



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

Prishtina, on 5 July 2024  
Ref. no.:AGJ 2472/24

*This translation is unofficial and serves for informational purposes only.*

## **JUDGMENT**

in

**case no. KI154/23**

**Applicant**

**Afrim Tafarshiku**

**Constitutional review of Judgment AC. no. 8304/2021, of 20 February 2023, of the  
Court of Appeals of Kosovo**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërzhaliu-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 was submitted by Afrim Tafarshiku, residing in Prishtina (hereinafter: the Applicant), represented by Jeton Osmani, a lawyer in Prishtina.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Judgment [AC. no. 8304/2021] of 20 February 2023 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), in conjunction with the Judgment [C. no. 3804/18], of 5 December 2019, of the Basic Court in Prishtina, General Department (hereinafter: the Basic Court).
3. The Applicant was served with the contested Judgment on 13 March 2023.

## **Subject matter**

4. The subject matter is the constitutional review of the contested Judgment, whereby it is claimed that the Applicant's rights guaranteed by: articles 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with paragraph 1 of Article 6 of the European Convention on Human Rights (hereinafter: ECHR), as well as articles: 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 of the ECHR, and paragraph 5 of Article 102 [General Principles of the Judicial System] of the Constitution, have been violated .

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, articles 20 [Decisions] and 22 [Processing Referrals] 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, Nr. 01/2023 (hereinafter: the Rules of Procedure).
6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

## **Proceedings before the Constitutional Court**

7. On 13 July 2023, the applicant's representative, by mail service, submitted his referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 2 August 2023, the President of the Court by the Decision [GJR. KI154/23] appointed judge Enver Peci as Judge Rapporteur and by the Decision [KSH. KI154/23], the Review Panel, composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Radomir Laban (members).
9. On 18 July 2023, the Court notified the applicant's representative about the registration of the referral as well as the Basic Court, which was also asked to submit to the Court the

acknowledgment of receipt that proves when the applicant was served with the contested decision. On the same date, a copy of the referral was sent to the Court of Appeals.

10. On 24 July 2023, the Basic Court submitted to the Court the requested acknowledgment of receipt that proves when the Applicant was served with the contested decision.
11. On 31 October 2023, the Court requested the Basic Court to confirm whether the applicant submitted a response to the appeal during the second instance procedure to the Court of Appeals.
12. On 6 November 2023, the Court accepted the response from the Basic Court, where it is confirmed that the applicant, on 28 September 2021 submitted the response to the appeal to the Basic Court, which response was forwarded on 19 October 2021, to the Court of Appeals.
13. On 13 November 2023, the Court requested the Court of Appeals to confirm whether, during the second instance procedure at the Court of Appeals has reviewed the response to the appeal, of 28 September 2021.
14. On 22 December 2023, in the absence of a response from the Court of Appeals, the Court turned to the Kosovo Judicial Council (hereinafter: KJC) to confirm the aforementioned information, which was requested from the Court of Appeals.
15. On 27 December 2023, the Court received the response from the Court of Appeals, in which it was not specified whether it had accepted and reviewed the response to the applicant's appeal of 28 September 2021, but only attached the copy of the Judgment [AC. no. 8304/2021] of 20 February 2023 of the Court of Appeals and the note for consultation and voting of this Judgment.
16. On 11 March 2024, Judge Jeton Bytyqi took the oath in front of the President of the Republic of Kosovo, in which case his mandate at the Court began.
17. On 28 May 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court in full composition after deliberation, decided: (i) to declare, unanimously, the referral admissible; (ii) to hold, unanimously, 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 paragraph 1 of article 6 (Right to a fair trial) of the European Convention on Human Rights; (iii), to declare, by 8 (eight) votes for and 1 (one) against invalid, the Judgment [AC. no. 8304/2021], of 20 February 2023, of the Court of Appeals of Kosovo and (iv) remand, by 8 (eight) votes for and 1 (one) against, the Judgment [AC. no. 8304/2021], of 20 February 2023, of the Court of Appeals of Kosovo, for reconsideration in accordance with the Judgment of this Court.
18. In accordance with Rule 57 (Concurring Opinions) of the Rules of Procedure of the Court, Judge Radomir Laban has prepared a concurring opinion, which will be published together with this Judgment.

## Summary of facts

19. From the case file it turns out that the applicant was employed in the position of “*Team Leader*” in the Energy Corporation of Kosovo (hereinafter: KEK), from 17 September 1974 in different positions.
20. On 8 May 2018, the Applicant submitted a request to his employer for the recognition of the right to the payment of three jubilee salaries.
21. On 15 May 2018, On 10 April 2019, the Employer by Decision [Nr. 3861] rejected as ungrounded the applicant’s request for awarding three jubilee salaries, as a result of not fulfilling the criteria defined by its decisions on jubilee reward.
22. On 10 April 2019, the Employer issued Decision [no. 2244] by which it accepted the obligation to compensate jubilee salaries for the period 2015-2017. Meanwhile, on 23 August 2019, by Decision [no. 3261], the Employer supplemented Decision [no. 2244] recognizing the right to payment of jubilee salaries to all employees who met the requirement until 31 December 2019.
23. On 21 December 2018, the Applicant submitted a lawsuit to the Basic Court for the compensation of jubilee salaries, with the proposal that the Basic Court approves the statement of claim, recognizes his right to the payment of 3 (three) jubilee salaries in the unspecified amount, with legal interest at the amount of 8% (eight percent), as well as to compensate the costs of the proceedings.
24. On 31 October 2019, the Employer submitted the response to the Applicant’s lawsuit, of 21 December 2018, with the proposal that the Basic Court reject it due to the filing of the claim.
25. On 5 December 2019, the Basic Court, by Judgment [C. no. 645/2020] approved the Applicant’s statement of claim as grounded in its entirety. The Basic Court, among other things, assessed that the right to jubilee salaries was determined by Article 52 of the General Collective Agreement of Kosovo (hereinafter: GCAK) and by paragraph 4 of Article 53 of the Employer’s Employment Code, according to which the latter held the right to “...*additional payment/bonuses/for own employees or jubilee salaries...*”. Consequently, in the reasoning of the Judgment of the Basic Court it was emphasized as follows:

*“From the reasons stated above, the court has come to the conclusion that in the present case the conditions set forth in the provisions of Article 53.4 of the Labor Code are met, that the claimant is recognized the right to the payment of salaries in the name of the jubilee bonus in the amount of three salaries, as well as from Decision no. 8261 of 23.08.2019, issued by the respondent itself, where all employees who meet the requirements, by 31.12.2019, are entitled to a jubilee salaries, therefore, it was decided to approve the claimant’s statement of claim as grounded”.*
26. On 28 January 2020, the Employer submitted an appeal to the Court of Appeals against the Judgment [C. no. 3804/2018] of 5 December 2019 of the Basic Court on the grounds of (i) violations of the provisions of the contested procedure; (ii) incomplete determination of the factual situation; and (iii) erroneous application of substantive law, with the proposal that the statement of claim be rejected as ungrounded. In the submitted complaint, the Employer emphasized that the violation of the procedural provisions consisted in that the enacting clause of the Judgment [C. no. 3804/2018] of the Basic Court was contrary to the

evidence of the case file. Furthermore, by the appeal, the Employer alleged that the first instance court had erroneously decided on the basis of the respective Law on Obligation Relationships and of the GCAK, since at the time when the Applicant submitted the lawsuit and the request with the Employer, the GCAK was not in force and consequently did not produce legal effects.

27. From the case file it turns out that on 27 September 2021, the Applicant submitted the response to the appeal to the Basic Court for the Court of Appeals, where among other, he emphasized that: *"[...] The respondent's allegation that the lawsuit is out of time and that the claimant had to follow the procedure at the time when, according to the respondent, the GCAK was in force fully contradicts the provisions of the Labor Law, and this is due to the fact that in this dispute we are dealing with a dispute in which the claimant requests to recognize a monetary right recognized on the basis of the aforementioned provisions, in the sense of this since the claimant acquired the right at the time when the GCAK was in force, based on Article 87 of LL, the claimant has time up to 3 years from the date of submission of the request to request that this right be recognized, and that the respondent did not recognize such a right to the claimant even when the request was submitted, which means that from this moment runs (the statute of limitation, but in any case the respondent has interrupted the statute of limitation with the continuation of the recognition of the obligation to pay jubilee salaries by the decision no. 8261 of 23.08.2019, therefore, we consider that the court has decided correctly when approving the claimant's claim as ground since the claimant fully meets these conditions, but the respondent itself has recognized such a right, but has not paid the jubilee salaries"*.
28. On 20 February 2023, the Court of Appeals, by the Judgment [Ac. no. 8304/2021] approved as grounded the appeal filed by the employer and modified the Judgment of the Basic Court [C. no. 3804/2018] of 5 December 2019, rejecting the applicant's claim as ungrounded. In the content of this Judgment, the Court of Appeals did not reflect the fact whether it examined the response to the appeal submitted by the applicant, which, based on the case file, it received on 19 October 2021. Furthermore, in the reasoning of its Judgment, the Court of Appeals assessed the following:

*"According to the assessment of the second instance court, the judgment is contrary to the evidence found in the case file, namely the judgment does not contain reasons for the decisive facts, - and in particular for the time of reaching the work experience of 30 years, respectively 40 years - in the name of which experience, the claimant requested the jubilee reward in the value of three basic salaries. Also, the factual situation determined by the first instance court does not exactly correspond to the evidence from the case file, since from the statements in the lawsuit and other evidence in the case file, it results that the claimant from 1974 established an employment relationship with the respondent, from which fact results that he reached 40 years of work experience in 2014, while he initiated the contested procedure by the lawsuit of 21.12.2018, requesting the respondent's obligation to pay three salaries in the name of the jubilee reward.*
29. Therefore, referring to the provisions of Article 87 of Law no. 03/L-212 on Labor (hereinafter: Law on Labor ), the Court of Appeals held that the applicant's request was time-barred after determining a different factual situation, namely that the applicant reached the jubilee part of the work in 2014, from which date the statute of limitation period began to run.

