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

Prishtina, on 23 October 2024
Ref. no.: AGJ 2570/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI43/24

Applicant

Merita Visoka, Eroll Visoka, and Melinda Visoka

Constitutional review of Decision Rev. no. 382/2023 of 17 October 2023 of the Supreme Court of the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Selvete Gërxhaliu-Krasniqi, Judge
Bajram Ljatifi, 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 Merita Visoka, Eroll Visoka, and Melinda Visoka, residing in Prishtina (hereinafter: the applicants), represented by the Law Firm "Sejdiu & Qerkini" L.L.C., in Prishtina.

Challenged decision

2. The applicants challenge the constitutionality of Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment [Ac. no. 737/19] of 17 July 2023 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), and Judgment [C. no. 106/2013] of 8 November 2018 of the Basic Court in Prishtina – Branch in Podujeva (hereinafter: the Basic Court).

3. The Applicants were served with the contested Decision on 31 October 2023.

Subject matter

4. The subject matter is the constitutional review of Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court, whereby it is claimed that the applicants' fundamental rights and freedoms guaranteed by articles 3 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

Legal basis

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

Proceedings before the Constitutional Court

6. On 20 February 2024, the applicants submitted the referral to Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 21 February 2022, the President of the Court by Decision [no. GJR. KI43/24] appointed Judge Selvete Gërxhaliu Krasniqi as Judge Rapporteur and by Decision [no. KSH. KI43/24] appointed the Review Panel, composed of judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).

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

9. On 19 March 2024, the Court notified the applicants and the Supreme Court about the registration of the referral.

10. On 24 September 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral.

11. On the same date, the Court, unanimously, decided (i) to declare the referral admissible; (ii) to hold that Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court is not in compliance with paragraph 1 of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of article 6 (Right to a fair trial) of the ECHR.

Summary of facts

12. Based on the case file, the Court notes that the court proceedings began on 11 March 2013, when Eroll Visoka (one of the applicants) sued the Municipality of Podujeva. In the statement of claim, the latter has requested to confirm that he is the owner of the immovable property no. 552 in „Qytet-rruga Zahir Pajaziti" with house culture (00.0045 ha), yard (00.05.00 ha) and field (00.00.58 ha). Also, for cadastral plot no. 553 in „Qytet-Trualli", with culture field (00.05.60 ha), all registered in the possession list 1230 HA, CZ Podujeva. These properties were expropriated by the decision on expropriation [no. 04-466-765/3] of 28 July 1980, which became enforceable on 5 November 1980 by the respondents for the construction of the house of culture and consequently they were registered as social property in the name of the Municipality of Podujeva. In the statement of claim, he did not specify the value of the dispute in question.

13. On 13 June 2013, Eroll Visoka specified the claim through the submission, expanding the claim with the other applicants, but again, even in the specified claim, the applicants did not specify the value of the dispute in question.

14. On 8 November 2018, the Basic Court, by Judgment [C. no. 106/2013], rejected the statement of claim of the applicants. The Basic Court, after assessing the evidence and testimonies, found that the expropriation was carried out in accordance with the law and the predecessors of the applicants received compensation, although not adequate according to the allegations of the applicants. The Basic Court also emphasized that the applicants missed the legal deadline for the request for the return of the Law on Associated Labor.

15. Against this Judgment, the applicants filed an appeal on the grounds of violations of the provisions of the contested procedure, the erroneous and incomplete determination of factual situation and the erroneous application of the substantive law.

16. On 17 July 2023, the Court of Appeals, deciding according to the appeal, rendered the Judgment [Ac. no. 737/19], whereby it rejected as ungrounded the appeal of the applicants, while upholding the Judgment [C. no. 106 /2023] of the Basic Court. In its reasoning, the Court of Appeals emphasized that there has been no violations of the provisions of the contested procedure which this court is obliged to examine *ex-officio,* and it did not find that the judgment in question is incomprehensible and self-contradictory. In relation to the applicants' allegations, the Court of Appeals assessed that the first instance court has determined the factual situation in a correct and complete manner and that on the basis of this, it has also correctly applied the substantive law.

