



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 6 March 2024 2024
Ref. no.: AGJ 2408/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI43/23

Applicant

Armend Hamiti

Constitutional review
of Judgment AA. no. 37/22 of 18 January 2023, of the Supreme Court of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Armend Hamiti residing in the municipality of Prishtina (hereinafter: the Applicant), who is represented by Diamant Zekaj, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [AA. no. 37/22] of 18 January 2023, of the Supreme Court of Kosovo (hereinafter: the Supreme Court) in conjunction with Decision [KPK/No. 1513/2022] of 29 November 2022, of the Kosovo Prosecutorial Council (hereinafter: the KPC).
3. The Applicant was served with the contested decision on 24 January 2023.

Subject matter

4. The subject matter is the constitutional review of the contested Judgment, whereby the Applicant alleges that his fundamental rights and freedoms, guaranteed by 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 on Human Rights (hereinafter: the ECHR) have been violated.
5. The Applicant before the Court requests the imposition of an interim measure, namely, to avoid irreparable damage for the latter.

Legal basis

6. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals), 27 (Interim Measures) and 47 (Individual Requests) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 25 (Filing of Referrals and Replies) and 44 (Request for Interim Measures) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
7. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

Proceedings before the Constitutional Court

8. On 14 February 2023, the Applicant submitted the Referral by mail service, which the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received on 16 February 2023.
9. On 2 March 2023, the Court notified the Applicant, the Supreme Court and KPC, and provided these last two with a copy of the Referral.
10. On 7 March 2023, the President of the Court by Decision [No. GJR. KI43/23] appointed Judge Nexhmi Rexhepi - as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Remzije Istrefi-Peci (members).

11. On 14 March 2023, the Court requested the alleged legal representative of the Applicant to submit the specific power of attorney to the Constitutional Court, which proves that he represents him before the Court.
12. On 23 March 2023, the legal representative of the Applicant submitted the aforementioned specific power of attorney.
13. On 17 January 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.
14. On the same date, the Court decided, unanimously, to declare the Referral admissible and to hold that the Judgment [AA. no. 37/22] of the Supreme Court of 18 January 2023, is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the ECHR.

Summary of facts

15. From the case file it follows that the Applicant exercises the profession of Prosecutor in the Serious Crimes Department in the Basic Prosecutor's Office in Prishtina (hereinafter: Basic Prosecutor's Office).
16. On 16 March 2022, a portal published a news story about the Applicant, which contained several photographs of a meeting between him and Sh.K, who was convicted of various criminal offenses.
17. On 15 April 2022, the Chief Prosecutor of the Basic Prosecutor's Office in Prishtina, in the capacity of the Competent Authority (hereinafter: the Competent Authority), after the media article of the aforementioned portal about the Applicant, submitted a request for the initiation of disciplinary investigations against the latter, claiming that he committed a disciplinary violation based on subparagraph 2.10 of paragraph 2 of Article 6 (Disciplinary offenses for prosecutors), of Law No. 06/L-057 on Disciplinary Liability of Judges and Prosecutors, amended and supplemented by Law No. 08/L-003 (hereinafter: the Law on Disciplinary Liability) and the general principles defined in subsection c of point 3 (Integrity) of the Code of Ethics and Professional Conduct for Prosecutors.
18. On 21 April 2022, the KPC rendered the Decision [KPK/no. 521/2022] on the establishment of the Investigation Panel for the conduct of disciplinary investigations in this case, consisting of: XH.B., N.T. and P.K.
19. On 20 May 2022, the Applicant submitted a request to the Agency for the Prevention of Corruption (hereinafter: APC) to assess whether the initiation of the disciplinary procedure by the competent authority represents a conflict of interest.
20. On 1 July 2022, the Chair of the KPC by Decision [KPK/ No. 776/2022] supplemented and amended Decision [[KPK/No. 521/2022] of 21 April 2022 of the KPC, so that it replaced the member of the Investigation Panel - P.K. with the reserve member (second in order) – N.R., for the same reason, as well as the first reserve member were on annual leave.

21. On 8 July 2022, the KPC, by the Decision [KPK/No. 785/2022], approved the request of the Investigation Panel [AD. no. 03/2022], to extend the investigation period for an additional two months, starting from 21 July 2022 to 21 September 2022.
22. On 6 September 2022, the KPC by the Decision [KPK/No. 1095/2022], based on paragraph 3 of Article 11 of the Law on Disciplinary Liability and paragraphs 6 and 9 of Article 6 of Regulation No. 05/2019 for the Disciplinary Procedure of Prosecutors (hereinafter: Regulation No. 05/2019), interrupted the statute of limitations and suspended the disciplinary procedure against the Applicant, until a decision is taken by the APC.
23. On 18 October 2022, the APC issued an opinion regarding the Applicant's request, where it concluded that the initiation of disciplinary proceedings against the Applicant, by his superior, as the Competent Authority, does not contradict the provisions of Law No. 06/L-011 on the Prevention of Conflict of Interest in Discharge of a Public Function (hereinafter: LPCI).
24. On 24 October 2022, the Applicant submitted a request for the annulment of the decisions of the KPC, namely (i) Decision [KPK. No. 776/2022] of 1 July 2022 and (ii) Decision [KPK. No. 1095/2022] of 6 September 2022, as well as concluded the expiration of the investigation deadline in his case [AD. no. 03/2022]. More specifically, the Applicant, in his request to the KPC, related to (i) Decision [KPK. No. 776/2022] of 1 July 2022 for the replacement of the member of the Investigation Panel, the Applicant stated that the decision was taken by an incompetent authority (Chair of the KPC) and as such is unlawful, while, regarding (ii)) Decision [KPK. No. 1095/2022] of 6 September 2022, for interruption of the statute of limitations and suspension of the disciplinary procedure, the latter emphasized that such a decision was not rendered in accordance with the requirements of the Law on Disciplinary Liability because this law does not provide for an interruption of the statute of limitations and suspension of the disciplinary proceedings when the procedure is suspended for administrative matters - in the present case pending the response of an administrative body, but that this legal provision determines the termination of the statute of limitations and the suspension of the disciplinary procedure only in the case when the alleged disciplinary violation contains elements of a criminal offense, and as such is referred to the State Prosecutor. Whereas, regarding the legal deadline for taking investigative actions by the Investigation Panel, the Applicant, based on paragraph 8 of Article 12 of the aforementioned Law, claimed that the Investigation Panel is out of time to continue investigations.
25. On 28 October 2022, in the fourth hearing, the Applicant requested that the Investigation Panel be excluded, claiming that all members of the panel are from Mitrovica – the Applicants' birthplace.
26. On 31 October 2022, the KPC by Decision [KPK/ No. 1291/2022], protocolled on 2 November 2022, rejected the Applicant's request for the exclusion of three members of the Investigation Panel, as well as obliged the Panel to continue with the investigation and submit the written report within the specified deadline.
27. On 1 November 2022, the Investigation Panel issued the Report on the case [AD. no. 03/2022], in which it concluded that the Applicant violated subparagraph 1.3 of paragraph 1 of Article 6, and subparagraph 2.10 of paragraph 2 of Article 6 of the Law on Disciplinary Liability, with the following reasoning:

*“- The fact of the meeting between the prosecutor [the applicant] and the respondent [Sh.K] has been confirmed;
 - From the administered evidence, it follows that no case of a cooperating witness was initiated from this meeting;
 - The Chief Prosecutor [K.M] was not informed about this meeting;
 - The defendant [Sh.K.] has been proven to have been involved in several criminal offenses for which he is also convicted and that the same person was later found with a photograph that he was also sitting with another person – [M.M], for whom the prosecutor [the applicant] had filed an Indictment.”*