## **Applicant's allegations**

30. The Applicant claims that the contested Judgment violates his rights protected by articles: 3 [Equality Before the Law], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with paragraph 1 of Article 6 of the European Convention on Human Rights (hereinafter: ECHR), as well as articles: 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 of the ECHR, and paragraph 5 of Article 102 [General Principles of the Judicial System] of the Constitution.
31. In relation to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Applicant essentially claims that the contested Judgment of the Court of Appeals contains: (i) lack of review of his response to the complaint filed by the opposing party, namely, violation of the principle of equality of arms (ii) erroneous application of the law, as well as (iii) lack of consistency, namely divergence in the case law of the Court of Appeals.
32. Regarding the first issue, namely, the violation of the principle of equality of arms, the Applicant claims that his right to fair and impartial trial was violated due to the fact that his response to the complaint filed by the opposing party was not examined at all, since the Court of Appeals when deciding, it did not take into account and did not establish that the applicant submitted a response to the complaint, which, according to him, is contrary to paragraph 1 of article 31 and articles 32, 54 and paragraph 5 of article 101 of the Constitution.
33. As for the second issue, namely, the erroneous application of the law, the Applicant alleges that the erroneous assessment of the Court of Appeals that the legal basis of the claim is in the GCAK, led to the erroneous assessment of the timeliness of the statement of claim, finding that his claim was time-barred. In this regard, the Applicant states that: *“The judgment of the Court of Appeal, by which the complaint of the respondent was approved and the claim of the claimant was rejected, was taken contrary to the factual situation and with incorrect application of substantive law by not applying the internal acts of the respondent. Therefore, it is indisputable fact that in the present case, not only the principle of the administration of justice but also the equality of arms have been violated to the applicant, which consists in not applying the correctly the substantive law when deciding regarding the legal remedy effectively as a consequence of the Refusal to submit the claim as in the highlighted decision. By rejecting the claimant's request as unfounded, the applicant has been put in a substantially unfavorable position vis-à-vis the respondent. [...]”*. In this regard, the Applicant claims that the contested Judgment of the Court of Appeals is unlawful and discriminatory, contrary to the material evidence and accompanied by erroneous application of the law, due to the fact that the Court of Appeals diverted his case to reward the three jubilee salaries that, according to him, he is entitled to, based on paragraph 4 of Article 53 of the KEK Labor Code.
34. Also, in this context, the Applicant emphasizes that he was placed in an unequal position with the opposing party and that he was discriminated against in comparison to his colleagues who exercised this right under the same conditions, based on the decisions and the Labor Code of the Employer, in which case he raises the allegation of violation of Article 24 of the Constitution.

35. As for the third issue, namely, the lack of consistency in the case law of the Court of Appeals, the Applicant in his referral, also mentions 4 (four) court decisions of the Supreme Court and the Court of Appeals in other cases, respectively, the decisions with the following numbers: [CML. No. 07/2020], of 15 April 2021; [Rev. no. 90/2020] of 4 May 2020; [Ac. no. 4367/19], of 17 July 2020; and [Ac. no. 2016/2020], of 24 June 2020], and states that the claims of the claimants in question have been approved, but the latter has not attached copies of these decisions to the Court. In relation to this allegation, the applicant claims that legal certainty has been violated since, under the same conditions, the Court of Appeals and the Supreme Court recognized the claimant's right to jubilee award, while not to him.
36. In the following, the Applicant specified in his referral that : *"[...] by the decision of the Supreme Court to Reject the revision of the claimant as ungrounded, with the erroneous application of the legal provisions as in the aforementioned reasoning, the applicant's Right to Legal Remedies has also been violated within the meaning of Article 32 in conjunction with Article 54 of the Constitution of Kosovo, because each person has the right to use legal remedies against judicial and administrative decisions that 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 the denial of any right guaranteed by this Constitution or by law, as well as the right to effective legal remedies if it is established that such a right has been violated."*
37. Finally, the applicant requests the Court to: i) approve his referral; (ii) annul the Judgment [AC. no. 8304/2021] of 20 February 2023, of the Court of Appeals as unlawful; and iii) to remand the case for reconsideration and retrial to the Court of Appeals.

### **Response of the Basic Court**

38. On 6 November 2023, the Court accepted the answer from the Basic Court, where it is emphasized as follows:

*"We are responding to your request KI154/2023 of 31.10.2023 regarding Case C. no. 3804/2018.*

*Lawyer Jeton Osmani submitted an answer to the complaint in the Court on 28.09.2021 and in the attachment you can find the letter of confirmation and a copy of the answer attached to the case as well as a copy of the register where it is evidenced that on 19.10.2021 the case was completed in the Court of Appeals"*

### **Response of the Court of Appeals**

39. On 27 December 2023, as noted above, the Court received the response from the Court of Appeals, in which it was not specified whether it had accepted and reviewed the response to the applicant's complaint of 28 September 2021 but had attached only the copy of the Judgment [AC. no. 8304/2021] of 20 February 2023 of the Court of Appeals and the note for consultation and voting of this Judgment.

## 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 24** **[Equality Before the Law]**

*“1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.*

*2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.  
[...]*”

#### **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.*

*[...]*”



## 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.  
[ ...]”*

### Article 13 (Right to an effective remedy)

*“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”*

## LAW No. 03/L-006 ON CONTESTED PROCEDURE

### Article 5 (no title)

*“5.1 The court shall enable each party to make a statement on the claims and allegations submitted by the contentious party.  
5.2 Only for the cases determined by this law, the court has the power to settle the claim for which the contentious party was not enabled to make a statement.”*

### Neni 182 (no title)

*“182.1 Basic violation of provisions of contested procedures exists in case when the court during the procedure didn't apply or wrong application of any of the provisions of this law, while this has or will impact a rightful legal decision.*

*182.2 Basic violation of provisions of contested procedures exists always:*

*[...]*

*h) if it's contrary to the provisions of this law, the court has issued a decision based on confession of the party, disobedience, absence, withdrawal from the claim or without holding of the main hearing;*

*i) if any of the parties through illegal activity, especially by not offering the opportunity for a hearing in the court;*

*[...]*

*n) if the decision has leaks due to which it' can't be examined, especially if the disposition of the decision is not understandable or contradictory in itself with the reasoning of the verdict, or when the verdict has no reason or which gives no*

*justification for the final facts, or which reasoning are unclear, contradictory, or if in the final facts there are contradictions between what is said in the verdict, the main document or the procedural records and of the document or the minutes of proceeding;*

*o) if the verdict overpass the claim for charges.*

*[...].”*

#### **Article 187 (no title)**

*“187.1 A sample of the complaint presented timely, legally and complete, is sent within seven days to the opposing party by the court of the first degree complain, that can be replied with presentation of a complaint within seven days.*

*187.2 A sample of the reply with complaint the first degree court sends to the complainer immediately or at the latest within the period of seven days from its arrival to the court.*