17. On 4 September 2023, against the Judgment of the Court of Appeals, the authorized representative of the applicants submitted a revision to the Supreme Court with a proposal that the Supreme Court approves the revision in its entirety, annulling the Judgment [Ac. no. 737/2019] of 17 July 2023 of the Court of Appeals and the Judgment [C. no. 106/13] of 8 November 2018 of the Basic Court, and that the case be remanded for retrial and reconsideration to the first instance court.

18. On 17 October 2023, the Supreme Court rendered the Decision [Rev. no. 382/2023] by which it rejected as impermissible the revision of the representative of the applicants, submitted against the Judgment [Ac. no. 737/19] of the Court of Appeals of 17 July 2023.

19. In its reasoning, the Supreme Court emphasized that in this legal contested matter it first assessed the permissibility of the revision based on paragraph 3 of Article 211 of the Law on Contested Procedure (hereinafter: the LCP), where it is established: *"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 €"*.

20. Furthermore, the Supreme Court emphasized that in article 30 paragraph 1 of the LCP, it is determined that: *"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"*, whereas in paragraph 2 of this article it is stipulated that: *"If not included in the main claim, the interest, procedural expenditure, contracted penalties and other claims are not taken into consideration"*.

21. Further in the Decision, the Supreme Court reasoned that neither with the initial lawsuit nor with the subsequent specification of the request has the value of the dispute been determined. The Supreme Court, further, emphasized that the Basic Court, by the judicial notice of 9 March 2017, invited the applicants to pay the court fee in the amount of € 15, which the applicants paid on behalf of the court fee for the lawsuit. The Supreme Court reasoned that it is obliged to assess the permissibility of the revision and in this case the revision is not allowed due to the value of the dispute, based on the fact that the applicants did not mention the value of the dispute in the lawsuit and in the subsequent specification of the request, while the fee paid for the lawsuit does not exceed the value of the dispute over €3,000 according to the administrative instruction on the unification of court fees. Likewise, the nature of the dispute does not constitute an exception for the permissibility of the revision. In conclusion, the Supreme Court found that, since the lower instance court did not act in accordance with Article 218.1 and 2 point d) of the LCP, to dismiss the revision as impermissible, the Supreme Court, with the application of Article 221 of the LCP, had to dismiss the latter as impermissible.

Applicant s' allegations

22. The applicants claim that the Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court violate their fundamental rights and freedoms established by Articles 3 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 (Right to a fair trial) of the ECHR.

23. The applicants note that the Supreme Court emphasized that they did not determine the value of the dispute in the lawsuit or later during the procedure, and this flaw was not eliminated until the end of the proceedings. The applicants also emphasize that the Supreme Court has issued a judicial notice on behalf of the lawsuit, but has ignored the provisions of the LCP and that it has not provided reasons why the regular courts did not respect Article 36 of the LCP, which requires the court to determine the value of the dispute when the parties do not do so.

24. The applicants further emphasize that according to Article 36 of the LCP, it is the responsibility of the court, not the claimant, to determine the value of the dispute when this has not been done by the parties and that in the present case, due to the court's failure to determine the value, the applicants have been deprived of the right to exercise extraordinary legal remedies. The LCP requires the court to act *ex officio* to determine the value of the dispute based on the objective circumstances and the request of the party, if the claimant does not determine the value, the court must do so in the preparatory session or in the first session of the main hearing. The applicants also emphasize that the error of the court cannot be attributed to the claimant and should not hinder his right to effective legal protection. According to the law, the responsibility

for determining the value of the dispute, when the object of the claim is not related to monetary claims, falls on the claimant and the court, if the claimant does not determine the value of the dispute, this should not hinder efficient judicial protection. Furthermore, the applicants emphasize that the law provides that, in case the claimant does not determine the value or abuses this right, the court must determine the value of the dispute *ex officio* and that this is the duty of the court according to Article 36 of the LCP.

25. The applicants state that this case focuses on two main questions: does the court have the obligation according to Article 36 of the LCP to determine the value of the dispute when the parties have not determined it? And is it right to attribute to the applicant the failure of the court to apply the law, which is hindering the examination of the revision on merits? And that in the present case, the Supreme Court did not correctly apply the LCP, not determining the value of the dispute, which made it impossible to file the revision, which requires that the value of the dispute be at least €3,000. Also, the applicants emphasize that this responsibility cannot be assigned to the claimant, who had no opportunity to determine the value at that stage and that the object of the dispute was an immovable property, with a value much higher than €15, as it was the court fee. Furthermore, the applicants point out that the Supreme Court, by the decision to dismiss the revision as impermissible, has placed an unfair burden on the applicant, denying him the right to full access to justice and to a fair trial and that the Supreme Court has not examined the revision in its essence.