28. The Investigation Panel, at the end of its report, proposed to the KPC to approve the proposal of the Competent Authority and to impose the disciplinary sanction “*public written reprimand*” on the Applicant”.
29. On 29 November 2022, KPC by Decision [KPK/No. 1513/2022] approved as grounded the Report of the Investigation Panel [AD. no. 03/2022], of 1 November 2022 and imposed on the Applicant the disciplinary sanction “*public written reprimand*”. In its decision, the KPC concluded as follows: “*[...] after the hearing of the Investigation Panel, the subject of the disciplinary investigation, the defense lawyer of the subject of the disciplinary investigation and the review, analysis, comparison of the evidence mentioned in the Panel Report as well as the final word, came to the conclusion that the prosecutor A.H. [the Applicant], with this action, acted in violation of Law No. 06/L-057 on the Disciplinary Liability of Judges and Prosecutors, which expressly defines the cases when the prosecutor “engages in behaviour while on duty or in private which harms the honour and dignity of the State Prosecutor and the public trust in the reliability of the state prosecutor” regarding the possible information that the prosecutor was able to get from an “informant”, he should have reported it to the head of the department or the chief prosecutor himself, which he did not do. Meetings of the prosecutor with an informant (if they were assessed as allowed) could have been held in the prosecutor’s office, for which an official record would be kept, about which the chief prosecutor would also be notified, but this has not happened*”.
30. On the same date, the Applicant submitted a complaint to the KPC against the Decision [KPK/ No. 1291/2022] of 31 October 2022, recorded on 2 November 2022, claiming that the KPC in its decision did not address his request of 24 October for the annulment of decisions [KPK. No. 776/2022] of 1 July 2022 and [KPK. No. 1095/2022] of 6 September 2022, and finding that the investigation deadline has passed in his case [AD. no. 03/2022]. More specifically, in his complaint, the Applicant claimed that:
 - (i) The decision [KPK. no. 776/2022], of 1 July 2022 for the replacement of the member of the Investigation Panel is unlawful because it was taken by an incompetent body, namely the Chair of the KPC and not by the KPC as a collegial body in violation of subparagraph 1.5 of paragraph 1 of Article 7 (Duties and responsibilities of the Council) and paragraph 2 of Article 11 (Chair and Vice-Chair of the Council) of Law No. 06/L-056 on Kosovo Prosecutorial Council of (hereinafter: Law on the KPC), and Article 12 (Establishment of the Investigation Panel) of Regulation No. 05/2019. The Applicant pointed out that the decision in question was not based on paragraph 5 of Article 13 (Conflict of Interest and Exclusion) of Regulation No. 05/2019, therefore, it cannot be attempted to invoke this article because it is not part of this decision and that it is only applied in situations related to conflict of interest;
 - (ii) Decision [KPK. No. 1095/2022] of 6 September 2022 for the termination of the statute of limitations and the suspension of the disciplinary procedure against the

applicant is based on Article 11 (Criminal offence) of the Law on Disciplinary Liability, which determines the termination of the statute of limitations and the suspension of the disciplinary procedure only in case of referring the case to the competent Prosecutor if the alleged violation contains elements of a criminal offense, and not due to pending the answer from the APC regarding the potential conflict of interest of the members of the Investigation Panel, therefore, according to the Applicant, the decision in question does not produce legal consequences;

- (iii) Given that the aforementioned decisions, according to the Applicant, are unlawful, the legal deadline for the completion of the investigations in the disciplinary procedure according to paragraph 8 of Article 12 (Investigation Procedure) of the Law on Disciplinary Liability of 3 (three) months, including the additional period of another 2 (two) months, has expired because more than 6 (six) months have passed since 21 April 2022 when the investigation was opened, therefore, the legal period for undertaking investigation actions has expired, respectively, the Report of the Investigation Panel holds the date of 1 November 2022, that is, outside the time limit stated above;
- (iv) The Investigation Panel submitted the report on 1 November 2022, that is, within the period that the request for the exclusion of the panel was being handled, which was submitted on 28 October 2022, while the decision to reject the exclusion of the panel was served the applicant on 2 November 2022;
- (v) The Applicant contested the Report of the Investigation Panel claiming that he was denied the right to propose additional witnesses and facts and that he was never asked or heard about the merits of the case. In this regard, he emphasized that the said report is not even balanced with the testimony of the Applicant, it does not contain the facts that the exclusion of the Investigation Panel was requested, nor does it contain the decision of the KPC to reject the exclusion of the members of this panel;
- (vi) Regarding the merits of the Report of the Investigation Panel, the Applicant claimed that: *"[...] the reporting of a portal can never be assessed as evidence but as an indication for the extraction of evidence"* and that the Investigation Panel had tendencies to confirm the positions of the article published by the portal, which, according to him, aimed at damaging his personal and professional integrity, as well as damaging the integrity of the process for the selection of the Chief State Prosecutor. Further, the latter claimed that in no case did he claim that the meeting with Sh.K. was done due to the initiation of a case of a cooperating witness as stated in the report, but emphasized his statement that he had given legal advice to him on where he should submit his information, respectively, to the Special Prosecutor's Office of the Republic of Kosovo, therefore, he did not inform his superior, the Chief Prosecutor of the Basic Prosecutor's Office about this. Then, the Applicant objected the part of the report that mentions the meeting of Sh.K. with M.M., where against the latter, he filed an indictment, emphasizing that: *"This objective responsibility, without being related to the actions of Mr. Hamiti [the Applicant], is a responsibility of old times, which does not take place in systems where the rule of law is the basis of the functioning of institutions. If a State Prosecutor is held responsible for this, it creates a dangerous precedent: With each person a State Prosecutor meets and that person later meets with another person whose case the Prosecutor in question is working on, the Prosecutor of the State himself commits disciplinary violations"*.

31. On 27 December 2022, the Applicant submitted an appeal to the Supreme Court against the Decision [KPK/No. 1513/2022] of 29 November 2022 of the KPC, on the grounds of

erroneous application of the law and clear or obvious factual errors, which according to the Applicant affect the substantial rights of the party. The latter repeated the claims that he presented in the complaint addressed to the KPC as above.

32. On 18 January 2023, the Supreme Court by the Judgment [AA. no. 37/2022] rejected as ungrounded the Applicant's appeal submitted against the Decision [KPK/No. 1513/2022] of 29 November 2022. In the reasoning of its Judgment, the Supreme Court, among other things, concluded that:

"[...] The Supreme Court of Kosovo accepts as grounded the factual findings and the legal position of the Kosovo Prosecutorial Council and assesses its decision as fair and legal, which does not contain erroneous application of the law nor violation of the procedural provisions of the Law on Disciplinary Liability of Judges and Prosecutors and the Code of Professional Ethics for Prosecutors, determined the factual situation in a correct manner, as well as correctly applied the substantive law, when it decided as in the enacting clause of its decision. Therefore, the appealing allegations that the challenged decision contains the alleged violations as in the complaint are not grounded. According to the assessment of this Court, the enacting clause of the contested decision is clear, in harmony with the reasons of the decision, thus the reasoning being in logical and legal agreement with the enacting clause. The KPC provided all the reasons for the relevant facts for a fair and full decision-making, in the context and in relation to the prosecutor's disciplinary liability, by assessing all the circumstances and determining all the facts relevant to the present case, on the basis of which it created a clear overview from which it found the disciplinary liability of the Prosecutor initiated by the Competent Authority, for which it has imposed the corresponding measure of the disciplinary sanction.

The Supreme Court of Kosovo also approves the position that the disciplinary measure by the KPC is proportional in relation to the violation committed by the investigation subject and is in implementation of the legal responsibilities that the KPC has in the disciplinary procedure against Prosecutors according to the Law on Disciplinary Liability of Judges and Prosecutors. [...]

[...] the complaint and allegations of the investigation subject [the Applicant], which were presented against the decision of the KPC, are not based on relevant facts and evidence. The KPC has acted in accordance with the provisions of the Law in force on the Disciplinary Liability of Judges and Prosecutors, has argued that a disciplinary offense has been committed by the complainant [the Applicant], has imposed the disciplinary measure in harmony with the principle of proportionality and legally provided criteria (Article 7 par. 2) and took into account also the seriousness, the consequences, the circumstances in which the offense was committed, etc. Therefore, from here, the allegations of the complaint for erroneous application of legal provisions and substantive law are ungrounded and as such legally unsustainable".

Applicant's allegations

33. The Court recalls that the Applicant claims that by the contested Judgment his right guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR have been violated.

34. Initially, the Applicant states that *“[...] the lack of implementation of the guarantees established in Article 6 of the ECHR was decisive for the Applicant to be exposed to an arbitrary decision by the KPC which decision, by not implementing the guarantees from Article 6 of the ECHR, was upheld by the Supreme Court”*.
35. The Applicant, regarding the application of Article 6 of the ECHR in the disciplinary proceedings, refers to the practice of the European Court of Human Rights (hereinafter: the ECtHR), which states that: *“[...] article 6 of the ECHR is also applicable in disciplinary cases before professional bodies, in cases where the right to exercise a profession is put at risk (Reczkoeicz v. Poland, par. 183-185). Thus, the applicability of Article 6 of the ECHR in disciplinary cases is determined based on the disciplinary sanctions that the individual risks suffering as a result of the alleged disciplinary violations (Marusiy v. Croatia, par. 72-73). Thus, the result of the disciplinary procedure, [as long as there is a risk of banning the practice of the profession] does not affect the applicability of Article 6 of the ECHR (Peleki v. Greece, par. 39)”*. In this regard, the Applicant, in addition to the disciplinary measure “Public written reprimand”, he *“[...] was also exposed to his dismissal, which would mean the termination of his mandate of a prosecutor. This is because according to the disciplinary procedure against the Applicant, it could have ended with dismissal from his position [Law No. 06/L-057 on the Disciplinary Liability of Judges and Prosecutors, Article 7.1.]”*. In this context, according to the Applicant, this situation: *“[...] represents the activation of Article 6 of the ECHR [...] since the very development of the disciplinary procedure calls into question the subject’s right to continue exercising his profession (Marusic v. Croatia, No. 79821112, par. 74-75)”* and the disciplinary sanction represents *“[...] his obstacle to advancement in his professional career”*.
36. Regarding the right to fair and impartial trial, the Applicant emphasizes that this right: *“[...] itself entails the procedural requirement [...] it must necessarily be effective”*. Further, the Applicant adds that *“[...] in a judicial procedure, the parties have the right to present their claims that they consider important for the concrete case. The right to a fair and impartial trial can be considered effective only in cases where their claims are “heard” or properly considered by the court (Donadze v. Georgia, § 35)”*. In this context, the Applicant adds that: *“The challenged judgment made this right only formal and not effective [...] since beyond the submitted complaint, the Applicant’s appealing allegations “were not heard” as required by the ECHR and ECtHR case law. Under these circumstances, the Supreme Court of the Republic of Kosovo, by the contested Judgment, has essentially denied the Applicant access to justice and the right to have his claims “heard” by the court, in which case it has committed a violation of Article 31 of the Constitution of the Republic of Kosovo and Article 6.1 of the ECHR”*.
37. The Applicant further reiterates his allegations specified in the complaint addressed to the Supreme Court, which he attaches to this referral, regarding: (i) the illegality of the decision of the KPC to replace the member of the Investigation Panel by the Chair of KPC; (ii) the illegality of the termination of the statute of limitation and the suspension of the disciplinary procedure in violation of Article 11 of the Law on Disciplinary Liability; (iii) exceeding the legal deadline for undertaking investigative actions by the Investigation Panel; (iv) the illegal proceeding of the disciplinary procedure by the Investigation Panel before the KPC has rendered the decision on the request for the expulsion of the member of this panel; (v) denial of the right to be heard; and (vi) the arbitrary decision of the KPC.
38. In this context, the latter emphasizes that the Supreme Court, by the contested Judgment *“[...] has only “notarized” the positions of the decision of the KPC, challenged by*

the appeal, and did not consider the appealing allegations of the applicant at all". The Applicant states that: "[...] through the Judgment, he saw the decision of the KPC again, but he did not see reasoning for his allegations. Examination of these allegations by the Supreme Court would necessarily bring a different result on the subject of the disciplinary procedure".

39. Further, the Applicant adds that: *"The Supreme Court did not examine the allegations of the complainant, but completely ignored them. [...] paradoxically, the Supreme Court in the contested Judgment provided answers to issues which were not allegations of the parties in the procedure at all [contested Judgment, page 6, last paragraph] but it did not provide answers to any of the Applicant's appealing allegations".*
40. In this regard, the Applicant's representative also emphasizes the following: *"[...] despite the fact that the applicant had the opportunity to exercise his right to judicial protection, namely to file a complaint with the Supreme Court of the Republic of Kosovo, the contested Judgment made this right only formal and not effective. This is because beyond the submitted complaint, the Applicant's appealing allegations "were not heard" as required by the ECHR and the case law of the ECtHR. In these circumstances, the Supreme Court of the Republic of Kosovo, by the contested Judgment, has essentially denied the Applicant access to justice and the right to have his allegations "heard" by the court, in which case he has violated Article 31 of the Constitution of the Republic of Kosovo".*
41. In the end, the Applicant claims that: *"The contested judgment of the Supreme Court denied the party the right to have his claims of a civil nature be heard on merits by an independent and impartial court established by law, thereby infringing his constitutional right to a fair and impartial trial".*

Request for interim measure

42. The Applicant in his referral before the Court requested the Court to impose the interim measure to avoid irreparable damage to him, with the following reasoning: *"[...] the contested decision represents an obstacle for the applicant for promotion in office, in terms of his appointment as Chief State Prosecutor, Chief Prosecutor of any prosecution or even his appointment as Prosecutor in a higher department than where he is currently engaged. Leaving the contested Judgment in force, until the decision on merits is rendered by the Constitutional Court, prevents the latter from being part of various promotion processes. Here, in particular, the process for the selection of the Chief State Prosecutor should be emphasized, in which process the Applicant is a candidate and which process has not been completed yet. [...] In this situation, the development of the process for Chief State Prosecutor and its conclusion without the applicant, as one of the candidates in this competition, would bring irreparable consequences for the applicant. Of course, it would be problematic later, after the decision on merits by the Constitutional Court, to return the entire process for the Chief State Prosecutor to zero point, due to the annulment of the contested Judgment".*

Relevant constitutional and legal provisions

THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31 [Right to Fair and Impartial Trial]

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

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

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6 (Right to a fair trial)

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

LAW No. 06/L –057 ON DISCIPLINARY LIABILITY OF JUDGES AND PROSECUTORS

Article 6 (Disciplinary offenses for prosecutors)

“1. A prosecutor commits a disciplinary offense if he or she:

1.1. is convicted of a criminal offense;

1.2. violates the Law, or

1.3. violates his or her official duties as a prosecutor.

2. Violation of duties of a prosecutor, pursuant to this Law, shall include the following actions, if committed by a prosecutor intentionally or with gross negligence:

2.1. continuously, fails to take any prosecutorial action required by the Law into force or fails to exercise prosecutorial within the deadlines foreseen by Law, except when the seriousness of failure to act or the level of the offense serves as a basis for initiation of the disciplinary procedures for a single violation;

2.2. . fails to consider inculpatory as well as exculpatory evidence and facts during the investigation and does not make sure that the rights of the defendant are respected during the investigation;

2.3. communicates with the unauthorized persons the confidential information taken during the exercise of the official duty;

2.4. fails to ensure that evidence and facts during the investigation are collected in accordance with Law;

2.5. fails to take into consideration the rights of witnesses and injured parties, particularly to undertake measures in order to protect their life, security and privacy in compliance with the legislation into force;

2.6. . fails to comply with the lawful decisions or instructions of the Chief Prosecutor;
 2.7. fails to participate in disciplinary procedures and to respond to disciplinary investigations, unless permitted by Law;
 2.8. provides false or misleading information in matters related to disciplinary proceedings and prosecution related administrative procedures, including promotion and transfers, except if otherwise provided by Law;
 2.9. in continuity fails to participate without reasonable justification in mandatory training programs prescribed by Law or relevant regulations and policies;
 2.10. engages in behaviour while on duty or in private which harms the honour and dignity of the State Prosecutor or which may harm public confidence in the impartiality or credibility of the State Prosecutor;
 2.11. accepts any form of gifts or remuneration which may lead to, or appear to lead to improper influence on official decisions and actions;
 2.12. abuses the official position in any form to obtain illicit benefits for oneself or other persons or for any other purposes in contradiction with the Law;
 2.13. becomes a member of a political entity or any other political organization, seeks or holds any political office, is a candidate or is elected to any political post, or otherwise engages in any political activity.”

Article 7 (Disciplinary sanctions)

“1. One or more of the following disciplinary sanctions may be imposed by the Councils on judges and prosecutors for a disciplinary offense:
 1.1. non-public written reprimand; 1.2. public written reprimand;
 1.3. temporary wage reduction up to fifty percent (50%) for a period of up to one (1) year; 1.4. temporary or permanent transfer to a lower level court or prosecution office;
 1.5. proposal for dismissal.
 2. Disciplinary sanctions shall be imposed only in compliance with the principle of proportionality and taking into account:
 2.1. the number and seriousness of the disciplinary offenses committed by a judge or prosecutor;
 2.2. the consequences of a disciplinary offense;
 2.3. the circumstances under which the disciplinary offense was committed;
 2.4. the overall performance and behaviour of the judge or prosecutor;
 2.5. the behaviour and level of cooperation of the judge or prosecutor during the disciplinary proceedings.”

Article 11 (Criminal offence)

“1. In cases when the alleged disciplinary offense contains elements of a criminal offense, the Competent Authority shall ex-officio refer the case to the State Prosecutor and provide written notification thereof to the Council and the Ombudsperson.
 2. If the State Prosecutor decides not to prosecute the offence, he or she shall inform the Competent Authority in writing of the decision, which shall then proceed in accordance with Article 9, paragraph 5 of this Law.
 3. Referral of the case to the State Prosecutor shall interrupt the statute of limitation and suspend the disciplinary proceedings.
 4. If the referral of the case to the State Prosecutor results in a criminal conviction or acquittal, the State Prosecutor shall inform the Competent Authority in writing on the

outcome of the criminal proceedings, and the Competent Authority shall proceed in accordance with Article 9 of this Law if the disciplinary case or the criminal case contains elements of a disciplinary offense.”

Article 12 **(Investigation procedure)**

“[...]

5. Within fifteen (15) working days from the receipt of the request to initiate disciplinary investigations, the Council shall establish an investigation panel to conduct the investigation. In cases foreseen in paragraph 3 of this Article, the Council may dismiss the request without forming the investigating panel, if it is considered with no value prima facie or not of a serious importance it is not substantial and it does not have any kind of relation with the disciplinary offence or falls under the status of limitations. The investigation panel concerning a judge, respectively president of the court, shall be composed of three (3) judges of a different court. The investigation panel concerning a prosecutor, respectively chief prosecutor for prosecutors, shall be composed of three (3) prosecutors of a different prosecutorial body. The Council shall determine the chairperson of the investigation panel from among the members of the investigation panel. The procedure for the selection and assignment of judges and prosecutors to serve on the investigation panel shall be determined by the Councils. The Council shall provide administrative and professional assistance to the investigation panel.

[...]

8. The investigation panel shall complete the investigation within three (3) months from the day it was established by the Council. In exceptional circumstances, the Council may extend the investigation for an additional period of up to two (2) months. Upon completion of the investigation, the investigation panel shall submit to the Council, the judge or prosecutor under investigation and the Competent Authority which has requested the initiation of disciplinary investigations, a written report on all collected facts and evidence. Upon the submission of the report, the investigation panel shall cease its function at the moment when the case becomes final.

[...]

LAW NO. 06/L –056 ON KOSOVO PROSECUTORIAL COUNCIL

Article 11 **(Chair and Vice-Chair of the Council)**

“[...]

2. The Chair shall have the following authorizations:

- 2.1. chairs all meetings of the Council;*
- 2.2. approves the agenda and points to be submitted to the Council for review and decision;*
- 2.3. represents the Council;*
- 2.4. supervises and manages the work of the Council and its committees;*
- 2.5. proceeds the budget drafted by the Council for the expenses of actions and staff of the Council and State Prosecutor;*
- 2.6. submits a report in writing, at least once a year, to the Assembly on the performance, actions, expenditures and needs of the State Prosecutor;*
- 2.7. upon the approval of the Council, assigns permanent committee members as referred to in this Law, and undertakes other duties as required by the Council.*

[...]"

LAW NO. 08/L-167 ON STATE PROSECUTOR

Article 28 (Criteria for Chief State Prosecutor and Chief Prosecutors)

"1. The candidate for Chief State Prosecutor and Chief Prosecutor shall meet the following general conditions:

[...]

1.6. not have disciplinary measures imposed to him, with the exception of reproach or non-public reprimand in the last five (5) years."

Article 29 (General criteria for Deputy Chief State Prosecutor and Deputy Chief Prosecutor)

"1. In order to exercise the function of Head of Department, the candidate must meet the following conditions:

[...]

1.6. not have disciplinary measures imposed to him, except for reproach or non-public reprimand in the last five (5) years."

REGULATION (No. 05/2019) ON DISCIPLINARY PROCEDURE OF PROSECUTORS

Article 6 (Initial Review by the Competent Authority)

"[...]

6. Referral of the case to the prosecutor suspends the prescription and suspends the disciplinary procedure.

[...]

The disciplinary procedure resumes at the time of the final decision by the prosecutor or the court regarding the matter in question."

Article 12 (Establishment of the Investigation Panel)

"1. The Council shall establish a panel of investigators to investigate the alleged disciplinary violations from the list drawn up in accordance with Article 11 of this Regulation. The Panel consists of three (3) prosecutors, selected by lot, coming from other prosecution offices and not by the prosecution where the prosecutor is being investigated.

2. Council appoints the head of the Investigation Panel from among the panel members.

3. The Council also appoints two reserve members for each investigating panel.

4. At least one of the members of the panel may be prosecutors in the field, as well as the prosecutor to whom the investigation is initiated.

5. The Investigation Panel is supported by Council officials, who provide professional and administrative assistance. Supporting officials should have high professional and

moral integrity, maintain official secrecy and comply with the provisions of Law no. 06/L-011 on the Prevention of Conflict of Interest in Exercising Public Function. The Official is obliged at any time when he believes there may be a conflict of interest to notify his superior as well as the Chairperson of the Investigation Panel.”

Article 13 (Conflict of Interest and Exclusion)

“1. The Chairperson and the members of the Council and the Investigation Panel before and during the conduct of the investigative and disciplinary proceedings, or when circumstances appear that may result in a conflict of interest, are obliged to notify in writing the Council, respectively the Chairperson of the Investigation Panel.

2. At any time, the parties may address the Council, respectively the Chairperson of the panel, and request the exclusion of a member or council or an Investigation Panel when circumstances arise which may result in a conflict of interest. The application must be reasonably well explained and explain the basis on which the doubt is raised.

3. In all cases where conflicts of interest arise, the procedure is terminated until it is decided on the claims of the parties.

4. The Chairperson of the Council, the Council or the Chairperson of the Panel decides on the requirements regarding the conflict of interest. If the request results with the exception of a member of the Council, the Chairperson of the Council or the Chairperson or a member of the panel, he or she is replaced respectively by the members of the Council, shall be excluded from the procedure.

5. The Chairperson of the Council, the Council, respectively the Chairperson of the Panel shall decide on the matter no later than five (5) days from the day of receipt of the request.”

CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR PROSECUTORS [approved by the Prosecutorial Council of Kosovo on 31 July 2012]

3. Integrity

“3.1. Integrity is the quality of a prosecutor who must be visible and known at all times in harmony with his actions based on a high moral and professional character. Acting with integrity for a prosecutor means to work and be responsible for his actions and omissions in professional and private life.

3.2. Violation of integrity may involve an act or omission - whether in the exercise of official duty or in private life - that is in violation of the law, the prosecution system policies and strategies, administrative instructions, or an act constituting to a criminal offense.

*Implementation
[...]*

c. The prosecutor shall exclude any conduct that may raise doubts as to the impartiality of his motives and is not involved in behaviours that undermines the honor and dignity of the State Prosecutor or which may undermine public confidence;”

Admissibility of the Referral

43. The Court initially examines whether the admissibility criteria established in the Constitution, and further specified in the Law and the Rules of Procedure have been met.
44. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

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

[...]

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

45. The Court also refers to Articles 47 [Individual Requests] 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47 [Individual Requests]

Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.

Article 48 [Accuracy of the Referral]

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

Article 49 [Deadlines]

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

46. Regarding the fulfillment of these criteria, the Court finds that the Applicant is : (i) an authorized party, challenging an act of a public authority, namely the Judgment [AA. no. 37/22] of 18 January 2023, of the Supreme Court of Kosovo (hereinafter: the Supreme Court) in conjunction with the Decision [KPK/No. 1513/2022] of 29 November 2022, of the Prosecutorial Council of Kosovo (hereinafter: KPC); (ii) has specified the rights and freedoms that he claims to have been violated; (iii) has exhausted all legal remedies provided by law, as well as (iv) submitted the referral within the legal deadline.

47. In what follows, the Court will assess whether, in the circumstances of the present case, Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is applicable. Accordingly, the Court will assess whether the Applicant's referral, which is related to the disciplinary proceedings conducted against him, in terms of claims for violation of the right to a fair and impartial trial, is *ratione materiae* with the Constitution.

Regarding the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR in the disciplinary procedure before a public authority

48. The Court initially recalls that in the present case, the disciplinary measure "*Written public reprimand*" was imposed on the applicant by the KPC, which decision was upheld by the Supreme Court.
49. Regarding the application of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR in the disciplinary proceedings, the Court recalls the Applicant's allegations who refers to the case law of the ECtHR, which determines that this article is also applicable in disciplinary cases before the professional bodies, in cases where the right to practice a profession is put at risk, and as a result of the disciplinary procedure, the practice of the profession may be banned. The Court notes that the Applicant justifies this in his case with the fact that during the disciplinary proceedings against him, the latter "[...] *was also exposed to his dismissal, which would mean the termination of his mandate by the prosecutor [...]*" as well as with the fact that the disciplinary sanction represents an obstacle to promotion in his career.
50. In this context, the Court emphasizes that the ECtHR has consolidated case law that paragraph 1 of Article 6 of the ECHR as a "*civil right*" is applied in disciplinary procedures in which the right to continue practicing a profession is put at risk (see ECtHR cases, [*Philis v. Greece \(no. 2\)*](#), no. 19773/92, Judgment of 27 June 1997, paragraph 45; [*Vilho Eskelinen and others v. Finland \[GC\]*](#), no. 63235/00, Judgment of 19 April 2007, paragraph 62). This principle has been applied in relation to the proceedings conducted before the various professional disciplinary bodies and in particular in relation to the judges in the case [*Baka v. Hungary \[GC\]*](#), no. 20261/12, Judgment of 23 June 2016, paragraphs 104-105, with prosecutors in case [*Polyakh and others v. Ukraine*](#), no. 58812/15 and 4 others, Judgment of 17 October 2019, paragraph 160, and practicing lawyers in [*Malekv. Austria*](#), no. 60553/00, Judgment of 12 September 2003, paragraph 39, and [*Helmut Blum v. Austria*](#), no. 33060/10, Judgment of 5 April 2016, paragraph 60 (see also the ECtHR case, [*Reckoëitcz v. Poland*](#), no. 43447/19, Judgment of 22 November 2021, paragraph 183).
51. The Court recalls that disciplinary proceedings have been initiated against the Applicant for committing a disciplinary violation based on sub-paragraph 2.10 of paragraph 2 of Article 6 of the Law on Disciplinary Liability, which stipulates that: "*2. Violation of duties of a prosecutor, pursuant to this Law, shall include the following actions, if committed by a prosecutor intentionally or with gross negligence: [...] 2.10. engages in behaviour while on duty or in private which harms the honour and dignity of the State Prosecutor or which may harm public confidence in the impartiality or credibility of the State Prosecutor.*"
52. The Court notes that based on Article 7 of the Law on Disciplinary Liability, for the disciplinary violations defined in paragraph 2 of its article 6, the KPC can impose on the prosecutors, among other things, the disciplinary sanction "*proposal for dismissal*", which constitutes the most serious disciplinary measure through which the right to exercise the profession is put at risk. Moreover, the Court notes that according to the limitations set out

in articles 28 (Criteria for Chief State Prosecutor and Chief Prosecutors) and 29 (General criteria for Deputy Chief State Prosecutor and Deputy Chief Prosecutor) of Law 08/L-167 on State Prosecutor hereinafter: Law on the State Prosecutor), the prosecutor against whom was imposed a disciplinary measure, with the exception of reprimand or non-public reprimand in the last 5 (five) years, may not compete to be selected in the following positions: (i) Chief State Prosecutor; (ii) Chief Prosecutor; (iii) Deputy Chief State Prosecutor; and (iv) Deputy Chief Prosecutor.

53. Consequently, the Court finds that the right to a fair and impartial trial as a civil right, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, is applicable in the case of the Applicant, taking into account the risk threatened for the exercise of the profession and the obstacle for professional advancement for the period of 5 (five) years as a result of the imposition of the disciplinary measure “*Written public reprimand*”.

Conclusion regarding the admissibility of the referral

54. At the end and after examining the Applicant’s Referral, the Court considers that the Referral cannot be considered as manifestly ill-founded on constitutional basis, as provided by paragraph (2) of Rule 34 of the Rules of Procedure, and therefore, the referral is declared admissible for review on the merits.

Merits of the Referral

55. The Court recalls that the circumstances of the present case are related to the Judgment [AA. no. 37/22] of 18 January 2023, of the Supreme Court, which upheld the Decision [KPK/No. 1513/2022] of 29 November 2022, of the KPC for the imposition of the disciplinary measure “*Public written reprimand*” against the Applicant. The disciplinary procedure was initiated by the Chief Prosecutor of the Basic Prosecutor’s Office in the capacity of the Applicant’s superior, respectively, the competent authority, as a result of the publication of a news story on a portal, which contained several photographs of a meeting between the Applicant and Sh.K, who was convicted of various criminal offences. On 21 April 2022, the KPC established the Investigation Panel for the development of disciplinary investigations in the present case, which then, on 1 July 2022, the Chair of the KPC by Decision [KPK/No. 776/2022] changed by replacing one member because he was on annual leave. On 20 May 2022, the Applicant submitted a request to APC to assess whether the initiation of the disciplinary procedure by the competent authority represents a conflict of interest. As a consequence of this, on 6 September 2022, the KPC by Decision [KPK/No. 1095/2022], based on paragraph 3 of Article 11 of the Law on Disciplinary Liability and paragraphs 6 and 9 of Article 6 of Regulation No. 05/2019 terminated the statute of limitations and suspended the disciplinary procedure against the Applicant, until a decision is taken by the APC. On 18 October 2022, the APC issued an opinion regarding the Applicant’s request, where it found that the initiation of disciplinary proceedings against the Applicant, by his superior, as the Competent Authority, does not contradict the provisions of the LPCI. On 24 October 2022, the Applicant requested the KPC to annul its decisions, respectively (i) Decision [KPK/no. 776/2022] for the replacement of the member of the Investigation Panel; and (ii) Decision [KPK/No. 1095/2022] on statute of limitation and suspension of the disciplinary procedure against him, and on 28 October 2022, in the hearing, he requested the dismissal of all members of the Investigation Panel. On the other hand, on 31 October 2022, KPC by Decision [KPK/No. 1291/2022], rejected the Applicant’s request for the dismissal of three members of the Investigation Panel, as well as obliged the

Panel to continue with the investigation and submit the written report within the set deadline, and the panel on 1 November 2022, submitted the Report on the case [AD. no. 03/2022], in which it found that the Applicant violated sub-paragraph 1.3 of paragraph 1 of Article 6, and sub-paragraph 2.10 of paragraph 2 of Article 6 of the Law on Disciplinary Liability, and which report, on November 29, 2022, the KPC approved as grounded by Decision [KPK/No. 1513/2022] and imposed on the Applicant the disciplinary sanction “*Written public reprimand*”, which decision was upheld by the Supreme Court.

56. The Court reiterates that the Applicant claims that the lack of implementation of the guarantees defined in Article 6 of the ECHR, for which article he argues based on the case law of the ECtHR that it is applicable “[...] *also in disciplinary cases before the professional bodies, in cases where the right to exercise a profession is put at risk*”, it was decisive that the Applicant was exposed to an arbitrary decision by the KPC, which decision was upheld by the Supreme Court.
57. In this context, the Court notes that, in essence, the Applicant considers that the KPC and the Supreme Court did not reason their decisions, respectively, did not consider his appealing allegations at all and did not respond to any of them, thus violating his constitutional right to a fair and impartial trial. The Court also recalls that the Applicant’s allegation of violation of his “*right to be heard*” is raised within the framework of his right to a “*reasoned court decision*”, given that in this regard he states that: “[...] *beyond the submitted appeal, the applicant's appealing allegations "were not heard" as required by the ECHR and the case law of the ECtHR.*”
58. Bearing in mind that the Applicant’s allegations are related to procedural constitutional guarantees, therefore taking into account the nature of the case, the Court reiterates that the Applicant’s Referral is assessed only in relation to these procedural guarantees.
59. The Court notes that the Applicant’s status as a prosecutor gives him an essential role in the administration of justice within the legal system of the Republic of Kosovo. As such, he is vested with legal authorizations which have the primary purpose of preventing and punishing criminal offenses on the one hand, as well as protecting citizens from illegal actions on the other hand. The formal role given to the function of the prosecutor, at all times and circumstances, carries within itself the task of guaranteeing individual freedoms and also that of the rule of law, effectively and systematically ensuring the visible and proper functioning of the system of justice in the country, as well as earning, enjoying and maintaining public trust in this system. (see the ECHR case [Kayasu v. Turkey](#) no. 64119/00 and 76292/01, paragraph 91, Judgment of 13 November 2008, as well as other references therein)
60. When assessing the merits of the allegations for unreasoned court decision, the Court will also apply the standards of the ECtHR case law, in accordance with which, the Court based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution in harmony with the case law of the ECtHR.
61. In the following, the Court will examine the Applicant’s allegations regarding the lack of reasoning of the court decisions, including his allegation for not addressing his right to be heard. First, the Court will elaborate (i) the general principles regarding the right to a reasoned decision and then (ii) apply the latter to the circumstances of the present case.

(i) *General principles related to the right to a reasoned decision*

62. The guarantees established in Article 6 paragraph 1 of the ECHR also include the obligation for the courts to give sufficient reasons for their decisions (see the case of the ECtHR, [H. v. Belgium](#), nr. 8950/80, Judgment of 30 November 1987, paragraph 53 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, Judgment of 15 December 2022, paragraph 113). The reasoned court decision shows the parties that their case was indeed examined.
63. Despite the fact that the domestic court has a certain margin of appreciation regarding the selection of arguments and the decision on the admissibility of evidence, it is obliged to justify its actions by giving reasons for all its decisions (see the cases of the ECtHR: [Suominen v. Finland](#), no. 37801/97, Judgment of 24 July 2003, paragraph 36; as well as the case [Carmel Saliba v. Malta](#), no. 24221/13, Judgment of 24 April 2017, paragraph 73 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, Judgment of 15 December 2022, paragraph 114).
64. The lower Court or state authority, on the other hand, must give such reasons and justifications which will enable the parties to effectively use any existing right of appeal (see the ECtHR case [Hirvisaari v. Finland](#), no. 49684/99, Judgment of 25 December 2001, paragraph 30 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, paragraph 115).
65. Article 6 paragraph 1 obliges the courts to give reasons for their decisions, but this does not mean that a detailed answer is required for each argument (see the ECtHR cases, [Van de Hurk v. the Netherlands](#), no. 16034/90, Judgment of 19 April 1994, paragraph 61; [Garcia Ruiz v. Spain](#), no. 30544/96, Judgment of 29 January 1999, paragraph 26; [Perez v. France](#), no. 47287/99, Judgment of 12 February 2004, paragraph 81 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 116).
66. The nature of the court's decision depends on whether the Court is obliged to justify it, and this can only be decided in the light of the circumstances of the case in question: it is necessary to take into account, among other things, the different types of submissions that a party may submit to the court, as well as the differences that exist between the legal systems of the countries with regard to legal provisions, customary rules, legal positions and the presentation and drafting of judgments (see ECtHR cases [Ruiz Torija v. Spain](#), no. 18390/91, Judgment of 9 December 1994, paragraph 29; [Hiro Balani v. Spain](#), no. 18064/91, Judgment of 9 December 1994, paragraph 27 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 117).
67. However, if a party's submission is decisive for the outcome of the proceedings, it seeks to respond to it specifically and without delay (see ECtHR cases [Ruiz Torija v. Spain](#), cited above, paragraph 30; [Hiro Balani v. Spain](#), cited above, paragraph 28 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 118).
68. Therefore, the courts are obliged:
 - (a) to review the main arguments of the parties (see ECtHR cases [Buzescu v. Romania](#), no. 61302/00, Judgment of 24 August 2005, paragraph 67; [Donadze v. Georgia](#), no. 74644/01, Judgment of 7 June 2006, paragraph 35); and

- (b) to review very rigorously and with particular care the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: *Fabris v. France*, [16574/08](#), Judgment of 7 February 2013, paragraph 72; *Wagner and JMWL v. Luxembourg*, [nr. 76240/01](#), Judgment of 28 June 2007, paragraph 96).
69. Article 6, paragraph 1 does not require the Supreme Court to give a more detailed reasoning when it simply applies a specific legal provision regarding the legal basis for rejecting the appeal because that appeal has no prospect of success (see ECtHR cases, *Burg and others v. France*, no. [34763/02](#); decision of 28 January 2003; *Gorou v. Greece* (no. 2), [no. 12686/03](#), decision of 20 March 2009, paragraph 41 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 120).
70. Similarly, in a case where there is a request to allow the filing of an appeal, which is a prerequisite for the procedure of a higher court, as well as for a possible decision, Article 6, paragraph 1 cannot be interpreted in such a sense as to order a detailed reasoning of the decision rejecting the request to file an appeal (see ECtHR cases, *Kukkonen v. Finland* (no. 2), no. [47628/06](#), Judgment of 13 April 2009, paragraph 24; *Bufferne v. France*, no. [54367/00](#), Decision of 26 February 2002 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 121),
71. In addition, when rejecting an appeal, the court of appeal can, in principle, simply accept the reasoning of the lower court's decision (see ECtHR case *García Ruiz v. Spain*, cited above, paragraph 26; see, contrary to this, *Tatishvili v. Russia*, no. [1509/02](#), Judgment of 9 July 2007, paragraph 62). However, the concept of fair procedure implies that the domestic court that has provided a close explanation for its decisions, whether by repeating the reasoning previously given by a lower court or in any other way, was in fact dealing with important issues within its jurisdiction, which means that it did not simply and without additional effort accept the conclusions reached by the lower court (see ECtHR case, *Helle v. Finland*, no. [157/1996/776/977](#), Judgment of 19 December 1997, paragraph 60 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 122). This request is all the more important if the party in dispute has not been able to present its arguments verbally in the proceedings before the domestic court.
72. However, the courts of appeal (in the second instance) which have jurisdiction to dismiss ungrounded appeals and to resolve factual and legal issues in the contested procedure are obliged to justify why they refused to rule on the appeal (see ECtHR case *Hansen v. Norway*, no. 15319/09, Judgment of 2 January 2015, paragraphs 77–83 and case of the Court [KI143/22](#), Applicant *Hidroenergji l.l.c*, cited above, paragraph 123).

(ii) *Application of general principles in the circumstances of the present case*

73. The Court recalls that the Supreme Court by the Judgment [AA. no. 37/22] of 18 January 2023, rejected the Applicant's complaint as ungrounded and upheld the Decision [KPK/No. 1513/2022] of 29 November 2022, of the KPC, which found that elements of disciplinary liability were found with the Applicant, in violation of subparagraph 1.3 of paragraph 1 and subparagraph 2.10 of paragraph 2 of Article 6 of the Law on Disciplinary Liability, as well as imposed on him the disciplinary sanction "Written public reprimand".
74. In this context, the Court emphasizes the content of subparagraph 1.3 of paragraph 1 of Article 6 (Disciplinary offenses for prosecutors) of the Law on Disciplinary Liability, which defines that the prosecutor commits a disciplinary offense if he or she, among other things:

“1.3. violates his or her official duties as a prosecutor”, as well as subparagraph 2.10 of paragraph 2 of the same article, which defines the violation of the duties of the prosecutor, according to this law, if the prosecutor commits them intentionally or through gross negligence, among other things, performs the action as follows: “2.10. engages in behaviour while on duty or in private which harms the honour and dignity of the State Prosecutor or which may harm public confidence in the impartiality or credibility of the State Prosecutor;”.

75. The Court also underlines the legal provisions for the initiation of the investigation procedure for the disciplinary liability of a prosecutor, where according to paragraph 4 of Article 12 (Investigation Procedure) of the Law on Disciplinary Liability, *“4. The request to initiate disciplinary investigations shall be submitted in writing to the Council and to the judge or prosecutor who is the subject of investigation”*, whereas according to paragraph 5 of the same article, *“5. Within fifteen (15) working days from the receipt of the request to initiate disciplinary investigations, the Council shall establish an investigation panel to conduct the investigation”*. Moreover, paragraph 8 of Article 12 of the Law on Disciplinary Liability establishes that: *“The investigation panel shall complete the investigation within three (3) months from the day it was established by the Council. In exceptional circumstances, the Council may extend the investigation for an additional period of up to two (2) months. Upon completion of the investigation, the investigation panel shall submit to the Council, the judge or prosecutor under investigation and the Competent Authority which has requested the initiation of disciplinary investigations, a written report on all collected facts and evidence. Upon the submission of the report, the investigation panel shall cease its function at the moment when the case becomes final*, while according to paragraphs 1 and 3 of Article 14 (Disciplinary Procedures) of this law, the KPC, upon receiving the written report of the Investigation Panel or accepting the voluntary agreement for the alleged disciplinary violation, holds a hearing in the time period of 30 (thirty) days and then decides whether the alleged disciplinary offense has been committed, and, in case it finds that the judge or prosecutor has committed the alleged disciplinary offense, imposes the disciplinary sanction.
76. The Court reiterates the Applicant’s allegations for the lack of the reasoning of court decisions, namely the non-addressing of his appealing allegations by the KPC and the Supreme Court, such as: (i) the illegality of the decision of the KPC to replace the member of the Investigation Panel by the Chair of the KPC in violation of its legal basis, respectively, subparagraph 1.5 of paragraph 1 of Article 7 of the Law on the Prosecutorial Council and paragraph 5 of Article 12 of the Law on Disciplinary Liability and Article 12 of Regulation No. 05/2019 and the lack of reference in paragraph 5 of Article 13 of Regulation No. 05/2019, on the legal basis of this decision; (ii) the illegality of the termination of the statute of limitation and the suspension of the disciplinary procedure in violation of Article 11 of the Law on Disciplinary Liability ; (iii) exceeding the legal deadline for undertaking investigation actions by the Investigation Panel in violation of paragraph 8 of Article 12 of the Law on Disciplinary Liability ; (iv) the illegal proceeding of the disciplinary procedure by the Investigation Panel before the KPC has rendered a decision on the request to exclude the members of this panel; (v) denial of his right to be heard, respectively to propose additional witnesses and facts, and that according to him, he was never *“asked or heard”* regarding the merits of the case; as well as (vi) the arbitrariness of the decision of the KPC, which, according to him, was rendered with the purpose of harming his personal and professional integrity, as well as damaging the integrity of the process for the selection of the Chief State Prosecutor, for which position the Applicant was a candidate.

77. In this context, the Court emphasizes the relevant legal provisions regarding the aforementioned allegations of the Applicant, namely:

- (i) subparagraph 1.5 of paragraph 1 of Article 7 of the Law on the KPC, which stipulates that: *“1. The Council exercises the following duties and responsibilities: [...] 1.5. ensures the implementation and oversight of the requirements for admission to the prosecution office, which should be made in accordance with the principles of merit, equal opportunities, gender equality, non-discrimination and equal representation, on the basis of public vacancy and after verifying candidates’ capacity to act;”* and its Article 11, which defines the powers of the Chair of the KPC;
- (ii) Article 11 of the Law on Disciplinary Liability stipulates, among other things in its paragraph 3, that: *“3. Referral of the case to the State Prosecutor shall interrupt the statute of limitation and suspend the disciplinary proceedings.”*;
- (iii) paragraph 5 of Article 12 of the Law on Disciplinary Liability, which stipulates, among other things, that: *“The investigation panel concerning a prosecutor, respectively chief prosecutor for prosecutors, shall be composed of three (3) prosecutors of a different prosecutorial body. The Council shall determine the chairperson of the investigation panel from among the members of the investigation panel. The procedure for the selection and assignment of judges and prosecutors to serve on the investigation panel shall be determined by the Councils. The Council shall provide administrative and professional assistance to the investigation panel”*;
- (iv) paragraph 8 of Article 12 of the Law on Disciplinary Liability, which determines that: *“8. The investigation panel shall complete the investigation within three (3) months from the day it was established by the Council. In exceptional circumstances, the Council may extend the investigation for an additional period of up to two (2) months. Upon completion of the investigation, the investigation panel shall submit to the Council, the judge or prosecutor under investigation and the Competent Authority which has requested the initiation of disciplinary investigations, a written report on all collected facts and evidence. Upon the submission of the report, the investigation panel shall cease its function at the moment when the case becomes final.”*;
- (v) Article 12 of Regulation No. 05/2019, which determines, among other things, in its paragraph 1 that: *“1. The Council shall establish a panel of investigators to investigate the alleged disciplinary violations from the list drawn up in accordance with Article 11 of this Regulation. The Panel consists of three (3) prosecutors, selected by lot, coming from other prosecution offices and not by the prosecution where the prosecutor is being investigated.[...]”*; as well as
- (vi) paragraphs 3, 4 and 5 of Article 13 of Regulation No. 05/2019, which determine that: *“[...] 3. In all cases where conflicts of interest arise, the procedure is terminated until it is decided on the claims of the parties. 4. The Chairperson of the Council, the Council or the Chairperson of the Panel decides on the requirements regarding the conflict of interest. If the request results with the exception of a member of the Council, the Chairperson of the Council or the Chairperson or a member of the panel, he or she is replaced respectively by the members of the Council, shall be excluded from the procedure. 5. The Chairperson of the Council, the Council, respectively the Chairperson of the Panel shall decide on the matter no later than five (5) days from the day of receipt of the request.”*

78. From the above elaboration of the Applicant's allegations as well as the aforementioned legal provisions in connection with these allegations, the Court considers that the Applicant raises substantial claims regarding the handling of his case during the course of the investigation procedure for alleged disciplinary offenses.
79. In this respect, the Court highlights certain parts of the reasoning of the Supreme Court regarding the Applicant's appealing allegations:

"Kosovo Prosecutorial Council of in the disciplinary session held on 29.11.2022 heard the Chairman of the Investigation Panel, who elaborated the allegations, however, in none of the four hearings held by the Investigation Panel, nor in the KPC disciplinary session, the subject of the disciplinary investigation [the Applicant] as and not even his representative, the defense lawyer, have given a statement related to the specific case, have not been involved in the discussion about the subject of the treatment, but have always expressed dissatisfaction with the decisions of the KPC, either for the decision to change the member of the investigation panel and replacement with the reserve member, either for the decision to extend the deadline of the disciplinary investigation, or for the decision to suspend the investigation or for the expulsion of the members of the Investigation Panel, where neither the Panel nor the KPC had the opportunity to receive a statement since never declared regarding the case in question, in addition to the written response addressed to the Chief Prosecutor of the Basic Prosecutor's Office in Prishtina - the Competent Authority, regarding the writing in "Paparaci".[...] [...] The Supreme Court of Kosovo accepts as grounded the factual findings and the legal position of the Kosovo Prosecutorial Council and assesses its decision as fair and legal, which does not contain erroneous application of the law nor violation of the procedural provisions of the Law on Disciplinary Liability of Judges and Prosecutors and the Code of Professional Ethics for Prosecutors, determined the factual situation in a correct manner, as well as correctly applied the substantive law, when it decided as in the enacting clause of its decision. Therefore, the appealing allegations that the challenged decision contains the alleged violations as in the complaint are not grounded. According to the assessment of this Court, the enacting clause of the contested decision is clear, in harmony with the reasons of the decision, thus the reasoning being in logical and legal agreement with the enacting clause. The KPC provided all the reasons for the relevant facts for a fair and full decision-making, in the context and in relation to the prosecutor's disciplinary liability, by assessing all the circumstances and determining all the facts relevant to the present case, on the basis of which it created a clear overview from which it found the disciplinary liability of the Prosecutor initiated by the Competent Authority, for which it has imposed the corresponding measure of the disciplinary sanction.

The Supreme Court of Kosovo also approves the position that the disciplinary measure by the KPC is proportional in relation to the violation committed by the investigation subject and is in implementation of the legal responsibilities that the KPC has in the disciplinary procedure against Prosecutors according to the Law on Disciplinary Liability of Judges and Prosecutors. [...]

[...] the complaint and allegations of the investigation subject [the Applicant], which were presented against the decision of the KPC, are not based on relevant facts and evidence. The KPC has acted in accordance with the provisions of the Law in force on the Disciplinary Liability of Judges and Prosecutors, has argued that a disciplinary offense has been committed by the complainant [the Applicant], has imposed the

disciplinary measure in harmony with the principle of proportionality and legally provided criteria (Article 7 par. 2) and took into account also the seriousness, the consequences, the circumstances in which the offense was committed, etc. Therefore, from here, the allegations of the complaint for erroneous application of legal provisions and substantive law are ungrounded and as such legally unsustainable”.

80. Based on this reasoning of the Supreme Court as above, the Court notes that the latter has concluded, in a generalized way, that: “[...] *the complaint and allegations of the investigation subject [the Applicant], which were presented against the decision of the KPC, are not based on relevant facts and evidence*”, as long as it has not addressed some of the Applicant’s specific allegations or offered any specific arguments regarding the evidence presented by him.
81. In other words, the Supreme Court did not address the Applicant’s allegations in relation to:
- (i) the legality of the decision of the KPC to replace the member of the Investigation Panel by the Chairman of the KPC in relation to subparagraph 1.5 of paragraph 1 of Article 7 of the Law on the KPC and paragraph 5 of Article 12 of the Law on Disciplinary Liability and Article 12 of Regulation No. 05/2019;
 - (ii) the legality of the termination of the statute of limitation and the suspension of the disciplinary proceedings in relation to Article 11 of the Law on Disciplinary Liability;
 - (iii) exceeding the legal deadline for undertaking investigation actions by the Investigation Panel, namely the mandate of this panel in relation to paragraph 8 of Article 12 of the Law on Disciplinary Liability; and
 - (iv) proceeding with the report of the Investigation Panel in the KPC, as long as the latter had not yet rendered a decision regarding the request for the exclusion of the members of this panel in relation to the obligation to suspend the procedure until it is decided about the conflict of interest, specified in the paragraphs 3, 4 and 5 of Regulation No. 05/2019.
82. In the context of the last allegation, the Court points out that the Investigation Panel submitted its final report to the KPC on 1 November 2022, respectively without receiving the decision of the KPC regarding the Applicant’s request for the exclusion of the members of the Investigation Panel, which was officially recorded on 2 November 2022, despite the obligation of the Chairman of the KPC, the KPC and the Chairman of the Investigation Panel that *“In all cases where a conflict of interest appears, the procedure will be suspended until it is decided about the conflict of interest”* in accordance with paragraph 3 of Article 13 of Regulation No. 05/2019.
83. Regarding the lack of reasoning of the appealing allegation for (v) denial of the right to be heard, the Court notes that the Supreme Court, while describing the factual situation, referred to the hearings during the disciplinary procedure before the Investigation Panel and the hearing of the KPC, where the Applicant refused to declare on the merits of the case and raised only procedural aspects of the progress of the disciplinary procedure conducted against him, and that the decisions regarding this procedure are based on the written statement/response of the Applicant to the Chief Prosecutor of the Basic Prosecutor’s Office in Prishtina. Therefore, regarding the latter, the Court finds that the allegation in question is sufficiently reasoned.
84. Whereas, as regards the non-addressing of the Applicant’s appealing allegation for (vi) arbitrary decision of the KPC, the Court considers that the Supreme Court in its reasoning

has accepted the assessment and reasoning of the KPC, which in its Decision [no. 1513/2022] of 29 November 2022, concluded that: “[...] *after the hearing of the Investigation Panel, the subject of the disciplinary investigation, the defense lawyer of the subject of the disciplinary investigation and the review, analysis, comparison of the evidence mentioned in the Panel Report as well as the final word, came to the conclusion that the prosecutor A.H. [the Applicant], with this action, acted in violation of Law No. 06/L-057 on the Disciplinary Liability of Judges and Prosecutors [...]*”, what makes the decision in question here not to be characterized by a lack of reasoning of the court decision.

