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GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, 6 April 2023
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DISSENTING OPINION

Judge

RADOMIR LABAN

in

Case no. KI14/22

Applicant

Shpresa Gërvalla

Constitutional review
of Judgment Rev. no.409/2020 of the Supreme Court of Kosovo
of 28 September 2021

Expressing at the beginning my respect for the opinion of the majority of judges that in this casethere has been violation of Article 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 for the Protection of Human Rights (hereinafter: the ECHR),

However, I, as a single judge, have a dissenting opinion regarding the conclusion of the majority and do not agree with the opinion of the majority. I consider that there is no violation of the right to *a "tribunal established by law"* from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR as presented in the judgment.

As a judge, I agree with the factual situation as stated and presented in the judgment and I accept the same factual situation as correct. Also, I, as a judge, agree with the way the Applicant's allegations were stated and presented in the judgment and I accept them as correct.

However, I conclude that in the circumstances of the present case, the majority of the court **(I)** without explaining the general guarantees: institutional requirements in connection with *the "tribunal established by law"*; **(II)** not explaining the concept of court at all; **(III)**does not distinguish between the general principles of the tribunal established by law: **the**

criminal aspect;and general principles of the tribunal established by law:**civil aspect; (IV)** not explaining the general principles regarding the level of jurisdiction of the courts; **(V)** not justifying review by a court of competent jurisdiction. By applying one non-comparable case of the ECtHR which is not relevant to the present case, erroneously conclude that the Supreme Court had been deciding outside its jurisdiction.

I consider that the general principles must be taken into account as a whole as it will be presented in this dissenting opinion and that the leading cases of the ECtHR must be used, and not individual exceptions as it was done in the judgment, that a distinction must be made between criminal and the civil aspect of the Court established on the basis of the law because the requirements of the criminal aspect are stricter, further, I consider that the legal norms must be read as a whole and not taken out of context and that the general principles must be interpreted as a whole.

Due to the above, I do not agree with the legal analysis regarding the admissibility of the case and the opinion of the majority that there is a violation of the right to a *"tribunal established by law"*as stated and presented in the judgment, and I will explain my disagreement in detail.

Due to the above, and in accordance with Rules 61 and 63 of the Rules of Procedure of the Constitutional Court, I will, in order to follow and explain the dissenting opinion as easily and clearly as possible **(I),** repeat the Applicant's allegations regarding alleged violations of rights; **(II)** present the content of relevant constitutional and legal provisions; **(III)** explain the general guarantees: institutional requirements regarding to a*"tribunal established by law";***(IV)** I will explain the concept of court/tribunal; **(V)** I will explain the general principles of the tribunal established by law: the criminal aspect; **(VI)** I will explain the general principles of the Tribunal established by law: civil aspect; **(VII)** I will explain the general principles regarding the level of jurisdiction of the courts; **(VIII)** I will explain the review conducted by a court with full jurisdiction **(IX)** Apply the abovementioned basic principles to thepresent case; **(X)** present a conclusion regarding the alleged violations of the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

(I) Applicant's allegations regarding the alleged violations of rights

1. The Applicant alleges that the challenged judgment of the Supreme Court was rendered in violation of her fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law] and 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Articles 1 and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and Articles 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.

2. The Applicant, invoking Article 214, paragraph 2 of the LCP, alleges that the revision cannot be submitted due to an erroneouslyor incompletely established factual situation. In the context of this, the Applicant argues that the Supreme Court, based its challenged judgment "*on the allegedly erroneous findings of the regular courts of both instances, regarding the ascertainment of facts or an incompletely established factual situation, with the final determination of whether or not there is a responsibility and obligation of the respondent to compensate [the Applicant] for the material and non-material damage she suffered in the accident of 18.11.2011"*.

3. Regarding the decision of the Supreme Court, which changed the judgments of the Basic Court and Appellate Court, the Applicant alleges the following: "*TheSupreme*

Court, in the challenged judgment, gives reasoning that, in the legal sense, call into question the passive legitimacy of the respondent in this civil dispute, then the question arises: which was a legal obstacle for the Supreme Court to ACCEPT the revision as grounded, to CHANGE the judgments of the two instances of regular courts and to remand the case to the first-instance court for RECONSIDERATION and RETRIAL, and thus give [the Applicant] the opportunity to take the necessary actions in order to specify the claim, both subjectively and objectively".

4. In the following, the Applicant alleges that the challenged judgment of the Supreme Court was rendered"*in violation of international conventions and the Universal Declaration of Human Rights, as well as anti-discrimination laws in the Republic of Kosovo.*"

5. Furthermore, the Applicant states that Raiffeisen bank has caused to her irreparable material and non-material damage.

6. In the end, the Applicant repeats that she is "*convinced that the challenged judgment contains the elaboration and judgment of the case which refers to the erroneous or incomplete determination of the factual situation, for which the REVISION is not allowed* [...]".

7. Furthermore, the Applicantalleges that: "*the case of this judgment represents a lack of legal certainty and a loss of confidence in the judiciary, because it would not even be good case law to continue using the challenged judgment as a source that helps regular courts to correctly interpret legal norms, the conduction of the judicial process and the qualification of the facts in each present case in an adequate manner, all with the aim of increasing credibility in the judiciary and legal security in general, as well as the validity of the recommendations that guide judges regarding the standards that the courts will guarantee during the conduction of court processes of this or a similar nature".*

8. Finally, the Applicant requests the Court to approve her referral submitted to the Court.

(II) Content of relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 31
[Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

[...]

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."

(III) General guarantees: institutional requirements regarding to a "tribunal established by law"

9. The concept of "a tribunal established by law", together with the concepts of "independence" and "impartiality" of the court, forms part of the "institutional requirements" of Article 6 paragraph 1. In the jurisprudence of the Court, there is a very close mutual connection between these concepts (Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, 2020, paragraph 218).

10. In particular, the Court considered that a judicial body that does not meet the requirements of independence - especially from the executive power - and the requirements of impartiality cannot be characterized as a "tribunal" for the purposes of Article 6 paragraph 1. Similarly, when determining whether a "tribunal" is "established by law", a reference to a "tribunal" includes any provision of domestic law - including, in particular, provisions relating to the independence of members of the court - which, if breached, renders the participation of one or more judges in the consideration of a case "inadequate". Moreover, when determining whether the court can be considered"independent" in the sense of Article 6 paragraph 1, the Court took into account, among other things, the way of appointing the members of the court, which encroaches on the domain of establishing a "tribunal". Accordingly, although each guarantee serves a specific purpose as a specific guarantee of a fair trial, there is a common thread that connects the institutional requirements of Article 6 paragraph 1, in that all requirements are driven by the goal of upholding the basic principles of the rule of law and the separation of powers (*ibid.*,paragraphs 232–233). The Applicantalleges that the challenged judgment of the Supreme Court was rendered in violation of her fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law] and 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Articles 1 and 2 of the International Convention on Elimination of All Forms of Racial Discrimination and Articles 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.

(IV) Concept of a "tribunal/court"

11. The judgment in case Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, specified and clarified the relevant principles of case law (see, in particular, paras. 219–222; see also Eminağaoğlu v. Turkey, no. 76521/12, 2021, paras. 90–91 and 94), which can be divided into three cumulative requirements, as set out below (see the relevant summary in case Dolińska-Ficek and Ozimek v. Poland, no. 49868/19, 57511/19, paragraphs 272–280).

12. Firstlz, the "court" is characterised in the substantive sense of the term by its judicial function (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraphs 219 and further for relevant principles), that is to say, determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (Cyprus v. Turkey [GC], no. 25781/94, 2001, paragraph 233; Xero Flor w Polsce sp. z o.o. v. Poland, no. 4907/18, 2021, paragraph 194, in relation to a constitutional court).

13. A power of decision is inherent in the very notion of "court". The proceedings must provide the "determination by a tribunal of the matters in dispute", as required by Article 6 paragraph 1 (Benthem v. the Netherlands, no. 8848/80, 1985, paragraph 40).

14. Therefore, the power simply to issue advisory opinions without binding force is therefore not sufficient, even if those opinions are followed in the great majority of cases (*ibid*).

15. For the purposes of Article 6 paragraph 1, a "court" need not to be a court of law integrated into the standard judicial machinery of the country concerned (Xhoxhaj v. Albania, no. 15227/19, 2021, paragraph 284, concerning a body set up to re-evaluate the ability of judges and prosecutors to perform their functions; Ali Rıza and Others v. Turkey, no. 30226/10, 5506/16, 2020, paras. 194–195 and 202–204, and Mutu and Pechstein v. Switzerland, no. 40575/10, 67474/10, 2018, paragraph 139, concerning arbitration). Such a court may be set up to deal with a specific subject matter which can be appropriately administered outside the ordinary court system. What is important to ensure compliance with Article 6 paragraph 1 are the guarantees, both substantive and procedural, that should be in place (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020; Rolf Gustafson v. Sweden, no. 23196/94, 1997, para. 45). Thus, a body that does not observe the procedural safeguards under Article 6 cannot be regarded a "court" established by law (Eminağaoğlu v. Turkey, 2021, paragraphs 99–105, regarding disciplinary proceedings for judges),

16. Hence, a "court" may comprise a body set up to determine a limited number of specific issues, provided always that it offers the appropriate safeguards (Lithgow and others v. the United Kingdom, no. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, 1986, paragraph 201, in the context of an arbitration tribunal). Moreover, an authority that is not classified as one of the courts of a state may nonetheless, for the purposes of Article 6 paragraph 1, come within the concept of a "court" in the substantive sense of the term (Sramek v. Austria, no. 8790/79, 1984, paragraph 36).

17. The fact that it performs many functions (administrative, regulatory, adjudicative, advisory and disciplinary) cannot in itself preclude an institution from being a "court" (H. v. Belgium, no. 8950/80, 1987, paragraph 50).

