law by the regular courts regarding the statute of limitation of the statement of claim

69. The Court recalls that the Applicant, regarding his allegations of violation of the right to fair and impartial trial, relates them to the interpretation given by the regular courts, regarding the statute of limitations. In essence, the Applicant considers that: (i) the statute of limitation for him has not been interrupted by the fact that his lawsuit was rejected based on the Decision [Rev. no. 97/2004] of 25 January 2005 of the Supreme Court; (ii) he cannot file a lawsuit without knowing the natural or legal person who caused the damage. The Applicant considers that the limitation period begins to run from this, which basically means that the Applicant challenges the interpretation of the law by the regular courts regarding the institution of limitation.

70. The Court recalls that the Applicant complains about the limitation period, stating that: (i) in accordance with Article 376 of the LOR, the limitation period is 3 years from becoming aware of the damage caused and 5 years from the day the damage was caused. The Applicant argues that the statute of limitations for him has not been interrupted by the fact that his lawsuit was rejected according to the Decision of the Supreme Court of Kosovo [Rev. no. 97/2004]; and (ii) the courts have not entered the merits of lawsuit but only within the time limits. The Applicant before the Court has also emphasized that *"I cannot file a lawsuit without knowing the person who caused the damage [...] to find out who is the physical or legal person who caused the damage"*. The Applicant believes that this is where the statute of limitations begins to run.

71. The Court recalls that the initiation of the second lawsuit was a result of the fact that the Supreme Court decided by the Decision [Rev. no. 97/ 2004], that the Ministry of Education, Science and Technology does not have the capacity of a legal entity, therefore it does not have the ability to be a party to the proceedings. In this line, the Applicant, on 18 April 2006, filed the second lawsuit, against the Primary School in Smrekonicë, Vushtrri "Enver Hadri".

72. The Municipal Court in Vushtrri, by the Decision, dismissed the Applicant's lawsuit, emphasizing that the case is adjudicated in accordance with Article 332 of the LCP, and then, the Court of Appeals annuled the Decision of the Municipal Court, and remanded the case for retrial to the Basic Court, emphasizing, among other things,

that the procedural violation consists in the fact that the first instance court has not established whether the Primary School in Smrekonica "Enver Hadri" can be a procedural party, which should be taken care of *ex-officio*. The Basic Court in retrial and then the higher instance courts, apply as a legal basis, the relevant provisions of limitation, and rely mainly on Article 389 of the LOR, where it is determined that the dismissal of the lawsuit does not cause the interruption of the limitation period. However, the Court of Appeals, considering that the first instance court confused the legal institutes and the fact that based on Article 391 of the LCP, namely point f), it is foreseen that the lawsuit was filed after the deadline if with special provisions provision was foreseen the deadline for its filing, and since in the present case, there are no special provisions, it was decided to remand the case to the Basic Court for retrial.

73. Therefore, the Basic Court, by the Judgment, ultimately was based on the limitation provisions and reasoned that: (i) in accordance with Article 376 of the LOR, the limitation period is 3 years from becoming aware of the damage caused, and 5 years from the day of causing damage, and that for the Applicant the deadline was 10 November 2003; (ii) based on Article 389 of the LOR, the dismissal of the lawsuit does not cause the interruption of the limitation period, therefore, the deadline is not interrupted by the fact that the lawsuit was dismissed by the Decision of the Supreme Court [Rev. no. 97/2004]. In the appeal procedure, the Court of Appeals reasoned based on paragraph 1 and 2 of Article 389 of the LOR, which defines the conditions for interruption of the statute of limitation. In the end, in the revision procedure, the Supreme Court by the Judgment also based on paragraphs 1 and 2 of Article 389 of the LOR, and Article 390 paragraph 1 of the LOR cannot be applied.

