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

Prishtina, 24 July 2024
Ref. no.: AGJ 2494/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI04/23

Applicant

Avdyl Bajgora

Constitutional review of
Decision Rev. no. 43/2022 of 10 October 2022
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
Enver Peci, Judge, and
Jeton Bytyqi, Judge

Applicant

1. The Referral is submitted by Avdyl Bajgora, who before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is represented by Jeton Osmani, a lawyer in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Rev. no. 43/2022] of 10 October 2022, of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the contested decision, whereby it is claimed that the applicant's fundamental human rights and freedoms guaranteed by articles 3 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with article 13 (Right to an effective remedy) of the ECHR, as well as articles 102 [General Principles] and 116 [Legal Effect of Decisions] of the Constitution, have been violated.

Legal basis

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

6. On 11 January 2023, the applicant submitted the referral to the Court.

7. On 18 January 2023, the President of the Court by Decision [No. GJR. KI 04/23] and Decision [No. KSH. KI 04/23] appointed Judge Bajram Ljatifi - as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu - Krasniqi (Presiding), Nexhmi Rexhepi and Enver Peci (members).

8. On 1 February 2023, the Court notified the applicant about the registration of the referral. On the same date, the Court notified the Supreme Court about the registration of the referral.

9. On 11 March 2024, Judge Jeton Bytyqi took an oath before the President of the Republic of Kosovo, in which case his mandate at the Court began.

10. On 30 May 2024, the Review Panel considered the report of the Judge Rapporteur and by two (2) votes for and one (1) against, recommended to the Court the admissibility of the referral. On the same date, the Court in full composition after deliberation, decided: (i) to declare, by eight (8) votes for and one (1) against, the referral admissible; (ii) to

find, by 8 (eight) votes for and 1 (one) against, that Decision [Rev. no. 43/2022] of 10 October 2022, of the Supreme Court is not in compliance with paragraph 1 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; (ii) to declare, by 8 (eight) votes for and 1 (one) agains,t invalid the Decision [Rev. no. 43/2022] of 10 October 2022, of the Supreme Court; and (iii) remand, by eight (8) votes for and one (1) against, the Decision [Rev. no. 43/2022] of 10 October 2022, of the Supreme Court for reconsideration of the revision on merits, in accordance with the finding given in this Judgment.

Summary of facts

11. The Court first emphasizes that the applicant on 7 August 2021 submitted a referral to the Court, registered with number KI143/21, whereby he contested the Decision [Rev. no. 558/2020] of the Supreme Court, of 22 February 2021, in conjunction with the Judgment [Ac. no. 5071/2019] of the Court of Appeals, of 17 January 2020. The Court below, and in summary, will present the chronology of the facts until the Court rendered Judgment in case KI143/21, insofar as they are related to the present referral.

(i) Proceedings before the regular courts before rendering the Judgment in case KI143/21

12. The applicant, until reaching his retirement age, namely until 29 May 2018 was employed in publicly owned enterprise Kosovo Energy Corporation J.S.C. (hereinafter: KEK).

13. On 10 December 2018, the applicant filed a request for three jubilee salaries with the publicly owned enterprise KEK based on Article 52, paragraph 1, item (3) of the General Collective Agreement, which was in force from 1 January 2015, until 1 January 2018.

14. On 14 December 2018, the publicly owned enterprise KEK, by letter no. 1527, rejected the Applicant's request for payment of three jubilee salaries, on the grounds that: *"The right to jubilee salary is not stipulated by Law and that this right is provided by the General Collective Agreement and our Labor Code, but not as an imperative right"*.

15. On 24 December 2018, the Applicant filed a statement of claim with the Basic Court in Prishtina, requesting the Court to oblige the respondent KEK to pay him an unspecified amount on behalf of three (3) jubilee salaries and in the name of the salary difference and the experience for three (3) pension salaries, the amounts to be determined after the financial expertise, together with the legal interest. The Applicant based his request on the General Collective Agreement of Kosovo. During the court hearing, the applicant specified the statement of claim based on the last salary received by the respondent, namely requesting the amount of € 2,739.00 on behalf of the three (3) jubilee salaries and on behalf of the difference the amount of € 547.80, in a total amount of € 3,286.80.

16. On 7 May 2019, the Basic Court in Prishtina, by Judgment [C. no. 3845/18]:

I. Partially approved the statement of claim of the applicant;
II. Obliged KEK to pay to the applicant the amount of 2,739.00 € on behalf of three jubilee salaries, with legal interest of 8%, starting from the receipt of this Judgment;
III. Rejected a part of the statement of claim regarding the difference in salary in the amount of € 547.80, and
IV. Obliged KEK to pay the applicant the amount of 260 euro on behalf of the court expenses.

17. On an unspecified date, KEK filed an appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina, of 7 May 2019.

18. On 26 July 2019, the Applicant submitted a response against the appeal of KEK to the Court of Appeals, whereby : (i) he requested to reject the appeal of KEK; (ii) to modify the Judgment [C. no. 3845/18] of the Basic Court , of 7 May 2019, in point III of the enacting clause, so that the court approves as grounded the statement of claim regarding the difference in salary in the amount of € 547.80. The applicant also requested that the Judgment of the Basic Court be modified in part IV of the enacting clause regarding the costs of the proceedings, adding to the approved value of € 260, in the first instance also the costs of the proceedings before the Court of Appeals, in the amount of € 208, which result in total amount of € 468.

19. On 17 January 2020, the Court of Appeals, by Judgment [Ac. no. 5071/2019] decided as follows:

> *"I. The appeal of the respondent Kosovo Energy Corporation (KEK) in Prishtina is APPROVED, Judgment C. no. 3845/18 of 07.05.2019 of the Basic Court in Prishtina - General Department, civil division , in point I, II and IV of the enacting clause, so that the claim of [the applicant] , requesting that the respondent be obliged to pay [the applicant] three salaries for jubilee reward the amount of 2,739.00 euro and in the name of the difference in the amount of 547.80 euro, in the total amount of 3,286.80 euro and the costs of the proceedings, within 7 days, after the receipt of the judgment, under threat of forced execution, is REJECTED as UNGROUNDED.*
> *II. The contested judgment in point III remains unaffected."*

20. On an unspecified date, the applicant against the Judgment of the Court of Appeals [Ac. no. 5071/2019], of 17 January 2020, submitted a request for revision to the Supreme Court on the grounds of (i) violation of the provisions of the contested procedure and (ii) erroneous application of substantive law.

21. On 22 February 2022, the Supreme Court by Decision [Rev. no. 558/2020] dismissed the applicant's revision against Judgment of the Court of Appeals as impermissible.

22. The Supreme Court based on paragraph 2 of Article 211 of Law No. 03/L-006 on the Contested Procedure (hereinafter: LCP) found that in order to permit the revision, the value of the object of dispute in the affected part of the judgment must be over the amount of 3,000 euro.

23. As a result of this finding, the Supreme Court reasoned that:

> "*Taking into account the fact that the claimant has not filed an appeal against the first instance judgment, nor in its rejecting part, as in item three (III) of the enacting clause, and while only the respondent filed an appeal, in this part the decision of the first instance court has remained not reviewed, and the claimant since in this part has not filed the regular remedy - appeal, cannot file the revision as an extraordinary remedy, in terms of the rejected claim on behalf of the difference in the amount of € 547.80".*

24. According to the Supreme Court: *"For this reason despite the fact that the Court of Appeals has decided as in item two, of the enacting clause of the judgment, to reject the statement of claim in the name of the request for three salaries for jubilee compensation in the amount of € 2739.00 and in the name of the difference in the*

amount of 547.80 €, in the total amount of € 3,286.80, this does not change the value of the dispute that can be challenged by revision, as the subject of revision can be only the request for three salaries for jubilee reward in the amount of € 2,739.00, in which part the revision is not allowed, due to the value of the claim, which has been challenged by revision, which is in the amount of only € 2,739.00 means it does not exceed the limit of €3,000, foreseen as a legal requirement for the possibility of filing the revision, for which the claimant's revision is not allowed and had to be dismissed".

(ii) Proceedings before the Constitutional Court

25. As specified above, on 7 August 2021, the applicant submitted a request to the Court, contesting the constitutionality of the Decision [Rev. no. 558/2020] of the Supreme Court, of 22 February 2021, whereby he claimed that this decision violated his rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], in conjunction with Article 6 (Right to a fair trial) of the ECHR, Article 32 [Right to Legal Remedies], in conjunction with Article 54 [Judicial Protection of Rights] of the Constitution and Article 13 (E right to an effective remedy) of the ECHR.

26. On 25 November 2021, the Constitutional Court, by its Judgment KI143/21, decided:

    (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 Article 6 [Right to a fair trial) of the ECHR;
    (iii) to declare invalid Decision [Rev. no. 558/2020] of the Supreme Court of 22 February 2020 and remands the latter for reconsideration, in accordance with the findings of the Court in this Judgment; and
    (iv) to order the Supreme Court to notify the Court about the measures taken to implement the Judgment of this Court, not later than 25 May 2022.

27. The Court concluded that it is the discretionary right of the injured party (in this case - the applicant), to decide whether he wants to partially or fully to contest the judgment of the second instance, by filing revision with the Supreme Court. In the present case, the applicant challenged the Judgment of the Court of Appeals in its entirety, and by item I of its provision, the entire value of the object of the dispute, namely the amount of 3,286.80 euro has been rejected.

28. The Court qualified the conclusions of the Supreme Court on the rejection of the request for revision as "*manifestly ill-founded and manifestly arbitrary, which have resulted in the inability of the Applicant to access the court, and consequently in denial of the right to an effective legal remedy and judicial protection of rights*" (paragraph 77, of Judgment).

(ii) The proceedings in the Supreme Court after the Court's Judgment KI143/21 was rendered

29. On 10 October 2022, the Supreme Court in the retrial procedure, by the Decision [Rev. no. 43/2022], decided that: "*The revision of the claimant's representative, submitted against the Judgment Ac. no. 5071/19, of 17.01.2020 of the Court of Appeals of Kosovo in Prishtina, is dismissed as impermissible".*

30. The Supreme Court, in relation to the response to the appeal, reasoned that:

    (i) "*[...] under no circumstances can a response to an appeal be treated as an appeal. [...] Even if the opposing party, in this case the claiming party in*

response to the appeal, raises issues that can be treated as appealing allegations (just as in this case the proposal filed in response to the appeal was taken as a basis), this court assesses that based on the fact that the response to the appeal is not a legal appealing remedy, it cannot be treated as such regardless of what the party filing it proposes";

(ii) even if response to the appeal was treated as an appeal, the legal deadlines should be considered, where in the present case it turns out that it was submitted out of the deadline, starting from the date when the applicant was served with the Judgment of the Basic Court, respectively on 17 June 2019, while the response to the appeal was submitted on 26 July 2019, a period which contradicts the criteria set forth in Article 477 of the LCP;

(iii) *"for a submission to be treated as an appeal, it must necessarily contain the elements defined by article 178 of the LCP, which elements are not contained in the response to the appeal, <u>which in this case was treated as a legal remedy by the Constitutional Court</u>".*

31. In what follows, in relation to the revision submitted by the applicant, the Supreme Court assessed that based on paragraph 2 of Article 211 of the LCP, which determines that the value of the object of dispute must be over 3,000 euro, in order to permit revision.

32. The Supreme Court, in the following, emphasized that it stands by the reasoning given in the first procedure before it, where it emphasizes that "*taking into account the fact that the claimant has not filed an appeal against the first instance judgment, nor in its rejecting part, as in item three (III) of the enacting clause, and while only the respondent filed an appeal, in this part the decision of the first instance court has remained not reviewed, and the claimant since in this part has not filed the regular remedy - appeal, cannot file the revision as an extraordinary remedy, in terms of the rejected claim on behalf of the difference in the amount of € 547.80*".

33. As for the amount of the value of the revision, the Supreme Court concluded that the object of the revision may be "*only the request for three salaries for jubilee reward in the amount of €2,739.00, in which part the revision is not allowed, due to the value of the claim, which was contested with the revision, which is in the amount of only 2,739.00 euro*".

Applicant's allegations

34. The applicant alleges that the contested decision of the Supreme Court , was rendered in violation of the fundamental rights and freedoms , guaranteed by articles 3 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), article 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with article 13 (Right to an effective remedy) of the ECHR, as well as articles 102 [General Principles] and 116 [Legal Effect of Decisions] of the Constitution.

(i) Allegations of violation of Article 31 of the Constitution in conjunction with article 6 and article 13 of the ECHR

35. Initially, the applicant considers the finding of the Supreme Court that the revision is not permitted as "*ungrounded, inadmissible and illegal, it even contradicts Article 6*

of the European Convention, but also the Judgment of the Constitutional Court KI143/ 21 of 13.12.2021, [...] where it clarifies that referring to the revision, the value of the dispute is determined by the claimant depending on the revision filed, where the value of the dispute includes not only the requested value but also the value of the object of the dispute that should be taken into account, the total damage that can be done to the applicant in a judicial process and not only the value of the claim, but also the value of the requested procedural costs, which in this case exceed the amount of 3,000 euro".

36. According to the applicant, his right to fair and impartial trial, within the meaning of Article 31 [Right to Fair and Impartial Trial] of the Constitution, has been violated by "*the failure of the Court to act according to the legal provisions as well as the action contrary to the Judgment of the Constitutional Court KI143/21, by which Judgment the claimant's request was approved and the decision of the Supreme Court to dismiss the revision was once again dismissed, and that the latter acted the same in the reconsideration by dismissing the revision of the claimant and therefore, he was unable to receive a final response from the courts regarding the merits of his case*".

37. Furthermore, the applicant alleges a violation of Article 13 of the ECHR. According to him: "*The judgment of the Court of Appeals in Prishtina, by which the respondent's appeal was approved and the claimant's claim was rejected, was rendered contrary to the factual situation and with erroneous application of substantive law by not applying it at all when issuing the internal acts of the respondent. Therefore, it is indisputable fact that in the present case, the principle of the administration of justice but also the equality of arms, which consists in the impossibility of using the legal remedy in an effective way has been violated, which is a consequence of the dismissal of the revision as in the mentioned decision. By dismissing the claimant's revision as not permitted, the applicant has been placed in a substantially unfavorable position vis-a-vis the respondent*".

38. The applicant claims that the Supreme Court and the Court of Appeals have decided on cases in completely similar factual and legal circumstances as his, approving the claims of the employees of the respondent (Public Enterprise KEK), therefore the applicant claims that he was placed in an unequal position before the law within the meaning of Article 24 of the Constitution. In this regard, the applicant, referring to Article 31 of the Constitution, emphasizes that everyone is guaranteed equal protection of rights in proceedings before the courts, other state bodies and holders of public powers.

39. In support of this allegation, the applicant attached to the referral the Judgment of the Supreme Court, [Rev. no. 90/2020] of 4 May 2020, as well as the Judgments of the Court of Appeals, [Ac. no. 2016/2020] of 24 June 2020, [Ac. no. 4367/19] of 17 July 2020, [Ac. no. 2507/19] of 9 September 2019 and [Ac. no. 6189/20] of 29 April 2021. The applicant claims that there are hundreds of such judgments, in which the Court of Appeals has recognized these rights to the claimants, under the same factual and legal conditions and circumstances as his.

40. Moreover, regarding the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the applicant states that as a result of the Supreme Court not rendering a decision on merits and rejecting the revision, "*the party has not been properly and equitably treated in these proceedings*".

(ii) Allegations of violation of Article 32, Article 54 and Article 102 of the Constitution

41. In addition to the aforementioned allegations, the applicant also claims a violation of the right to legal remedies within the meaning of Article 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 54 [Judicial Protection of Rights] of the Constitution, *"since each person has the right to use legal remedies against judicial and administrative decisions which violate his/her rights or interests in the manner defined by law since the claimant also enjoys the right to judicial protection in case of violation or denial of any right guaranteed by this Constitution or by law, as and the right to effective legal remedies if it is found that such a right has been violated"*.

42. According to him, as a result of the created situation, the latter was unable to *"consideration of the extraordinary legal remedy before the regular Courts, and by this they prevented him from judicial protection of rights guaranteed by Article 54 of the Constitution"*. Further, the applicant claims that the regular courts *"acted in violation of Article 102 of the Constitution, not acting on the basis of the law applicable in Kosovo"*.

(iii) Allegations of violation of Article 116 of the Constitution

43. The applicant claims that the Supreme Court violated Article 116 of the Constitution by not acting according to the Judgment of the Constitutional Court. Referring to Article 116, he states that "*The Supreme Court did not have the right to DISMISS the claimant's Revision as impermissible, but it had the obligation to respect the aforementioned decision and render decision on merits on the claimant's case by rejecting or approving the claimant's Revision"*.

44. Finally, the applicant requests the Court to approve his referral and annul the Decision of the Supreme Court [Rev. no. 43/2022] of 10 October 2022, as unlawful, and the modification of the latter by deciding on merits for his lawsuit or remand it for retrial and reconsideration to the Supreme Court.

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 3
[Equality Before the Law]

1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.

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.

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.

Article 102
[General Principles of the Judicial System]

1. Judicial power in the Republic of Kosovo is exercised by the courts.
2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.
3. Courts shall adjudicate based on the Constitution and the law.
4. Judges shall be independent and impartial in exercising their functions.
5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.

Article 116
[Legal Effect of Decisions]

1. Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

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.

3. If not otherwise provided by the Constitutional Court decision, the repeal of the law or other act or action is effective on the day of the publication of the Court decision.

4. Decisions of the Constitutional Court are published in the Official Gazette.

European Convention of 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 30

30.1 The claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility. Only the value of the disputed facility included in the main claim is taken into consideration.
30.2 If not included in the main claim, the interest, procedural expenditure, contracted penalties and other claims are not taken into consideration.

Article 211

211.1 Against the decision of the court of second instance, sides can present a revision within a period of thirty (30) days from the day the decision was brought.

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 €.

211.3 Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €.

211.4 Excluding, when dealt with the charge claim from the paragraph 2 and 3 of this article, the revision is always permitted: a) food contests; b) contests for damage claim for food lost due to the death of the donator of fond; c) contests in work relations initiated by the employee against the decision for break of work contract.

Article 214

214.1 Revision can be presented:

a) for violation of provisions of contested procedures from the article 188 of this law done by the procedure of the court of second instance;

b) due to wrongful application of material right;

c) due to over passing claim charge, if the irregularities were done in the procedure developed in the court of second instance.

214.2 Revision can be presented due to wrong ascertainment of incomplete of the factual state.

214.3 Against the decision issued in the procedures of the second instance, which verifies the decisions based on confession, the revision can be presented only by the causes mentioned in the paragraph 1, point. a) and b) of the paragraph 2 of this article.