18. The power to give a binding decision which may not be altered by a non-judicial body to the detriment of an individual party is inherent in the very notion of a "court" (Van de Hurk v. the Netherlands, no. 16034/90, 1994, paragraph 45). One of the fundamental aspects of the rule of law is the principle of legal certainty which requires, *inter alia*, that where the courts have finally determined an issue their ruling should not be called into question (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraph 238, citing Brumărescu v. Romania [GC], 28342/95, 1999, paragraph 61). In addition, only an institution that has full jurisdiction merits the designation "tribunal" for the purposes of Article 6 para. 1 (Mutu and Pechstein v. Switzerland, 2018, para. 139)

19. Secondly, a "court" must also satisfy a series of further requirements – independence, in particular from the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure – several of which appear in the text of Article 6 paragraph 1 (Le Compte, Van Leuven and De Meyere v. Belgium, 6878/75, 7238/75, 1981, paragraph 55; Cyprus v. Turkey [GC], 2001, paragraph 233). Indeed, both independence and impartiality are key components of the concept of a "court", as was clarified in the judgment of case Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraphs 231 et seq.). In short, a judicial body which does not satisfy the requirements

of independence – in particular from the executive - and pf impartiality, cannot be characterized as a "court" for the purposes of Article 6 paragraph 1 (paragraph 232).

20. Lastly, the judgment in case Guðmundur Andri Ástraðsson v. Iceland [GC], 2020, added that the very notion of a "tribunal" that it should be composed of judges selected on the basis of merit – that is, judges who fulfil the requirements of technical competence and moral integrity to perform the judicial functions required of it in a State governed by the rule of law (paragraphs 220–221). A rigorous process for the appointment of ordinary judges is of paramount importance to ensure that the most qualified candidates in both these respects are appointed to judicial posts. The higher a tribunal is placed in the judicial hierarchy, the more demanding the applicable selection criteria should be. Furthermore, the non-professional judges may be subject to different selection criteria, particularly when it comes to the requisite of technical competencies. Such merit-based selection not only ensures the technical capacity of a judicial body to deliver justice as a "tribunal", but it is also crucial in terms of ensuring public confidence in the judiciary and serves as a supplementary guarantee of the personal independence of judges (paragraph 222).

21. In case Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, the judgment defined a three-step procedure to guide the Court and national courts in assessing whether irregularities in a particular judicial appointment procedure "were of such gravity as to entail a violation of the right to a tribunal established by law and of whether the balance between the competing principles has been struck fairly and proportionately by the relevant State authorities in the particular circumstances of a given case (paragraphs 243–252) (and see section B below). In case of Xero Flor w Polsce sp. the zoo. v. Poland, 2021, this approach was applied to the question of the validity of the election of a judge of the Constitutional Court (paragraphs 255 et seq.).

22. Examples of bodies recognized as having the status of a "court" within the meaning of Article 6 paragraph 1 of the Convention include:
    i) a regional real-property transactions authority (Sramek v. Austria, 1984, paragraph 36);
    ii) a criminal damage compensation board (Rolf Gustafsson v. Sweden, 1997, paragraph 48);
    iii) a forestry disputes resolution committee (Argyrou and others v. Greece, no.10468/04, 2009, paragraph 27);
    iv) The Court of Arbitration for Sport (Mutu and Pechstein v. Switzerland, 2018, paragraph 149), and a football arbitration committee (Ali Rıza and others v. Turkey, 2020, paras. 202–204), and in the commercial sphere, see Beg S.p.a. against Italy, no. 5312/11, 2021;
    c) bodies set-up to review the ability of judges and prosecutors of the country to perform their functions (Xhoxhaj v. Albania).

(V) General principles of the Tribunal established by law: criminal aspect

23. Based on Article 6 paragraph 1 of the Convention, the court must always be "established by law". That expression reflects the rule of law principle inherent in the system of protection established by the Convention and its protocols (Jorgić v. Germany, no. 74613/01, 2007, paragraph 64; Richert v. Poland, no. 54809/07, 2011, paragraph 41). Moreover, a body not established by law would lack the legitimacy required in a democratic society to act on individual complaints (Lavents v. Latvia, no. 58442/00, 2002, paragraph 114; Gorgiladze v. Georgia, no. 4313/04, 2009, paragraph 67; Kontalexis v. Greece, no. 59000/08, 2011, paragraph 38).

24. “Law” in the sense of Article 6, paragraph 1, in particular includes legal acts on the establishment and jurisdiction of judicial bodies (Lavents v. Latvia, 2002, paragraph 114; Richert v. Poland, 2011, paragraph 41; Jorgić v. Germany, 2007, paragraph 64), but also any other provisions of domestic law, the violation of which would render the participation of one or more judges in the examination of the case unlawful (Pandjikidze et al. v. Georgia, no. 30323/02, 2009, paragraph 104; Gorgiladze v. Georgia, 2009, paragraph 68).The expression “established by law” includes not only the legal basis for the very existence of the court, but also the requirement that the court observe certain rules governing its work (ibid.), as well as the composition of the court panel in each case (Posokhov v. Russia, no. 63486/00, 2003, paragraph 39; Fatullayev v. Azerbaijan, 2010, nr. 40984/07, paragraph 144; Kontalexis v. Greece, 2011, paragraph 42). Moreover, bearing in mind the essential implications for the adequate functioning and legitimacy of the judiciary in a democratic state governed by the rule of law, the Court concluded that the process of appointing judges necessarily represents an inherent element of the concept of “establishing” a court “by law” (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraph 227).

25. Accordingly, if the court does not have jurisdiction to try the respondent in accordance with the applicable provisions of domestic law, it is not “established by law” within the meaning of Article 6 paragraph 1 (Richert v. Poland, 2011, paragraph 41; Jorgić v. Germany, no. 74613/01, 2007, paragraph 64).

26. The purpose of the phrase “established by law” in Article 6 “is to ensure that the judicial organization in a democratic society does not depend on the decision of the executive, but is governed by a law adopted by the parliament” (Richert v. Poland, 2011, paragraph 42; Coëme et al. v. Belgium, no. 32492/96, 32547/96, 32548/96, 33209/96, 33210/96, 2000, paragraph 98). In countries where laws are codified, the organization of the judicial system also cannot be left to the discretion of judicial bodies, although this does not mean that the courts do not have some freedom to interpret the relevant domestic legislation (ibid.; Gorgiladze v. Georgia, 2009, paragraph 69).

27. In principle, when a court violates the domestic legal provisions on the establishment and jurisdiction of judicial bodies, there is a violation of Article 6 paragraph 1 (see the case of Tempel v. Czech Republic, 2020, where questions concerning the assignment of court jurisdiction were examined from the perspective of general procedural fairness). The court is therefore competent to examine whether national laws have been respectedin this regard. However, given the general principle according to which the provisions of domestic law are primarily interpreted by the national courts themselves, the Court cannot in principle question their interpretation, unless there is an obvious violation of domestic law (Coëme et al. v. Belgium, 2000, paragraph 98 in fine; Lavents v. Latvia, 2002, paragraph 114; Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraphs 216 and 242). Therefore, the Court's task is limited to examining whether there were reasonable grounds for the authorities to establish jurisdiction (Jorgić v. Germany, 2007, paragraph 65).

28. The Court further explained that the review in accordance with the requirement “a court established by law” must not lose sight of the general purpose of the institutional requirements of Article 6 paragraph 1 and must systematically review whether the alleged irregularity in the given case was so serious that it could threaten the stated basic principles and question the independence of the court in question.“Independence”, in this context, refers to the necessary personal and institutional independence required for impartial decision-making, and is therefore a prerequisite for impartiality. It entails (i) a state of mind, which signifies the judge's intransigence in the face of external pressures regarding his moral integrity, and (ii) a set of institutional and operational arrangements – which include the procedure by

which a judge can be appointed in a way that ensures his independence and the application of criteria for selection on the basis of merit – which must provide protection against undue influence and/or absolute discretion of other state authorities, both during the initial stage of appointing a judge and during the performance of his or her duties (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraph 234).

29. In this context, the Court also noted that the conclusion that the court is not "a court established by law"may have significant consequences regarding the principles of legal certainty and the immutability of judges. However, respecting these principles at any cost, and at the cost of applying the requirement that "the court must be established by law", can in certain circumstances cause even greater damage to the rule of law and public trust in the judiciary. As in all cases in which there is a conflict of the basic principles of the Convention, in such cases it is necessary to establish a balance in order to establish the existence of an urgent need - which is material and convincing in its nature - and which would justify a deviation from the principle of legal certainty and the nature of the adjudicated matter, as well as the principle of immutability of judges, if necessary, in the special circumstances of the case (ibid., paragraph 240).

30. With regard to alleged violations of the requirement of a "court established by law" in relation to the process of appointing judges, the Court devised the following criteria which, when viewed cumulatively, constitute the grounds for its assessment (ibid., paragraphs 243-252):

a) In the first place, in principle there must be an obvious violation of domestic law in the sense that it must provide the possibility of objective and real identification. However, the absence of such a violation does not exclude the possibility of a violation, bearing in mind that a procedure that is apparently in accordance with the rules may nevertheless lead to results that are not in accordance with the above case and purpose.

b) Second, only those violations that relate to the basic rules of the procedure for appointing judges (that is, violations that affect the essence of the case law) can lead to a violation: for example, the appointment to the position of judge of a person who does not meet the relevant eligibility criteria or violations that may otherwise violate the purpose and effect of the "established by law" requirement. Accordingly, violations that are purely technical in nature do not reach the relevant threshold.

c) Thirdly, the review of the legal consequences of the violation of domestic law on appointments to judicial office before domestic courts must be carried out on the grounds of the relevant standards of the Convention. In particular, it is necessary to establish a fair and proportionate balance in order to establish the existence of an urgent need, which is material and convincing in its nature, and which would justify a departure from the conflicting principles of legal certainty and immutability of judges, if necessary, in the special circumstances of the case. With the passing of time, the preservation of legal certainty gains weight in establishing a balance.