26. Further, the applicants emphasize that the LCP determines that disputes related to immovable property are not disputes of small value. The Supreme Court did not take into account this provision in the assessment of the applicant's dispute, which involved immovable property. The applicants also point out that Article 36 of the LCP was not referred to, which requires the court *ex officio* to determine the value of the dispute when it has not been determined by the parties. Further, the applicants emphasize that the LCP and the case law of the Supreme Court of Croatia show that immovable property disputes are excluded from the rules on small value disputes, also emphasizing that article 486 of the LCP confirms that disputes with immovable property as object are not qualified as disputes of small value, legitimizing the revision of the applicant due to the high value of the object of dispute and that the court is obliged to act when the value of the dispute has not been determined by the parties, according to Article 36 of LCP.

27. The applicants emphasize that the Supreme Court, with illegal actions, has deprived them of the opportunity to have access to the court and of the right to have their case examined in a fair and meritorious manner and that the court proceedings must respect the constitutional principle of the rule of law, one of the highest values of the constitutional order of Kosovo. Also, the applicants state that these proceedings must ensure that the legal consequences are in line with the legitimate expectations of the parties in a judicial process, including the expectation for a meritorious resolution of the dispute and that the value of the dispute and the fair application of the procedural provisions by the courts affect the rights of the parties to submit revision as an extraordinary legal remedy. Further, the applicants point out that although the value of the dispute may have been determined, the current LCP stipulates that when the dispute involves immovable property, the value of the dispute is not considered small.

28. The applicants emphasize that according to the European Court of Human Rights (hereinafter: the ECtHR), restrictions should not prevent or reduce the essence of the right to have access to legal remedies and that the right to address the court aims to ensure that the parties are heard and treated equally before the court. This includes not only the right to initiate the court proceedings, but also to receive a final decision from the court, requiring that the access be real and not formal. Furthermore, the applicants

emphasize that the denial of this right is considered a violation of the fundamental right to a fair trial, as provided by Article 31 of the Constitution and Article 6 of the ECHR. And that if the procedural remedy is not dealt with substantially, this violates the right of defense and access to the Supreme Court. Also, the applicants point out that an erroneous application of the norms that leads to the non-adjudication of the claims violates the right to address the court and to a fair trial and that the right to submit revision and access to the court may not violated to the applicant due to failures or errors of the state authorities.

29. Therefore, the applicants request the Court to: (i) find the referral admissible; (ii) hold the violation of the individual rights of the applicants guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, as a result of violations by the Supreme Court of a series of rights guaranteed to the applicants by these instruments and the LCP; and as a result (iii) to declare invalid the Decision of Supreme Court, (iv) order the remand of the case for retrial; and (v) determine any other legal measure that the Court considers to be legally based and reasonable.

Relevant constitutional provisions

CONSTITUION OF THE REPUBLIC OF KOSOVO

Article 3
[Equality Before the Law]

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

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

Article 31
[Right to Fair and Impartial Trial]

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

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

[…]

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

"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".

Article 36

"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".

REVISION

Article 211

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

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

Article 11

"Article 218 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

30. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure have been met.

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

Article 113
[Jurisdiction and Authorized Parties]

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

[...]

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

[...]."

32. The Court further examines whether the applicants have fulfilled the admissibility criteria, as established by Law, namely articles 47, 48 and 49 of the Law, which stipulate:

Article 47
(Individual Requests)

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

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

Article 48
(Accuracy of the Referral)

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

Article 49
(Deadlines)

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

33. Regarding the fulfillment of the aforementioned criteria, the Court assesses that the applicants: i) are authorized party, pursuant to paragraph 7 of Article 113 of the

Constitution; ii) contest the constitutionality of Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court; iii) have exhausted all available legal remedies, in accordance with paragraph 7 of article 113 of the Constitution and paragraph 2 of article 47 of the Law; iv) have specified the rights guaranteed by the Constitution, which they claim to have been violated, in accordance with the requirements of Article 48 of the Law; and v) submitted the referral within the legal deadline of 4 (four) months, as provided for in Article 49 of the Law.