74. In the end, the Supreme Court, in its Judgment [Rev. no. 239/2019] of 26 November 2020, rejected the revision of the Applicant, among others, reasoning as follows:

> *"The Supreme Court assesses that Article 389 paragraph 1 and 2 of the LOR, clearly etablishes that in those cases where there was a judicial procedure between the parties, but the procedure ends with the dismissal of the lawsuit, as happened in the case specifically with the Decision Rev. no. 97/2004, the Supreme Court of Kosovo, the claimant's lawsuit was dismissed, it is considered that this procedure did not cause the interruption of the limitation period, while taking into account the moment of occurrence of the case on 10.11.1998 , and the moment when the lawsuit was filed with court on 18.04.2006, it turns out that the lawsuit was filed after the period of 5 years (absolute limitation), namely 7 years, 5 months, while the absolute limitation period according to Article 376.2 of the LOR , (the old law which was in force when the case occurred). Likewise, in the present case, Article 390 paragraph 1 of the LOR cannot be applied, which states "Should an action against a debtor be renounced on the ground of lack of jurisdiction of the court, or by some other reason not related to the substance of the matter, if the creditor files another action within a three month period after the final decision renouncing the action, it shall be held that the limitation period was interrupted by the first action. The claimant accepts that he received the Decision Rev. no. 97/2004 of 25.01.2005, of the Supreme Court of Kosovo, on 22.04.2005, while the new lawsuit was filed on 18.04.2006, i.e. even after the three-month deadline, provided by this provision, therefore, it cannot be considered that we have an interruption of the limitation according to the lawsuit filed on the 03.11.2000."*

75. Therefore, in essence, the Court notes that the Supreme Court, when applying Article 389 of the LOR, explained to the Applicant why there is a statute of limitations in his case, emphasizing that the Applicant's lawsuit was dismissed by the Decision [Rev. no.

97/2004] of 25 January, 2005 of the Supreme Court, and this did not cause the deadline to be interrupted. Also, based on the moment when the accident occurred, namely 11 November 1998, and the moment when the second lawsuit was filed with the Court on 18 April 2006, it results that this lawsuit, according to paragraph 2 of Article 376 of the LOR, is after the deadline of 5 (five) years, that is, the absolute limitation has occurred, in the deadline of 7 (seven) years and 5 (five) months. The Supreme Court also clarified why paragraph 1 of Article 390 of the LOR is not applied, emphasizing that the Applicant was served with the Decision [Rev. no. 97/2004] of 25 January 2005 on 22 April 2005, while he filed the second lawsuit (new lawsuit) after the three (3) month deadline, as required by provision 390 of the LOR. Consequently, it cannot be considered that there is an interruption of the statute of limitation.

76. In this line, the Court recalls that paragraph 1 of Article 376 of LOR stipulates that the claim for damages is statute-barred for 3 (three) years from the day when the injured party learned about the damage, but this claim is prescribed for 5 (five) years from the day when the damage was caused.

77. The Court notes that Article 389 of the LOR provides for cases of waiver, dismissal or rejection of the lawsuit. In this line, the regular courts were based on paragraph 1 and 2 of article 389 of the LOR, where paragraph 1 specifies that the interruption of the statute of limitations made by filing a lawsuit or by any other action is considered not to have begun if the creditor renounces the lawsuit or the action he has taken, while paragraph 2 of Article 389 of the LCP states that there was no interruption of the statute of limitations if the creditor''s lawsuit is dismissed or rejected.

78. In addition, the Supreme Court also applied Article 390 of the LOR, which in its paragraph 1 states that if the relevant lawsuit is rejected due to the incompetence of the court or any other cause, which is not related to the substance of the matter, so that the creditor files the lawsuit again within a three months period from the date when the rejected decision of the lawsuit has taken the final form, it will be considered that the statute of limitations has been interrupted by the first lawsuit.

79. The Court notes that the Applicant has lost the opportunity to file his lawsuit under three scenarios, namely, (i) the 3 (three) and 5 (five) year deadlines as required by Article 376 of the LOR to file the claim for compensation, then, (ii) the fact that by the Decision [Rev. no. 97/2004] of 25 January 2005 of the Supreme Court, his lawsuit was dismissed and this resulted in the limitation period not being interrupted as provided by Article 389 of the LOR, and finally (iii) the fact that the three (3) month period cannot be applied as required by paragraph 1 of Article 390 of the LOR, because the the second lawsuit was filed by the Applicant many months later.

80. From the above, the Court finds that there has been no violation of paragraph 2 of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR in relation to the allegation of erroneous interpretation of the law on the statute of limitations by the regular courts.

II. Constitutional review of the Applicant's allegation about the right to a trial within a reasonable time

81. In dealing with this allegation, the Court first recalls once again this allegation of the applicant who, among other things, emphasizes se *the inefficiency of the courts and the delays caused through no fault of the applicant in the timely treatment of this case have caused harmful consequences for the applicant, who, after filing the case in the Court, has created dependency- lispedence, making it impossible to continue the legal and court procedures in time*. The Court recalls that in the case file, the

Applicant in particular referred to the Decision [CA. No. 452/2012] of 14 March 2013 of the Court of Appeals.