*[...]”*

#### **Article 188 (no title)**

*“188.1 After receiving the reply to the complaint, or after the deadline for replying to the complaint, the court of the first degree will forward the subject will following documentation to the court of the second degree the complaint and the reply presented within a period of seven days at most.*

*188.2 If the complainer asses that during the first degree procedure the provisions of contestation procedures are violated, the court of the first degree can issue explanation regarding the subject of the complain relating to the violations of the kind, and according to the need it can conduct investigations aiming at verification of the correctness of the subject in the complaint.”*

#### **Article 195 (no title)**

*“195.1 The complaint court in the college session or based on the case evaluation done directly in front of it can:*

*a) disregard the complaint that arrives after the deadline, it’s incomplete or illegal;*

*b) disregard the case and reject the claim;*

*c) can disregard the decision and return the case for re-trial in the court of the first instance;*

*d) reject the complaint as an un-based one and verify the decision reached;*

*e) change the decision of the first instance.*

*195.2 The court of the second instance is not linked to the proposal submitted in the complaint.”*

## Admissibility of the Referral

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

41. In this respect, the Court refers to Article 113 of the Constitution which establishes:

*“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.”*

42. In the following, the Court examines whether the Applicant has fulfilled the admissibility criteria, as established in the Law. In this regard, the Court refers to articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

### *Article 47 (Individual Requests)*

*“1. Every individual is entitled to 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 [...].”*

43. Regarding the fulfillment of the admissibility criteria, as mentioned above, the Court finds that the applicant is: (i) an authorized party; (ii) contests an act of a public authority, namely the Judgment [AC. no. 8304/2021] of 20 February 2023, of the Court of Appeals; (iii) specified the rights and freedoms that he claims have been violated; (iv) has exhausted all legal remedies established by law; and (v) submitted the referral within the legal deadline.

44. The Court also finds that the applicant's referral meets the admissibility criteria, established in paragraph 1 of rule 34 of the Rules of Procedure and that the latter cannot be declared inadmissible based on the requirements established in paragraph 3 of rule 34 of the Rules of Procedure. The Court also states that the referral is not manifestly ill-founded on

constitutional basis, as foreseen in paragraph 2 of rule 34 of the Rules of Procedure, therefore it is to be declared admissible and its merits must be examined.

### **Merits of the Referral**

45. The Court notes that the Applicant challenges the Judgment [AC. no. 8304/2021] of 20 February 2023, of the Court of Appeals by which it approved as grounded the complaint submitted by the Employer and modified the Judgment [C. no. 3804/2018] of 5 December 2019 of the Basic Court rejecting the statement of claim of the Applicant as ungrounded.
  46. The Court reiterates that the Applicant essentially claims a violation of his rights protected by paragraphs 1 and 2 of Article 24 [Equality Before the Law], paragraphs 1 and 2 of Article 31 [Right to Fair and Impartial Trial ] of the Constitution in conjunction with Article 6 of the ECHR. Further, the Court notes that the applicant, in terms of his right to a fair and impartial trial, essentially claims that the contested Judgment of the Court of Appeals contains: (i) lack of consideration of his response to the complaint filed by the opposing party, namely, violation of the principle of equality of arms (ii) erroneous application of the law, as well as (iii) lack of consistency, namely divergence in the case law of the Court of Appeals.
  47. Consequently, the Court will examine the Applicant's allegation related to the principle of equality of arms within the meaning of his right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR based on the case law of the European Court of Human Rights (hereinafter: ECHR), in accordance with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
  48. In this context, the Court emphasizes that the Applicant claims that in his case the "*principle of adversariality*" and that of "*equality of arms*" were not respected, as the response to the complaint, of 28 September 2021, during the second instance procedure by the Court of Appeals, in which judgment it was not mentioned at all that the applicant submitted a response to the complaint and whether it was reviewed or not.
  49. In this regard and in order to deal with the Applicant's allegations, the Court will first elaborate (i) the general principles regarding the equality of arms and the principle of procedural adversariality, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, insofar as they are relevant in the circumstances of the present case, in order to assess the applicability of these articles, to continue with (ii) the application of these general principles in the circumstances of the present case.
- I. General principles regarding the equality of arms and the principle of adversarial procedure guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR as well as relevant case law**
- (i) *General principles*
  50. Regarding the equality of arms and the principle of procedural adversariality, which are guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Court first emphasizes that it already has a case law, which was built based on the principles established through the case law of the ECtHR (including but not limited to the cases [\*Yvon v. France\*](#), no. 44962/98, Judgment of 24 July 2003; [\*Dombo Beheer B.V. v. the Netherlands\*](#), no. 14448/88, Judgment of 27 October 1993; [\*Brandstetter v. Austria\*](#), no. 11170/84,

2876/87; 13468/87, Judgment of 29 August 1991; [Vermeulen v. Belgium](#), no. 19075/91, Judgment of 20 February 1996; [Rowe and Davis v. United Kingdom](#), no. 18990/91; Judgment of 16 February 2000, [Jasper v. the United Kingdom](#), nr. 27052/95, Judgment of 16 February 2000; [Zahirović v. Croatia](#), no. 58590/11, Judgment of 25 July 2013; [Beer v. Austria](#), no. 30428/96, Judgment of 6 February 2001). Having said that, the Court's cases through which the Court has affirmed the principles established by the ECtHR and has applied the same to the cases for consideration before it, including but not limited to the cases [KI108/10](#), applicant *Fadil Selmanaj*, Judgment of 5 December 2011; [KI52/12](#), applicant *Adije Iliri*, Judgment of 5 July 2013, [KI200/13](#), applicant *Belkize Kallaq*, Judgment of 15 April 2014; [KI10/14](#), applicant, *Joint Stock Company Raiffeisen Bank Kosovo J.S.C.*, Judgment of 20 May 2014; [KI31/17](#), applicant *Shefqet Berisha*, Judgment of 30 May 2017; [KI47/17](#), applicant *Selvete Aliji*, Judgment of 28 December 2018; [KI209/19](#), applicant *Memli Krasniqi*, Judgment of 26 November 2020; [KI82/21](#), applicant *Municipality of Gjakova*, Judgment of 30 September 2021; [KI84/21](#), applicant *Kosovo Telecom J.S.C.*, Judgment of 17 December 2021; [KI67/22](#), applicant *Zeqirja Prebreza*, Judgment of 4 April 2023, [KI206/21](#), applicant *Ukë Salih*, Judgment of 25 July 2023, [KI122/21](#), applicant *Lekë Bytyqi*, Judgment of 27 July 2021).