85. In this context, since the Supreme Court accepted the reasoning of the KPC, the Court also highlights the content of the aforementioned decision of the KPC, which only describes the course of the investigation procedure against the Applicant for a disciplinary offense, as well as administers the evidence of the present case establishing the disciplinary offense, without addressing the Applicant’s allegation, which he raised during the investigation procedure by (i) the Request for the annulment of the decisions and the finding of the expiration of the investigation period in the case AD. no. 03/2022 of 24 October 2022 as well as (ii) Appeal against the Decision [1291/2022] of the KPC for refusal to exclude members of the Investigation Panel, of 31 October 2022, recorded on 2 November 2022.
86. From the above, the Court assesses that the Supreme Court did not provide an explanation to 4 (four) of 6 (six) central allegations in relation to the Applicant’s case, as required by the procedural guarantees of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, including procedural flaws which the applicant claimed.
87. Given that the Applicant has not received a response to 4 (four) substantive allegations, the Court considers that the Judgment of the Supreme Court does not provide the guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR that entail the obligation for the courts to give sufficient reasons for their decisions (see ECtHR case, [H. v. Belgium](#), cited above, paragraph 53; as well as Court cases, [KI230/19](#), Applicant *Albert Rakipi*, cited above, paragraph 139 and [KI87/18](#), Applicant *IF Skadiforsikring*, cited above, paragraph 44 and case KI202/21, with the Applicant *Kelkos Energy, L.L.C.*, cited above, paragraph 134, KI143/22, Applicant *Hidroenergi l.l.c.*, cited above, paragraph 133).
88. The Court recalls that the ECtHR in its consolidated jurisprudence has determined that courts with appellate jurisdiction do not need to provide detailed reasoning in cases where they agree with the reasoning given by the court of first instance, despite the fact that the same should also be sufficiently reasoned (see ECtHR case *Garcia Ruiz v. Spain*, cited above, paragraph 31). In this regard, the Court clarifies that the first level of decision-making in the disciplinary procedure against prosecutors in the prosecutorial system according to paragraph 3 of Article 14 (Disciplinary Procedures) of the Law on Disciplinary Liability, stipulates as follows: “3. *The Council shall decide whether the alleged disciplinary offense has been committed and, if it finds that the judge or prosecutor has committed the alleged disciplinary offense, impose the disciplinary sanction according to the provisions of this Law.*” However, in the circumstances of the case under review, the Court notes that the Supreme Court has only upheld the decisions of the KPC as a lower instance by approving their position and reasoning in this Judgment.
89. Consequently, taking into account that even the Supreme Court did not address the Applicant’s allegations, which he had raised before both the Basic Court and the Court of Appeals, the Court considers that the essential criteria of the right to a reasoned decision, in one way or another, stipulate that the Supreme Court had an obligation to address the

Applicant's central claims and not to disregard them in their entirety or to address some of them only with a short and generalized reasoning (see, *mutatis mutandis*, case KI202/21, with the Applicant *Kelkos Energy, L.L.C.*, cited above, paragraph 135 and KI143/22, Applicant *Hidroenergji l.l.c*, cited above, paragraph 135).

90. In the light of the above, the Court reiterates that the Supreme Court had an obligation to address the substantive issues of the Applicant, which in the circumstances of the present case did not happen.
91. The Court recalls that the Supreme Court regarding the Applicant's complaint as to the imposition of the disciplinary sanction "*Public written reprimand*" approved and confirmed the position of the KPC, as the lower level of decision in this case, emphasizing that "*The KPC has acted in accordance with the provisions of the Law in force on the Disciplinary Liability of Judges and Prosecutors, has argued that a disciplinary offense has been committed by the complainant [the Applicant], has imposed the disciplinary measure in harmony with the principle of proportionality and legally provided criteria (Article 7 par. 2) and took into account also the seriousness, the consequences, the circumstances in which the offense was committed, etc. .*"
92. In this regard, the Court considers that the Supreme Court, beyond the description of the factual situation and the relevant evidence, has not justified the central claims raised by the Applicant.
93. Finally, the Court reiterates that procedural justice requires that substantive claims raised by the parties in the regular courts should be properly answered, especially if they relate to decisive allegations that in the present case refer to the legality of the decisions of the KPC in relation to the investigation procedure for disciplinary violations and the mandate of the Investigation Panel (see Court's case, KI202/21, *Kelkos Energy, L.L.C.*, cited above, paragraph 140 and KI143/22, Applicant *Hidroenergji l.l.c*, cited above, paragraph 139).
94. Therefore, the Court finds that the contested Judgment of the Supreme Court does not meet the criteria of a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to the absence of a reasoned decision.

Request for interim measure

95. The Court refers to Article 116.2 [Legal Effect of Decisions] of the Constitution and Article 27 [Temporary Measures] of the Law, which establish:

Article 116 [Legal Effect of Decisions]

"[...]"

2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.

"[...]"

Article 27
[Interim Measures]

“1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.

2. The duration of the interim measures shall be reasonable and proportionate.”

- 96. The Court also refers to Rule 45 (2) (b) [Decision-making Regarding the Request for Interim Measure] of the Rules of procedure which specifies: *“(2) The justification for either granting or denying the request for an interim measure, based on the criteria established in Article 27 (Interim measures) of the law”.*
- 97. The Court has already decided on the merits of the Referral and has held a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and consequently imposing the interim measure is unnecessary.
- 98. For these reasons, the request for an interim measure is to be rejected.

Conclusion

- 99. In sum, the Court finds that the Judgment [AA. no. 37/22], of 18 January 2023 of the Supreme Court does not meet the requirement for “*a fair trial*” in accordance with paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR due to the lack of adequate reasoning of the court decision in relation to the appealing allegations as follows: (i) the legality of the decision of the KPC to replace the member of the Investigation Panel by the Chairman of the KPC; (ii) the legality of the termination of the statute of limitation and the suspension of the disciplinary proceedings; (iii) exceeding the legal deadline for undertaking investigative actions by the Investigation Panel, namely the mandate of this panel; as well as (iv) proceeding with the report of the Investigation Panel in the KPC, as long as the latter had not yet rendered a decision regarding the request to exclude the members of this panel. Whereas, in relation to the other appealing allegations regarding (v) the Applicant's right to be heard as well as (vi) the arbitrary decision of the KPC, the Court finds that they are sufficiently reasoned so that they do not constitute violation of the right to a fair and impartial trial.
- 100. In addition, the Court considers that taking into account the fact that the Court has already decided on the merits of the Referral and found a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, therefore, the imposition of the interim measure is unnecessary.
- 101. As explained above, the Court's assessment only concerns the aspect of constitutional procedural guarantees in the case of the Applicant, therefore this judgment does not prejudice the epilogue of further proceedings.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 113.7 and 116.1 of the Constitution, Articles 20, 27 and 47 of the Law and Rules 45 (2) (b) and 48 (1) (a) of the Rules of Procedure, at the session held on 17 January 2024, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO DECLARE invalid Judgment [AA. no. 37/22] of the Supreme Court of 18 January 2023;
- IV. TO REMAND for reconsideration the Judgment [AA. no. 37/22] of the Supreme Court of 18 January 2023, in accordance with the Judgment of the Court;
- V. TO REJECT the request for imposing of an interim measure;
- VI. TO ORDER the Supreme Court to notify the Court, in accordance with paragraph 5 of Rule 60 (Enforcement of Decisions) of the Rules of Procedure, by 17 July 2024, about the measures taken to implement this Judgment;
- VII. TO NOTIFY this Judgment to the parties and, in accordance with paragraph 4 of Article 20 of the Law, to publish it in the Official Gazette of the Republic of Kosovo;
- VIII. TO HOLD that this Judgment enters into force on the day of publication in the Official Gazette of the Republic of Kosovo in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur

President of the Constitutional Court

Nexhmi Rexhepi

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.