34. The Court also finds that the referral meets the admissibility criteria, stipulated by paragraph 1 of rule 34 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements established by paragraph 3 of rule 34 of the of the Rules of Procedure.

35. Furthermore, and finally, the Court emphasizes that the referral cannot be declared inadmissible on any other basis. Therefore, it must be declared admissible and its merits must be examined.

Merits of the referral

36. In the context of assessing the admissibility of the referral, the Court will first recall the essence of the case as well as the relevant claims of the applicant, in the assessment of which, the Court will apply the standards of the case law of the ECtHR, in harmony 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.

37. At the outset, the Court recalls that the essence of the legal dispute before the regular courts is about the applicants, who on 11 March 2013 sued the Municipality of Podujeva. The applicants requested to legally recognize the ownership of two plots no. 552 in "Qytet-rruga Zahir Pajaziti " and cadastral plot no. 553 in " Qytet-Trualli ", all registered in the possession list 1230 HA, CZ Podujeva. These properties were expropriated by the municipality on 28 July 1980 for the construction of a house of culture. The expropriation decision became enforceable on 5 November 1980 and the properties were registered as social property in the name of the Municipality of Podujeva. The Basic Court, by the Judgment [C. no. 106/2013], rejected the statement of claim of the applicants, finding that the expropriation was carried out in accordance with the law and the predecessors of the claimants had received compensation, although not adequate according to them. The Basic Court also emphasized that the applicants have missed the legal deadline for the return of ownership by not acting within the deadlines of the Law on Expropriation and the Law on Associated Labor.

38. Against the Judgment of the Basic Court, the applicants submitted an appeal to the Court of Appeals, the Court of Appeal rejected the appeal as ungrounded. Bearing this in mind, the applicants submitted the request for revision, which was rejected by the Supreme Court for procedural reasons, concluding that the claim of the applicants does not exceed the value of 3,000 €.

39. Precisely the fact that the Supreme Court rejected the applicants' request for revision for purely procedural reasons prompted the applicants to submit the referral to the Court, claiming that this Decision of the Supreme Court violates their right to ''access to the court" guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. More specifically, the Supreme Court, by illegal actions, deprived the applicant of the opportunity to have access to the court and the right to have his case examined in a fair and meritorious manner. Emphasizing that the court proceedings must ensure that the legal consequences are consistent with the legitimate expectations of the parties to a

court proceeding and that the value of the dispute may be determined, the current LCP stipulates that when the dispute involves immovable property, the value of the dispute is not considered small.

40. Based on the above, the applicants conclude that the revision can be rejected only if the value of the dispute does not exceed the amount of €3,000, but in the present case the amount of the value of the dispute has not been determined and therefore it cannot be rejected. In this regard, the applicants claim that the Supreme Court did not give reasons why the regular courts did not respect Article 36 of the LCP, which requires the court to determine the value of the dispute when the parties do not do so. And that, it is clear that according to the law, if the claimant has not determined the value of the dispute according to article 30 of the LCP, then it is the duty of the court to determine this value "*ex officio*". Also, in the LCP, it is not determined that revision is not permitted in disputes without a determined value.

41. In this regard, the applicants emphasize that the LCP determines that disputes related to immovable property are not disputes of small value. The Supreme Court did not take into account this provision in the assessment of the applicant's dispute, which involved immovable property. Further, the applicants emphasize that the LCP and the case law of the Supreme Court of Croatia show that immovable property disputes are excluded from the rules on small value disputes, also emphasizing that article 486 of the LCP confirms that disputes with immovable property as object are not qualified as disputes of small value, legitimizing the revision of the applicant due to the high value of the object of dispute and that the court is obliged to act when the value of the dispute has not been determined by the parties, according to Article 36 of LCP.