(i) Period to be taken into account

82. The Court, referring to the case law of the ECtHR and its case law, assessed that the calculation of the time length of the proceedings, begins at the moment when the competent court starts the proceedings at the request of the parties for the establishment of a right or a legitimate claimed interest (see ECtHR cases, *Vilho Eskelinen and others v. Finland*, no. 63235/00, Judgment of 19 April 2007, paragraph 65; *Erkner and Hofauer v. Austria*, no. 9616/81, of 23 April 1987, paragraph 64;, see also the ECtHR case *Poiss v. Austria,* no. 9816/82, Judgment of 23 April 1987, paragraph 50, and the cases of the Constitutional Court No. KI127/15, Applicant *Mile Vasovič,* Resolution on Inadmissibility of 15 June 2015, paragraph 43; KI 81/16, Applicant *Valdet Nikqi*, Judgment of 31 May 2017, KII9/17, Resolution on Inadmissibility of 21 February 2018, paragraph 50). This process is considered completed with the issuance of a final decision by a competent court of the last instance (see, the ECtHR case *Eckle v. the Federal Republic of Germany*, of 15 July 1982, paragraph 74; as well as Court case KI177/19, Applicant NNT "Sokoli", Judgment of 29 March 2021, paragraph 98). Therefore, the requirement for reasonable length applies to all stages of the judicial process aimed at resolving the dispute, not excluding stages after the adjudication on the merits (see ECtHR case, *Robins v. United Kingdom*, no. 22410/93 Judgment of 23 September 1997, paragraphs 28-29).

83. In the present case, the Applicant, as explained above, filed the lawsuit in 2000, while the second lawsuit was filed on 18 April 2006. According to the case file, the Applicant requested urgency on 13 April 2016 in the Basic Court, stating that he submitted the urgency due to the imperative need for medical treatment, because of the injuries suffered. The Applicant emphasized that the matter has priority because it has been in the proceedings since 2000.

84. Therefore, the Court finds that the period that should be taken into account in relation to the Applicant's allegation of violation of the right to a fair trial, according to paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, in the present case, is calculated from the date of submission of the second lawsuit on 18 April 2006 until the last decision related to the Applicant's lawsuit, namely the Judgment [Rev. no. 239/2019] of 26 November 2020 of the Supreme Court, in total of 14 years, 7 months and 8 days.

(ii) Relevant principles

85. First of all, the Court notes that, according to the consistent case law of the ECtHR, which is also reflected in the Court's case law, the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case, having regard to the criteria laid down in the ECtHR case law, specifically: (a) the complexity of the case; (b) the conduct of the parties to the proceedings; (c) the conduct of the competent court or other public authorities; and (d) the importance of what is at stake for the Applicant in the litigation (see ECtHR cases, *Mesić v. Croatia*, no. 19362/18, Judgment of 5 May 2022, paragraph 127; *Bara and Kola v. Albania*, no. 43391/18 17766/19, Judgment of 12 October 2021, paragraph 63; *Mishgjoni v. Albania*, no. 18381/05, Judgment of 7 December 2010, paragraph 44; *Gjonboçari and others v. Albania*, no. 10508/02 Judgment of 23 October 2007, paragraph 61; *Mikulić v. Croatia*, no. 53176/99, no. 35382/97, Judgment of 7 February 2002, paragraph 38; *Comingersoll S.A. v. Portugal*, Judgment of 6 April 2000; *Frydlender v. France*, no. 30979/96, Judgment of 27 June 2000, paragraph 43; *Sürmeli v. Germany*, no.

