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

Prishtina, on 16 May 2024
Ref. no.: AGJ 2428/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI121/22

Applicants

Mexhid Asllani, Ekrem Asllani and Nuredin Xhaferi

Constitutional review of
Decision [Rev. no. 434/2022] of 24 May 2022 on supplementing
Judgment [Rev. no. 426/2021] of the Supreme Court of Kosovo of 29 June 2021
and
Judgment [Ac. no. 1148/2018] of the Court of Appeals of 4 March 2020

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
Enver Peci, Judge and
Jeton Bytyqi, Judge

Applicants

1. The Referral was submitted by Mexhid Asllani, Ekrem Asllani and Nuredin Xhaferi, all from the village of Komogllava, Municipality of Ferizaj (hereinafter: the Applicants), represented by Arbër Istrefi, a lawyer from Prishtina.

Challenged decision

2. The Applicants challenge the constitutionality of the Decision [Rev. no. 434/2022] of 24 May 2022 to amend the Judgment [Rev. no. 426/2021] of 29 June 2021 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) and the constitutionality of Judgment [Ac. no. 1148/2018] of 4 March 2020 of the Court of Appeals, in conjunction with Judgment [C. No. 395/2015] of 23 June 2017 of the Basic Court in Ferizaj (hereinafter: the Basic Court

Subject matter

3. The subject matter of the Referral is the constitutional review of the above-mentioned decisions, whereby the Applicants allege that their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR) have been violated.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 25 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

5. 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 of the Republic of Kosovo (hereinafter: the Constitution) refers to the provisions of the aforementioned Rules of Procedure No. 01/2018 of the Court. 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

6. On 4 August 2022, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo.

7. On 8 August 2022, the President of the Court, by Decision [GJR. KI121/22], appointed Judge Nexhmi Rexhepi as Judge Rapporteur and by decision KSH. KI121/22 appointed the members of the Review Panel, composed of judges: Gresa Caka-Nimani (Presiding), Safet Hoxha and Radomir Laban (members).

8. On 15 August 2022, the Court notified the Applicants' representative of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 6 December 2022, the Basic Court in Prizren notified the Court that the challenged Decision of the Supreme Court was submitted to the Applicant on 15 February 2022.

10. On 16 December 2022, Judge Enver Peci took the oath before the President of the Republic of Kosovo, thus commencing his term at the Court.

11. On 26 July 2023, the Court requested additional information from the Court of Appeals and the Basic Court in Ferizaj regarding the appeal filed on 31 July 2017 by the Applicants to the Court of Appeals.

12. On 28 July 2023, the Court of Appeals notified the Court that there have been no other appeals in the case files remaining in this court, and that *"For additional information if there have been other appeals, we address the Basic Court in Ferizaj, for the case files C.no.395/2015"*.

13. On 3 August 2023, the Basic Court informed the Court: *"... that the legal remedy - appeal of the claimants Mexhid Asllani, Ekrem Asllani and Nuredin Xhaferi has been submitted and recorded at the Basic Court-Ferizaj on 5 September 2017"*.

14. On 8 September 2023, the Court again requested additional information from the Basic Court, to understand if the latter had processed the appeal of the Applicants to the Court of Appeals for review and decision-making.

15. On 25 September 2023, the Basic Court informed the Court that the appeals filed by the Applicants and by Sigal Uniqua Group Austria (the respondent), against the Judgment of the Basic Court, were recorded at the Basic Court on 5 September 2017, and after the completion of the case, they were submitted to the Court of Appeals for further proceedings.

16. On 11 March 2024, Judge Jeton Bytyqi took the oath before the President of the Republic of Kosovo, thus commencing his term at the Court.

17. On 21 March 2024, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral admissible for consideration in merits. On the same date, the Court in full composition, after deliberation, with five (5) votes "for" and four (4) "against", found a violation of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the Law on the Constitutional Court. In this case, Judge Jeton Bytyqi stated that in relation to the findings of the majority, he would submit a Dissenting Opinion, which was joined by Judge Enver Peci.

Summary of facts

18. The Referral relates to a civil dispute between the Applicants and the insurance company Sigal Uniqua Group Austria, headquartered in Prishtina, regarding a traffic accident that occurred on the Ferizaj-Kaçanik highway, from which the Applicants sustained injuries. In this case, the insured of the company Sigal Uniqua Group Austria was found guilty of causing the accident. After this event, the Applicants followed the procedures, as follows.

19. On 15 July 2015, the Applicants filed a statement of claim with the Basic Court for compensation for material and immaterial damage caused by the traffic accident on the Ferizaj-Kaçanik road axis. The Applicant M. Asllani claimed 5389,00 Euro, E. Asllani claimed 5768,00 Euro and N. Xhaferi claimed 5434,00 for damage compensation.

20. On 7 June 2017, the Applicants specified their claim.

21. On 23 June 2017, the Basic Court, ruling on the Applicants' statement of claim, issued Judgment C. no. 395/2015, whereby:

I. It partially granted the statement of the claim of the Applicants;

II. It obliged the respondent Sigal Uniqua Group Austria to pay, on behalf of non-material and material damages:

i. to the Applicant Mexhid Asllani: a) for bodily and physical pain the amount of 1200,00 Euro, b) for fear suffered the amount of 950,00, and c) on behalf of material damage, the costs of treatment in the amount of 809,00. In total, out of the amount of 5389,00: 2959 were approved and 2430,00 rejected;

ii. to the Applicant Ekrem Asllani: a) for bodily and physical pain the amount of 1400,00 Euro, b) for fear suffered the amount of 1050,00, and c) on behalf of material damage, the costs of treatment in the amount of 668,00. In total, out of the amount of 5768,00: 3118,00 approved and 2650,00 rejected; and

iii. to the Applicant Nuredin Xhaferi: a) for bodily and physical pain the amount of 1700,00 Euro, b) for fear suffered the amount of 1000,00, c) for assistance from another person the amount of 30,00 Euro, and d) for fortified food the amount of 30,00 Euro. In total, out of the amount of 5434,00: 2674,00 approved and 2760,00 rejected.

III. It obliged the respondent to pay to the Applicants the amounts specified in paragraph II of the enacting clause, and in the total amount of 8751,00 Euro, the legal interest in the amount of 8% (eight percent), from 15 July 2015 until the final payment, as well as the costs of the court proceedings in the amount of 1618,00, all within fifteen (15) days after the Decision becomes final. In general, the total amount rejected by this court is 7,840.00 Euro.

22. The Basic Court, among other things, emphasized that in the circumstances of the specific case, the legal basis of the statement of claim was not disputed, but its amount, because it was established that the insured of the defendant was guilty of causing the traffic accident. Furthermore, the reasoning states: "Regarding the amount of non-material and material damages, the Court has decided based on free assessment pursuant to Article 323 of LCP, and pursuant to the provisions of Articles 136, 159, 169, 174, 182 and 961 of LOR, relying on the opinion of medical experts Dr. *B.I, orthopedist - traumatologist and Dr. M.A, neuropsychiatrist, to whom the court has entrusted full confidence, and who have given their opinion in the minutes dated 17.05.2017 and in the hearing dated 31.05.2017, as well as in the medical documentation contained in the case files that are administered as evidence in this legal case*".

23. On 4 July 2017, the respondent Sigal Uniqua Group Austria filed an appeal with the Court of Appeals against the Judgment of the Basic Court of 23 June 2017, due to allegations of erroneous determination of the factual situation, violation of the provisions of the procedure and erroneous application of the substantive law.

24. On 31 August 2017, the Applicants filed an appeal with the Court of Appeals against the Judgment of the Basic Court of 23 June 2017 due to disagreement with the amount of compensation (damage compensation), requesting the approval of the claim in its entirety. In their complaint, the Applicants, among other things, emphasized: "*We stress once again the fact that the claimants, although according to medical expertise, have suffered minor bodily injuries, the experts but also the evidence confirm that these injuries are numerous and as such the need for rehabilitation in the future is still*

anticipated, since the claimants have often been instructed to attend physiotherapeutic treatments and therefore the costs of recovery are high, but the awarded amount does not provide the satisfaction deserved for all these injuries sustained."

25. On 4 March 2020, the Court of Appeals issued the judgment Ac. no. 1148/2018, deciding only with regard to the appeal of the respondent Sigal Uniqua Group Austria. Through this judgment, the court concerned: (i) rejected the respondent's appeal, and (ii) confirmed the Judgment [C. no. 395/2015] of 23 June 2017 of the Basic Court, on the grounds that: *"... the appeal allegations of the respondent regarding the fact that the challenged judgment is the result of an erroneous or incomplete confirmation of the factual situation, are unfounded and considers that the first instance court, after assessing the collected evidence provided by the litigants, issued a judgment which, according to the assessment of the Panel of the Court of Appeals, is fair and lawful and that the first instance court has given concrete reasons for the decisive facts, giving adequate explanations and reasons for such a decision, based on the relevant legal provisions referring to this contested case."*

26. On 29 June 2020, the Applicants submitted a request for revision to the Supreme Court against Judgment [Ac. 1148/2018] of 4 March 2020 of the Court of Appeals, due to the erroneous application of the substantive law, including the violation of the right to appeal, as a result of the failure to review their appeal filed on 31 August 2017 by the Court of Appeals, stating that: *"The Judgment Ac. no. 1148/2018 of 04.03.2020 of the Court of Appeals of Kosovo confirmed Judgment C. no. 395/15 of the Basic Court in Ferizaj, by rejecting the appeal of the respondent, while regarding the appeal of the claimants, the Court of Appeals did not decide at all".*

27. The respondent Sigal Uniqua Group Austria filed a request for revision to the Supreme Court, within the legal deadline, against the Judgment [Ac. no. 1148/2018] of the Court of Appeals of 4 March 2020, due to erroneous application of the substantive law.

28. On 29 June 2021, the Supreme Court, by Judgment Rev. no. 426/2021, (i) rejected as unfounded the request for revision filed by the respondent Sigal Uniqua Group Austria, upholding the Judgment [Ac. no. 1148/2018] of the Court of Appeals of 4 March 2020, on the grounds that: *"In the revision submitted by the respondent, there were no allegations regarding substantial violations of the procedure, but only regarding the erroneous application of substantive law, without specifying which legal provisions were violated by the lower instance courts, but only limiting themselves to the allegation regarding the awarded amounts, without reasoning why such amounts are high." [...]. The Supreme Court of Kosovo has upheld the stance of the first and second-instance courts regarding the application of substantive law, assessing that in accordance with the proven factual situation, substantive law has been applied correctly and lawfully, as the judgment is based on the provisions of Articles 183 and 961 of the Law on Obligational Relationships (LOR), obliging the respondent to compensate the claimants for the awarded amounts, as stated in the enacting clause of the first-instance judgment.*

29. On 2 August 2021, the Applicants, after receiving Judgment [Rev. no. 426/2021] of 29 June 2021 from the Supreme Court, submitted a request for the review of their request for revision, alleging that their request for revision, submitted to the Supreme Court on 29 June 2020, was not considered at all by the latter. In their request for the review of the revision, the Applicants emphasized that: "*...on 31.08.2017, we also filed an appeal to the Court of Appeals, which the Court of Appeals of Kosovo did not consider. Therefore, we are enclosing a copy of the appeal and the revision to this submission, although the original is in the case files. We propose that the case be forwarded once*

again to the Supreme Court of Kosovo to be decided in accordance with the claimants' revision filed within the legal deadline, for which the Supreme Court did not declare itself in its Judgment of 31.08.2017".

30. On 24 May 2022, the Supreme Court issued Decision [Rev. no. 434/2021] to supplement its Judgment [Rev. no. 426/2021] of 29 June 2021. Through this supplemental decision, the same rejected, as inadmissible, the Applicants' request for revision on the following grounds: "*The Supreme Court, taking into account the provision of Article 211.2 of LCP, which stipulates that in property legal disputes in which the statement of claim is related to money, the delivery of an item, or the fulfilment of any other promise, if the value of the value of disputed item in the challenged part of the judgment does not exceed 3.000 €. [...] The Supreme Court of Kosovo, upon examining the admissibility of the revision under Articles 211.2 and 221 of LCP, found that: The revision requested by the authorized representative of the claimants is inadmissible".*

Applicants' allegations

31. The Applicants allege before the Court that the supplemental Decision [Rev. no. 434/2022] of 24 May 2022, in conjunction with Judgment [Rev. no. 426/2021] of the Supreme Court of Kosovo of 29 June 2021, and Judgment [Ac. No. 1148/2018] of the Court of Appeals of 4 March 2020 violate their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR) have been violated.

i. Allegations regarding violation of the right to a "fair trial"

32. The Applicants initially point out that the Court of Appeals did not consider at all their appeal filed against Judgment [C. no. 395/15] of the Basic Court of 23 June 2017, which, according to them, did not grant fair compensation that would serve them as "a deserved material satisfaction for the harm caused to them, and precisely for these reasons, an appeal was filed with the second instance court, but the same was not considered at all by this court. *Therefore, in the specific case, we are dealing with an unfair trial, and for the benefit of the respondent - the opposing party, and in the concrete case the principle of equality of arms was also violated, since the second instance court was not objective when it decided only on the appeal of the respondent, while the appeal of the claimant was not considered at all, thus contradicting the above-mentioned provisions, thereby violating the rights guaranteed to the claimants by the Constitution of the Republic of Kosovo".*

33. Based on this, the Applicants emphasize that "*the position of the Court of Appeals cannot be accepted and cannot stand, given the fact that the right to legal remedies and their consideration is regulated by the Constitution of the Republic of Kosovo; in the specific case, the Applicants' right was initially denied by the Court of Appeals, furthermore, in the reasoning of this decision, it is not at all mentioned that the claimants have filed an appeal.*"

34. The Applicants allege that even the Supreme Court, by rejecting their request for revision as inadmissible, by Decision [Rev. no. 434/2022] of 24 May 2022 to supplement Judgment [Rev. no. 426/2021] of 29 June 2021, denied them the rights guaranteed by the Constitution and ECHR. In this context, the Applicants emphasize: *"... in the specific case, both courts, with their judgments, by considering only the appeal of the respondent and not the appeal of the claimants, have caused*

noncompliance with the principle of equality of arms by the parties to the proceedings; in the specific case, the Applicants' rights and individual freedoms guaranteed by the Constitution (constitutionality), namely Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights - ECHR, Article 32 [Right to Legal Remedies], article 54 [Judicial Protection of Rights], Article 102 [General Principles of the Judiciary System], paragraphs 3 and 5 of the Constitution of the Republic of Kosovo have been violated".

35. In conclusion, the Applicants request the Court (i) to declare the Referral admissible; (ii) hold that there has been a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, violation of Articles 32 and 54 of the Constitution; (iii) declare invalid the Judgment [Ac. no. 1148/18] of the Court of Appeals of 4 March 2020 and Decision [Rev. no. 434/2021] of 24 May 2022 to supplement Judgment [Rev. no. 426/2021] of the Supreme Court of 29 June 2021, remanding the case to the Court of Appeals to decide on their appeal of 31 August 2017, or to the Supreme Court to decide on the merits of the case and grant in its entirety the statement of claim regarding the damages alleged for injuries sustained from the accident.

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

Article 32
[Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

Article 54
[Judicial Protection of Rights]

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6
(Right to a fair trial)

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

[...]

LAW NO. 03/L-006 ON CONTESTED PROCEDURE.

Article 32

32.1 If the claim against the defendant includes several claims that have a same factual and legal basis, the value of the disputed facility is set by summing the values of all claims.

32.2 If the demands in the claim are with several bases or against several defendants, the value of the disputed facility is determined according to the amount of each individual claim.

Supplementary judgment

Article 162

162.1 If the court hasn't decided over all requests that should have been included in the verdict, or when only one part of the requests was not included than the party can suggest its supplementation through a proposal in a period of fifteen (15) days since the day of the verdict was issued.

USUAL MEANS OF ATTACK
COMPLAINT AGAINST THE ADJUGMENT
Reasons on which the verdict could be strike

Article 181

181.1 The verdict can strike:
a) due to the violation of provisions of contestation procedures;

EXTRAORDINARY MEANS OF STRIKE
REVISION

Article 211

211.1 Against the decision of the court of second instance, parties can present a revision within a period of thirty (30) days from the day the decision was brought.
211.2 Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €.
[...]

Article 218

1. A belated, impermissible or incomplete revision shall be dismissed by a ruling of the court of first instance without conducting a main hearing.
2. The revision is not permissible:
   a) if it is presented by an unauthorized person;
   b) a person who has withdrawn it;
   c) a person who has no legal interest or is against a judgment;
   d) not subject to revision according to the law."

Article 221

A later revision, an incomplete or not allowed one will be rejected by the court of revision, if it wasn't done by the court of the first instance within its authorizing boundaries (article 218 of this law).

Admissibility of the Referral

36. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.

37. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, in conjunction with paragraph 4 of Article 21 [General Principles] of the Constitution, which stipulates:

Article 113
Article 113 [Jurisdiction and Authorized Parties]

"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.
[...]

38. The Court further examines whether the Applicants fulfilled the admissibility requirements, as stipulated in the Law, namely in Articles 47, 48 and 49 of the Law, which stipulate:

Article 47
[Individual Requests]

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

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...".

39. Regarding the fulfilment of the aforementioned criteria, the Court assesses that the Applicant: i. is legitimized as an authorized party pursuant to paragraph 7 of Article 113 of the Constitution; ii. contests the constitutionality of the Decision [Rev. no. 434/2022] of the Supreme Court of Kosovo of 24 June 2022 and Judgment [Ac. No. 1148/2018] of the Court of Appeals of 4 March 2020; iii. exhausted all available legal remedies

pursuant to paragraph 2, Article 47 of the Law; iv. clearly specified the rights guaranteed by the Constitution, which he claims have been violated by the courts, in accordance with the requirements of Article 48 of the Law; and v. submitted the Referral within a period of four (4) months, as determined by Article 49 of the Law.

40. However, in addition, the Court examines whether the Applicant has met the admissibility criteria established in Rule 34 [Admissibility Criteria], namely provisions (1) (d) and (2) of Rule 34 of the Rules of Procedure, which stipulate:

> *(1) The Court may consider a referral as admissible if:*
> *[...]*
> *(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.*
>
> *(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim."*
> *[...]*

41. The Court recalls that the above-mentioned rule, based on the case law of the ECtHR and of the Courts enables the latter to declare inadmissible referrals for reasons relating to the merits of a case. More precisely, based on this rule, the Court may declare a Referral inadmissible after assessing its merits, namely if it assesses that the content of the Referral is manifestly unfounded on constitutional grounds, as defined in sub-rule (2) of Rule 34 of the Rules of Procedure (see case KI04/21, Applicant *Nexhmije Makolli*, Resolution on Inadmissibility, of 12 May 2021, paragraph 26; see also case KI175/20, Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility, of 27 April 2021, paragraph 37).

42. The Court also considers that the Referral cannot be considered clearly unfounded on constitutional grounds, as provided by paragraph (2) of Rule 34 of the Rules of Procedures, and consequently the Referral is declared admissible for review based on the merits, (see also the ECtHR case, *Alimuçaj v. Albania*, no. 20134/05, Judgment of 9 July 2012, paragraph 144, and see the Court cases KI75/21, with Applicant "*Abrazen LLC", "Energy Development Group Kosova LLC", "Alsi&Co. Kosovo LLC" and "BuildingConstruction LLC",* Judgment of 19 January 2022, paragraph 64; KI27/20, Applicant, *Lëvizja VETËVENDOSJE!*, Judgment of 22 July 2020, paragraph 43, and recently KI82/22, Applicant, *Valon Loxhaj,* Judgment of 7 June 2023, paragraph 59).

43. In the light of the foregoing, the Court assesses that the Applicants' Referral raises serious allegations at the constitutional level, hence the same cannot be declared inadmissible on the basis of the criteria established in sub-rule (2) of Rule 34 of the Rules of Procedure. Consequently, the Court assesses that the Applicants' Referral meets the admissibility requirements for merit-based evaluation.

Merits of the Referral

44. The Court recalls that as a result of a traffic accident, the Applicants sustained bodily injuries, caused by the insured of the respondent, Sigal Uniqua Group Austria. The Applicants filed a statement of claim against the company concerned with the Basic Court, whereby they claimed compensation for material and non-material damages due to bodily and emotional injuries sustained. The latter partially granted their statement of claim and obliged the respondent, Sigal Uniqua Group Austria, to pay them the specified amounts, as reflected in point II of the enacting clause of the Basic Court's Judgment, namely the total amount of 8751.00 Euro. Both the Applicants and the

respondent, Sigal Uniqua Group Austria, filed an appeal to the Court of Appeals against the Judgment of the Basic Court. The Court of Appeals, in fact, had only decided on the appeal of the respondent, Sigal Uniqua Group Austria, rejecting the same as unfounded. Upon receiving the Court of Appeals' Judgment, the Applicants realized that their appeal had not been considered at all by the latter.

45. As a result, the Applicants submitted a request for revision to the Supreme Court, where in addition to legal violations, the same expressly alleged the violation of the right to appeal. In the meantime, Sigal Uniqua Group Austria submitted a request for revision to the Supreme Court against the Court of Appeals' Judgment, which by the Judgment [Rev. no. 426/2021] of 29 June 2021, rejected its revision. In its judgment of 29 June 2021, the Supreme Court did not deal with the revision of the Applicants. As a result, they once again addressed the Supreme Court, requesting it to consider their revision, filed on 29 June 2020. In this regard, on 24 May 2022, the Supreme Court issued the Decision [Rev. no. 434/2022] to supplement Judgment [Rev. no. 426/2021] of 29 December 2021. Through the supplemental decision, the Supreme Court rejected the Applicants' request for revision based on Articles 221 and 162 of LCP, without addressing at all the allegation regarding the violation of the right to the appeal, namely the ordinary legal remedy by the Court of Appeals.

46. In examining the Applicants' allegations, the Court takes into account the ECtHR case law and its own case law, which determines that a complaint/request is characterized by the facts therein, and not only by the legal basis and the arguments to which the parties expressly invoke (see the case of the ECtHR: *Talpis v. Italy*, no. 41237/14, Judgment of 18 September 2017, paragraph 77 and references cited therein).

47. Based on the case files, the Court notes that the essence of the allegations for violations of the constitutional rights of the Applicants relates to: (i) the failure to examine the appeal of 31 August 2017 by the Court of Appeals, and (ii) the failure to examine the request for revision based on merits by the Supreme Court, whereby the Applicants explicitly raised the issue of denial of justice and the legal remedy by the Court of Appeals.

48. In the light of the foregoing, the Court notes that the essence of allegations for violations of rights guaranteed by the Constitution and the ECHR, raised in the Referral by the Applicants, is primarily related to (i) the denial of the right to "a fair trial", namely the denial of the right to "access to justice/court" guaranteed by Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of ECHR.

49. Therefore, the Court will further examine the allegations of the Applicants from the perspective of rights guaranteed by Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, applying the relevant principles established through the ECtHR case law, according to which the Court, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged that: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*

50. In this regard, the Court recalls that procedural justice is assessed based on the entirety of the procedure (see the cases of the Court KI62/17, Applicant: *Emine Simnica*, Judgment of 29 May 2018; paragraph 41 and KI20/21, Applicant: *Violeta Todorović*, Judgment of 13 April 2021, paragraph 38; see also the Judgment of the ECtHR, *Barbera, Messeque and Jabardo v. Spain*, no. 10590/83, Judgment of 6 October 1988, paragraph 68). Therefore, in the procedure of assessing the grounds of allegations submitted by the applicants, the Court will adhere to these principles.

I. The Court's assessment regarding the allegation of violation of the right of "access to court/justice"

a) General principles

51. The right to have access to court for the purposes of Article 6 of the ECHR is defined in the case *Golder v. United Kingdom*, no. 4451/70, Judgment of 21 February 1975. Referring to the rule of law principle and the avoidance of arbitrary power, the ECtHR found that "the right of access to court" is an essential aspect of the procedural guarantees enshrined in Article 6.1 of the ECHR. According to the ECtHR, this right provides everyone with the right to address the relevant case related to "civil rights and obligations" before a court (see the case of the ECtHR, *Lupeni Greek Catholic Parish and others v. Romania*, no. 76943/11, Judgment of 29 November 2016, paragraph 84).

52. The Court in this context emphasizes that the "right to court", as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6.1 of the ECHR, stipulates that litigants should have an effective legal remedy that enables them to protect their civil rights (see the cases of the ECtHR, Běleš *and others v. the Czech Republic*, no. 47273/ 99, Judgment of 12 November 2002, paragraph 49; and *Naït-Liman v. Switzerland*, 513557/07, Judgment of 15 March 2018, paragraph 112).

53. Based on the ECtHR case law, everyone has the right to file a "lawsuit" concerning their respective "civil rights and obligations" in a court of law. Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, enshrines the "right to court", namely the "right of access to courts", which implies the right to initiate proceedings with the courts in civil matters (see, inter alia, the case of the ECtHR, *Golder v. United Kingdom*, cited above, paragraph 36).

54. According to ECHR case law, there should first be a "civil right" and secondly, there should be a "dispute" regarding the legality of an intervention that affects the very existence or scope of the protected "civil law". The definition of these two concepts should be substantive and informal (see, in this respect, the cases of ECtHR, *Le Compte, Van Leuven and De Meyere v. Belgium*, no. 6878/75, 7238/75, Judgment of 23 June 1981, paragraph 45; *Moreira de Azevedo v. Portugal*, no. 12686/03, Judgment of 23 October 1990, paragraph 66; *Boulois v. Luxembourg* no. 37575/04, Judgment of 20 March 2009, paragraph 29; and *Boulois v. Luxembourg*, no. 37575/04, Judgment of 3 April 2012, paragraph 92). Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, guarantees not only the right to initiate proceedings but also the right to obtain a resolution of the respective "dispute" from a court (see the cases of the ECtHR, *Kutić v. Croatia*, no. 48778/99, Judgment of 1 March 2002, paragraphs 25-32*; Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 86 and references therein; *Aćimović v. Croatia*, no. 61237/00, Judgment of 9 October 2003, paragraph 41; and *Beneficio Cappella Paolini v. San Marino*, no. 40786/98, Judgment of 13 July 2004, paragraph 29).

55. However, the aforementioned principles do not imply that the right to a court and the right of access to a court are absolute rights. They may be subject to restrictions, which are clearly defined by the ECtHR case law. These restrictions cannot go so far as to limit the individual's access, violating the very essence of the right (see ECtHR, *Baka v. Hungary*, no. 20261/12, Judgment of 23 June 2016, paragraph 120; and *Lupeni Greek Catholic Parish and others v. Romania,* cited above, paragraph 89). Whenever access to the court is restricted by the relevant law or case law, the Court examines whether such restriction affects the substance of the law and, in particular, whether such restriction pursued a "legitimate purpose", as well as whether there is "a reasonable

relationship of proportionality between the means used and the goal to be achieved" (see the cases of the ECtHR, Ashingdane *v. United Kingdom*, no. 8225/78, Judgment of 28 May 1985, paragraph 57; *Naït-Liman v. Switzerland*, Judgment of 21 September 1990, paragraph 65; and *Marković and others v. Italy*, no. 1398/03, Judgment of 14 December 2006, paragraph 99). The right of access to court may in certain circumstances be subject to certain legitimate restrictions, such as statutory limitation deadlines, orders requiring payment of a guarantee, a request for representation (cases of the ECtHR, *Stubbings and others v. United Kingdom*, no. 22095/93, Judgment of 22 October 1996; *Tolstoy Miloslavsky v. United Kingdom*, no. 18139/91, Judgment of 13 July 1995; *R.P. and others v. United Kingdom*, no. 38245/08, Judgment of 9 October 2012).

56. All these principles defined by the ECtHR regarding the right of "access to court/justice" have been used and established in the case law of the Court, in the resolution of concrete cases when the parties have claimed denial of the right of "access to justice" (see the cases in which the Court has found violations of the right of access to justice, KI10/22, the Applicant *Trade Union of the Institute of Forensic Medicine*, Judgment of 18 July 2022; KI224/19, *Applicant Islam Krasniqi*, Judgment of 10 December 2020; KI143/21, Applicant *Avdyl Bajgora*, Judgment of 25 November 2021; KI80/19, Applicant *Radomir Dimitrijević*, Judgment of 10 November 2020; KI214/21, Applicant *Avni Kastrati*, Judgment of 7 December 2022, and cases in which no violation of the right of "access to justice" has been found, KI133/17, Applicant *Ali Gashi*, Judgment of 29 July 2019; KI62/18, Applicant Nadlije *Gojani*, Judgment of 27 September 2018, KI78/18, Applicant *Pashk Malota*, Judgment of 27 February 2019, KI92/21, Applicant *Fadil Ponosheci*, Judgment of 21 October 2021.

b) Application of the above-mentioned principles to the circumstances of the present case

57. The Court, based on the case files, recalls that the essence of the violation of the right to have "access to the court/justice" as a result of an effective legal remedy and effective judicial protection, is related to (i) the failure to examine the appeal of the Applicants by the Court of Appeals, submitted on 31 August 2017 through the Basic Court, and (ii) the failure to examine the request for revision on merits by the Supreme Court, which was related to the violation of the right to appeal, namely a legal remedy, as a result of the failure to examine the appeal of 31 August 2017 by the Court of Appeals.

58. The Court, in the context of the merits of the allegations, initially recalls *that "anyone who considers that there has been unlawful interference in the exercise of his/her civil rights and alleges that he/she has been restricted from contesting a specific allegation before a court, may refer to Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, invoking the right of "access to justice"* (see the case of the ECtHR *Golder v. United Kingdom*, cited above, paragraph 36).

59. Based on the aforementioned principles, the Court points out that the right of access to court/justice, in principle, is guaranteed in relation to *"disputes*" regarding a "*civil right*". In this sense, the Court considers that in order to determine the applicability of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, it must be taken into account that we have to do with two essential issues. The first relates *to "civil law*", while the second relates to the existence of a "*contest*" of a real dispute which requires a judicial solution.

60. In the circumstances of the present case, the Court considers that the Applicants have met both of the above-mentioned criteria, due to the fact that we have a real *"dispute*" between them and the respondent Sigal Uniqua Group Austria, where the Applicants

filed a lawsuit against the latter, through which they sought monetary compensation, which claims according to the law on the obligational relationships fall into the "civil rights" due to the nature of the dispute.

61. Since the above-mentioned criteria are met, the Court will then examine whether the denial of this fundamental right guaranteed to individuals by Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR occurred as a result of the negligence of the regular courts.

i. Regarding the allegations of violation of Article 31 of the Constitution by the Court of Appeals

62. In the context of arguing the allegations raised in the Referral, the Court recalls that the Applicants allege that the Court of Appeals did not consider at all their appeal filed with the latter, on 31 August 2017, against Judgment [C. no. 395/15] of 23 June 2017 of the Basic Court, noting that their allegations have remained unaddressed.

63. In this regard, the Court referred to the case files and noted that it is the fact that the Applicants filed an appeal against Judgment [C.no.395/15] of 23 June 2017 of the Basic Court on 31 August 2017 with the Court of Appeals, through the Basic Court. However, the latter, on 4 March 2020, through the Judgment (Ac. no. 1148/2018], decided only on the appeal of the respondent Sigal Uniqua Group Austria, but not on the appeal of the Applicants (claimants), whereby they alleged the violation of their rights by the Basic Court.

64. In this case, the Court of Appeals, taking into account the fact that the Applicants were claimants in this case, forwarded the Judgment to them [Ac. no. 1148/2018] of 4 March 2020. From this moment, the Applicants realized that their appeal submitted on 31 August 2017, against the Judgment [C. no. 395/15] of the Basic Court of 23 June 2017, was not considered at all by the Court of Appeals, likewise, their allegations for awarding the low amount of material and non-material damage compensation remain meritoriously unaddressed by the latter. Referring to the content of the aforementioned judgment of the Court of Appeals, the Court notes that in the text of the Judgment [Ac. no. 1148/2018] of the Court of Appeals 04 March 2020, it is not mentioned at all, as a fact, that the Applicants filed an appeal against the Judgment [C.no.395/15] of 23 June 2017 of the Basic Court on 31 August 2017.

65. Given these circumstances, the Constitutional Court requested 26 July 2023 from the Basic Court and the Court of Appeals additional information to understand the reasons why the Applicants' request was not considered. In this regard, on 28 July 2023, the Court of Appeals informed the Court that "in the case files that remain in this court there were no further complaints, and that for additional information, if there were other complaints, the Court should address to the Basic Court in Ferizaj".

66. Meanwhile, on 3 August 2023, the Basic Court in Ferizaj, in its reply to the Court, stated that: *"... the legal remedy - the appeal of the respondents Mexhid Asllani, Ekrem Asllani and Nuredin Xhaferi was recorded and filed with the Basic Court of Ferizaj on 5 September 2017",* enclosing to the reply a copy of the appeal filed by the Applicants on 31 August 2017, which was filed with this court on 5 September 2017. Since it was not understood from the reply of the Basic Court whether the Applicants' appeal proceeded for consideration to the Court of Appeals, the Court again requested additional clarifications on 8 September 2023 from the Basic Court and the latter on 25 September 2023 informed the Court that both the Applicants' appeal and that of the respondent Sigal Uniqua Group Austria, after the case (file) had been completed and

the conditions for proceeding had been met, the case was submitted to the Court of Appeals for further consideration.

67. In the light of the foregoing, the Court recalls that both the Applicants and the respondent Sigal Uniqua Group Austria, simultaneously appealed the Judgment [C. no. 395/15] of the Basic Court of 23 June 2017 to the Court of Appeals. The respondent due to (i) the high amount awarded, while the Applicants due to (i) the low amount awarded in relation to the damages sustained by the accident. However, the Court notes that the Court of Appeal by Judgment [Ac. no. 1148/2018] of 4 March 2020, ruled only on the appeal of the respondent Sigal Uniqua Group Austria, but not on the appeal of the Applicants of 31 August 2017. In this context, it is indisputable that the Court of Appeals, by its judgment of 4 March 2020, considered only the allegations of the respondent Sigal Uniqua Group Austria and thus the appeal of the Applicants, and also the allegations raised thereof were not addressed in substance by this court instance.

68. In this context, the Court finds that the Applicants' statement of claim in the substantive aspect has been reviewed only by one court instance, namely only by the Basic Court in Ferizaj, and by no other court instances, including the Supreme Court, at which the Applicants have expressly raised a violation of their right to access justice and to regular remedy (appeal) by the Court of Appeals.

69. Considering the fact that the Applicants filed an appeal to the Court of Appeals on 31 August 2017, and the latter did not consider it at all, neither with the Judgment [Ac. no. 1148/2018] of 4 March 2020 nor separately, the Court considers that the Applicants have been prevented from examining the substance of the allegations raised through their appeal, against Judgment [C. no. 395/15] of the Basic Court of 23 June 2017.

70. The Court reiterates that it is not its duty to assess whether the regular courts have correctly interpreted and applied the relevant rules of substantive and procedural law. However, in cases where an allegation raises constitutional issues, namely irregularities of the judicial process, the Court is obliged to intervene and remedy the violations caused by the regular courts, in order to provide the individual with a fair trial in accordance with Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR. (see the case KI214/22, Applicant Avni Kastrati, Judgment of 7 December 2022, paragraph 127).

71. Referring to the circumstances of the present case, the Court holds that the failure to review the appeal of the Applicants on merits by the Court of Appeals constitutes an insurmountable procedural flaw which is contrary to the right to access to justice. In this regard, the Court considers that the Court of Appeals denied the Applicants the right of access to court/justice guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR.

ii. Regarding the allegations of violation of Article 31 of the Constitution by the Supreme Court

72. In addition to the allegations of denial of justice and legal remedy by the Court of Appeals, the Applicants have raised the same allegations with the Supreme Court. In this dispute, referring to the case files, the Court notes that the Applicants, having received the Judgment [Ac. no. 1148/2018] of the Court of Appeals of 4 March 2020, which decided on the appeal of the respondent Sigal Uniqua Group Austria, but not on their appeal, addressed the Supreme Court with a request for revision, convinced that their request would be treated fairly, given the nature of the violation caused by the Court of Appeals. In their request for revision of 29 June 2020 and the one repeated on 2 August 2021, the Applicants specifically raised the violation of the right to appeal,

which consequently resulted in the failure to examine the substance of their allegations, raised against the Judgment of the Basic Court.

73. The Court considers the concrete case to be specific in terms of factual and legal circumstances and therefore should be treated as such by the Court when it comes to the assessment of admissibility criteria. In the case at stake, we are dealing with a statement of claim filed by several claimants (co-claimants) against the respondent, due to material and immaterial damages caused by its insured, where the content of the norm of the law varies depending on the specifics of the case, in terms of meeting the legal requirements to submit a request for revision to the Supreme Court. The circumstances of the present case indicate a procedural flaw, which was caused simply by the negligence of the second instance court, which resulted in the violation of the right of access to court/justice of the Applicants, which requires the resolution of the underlying case.

74. Therefore, given the nature of the violation that occurred during the trial of this case, the Court considers that it would be prejudicial on its part if it considered that at the Supreme Court, the Applicants did not have at their disposal an effective remedy to use for the violations caused by the Court of Appeals in this case. This takes into account the nature of the constitutional violation that occurred in the Court of Appeals, such as the right to appeal the decisions of the first instance court before the latter, and the legal criteria foreseen for the exercise of the revision, according to paragraph 1 (a) of Article 214 of the LCP, which refers to procedural violations under Article 182.2 (i) of this law. Based on these grounds, the Applicants have relied on the effectiveness of the remedy used (revision) and on the rectification of the violation caused by the Court of Appeals. Furthermore, the Court recalls that even in cases where the parties have doubts about the effectiveness of the remedy, the ECtHR case law stipulates that "in cases where the Applicants have doubts about the effectiveness of the remedy, it should be used and that the Applicant cannot be held responsible for its use, for the fact that he/she has used it (see the case of the ECtHR, *Červenka v. Czech Republic*, no. 62507, Judgment of 13 January 2017, paragraph 121).

75. The Court recalls that for the revision of the Applicants, the Supreme Court decided by Decision [Rev.no.434/2021], of 24 May 2022, to supplement the previous Judgment [Rev.no.426/2021] of 29 June 2021, dismissing their request, with the following reasoning: "*The Supreme Court, taking into account the provision of Article 211.2 of LCP, which stipulates that in property legal disputes in which the statement of claim is related to money, the delivery of an item, or the fulfilment of any other promise, if the value of the value of disputed item in the challenged part of the judgment does not exceed 3.000 €. […]. The Supreme Court of Kosovo, upon examining the admissibility of the revision under Articles 211.2 and 221 of LCP, found that: The revision requested by the authorized representative of the claimants is inadmissible*".

76. The Court finds that, in dismissing the appeal as inadmissible, the Supreme Court based its reasoning on paragraph 2 of Article 211 and Article 221 of LCP. The first relates to the value of the subject of the dispute, while the latter stipulates that: *"A later revision, an incomplete or not allowed one will be rejected by the court of revision if it wasn't done by the court of the first instance within its authorizing boundaries (Article 218 of this Law)*. The Court, in this sense, refers to the content of Article 218 of the LCP, and recalls that this article stipulates: *"The revision presented after the legal time period, is incomplete and not allowed can be rejected by the first instance court without holding a court session."*

77. Always referring to the content of the supplemental Decision, the Court found that, among other things, the Supreme Court had found that: *"The authorized representative*

of the claimants, after receiving the Judgment Rev.426/2020 of the Supreme Court of 29.06.2021, submitted a request to the court for the review of the claimants' revision, enclosing a copy of the revision exercised by the authorized representative of the respondents, and providing evidence that the revision was submitted within the legal deadline. Against the judgment of the second instance court, the authorized representative of the claimants timely submitted a revision, due to the erroneous application of substantive law, proposing that the judgments of the second and first instance be amended, and the claimants' allegations be granted in entirety according to the specifications of the claim". However, nowhere in the decision is it emphasized that the Applicants raised the issue of denial of the right to appeal, namely to a legal remedy.