42. Therefore, the Court, before analyzing the claims of the applicants, wishes to emphasize that in this referral it will not deal with the issue of ownership between the applicants and the respondent, nor with the legal legitimacy of the parties to the regular court proceedings, but will focus exclusively on the issue of the possible violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the context of the violation of the right to access to court, namely if the procedural flaws of the regular courts resulted in the situation that the request of the applicants is rejected by the Supreme Court because the latter, when deciding on the permissibility of the revision, took a formalistic approach, not taking into account the possible procedural failures of the lower instance courts.

43. The present case which is examined by the Court is related to the way in which the existing *ratione valoris* conditions have acted in the case of the applicants. Specifically, the case concerns the issue of whether the Supreme Court, in the special circumstances of the case, by declaring the applicants' revision impermissible, applied excessive formalism and disproportionately affected its ability to adjudicate the merits of the case in his property dispute, as guaranteed by legal regulations. In the context of the above, the Court will examine whether the action of the lower instance courts and the taking/failure to take the procedural actions by the latter, have resulted in the restriction of access to the higher court.

44. In application of this analysis, the Court will first refer to the case law of the Court, as well as the case law of the ECtHR regarding the limitations of access to the court, including the case law related to the limitations of access to the higher courts. Then, it will analyze the case law related to the issue of *ratione valoris* limitation of access to higher courts, as well as the special issues of proportionality that arise in this case, that is, who should bear the adverse consequences of errors committed during the procedure, and with the question of the existence of excessive formalism.

45. Therefore, the Court must determine whether the failure of the Basic Court to act in accordance with Article 36 of the LCP and to determine the value of the dispute resulted in the situation where the Supreme Court rejected his request for revision for purely formalistic reasons, without considering the substance of his appealing allegations.

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

47. Having said that, the Court refers to the conclusion of the Supreme Court that the revision of the applicant is not permitted, by stating: *"since the lower instance court did not act in accordance with Article 218.1 and 2 point d) of the LCP, to dismiss the revision as impermissible, the Supreme Court, with the application of Article 221 of the Law on Contested Procedure, had to dismiss the latter as impermissible."*

48. Taking into account the above, the circumstances of the present case are related to the fact whether the Supreme Court, by declaring "*revision not permitted*" for purely legal/procedural issues, has disproportionately affected the possibility of the applicant to obtain a decision on merits for his case by the Supreme Court.

49. The Court, based on its case law and that of the ECtHR, has in principle emphasized that the right of access to the court should be "*practical and effective*" and not "*theoretical and illusory*" (see, among others, the cases of the Court KI20/21 applicant *Violeta Todorović,* Judgment of 13 April 2021, paragraph 43 and KI224/19, applicant *Islam Krasniqi*, Judgment of 10 December 2020, paragraph 39; see also the ECtHR case *Lupeni Greek Catholic Parish v. Romania [GC],* no. 76943/11, Judgment of 29 November 2016, paragraph 84). According to the case law of the Court and that of the ECtHR, this right is not absolute, but may be subject to limitations that must reduce access to the court in that way or to an extent that violates the very essence of the right. Such restrictions will not be justified if they do not pursue a legitimate aim or if there is no reasonable relation of proportionality between the means employed and the aim sought to be achieved through them (see Court cases KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 51; KI20/21, applicant *Violeta Todorović*, cited above, paragraph 45; and KI54/21, applicant *Kamber Hoxha*, Judgment of 4 November 2021, paragraphs 63-64; see also ECtHR cases: *Sotiris and Nikos Koutras ATTEE v. Greece*, no. 39442/98, Judgment of 16 and *Lupeni Greek Catholic Parish v. Romania [GC],* cited above, paragraph 89).

General principles on access to the higher courts and the ratione valoris restrictions in this respect

50. The Court, in the context of the restriction of access to higher courts, namely the Supreme Court, and which is related to the *ratione valoris* restriction, refers to its case law, which, based on the case law of the ECtHR, has affirmed the principles that are related to the *ratione valoris* restriction in the Supreme Court. In this context, the Court has emphasized that Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, does not oblige to set up courts of appeals or supreme courts, however, in the event that such a court exists, the guarantees of article 31 of the Constitution, in conjunction with Article 6 of the ECHR must be respected, and therefore they must guarantee to litigants an effective right of access to the courts for the determination of their "*civil rights and obligations*" (see, case of Court KI199/22, applicant *P.T.P. "Arta XH",* