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

Prishtina, 24 July 2024
Ref. no.: AGJ 2492/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI172/23

Applicant

Rejhane Ceka
Fiknete Ceka
Lejlane Ceka
Sara Ceka

Constitutional review of Decision Rev. no. 216/2023, of 19 June 2023 of the Supreme Court of Kosovo in conjunction with Judgment Ac. no. 3023/2020, of 7 April 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 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 was submitted by Rejhane, Fiknete, Lejlane and Sara Ceka (hereinafter: the Applicants), residing in the village of the old Kaçanik in the municipality of Kaçanik, represented by Law Firm “Avokatura Istrefi”, with lawyers Zaim Istrefi, Arbër Istrefi and Jeton Idrizi.

Challenged decision

2. The applicants challenge the Decision [Rev. no. 216/2023], of 19 June 2023 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [Ac. no. 3023/2020], of 7 April 2023 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) and the Judgment [C. no. 237/18] of 13 December 2020, of the Basic Court in Ferizaj - branch in Kaçanik (hereinafter: the Basic Court).

Subject matter

3. The subject matter of the referral is the constitutional review of the contested decision, whereby it is claimed that the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 of the European Convention on Human Rights (hereinafter: the ECHR), Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights] , as well as paragraphs 3 and 5 of Article 102 [General Principles of the Judicial System] 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 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).

Proceedings before the Constitutional Court

5. On 22 August 2023, the applicants submitted their referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 1 September 2023, the President of the Court by the Decision [no. GJR. KI172/23] appointed judge Radomir Laban as Judge Rapporteur and by the Decision [no. KSH. KI172/23], the Review Panel, composed of judges: Remzije Istrefi-Peci (Presiding), Nexhmi Rexhepi and Enver Peci (members).

7. On 7 September 2023, the Court notified the applicants about the registration of the referral.

8. On the same date, the Court sent a copy of the Referral to the Supreme Court.

9. On 24 January 2024, the Review Panel considered the preliminary report proposed by the Judge Rapporteur and decided to postpone the consideration of the referral to a next session after additional supplementations.

10. 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.

11. On 30 May 2024, the Review Panel considered the report of the Judge Rapporteur and by 2 (two) votes for and 1 (one) 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 8 (eight) votes for and 1 (one) against, the referral admissible; (ii) to hold, by 5 (five) votes for and 4 (four) against, that there has been a

violation of paragraph 1 of article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the European Convention on Human Rights; (iii), to declare invalid, by 5 (five) votes for and 4 (four) against, the Decision [Rev. no. 216/2023], of 19 June 2023, of the Supreme Court of Kosovo and (iv) remand, by 5 (five) votes for and 4 (four) against, the Decision [Rev. no. 216/2023], of 19 June 2023, of the Supreme Court of Kosovo for retrial, in accordance with the findings of the Court.

12. In accordance with Rule 56 (Dissenting Opinions) of the Rules of Procedure of the Court, judges Remzije Istrefi-Peci, Enver Peci and Jeton Bytyqi, have prepared a dissenting opinion, which will be published together with this Judgment.

Summary of facts

13. From the case file, it turns out that on 30 October 2018, the applicants together with their parents, Sh. C. and M. C., submitted a claim for compensation of material and non-material damage against the insurance company "Elsig Sh. A." (hereinafter: the insurance company), due to the death of their brother in a traffic accident that occurred on 8 June 2018.

14. On 13 December 2019, the Basic Court by the Judgment [C. no. 237/18]:

I. approved the claim of the applicants and their parents, so that:
   a. in the name of non-material damage namely mental suffering due to the loss of a family member, compensated:
      1. Sh. C., the father of the deceased, the amount of €10,000 (ten thousand) euro;
      2. M. C., the mother of the deceased, the amount of €10,000 (ten thousand) euro; and
      3. R. C., sister of the deceased [applicant] the amount of €8,000 (eight thousand) euro;
      4. F. C., sister of the deceased [applicant] the amount of €8,000 (eight thousand) euro;
      5. L. C., sister of the deceased [applicant] the amount of €8,000 (eight thousand) euro;
      6. E. D., sister of the deceased, the amount of €8,000 (eight thousand) euro;
   b. in the name of material damage to the father of the deceased:
      1. funeral expenses amounting to €1,500 (one thousand five hundred) euro, and
      2. raising the memorial in the amount of €1,500 (one thousand five hundred) euro;
   c. all such amounts with interest of 8% (eight percent), starting from 11 December 2019 and until the final payment; and

II. rejected as ungrounded the claim of the claimants, the sisters of the deceased, on the approved amounts of €4,000 (four thousand) euro;

III. obliged the respondent, respectively, the insurance company to pay the amounts determined in this enacting clause and the costs of the contested procedure in the amount of €2,396 (two thousand three hundred and ninety-six) euro.

15. On 21 May 2020, the insurance company filed an appeal with the Court of Appeals against the Judgment [C. no. 237/18], of 13 December 2019 of the Basic Court on the grounds of (i) essential violations of the provisions of the contested procedure, (ii)

erroneous and incomplete determination of factual situation, as well as (iii) erroneous application of substantive law with the proposal that his/her appeal be approved and the contested Judgment be annulled and the matter be returned to the first instance for reconsideration and retrial.

16. On 22 May 2020, the Basic Court by the Decision [C. no. 237/2018] corrected on the first page, in point I.A.6. and point II of the enacting clause, the name of one of the sisters of the deceased, at the same time the applicant, from E. D. to S. C.

17. On 7 April 2023, the Court of Appeals by Judgment [Ac. no. 3023/2020]:

I. partially rejected as ungrounded the complaint of the insurance company, so that it upheld point I of the enacting clause of the Basic Court regarding material damage and non-material damage in relation to the amounts dedicated to the parents of the deceased, as well as point III of the enacting clause pertaining the obligation to pay the amounts determined in the enacting clause and the costs of the contested procedure; whereas

II. partially approved as grounded the complaint of the insurance company so that it modified the Judgment of the Basic Court in point I of the enacting clause regarding non-material damage for mental suffering for the applicants and point II thereof, so that it reduced the amount of €8,000 (eight thousand euro) granted by the Judgment of the Basic Court in the amount of €5,000 (five thousand euro) for each of the sisters of the deceased, at the same time the applicant, with legal interest of 8% (eight percent) from the day of receiving the judgment of the first instance court and rejected as ungrounded the claim of the applicants beyond the amounts approved as above.

18. The Court of Appeals in its judgment, among other things, reasoned as follows: *"[...] The Court of Appeals, during the assessment of the appealing allegations of the respondent, found that the allegations related to the compensation of non-material damage for mental suffering regarding the sisters of the deceased [E.C.] are partially grounded, for the reason that this Court finds that the amounts approved by the court of first instance are extremely high amounts and are not in accordance with the case law. The Court of Appeals assesses that the amounts determined as in point II of the enacting clause of this judgment, namely the amount of 5,000.00 euro for each of the claimants as sisters of the deceased, is very adequate and in accordance with the mental suffering experienced, as well as in accordance with the case law. [...]".*

19. On 25 May 2023, the applicants filed a revision against the Judgment [Ac. no. 3023/2020] of 7 April 2023 of the Court of Appeals on the grounds of erroneous application of the provisions of substantive law, with the proposal that the Supreme Court modifies the above-mentioned Judgment of the Court of Appeals, so that it upholds the Judgment of the first instance. In their revision, the applicants, among others, claimed: *"[...] the amounts modifies according to the contested judgment do not correspond to the intensity of the pain experienced by the claimants [applicants], while the amounts adjudicated by the of first instance court are adequate to the intensity of suffering experienced by the claimants and they will at least mitigate the adverse consequences that have appeared in the case of causing these sufferings, and that these mental sufferings are still present today".*

20. On 19 June 2023, the Supreme Court by the Decision [Rev. no. 216/2023] rejected as impermissible the revision of the applicants against the Judgment of the Court of Appeals. The latter in its decision referred to the provisions of Law no. 03/L-006 on Contested Procedure (hereinafter: LCP), respectively paragraph 2 of article 211, which

establishes: "*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 €*" as well as Article 211 of Law no. 04/L-118 on amending and supplementing the LCP, where paragraph 2 of article 218 of the LCP, among other things, is amended as follows: *"2. The revision is not permissible: a) if it is presented by an unauthorized person; b) a person who has withdrawn it; c)) a person who has no legal interest or is against a judgment; d) not subject to revision according to the law".*