214.4 Against the decisions of the second instance which verifies the decision of the first instance, the revision is not permitted due to the violation of the provisions of the contested procedures from the paragraph 1, pt. 1, of this article, unless their existence is not mentioned in the appeal, except when it is dealt with the violation which are under the official task of the second instance court and the one of the revision.

Article 215

The revision court examines the decision attacked only in the part that is attacked through revision and only within the boundaries of the causes shown by the revision, but taking care accordingly to the official obligation for rightful application of material goods right and for the violation of the provisions of the contested procedure, which deal with the ability to be a party and regular representation.

Article 477

The deadline for an appeal against an order is seven (7) days.

Admissibility of the Referral

45. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and in the Rules of Procedure.

46. 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 establish:

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".
[...]

47. The Court further considers whether the Applicant has fulfilled the admissibility requirements as specified by the Law, namely Articles 47, 48 and 49 of the Law, which establish:

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 [...]".

48. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria set out in Rule 39 [Admissibility Criteria], namely provisions (1) (d) and (2) of Rule 34 of the Rules of Procedure, which establish:

(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".

49. Regarding the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; challenges Decision [Rev. no. 43/2022] of the Supreme Court of 10 October 2022; has specified the rights and freedoms which he claims to have been violated; has exhausted all available legal remedies provided by law, and submitted the referral within the legal deadline.

50. The Court also finds that the applicant's referral meets the admissibility criteria set forth in paragraph (1) of rule 34 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements established in paragraph (3) of rule 34 of the Rules of Procedure.

51. Furthermore, and finally, the Court assesses that this referral is not manifestly ill-founded as established in paragraph (2) of rule 34 of the Rules of Procedure and therefore, it should be declared admissible, and its merits examined.

Merits

52. Initially, the Court recalls that the circumstances of the present case are related to the petitioner's claim filed against the public enterprise KEK, for the compensation of three (3) jubilee salaries and the payment of the salary difference, for three accompanying pension salaries, based on the General Collective Agreement, which was in force from 1 January 2015, until 1 January 2018. The Basic Court in Prishtina (i) approved the relevant claim for the part that was about the compensation of three (3) jubilee salaries in the amount of 2,739.00 euro; while (ii) it rejected the claim in the part related to the payment of the salary difference in the amount of 547.80 euro. The Court of Appeals, acting upon the KEK appeal, modified the first instance judgment and, referring to the relevant provisions related to the statute of limitations, rejected the applicant's claim in its entirety. In examining the request for the revision of the latter, the Supreme Court found that the revision in this case is not permitted, because the value of the dispute did not exceed the amount of 3,000.00 euro as established in paragraph 2 of article 211 of the LCP.

53. The Court recalls that the applicant, on 7 August 2021, submitted a referral to the Court, contesting the constitutionality of the Decision [Rev. no. 558/2020] of the Supreme Court, of 22 February 2021, whereby he claimed that his rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, Article 32 [Right to Legal Remedies], in conjunction with Article 54 [Judicial Protection of Rights] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR have been violated.

54. The Court further recalls that the latter, by its Judgment KI143/21, declared the applicant's referral admissible and, in terms of his right to access to the court, found that the Decision [Rev. no. 558/2020] of 22 February 2021 of the Supreme Court was rendered in violation 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, declaring the latter invalid and remanding it for retrial, in accordance with the findings of the Court in this Judgment. In assessing the applicant's allegations, the Court first (i) elaborated on the general principles of its case law and that of the European Court of Human Rights (hereinafter: the ECtHR) regarding the principle of "*access to the court*"; and (ii) thereafter, applied the latter to the circumstances of the present case. The Court, among other things, recalled that, in principle, the right to a fair and impartial trial does not only reflect the right to initiate proceedings, but also the right to receive a resolution of the relevant dispute from a court. The Court, after having analyzed the case file, considered that the value of the object of the dispute should take into account the total damage that was caused and that the assessment of the value of the damage for the purposes of the admissibility of the legal remedy cannot be subject to a very formalistic approach, while in the circumstances of the present case, the value of the dispute was above the value on the basis of which the revision is permitted. The Court further and based on the clarifications provided in the published Judgment, emphasized that the Supreme Court's failure to consider the request of the relevant applicant on its merits constitutes an insurmountable procedural flaw which is in violation of the right to access to court as an integral part of the right to a fair and impartial trial.

55. As a result of this, the Supreme Court by its Decision [Rev. no. 43/2022] of 10 October 2022, again rejected the revision of the applicant as impermissible. The Supreme Court basically found that the value of the dispute did not exceed the amount of 3,000. 00 euro as established in paragraph 2 of article 211 of the Law on Contested Procedure, this is because according to it (i) the subject of revision is only the request for three (3) jubilee salaries in the amount of 2,739.00 euro because against the rejection of the claim

in the part that had to do with the payment of the salary difference in the amount of 547.80 euro by the Basic Court, the applicant did not file an appeal with the Court of Appeals and (ii) the response to the appeal cannot be treated as an appeal, moreover, if the latter results to have been filed out of the legal deadline defined by the provisions of the Law on Contested Procedure.

56. The applicant in his referral essentially claims that by the Decision [Rev. no. 43/2022] of the Supreme Court, of 10 October 2022 (i) the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR has been violated, as a result, among other things, of non-approval of his request for revision based on the findings of the Court through the Judgment in the case KI143/21, and the violation of the equality of arms in the proceedings; (ii) the right to legal remedies, guaranteed by Articles 32 and 54 of the Constitution, in conjunction with Article 13 of the ECHR; and (iii) the right to equality before the law, guaranteed by Article 24 of the Constitution. In what follows, he also claims that the Supreme Court, by its contested Decision, as a result of not taking into account the findings of the Court in case KI143/21, has also violated Article 116 [Legal Effect of Decisions] of the Constitution, where in paragraph 1 stipulates that the decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

57. In relation to the latter, namely in terms of the implementation of the decisions of the Constitutional Court, the Court notes that the issue of the obligation to execute the decisions of the Constitutional Courts has also been addressed by the Venice Commission, and in this regard, the latter, in one of its opinions, namely through Opinion CDL-AD (2017) 003 (adopted on 10-11 March 2017) on the Law on amending the Organic Law No. 2/1979 on the Constitutional Court of Spain deals with the issue of the nature of the decisions of the Constitutional Court and who has the obligation to execute them, if the latter are not respected by the parties to whom they are addressed. Through this opinion, the Venice Commission emphasized that the decisions of the Constitutional Court are final and have a binding character (see paragraph 8 of the Opinion). According to the Venice Commission: "*This is a corollary of the supremacy of the Constitution. Disregarding a judgment of a Constitutional Court is disregarding the Constitution and the Constituent Power, which attributed the competence to guarantee this Constitution's supremacy to the Constitutional Court. When a public official refuses to execute a judgment of the Constitutional Court, he or she violates the Constitution, including the principles rule of law, separation of power and loyal cooperation of state organs [...]*" (see, paragraph 8 of the Opinion).

58. Following this, and in connection with the execution of the Judgment in case KI143/21, of 25 November 2021 of the Constitutional Court, through which it was found that the Judgment [Rev. no. 558/2020] of 22 February 2021 of the Supreme Court was rendered in violation of his right to access to the court and as a result of the annulment of this decision, the latter was remanded for reconsideration in accordance with the findings of the Court's Judgment in this case . Having said that, the Court by its Judgment in case KI143/21 concluded that the value of his dispute exceeded the amount of 3,000.00 euro. As a result of remanding the case for retrial and within the framework of the execution of the Court's Judgment in case KI143/21, the Supreme Court on 10 October 2022 rendered a decision, namely the Decision [Rev. no. 43/2022]. However, despite the findings of the Constitutional Court in this case, the Supreme Court, by its Decision, rejected again the revision of the applicant as impermissible, this time, among other things, reasoning that the response to the appeal was submitted out of the deadline set by the provisions of the LCP. The Court notes that as a result of rendering the contested Decision of the Supreme Court, the applicant, through his referral, submitted based on paragraph 7 of Article 113 of the Constitution, challenges the finding given by this decision of the Supreme Court.

59. However, based on the reasoning and findings of the Supreme Court, by its second Decision, which is again related to the permissibility of the revision, the Court assesses that the allegations of the applicant fall within the scope of his right to access the court, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, and consequently his current referral submitted to the Court will be examined and assessed within the framework of this right. This is because the essential claims raised in his referral are related to whether the Supreme Court by dismissing his revision again as impermissible due to the value of the dispute has disproportionately affected his right to a decision on merits in relation to his claim by the Supreme Court.

60. Based on this and the assessment of whether the applicant's right to access to the Supreme Court has been violated, the Court will first (i) elaborate the general principles of the right to access to the court, developed through the case law of the ECtHR and affirmed through the case law of the Constitutional Court, including the principles and criteria developed by the ECtHR related to the *ratione valoris* restriction on access to higher courts, to (ii) continue with the application of these principles and criteria in the circumstances of the present case.

A. General principles

(a) General principles regarding access to the Court

61. With regard to the right of "*access to a court*", a right guaranteed by paragraph 1 of Article 31 of the Constitution, in conjunction with paragraph 1 of Article 6 of the ECHR, the Court first notes that it already has a case law, which is built on the principles established by the case law of the ECtHR (including but not limited to cases *Golder v. the United Kingdom*, application no. 4451/70, Judgment, of 21 February 1975; *Běleš and others v. Czech Republic*, application no. 47273/99, Judgment, of 12 November 2002; *Miragall Escolano and Others v. Spain*, application no. 38366/97 and none others, Judgment, of 25 January 2000; and *Naït-Liman v. Switzerland*, application no. 51537/07, Judgment, of 15 March 2018). Having said that, the cases of the Court in which the Court has affirmed the principles established by the ECtHR and has applied the same in the cases for review before the Court, including but not limited to cases KI62/17, Applicant *Emine Simnica* [Judgment of 29 May 2018]; KI224/19 Applicant *Islam Krasniqi* [Judgment of 10 December 2020] and KI20/21 Applicant *Violeta Todorovic* [Judgment of 13 April 2021]; KI54/21 applicant *Kamber Hoxha* [Judgment, Judgment of 4 November 2021], KI55/21 applicant *Muhamet Ademi* [Judgment of 10 March 2021].

62. In this context the Court emphasizes that the "*right of access to a court*" as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, stipulates that the parties to the proceedings must have an effective legal remedy that enables them to protect their civil rights (see cases of the Court K224/19, Applicant *Islam Krasniqi*, cited above, paragraph 35; and KI20/21, Applicant *Violeta Todorović*, cited above, paragraph 41; see in this context also the cases of the ECtHR, *Beles and Others v. Czech Republic*, cited above, paragraph 49; and *Nait-Liman v. Switzerland*, cited above, paragraph 112).

63. The Court, based on its case law and that of the ECtHR, in principle, emphasized that the right of access to the court should be "*practical and effective*" and not "*theoretical and illusory*" (see, among others, the Court cases, KI20/21, applicant *Violeta Todorović,* cited above, paragraph 43 and KI224/19, applicant *Islam Krasniqi*, cited above, paragraph 39 and the ECtHR case, *Lupeni Greek Catholic Parish and others v. Romania* [GC], no. 76943/11, Judgment of 29 November 2016, paragraph 84).

According to the case law of the ECtHR, affirmed through the Court's own case law, this right is not absolute, but may be subject to limitations which should not reduce access to the court in such a way or to an extent that they violate the very essence of the right. Such restrictions will not be justified if they do not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, the case of the Court KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 51; KI20/21, applicant *Violeta Todorović*, cited above, paragraph 45; and KI54/21, applicant *Kamber Hoxha*, Judgment of 4 November 2021, paragraphs 63-64 and cases of the ECtHR: *Sotiris and Nikos Koutras ATTEE v. Greece*, no. 39442/98, Judgment of 16 November 2000, paragraph 15; *Běleš and others v. Czech Republic*, nr. 47273/99, Judgment of 12 November 2002, paragraph, 61; and *Lupeni Greek Catholic Parish and others v. Romania*, cited above, paragraph 89).

64. In the end, the Court, based on the case law of the ECtHR, reiterates that it is not its function to deal with errors of facts or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "*fourth instance*", which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (see, ECtHR case *Garcia Ruiz v. Spain* [GC] application no. 30544/96, Judgment of 21 January 1999, par. 28 and *Perez v. France* [GC] application no. 47287/99, Judgment, of 12 February 2004, paragraph 82, see, also cases of the Court: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011; and KI06/17, applicant *L. G. and five others,* Resolution on Inadmissibility of 25 October 2016, paragraph 37).

(b) General principles regarding access to higher courts and ratione valoris restrictions

65. The Court first notes that the ECtHR has emphasized that *"Article 6 of the [ECHR] does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the proceedings before them must comply with the guarantees of Article 6, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their civil rights and obligations"* (see ECtHR cases *Andrejeva v. Latvia* [GC], application no. 55707/00, Judgment of 18 February 2009, paragraph97).

66. Having said that, the Court refers to the case of the Grand Chamber of the ECtHR in the case *Zubac v. Croatia* [application no. 40160/12, Judgment of 5 April 2018], in relation to the limitation of access to the Supreme Court, where it was emphasized that: *"[...] finds it important to note that the case at hand does not concern the question of whether the domestic system is allowed, under Article 6 § 1 of the Convention, to place restrictions on the access to the Supreme Court, nor does it concern the scope of the possible arrangements providing for such restrictions. Indeed, there is no dispute between the parties that the ratione valoris restrictions on access to the Supreme Court are generally permissible and, for the purpose of this provision, legitimate. Moreover, in view of the fact that it is impossible to expect a uniform model for the functioning of the supreme courts in Europe, and having regard to the Court's case-law on the matter [...], there is no reason in the present case to put in doubt the legitimacy and permissibility of such restrictions or the domestic authorities' margin of appreciation in regulating their modalities."* In this regard, the ECtHR proceeded that the case at issue rather concerns the manner in

which the existing *ratione valoris* requirements operated in the applicant's case (see, paragraph 73 of the Judgment). Moreover, according to the ECtHR, it concerns the question whether in the particular circumstances of the case, the Supreme Court, by declaring the applicant's appeal on points of law (revision) inadmissible, applied excessive formalism and disproportionately affected her possibility of obtaining a final determination of her property dispute by that court, as otherwise guaranteed under the relevant domestic law (see, paragraph 74 of the Judgment).

67. In the further development of the principles related to access to the Supreme Court, namely to the permissibility of the legal remedy in this court as a result of the *ratione valoris* threshold defined by law, the ECtHR reiterated that *"the manner in which Article 6 paragraph 1 [of the ECHR] applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted before those courts. The conditions of admissibility of a revision may be stricter than for an ordinary appeal"* (see, paragraph 82 of the Judgment and the references used therein as the case [*Kozlica v. Croatia*](), no. 29182/03, Judgment of 2 November 2006, paragraph 32). Following this, the ECtHR emphasized that: "*the application of a statutory ratione valoris threshold for appeals to the supreme court is a legitimate and reasonable procedural requirement having regard to the very essence of the supreme court's role to deal only with matters of the requisite significance* (see, paragraph 83 of the Judgment in this case and the references used in this case, *inter alia* the case [*Jovanović v. Serbia*](), no. 32299/08, Judgment of 2 October 2012, paragraph 48; and see also the Court's case KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 52). Having said that, the ECtHR, in terms of assessing whether the restriction on access to the Supreme Court was proportionate, defined a three-step test, namely: (a) whether the restriction was foreseeable; (b) assessing whether the applicant or the state should bear the adverse consequences of errors made during the procedure; and (c) whether the application of the restriction of access to the court has resulted in excessive formalism.

68. In this regard, the ECtHR emphasized that the latter, based on its case law, has given importance to whether the procedure that would be developed and related to a complaint on issues of legality in the courts of the highest instance could be considered as foreseeable from the litigant's point of view (see, paragraph 87 of the Judgment and the references used in this case). According to the ECtHR, a coherent case law and continuous application of this practice as a rule would satisfy the foreseeability criterion regarding the restriction of access to the court, and this assessment has also guided the approach of the ECtHR in cases related to *ratione valoris* restrictions in the higher courts (see, paragraphs 88-89 of the Judgment and the references used in this case, such as the case of *Jovanović v. Serbia*, cited above, paragraph 48 and the case [*Egić v. Croatia*](), application no. 32806/09, Judgment, of 5 June 2014, paragraph 57).

69. Regarding whether the applicant or the state should bear the adverse consequences of errors made during the proceedings, the ECtHR emphasized that it must be determined whether (i) the applicant was represented during the proceedings and whether he had shown the due diligence in the undertaking of the relevant procedural actions, (ii) proceeding with the determination of whether the errors could have been avoided from the beginning and (iii) whether the errors could be mainly attributed to the applicant or the competent authorities (see, paragraphs 90-95 of the Judgment in the case of *Zubac v. Croatia*, and the references used in this case).

70. In this regard, the ECtHR first noted that the observance of formal rules in civil procedure, through which the parties ensure the resolution of a civil dispute, is valuable and important because: it is able to limit discretion; ensure equality of the parties; prevent arbitrariness; ensure effective resolution of a dispute and trial within a

reasonable time; and to guarantee legal certainty and respect for the court. However, according to the well consolidated case law of the ECtHR, "*excessive formalism*" may conflict with the criterion of guaranteeing the practical and effective right of access to the court within the meaning of paragraph 1 of Article 6 of the ECHR. According to the ECtHR, this usually happens in cases of a strict or narrow interpretation of a procedural rule, resulting in preventing the examination of a submission of the applicant to be assessed on its merits, and with the appearance of the risk that his / her right for the effective protection of the court is violated (see, paragraph 97 of the Judgment and the references used therein such as the case of *Běleš and Others v. Czech Republic*, cited above, paragraphs 50-51).

71. Following this, the ECtHR has underlined that the assessment of the complaint for excessive formalism in the decisions of the local courts will, as a rule, be the result of examining the case in its entirety. In making this assessment, the Court has often pointed to the issues of "*legal certainty*" and "*proper administration of justice*" as two central elements to make a distinction between an excessive formalism and an acceptable application of procedural formalities. Following this, the ECtHR underlined that: *"[...] however, the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court* (see, paragraphs 98-99 and references therein).

72. Consequently, the ECtHR in the application of the aforementioned principles in the circumstances of the case *Zubac v. Croatia* assessed whether (i) the access to the Supreme Court as a result of the *ratione valoris* threshold constituted a restriction; (ii) whether this restriction pursues a legitimate aim; and (iii) whether the restriction was proportionate, and in terms of the latter, the ECtHR assessed whether: (a) the foreseeability of the restrictions; (b) the issue of whether the applicant or the state should bear the adverse consequences of errors made during the proceedings; and (c) the issue of "*excessive formalism*" in the application of this restriction, to conclude with its conclusion regarding the proportionality of the restriction of access to the Supreme Court (see, paragraphs 80-126 of the Judgment in case Zubac v. *Croatia*).

73. Following this, the ECtHR in case *Zubac v. Croatia*, applying the principles and criteria developed in this case, found that the restriction of access to the Supreme Court of the Republic of Croatia was not the result of inflexible procedural rules, namely, the law and the relevant domestic case law provided for the possibility of changing the value of the case in dispute at an earlier stage of the judicial process, which enables access to the Supreme Court in case of a change in the circumstances of the case. In addition, the Applicant could have filed another extraordinary remedy established by law that would have also given her access to the Supreme Court, which she did not do. Following this, the ECtHR concluded that: *"The main function of the Supreme Court, as the highest court in Croatia, is to ensure the uniform application of the law and the equality of all in its application.*" According to the ECtHR: (i) the restriction of access to that court by setting a legal *ratione valoris* threshold is justified by the legitimate aim of the Supreme Court to deal only with more significant cases and (ii) the resolution of irregularities committed by the lower courts in determining the value of the dispute also aimed at a legitimate aim, namely respect for the rule of law and the proper functioning of the judicial system (see, paragraphs 101-125 of the Judgment in case *Zubac v. Croatia*).

74. In the light of the above elaboration, the Court in the circumstances of the present case will further apply the principles and the above test developed by the ECtHR, respectively assessing whether (i) in relation to the criterion of foreseeability of the restriction through the legal threshold , will assess whether the case law of the Supreme Court is consistent and clear regarding the permissibility of revision; (ii) whether the restriction of access to the Supreme Court could be attributed to the applicant; and (iii)

if the Supreme Court used excessive formalism in the interpretation and application of the legal provisions in force related to the threshold of admissibility of the revision.

B. Assessment of the Court

75. Initially, the Court considers it important to emphasize that in terms of the proper administration of justice, the application of formal and procedural rules related to the admissibility of a legal remedy is of such importance that it serves legal certainty during the development of judicial proceedings before regular courts.

(a) Restrictions on the applicant's access to the Supreme Court

76. The Court points out that the provisions of the LCP define revision as an extraordinary remedy of contesting, which the parties can submit to the Supreme Court on the grounds of (a) violation of the provisions of the contested procedure; (b) erroneous application of substantive law; and (c) exceeding the claim (items a, b and c of paragraph 1 of article 214 of the LCP). However, based on paragraph 2 of article 211, of the LCP "*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 €*". Having said that, at the moment of reaching this threshold, the Supreme Court based on Article 223 of the LCP can annul the decisions of the lower instance courts and remand the case to the lower instance court for retrial or to annul the decisions of the lower instance courts and consequently reject the claim of the parties.

77. Returning to the circumstances of the present case, the Court recalls that the applicant against the Judgment [Ac. no. 5071/2019] of 17 January 2020, of the Court of Appeals submitted a revision to the Supreme Court. By the above-mentioned Judgment of the Court of Appeals, challenged by the applicant with revision, namely in item I of its enacting clause, it was decided that:

    I. The appeal of the respondent Kosovo Energy Corporation (KEK) in Prishtina is APPROVED, Judgment C. no. 3845/18 of 07.05.2019 of the Basic Court in Prishtina - General Department, civil division , in point I, II and IV of the enacting clause, so that the claim of [the applicant], requesting that the respondent be obliged to pay [the applicant] three salaries for jubilee reward the amount of 2,739.00 euro and in the name of the difference in the amount of 547.80 euro, in the total amount of 3,286.80 euro and the costs of the proceedings, within 7 days, after the receipt of the judgment, under threat of forced execution, is REJECTED as UNGROUNDED.

78. Following this, the Court notes that the nature of the restriction *ratione valoris* based on the aforementioned legal provisions is based on paragraph 2 of Article 211 of the LCP.

79. Based on this, the Court will assess whether the restriction *ratione valoris* follows a legitimate aim.

(b) Whether the restriction pursues a legitimate aim

80. The Court notes that the restriction of access to the Supreme Court is within the generally recognized legitimate purpose of the statutory *ratione v*aloris threshold for the submission of revision to the Supreme Court, that is related to the very essence of its jurisdiction and competence to adjudicate on issues of legality of decisions rendered by the lower court as the highest judicial authority, as stipulated by Article 103

[Organization and Jurisdiction of Courts] of the Constitution. Consequently, the Court assesses that the *ratione v*aloris threshold determined by law pursues a legitimate aim, which serves the respect for the rule of law and the proper administration of justice.

(c) Whether the restriction was proportionate to the legitimate aim

81. Based on the above-mentioned elaboration, the Court reiterates that the modalities of the limitation *ratione valoris* are defined in the applicable legislation in force, and in this regard, it does not contest the competence of the Supreme Court to assess the permissibility of the revision which is subject to this limitation. However, the Court, in the context of assessing whether the limitation, found through the contested Decision of the Supreme Court was proportionate, will examine: (i) whether this limitation was foreseeable; (ii) whether the consequences of errors made during the procedure should be borne by the court or by the litigants themselves, and (iii) whether there was an "*excessive formalism*" that limited the applicant's access to the Supreme Court.

(i) In regard to the foreseeability of restriction

82. The Court, returning to the circumstances of the present case, regarding (i) the issue of foreseeability, assesses that the Supreme Court has a consolidated case law regarding the legal threshold established by paragraph 2 of article 211 of the LCP for admissibility of revision. In this regard, the Court also takes into account the relevant legal provisions that regulate the determination of the value of the object of the dispute in the contested procedure, namely articles 211 and 218 of the LCP, which determine the permissibility of the revision in the context of the legal threshold or the minimum value for submitting this legal remedy. Therefore, the Court assesses that the proceedings regarding the review of the admissibility of the revision before the Supreme Court regulated by the aforementioned legal provisions is foreseeable.

(ii) Bearing the adverse consequences of errors made during the procedure

83. The Court assesses that the applicant was represented by a legal representative, who initially filed (i) a lawsuit with the Basic Court, then (ii) appeal to the Court of Appeals and then (iii) revision to the Supreme Court. As a result, the Court, in accordance with the aforementioned principles and criteria established through the case law of the ECtHR, assesses that the applicant has followed the procedure of legal remedies as defined by law. In this regard, the Court refers again to item I of the enacting clause of the Judgment of the Court of Appeals, which in this part rejected the claim of the applicant in the "*total amount of 3,286.80 euro*". Accordingly, in this regard, this determination of the Court of Appeals through item I of the enacting clause of its Judgment of 17 January 2020 cannot be attributed to the applicant. Having said that, the failure of the Supreme Court to take into account this finding of the Court of Appeals in item I of the enacting clause of its Judgment, cannot be to the detriment of the applicant, whose right in this case has been limited for consideration of his revision by the Supreme Court on merits.

(iii) Whether there was an "excessive formalism" that limited the applicant's access to the Supreme Court

84. In terms of assessing how the procedural requirements of the law have been implemented, respectively, whether or not the Supreme Court has used excessive formalism when interpreting the relevant legal provisions in force and related to the permissibility of revision, the Court, first, refers to the relevant parts of the contested decision, and notes that the Supreme Court justified the conclusion of rejecting, as inadmissible, the request for revision, among other things, that (i) supports the

reasoning given in the first procedure before it, where it states that "t*aking into account the fact that the claimant has not filed an appeal against the first instance judgment, nor in its rejecting part, as in item three (III) of the enacting clause, and while only the respondent filed an appeal, in this part the decision of the first instance court has remained not reviewed, and the claimant since in this part has not filed the regular remedy - appeal, cannot file the revision as an extraordinary remedy, in terms of the rejected claim on behalf of the difference in the amount of € 547.80* and (ii) as for the amount of the value of the revision, the object of the revision may be "*only the request for three salaries for jubilee reward in the amount of €2,739.00, in which part the revision is not allowed, due to the value of the claim, which was contested with the revision, which is in the amount of only 2,739.00 euro".*

85. The Court, taking as a basis the finding of the Supreme Court, which is specifically related to the interpretation of paragraph 2 of article 211 of the LCP and its findings regarding the legal threshold, notes that its interpretation has resulted in a formalistic interpretation, this is because the impugned judgment of the Court of Appeals in point I of its enacting clause determined the rejection of the applicant's claim *"in a total amount of 3,286,80 euro".* Having said this, the Court, in principle, does not question the competence of the Supreme Court, defined by law, to examine the permissibility of the revision in terms of the *ratione valoris* threshold , based on paragraph 2 of Article 211 of the LCP, before assessing the revision on the merits. Moreover, the Court also reiterates that the interpretation of procedural rules serves legal certainty and the proper administration of justice, as an integral part of the fundamental principle of the rule of law in a democratic state (see Court case KI54/21, applicant *Kamber Hoxha*, cited above, paragraph 82).

86. However, the applicant, based on the determinations of the Judgment of the Court of Appeals, according to point I of its enacting clause, submitted a revision expecting that the latter would be examined on merits in the Supreme Court. In this regard, the Court considers that the applicant had the expectation that his revision, which was based on his claim submitted to the Basic Court, and rejected through point I of the impugned Judgment of the Court of Appeals, would be examined on the merits by the Supreme Court.

87. Having said that, the Court notes that the strict interpretation of the Supreme Court of the rules of the threshold of the value of the object in the circumstances of the applicant's case, which are directly related to the impugned Judgment of the Court of Appeals, contradicts the criterion of guaranteeing the practical and effective right of access to the court in the sense of paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR.

88. As a result, the Court assesses that the formalistic interpretation of the procedural rules created an obstacle for the applicant to have his case resolved on the merits.

89. In this sense, the Court notes that the contested Decision of the Supreme Court, which for the second time rejected the applicant's revision as impermissible, constitutes an excessive formalism, which has resulted in a very strict interpretation and application of procedural rules, stipulated by the legislation in force and as a result unjustifiably violated the applicant's access to its jurisdiction.

Conclusion regarding proportionality

90. The Court has dealt with the applicant's allegations and found that the circumstances of the present case again contain elements related to the alleged violation of his right to access to the court, as an integral part of his right to fair and impartial trial, guaranteed

by paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR.

91. Based on the elaboration as above, the Court once again emphasizes that it does not challenge or question the content of paragraph 2 of Article 211 of the LCP, as well as the applicability of this provision in the circumstances of the present case, however it concludes that the interpretation and the implementation of the relevant provisions of the LCP that are related to the permissibility of revision was not proportionate to the aim pursued to guarantee legal certainty and the proper administration of justice, as one of the basic principles of the rule of law in a democratic society.

General conclusion

92. Finally, the Court finds that the finding of the Supreme Court by the contested Decision of the Supreme Court, of 10 October 2022, to dismiss the claim of the applicant as inadmissible because the value of the object did not exceed the threshold of 3,000 00 euro is not in compliance with paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR.

93. In what follows, the Court recalls that the applicant in his referral also alleged a violation of Articles 3 [Equality Before the Law], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution. In this regard, as elaborated above, the Court found that the circumstances of the applicant's case encompasses elements related to his right of access to the court, as an integral part of the right to a fair and impartial trial, guaranteed by paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR and following the finding as above, by this Judgment, the Court does not consider it necessary to examine separately the allegations of violation of rights guaranteed by Articles 32 and 54 of the Constitution.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraphs 1 and 7 of article 113 and paragraph 1 of article 116 of the Constitution, articles 20 and 47 of the Law and rule 48 (1) a) of the Rules of Procedure, on 30 May 2024

DECIDES

I. TO DECLARE, by eight (8) votes for and one (1) against, the referral admissible;

II. TO HOLD, by eight (8) votes for and one (1) against, that Decision [Rev. no. 43/2022] of 10 October 2022, of the Supreme Court is not in compliance with paragraph 1 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, by eight (8) votes for and one (1) against, invalid Decision [Rev. no. 43/2022] of 10 October 2022 of the Supreme Court;

IV. TO REMAND, by eight (8) votes for and one (1) against, Decision [Rev. no. 43/2022] of 10 October 2022, of the Supreme Court for reconsideration on merits, in accordance with the finding given in this Judgment;

V. 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 2 December 2024, about the measures taken to implement this Judgment;

VI. TO NOTIFY this Judgment to the parties;

VII. TO PUBLISH this Judgment in the Official Gazette, in accordance with paragraph 4 of article 20 of the Law;

VIII. This Judgment enters into force on the day 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**
Bajram Ljatifi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.