78. The Court notes that the Supreme Court during the assessment of the legal criteria had taken for granted the Judgment [Ac. no. 1148/2018] of the Court of Appeals of 4 March 2020, despite the fact that the Court of Appeals had not decided at all on the appeal of the Applicants, whereby their allegations remained unexamined on the merits. In this context, the question arises as to what would be the outcome and epilogue of the decision of the Court of Appeals, if the latter were to consider in substance the allegations raised in the appeal by the Applicants on 31 August 2017. Thus, in the circumstances of the present case, what is the legal and logical effect of the Applicants' complaint, when it is clear that the Court of Appeals issued its Judgment [Ac. no. 1148/2018] of 4 March 2020, only based on the complaint, and the allegations raised therein by the opposing party, namely the respondent Sigal Uniqua Group Austria, when it was clearly evident that the latter, through the filing of the appeal, had requested a reduction of the amount of compensation, while the Applicants, through their appeal of 31 August 2017, requested the opposite, namely the increase of the amount of compensation, set by the first instance court.

79. In this context, the Court considers that the Court of Appeals could not be expected to award greater compensation to the Applicants, because the subject contested before it by the appeal of the respondent Sigal Uniqua Group Austria, was the high amount of compensation set by the first instance court for the Applicants, which amount was due to be paid by the respondent. Therefore, given these circumstances, the Supreme Court should focus on the substance of the violation alleged by the Applicants, which was the right to appeal (legal remedy) and not to take for granted the Judgment [Ac. no. 1148/2018] of 4 March 2020 of the Court of Appeals, which did not rule on the civil rights and obligations of the Applicants, but on those of the respondent. The sufficiency of the Supreme Court to decide on the revision of the Applicants, solely on the basis of what the Court of Appeals had decided, according to the appeal of the respondent Sigal Uniqua Group Austria, by Judgment [Ac. no. 1148/2018] of 4 March 2020, has prejudiced the outcome of the merits of the case, potentially arising from the consideration of the appeal of the Applicants, which has never been decided by the Court of Appeals.

80. The Court recalls that the Applicants expressly raised the violation of rights in the appeal to the Supreme Court. However, despite this fact, the Supreme Court did not consider their substantive allegation at all. Based on the specific factual and legal circumstances of the case, the Court recalls that according to paragraph 3 of Article 102 [General Principles of the Judicial System] of the Constitution, it is clearly and expressly provided that: *"3.* Courts shall adjudicate based on the Constitution and the law*,* which implies that regular courts, when interpreting and applying relevant legal norms, should take care not to violate the very essence of the right guaranteed by the Constitution and the ECHR. Furthermore, the regular courts, including the Supreme Court, as the final instance of the regular judiciary, are bound by Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which stipulates:

"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.

81. In the light of the foregoing, the Court finds that the negligence to properly handle the Applicants' submissions and the allegations raised therein, in the circumstances of the present case, weighs on the regular courts which are called upon to provide justice. The Applicants have done everything required by law to exercise their right to appeal (legal remedy) effectively before the regular courts and this is clearly confirmed by the fact of the protocol of their appeal to the Basic Court, on 5 September 2017 and the proceeding of their appeal for review to the Court of Appeals. Applicants may not be asked to become custodians of the progress of the process, following the progress of the case, where their submissions have ended up, and whether they have arrived at the right place or not, as long as their appeal has been duly submitted to the Court of Appeals, through the Basic Court.

82. In the present case, the Court considers that the inability to address the specific allegations raised by the Applicants through the appeal filed on 31 July 2017 with the Court of Appeals, and the failure to remedy the violation of the right to appeal by the Supreme Court, constitutes a procedural flaw, which consequently has violated the very essence of the Applicants' right to receive a meritorious and reasoned response to their case. (See the case of ECtHR, *Golder v. United Kingdom*, cited above, paragraph 36, and the case of the Court, KI214/22, with the Applicant, *Avni Kastrati*, Judgment of 7 December 2022, paragraph 128, and the cases cited therein).

83. Having said this, the Court finds that the failure to review the appeal, and as a consequence, the allegations raised therein by the Applicants to the Court of Appeals, and the failure to deal with the substantive allegation by the Supreme Court, in relation to the denial of the right to appeal by the Court of Appeals, has violated their right of "access to justice", and consequently the right to an effective legal remedy and judicial protection of the rights before these judicial instances.

Conclusion

84. The Court, based on the above analysis, concludes that the Decision [Rev. no. 434/2022] of 24 May 2022 to supplement Judgment [Rev. no 426/2021] of 29 June 2021 of the Supreme Court of Kosovo, and Judgment [Ac. no. 1148/2018] of 4 March 2020 of the Court of Appeals were issued in violation of the constitutional rights of the Applicants, guaranteed by 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.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraphs 1 and 7 of Article 113 of the Constitution, in accordance with Articles 20 and 47 of the Law, as well as Rule 48 (1) (a) of the Rules of Procedure, on 21 March 2024:

DECIDES

I. TO DECLARE, by five (5) votes for and four (4) against, the Referral admissible;

II. TO HOLD, by five (5) votes for and four (4) against, that there has been a violation of paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO DECLARE, by five (5) votes for and four (4) against, the Decision [Rev. no. 434/2022] of 24 May 2022 and the Judgment [Rev. no. 426/2021] of 29 June 2021 of the Supreme Court and Judgment [Ac. no 1148/2018] of 4 March 2020 of the Court of Appeals, invalid;

IV. TO REMAND, by five (5) votes for and four (4) against, Judgment [Ac. no. 1148/2018] of 4 March 2020 of the Court of Appeals for reconsideration before the Court of Appeals, in accordance with the Court's findings in this Judgment;

V. TO ORDER the Court of Appeals to notify the Court, in accordance with sub-rule (5) of Rule 60 of the Rules of Procedure, of the measures taken to implement the Judgment of the Court, no later than 23 September 2024;

VI. TO NOTIFY this Judgment to the parties;

VII. TO PUBLISH this Judgment in the Official Gazette in accordance with paragraph 4 of Article 2 of the Law;

VIII. TO HOLD that this Judgment is effective on the date of its 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

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