31. In the case of Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, applying the aforementioned test, the Court found that the very essence of the Applicant's right to a "court established by law" was violated by the participation of a judge in the proceedings whose appointment was tainted by an obvious and serious violation of the fundamental domestic rule that is intended to limit the influence of the executive power and strengthen the independence of the judiciary. The first and second criteria are thus satisfied. As regards the third criterion, the Supreme Court failed to conduct an assessment in accordance with the Convention and to achieve an appropriate

balance between the relevant conflicting principles, even though the disputed irregularities were established even before the judges in question took office. The Supreme Court also did not respond to the very relevant arguments of the Applicant. The restraint shown by the Supreme Court in considering the Applicant's case undermined the significant role that the judiciary plays in maintaining the checks and balances inherent in the separation of powers.

32. Examples in which the Court found that the body in question was not a "court established by law":

a) the court of cassation which tried co-respondents who were not ministers for acts related to those for which the ministers were tried, because the rule of connection was not established by law (Coëme et al. v. Belgium, 2000, paragraphs 107-108);
b) a court consisting of two lay judges selected as members of the trial panel in a particular case in violation of the legal requirement regarding random selection and the upper time limit for performing that duty of two weeks per year (Posokhov v. Russia, 2003, paragraph 43);
c) a court composed of lay judges who continued to decide cases in accordance with established tradition, even though the law on lay judges was repealed and no new law was enacted (Pandjikidze et al. v. Georgia, 2009, paragraphs 108–111);
d) a court whose composition was not in accordance with the law, considering that two judges were legally excluded from the trial in the case (Lavents v. Latvia, 2002, paragraph 115).

33. The court found that the court was "established by law" in the following cases:

a) a German court that tried a person for acts of genocide committed in Bosnia and Herzegovina (Jorgić v. Germany, 2007, paragraphs 66-71);
b) a special court established to try corruption and organized crime (Fruni v. Slovakia, no. 8014/07, 2011, paragraph 140);
c) a case in which a single judge was seconded from a higher court to try the Applicant's case [Maciszewski et al. v. Poland (Dec.), no. 65313/13, 66936/13, 69508/13, 2020];
d) the re-entrustment of the case to a specialized court carried out in accordance with the law and without any indication of the intention to influence the outcome of the case (Bahaettin Uzan v. Turkey, no. 30836/07, 2020).

34. For additional examples where the Court has examined a claim concerning a "court established by law" – under both the criminal and civil aspects of Article 6 paragraph 1 – see Guðmundur Andri Ástráðsson v Iceland [GC], 2020, paragraph 217).

(VI) General principles of the Tribunal established by law: civil aspect

35. In light of the principle of the rule of law inherent in the Convention system, a "tribunal" must always be "established by law" (*Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, paragraph 211), or more precisely "a tribunal established by law" (paragraphs 229 -230). This is necessary in order to protect the judiciary from any illegal or improper external influence (paragraphs 226 and 246). After analysing the case law (paragraphs 211-217 and cited references from civil cases), this judgment elaborated the principles of case law and clarified the meaning of this concept (paragraphs 223-230) and its relationship with other "institutional requirements" concerning independence and impartiality under Article 6 paragraph 1 (paragraphs 218 et seq., paragraphs 231–234) 14, the rule of law and public confidence in the judiciary (paragraphs 237 et seq.; see relevant summary in *Xero Flor w Polsce sp. z o. o. v. Poland,* 2021, paragraphs 245–251, and for the principle of legality, paragraph 282).

36. The “law” by which a “tribunal” may be considered “established” includes any provision of domestic law - including, in particular, provisions relating to the independence of members of the tribunal - which, if violated, would render the participation of one or more judges in the trial of a case “inadequate” (paragraph 232). Examination in accordance with the requirement “a tribunal established by law” must systematically examine whether the alleged irregularity in a given case was of such gravity that it threatens the basic principles of the rule of law and the separation of powers and threatens the independence of the tribunal in question (paragraphs 234 and 237).

37. The tribunal can therefore examine whether domestic law was respected in this regard. However, bearing in mind the general principle that it is primarily the domestic tribunals themselves that are obliged to interpret the provisions of domestic law (paragraph 209), the Court concluded that it cannot question their interpretation unless there has been a “manifest violation” of the legislation (Kontalexis v. Greece, 2011, paragraphs 39 et seq., regarding the scheduling of hearings and the replacement of a judge by a substitute judge on the day of the hearing; Pasquini v. San Marino, no. 23349/17, 2019, paragraphs 104 and 109). For a case in which the Court rejected domestic tribunals' assessment of compliance with the “tribunal established by law” requirement, see Miracle Europe Kft v. Hungary, no. 57774/13, 2016, paragraphs 65–66. Subsequently, in Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, the Grand Chamber distinguished between the concept of “manifest violation” of domestic law and the concept of “clear violation of domestic rules on the appointment of judges” (see, in particular, paragraphs 242, paragraphs 244 and further, paragraph 254). In this case, the domestic tribunal had already established a violation of the rules at the stage of the initial appointment of judges by the national appointing authority (paragraphs 208-210, 242, 254), and the role of the Court was limited to determining the consequences of the established violations of domestic law within the meaning of Article 6 paragraph 1.

38. The expression “constituted by law” does not only include the legal basis for the very existence of a “tribunal”, but also means that that tribunal must respect the specific rules according to which it is governed (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraph 223; Sokurenko and Strygun v. Ukraine, no. 29458/04, 29465/04, 2006, paragraph 24). The legality of a court or tribunal must by definition also include the composition of the tribunal in each case and the procedure for the initial appointment of judges (Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraphs 224–228). The latter aspect was examined by the Grand Chamber in Guðmundur Andri Ástráðsson v. Iceland [GC].

39. The appointment of judges by the executive or legislature is permitted, provided that the appointees are free from influence or pressure when performing their judicial role (ibid.,paragraph 207). Whatever appointment system exists at the domestic level, it is important that the domestic law on the appointment of judges be as unambiguous as possible, so as not to allow arbitrary interference in the appointment process, including interference by the executive (ibid.,paragraph 230).

40. Regarding the initial process of appointing a judge, see the judgment in Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, which held that not every irregularity constitutes a violation of Article 6 paragraph 1 (taking care not to adopt an overly broad interpretation of the right to “a tribunal established by law”; see paragraphs 236 et seq.). The tribunal developed a “threshold test” and defined a “three-step test” to determine whether the irregularities in a given procedure for appointing a judge “were of such gravity as to entail a violation of the right to a tribunal established by law and whether the balance between the conflicting principles is fairly and proportionately achieved by the relevant state authorities in the particular circumstances of the case” (paragraphs

235 et seq., paragraphs 243–252 for an account of the various steps, and paragraphs 254–290 for their application; see also Xero Flor w Polsce sp. z o. o. v. Poland, 2021, regarding the constitutional court, especially paragraphs 285–289).Applying this approach in the judgment of Reczkowicz v. Poland, no. 43447/19, 2021 (paragraphs 216–282), the Court held that the procedure for appointing judges in the context of the reorganization of the judicial system was subject to the impermissible influence of the legislative and executive powers, and that this is a fundamental irregularity that negatively affects the entire process and threatens the legitimacy of the relevant formation of the Supreme Court (paragraphs 276–280). It also found a fundamental irregularity in the case of Dolińska-Ficek and Ozimek v. Poland, 2021, contrary to the requirements of judicial independence and separation of powers, among other principles (paragraph 349). The judgment stated that the deliberate disregard of a binding court decision by the executive power and interference with the course of justice, in order to jeopardize the validity of the judicial review of the appointment of judges, had to be characterized as a clear violation of the rule of law (paragraphs 338 and 348-350).

41. A body established by law on an exceptional and transitional basis does not in itself preclude it from being considered a "tribunal established by law" within the meaning of the Convention (Xhoxhaj v. Albania, 2021, paragraphs 284-288).

42. The role of the courts is to conduct proceedings in order to ensure the proper administration of justice. Entrusting a case to a particular judge or tribunal falls within their internal field of discretion in such matters. However, to be compatible with Article 6 paragraph 1, that procedure must meet the requirements of independence and impartiality (Pasquini v. San Marino, 2019, paragraphs 103 and 107). The judge entrusted with the case must be independent from the executive power, and the entrustment of the case cannot be solely dependent on the discretionary powers of the judicial authorities (ibid., paragraph 110). In the Court case law, a difference has been established between the entrustment of a case and the re-entrustment of a case (ibid., paragraph 107).

43. The practice of tacitly renewing the mandate of judges for an indefinite period after their legal mandate expires and while they await re-appointment is considered contrary to the principle of "a tribunal established by law" (Olexandr Volkov v. Ukraine, no. 21722/11, 2013, paragraph 151). The procedure for appointing judges must not be reduced to the status of internal practice (ibid., paragraphs 154-56). The replacement of a judge must also be devoid of arbitrariness [Pasquini v. San Marino, 2019, paragraph 112, as must the reassignment of cases (Miracle Europe Kft. v. Hungary, 2016, paragraphs 59–67; Biagioli v. San Marino, no. 8162/13(dec.), 2014, paragraphs 77–78 and 80, for the present case of small jurisdiction and small court].