21. Likewise, the Supreme Court in its decision reasoned as follows:

> "*While the claimants did not file an appeal against the first-instance judgment, therefore, in the rejecting part, the first-instance judgment became final at the time of the expiry of the period of appeal, since the responding party in the rejecting part did not contest the first-instance judgment, while by the second-instance court, the judgment of the first-instance in the rejecting part has not been reviewed, therefore in this part it cannot be challenged by revision at all. [...]*
> *[...] the cited provisions refer to the permissibility of the revision conditional on the value of the dispute which must be over 3,000 (three thousand) euro, for the revision to be allowed, and the situation when the revision is allowed regardless of the value of the dispute according to the exclusion criterion for the nature of the contested issue. In this case, the value of the dispute in the part rejected by the second instance court for the claimants for each claim separately is that: to the claimant [R.C], the sister of the deceased in the amount of €3,000, to the claimant [F.C], the sister of the deceased in the amount of €3,000, to the claimant [L.C], the sister of the deceased in the amount of €3,000, to the claimant [S.C.], the sister of the deceased in the amount of €3,000, and which does not exceed the amount of €3,000 for none of the claimants. In this case, we are dealing with simple co-litigants, where the procedural position of a co-litigant does not depend on the procedural position of the other co-litigants. According to Article 268 of the LCP, each of them is independent in the process and that the value of the dispute is taken separately for each of them".*

Applicant's allegations

22. The applicants claim that their rights protected by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR, Article 32 [Rights to Legal Remedies], Article 54 [Judicial Protection of Rights], as well as paragraphs 3 and 5 of Article 102 [General Principles of the Judicial System] of the Constitution, have been violated.

23. In this regard, the applicants emphasize: *"[...] the non-examination of the legal remedy by the Supreme Court, respectively the rejection of the legal remedy as "impermissible", on the grounds of violations of the legal provisions by the Supreme Court, has caused non-respect of the principle of equality of arms by the parties in the procedure [...].*

24. More specifically, the applicants consider that: *"The Supreme Court by the aforementioned Decision acted as if we were dealing with separate judgments when it calculated the value of the object of the dispute, the Supreme Court has erroneously interpreted these legal provisions, since the value of the object of the dispute with which the Supreme Court is connected exceeds the value over €3,000.00 (which in property-legal disputes is a condition to file revision), taking into account the*

general value of the object of the dispute also mentioned in the decision of the first instance court, since we are not dealing with separate disputes but with a single one and as the value of the object of the dispute is considered the total value, therefore such a conclusion by the Supreme Court of Kosovo is completely contrary to the provisions of the Law on Contested Procedure".

25. Moreover, the applicants refer to paragraph 1 of article 30 and paragraph 1 of article 32 of the LCP, claiming that the requests of the applicants are based on the same legal and factual basis, since they are related to a respondent and with the same claim for all claimants. In this regard, the applicants underline that: *"The Supreme Court by the above-mentioned Decision erroneously referred to the legal provisions of the Law on Contested Procedure, since in the reasoning of this decision the Supreme Court acted as if we were dealing with separate disputes, and also erroneously interpreted the legal provisions of Article 268 of LCP, [Each litispendence in the contested process is parties in its own, while the procedural actions committed or not do not, are not in favor or against other litispendence]. This provision, which was highlighted in the reasoning of the Supreme Court's decision, is not at all related to the object of this contested case, this provision is understood as a general provision related to the procedural position of the co-litigants, as well as the procedural actions and the effects of these actions within the institute of co-litigation. Thus, this article, in principle, in a general way, has established that co-litigants in the litigation process are independent parties, and that the performance or non-performance of procedural actions by any of the co-litigants does not benefit or harm the other co-litigants. By this provision, the so-called simple co-litigation is regulated, where the court can give a different decision or decisions with different contents to each of the co-litigants. This article is understood as a general provision and in principle as such, because it cannot be understood and applied as such in all cases. This is due to the fact that, in some cases when according to the law or due to the special nature of any legal relationship, the dispute related to it can be resolved in the same way for all co-litigants. In this case, they are all considered as a single litigating party, and consequently when one of the co-litigants does not perform any procedural action, the effect of the procedural actions performed by the other co-litigants also extends to those who have not performed such procedural actions. In the event that the procedural actions performed by the co-litigants differ between them (they are not coordinated in terms of content), then the court will take into consideration the most favorable procedural action for all the co-litigants".*

26. Finally, the applicants request the Court to: (i) find a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, articles 32, 54 and 102 of the Constitution; (ii) declare invalid the Decision [Rev. no. 216/2023] of 19 June 2023 of the Supreme Court; as well as (iii) to remand the case to the Supreme Court to allow the revision of the applicants so that it modifies the Judgment [Ac. no. 3023/20] of 7 April 2023 of the Court of Appeals and upholds the Judgment [C. no. 237/18] of 10 January 2020 of the Basic Court.

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31
[Right to Fair and Impartial Trial]

"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.
5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to 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."

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6 (Right to a fair trial)

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

LAW No. 03/L-006 ON CONTESTED PROCEDURE

4. Determination of the value of the disputable facility

Article 30
(no title)

"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 32
(no title)

"32.1 If the claim against the defendant includes several claims that have a same factual and legal basis, the value of the disputed facility is set by summing the values of all claims.
32.1 If the demands in the claim are with several bases or against several defendants, the value of the disputed facility is determined according to the amount of each individual claim."

Article 36
(no title)

"If the claimant did not specify the value of the disputed facility in the claim filed to the court, or the amount is much higher or lower than the actual value, the court shall, according to its official duty or objections of the defendant, at the preliminary hearing at latest, or if there was no preliminary hearing held, at the principal hearing session of the legal matter but before the start of the principal proceeding, promptly and appropriately determine or verify accurately the value claimed by the claimant. In such a case, the decision of the court is not subject to appeal."

CHAPTER XIV
EXTRAORDINARY MEANS OF STRIKE

REVISION

Article 211
(no title)

"[...]
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 €[...]"

Article 214
(no title)

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.
[....]"

CHAPTER XVI
LITISPENDENCE

Article 268
(no title)

"Each litispendence in the contested process is parties in its own, while the procedural actions committed or not do not, are not in favor or against other litispendence."

Neni 269
(no title)

"269.1 If according to the law or due to the nature of the judicial relations, the contest can be resolved only in the same way for each of litispendence, than all of the are considered as a sole litidependent party, so when one of the joint litispendent doesn't conduct a procedural action, the effects pf the procedural actions committed by other litidependentts covers the ones who haven't committed the same acts.
269.2 If the litidependent conduct procedural actions that differ among them, than the court will consider that procedural action that is the most favorable one for all."

LAW NO. 04/L-118 ON AMENDING AND SUPPLEMENTING THE LAW NO.03/L-006 ON CONTESTED PROCEDURE

Article 11
(no title)

"Article 216 of the basic law shall be reworded with the following text:

Article 218

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

Admissibility of the Referral

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

28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

> *"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".*

29. The Court also refers to articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

Article 47
[Individual Requests]

> *"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".

30. Regarding the fulfillment of these criteria, the Court finds that the applicants are: (i) authorized parties; (ii) contest an act of a public authority, namely the Decision [Rev. no. 216/2023] of 19 June 2023 of the Supreme Court in conjunction with Judgment [Ac. no. 3023/2020] of 7 April 2023, of the Court of Appeals and Judgment [C. no. 237/18] of 13 December 2020, of the Basic Court; (iii) have specified the rights and freedoms that they claim to have been violated; (iv) have exhausted all legal remedies established by law; and (v) submitted the referral within the legal deadline.

31. The Court also emphasize 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

32. Initially, the Court recalls that the circumstances of the present case are related to the claim of the applicants and their parents, against the insurance company, for compensation of material and non-material damage due to the death of their brother in a traffic accident, which was insured in this company. The Basic Court by Judgment [C. no. 237/18] of 13 December 2020, approved their claim as well as that of their parents regarding the compensation of material and non-material damage, where for the non-material damage, the applicants were compensated separately in the amount of €8,000 (eight thousand euro), while each parent in the amount of €10,000 (ten thousand euro). As a result of the appeal of the insurance company, the Court of Appeals by Judgment [Ac. no. 3023/2020] of 7 April 2023, upheld the compensation for the material and non-material damage related to the parents of the applicants, while modifying the Judgment of the Basic Court, reducing the amount from € 8,000 (eight thousand euros) to € 5,000 (five thousand euro) for each of the applicants. The applicants submitted a revision against the Judgment of the Court of Appeals, which the Supreme Court by the Decision [Rev. no. 216/2023] of 19 June 2023, dismissed as impermissible on the grounds that the value of the object of the dispute in the contested part of the judgment does not exceed the amount of €3,000 (three thousand euro) for each of them, and that considered the latter as simple co-litigants, where the procedural position of a co-litigant does not depend on the procedural position of other co-litigants, therefore, the value of the dispute is taken separately for each one of them.

33. The applicants, in their request before the Court, contest the above-mentioned finding of the Supreme Court that their revision was impermissible, claiming that this finding constitutes a violation of their fundamental rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with article 6 of the ECHR, articles 32, 54 as well as paragraphs 3 and 5 of article 102 of the Constitution. This is because, according to them, the value of the object of their dispute exceeds the value of €3,000 (three thousand euro), on the grounds that their claims are not separate disputes but constitute a single claim, among other things, because they rely on the same legal and factual basis and relate to one respondent, as well as contain the same claims for all claimants.

34. Following the claim of the applicants, the Court will apply the case law standards of the ECtHR, 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. In this regard, the Court initially points

out that the issue of rejecting or not permitting the revision because it does not reach the value established by law falls within the scope of the principle or the right of access to the court, guaranteed by Article 31 of the Constitution , in conjunction with Article 6 of the ECHR (see the case of the Court, KI96/22, applicants *Naser Husaj and Uliks Husaj,* Resolution on Inadmissibility, of 29 August 2023, paragraph 49).

35. Consequently, the denial of the right to access to the court, has as a consequence the denial of the effective legal remedy and the judicial protection of the rights, which rights the applicants also claim to have been violated by the arbitrary conclusions of the Supreme Court, in relation to the assessment of the value of the object of the dispute, as a prerequisite to assess the merits of the case (see, the case of the Court, KI143/21, applicant *Avdyl Bajgora*, Judgment of 25 November 2021, paragraph 60).

36. Following this, the Court refers to the finding of the Supreme Court that their revision was impermissible due to the value of the object of the dispute, therefore it will examine the claim of the applicants that is related to the question of the permissibility of the revision.

37. In the context of the aforementioned claim, the applicants emphasize: *"The Supreme Court by the aforementioned Decision acted as if we were dealing with separate judgments when it calculated the value of the object of the dispute, the Supreme Court has erroneously interpreted these legal provisions, since the value of the object of the dispute with which the Supreme Court is connected exceeds the value over €3,000.00 (which in property-legal disputes is a condition to file revision), taking into account the general value of the object of the dispute also mentioned in the decision of the first instance court, since we are not dealing with separate disputes but with a single one and as the value of the object of the dispute is considered the total value, therefore such a conclusion by the Supreme Court of Kosovo is completely contrary to the provisions of the Law on Contested Procedure".*

38. Having said that, the circumstances of the present case are related to whether the Supreme Court by declaring *"revision impermissible"* through the interpretation of the procedural provisions in an extremely formalistic manner, disproportionately affecting the possibility of the applicants to receive a decision on merits of their case by the Supreme Court (see, the Court case, KI96/22, applicants *Naser Husaj and Uliks Husaj*, cited above, paragraph 50).

39. In the following, and in the aforementioned context, the Court will first refer to the Judgment of the Grand Chamber of the ECtHR, *Zubac v. Croatia* [no. 40160/12, Judgment of 5 April 2018], which, among other things, has established the general principles regarding the issue of the permissibility of the revision and which is related to the value threshold defined by law. Due to the relevance of this case in relation to the circumstances of the present case, the Court briefly emphasizes the facts of the case *Zubac v. Croatia*, where the applicant was denied revision by the Supreme Court of Croatia. More specifically, in this case the applicant had filed a civil lawsuit, the subject of which was assessed by her first lawyer at the value of 10,000 HRK (ten thousand kunas) or about 1,400 € (one thousand four hundred euro), which value later in the preparatory session after changing the lawyer, was reassessed to 105,000 HRK (one hundred and five thousand kunas). However, the "*civil lawsuit*" referred to in the lawsuit could only be changed by a special court decision, which was no longer possible at that stage, and despite the courts having used the new figure in the calculation of court fees, the applicant's revision was rejected as impermissible by the Supreme Court, on the grounds that the value of the dispute does not reach the threshold of the value established by law to submit the revision because the change of the value of the dispute through the first-instance

request document was not changed in a valid manner. In this case, the ECtHR did not find a violation of paragraph 1 of Article 6 of the ECHR, but during its assessment it developed some criteria which have subsequently been applied by this court, among others, in the following cases: *Jureša v. Croatia* [no. 24079/11, Judgment of 22 May 2018, paragraphs 41-45], *Lazarević v. Bosnia and Herzegovina* [no. 29422/17, Judgment of 14 January 2020, paragraphs 28-35] and *Makrylakis v. Greece* [no. 34812/15, Judgment of 17 November 2022, paragraphs 36-52].

40. Following the logic of the ECtHR case, *Zubac v. Croatia*, the Court will first present (i) the summary of the relevant principles, respectively (a) the ECtHR general principles for access to the court as far as they are relevant in the circumstances of the present case; and (b) the general principles for access to the higher courts and the *ratione valoris* restrictions in this respect, including according to the principles developed in the *Zubac v. Croatia* case and then (ii) applying these principles to the circumstances of the present case.

(a) General principles on access to the court

41. The right of access to the court is an integral part of the right to a fair and impartial trial according to paragraph 1 of article 6 of the ECHR. The basic principles related to this right have been established in the case of the ECtHR, *Golder v. The United Kingdom* [no. 4451/70, Judgment of 21 February 1975, paras 28-36]. In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the ECHR. Thus, paragraph 1 of Article 6 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see ECtHR cases, *Roche v. The United Kingdom [GC],* no. 32555/96, Judgment of 19 October 2005, paragraph 116, see also *Z and Others v. The United Kingdom [GC],* no.29392/95, Judgment of 10 May 2001, paragraph 91, *Cudak v. Lithuania [GC]* , no. 15869/02, Judgment of 23 March 2010, paragraph 54, G; and *Lupeni Greek Catholic Parish and others v. Romania, [GC],* nr.76943/11, no. 76943/11, Judgment of 29 November 2016, paragraph 84 (extracts)).

42. The right of access to a court must be "*practical and effective*", not "theoretical or illusory" (see, to that effect, *Bellet v. France,* [no. 42527/98 Judgment of 4 December 1995, paragraph 36). This observation is particularly true, in relation to the guarantees provided for in Article 6 of the ECHR, in view of the prominent place held in a democratic society by the right to a fair trial (see ECtHR cases *Prince Hans-Adam II of Liechtenstein v. Germany [GC]* , no. 42527/98, Judgment of 12 July 2001, paragraph 45, and *Lupeni Greek Catholic Parish and others v. Romania, [GC]*, cited above, paragraph 86).

43. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see, *Stanev v. Bulgaria [GC],* no. 36760/06, Judgment of 17 January 2012, paragraph 230). In laying down such regulation, the Contracting parties of the ECHR enjoy a certain margin of appreciation. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with paragraph 1 of Article 6 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see ECtHR case, *Lupeni Greek Catholic Parish and others v. Romania, [GC],* cited above, paragraph 89, with further references).

44. The ECtHR in its case law also stresses that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the ECHR (see, among other, *García Ruiz v. Spain [GC]*, no. 30544/96, Judgment of 21 January1999, paragraph 28 and *Perez v. France [GC]*, no. 47287/99, Judgment of 12 February 2004, paragraph 82). Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the ECtHR to review, because it should not act as a fourth instance and will not therefore question under paragraph 1 of Article 6, the judgment of the national courts, unless their findings can be regarded as "*arbitrary or manifestly unreasonable*" (see, among others, *Bochan v. Ukraine (no. 2) [GC]*, no. 22251/08, Judgment of 5,February 2015, paragraph 61).