75529/01, Judgment of 8 June 2006, paragraph 128; *Lupeni Greek Catholic Parish and others v. Romania*, no. 76943/11, Judgment of 29 November 2016, paragraph 143; *Nicolae Virgiliu Tănase v. Romania*, no. 41720/13, Judgment of 25 June 2019, paragraph 209; see also Court cases: KI07/15, Applicant Shefki Zogiani, Resolution on inadmissibility of 23 Septembe, 2016, paragraphs 53-62; KI23/16, Applicant *Qazim Bytyqi and others*, Resolution on inadmissibility of 5 May 2017, paragraph 58; KI18/18, Applicant *Isuf Musliu*, Resolution on Inadmissibility, of 11 June 2018, paragraph 43; KI13/19, Applicant *Fevzi Hajdari*, Resolution on Inadmissibility of 10 June 2019, paragraphs 65-72; KI177/19, Applicant *NNT "Sokoli*", Judgment of 16 April 2019, paragraphs 96-106; KI104/20, Applicant *Ejup Koci*, Resolution on inadmissibility of 22 March 2021, paragraph 46; KI135/2020, Applicant *Hava Behxheti*, cited above, paragraphs 39-54).

(iii) Analysis of the reasonableness of the length of the proceedings

86. The Court notes that the Applicant's case arose as a result of an accident at work in 1998. He submitted a claim for compensation for damages for the first time in 2000, and for the second time in 2006, sought compensation for the injuries he suffered, including reduced working capacity, physical pain and emotional pain.

87. As elaborated above, in order to ascertain whether the length of the proceedings was reasonable, the Court must take into account the following factors: (a) the complexity of the case; (b) the conduct of the Applicant; (c) the conduct of the relevant court authorities; and (ç) the importance of what is at stake for the Applicant in the dispute.

(a) Compolexity of the case

88. As to the complexity of the case, the Court refers to the case law of the ECtHR that clarified that the complexity of the case may relate to factual and legal issues, but may also be related to the involvement of certain parties to the proceedings or a certain number of evidence that are to be considered by the regular courts (see, *mutatis mutandis*, ECtHR cases, *Lupeni Greek-Catholic Parish and others v. Romania*, cited above paragraph 150; *Nicolae Virgiliu Tănase v. Romania*, cited above, paragraph 210; *Katte Klitsche de la Grange v. Italy*, no. 12539/86, Judgment of 19 September 1994, paragraph 55; *Humen v. Poland*, no. 26614/95, Judgment of 15 October 1999, paragraph 63 and *Cipolleta v. Italy*, no. 38259/09, Judgment of 11 January 2018, paragraph 44 where, despite the complexity of the bankruptcy procedures, the ECtHR found that they were delayed in violation of the fair trial criterion "within a reasonable time" as guaranteed by Article 6 (1) of the ECHR; also, see Court cases, KI18/18, Applicant *Isuf Musliu*, cited above, paragraph 45; and KI104/20, Applicant *Ejup Koci*, cited above, paragraph 48).

89. In the present case, the Court notes that the Applicant's case was rejected due to the statute of limitations. The starting point of the Applicant's first lawsuit, and the reasoning of the regular courts in this period, have influenced the application of the legal provisions of statute of limitation in the Applicant's second lawsuit. As elaborated above in paragraphs 69-80, the regular courts applied the provisions of statute of limitation which were specifically specified in the LOR.

90. In these circumstances, the Court, referring to the factual circumstances of the case that are related to the certification of the statute of limitation, finds that the case was not complicated.

(b) Conduct of the Applicant

91. In this regard, the Court recalls that in principle the Applicants are entitled to make use of all relevant domestic procedural steps available by applicable laws. However, the Applicants should also take into account the consequences in case the legal remedies used can affect the length of the consideration of their cae. The Court considers that the conduct of the Applicants constitutes an objective fact which cannot be attributed to the courts and must be taken into account in the finding whether the proceedings continued beyond the reasonable timeframe required by paragraph 2 of Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR (see: ECtHR cases, *McFarlane v. Ireland*, of 10 September 2010, application No. 31333/06, paragraph 148; *Eckle v. Germany*, cited above, paragraph 82; See also the case of Court KI07/15, Applicant *Shefki Zogiani*, Resolution on Inadmissibility of 23 September 2016, paragraph 55).

92. The Court, based on the case file, notes that on 13 April 2016, the Applicant sent an "Urgency for acceleration of the procedure" to the Basic Court, emphasizing that he submits the urgency due to the imperative need for medical treatment, because of the injuries sustained. The Applicant emphasized that the case has priority because it has been in the procedure since 2000.

93. Regarding the Applicant"s procedural actions, the Court refers to the case law of the ECtHR where it clarified that the Applicant is required to be careful in taking procedural steps and to refrain from using tactics to delay the review of his case (see the cases of the ECtHR, *Bara and Kola v. Albania*, cited above, paragraph 91 where the ECtHR concluded that based on the conduct of the complainant there is no indication that he caused or contributed to the delay of the proceedings; *Union Alimentaria Sanders S.A. v. Spain*, No. 11681/85, Judgment of 7 July 1989, paragraph 35).

94. In the following and based on the aforementioned actions of the Applicant, the Court, emphasizing his conduct, since the date of filing the second lawsuit on 18 April 2006, considers that the actions of the Applicant could not have influenced in the delay of the Basic Court and the Court of Appeals, respectively in reviewing his case.

(c) Conduct of relevant court authorities

95. The Court first points out the principled position of the ECtHR that paragraph 1 of Article 6 of the ECHR requires contracting states to organize their legal systems in such a way that the competent authorities fulfill the requirements of the said Article, including the obligation to review cases within a reasonable time frame (see ECtHR cases, *Luli and others v. Albania*, no. 64480/09 64482/09 12874/10 56935/10 3129/12, Judgment of 1 April 2014, paragraph 91; *Kaçiu and Kotorri v. Albania*, no. 33192/07 33194/07, Judgment of 25 June 2013 and *Abdoella v. the Netherlands*, no. 12728/87, Judgment of 25 November 1992, paragraph 24).

96. In this regard, the ECtHR emphasized that the reasoning of the courts regarding the backlog with unresolved cases cannot be taken into consideration (see ECtHR cases, *Bara and Kola v. Albania*, cited above, paragraphs 70-71 and 94- 96; *Krastanov v. Bulgaria*, No. 50222/99, Judgment of 30 September 2004, paragraph 74; *Vocaturo v. Italy*, No. 11891/85, Judgment of 1 April 1989, paragraph 17; and *Cappello v. Italy*, No. 12783/87 , Judgment of 24 January 1992, paragraph 17).

97. However, in the ECtHR case, *Buchholz v. Germany*, to the German Government's claim that as a result of the economic recession there has been a significant increase in

the volume of litigation in the field of employment, resulting in an overload of pending cases before courts, including the Hamburg courts, the ECtHR has clarified that:*"[...] the Convention places a duty on the Contracting States to organise their legal systems so as to allow the courts to comply with the requirements of Article 6 par. 1 (of the ECHR), including that of trial within a "reasonable time". Nonetheless, a temporary backlog of business does not involve liability on the part of the Contracting States provided they have taken reasonably prompt remedial action to deal with an exceptional situation of this kind"* (see ECtHR case, *Buchholz v. Germany*, no. 7759/77, Judgment of 6 May 1981, paragraph 51).

98. Following this position, the Court also emphasized in its case law that the regular courts have taken into consideration the constitutional and legal obligation to finalize cases within reasonable time, so as not to cause confusion and uncertainty. Regular courts cannot allow the case to be indefinitely transferred from one court instance to another. Otherwise, the public confidence in the entire legal order would be undermined (see in this regard the reasoning of the Court in case KI104/20, applicant *Ejup Koci*, cited above, paragraph 62).

99. The ECHR has also determined that while it is not the function of the Court to analyze the way in which the regular courts have interpreted and applied the law, it nevertheless considers that judgments that annul previous findings and that bring the case back are usually due to errors carried out by lower courts and that the repetition of such trials may indicate a deficiency in the justice system (see, *mutatis mutandis*, ECtHR case, *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 147).

100. The Court notes that in the present case, in the procedure of the second lawsuit, there were three decisions of the Basic Court, three decisions of the Court of Appeals, out of which two were such that they remanded the case for retrial, while one decided on the case, and finally, a decision of the Supreme Court. Also, the Court recalls that the Municipal Court in Vushtrri held a preparatory session on 3 May 2006, then scheduled a main session on 18 May 2006, but which was postponed to 24 May 2006 and was held on the same day. In the first retrial procedure, the Basic Court held a preparatory hearing on 23 May 2013. In the second retrial procedure, the Basic Court scheduled a hearing which was then postponed to 12 July 2016, and in the latter, by the Decision, it was decided that the main hearing is scheduled for 5 August 2016. Also, on 31 October 2016, a session was held and by Decision it was decided that (i) the session is postponed; and (ii) the Basic Court in the next session will decide "*after the preliminary decision on the issue of statute of the limitation of the claim*".