44. The following situations have led to the determination of a violation, for example: the replacement of a judge by a substitute judge on the day of the hearing (Kontalexis v. Greece, 2011, paragraphs 42-44), the pronouncement of a verdict by a panel with a smaller number of members than required by law (Momčilović v. Serbia, no. 23103/07, 2013, paragraph 32, and Jeniţa Mocanu v. Romania, no. 11770/08, 2013, paragraph 41), conduct of court proceedings by a court administrator who is not authorized to perform that function under the relevant domestic law (Ezgeta v. Croatia, no. 40562/12, 2017, paragraph 44), or a court exceeding its normal jurisdiction deliberately violating the law without any explanation (Sokurenko and Strygun v. Ukraine, 2006, paragraphs 27–28); these cases should be seen in the light of Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, paragraphs 211 et seq., especially paragraph 218.Furthermore, if the supreme court does not act in accordance with its jurisdiction as defined by domestic law in respect revoking the decision and remanding the case for reconsideration or annulment

of the procedure, but decides on the merits of the case instead of the competent authority, then it is not a "tribunal established by law" (Aviakompaniya ATI, ZAT v. Ukraine, 2017, paragraph 44).

45. With regard to the initial procedure for the appointment of judges, the judgment in Guðmundur Andri Ástráðsson v. Iceland [GC], 2020, listed situations that would or would not constitute a violation of Article 6 paragraph1 (paragraphs 246–247 et seq.). In this case, the Court considered that there was a "serious violation" of the basic rule of the procedure for the appointment of judges to the new appellate court - especially by the Minister of Justice - for which, since it was not effectively eliminated in the revision carried out by the Supreme Court, and whose explanation the Court could not accept (paragraph 286), found to be in contradiction with Article 6 paragraph 1 (paragraphs 288–289).In the case of Xero Flor w Polsce sp. z o. o. v. Poland, 2021, the Court concluded that the executive and legislative powers had undue influence on the process of selecting judges of the Constitutional Court and that there were "serious irregularities" (paragraphs 284–291; see also Dolińska-Ficek and Ozimek v. Poland, 2021, paragraph 353, and the case of Reczkowicz v. Poland, 2021).Furthermore, the Applicant states that Raiffeisen Bank has caused to her irreparable material and non-material damage.

(VII) General principles regarding the level of jurisdiction of the courts

46. Although Article 6 paragraph 1 does not oblige the High Contracting Parties to establish appellate or cassation courts, the state that establishes such courts is obliged to ensure that persons who appear before those courts enjoy the basic guarantees contained in Article 6 paragraph 1 (Zubac v. Croatia [GC], no. 40160/12, 2018, paragraph 80; Platakou v. Greece, no. 38460/97, 2001, paragraph 38):

    a) Assessment in concreto: The way in which Article 6 paragraph 1 applies to courts of appeal or of cassation will, however, depend on the special features of the proceedings concerned. The conditions of admissibility of an appeal requesting revision may be stricter than for an ordinary appeal (Zubac v. Croatia [GC], 2018, paragraph 82; Levages Prestations Services v. France, no. 21920/93, 1996, paragraph 45).

    b) Assessment in globo: Account must be taken of the entirety of the proceedings conducted in the domestic legal order (Zubac v. Croatia [GC], 2018, paragraph 82; Levages Prestations Services v. France, 1996, paragraph 45). Consequently, a higher or the highest court may, in some circumstances, make reparation for an initial violation of one of the Convention's provisions (De Haan v. the Netherlands, 1997, no. 22839/93, paragraph 54; mutatis mutandis, Zubac v. Croatia [GC], 2018, paragraph 123).

47. Demands in terms of flexibility and effectiveness, which are fully compatible with the protection of human rights, may justify the previous intervention of administrative or professional (expert) bodies and, a fortiori, judicial authorities that do not satisfy in all respects the requirements of Article 6 (Le Compte, Van Leuven and De Meyere v. Belgium, 1981, paragraph 51). A violation of the Convention cannot be established if the proceedings before those bodies are "subject to subsequent control by a judicial authority with full jurisdiction" and if that authority provides all the guarantees under Article 6 (Denisov v. Ukraine [GC], no. 76639/11, 2018, paragraph 65; Zumtobel v. Austria, no. 18702/91 1993, paras 29–32; Bryan v United Kingdom, no. 19178/91, 1995, para 40).

48. Likewise, the fact that the duty of adjudication is transferred to professional disciplinary bodies does not in itself lead to a violation of the Convention. Nevertheless, in such circumstances, the Convention requires that there be at least one of the following two systems: either the professional disciplinary bodies themselves meet the requirements of that article, or, if they do not meet those requirements, they are subject to subsequent review by a "judicial body with full jurisdiction" which ensures all the guarantees under Article 6 paragraph 1 (Albert and Le Compte v. Belgium, no. 7299/75 7496/76, 1983, paragraph 29; Gautrin et al. v. France, no. 21257/93, 21258/93, 21259/93, 21260/93, 1998, paragraph 57; Fazia Ali v. the United Kingdom, no. 40378/10, 2015, paragraph 75).

49. Consequently, the Court has consistently emphasized and emphasizes that according to Article 6 paragraph 1, it is necessary that decisions made by administrative bodies that do not themselves meet the requirements of that article are subject to subsequent control by a "judicial body with full jurisdiction" (Ortenberg v. Austria, no. 12884/87, 1994, paragraph 31)

(VIII) Review conducted by a court with full jurisdiction

50. Only an institution with full jurisdiction deserves to be designated a "tribunal" within the meaning of Article 6paragraph 1 (*Beaumartin v. France*, no. 15287/89, 1994, paragraph 38). Article 6 paragraph 1 requires courts to exercise effective judicial review (*Obermeier v. Austria*, no. 11761/85, 1990, paragraph 70). The notion of "full jurisdiction" does not necessarily depend on legal categorization in domestic law. The principles of jurisprudence relating to the scope of judicial review are set out in particular in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], no. 55391/13, 57728/13, 74041/13, 2018, paragraphs 176–186, which emphasized "the specific context of disciplinary proceedings brought against a judge" (for application of these principles to the area of dismissal, see *Pişkin v. Turkey*, no. 33399/18, 2020, paragraphs 131–136).

51. For the purposes of Article 6 paragraph 1 of the Convention, the "tribunal" must have "jurisdiction to examine all matters of fact and law relevant to the dispute before it" (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraphs 176-177). The body in question must exercise "sufficient jurisdiction" or exercise "sufficient review" in the proceedings before it (*Sigma Radio Television Ltd v. Cyprus*, no. 32181/04, 35122/05, 2011, paragraph 152, and case law references cited in that judgment). The principle that the court should exercise full jurisdiction dictates that it cannot abandon any element of its judicial function (*Chevrol v. France*, no. 49636/99, 2003, paragraph 63). Where domestic courts in theory had full jurisdiction to resolve the dispute, their refusal to have jurisdiction to examine all factual and legal matters relevant to the dispute constitutes a violation of Article 6 paragraph 1 (*Pişkin v. Turkey*, 2020, paragraphs 137–151)

52. When the administrative body that resolves disputes about "civil rights and obligations" does not fulfil all the requirements from Article 6 paragraph 1, a violation of the Convention cannot be established if the proceedings before that body are "subject to subsequent control by a judicial body with full jurisdiction which provides all the guarantees under Article 6 paragraph 1", that is, if all structural or procedural deficiencies identified in the proceedings before the administrative authority have been corrected during a subsequent review by a judicial authority with full jurisdiction (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraph 132; *Peleki v. Greece*, no. 69291/12, 2020, paragraphs 58–60).

53. Article 6 paragraph 1 establishes, in principle, that a court or tribunal should have jurisdiction to examine all matters of fact and law relevant to the dispute before it

(*Terra Woningen B.V. v. the Netherlands*, no. 20641/92, 1996, paragraph 52; *Sigma Radio Television Ltd v. Cyprus,* 2011, paragraphs 151–57). This means in particular that the court must be authorized to review point by point each of the litigant's grounds of appeal on the merits and not refuse to examine any of those grounds, and it must also clearly state why it rejected those grounds after reviewing them. When it comes to the facts of the case, that court must be able to review those facts which are crucially important to the Applicant's case (*Bryan v. United Kingdom, no. 19178/91,* 1995, paras 44-45). In some cases, the court in question does not have full jurisdiction in terms of domestic law as such, but nevertheless examines point by point the grounds of appeal raised by the Applicants, without having to declare itself without jurisdiction when responding to the Applicants or when considering the facts or legal conclusions made by administrative authorities. In such cases, the assessment should refer to the intensity of the judicial review of the discretionary powers exercised by the administrative authorities (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraph 183 and case law references cited in that judgment).

54. In addition, a judicial authority cannot be said to have full jurisdiction if that authority is not competent to assess whether the punishment was proportionate to the offense in question (*Diennet v. France, no. 18160/91,* 1995, paragraph 34, *Mérigaud v. France*, no. 32976/04, 2009, paragraph 69).

55. The principle of full jurisdiction was qualified in a number of cases from the Court's jurisprudence, which often interpreted it in a flexible manner, especially in administrative law cases in which the jurisdiction of the appellate court was limited due to the technical nature of the subject of the dispute (*Al-Dulimi and Montana Management Inc. v. of Switzerland* [GC], no. 5809/08, 2016, paragraph 130; *Chaudet v. France*, no. 49037/06, 2009, paragraph 37).

56. Indeed, in the legal systems of the various Member States there are certain specialized areas of law (for example in the sphere of urbanism and spatial planning) in which the courts have limited jurisdiction in the factual sense, but can modify the decision of the administrative authority if that decision was based on a conclusion derived from fact, and it was established that that conclusion was distorted or ungrounded.Article 6 of the Convention does not require access to that level of competence which can substitute its opinion for the opinion of the administrative authority (see for example, in relation to spatial planning, the case of *Zumtobel v. Austria,*1993, paragraphs 31-32, and in relation to urban planning, *Bryan v. the United Kingdom,* 1995, paras 44–47; on environmental protection, *Alatulkkila et al. v. Finland*, no. 33538/96, 2005, paragraph 52; on the regulation of games of chance, *Kingsley v. United Kingdom* [GC], no. 35605/97, 2002, paragraph 32; review of case law practice can be found in the cases of *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraph 178 and *Fazia Ali v. the United Kingdom,* 2015, paragraphs 75–78).

57. The aforementioned situations refer to the judicial review of decisions made in the regular exercise of the discretionary powers of administrative bodies in *specialized areas of law* (planning, social security, etc.) which the ECtHR distinguishes from *disciplinary disputes* such as the one conducted in: *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraphs 196 and 203. In that judgment, the Court took the position that the judicial review of the decision of the administrative body must be proportionate to the subject matter of the dispute itself (paragraph 196).

58. In the context of the regular exercise of discretionary powers by administrative authorities in specialized areas of law that require particular professional experience or specialist knowledge (see, on the contrary, Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraph 195), the Court's jurisprudence has established certain criteria

on the basis of which it can be assessed whether the review was carried out by an authority "with full jurisdiction" within the meaning of the Convention (Sigma Radio Television Ltd v Cyprus, 2011, paragraphs 151-57). Therefore, in order to determine whether the judicial authority in question has sufficiently conducted a review, the following three criteria must be considered together (see also Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraphs 179–181):

a) Subject matter of the appealed decision:

i) if the administrative decision referred to a simple matter of fact, the control carried out by the court will have to be more intensive than if that decision referred to a specialized matter that requires specific professional knowledge;

ii) the systems that exist in Europe usually limit the power of the courts to review matters of fact, but at the same time do not prevent them from overturning those decisions on various grounds. The jurisprudence of the Court does not question this.

b) The manner in which the decision was rendered: what procedural guarantees existed in the proceedings before that administrative body?

i) If the complainant enjoyed certain procedural safeguards during the previous administrative procedure that meet many of the requirements of Article 6, then this may justify a more lenient form of subsequent judicial review [Bryan v. the United Kingdom, 1995, paragraphs 46-47; Holding and Barnes PLC v United Kingdom (dec.), 2002].

c) Content of the dispute, including the intended and actual grounds of appeal (Bryan v. United Kingdom, 1995, paragraph 45):

i) The judgment must be rendered in a procedure in which it is possible to examine point by point the merits of all the allegations of the person who stated the complaint, without refusing to examine any of those grounds, and must clearly explain why those allegations are rejected after they have been examined. When it comes to facts, the court must be empowered to review all those facts that are decisively important for the case of the person who filed the complaint. For these reasons, if that person makes only procedural allegations, he cannot later criticize the court for not deciding on the facts (Potocka et al. v. Poland, no. 33776/96, 2001, paragraph 57).

59. For example, if a court refuses to decide on its own on certain matters of fact that are crucial to the resolution of the dispute, this may constitute a violation of Article 6 paragraph 1 (Terra Woningen BV v. the Netherlands, 1996, paragraphs 53–55). The same applies if the court lacks jurisdiction to decide the key matter in the dispute (Tsfayo v United Kingdom, no. 60860/00, 2006, paragraph 48). In such cases, the matter which was decisive for the outcome of the case was not subject to independent judicial review (a summary of the relevant precedents can be found in Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraphs 181–183).

60. Briefly stated, in a dispute in which administrative authorities are involved, and the courts have refused to consider matters that are decisively important for the outcome of the dispute, referring to the fact that the authorities have already decided on those matters and that their decision has a binding effect on the courts, there has been a violation of Article 6 paragraph 1 (Tinnelly & Sons Ltd et al. and McElduff et al. v. the United Kingdom, no. 20390/92, 1998, paragraphs 76–79, regarding access to

employment; Aleksandar Sabev v. Bulgaria, no. 43503/08, 2018, paragraphs 55–58, regarding with dismissals).

61. If the ground of appeal is upheld, the reviewing court must be empowered to annul the decision appealed and to render a new decision of its own, or to refer the case back to the same or another body for reconsideration (Kingsley v United Kingdom [GC], 2002, paragraphs 32 and 34, and Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraph 184). In all cases, domestic courts must conduct an in-depth, thorough consideration of the Applicant's arguments and give reasons for rejecting the Applicant's complaints (Pişkin v. Turkey, 2020, paragraphs 146–151).

62. When the administrative body has already determined the facts in a quasi-judicial proceeding that meets many of the requirements stipulated by Article 6, paragraph 1, when the facts thus established or the conclusions drawn from them by the administrative body are not disputed and when the court has resolved point by point all other grounds of appeal invoked by a disputing party, the extent of the inquiry carried out by the appellate court will be deemed to be sufficient to establish compliance with Article 6 paragraph 1 (Bryan v United Kingdom, 1995, paras 44–47).

63. Again referring to the scope of judicial review, the Court added that domestic courts must "adequately state the reasons on which their decisions are grounded" (Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraph 185). Although it does not require a detailed response to every argument presented by the complainant, this obligation nevertheless implies that the party in the court proceedings can expect a concrete and explicit answer to those allegations that are decisive for the outcome of the proceedings in the subject matter (ibid.).

64. The abovementioned criteria and principles, as confirmed in the judgment of Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraphs 173–186), were adapted by the Grand Chamber to what it considered to be the specific context of disciplinary sanctions imposed in proceedings against judges regarding the subject matter of the dispute. In doing so, the Grand Chamber emphasized the importance of the role played by those sanctions and the judiciary itself in a democratic state and took into account the penal aspect in that regard. The revision of a decision imposing a disciplinary sanction differs from the revision of an administrative decision that does not contain such a penal element (paragraph 196). The relevant criteria for meeting the requirements established in Article 6, paragraph 1, refer both to the disciplinary procedure in the first instance, and to the court procedure in the latter, appeal phase. First of all, this implies that the proceedings before the disciplinary body should not only contain procedural guarantees (paragraph 197) but when there is a possibility that the Applicant will be sentenced to a very severe sentence, also measures for adequate establishment of the facts (for more details on this, see paragraph 198 of the judgment). In addition, when it comes to the appeal procedure before the judicial body, the Grand Chamber examined the following points (paragraphs 199 et seq. of that judgment):

    a) Matters submitted for judicial review (in this particular case, it was a finding of violation of professional duties, and the Applicant disputed that conclusion both factually and in terms of the sentence imposed: see paragraphs 201-03). It should be emphasized that in the specific context of disciplinary proceedings, factual matters are just as crucial for the outcome of the dispute as are legal matters. It is especially important to establish the facts when proceeding with the imposition of sanctions, especially disciplinary sanctions against judges, since judges must enjoy the respect necessary for them to be able to properly perform their duties, which

means that it is necessary to ensure public confidence in their functioning and independence of the judiciary (paragraph 203).

b) The method of judicial review, the decision-making powers of the body conducting the review and the reasoning for the decisions rendered by that body (paragraphs 204-213). It should be emphasized that in the context of disciplinary proceedings, the decision not to make the hearing public should only be an exceptional measure that is properly explained in the light of the case law of the institutions of the Convention (paragraph 210).

65. Examples of judicial bodies that were not considered to have "full jurisdiction":

a) An administrative court which was empowered to decide only whether the discretion enjoyed by the administrative authorities was exercised in a manner compatible with the aim and purpose of the law (Obermeier v. Austria, 1990, paragraph 70);

b) A court that decided on an appeal filed for procedural reasons against the decision of the disciplinary bodies of professional associations, and was not authorized to assess whether the sanction was proportionate to the offense in question (Diennet v. France, 1995, paragraph 34, in the context of a health association; Mérigaud v. France, 2009, paragraph 69, in the context of surveyors' associations);

c) The Constitutional Court, which could examine the contested procedure exclusively from the aspect of its compliance with the Constitution, was thus prevented from considering all relevant facts (Zumtobel v. Austria, 1993, paragraphs 29-30) or from removing deficiencies in the first instance (Grosam v. Czech Republic, no. 19750/13, 2022, paragraphs 148–153);

d) The Council of State (Conseil d'Etat), which, in accordance with its own jurisprudence, had the obligation to respect the opinion of the minister - an external body that is at the same time a representative of the executive power - when resolving matters related to the applicability of international treaties, without that opinion being subject to criticism or discussion between the parties. The Applicant was thus unable to challenge the minister's participation, which was decisive for the outcome of the court proceedings, and she was not even given the opportunity to examine the grounds of her response to the minister (Chevrol v. France, 2003, paragraphs 81–82).

e) Supreme Court in the specific context of disciplinary proceedings against a judge (Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraph 214).

66. In contrast, in the following examples, the requirements stipulated in Article 6 paragraph 1 were met:

a) The case of Fazia Ali v. United Kingdom, 2015, concerned a limited judicial review of an administrative decision rendered in the sphere of social protection, regarding the housing of homeless families. The housing plan, subject matter in that case was designed to provide housing for the homeless; there were a lot of small matters involved, and the general goal of that plan was to provide as much benefit as possible to poor people in an economical and fair way. In the Court's opinion, since a thorough examination of the facts had already been carried out at the administrative level, Article 6 paragraph 1 could not be interpreted in such a sense as to require that the examination subsequently carried out by the domestic courts

must necessarily include the reopening of the entire case and the re-examination of all witnesses.

b) Chaudet v. France, 2009: The Council of State (Conseil d'Etat) decided on a request for judicial review as a court of first and last instance. In that case, the council did not have "full jurisdiction", which would be reflected in the fact that its decision completely replaced the decision rendered by the medical board of civil aviation. However, it was clear from the court file that the State Council nevertheless considered all the allegations of the Applicant, both from the factual and the legal side, and that it evaluated all the evidence from the medical file taking into account the conclusions of all the medical reports about which the parties discussed before it. Therefore, the Court concluded that the Applicant's case was examined in accordance with the requirements established in Article 6 paragraph 1 (paragraphs 37-38). See also Malhous v Czech Republic [GC], no. 33071/96, 2001, para 62, and the references below to supervision by a court with "full jurisdiction".

c) Zumtobel v. Austria, 1993: The Court took the view that the Administrative Court of Austria fulfilled the requirements of Article 6 paragraph 1 in regarding the matters not within the exclusive discretionary competence of the administrative authorities, and that it considered all allegations point by point on the merits. without ever having to declare itself incompetent to respond to those allegations or to determine various facts (paragraphs 31–32 – see also Ortenberg v. Austria, 1994, paragraphs 33–34; Fischer v. Austria, no. 16922/90, 1995, paragraph 34).

d) McMichael v United Kingdom, no. 16424/90, 1995: in that case a first instance Sheriff Court order that a child be given up for adoption was the subject matter of an appeal to the higher instance Court of Session. The latter court had full jurisdiction to that effect; ordinarily it would act on the sheriff's findings of fact, but it was under no obligation to do so. It could, where adequate, take evidence itself or send the case to the sheriff with instructions as to how it should proceed (paragraph 66). In addition, that lower court, when deciding on appeals filed against decisions on the hearing of children, also had full jurisdiction and was authorized to examine both the merits and alleged procedural irregularities (paragraph 82).

e) Potocka et al. v. Poland, 2001: the scope of jurisdiction of the Supreme Administrative Court, as determined by the Law on Administrative Procedure, is limited to assessing the legality of challenged administrative decisions. However, that court was also authorised to annul a decision, in whole or in part, if it found that the procedural requirements of fairness were not met in the proceedings leading to its rendering. From the explanation of the Supreme Administrative Court, it was clearly seen that it actually examined the aspect of the expediency of the case. Although that court could have limited its analysis to the conclusion that the contested decisions must be affirmed in view of the procedural and substantive deficiencies in the Applicants' claim, it considered the merits of all their allegations point by point and at no point did it have to be declared incompetent to respond to those allegations or to establish essential facts. The court rendered a judgment that it carefully reasoned, thoroughly considering the arguments of the Applicants that were essential for the outcome of the case. Therefore, the scope of the review conducted by the Supreme Administrative Court was sufficient to meet the requirements of Article 6 paragraph 1 (paragraphs 56-59).

(IX) Application of the abovementioned basic principles to thepresent case

67. I remind you that the circumstances of the present caseare related to the fact that the Applicant, while performing her work duties as a cashier of the KEK department, Fushë Kosovë branch, suffered bodily injuries due to a fall on the stairs of the Raiffeisen bank

building, Fushë Kosovë branch. On an unspecified date, the Applicant filed a lawsuit against Raiffeisen Bank in court, by which she requested compensation for bodily injuries. On 4 January 2017, the Basic Court in Judgment [C. no. 3134/11] partially accepted the claim of the Applicant and *"for an injury sustained at the workplace [on 6 February 2012] for 70% of the obligation"*as compensation for non-material damage, it obliged Raiffeisen Bank to pay her the following amounts: 7,000 euros in compensation for physical pain suffered; 8,400 euros in compensation for the fear caused; 2450 euros compensation for bodily disfigurement; and 3,500 euros in compensation due to the limitation of general life activities.As a result of Raiffeisen Bank's appeal that was filed before the Court of Appeal, the latter in its judgment [Ac. no. 1034/17] of 24 February 2020, rejected Raiffeisen Bank's appeal as ungrounded, and confirmed the judgment of the Basic Court, but also modified the legal interest part by deciding that "legal interest is being tried, for funds deposited in to the commercial banks of Kosovo, *for a period longer than one year, without a specific purpose, starting from the day of receipt of the judgment of the first-instance court, until the final payment*.As a result of the audit submitted by Raiffeisen Bank to the Supreme Court, the latter in the judgment [Rev. No. 409 /2020] accepted Raiffeisen Bank's audit as grounded and changed the judgments of the Appellate and Basic Courts, rejecting the Applicant's claim as ungrounded.

68. The Supreme Court explained in the challenged judgment

> *"In this state of the case, the Supreme Court of Kosovo does not accept as grounded the abovementioned legal position of the first and second instance courts regarding the acceptance of the claim of the claimant, since the first and second instance judgments are covered by the erroneous application of substantive law, 173 and 174 in connection with the Article 192, paragraph 1 of the Law on Obligational Relationships (LOR, OG. 29/78).*
>
> *On review of the respondent's allegations, regarding the violations of the provisions of the civil procedure, the Supreme Court finds that they are ungrounded, and that the judgment does not refer to the alleged violations, nor to the violations that are taken care of ex officio in accordance with the provision of Article 215 of the LCP, which is about the capacity of the party and regular representation.*
>
> *The Supreme Court found from the case file that the first instance and second instance courts, on the basis of the conducted evidence, on the established factual situation, erroneously applied the material law, partially accepting the claimant's claim and forcing the respondent to compensate the claimant for damages as in the sentence of the first instance and second instance judgment.*
>
> *The erroneous assessment of the factual situation established by the first instance and second instance courts consists in an erroneous assessment of the evidence presented, due to the fact that the first instance court in the case of a partial acceptance of the claim, and the second instance court acting on the claim, in connection with the determination of the fact whether there is liability and the respondent's obligation to compensate the claimant for the damage it suffered on 18.11.2011, where the claimant, while going down the external stairs of the building of Raiffeisen Bank J.S.C., Fushë Kosovë branch, slipped and fell and suffered bodily injuries, at the time of the fall she was performing the duties of a cashier in the Prishtina District in Fushë Kosovë as a regular employee at KEK, Supply Division in Prishtina, based the judgment on the opinion given in the expert opinion of occupational safety expert Hamid Nuredini, which expert opinion was not necessary in this case.*

The Supreme Court finds that in this particular case, the responsibility of the respondent does not arise from the employment relationship between the claimant and the respondent, because the claimant was not employed by the respondent, therefore it was completely unnecessary to provide an expert opinion on occupational safety as evidence, this expert opinion is only necessary in those cases of damages when the respondent is the employer, which is not the case in this present case.The fact that the claimant performed the duties of a cashier in the Prishtina District in Fushë Kosovë as a regular employee at KEK, Supply Division in Prishtina, in relation to the respondent, is completely irrelevant, and the claimant in this case, in relation to the respondent, is only a client like any other client (citizen) who receives services, so the provisions of occupational safety in relation to the respondent cannot be applied.

The Supreme Court finds that in this case the responsibility of the respondent in relation to the injuries sustained by the claimant has not been established, for the reason that there is no police report in the case file describing the accident, nor a report on the accident by the municipal inspectorate, which would provide an overview of the facts that would be relevant to the accident, such as whether there was rain, frost on the critical day, the condition of the stairs where the accident occurred and whether the respondent had any omission that contributed to the cause of the accident, evidence was also not provided immediately after the accident, while after changes in the factual situation, a change in the state of the staircase, an established fact that is not contested by the statements of the parties as in the case file, it is impossible to give an objective opinion of any expert on the circumstances of the accident, and in a present case, a confirmation of the respondent's responsibility for causing damage.Even if we take into account the expert testimony of defence expert Hamid Nuredini, which is in the case files, the opinion of this expert is based on hypotheses and not on the factual situation, as the expert himself, in his written testimony and statement at the hearing, states that stairs were replaced after the accident, and at the same time states that it is the respondent's responsibility that the stairs were slippery, although he did not state the reason why he came to this conclusion, which this court cannot accept.

Furthermore, the Supreme Court finds that due to the change in the situation on the site, due to the replacement of the staircase tiles and the lack of other evidence that would prove the respondent's responsibility for the damage, it was not considered reasonable to remand the case to a retrial, because with the existing data we cannot have an objective expert opinion that could support the judgment.

Taking into account the evidence led by the firstinstance court, such as the employment contract no. 9876/0 of 1 March 2011, transaction confirmation of 11/18/2011 issued by the respondent, confirmation of transfer of 21.12.2005, Discharge sheetof 06.12.2011 issued by the specialist orthopaedic clinic AS, referralof 25.12.2011 issued by IOM, accident report of 22.11.2011, the findings of the specialist radiologist of 11/18/2011, expert opinion in the field of occupational safety of 19.07.2015, medical examination of 27.06.2016, as well as the statement of the witness Fehmi Dervisholli, do not prove the responsibility of the respondent in relation to the claimant, so taking into account the reasons stated above, the factual situation that was confirmed by the firstinstance court and accepted by the secondinstance court cannot be accepted by the Supreme Court, because it assesses that with the same the evidence did not prove the essential fact that the respondent was responsible for causing the damage, from which responsibility would arise the obligation to compensate for the damage, so the judgments of the two lower levels of instances were erroneously based on the provisions of Articles

173 and 174 in conjunction with Article 192, paragraph 1 of the Law on ObligationalRelationships (LOR, OG. 29/78).

The Supreme Court, from the evidence presented in this case, as well as from the case file, finds that the merits of the claimant's claim have not been proven, therefore, there is no basis for accepting the claim, for the reason that based on the evidence presented, the respondent's objective responsibility for causing injuries to the claimant has not been proven.For each claim, the merits must be proven, in this case the claimant did not prove the merits of the claim, and according to Article 319, paragraph 1 of the Law on Contested Procedure, according to which each of the parties in the litigation is obliged to prove the facts on which they base their claims and aims, as well as Article 322 of the LCP, according to which if the court cannot confirm a fact with certainty based on the evidence obtained, it will conclude on the existence of the fact by applying the rules on the burden of proof, in this case the court rejected the claim of the claimant as in the sentence of this judgment, in the absence of evidence to prove the validity of the rejected claim of the claimant."

69. The Applicant stated in her request submitted to the Court:*"[...]that the challenged judgment [of the Supreme Court] contains the elaboration and judgment of the case which refers to the erroneous or incomplete determination of the factual situation, for which REVISION is not allowed [...]"*. In this context, the Applicant claims that the Supreme Court's reasoning for the rejection of the claim is based on issues of proving the factual situation by assessing whether the respondent [Raiffeisen Bank] is responsible for the damage caused. According to the Applicant, the Supreme Court should have remanded the case to a lower court in this case. In the following, the Applicant specifies that: "[...*]"the case of this judgment represents a lack of legal certainty and a loss of confidence in the judiciary, because it would not even be good case law to continue using the challenged judgment as a source that helps regular courts to correctly interpret legal norms, the conduction of the judicial process and the qualification of the facts in each present case in an adequate manner, all with the aim of increasing credibility in the judiciary and legal security in general, as well as the validity of the recommendations that guide judges regarding the standards that the courts will guarantee during the conduction of court processes of this or a similar nature"*.

70. From the abovementioned Applicant's allegations, it follows that the allegations stated in her referral refer to exceeding the competence of the Supreme Court to remand the case for review to the lower courts, and which essentially refer to the criteria of the right of the tribunal established by law, which is guaranteed by paragraph 2 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

71. In the circumstances of the present case, the majority decided to consider the Applicant's allegations from the point of view of her right to a tribunal established by law, as an integral part of the right guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, applying the principles established through case law of the ECtHR, in which case the Court, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to: "*interpret human rights and fundamental freedoms guaranteed by this Constitution consistently with the court decisions of the European Court of Human Rights*".

72. In order to continue with the assessment of the Applicant's allegations, it is necessary to establish the jurisdiction of the Supreme Court and elaborate the legal basis, that is, the provisions of the applicable law, which determine the jurisdiction of the Supreme Court to decide on the revision procedure.

73. I reiterate the relevant legal provisions that refer to the extraordinary remedy of revision, as well as the jurisdiction of the Supreme Court to decide on revision. First, the Court notes that paragraph 1 of Article 211 of the Law on Contested Procedure (hereinafter: LCP) states that: "*Against the decision of the court of second instance, sides can present a revision within a period of thirty (30) days from the day the decision was brought*." On the other hand, Article 212 specifies that the Supreme Court decides on revision.

74. In the following, I hold that through paragraph 1 of Article 214, the reasons for which a review can be submitted to the Supreme Court are established, that is, it is established that a revision may be submitted:

a) for violation of provisions of contested procedures from the article 188 of this law done by the procedure of the court of second instance;
b) due to wrongful application of material right;
c) due to over passing claim charge, if the irregularities were done in the procedure developed in the court of second instance.

75. Furthermore, I note that paragraph 2 of Article 214 stipulates:"*Revision cannot be submitted due to erroneous or incomplete ascertainment of the factual situation".*

76. After that, I highlight Article 224 of the LCP. In paragraph 1 of the Article, it is stipulated that: *"If the court of revisions ascertains that the substantive law has been erroneously applied, it shall approve the submitted revision and change the challengedjudgment".*

77. On the other hand, paragraph 2 of Article 224 stipulates that: "*If the court of revision ascertains due to the wrongful application of the material good, or due to the violation of rules of procedure-the factual state isn't certified completely and for that reason there are no conditions to change the attacked decision, than the court approves the revision through a verdict and annuls partially or completely the decision of the first and the second instance, or only the decision of the second instance, while the case is sent for retrial to the same or other judges of the court of the first instance or the second".*

78. First of all, I reiterate that the extraordinary legal remedy, respectively revision, in the circumstances of this present case, was allowed and that the Supreme Court reviewed and decided in accordance with its competences stipulated by Article 211 of the LCP, which stipulates "*Against the decision of the court of second instance, sides can present a revision within a period of thirty (30) days from the day the decision was brought*".

79. Further, Article 212 of the LCP stipulates that"*For revisions is decided by the Supreme Court of Kosovo.*"

80. Based on the above, I conclude that revision in accordance with Article 211 of the LCPis provided as a legal remedy, and that in accordance with Article 212 of the LCP, the Supreme Court was competent to decide on the revision.

81. Further, it should be examined and assessed whether the Supreme Court, when making its decision in the revision procedure, decided in accordance with the law or exceeded its jurisdiction. This assessment shall be basedon the general principles that have been established through the case law of the ECtHR.

82. More specifically, when assessing the referral, the Court shall rely on the principles and findings of the ECtHR in the relevant case law that refer to cases where the court violated the criteria of a tribunal established by law in the sense of Article 6 of the ECtHR by exceeding the jurisdiction established by law.

83. I believe that the majority,when assessing whether the Supreme Court exceeded its competences defined by law, referred to the erroneous case lawof the ECtHR, more precisely to the case of *Sokurenko and Strygun v.Ukraine* by which it is considered that the term "tribunal established by law" covers not only the legal basis for the very existence of the "tribunal", but also its decision-making in accordance with the special rules that regulate it (paragraph 24 of the judgment in the case of *Sokurenko and Strygun v. Ukraine*).

84. Furthermore, I believe that they should have used the general principles regarding exceeding the jurisdiction of the deciding court because there is no dispute between the parties that the supreme court was competent to decide on revision.

85. I therefore consider that the correct case lawon jurisdiction is explained in detail in Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraphs 179–181. Therefore, in order to determine whether the judicial authority in question has sufficiently conducted the review, the following three criteria must be considered together

a) Subject matter of the appealed decision:

i) if the administrative decision referred to a simple matter of fact, the control carried out by the court will have to be more intensive than if that decision referred to a specialized matter that requires specific professional knowledge;

ii) the systems that exist in Europe usually limit the power of the courts to review matters of fact, but at the same time do not prevent them from overturning those decisions on various grounds. The jurisprudence of the Court does not question this.

b) The manner in which the decision was rendered: what procedural guarantees existed in the proceedings before that administrative body?

i) If the complainant enjoyed certain procedural safeguards during the previous administrative procedure that meet many of the requirements of Article 6, then this may justify a more lenient form of subsequent judicial review [Bryan v. the United Kingdom, 1995, paragraphs 46-47; Holding and Barnes PLC v United Kingdom, no. 2352/02 (dec.), 2002].

c) Content of the dispute, including the intended and actual grounds of appeal (Bryan v. United Kingdom, 1995, paragraph 45):

i) The judgment must be rendered in a procedure in which it is possible to examine point by point the merits of all the allegations of the person who stated the complaint, without refusing to examine any of those grounds, and must clearly explain why those allegations are rejected after they have been examined. When it comes to facts, the court must be empowered to review all those facts that are decisively important for the case of the person who filed the complaint. For these reasons, if that person makes only procedural allegations, he cannot later criticize the court for not deciding on the facts (Potocka et al. v. Poland, 2001, paragraph 57).

86. In terms of the law that is applied in this case, I reiterate that the matter of the jurisdiction of the Court to decide on revision is defined by the provisions of the LCP, respectively Articles 211 to 224 of this law. More precisely, these legal provisions stipulate the legal basis for the very existence or competence of the Supreme Court to decide on the revision procedure.

87. Up to this stage, or in regard to the jurisdiction of the Court to decide in terms of Articles 212 to 224, I note that the Supreme Court was competent to decide in the revision proceedings. In this sense, I note that the revision filed by the respondent was filed due to the violations of the provisions of the contested procedure as well as due to the erroneous application of substantive law.

88. The respondent [Raiffeisen Bank] specified in the revision that: *"[...] it believes that the judgment challenged by this revision was rendered in complete contradiction to the provisions of the Law on Contested Procedure, in the sense of Article 182.2 n) of the LCP, which clearly defines that a basic violation of the provisions of the contested procedure always exists: "if the judgment has defects that cannot be examined, and especially if the operative part of the judgment is incomprehensible or contradictory, in itself or with the reasons of the judgment, or if the judgment has no reasons at all or there are no reasons on decisive facts stated at all, or those reasons are unclear, or contradictory, or if there are contradictions regarding decisive facts between what is stated in the reason for the judgment about the content of the document or records about the data given in the procedure and those documents or records themselves". Given that the court in both cases described and treated only the evidence presented by the claimant, while at the same time it completely ignored the facts and evidence presented by the respondent, the judgments are biased in content and contradict the content of the case itself".*

89. Furthermore, in terms of the criterion defined in paragraph 2 of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, that the tribunal must be established by law, I assess that the courts in general and in the present case the Supreme Court must adhere to its expressly defined jurisdiction when deciding by law, in the present case the provisions of the LCP.

90. This is because the right to a tribunal established by lawor in accordance with the law is the central feature of a fair and impartial trial, because it refers to the very essence of law, and accordingly, I consider that the assessment and consideration of whether the Supreme Court, when deciding in this revision procedure, exceeded its legal jurisdiction essentially and primarily before rather than determining whether the other procedural guarantees defined by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, have been respected or not.

91. I note that in this present case, from the reasoning of the Supreme Court, it derives that the respondent's responsibility was not proven, the Supreme Court rejected the Applicant's claim as ungrounded, and therefore the decisions made by the Basic Court and the Court of Appeals were annulled by rejecting the Applicant's claim in its entirety.

92. In the following, I reiterate that the Supreme Court, during its reasoning, assessed that: *"from the case file, it was determined that the first and second instance courts, based on the evidence presented, in connection with the established factual situation, erroneously applied substantive law, when they partially adopted the claimant's claim [of the Applicant], and when they obliged [Raiffeisen Bank] to compensate [the Applicant] for the damage described in detail as well as in the sentences of the firstinstance and secondinstance judgments".*

93. In regard to the latter, I emphasize Article 224 of the LCP. In paragraph 1 of the article, it is determined that:"*If the court of revisions ascertains that the substantive law has been erroneously applied, it shall approve the submitted revision and change the challenged judgment".*

94. The Supreme Court did the above in the present case, reasoning*"Taking into account the evidence led by the first instance court, such as the employment contract no. 9876/0 of 1 March 2011, transaction confirmation of 11/18/2011 issued by the respondent, confirmation of transfer of 21.12.2005, Discharge sheet of 06.12.2011 issued by the specialist orthopaedic clinic AS, referral of 25.12.2011 issued by IOM, accident report of 22.11.2011, the findings of the specialist radiologist of 11/18/2011, expert opinion in the field of occupational safety of 19.07.2015, medical examination of 27.06.2016, as well as the statement of the witness Fehmi Dervisholli, do not prove the responsibility of the respondent in relation to the claimant,**so taking into account the reasons stated above, the factual situation that was confirmed by the first instance court and accepted by the second instance court**cannot be accepted by the Supreme Court, because it assesses that with the same the evidence did not prove the essential fact that the respondent was responsible for causing the damage, from which responsibility would arise the obligation to compensate for the damage, so the judgments of the two lower levels of instances were erroneously based on the provisions of Articles 173 and 174 in conjunction with Article 192, paragraph 1 of the Law on Obligational Relationships (LOR, OG. 29/78)."*

95. Therefore, the Supreme Court, *"...assesses that with the same the evidence did not prove the essential fact that the respondent was responsible for causing the damage, from which responsibility would arise the obligation to compensate for the damage, so the judgments of the two lower levels of instances were erroneously based on the provisions of Articles 173 and 174 in conjunction with Article 192, paragraph 1 of the Law on Obligational Relationships (LOR, OG. 29/78)".*

96. In this sense, I recall the proper practice of the ECtHR to the abovementioned case of the ECtHR Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, which reasons "*the systems that exist in Europe usually restrict the power of the courts to review matters of fact, but they at the same time, do not prevent them from revising those decisions on various grounds. The Court case law does not question this."*

97. If the ground of appeal is upheld, the reviewing court must have the power annul the appealed decision, to render a new decision of its own, or to refer the case back to the same or another body for reconsideration (*Kingsley v. United Kingdom*[GC],2002, paragraphs 32 and 34, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraph 184). In all cases, domestic courts must conduct an in-depth, thorough review of the Applicant's arguments and give reasons for rejecting the Applicant's complaints (*Pişkin v. Turkey,* 2020, paragraphs 146–151).

98. Returning to the present case, I consider that the Supreme Court decided within its competence because, in accordance with Article 211 and 212, it is competent to decide on revisions submitted against the decisions of the Court of Appeals.

99. Also, the Supreme Court is competent to overturn the decision of the Court of Appeals in accordance with Article 224 of the LCP, which stipulates: *"If the court of revisions ascertains that the substantive law has been erroneously applied, it shall approve the submitted revision and change the challenged judgment".*

100. The ECtHR did not find a violation of Article 6, which related to the court established on the basis of the law in case Potocka et al. v. Poland, 2001: the scope of jurisdiction of the Supreme Administrative Court, as determined by the Law on Administrative Procedure, is limited to assessing the legality of challenged administrative decisions. However, that court was also authorised to annul a decision, in whole or in part, if it found that the procedural requirements of fairness were not met in the proceedings leading to its rendering. From the explanation of the Supreme Administrative Court, it was clearly seen that it actually examined the aspect of the expediency of the case. Although that court could have limited its analysis to the conclusion that the contested decisions must be affirmed in view of the procedural and substantive deficiencies in the Applicants' claim, it considered the merits of all their allegations point by point and at no point did it have to be declared incompetent to respond to those allegations or to establish essential facts. The court rendered a judgment that it carefully reasoned, thoroughly considering the arguments of the Applicants that were essential for the outcome of the case. Therefore, the scope of the review conducted by the Supreme Administrative Court was sufficient to meet the requirements of Article 6 paragraph 1 (paragraphs 56-59).

101. I notice that the Supreme Court gave a concrete reasoning stating; *"... from the evidence presented in this case, as well as from the case file, finds that the merits of the claimant's claim have not been proven, therefore, there is no basis for accepting the claim, for the reason that based on the evidence presented, the respondent's objective responsibility for causing injuries to the claimant has not been proven.For each claim, the merits must be proven, in this case the claimant did not prove the merits of the claim, and according to Article 319, paragraph 1 of the Law on Contested Procedure, according to which each of the parties in the litigation is obliged to prove the facts on which they base their claims and aims, as well as Article 322 of the LCP, according to which if the court cannot confirm a fact with certainty based on the evidence obtained, it will conclude on the existence of the fact by applying the rules on the burden of proof, in this case the court rejected the claim of the claimant as in the sentence of this judgment, in the absence of evidence to prove the validity of the rejected claim of the claimant".*

102. If the appealing allegation is approved, the reviewing court must be empowered to annul the decision complained of, and to render a new decision of its own, or to remand the case to the same or another authority for retrial (*Kingsley v. United Kingdom* [GC] , 2002, paragraphs 32 and 34, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, paragraph 184).

103. Furthermore, the ECtHR in case (Ramos Nunes de Carvalho e Sá v. Portugal [GC], 2018, paragraphs 183-186), which is the leading case in which the court established the basic principles of a court established on the basis of law, stated the following:

> *184. Furthermore, the Court has considered it generally inherent in the notion of judicial review that, if a ground of appeal is upheld, the reviewing court must have the power to quash the impugned decision, and either take a fresh decision or remit the case to the same body or a different body (see Kingsley v. the United Kingdom [GC], no. 35605/97, §§ 32 and 34, ECHR 2002-IV, and Oleksandr Volkov, cited above, § 125).*
>
> *185. Article 6 also requires the domestic courts to adequately state the reasons on which their decisions are based. Without requiring a detailed answer to every argument put forward by a complainant, this obligation nevertheless presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the*

proceedings in question (see, among many other authorities, Ruiz Torija v. Spain, no. 18390/91, 9 December 1994, §§ 29-30, Series A no. 303-A).

186. The Court also reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, Nejdet Şahin and Perihan Şahin v. Turkey [GC], no. 13279/05, § 49, 20 October 2011). The Court is not a court of appeal from the national courts and it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities (García Ruiz v. Spain [GC], no. 30544/96, § 28, ECHR 1999-I).

104. Bearing in mind all of the above, I consider that the Supreme Court acted in accordance with its competencies when it annulled the decision of the Court of Appeals, becausethe scope of the Supreme Court's revision in the judicial revision proceedings in this case was sufficient to comply with Article 6 of the Convention and Article 31 of the Constitution.

(X) Conclusion regarding the alleged violations of the Applicant's rights

105. Based on the above,I believe that the majority applied the wrong case law of the ECtHR in the case of *Sokurenko and Strygun v. Ukraine,* the circumstances of which were related to the fact that the Applicants claimed that the Supreme Court of Ukraine was not competent to confirm the decision of the Higher Commercial Court, because according to the Code of Commercial Procedure, this court, after annulling the decisions of the Supreme Commercial Court, can remand the case for reconsideration or annul all proceedings.As well as the cases of *Veritas v. Ukraine, no.* 39157/02, judgment of 13 November 2008, *Basat Impex, TOV v. Ukraine,* no. 39051/07, judgment of 1 December 2011; and *AVIAKOMPANIYA ATI, ZAT v. Ukraine* no. 1006/07, judgment of 5 October 2017, in which it was assessed that the factual and legal circumstances are the same as in the case of *Sokurenko and Strygun,* and accordingly, in both of these cases, a violation of Article 6 of the ECHR was established, as a result of violation of the right to a court established by law.

106. In all these cases referred to by the majority, the Supreme Court of Ukraine acted outside of its jurisdiction and did something that is completely contrary to the law of Ukraine, extended its jurisdiction to itself and made a decision outside of its jurisdiction.

107. On the contrary, in the present case, the Supreme Court of Kosovo was competent to act on the revision submitted by the party, was competent to annul and overturn the decision of the Court of Appeals, and therefore I consider that the scope of the revision of the Supreme Court in the judicial revision process in this case was sufficient to respect Article 6 of the Convention and Article 31 of the Constitution.

108. I consider that such a decision damages the Applicant herself because it is obvious from the reasoning of the Supreme Court that the Applicant will not be able to realize her essential right, that is, the request for compensation for damages and material compensation.

109. I consider that no Applicant addressed the Constitutional Court only to have the right to a tribunal established by law or some other procedural right, on the contrary, each Applicant addressed the court in order to realize some substantive right, respectively an effective right that he believes belongs to him.

110. In the present case, the Applicantaddressed the court in order to realize the material compensation for the damage incurred, and the regular courts gave her the opportunity to present her evidence, which the Applicant did.

111. The task of the court is to first determine whether there is a violation and to correct it by enabling the Applicant to realize the essential right that the Applicant requested, and not to provide him with a procedural right that is not effective.

112. I conclude that in the circumstances of the present case, the majority of the court **(I)** without explaining the general guarantees: institutional requirements in connection with *the "tribunal established by law"*; **(II)** not explaining the concept of court at all; **(III)** does not distinguish between the general principles of the Tribunal established by law: **the criminal aspect; and** general principles of the Tribunal established by law: **civil aspect; (IV)** not explaining the general principles regarding the level of jurisdiction of the courts; **(V)** not justifying review by a court of competent jurisdiction. By applying one non-comparable case of the ECtHR which is not relevant to the present case, erroneously concludes that the Supreme Court had been deciding outside its jurisdiction and it sets a wrong precedent that will not stand the test of time.

113. I consider that the general principles must be taken into account in their entirety as presented in this separate opinion, and that in doing so, the leading cases of the ECtHR must be used, and not individual exceptions as it was done in the judgment, that a distinction must be made between the criminal and civil aspects of the Court established on the basis of law because the requirements of the criminal aspect are stricter, further, I consider that the legal norms must be read as a whole and not taken out of context and that general principles must be interpreted in their entirety.

114. Due to the above, I conclude that there has been no violation of the right to a tribunal established by law from Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR as presented in the judgment.

115. Furthermore, I consider that with this decision of the majority, we are exposing the Applicant to new court proceedings and additional costs that are strictly formal in terms of repeated proceedings before the Basic Court and the Court of Appeals without the possibility for the Applicant to realize her essential right.

Dissenting opinion was submitted by the judge;

Radomir Laban, judge

On 27 February 2023, in Prishtina.