51. The Court initially clarifies that the principle of “*equality of arms*” is an element of a broader concept of a fair trial that requires a “*fair balance between the parties*” where each party must be afforded a reasonable opportunity to present his/her case – under conditions that do not place him at a substantial disadvantage *vis-à-vis* the other party (see the case of the ECtHR *Yvon v. France*, Judgment of 24 July 2003, paragraph 31, and the case of the ECtHR *Dombo Beheer B.V. v. the Netherlands*, cited above, paragraph 33; see *mutatis mutandis*, also the case of Court [KI31/17](#), cited above, paragraph 70; [KI209/19](#), cited above, 42-43; [KI82/21](#), cited above, paragraph 86, [KI84/21](#), cited above, paragraph 100).
52. The principle of adversarial proceedings implies that the parties to the proceedings should be aware of and have the opportunity to comment on and challenge the allegations and evidence presented during the main trial (see, *inter alia*, the ECtHR cases, *Brandstetter v. Austria*, cited above; and *Vermeulen v. Belgium*, cited above, paragraph 47; see also the case of the Court [KI84/21](#), cited above, paragraph 101).
53. Referring to the ECtHR case law, the Court emphasizes that the principle of equality of arms and the principle of adversarial proceedings are closely linked and in many cases the ECtHR has dealt with them altogether (see, *inter alia*, the ECtHR cases, *Rowe and Dawis v. the United Kingdom*, cited above, *Jasper v. the United Kingdom*, cited above; *Zahirović v. Croatia*, cited above, and the Court's case, [KI193/19](#), cited above, paragraph 48).
54. The requirement of “*equality of arms*”, in the sense of a “*fair balance*” between the parties, applies in principle to civil as well as to criminal cases (see case of Court [KI10/14](#), Applicant, [Joint Stock Company Raiffeisen Bank Kosovo J.S.C.](#) cited above, paragraph 42; and case [KI31/17](#), cited above, paragraph 71, and also, see the ECtHR case, [Werner v. Austria](#), no. 138/1996/757/956, Judgment of 24 November 1997, paragraph 66),
55. However, the ECtHR emphasized that the parties' right to a fair trial, including the principle of “*equality of arms*”, is not absolute. States enjoy a certain margin of appreciation in this area. However, it is for the ECtHR to determine in the last instance whether these principles have been complied with (see, *mutatis mutandis*, the ECtHR case, [Regner v. Czech Republic](#), no. 35289/11, Judgment of 19 September 2017, paragraph 147).

56. In this respect, the ECtHR, through its case law, has determined that an irregularity in the proceedings may, under certain conditions, be remedied at a later stage or at the same level (see the case of the ECtHR, [Helle v. Finland](#), no.157/1996/776/977, Judgment of 19 December 1997, paragraph 54) or, by a higher court (see the cases of the ECtHR, [Schuler-Zraggen v. Switzerland](#), no. 145818/89, Judgment of 24 June 1993, paragraph 52; and, on the other hand, [Albert et Le Compte v. Belgium](#), no. 7299/75; 7496/76, Judgment of 10 February 1983, paragraph 36; and [Feldbrugge v. the Netherlands](#), nr. 8562/79, Judgment of 29 May 1986, paragraphs 45-46 45-46).

(ii) *Case law of the ECtHR*

57. Based on the circumstances of the present case, the Court also refers to the relevant case law of the ECtHR that refers to equality of arms and procedural adversariality, from the point of view of guaranteeing these principles in the court proceedings during the administration of the submissions of the opposing parties. In the following, the Court refers to the relevant case law of the ECtHR related to the communication of responses to submissions. Although the factual and legal circumstances are not identical as in the circumstances of the present case, the Court will apply the principles established by the ECtHR in the following cases when examining the Applicant's allegation.
58. In this respect, the ECtHR stated that under the principle of “*equality of arms*”, it is inadmissible for a party to a proceeding to submit observations or comments before the regular courts, which are intended to influence the decision-making of the court, without the knowledge of the other party and without giving the other party the opportunity to respond to them. It is up to the party involved in the proceedings to then assess whether the remarks or comments submitted by the other party deserve a response (see case of the ECtHR [APEH Üldözötteinek Szövetsége and others v. Hungary](#), no. 32367/96, Judgment of 5 January 2011, paragraph 42; [Guigue and SGEN-CFDT v. France](#), no. 59821/00, Decision of 13 July 2000, and see also the Court's case KI84/21, cited above, paragraph 104).
59. Therefore, according to the case law of the ECtHR, the principle of “*equality of arms*” is violated when the complaint of the opposing party has not been communicated to the Applicant and he has not been informed about such a complaint by any other means (see the case of ECtHR [Beer v. Austria](#), Judgment of 6 February 2001, paragraph 19; see also the case of ECtHR [Andersena v. Latvia](#), Judgment of 19 September 2019, paragraph 87). Similarly, the ECtHR found a violation of this principle where only one of the two key witnesses was allowed to testify (see [Dombo Beheer B.V. v. The Netherlands](#), cited above, paragraphs 34 and 35).
60. In the ECtHR case, [Beer v. Austria](#), the Applicant claimed that the non-submission of the opposing party's appeal against the procedural costs order, which prevented it from reacting to it, resulted in a violation of the principle of equality of arms under paragraph 1 of Article 6 of the ECHR. In this case, the ECtHR noted that it is understandable that in ancillary matters, such as the determination of the cost of proceedings, the national authorities should have regard to the demands of efficiency and economy, but it does not, however, justify disregarding the fundamental principle of adversarial proceedings and that this non-communication of the appeal and the absence of any opportunity to reply constituted an infringement of the principle of equality of arms as guaranteed by Article 6 of the ECHR (see the ECtHR case, [Beer v. Austria](#), cited above, paragraphs 18-21)

(ii) *Case law of the Constitutional Court*

61. The Court, as specified above, has applied the aforementioned principles established through the case law of the ECtHR in its case law (see Court cases, KI108/10, KI108/10, applicant *Fadil Selmanaj*, cited above; KI52/12, *Adije Iliri*, cited above; KI200/13, applicant *Belkize Kallaq*, cited above; KI10/14, applicant *Joint Stock Company Raiffeisen Bank Kosovo J.S.C.*, cited above; KI31/17, applicant *Shefqet Berisha*, cited above; KI47/17, applicant *Selvete Aliji*, cited above; KI209/19, applicant *Memli Krasniqi*, cited above; KI82/21, applicant *Municipality of Gjakova*, cited above; KI84/21, applicant *Kosovo Telecom J.S.C.*, cited above; KI67/22, applicant *Zeqirja Prebreza*, cited above and KI206/21, applicant *Ukë Salih*, KI122/21, applicant *Lekë Bytyqi*, cited above).
62. In the following, the Court will refer to its cases, KI67/22, applicant *Zeqirja Prebreza* and KI206/21, applicant *Ukë Salih*, for which cases it assesses that in terms of the principle of adversarial procedure and that of equality of arms are relevant and similar to the factual and legal circumstances in the present case. In both of these cases, the first-instance decisions were quashed by the Court of Appeals to the applicants as a result of the complaints of the respective opposing parties. Also, the Court notes that in both cases, the Court of Appeals did not consider the response to the appeal of the applicants, respectively, in case KI67/22, it stated that “*the party did not submit the response to appeal*”, while in case KI206/21, it informed the Court that “*accepted the response to the applicant's complaint, but due to the large number of submissions in that court, it was not submitted to the panel that decided on this issue*”. After applying the relevant principles regarding the procedural guarantees of “*equality of arms*” and procedural “*adversariality*”, the Court considered that the respective applicants were placed in a significantly less favorable position compared to the opposing party, and consequently the opportunity to actually and substantially confront the arguments and claims made by the opposing side had been taken away. Consequently, the Court, in both cases, found a violation of paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR (see Court cases, KI67/22, applicant *Zeqirja Prebreza*, cited above, paragraph 76, and KI206/21, applicant *Ukë Salih*, cited above, paragraphs 119-120).
63. Similarly, in case KI193/19, applicant *Salih Mehaj*, which, unlike the circumstances of the present case, is a criminal case, but in the context of the principle of procedural adversariality and equality of arms, it is relevant. In case KI193/19, the Court found a violation of the principle of equality of arms and adversariality, because the Supreme Court in its judgment did not address at all the fact that the applicant submitted, through the mail and within the legal deadline, the answer against the claims of the State Prosecutor. In this sense, the Court considered that the Supreme Court has failed to guarantee the application of the principle of equality of arms and the principle of adversarial proceedings, because the Applicant has been placed at a significant disadvantage *vis-a-vis* the State Prosecutor, after having been deprived of the opportunity to have a real and substantial confrontation with the arguments and allegations presented by the State Prosecutor, as an opposing party in the proceedings, [KI193/19](#), applicant *Salih Mehaj*, Judgment of 17 December 2020, paragraph 60).

**II. Application of the above principles in the circumstances of the present case**

64. In order to apply the above-mentioned principles in the circumstances of the present case, in the following, the Court will recall the relevant facts of the case that are related to the Applicant's allegation of violation of the equality of arms and the principle of procedural

adversariality, the principles guaranteed by Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.

65. In this regard, the Court recalls that the essence of the case is related to the fact that the Basic Court had approved the applicant's claim for recognition of the right to compensation of 3 (three) jubilee salaries. Following this, after the employer submitted a complaint on 28 January 2020 to the Court of Appeals, the latter on 20 February 2023 approved it as grounded and modified the Judgment of the Basic Court, rejecting the applicant's claim as ungrounded. The applicant before the Court claimed that he submitted a response to the complaint on 27 September 2021, providing a copy of this document, which also bears the seal of the Basic Court. In order to prove the authenticity of the response to the complaint, submitted by the applicant, on 31 October 2023, the Court asked the Basic Court to clarify regarding the acceptance of this document, respectively, to confirm whether it has accepted that response to the complaint. The Court accepted this confirmation on 6 November 2023, where it is noted that on 28 September 2021, the applicant submitted the response to the complaint to the Basic Court, which response it forwarded on 19 October 2021 to the Court of Appeals. On 13 November 2023, the Court requested the Court of Appeals for information on whether it had considered this response to the complaint during the second instance procedure, and in the absence of a response from the Court of Appeals, the Court requested the KJC to confirm the aforementioned information. As a result of this request, on 27 December 2023, the Court accepted a response from the Court of Appeals, in which it was not specified whether it had accepted and considered the response to the applicant's complaint, of 28 September 2021, but had only attached copy of the Judgment [AC. no. 8304/2021] of 20 February 2023 of the Court of Appeals and the note for consultation and voting of this Judgment.
66. The Court reiterates the applicant's claim that in his case, the "*principle of adversariality*" and that of "*equality of arms*" were not respected, since he did not take into account the response to the complaint, of 27 September 2021, during the procedure in the second instance by the Court of Appeals, in which judgment it was not mentioned at all that the applicant submitted a response to the complaint and whether it was reviewed or not.
67. In order to address this allegation of the applicant, the Court refers to Article 187 (no title) of the LCP, which stipulates that:
- “187.1 A sample of the complaint presented timely, legally and complete, is sent within seven days to the opposing party by the court of the first degree complain, that can be replied with presentation of a complaint within seven days.*  
*187.2 A sample of the reply with complaint the first degree court sends to the complainer immediately or at the latest within the period of seven days from its arrival to the court.”*
68. In this context, the Court, based on the case law of the ECtHR, also recalls that defects in the first instance can be remedied in the second instance (appeal) if the appellate institution has "*full jurisdiction*" regarding the issue. In this regard, the Court reiterates that when an appeal is filed concerning the non-communication of documents, the concept of "*full jurisdiction*" includes not only the fact that the court of appeals has the right to examine the appeal, but also whether it has the jurisdiction to dismiss the impugned decision and/or make its own decision on the case or remand the case for a new decision by an impartial body (see *mutatis mutandis*, case of the ECtHR, [Köksoy v. Turkey](#), no. 31885/10, Judgment of 13 October 2020, paragraph 36; case [M.S. v. Finland](#), no. 46601/99, Judgment of 22 June 2005,



paragraph 35, as well as the Court's case KI206/21, applicant *Ukë Salih*, cited above, paragraph 103).

69. Therefore, in what follows, the Court, based on the case law of the ECtHR, will assess whether the court that examines the appeal, in this case the Court of Appeals, had full jurisdiction over the case, specifically, whether it had the opportunity to quash the contested decision, or make its own decision regarding the case or remand the case for a new decision by an impartial body, as well as decide on all issues raised by the applicant in the response against the employer's complaint.
70. In this case, the Court recalls that Article 187 (no title) of the LCP provides that a copy of the timely, admissible and complete complaint is sent by the first instance court to the opposing party, who may, within a period of 7 (seven) days, file an answer to the appeal in this court, while paragraph 2 of this article stipulates that the court of first instance sends a copy of the answer to the appeal to the appellant immediately, or at the latest within 7 (seven) days from its arrival at the court. Since Article 187 of the LCP does not specify more about the response to the complaint, the Court based on the LCP establishes in its Article 195 (no title) of LCP, which establishes that the decisions taken by the second instance court, in this case the Court of Appeals, are as following: (i) to dismiss the complaint as delayed, incomplete or inadmissible; (ii), to quash the impugned judgment and dismiss the claim; (iii) to quash the impugned judgment and remand the case for retrial to the first instance court, (iv) to reject the appeal as ungrounded and uphold the impugned judgment; (v), to modify the judgment of the first instance.
71. Furthermore, the Court notes that: based on paragraph 1 of article 181 (no title) of the LCP, the Judgment may be challenged in the Court of Appeals:  
  
*“a) due to the violation of provisions of contestation procedures;  
b) due to a wrong ascertainment or partial ascertainment of the factual state;  
c) due to the wrong application of the material rights.”*
72. Therefore, having regard to the provision above, the Court of Appeals has jurisdiction to conduct a full judicial review of the decisions of the Basic Court regarding the response to appeal, and this includes issues of violation of substantive provisions; procedural provisions; erroneous and incomplete determination of facts; as well as has the possibility to quash the contested decision and render a decision or remand the case for a new decision by an impartial body.
73. The Court therefore concludes that the Court of Appeals had full jurisdiction to examine all matters of fact and law relating to the dispute before it, including the Applicant's views regarding the response to appeal, and had jurisdiction to annul the decision of the Basic Court in all aspects, including the issues of fact and law. Therefore, the Court of Appeals qualifies as a *“judicial body having full jurisdiction”*, within the meaning of paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR.
74. In this context, the Court will further assess whether the Court of Appeals has assessed the Applicant's arguments regarding the response to appeal and his allegation that the Court of Appeals did not review at all the response to the appeal of the Employer of 27 September 2021, which raises the question of the principle of equality of arms.

75. The Court first refers to the judgment of the Court of Appeals, which, as to the essential violations of the contested procedure, stated that:

*“The Court of Appeal as a court of second instance, after assessing the appealing allegations related to the contested judgment, in support of the provision of Article 194 and 195 of the Law on Contested Procedure (LCP), has found that:  
The appeal of the respondent is grounded.”*