(b) General principles on access to the superior courts and the *ratione valoris* restrictions in this respect

45. According to the clarifications given through the case law of the ECtHR, 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 guarantees of Article 6 must be complied with, 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, Court cases, *Andrejeva v. Latvia [GC]*, no. 55707/00, Judgment of 18 February 2009, paragraph 97; see also, *Levages Prestations Services v. France*, no. 21920/93 Judgment of 23 October 1996, paragraph 44, Reports of judgments and decisions 1996-V; *Brualla Gómez de la Torre v. Spain*, no. 155/1996/774/975 Judgment of 19 December 1997, paragraph 37, Reports 1997-VIII, and *Annoni di Gussola and Others v. France*, no. 31819/96 and 33293/96, Judgment of 14 February 2001, para. 54).

46. According to its case law, however, it is not the Court's task to express a view on whether the policy choices made by the Contracting Parties defining the limitations on access to a court are appropriate or not; its task is confined to determining whether their choices in this area produce consequences that are in conformity with the ECHR. Similarly, the ECtHR role is not to resolve disputes over the interpretation of domestic law regulating such access but rather to ascertain whether the effects of such an interpretation are compatible with the ECHR in the context of the principles related to access to court (see, for example, *Platakou v. Greece* no. 38460/ 97, Judgment of 5 September 2001, paragraphs 37-39; *Yagtzilar and Others v. Greece*, no. 41727/98, Judgment of 10 July 2002, paragraph 25, and *Bulfracht Ltd v. Croatia*, no. 53261/08, Judgment of 21 June 2011, paragraph 35).

47. In this regard it should be reiterated that the manner in which paragraph 1 of Article 6 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 in the domestic legal order and the court of cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (see, *Levages Prestations Services v. France*, cited above, paragraph 45; *Brualla Gómez de la Torre v. Spain*, cited above, paragraph 37; and *Kozlica v. Croatia*, no. 29182/03, Judgment of 2 November 2006, paragraph 32; see also *Shamoyan v. Armenia* , no. 18499/08, Judgment of 7 July 2015, paragraph 29).

48. The ECtHR has further recognized 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, *Brualla Gómez de la Torre v. Spain*,

cited above, paragraph 36; *Kozlica v. Croatia*, cited above, paragraph 33; *Bulfracht LTD v. Croatia*, cited above, paragraph 34, *Dobrić v. Serbia*, no. 2611/07 and 15276/07, Judgment of 21 June 2011, paragraph 54; and *Jovanović v. Serbia*, no. 32299/08, Judgment of 2 October 2012, paragraph 48).

49. Moreover, when confronted with issues of whether the proceedings before courts of appeal or of cassation complied with the requirements of paragraph 1 of Article 6 of the ECHR, the Court has had regard to the extent to which the case was examined before the lower courts, the (non-) existence of issues related to the fairness of the proceedings conducted before the lower courts, and the nature of the role of the court at issue (see, for the relevant considerations the ECtHR cases, *Levages Prestations Services v. France*, cited above, paragraphs 45-49; *Brualla Gómez de la Torre v. Spain*, cited above, paragraphs 37-39; *Sotiris dhe Nikos Koutras ATTEE v. Greece*, no. 39442/98, Judgment of 16 November 2000, paragraph 22; and *Nakov v. Former Yugoslav Republic of Macedonia (dec.)*, no. 68286/01, Judgment of 24 October 2002).

50. Also, with respect to the application of statutory *ratione valoris* restrictions on access to the superior courts, based on the case law of the ECtHR as elaborated above, in assessing whether these legal restrictions have been interpreted in a very formalistic manner and therefore disproportionate to the right of access to the court, the Court has to varying degrees taken account of certain further factors, namely (i) the foreseeability of the restriction, (ii) whether it is the applicant or the respondent State who should bear the adverse consequences of the errors made during the proceedings that led to the applicant's being denied access to the supreme court and (iii) whether the restrictions in question could be said to involve "*excessive formalism*" (see, in particular, *Garzičić v. Montenegro*, no. 17931/07, Judgment of 21 September 2010, paragraphs 30-32; *Dobrić v. Serbia*, cited above, paragraphs 49-51; *Jovanović v. Serbia*, cited above, paragraphs 46-51; *Egić v. Croatia*, no. 32806/09, Judgment of 5 June 2014, paragraphs 46-49 and 57; *Sociedad Anónima del Ucieza v. Spain*, no. 38963/08, Judgment of 4 November 2014, paragraphs 33-35, and *Hasan Tunç and Others v. Turkey*, no. 19074/05, Judgment of 31 January 2017, paragraphs 30-34,). Each of these criteria will be explained in more detail below based on ECtHR case law.

51. In what follows, and as far as it is relevant in the circumstances of the present case, the Court will present the principles developed by the ECtHR, related to the three criteria mentioned above.

(i) the foreseeability of the restriction

52. As regards the first of the above-mentioned criteria, in a number of instances the Court has attached particular weight to whether the procedure to be followed for an appeal on points of law could be regarded as foreseeable from the point of view of the litigant. This is with a view to establishing whether the sanction for failing to follow that procedure did not infringe the proportionality principle (see, for instance, *Mohr v. Luxembourg*, no. 29236/95, Decision of 20 April 1999; *Lanschützer GmbH v. Austria*, no. 17402/08, Decision of 18 March 2014 paragraph 33 and *Henrioud v. France*, no. 21444/11, Judgment of 5 November 2015, paragraphs 60-66).

53. A coherent domestic case law and a consistent application of that practice will normally satisfy the foreseeability criterion in regard to a restriction on access to the superior court (see, for instance, ECtHR case, *Levages Prestations Services v. France*, cited above, paragraph 42; *Brualla Gómez de la Torre v. Spain*, cited above, paragraph 32; *Lanschützer GmbH v. Austria*, cited above, paragraph 34 and, on the

other hand, *Dumitru Gheorghe v. Romania*, no. 33883/06, Judgment of 12 April 2016, paragraphs 32-34).

54. The same consideration has guided the ECtHR approach in cases concerning the *ratione valoris* restrictions on access to the superior courts (see, *Jovanović v. Serbia*, cited above, paragraph 48, and *Egić v. Croatia*, cited above, paragraphs 49 and 57). The ECtHR also takes into account the accessibility of the relevant practice to the applicant and whether he or she was represented by a qualified lawyer (see, *Levages Prestations Services v. France*, cited above, paragraph 42, and *Henrioud v. France*, cited above, paragraph 61).

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

55. As regards the second criterion, the ECtHR has not infrequently determined the proportionality issue by identifying the procedural errors which occurred during the proceedings which eventually prevented the applicant from enjoying access to a court and by deciding whether the applicant was made to bear an excessive burden in respect of such errors. Where the procedural error in question occurred only on one side, that of the applicant or the relevant authorities, notably the court(s), as the case may be, the ECtHR would normally be inclined to place the burden on the one who has produced it (see, for instance, ECtHR cases, *Laskowska v. Poland, no. 77765/01*, Judgment of 13 March 2007, paragraphs 60-61; *Jovanović v. Serbia*, cited above, paragraph 46 in fine; *Šimecki v. Croatia*, no. 15253/10, Judgment of 30 April 2014, paragraphs 46-47, *Egić v. Croatia*, cited above, paragraph 57, and *Sefer Yılmaz and Meryem Yılmaz v. Turkey*, no. 611/12, Judgment of 17 November 2015, paragraphs 72-73).

56. More problematic, however, are situations where procedural errors have occurred both on the side of the applicant and that of the relevant authorities, notably the court(s). In such instances there is no clear-cut rule in the ECtHR case-law regarding the question on whom the burden should lie; the solution would then depend on all the circumstances of the case seen as a whole. Having said that, some guiding criteria can be distinguished from the ECtHR case law as follows.

57. Firstly, it should be established whether the applicant was represented during the proceedings and whether the applicant and/or his or her legal representative displayed the requisite diligence in pursuing the relevant procedural actions. Indeed, procedural rights will usually go hand in hand with procedural obligations. The ECtHR would also stress that litigants are required to show diligence in complying with the procedural steps relating to their case (see, ECtHR cases, *Bakowska v. Poland*, no. 33539/02, Judgment of 12 January 2010, paragraph 54; see also, *mutatis mutandis*, case *Unión Alimentaria Sanders S.A. v. Spain*, no.11681/85, Judgment of 7 July 1989, paragraph 35). Moreover, the ECtHR has laid emphasis on the question whether legal representation was available to applicants (see, for instance, ECtHR cases, *Levages Prestations Services v. France*, cited above, paragraph 48, and *Lorger v. Slovenia* no. 54213/12, Decision of 26 January 2016, paragraph 22).

58. Secondly, the Court will take into account whether the errors could have been avoided from the outset (see, for instance, ECtHR case, *Edificaciones March Gallego S.A. v. Spain*, Judgment of 19 February 1998, paragraph 35).

59. Thirdly, the Court will assess whether the errors are mainly or objectively attributable to the applicant or to the relevant authorities, notably the court(s). In particular, a restriction on access to a court would be disproportionate when the inadmissibility of a remedy is the result of attribution of a mistake to an applicant for which he or she is

not objectively responsible (see *Examiliotis v. Greece (no. 2),* no. 28340/02, Judgment of 4 May 2006, paragraph 28; see also *Platakou v. Greece*, cited above, paragraphs 39 and 49; *Sotiris and Nikos Koutras ATTEE v. Greece*, cited above, paragraph 21; and *Freitag v. Germany, no. 71440/01* , Judgment of 19 July 2007, paragraphs 39-42).

(iii) excessive formalism in interpretation and application of the law

60. With regard to the third criterion, the Court would stress that the observance of formalised rules of civil procedure, through which parties secure the determination of a civil dispute, is valuable and important as it is capable of limiting discretion, securing equality of arms, preventing arbitrariness, securing the effective determination of a dispute and adjudication within a reasonable time, and ensuring legal certainty and respect for the court.

61. It is, however, well-enshrined in the ECtHR case-law that "*excessive formalism*" can run counter to the requirement of securing a practical and effective right of access to a court under paragraph 1 Article 6 of the ECHR (see paragraph 77 above). This usually occurs in cases of a particularly strict construction of a procedural rule, preventing an applicant's action being examined on the merits, with the attendant risk that his or her right to the effective protection of the courts would be infringed (see, ECtHR cases, *Běleš and Others v. Czech Republic,* no. 47273/99, Judgment of 12 November 2002, paragraphs 50-51 and 69, and *Walchli v. France*, no. 35787/03, Judgment of 26 July 2007, paragraph 29).

62. An assessment of a complaint of excessive formalism in the decisions of the domestic courts will usually be the result of an examination of the case taken as a whole (see *Běleš and Others v. Czech Republic,* cited above, paragraph 69), having regard to the particular circumstances of that case (see, for instance, ECtHR cases, *Stagno v. Belgium*, no. 1062/07, Judgment of 7 July 2009, paragraphs 33-35, and *Fatma Nur Erten and Adnan Erten v. Turkey*, no. 14674/11, Judgment of 25 November 2014, paragraphs 29-32). In making that assessment, the Court has often stressed the issues of "*legal certainty*" and "*proper administration of justice*" as two central elements for drawing a distinction between an excessive formalism and an acceptable application of procedural formalities. In particular, it has held that 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, for instance, *Kart v. Turkey [GC],* no. 8917/05, Judgment of 3 December 2009, paragraph 79 (extracts); see also *Efstathiou and Others v. Greece*, no. 36998/ 02, Judgment of 27 July 2006 paragraph 24, and *Eşim v. Turkey*, no. 59601/09, Judgment of 17 September 2013, paragraph 21).

63. In the subsequent case-law of the ECtHR, the reliance on the above-noted elements has been consistently followed in determining whether the construction of a procedural rule unjustifiably restricted an applicant's right of access to court (see examples of ECtHR cases, where a violation was found: *Nowiński v. Poland*, no. 25924/06, Judgment of 20 October 2009, paragraph 34; *Omerović v. Croatia (no. 2),* no. 22980/09, Judgment of 5 December 2013, paragraph 45; *Maširević v. Serbia,* no. 30671/08, Judgment of 11 February 2014; *Republic of Moldova*, no. 22735/07, Judgment of 22 July 2014, paragraph 24; and *Louli Georgopoulou v. Greece*, no. 22756/09, Judgment of 16 March 2017 paragraph 48; and examples where it was determined that the restriction on access to court had not been disproportionate: *Wells v. the United Kingdom*, no. /37794/05, Decision of 16 January 2007, and *Dunn v. the United Kingdom*, no. 62793/10, Decision of 23 October 2012, paragraph 38).

c) Application of the above principles to the present case

64. Initially, the Court recalls that the applicants, from the beginning of the court proceedings, filed a claim together with their parents, through a legal representative, to request compensation for material and non-material damage for the death of their brother in a traffic accident. The Court reiterates that the Basic Court had awarded the amount of €8,000 (eight thousand euro) to each of the applicants in the name of non-material damage, while the Court of Appeals had modified the Judgment of the Basic Court by reducing the amounts in question to the value of €5,000 (five thousand euro) for each of them. In the end, the Supreme Court rejected their revision as impermissible.

65. In assessing whether, under the circumstances of the present case, the right of access to justice of the applicants has been violated, in the following Court will apply the principles elaborated above, first assessing whether (i) the right to access to justice in the Applicants' circumstances, and if this is the case, it will continue to assess (ii) whether such a restriction pursues a legitimate aim, and if this is the case, it will assess whether such a restriction is (iii) proportional to the aim pursued. In the context of the latter, the Court will apply the three criteria that originate from the case law of the ECtHR in the context of *ratione valoris* principles, namely (a) foreseeability of the restriction; (b) bearing adverse consequences as a result of errors made during the procedure – the relationship between the individual and the state; and (c) excessive formalism in the interpretation and application of applicable law.

(i) The restriction on the applicant's access to the Supreme Court

66. The Court initially notes that in the legal order of the Republic of Kosovo, access to the Supreme Court in civil matters, in principle, is secured through a revision, which according to the LCP is categorized as "*extraordinary*" remedy of contestation. According to paragraph 1 of article 214 (no title) of the LCP, this legal remedy is filed for the following reasons: (i) on the grounds of the violation of the provisions of the contested procedure from article 188 of this law which was made in the court procedure of the second instance; (ii) on the grounds of erroneous application of substantive law; (iii) due to the exceeding of the claim, even though this irregularity was made in the procedure conducted in the second instance court, while according to paragraph 2 of the same article, the revision cannot be filed on the grounds of erroneous or incomplete determination of the factual situation.

67. The Court also refers to the additional criteria, which are a prerequisite for submitting the revision, established, among others, in paragraph 2 of article 211 of the LCP, which provides that: *"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 €",* as well as paragraph 3 of this article, which determines that: *"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 €."* The Court also highlights the criterion established in Article 508 (no title) of the LCP, which provides that revision in commercial disputes is not allowed if the value of the object of the dispute in the contested part of the final judgment does not exceed 10,000 € (ten thousand euro). According to the provisions of the LCP, the Supreme Court may (i) approve the revision and repeal/annul (in part/in whole) the judgments of the lower courts, as well as return the case to reinstatement or, in some cases, (ii) approve the revision and modify the contested judgment. In any case, the

Supreme Court is authorized to declare inadmissible the revision that does not meet the relevant legal requirements.

68. In the present case, the applicants submitted a revision considering that the value of their claim had reached the corresponding legal threshold *ratione valoris* of €3,000 (three thousand euro). However, the Supreme Court declared their revision impermissible *ratione valoris*. It found that the value of the object of the dispute in the contested part of the judgment does not exceed the amount of €3,000 (three thousand euro) for each of them, established in paragraph 2 of article 211 of the LCP, and that based on article 268 (no title) of the LCP, considered them simple co-litigants, where the procedural position of a co-litigant does not depend on the procedural position of the other co-litigants and consequently the value of the dispute must be assessed for each party separately.

69. Based on the above, the Court emphasizes that the nature of the limitation in question, which derives from the relevant law of the contested procedure, does not in itself appear to be the result of inflexible procedural rules. The law provides for the possibility of filing the revision if the value of the object of the dispute in the contested part of the judgment does not exceed 3,000 (three thousand euro) according to paragraph 2 of article 211 of the LCP, which could provide access to the applicants to the Supreme Court .

70. Given these considerations, the Court will examine whether the restriction in question, namely the one established in paragraph 2 of Article 211 of the LCP, is justified, namely if it pursues a legitimate aim.

(ii) the legitimate purpose related to the limitation of the value of the dispute in the revision procedure

71. The Court observes that the impugned restriction on access to the Supreme Court falls within the generally recognised legitimate aim of the statutory *ratione valoris* threshold for appeals to the Supreme Court of ensuring that the Supreme Court, in view of the very essence of its role, only deals with matters of the requisite significance (see, ECtHR cases, *Brualla Gómez de la Torre v. Spain,* cited above, paragraph 36; *Kozlica v. Croatia,* cited above, paragraph 33*; Bulfracht LTD v. Croatia*, cited above, paragraph 34; *Dobrić v. Serbia*, cited above, paragraph 54; and *Jovanović v. Serbia*, cited above, paragraph 48). So, the Court notes that the intention of the legislator is to differentiate between small value disputes and large ones, so that only the latter will be able to access the higher courts.

72. Furthermore, according to paragraph 2 of Article 103 [Organization and Jurisdiction of the Courts] of the Constitution, the Supreme Court of Kosovo is the highest judicial authority, while according to paragraph 5 of Article 102 [General Principles of the Judicial System] of the Constitution, the right to use extraordinary legal remedies is regulated by law. Taking this into account, the Court emphasizes that the legal provision which defines the legal *ratione valoris* threshold before the Supreme Court pursues a legitimate aim, namely respect for the rule of law and the proper administration of justice. Therefore, emphasizing the fact that the statutory *ratione valoris* restrictions to have access to the Supreme Court in the context of the legal remedy of revision, pursue a legitimate goal. However, in the circumstances of the present case, it must be assessed whether the application of this restriction was proportional to the goal pursued and the test of proportionality is assessed, based on the criteria built by the case law of the ECtHR elaborated as above.

(iii) proportionality of restriction

73. As stated above, the Court emphasizes that the permissibility of *ratione valoris* restrictions for access to the Supreme Court pursues a legitimate aim and based on the practice of the ECtHR, is in accordance with the margin of appreciation of domestic authorities in regulating these legal modalities (see ECtHR cases, *Brualla Gómez de la Torre v. Spain*, cited above, paragraph 36; *Kozlica v. Croatia*, cited above, paragraph 33; *Bulfracht LTD v. Croatia*, cited above, paragraph 34; *Dobrić v. Serbia*, cited above, para. 54; and *Jovanović v. Serbia*, cited above, para. 48). Before assessing the proportionality of the restriction in question, the Court finds it nonetheless important to identify the scope of this margin in regard to the manner of application of the rules relating to the *ratione valoris* threshold to the instant case. In making that assessment, the Court will have regard to the extent to which the case was examined before the lower courts; the (non-) existence of issues related to the fairness of the proceedings conducted before the lower courts, and the nature of the role of the Supreme Court.

74. With regard to the first criterion mentioned above, the Court notes that the applicant's case was heard by two national court instances (Basic Court and Court of Appeals) exercising full jurisdiction in the matter. Further, with regard to the second criterion mentioned above, the Court notes that, in view of the complaints declared inadmissible, no discernible issue of lack of fairness arises in this case. As to the third criterion mentioned above, the Court notes that the Supreme Court's role has been limited to reviewing the admissibility of the case, respectively the evaluation of the legal criteria for access to the highest court (see, *Brualla Gómez de la Torre v. Spain*, cited above, paragraph 37). Based on the practice of the ECtHR, the Court notes that in such circumstances, the authorities of the respondent State enjoy a wide margin of appreciation in regard to the manner of application of the relevant *ratione valoris* restrictions in the present case.

75. However, this does not mean that the Supreme Court enjoys unfettered discretion in this respect. When examining whether that margin has been exceeded, the Court must be particularly attentive to the three criteria highlighted in paragraph 50 above, namely (i) the foreseeability of restriction, namely the procedure to be followed for filing revision; (ii) the question of who should bear the adverse consequences of the errors made during the proceedings, and (iii) the question whether excessive formalism in the interpretation and application of the provisions of the applicable law.

(a) the foreseeability of the restriction

76. With regard to the foreseeability of the restriction, namely the procedure to be followed in submitting the legal remedy for access to higher courts, the Court recalls the principles of the ECtHR, which emphasize that a coherent domestic case law and a consistent application of this practice will normally satisfy the criterion of foreseeability in relation to a restriction of access to the higher court (see, ECtHR cases *Jovanović v. Serbia*, cited above, para. 48, and *Egić v. Croatia*, cited above, paragraphs 49 and 57).

77. In this context, the Court should first emphasize that the relevant law that regulates the civil procedure, namely Law No. 03/L-006 on the Contested Procedure, which contains the restrictive provisions for the submission of the revision, was published in the Official Gazette of the Republic of Kosovo on 20 September 2008, with no. 38/2008 and is accessible to the public. Also, the Court underlines that the case law of the Supreme Court is consistent and clear to the extent that the amounts which do not exceed the value of €3,000 (three thousand euro) of the object of the dispute in the

contested part of the judgment, contrary to the procedural requirements of paragraph 2 of article 211 of the LCP, cannot lead to the admissibility of the revision.

78. Moreover, according to paragraph 2 of article 211 of the LCP, in case the value of the object of the dispute in the contested part of the judgment is fixed in the amount of €3,000 (three thousand euro), the revision is also not allowed. In the present case, there are 4 (four) applicants, to whom the Court of Appeals reduced the value of the amount compensated in the name of non-material damage for the death of their brother from €8,000 (eight thousand euro) to €5,000 (five thousand euro) for each of them, which results that each one separately, the value of the object of the dispute in the contested part of the judgment has a fixed amount of €3,000 (three thousand euro). However, the applicants have filed a joint revision of their claims in the name of non-material damage, and according to their claims before the Supreme Court, the value of their dispute is in the amount of €12,000 (twelve thousand euro), which exceeds the amount of €3,000 (three thousand euro).

79. Having said that, and taking into account the provisions of the LCP that are related to the restrictions on the submission of the revision as well as the case law of the Supreme Court in their interpretation, the Court assesses that the procedure for the submission of the revision is regulated in a coherent and foreseeable manner in the applicable law, and therefore the relevant restriction is foreseeable.

(b) bearing of the adverse consequences of the errors made during the proceedings

80. Regarding the second criterion, the Court reiterates that the case law of the ECtHR requires that it must be determined whether the applicant was represented during the proceedings and whether he had shown the due diligence in undertaking the relevant procedural actions, continuing with determining whether the errors were avoidable from the outset and whether the errors could be primarily attributed to the applicant or the competent authorities (see ECtHR cases, *Bakowska v. Poland*, cited above, paragraph 54, *Edificaciones March Gallego S.A. v. Spain*, cited above, paragraph 35, *Examiliotis v. Greece* (n. 2), cited above, paragraph 28). Thus, in the present case, the Court must assess whether the applicants or even the courts of the first and second instance have made procedural errors in relation to the determination of the value of the object of the dispute during the procedure, and if there are any, to whom are attributable.

81. In particular, the Court notes that the Applicants only filed a joint lawsuit with the Basic Court against the insurance company, together with their parents, with the request for compensation for material and non-material damage in the event of the death of their brother in a traffic accident. After the partial approval of their claim by the Basic Court, as a result of the insurance company's appeal, the Court of Appeals reduced the monetary amounts awarded to each of the applicants.

82. The Court also points out that the applicants from the beginning of the court proceedings were represented by the same legal representative, who had advised them in the use of legal remedies in order, including the submission of the revision before the Supreme Court and that the claim, in principle, concerned the same factual and legal circumstances for all applicants. This is because, neither from the content of the judgment of the Basic Court nor that of the Court of Appeals, it does not result that the requests of the applicants were treated as separate, but both judgments contain the same reasoning regarding the awarding of the same amounts to all applicants, in the name of non-material damage compensation, although the amounts in the enacting clause of the judgments are set separately for each.

83. Having said this, the Court, in accordance with the aforementioned principles and criteria established through the case law of the ECtHR, assesses that the applicants have followed the procedure of legal remedies according to the order and advice of their legal representative, and in this context, it does not result that they did not show the due diligence when they submitted the legal remedies in question. Therefore, the Court finds that the conclusion of the Supreme Court that their revision is not permitted as stipulated by paragraph 2 of Article 211 of the LCP, cannot be attributed to the actions and/or procedural failures of the applicants.

(c) "excessive formalism" in the interpretation and application of applicable law

84. Regarding the criterion of "*excessive formalism*" in the interpretation and application of the applicable law, the Court reiterates the positions of the ECtHR in its case law, where it has emphasized that "*excessive formalism*" on the part of the courts can be in violation of the right of access to court. According to the ECtHR, this usually happens in cases involving a particularly strict construction of a procedural rule, which prevents consideration of the merits of the party's request, with the risk of violating his/her right to effective defense before the courts. An assessment of a complaint with excessive formalism by domestic courts is usually the result of an examination of a case as a whole, taking into account the particular circumstances of that case (see, ECtHR cases with violations, *Nowiński v. Poland*, cited above, paragraphs 31-32; *Omerović v. Croatia*, cited above, paragraph 39; *Maširević v. Serbia*, cited above, paragraph 46; *Cornea v. Republic of Moldova*, cited above, para. 22).

85. In the present case, there is no reason to question the relevant procedural regulation according to paragraph 2 of article 211 of the LCP, regarding the legal *ratione valoris* threshold pertaining to the amount of €3,000 (three thousand euro). However, in terms of assessing how the procedural requirements of the law have been implemented, respectively, whether or not the Supreme Court has exercised excessive formalism during the interpretation of the relevant legal provisions in force and related to the permissibility of the revision, the Court, first, refers to relevant parts of the contested decision, and notes that the Supreme Court reasoned the conclusion of rejecting, as impermissible, the request for revision as follows:

> *"[...] While the claimants did not file an appeal against the first-instance judgment, therefore, in the rejecting part, the first-instance judgment became final at the time of the expiry of the period of appeal, since the responding party in the rejecting part did not contest the first-instance judgment, while by the second-instance court, the judgment of the first-instance in the rejecting part has not been reviewed, therefore in this part it cannot be challenged by revision at all.*
>
> *By the provision of article 211 paragraph 2 of the LCP, it is determined that: "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 €", while by the provision of Article 218 of the LCP and Article 11 of Law No. 04/L-118 on Amending and Supplementing Law No. 03/L-006 on the Contested Procedure, by which article 218 of the basic law is reworded, it is determined that: "1. A belated, impermissible or incomplete revision shall be dismissed by a ruling of the court of first instance without conducting a main hearing. 2. The revision is not permissible: a) if it is presented by an unauthorized person; b) a person who has withdrawn it; c) a person who has no legal interest or is against a judgment; d) not subject to revision according to the law".*

From the interpretation of these legal provisions, the Supreme Court of Kosovo came to the conclusion that revision is not allowed against the Judgment of the Court of Appeals of Kosovo Ac. No. 3023/2020 of 07.04.2023, for the reason that the cited provisions refer to the permissibility of the revision conditional on the value of the dispute which must be over 3,000 (three thousand) euro, for the revision to be allowed, and the situation when the revision is allowed regardless of the value of the dispute according to the exclusion criterion for the nature of the contested issue. In this case, the value of the dispute in the part rejected by the second instance court for the claimants for each claim separately is that: to the claimant [R.C], the sister of the deceased in the amount of €3,000, to the claimant [F.C], the sister of the deceased in the amount of €3,000, to the claimant [L.C], the sister of the deceased in the amount of €3,000, to the claimant [S.C.], the sister of the deceased in the amount of €3,000, and which does not exceed the amount of €3,000 for none of the claimants. In this case, we are dealing with simple co-litigants, where the procedural position of a co-litigant does not depend on the procedural position of the other co-litigants. According to Article 268 of the LCP, each of them is independent in the process and that the value of the dispute is taken separately for each of them

[...]".

86. From the reading of the norm where the Supreme Court relied, respectively paragraph 2 of Article 211 of the LCP, it is clear that the value of the subject of the dispute, in the contested part of the Judgment of the Court of Appeals, is specified by the injured party, through the exercise of revision. It is therefore the discretionary right of the injured party to decide whether he wants to challenge in whole or in part the judgment of the second instance, by exercising the revision in the Supreme Court (see, the Court case, KI143/21, applicant *Avdyl Bajgora*, cited above, paragraph 71).

87. The Court further refers to the enacting clause of the Judgment of the Court of Appeals, which establishes in point II therein that: *"partially APPROVED as grounded the complaint of the respondent Insurance Company "ELSIG" with seat in Prishtina, so that it MODIFIED the Judgment of the Basic Court in Ferizaj – branch in Kaçanik, C. no. 237/18, of 13.12.2019 in point I of the enacting clause regarding non-material damage for mental suffering for the claimants [R.C], [F.C.], [L.C] and [S.C.] and point II of the enacting clause of the judgment and now is adjudicated as follows:, the respondent Insurance Company "ELSIG" with seat in Prishtina that for the non-material damage for mental suffering due to the death of the family member should pay the amounts as follows: - To the claimant [R.C.], the sister of the deceased, the amount of 5,000.00 euro; - To the claimant [F.C.], the sister of the deceased, the amount of 5,000.00 euro; - To the claimant [L.C.], the sister of the deceased, the amount of 5,000.00 euro and to the claimant [S.C.], the sister of the deceased, the amount of 5,000.00 euro, all of this with legal interest of 8% from the day of service with the judgment of the first instance first court 13.12.2019, within 15 days after the finality of the judgment and under the threat of forced execution [...]".*

88. In the present case, it is clearly observed that the applicants have partially challenged the Judgment of the Court of Appeals, by which the Judgment of the Basic Court was partially modified, which initially approved their claim for compensation of non-material damage in the amount of 8,000 (eight thousand euro) for each one separately, while after the appeal procedure it was reduced to the amount of 5,000 (five thousand euro). Consequently, the Court finds that the applicants were denied the difference in the amount of €3,000 (three thousand euro) for each of them separately, and that in the present case, they contested these amounts by revision.

89. As elaborated above, the Court assesses as legitimate the restriction in paragraph 2 of Article 211 of the LCP regarding the value of € 3,000 (three thousand euro) to have the possibility of presenting the revision to the Supreme Court. In addition and as stated above, the Court assesses that based on the applicable law but also the case law of the Supreme Court, it is clear that the value of the object of the dispute that does not exceed the amount of € (three thousand euro) euro does not meet the conditions to address the revision filed on the merits. Having said that, in the circumstances of the present case, including based on the claims of the applicants, it is disputed whether the value of the dispute of € (three thousand euro) for each of the applicants should have been assessed separately by the Supreme Court for the purposes of the admissibility of the revision, or taking into account the specific circumstances of the case, to have been assessed in its entirety, namely in the amount of €12,000 (twelve thousand euro). The Court recalls that the Supreme Court came to the conclusion that the value of the dispute does not exceed the amount of €3,000 (three thousand euro) for any of the claimants, respectively, the applicants because it considered them as simple co-litigants based on Article 268 of the LCP, which determines that: "*Each litispendence in the contested process is parties in its own, while the procedural actions committed or not do not, are not in favor or against other litispendence".*

90. However, taking into account the claim of the applicants that they were treated as simple co-litigants, despite the fact that they had submitted a claim, namely, a joint complaint and revision under the same factual and legal circumstances, the Court refers to the legal provisions of the LCP, which regulate the filing of a lawsuit in these situations, respectively, Article 32 (no title) of the LCP, which establishes that:

> *"32.1 If the claim against the defendant includes several claims that have a same factual and legal basis, the value of the disputed facility is set by summing the values of all claims.*
> *32.1 If the demands in the claim are with several bases or against several defendants, the value of the disputed facility is determined according to the amount of each individual claim."*

91. Furthermore, the Court also recalls the content of paragraph 1 of Article 269 of the LCP, which provides that: *"269.1 If according to the law or due to the nature of the judicial relations, the contest can be resolved only in the same way for each of litispendence, than all of the are considered as a sole litidependent party, so when one of the joint litispendent doesn't conduct a procedural action, the effects pf the procedural actions committed by other litidependents covers the ones who haven't committed the same acts."*

92. In this context, the Court recalls that the applicants, since the beginning of the court proceedings, submitted a claim through a legal representative, to request compensation for material and non-material damage for the death of their brother in a traffic accident. Moreover, the Court reiterates that the Court of Appeals in its Judgment provided the same reasoning for reducing the amount awarded for non-material damage compensation for all applicants, which amount was the same for all, as follows: *"[...] The Court of Appeals, during the assessment of the appealing allegations of the respondent, found that the allegations related to the compensation of non-material damage for mental suffering regarding the sisters of the deceased [E.C.] are partially grounded, for the reason that this Court finds that the amounts approved by the court of first instance are extremely high amounts and are not in accordance with the case law. The Court of Appeals assesses that the amounts determined as in point II of the enacting clause of this judgment, namely the amount of 5,000.00 euro for each of the claimants as sisters of the deceased, is very adequate*

and in accordance with the mental suffering experienced, as well as in accordance with the case law. […]"

93. Having said this, the Court notes that, while the Supreme Court, in its Decision, clarified the rejection of the revision on the basis of the value of the object of the dispute for each of the applicants separately, the same issue of co-litigation, and which was essential in determining the overall value of the dispute in the specific circumstances of the case, it only treated superficially, emphasizing that "*in this case, we are dealing with simple co-litigants, where the procedural position of a co-litigant does not depend on the procedural position of the other co-litigants. According to Article 268 of the LCP, each of them is independent in the process and that the value of the dispute is taken separately for each of them*".

94. Based on the above, the Court notes that as long as it is not disputed that based on article 211 of the LCP, the revision is not allowed in property-legal disputes in which the claim is related to the monetary claims, with the handing items, or with the fulfillment of any other proposal, if the value of the object of the dispute in the contested part of the judgment does not exceed 3,000 euro, in the circumstances of the present case, the issue of co-litigation was decisive for determining the overall value of the object of the dispute. The Court notes that while the Supreme Court, in its Decision, referred to Article 268 of the LCP to qualify the position of each of the applicant sisters as simple co-litigants with the consequence of assessing the value of the object of the dispute for each of them separately and accordingly the consequence of the rejection of the revision. Having said this, and despite the claims of the parties before it, the Supreme Court did not refer to or clarify the provision of the LCP, namely its article 32, which is precisely related to the manner of determining the overall value of the property dispute, and which determines that (i) if a lawsuit filed against a respondent includes several claims that relied on the same factual and legal basis, then the value of the object of the dispute is determined according to the total amount of the value of all claims; and (ii) if the claims in the lawsuit result from different bases, or if they are raised against several respondents, the value of the object of the dispute is determined according to the amount of each claim separately.

95. The Court reiterates that it is not its duty to assess whether the regular courts have correctly interpreted and applied the relevant rules of substantive and procedural law. However, in cases where a claim raises constitutional issues, namely irregularities in the judicial process, the Court is obliged to intervene and correct the violations caused by the regular courts, in order to ensure the individual a fair trial in accordance with Article 31 of the Constitution and paragraph 1 of Article 6 of the ECHR (see the Court case, KI143/21, applicant *Avdyl Bajgora*, cited above, paragraph 78). In this context, the Court may assess the legal interpretations of regular courts exceptionally and only if those interpretations may have resulted in arbitrary or manifestly ill-founded conclusions (see, the case of the Court KI75/17, applicant *X*, Judgment of 30 January 2018, paragraph 59).

96. In the circumstances of the present case, and in which, the clear interpretation and reasoning of the provisions of the LCP that are related to co-litigation and the determination of the value of the object of the dispute, was decisive for the access to justice of the parties submitting the revision, the Court assesses that it was the primary duty of the Supreme Court to elaborate and apply the relevant provisions of the LCP in their entirety and not in isolation. More precisely, the application of article 211 of the LCP in conjunction with article 268 of LCP, completely disregarding article 32 of the LCP, the application and/or reasoning for the non-application of which was decisive for the parties submitting the revision, qualifies as "*excessive formalism*" in

the interpretation and application of the law in the context of access to justice according to the case law of the ECtHR.

97. The Court reiterates that the interpretation and application of the law is within the full competence of the Supreme Court, and according to the details given above, the Court does not challenge the application of the provisions of the LCP in the context of *ratione valoris* principles by the Supreme Court. Having said this, the Court also emphasizes that the Supreme Court is also obliged to interpret the law based on the principles that originate from the case law of the ECtHR according to the provisions of Article 53 of the Constitution, and in the specific circumstances of the present case, the avoidance of full application and/or justification for the non-application of Article 32 of the LCP, focusing only on Article 268 of the LCP, to continue with the assessment of the value of the object of dispute for each of the applicants separately, in isolation of the specific circumstances of the case, has resulted in the interpretation and application of the law in an extremely formalistic manner by the Supreme Court, also resulting in the violation of the right to access to justice of the parties submitting the revision.

98. The Court recalls that, based on the case law of the ECtHR, an assessment of a complaint of "*excessive formalism*" in the decisions of the domestic courts will usually be the result of an examination of the case taken as a whole (see, *Bělesh and Others v. Czech Republic,* cited above, paragraph 69), always having regard to the particular circumstances of that case (see, for instance, *Stagno v. Belgium*, no. 1062/07, judgment of 7 July 2009, paragraphs 33 - 35, and *Fatma Nur Erten and Adnan Erten v. Turkey*, no. 14674/11, judgment of 25 November 2014, paragraphs 29-32). In making that assessment, the Court has often stressed the issues of "*legal certainty*" and "*proper administration of justice*" as two central elements for drawing a distinction between an excessive formalism and an acceptable application of procedural formalities. In particular, it has held that 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, for instance, *Kart v. Turkey [GC]*, no. 8917/05, judgment of 3 December 2009, paragraph 79 (extracts); see also *Efstathiou and Others v. Greece, no. 36998/ 02,* judgment of 27 July 2006, paragraph 24, and *Eşim v. Turkey*, no. 59601/09, judgment of 17 September 2013, paragraph 21).

(d) Overall conclusion

99. Based on the above, the Court concludes that the contested Decision of the Supreme Court of 19 June 2023, violates the rights of the applicants guaranteed by paragraph 1 of article 31 of the Constitution in conjunction with paragraph 1 of article 6 of the ECHR. Having said that, the Court considers that the finding of 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 principle of access to the court, namely the Supreme Court and in no way prejudges the outcome of the merits of the case.

100. The Court also underlines that its conclusion that the contested Decision of the Supreme Court, of 19 June 2023, violates the rights of the applicants guaranteed by paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of ECHR, applies only in the circumstances of the present case, based on the assessment that the interpretation of Article 32 (no title), in conjunction with Articles 211, 214 and 268 (no title) of the LCP by the Supreme Court is not proportional because it represents excessive formalism. In this regard, the Court emphasizes that

the assessment of whether the actions of the Supreme Court are proportional to the legitimate purpose of the legal *ratione valoris* threshold regarding the guarantee of the right of access to higher courts, must be done case by case and the same applies only to the present case based on its factual and legal circumstances.

101. Finally, regarding the applicants' allegations for violation of articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, the Court assesses that these allegations will not be subject to constitutional review because they do not raise any new issues that have not been dealt with before under Article 31 of the Constitution in conjunction with Article 6 of the ECHR (see the case of the Court KI185/22 applicant *Salih Topalli*, cited above, paragraph 56 and references mentioned therein).

FOR THESE REASONS

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

DECIDES

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

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

III. TO DECLARE, by 5 (five) votes for and 4 (four) against, invalid Decision [Rev. no. 216/2023], of 19 June 2023, of the Supreme Court of Kosovo;

IV. TO REMAND, by 5 (five) votes for and 4 (four) against, Decision [Rev. no. 216/2023], of 19 June 2023, of the Supreme Court of Kosovo for retrial, in accordance with the findings of the Court in this Judgment;

V. TO ORDER the Supreme Court, to notify the Court, in accordance with paragraph 5 of rule 60 of the Rules of Procedure, by 2 December 2024, about the measures taken to implement the Judgment of the Court;

VI. TO REMAIN seized of the matter pending compliance with that order;

VII. TO NOTIFY this Judgment to the Parties and, in accordance with paragraph 4 of article 20 of the Law, to publish it in the Official Gazette of the Republic of Kosovo;

VIII. TO HOLD that this Judgment 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**
Radomir Laban	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.