101. The Court notes that the first instance court held about 5 sessions. In these sessions, the respondent's claims of statute of limitation were repeatedly raised. The Court also notes that it took about 6 years and 8 months to the Court of Appeals to decide to remand the case for a retrial by the Decision [CA. no. 452/2012] of 14 March 2013. The latter has also remanded the case for retrial by Judgment [Ac. no. 276/17], of 13 June 2019.

102. The Court considers that the Court of Appeals had jurisdiction to decide on the factual and legal issues, and the latter was able to decide on the case. In this respect, the Court considers that the repetition of such trials may indicate a deficiency in the justice system (see Court case KI81/16, applicant *Valdet Nikçi*, cited above, paragraph 71). The delays in the procedure in the present case were mainly attributed to the regular courts, because it took them more than 14 years to decide a non-complicated case, namely to find that the Applicant's civil lawsuit was statute-barred (see, *mutatis mutandis*, ECtHR case, *Mesić v. Croatia* , cited above, paragraph 129).

(d) The importance of what is at stake for the applicant in the dispute

103. Regarding the criterion of what is at stake for the applicant in the dispute, the Court refers to the court law of the ECtHR, which clarifies that a category of cases requires a special expeditious resolution. According to this case law, examples that require special care and priority solutions are cases related to civil status and capacity, cases about custody of children and parent-child relationship, disputes from the employment relationship, cases of applicants suffering from "*incurable diseases*" and have "*reduced life expectancy*", as well as cases about the right to education (see ECtHR cases, *Bock v. Germany*, no. 11118/84, Judgment of 21 February 1989, paragraph 49; *Laino v. Italy*, no. 33158/96, Judgment of 18 February 1999, paragraph 18, *Mikulić v. Croatia*, cited above, paragraph 44; *Hokkanen v. Finland*, No. 19823/92, Judgment of 23 September 1994, paragraph 72; *Niederböster v. Germany*, No. 39547 /98, Judgment of 27 May 2003, paragraph 39; *Frydlender v. France*, cited above, paragraph 45; *Vocaturo v. Italy*, cited above, paragraph 17; *X v. France*, No. 18020/91, Judgment of 31 March 1992, paragraph 47; *A. and others v. Denmark*, no. 20826/92, Judgment of 22 January 1996, paragraphs 78-81; *Oršuš and others v. Croatia*, no. 15766/03, Judgment of 16 Marc, 2010, paragraph 109; and *Sailing Club of Chalkidiki "I Kelyfos" v. Greece*, no. 6978/18 8547/18, Judgment of 21 November 2019, paragraph 60 where the ECtHR, among other things, had emphasized that the unjustified lack of a decision within a particularly long period by a court examining the case may be considered a denial of justice).

104. The Court recalls that the Applicant's referral concerns his compensation for the injuries suffered at the working place. The Court in the present case, taking into account that the Applicant was injured at his working place, and the fact that according to the case file, due to such an injury, he had to be treated abroad, and he had to be treated in continuation, considers that the regular courts should have responded with special care regarding the case of the Applicant.

105. The Court assesses that the regular courts should, under the circumstances of the present case, take into account the respect for the principle of fair administration of justice, namely the latter's obligation to properly deal with the cases before them (see Court case KI81/16, Applicant *Valdet Nikçi*, cited above, paragraph 92).

106. In this regard, the Court has taken the position that cases in regular courts cannot be conducted without a specific deadline for their finalization, as it happened in the present case that the procedures lasted for more than fourteen (14) years for a direct issue such as the determination of the statute of limitations of the Applicant's statement of claim (see, *mutatis mutandis*, KI81/16, applicant Valdet Nikçi, cited above, paragraph 98).

Conclusion regarding the prolongation of the procedures

107. In conclusion, the Court considers that since in the case of the Applicant the regular courts had applied the provisions governing the statute of limitation, as such, they were not so complicated to such an extent that the whole process, from the beginning of the second lawsuit until the challenged decision lasts 14 years, 7 months and 8 days.

108. The Court assesses that the present case was not complicated because (i) the regular courts had the duty to conclude whether the statement of claim of the Applicant for compensation of damage was time-barred or not; (ii) and that the procedure has not been further complicated by the actions of the Applicant who has only followed the procedural steps to exercise his right to compensation for the damage he suffered at

the workplace; whereas, (iii) it took the regular courts more than 14 years to ascertain by a final decision whether the claim of the Applicant is statute-barred or not. The Court reiterates that the failure to resolve the Applicant's case within a reasonable time, in addition to being an unjustified extension of the proceedings, can also be considered a denial of justice (see the ECHR case, *Sailing Club of Chalkidiki "I Kelyfos" v. Greece*, cited above, paragraph 60).

109. Therefore, the Court finds that the length of the proceedings as a whole, of 14 years, 7 months and 8 days, in the circumstances of the present case, cannot be considered reasonable.

110. As a consequence of the above, the Court finds that there has been a violation of paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

Effects of this Judgment on the Applicant

111. The Court takes into account the fact that the procedure for the Applicant lasted about 20 years, specifically in the above assessment of the Court, of 14 years, 7 months and 8 days, and in the end he received an answer that his claim was statute-barred . In this line, the Court recalls that it has found a violation of paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

112. The Court notes and finds that Article 41 of the ECHR, which is a part of Section II [European Court of Human Rights] of the ECHR cannot serve as a basis for seeking "*just satisfaction*" or compensation for non-pecuniary damage before the Constitutional Court, as this Article refers to the competences of the ECtHR and not to the competencies of the domestic courts which are part of the protection mechanism guaranteed by the ECHR. The contracting parties are obliged to guarantee the rights and freedoms guaranteed by Section I [Rights and Freedoms] of the ECHR. In this respect, the Court is aware of the fact that the ECHR awards "*just satisfaction*" or compensation for non-pecuniary damage, but does so on the basis of its specific competences described in Article 41 of the ECHR and Rule 60 of its Rules of Procedure. (see Court case, KI108/18 applicant *Blerta Morina*, Resolution on Inadmissibility of 5 September 2019, paragraph 195).

113. Despite the fact that the ECtHR has specific authorization to award "*just satisfaction*", this Court is bound and conditioned to act only on the basis of the legal and procedural regulative governing its work. None of the documents governing the scope and proceedings before this Court and the actions that the latter may take, provide an equivalent authorization to award "*just satisfaction*" in the manner in which such competence is clearly ascribed to the ECtHR with abovementioned provisions. (see Court case, KI108/18 applicant *Blerta Morina*, Resolution on Inadmissibility of 5 September 2019, paragraph 196).

114. The foregoing does not imply that individuals have no right to seek compensation from public authorities in the event of finding violation of their rights and freedoms under the laws applicable in the Republic of Kosovo. On the contrary, the ECtHR itself states that in order for a right protected by the ECHR to be repaired to the fullest extent possible, the respective Applicants must be compensated at the appropriate amount and in accordance with the right which has been infringed upon. (see Court case, KI108/18 applicant *Blerta Morina*, Resolution on Inadmissibility of 5 September 2019, paragraph 197; See, for example, one of the ECtHR cases in this regard: *Gavriliță v. Moldova*, no. 22741/06, Judgment of 22 July 2014). However, there are also such cases when, based on the specific circumstances of that case, the ECtHR

considers that the finding of a violation itself represents "just compensation" even for the non-material damage that an Applicant may have suffered. (See in this respect the operative part of the ECtHR case, *Roman Zakharov v. Russia*, no. 47143/06, Judgment of 4 December 2015, paragraph 312).

115. The Court further clarifies that there are no legal authorizations for assigning any type or method of compensation for cases where it finds a violation of the respective constitutional provisions, in the present case Article 31 of the Constitution and Article 6 (1) (see Court cases, KI10/18, Applicant *Fahri Deçani*, Judgment of 8 October 2019, paragraph 119; KI108/18, Applicant *Blerta Morina*, cited above, paragraph 196; as well as see the case, KI113/21 Applicant *Bukurije Haxhimurati*, Judgment of 20 December 2021, paragraph 148).

116. However, and moreover, the Court has emphasized that individuals have the right to request through the initiation of a separate procedure for compensation from the public authorities in case of finding the violation of their rights and freedoms based on the applicable laws in Republic of Kosovo (see Court cases KI113/21, Applicant *Bukurije Haxhimurati*, cited above, paragraph 150; KI10/18, Applicant *Fahri Deçani*, cited above, paragraph 120; and KI108/18, Applicant *Blerta Morina*, cited above, paragraph 197).

117. The Court assesses that the mere finding of the violation of a fair trial within a reasonable time as guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR, does not constitute "just satisfaction" for the applicant. Therefore, in cases where the mere finding of a constitutional violation by the Court may not be sufficient to avoid the consequences of the constitutional violation and when monetary compensation is necessary, it pertains to the parties involved to use available legal remedies under the applicable law, for the further realization of their rights, including the right to request compensation for material and non-material damage, as a result of violations of the rights guaranteed by the Constitution, found by the Court, including the violation of the right to a fair trial within a reasonable time as guaranteed by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR (see, *mutatis mutandis*, Court case KI113/21, Applicant *Bukurije Haxhimurati*, cited above, paragraph 151)

Conclusion

118. In the circumstances of the present case, the Applicant was injured at the workplace and initiated a civil lawsuit for compensation of damage against the Ministry of Education, Science and Technology in the Municipal Court in Vushtrri. The Applicant's case was concluded by the Decision [Rev. no. 97/2004] of 25 January 2005 of the Supreme Court, which found that the Applicant's civil lawsuit is inadmissible because the Ministry of Education, Science and Technology lacks passive procedural legitimacy. The Applicant submitted the second lawsuit to the Municipal Court in Vushtrri, which rejected the Applicant's lawsuit on the grounds that it is an adjudicated case. The Court of Appeals, after the Applicant's appeal, annulled the Decision of the Basic Court on the grounds that the conditions had not been created for the Applicant's lawsuit to be dismissed as an adjudicated matter. The Applicant filed a civil lawsuit against the municipality of Vushtrri in the name of compensation for the damage. In the meantime, the Basic Court in Vushtrri in the retrial rejected the Applicant's lawsuit as out of time. The Court of Appeals, after the Applicant's appeal, annulled the decision of the Basic Court on the grounds that the latter had confused the statute of limitations with the legal deadlines. In a repeated procedure, the Basic Court rejected the Applicant's lawsuit on the grounds that it is statute-barred. In the

appeal procedure, the Court of Appeals and the Supreme Court upheld the finding of the Basic Court that the Applicant's lawsuit is statute-barred.

119. In the present case, the Court as a preliminary matter assessed that the proceedings conducted from 2000 to 2005 are out of the temporal jurisdiction of the Court because they are incompatible *ratione temporis* with the Constitution.

120. Regarding the Applicant's lawsuit of erroneous interpretation of the law by the regular courts regarding the statute of limitations, the Court found that there has been no violation of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

121. Regarding the Applicant's lawsuit of violation of the right to a fair trial within a reasonable time, the Court referred to the criteria established by the case law of the ECtHR but also its own case law which are based on: (a) the complexity of the case; (b) the conduct of the parties to the proceedings; (c) the conduct of the competent court or other public authorities; as well as (d) the importance of what the applicat is at stake for the Applicant in the dispute.

122. The Court assessed that the present case was not complicated because (i) the regular courts had the duty to find whether the Applicant's lawsuit for compensation of damage was statute-barred or not; (ii) and that the procedure has not been further complicated by the actions of the Applicant who has only followed the procedural steps to exercis his right to compensation for the damage he suffered at the workplace; whereas, (iii) it took the regular courts more than 14 years to find by a final decision whether the Applicant's lawsuit is statute-barred or not. The court reiterates that not resolving the Applicant's case within a reasonable time, in addition to unjustified prolongation of the proceedings, can also be considered a denial of justice.

123. Therefore, the Court found that the length of the proceedings of 14 years, 7 months and 8 days, in the circumstances of the present case, cannot be considered reasonable and that there has been a violation of paragraph 2 of Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR, regarding the right to a fair trial within a reasonable time.

124. Regarding the issue of compensation for the Applicant's material and non-material damage, the Court assessed that the mere finding of the violation of the right to a fair trial within a reasonable time does not in itself constitute "just satisfaction" for the Applicant. Therefore, the Court assessed that the Applicant has the right to seek compensation for material and non-material damage in civil proceedings before the regular courts on the ground of violation of the right to a fair trial within a reasonable time as guaranteed by paragraph 2 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, on 18 July 2022, by majority:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of paragraph 2 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights, regarding the right to a fair and impartial trial within a reasonable time;

III. TO HOLD that there has been no other violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;

IV. TO HOLD that Judgment [Rev. no. 239/2019] of 26 November 2020 of the Supreme Court of Kosovo is effective;

V. TO NOTIFY this Judgment to the parties;

VI. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20.4 of the Law;

VII. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Bajram Ljatifi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.