76. Taking into account the applicant’s allegations, firstly, the Court notes that based on the response and acknowledgment of receipt submitted by the Basic Court, the latter, on 19 October 2021, forwarded the applicant’s response to the appeal to the Court of Appeals of 27 September 2021.
77. Secondly, the Court points out that the Court of Appeals nowhere in the contested Judgment mentions the response to the appeal submitted by the applicant on 27 September 2021, but only mentions the assessment of the appealing allegations, respectively, the employer’s appeal.
78. Thirdly, the Court points out again that the Court of Appeals did not respond to its requests regarding the specific question of whether it had accepted and considered the response to the appeal of the Applicant, of 27 September 2021. The Court forwarded first request to the Court of Appeals on 13 November 2023, to which it did not receive any response, while it addressed the second request through the KJC, to which it did not receive a specific response but only a copy of the Judgment [AC. no. 8304/2021] of 20 February 2023 of the Court of Appeals and the note for consultation and voting of this Judgment.
79. In the light of these facts and circumstances, the Court notes that there was a legal obligation that the response to the applicant’s complaint be sent to the opposing party and be reviewed by the court, which derives from article 187 of the LCP. In this respect, the Court emphasizes that article 187 of the LCP is in compliance with the requirements of paragraph 1 of Article 31 of the Constitution, which are related to the guarantee for the implementation of the principle of equality of arms and the principle of adversarial proceedings before the courts. Complying with the requirements and standards derived from these two principles is in function of the most effective protection of opposing parties in civil proceedings, who are equal.
80. The purpose of Article 31 of the Constitution and Article 187 of the LCP requires not only the fulfillment of the formal-procedural aspects, but also the fulfillment of the substantial aspects, of the standard of fair and impartial trial. This implies giving the opportunity to the parties, in this case the Applicant in civil proceedings, not only to submit to the court a written response to the allegations of the opposing party, namely KEK, but also to have that submission reviewed and the possibility of a confrontation of arguments and counter-arguments, in accordance with the principle of equality of arms and the principle of adversarial proceedings, in such a way that the parties to the proceedings are placed on an equal footing with each other (see the ECtHR case, *Dombo Beheer BV v. the Netherlands*, cited above, which stipulates that “*equality of arms*” means that each party must be given a reasonable opportunity to present his/her case under conditions that do not place him/her at a substantial disadvantage *vis-a-vis* the opponent”, also see similarly, the Court case, KI193/19 applicant *Salih Mekaj*, cited above, paragraph 57 and KI67/22, applicant *Zeqirja Prebreza*, cited above, paragraph 73).

81. From this point of view, it is clearly seen that the Court of Appeals was satisfied only with fulfilling the formal-procedural aspects, that is, only with sending the notification to the Applicant for submission of the legal remedy against him, without dealing with it at all, namely without making the response to the complaint submitted by the Applicant to the Employer's complaint a part of the procedure. In addition, the Court of Appeals did not give any reasoning in its judgment as to why the response to the complaint of the applicant was not considered, but the latter does not even mention that this response to the complaint was submitted by the applicant.
82. Based on its case law and that of the ECtHR, the Court considers that the obligation of the courts to notify the opposing party about the exercise of legal remedies against them is not an aim in itself. This obligation is a necessary procedural step to enable the parties to be treated equally, to have the opportunity to challenge the allegations and arguments of the opponent, and to present their case effectively. Therefore, the courts should not be satisfied only by the fact that the parties have received the notification about the exercise of a legal remedy against them, but the courts should assure the parties that their views and arguments have been duly reviewed and assessed, so that they are guaranteed the most effective protection against the allegations made against them. On the contrary, failure to review their objections and arguments automatically places them at a considerable disadvantage *vis-a-vis* the opponent (see similarly, Court case, KI193/19, applicant *Salih Mekaj*, cited above, paragraph 59 and KI67/22, applicant *Zeqirja Prebreza*, cited above, paragraph 75).
83. In this regard, the Court considers that the Court of Appeals in the circumstances of the present cases has failed to guarantee the application of the principle of equality of arms and the principle of adversarial proceedings, because the Applicant has been placed at a significant disadvantage *vis-a-vis* the opposing party, namely the employer, after having been deprived of the opportunity to have a real and substantial confrontation with the arguments and allegations presented by the employer, as an opposing party in the proceedings.
84. Therefore, the Court finds that the contested Judgment of the Court of Appeals was rendered contrary to the principle of equality of arms and the principle of adversarial proceedings.
85. The Court, based on its finding that the Court of Appeals violated the principle of equality of arms and of adversarial procedure by not examining the applicant's response to the complaint, considers in the following that it is not necessary to examine: (i) other allegations of the applicant in relation to the violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR with regard to erroneous application of the law and the lack of consistency in the case law of the Court of Appeals; (ii) allegations regarding violations of Article 24 of the Constitution; as well as (iii) allegations regarding articles 32, 54 and 102 of the Constitution because the latter must be considered by the Court of Appeals in accordance with the findings of this Judgment.
86. Finally, the Court considers that finding the violation of paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, in the circumstances of the present case, is only related to the procedural guarantees for the equality of arms in terms of the lack of review of the response to the appeal and does not in any way prejudice the outcome of the merits of the case.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with paragraph 7 of Article 113 and paragraph 1 of Article 116 of the Constitution of the Republic of Kosovo, articles 20, and 47 of the Law and Rule 48 (1) (a) of the Rules of Procedure, in the session held on 28 May 2024:

### **DECIDES**

- I. TO DECLARE, unanimously, the Referral admissible;
- II. TO HOLD, unanimously, 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 paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO DECLARE INVALID, by eight (8) votes for one (1) against, Judgment [AC. no. 8304/2021], of 20 February 2023, of the Court of Appeals of Kosovo;
- IV. TO REMAND, by eight (8) votes for one (1) against, Judgment [AC. no. 8304/2021], of 20 February 2023, of the Court of Appeals of Kosovo, for reconsideration in accordance with the Judgment of this Court;
- V. TO ORDER the Court of Appeals to notify the Court, in accordance with Rule 60 (5) of the Rules of Procedure, by 29 November 2024 about the measures taken to implement the Judgment of the Court;
- VI. TO NOTIFY this Judgment to the Parties and, in accordance with paragraph 4 of article 20 of the Law, to publish it in the Official Gazette of the Republic of Kosovo;
- VII. 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**

Enver Peci

Gresa Caka-Nimani

***This translation is unofficial and serves for informational purposes only.***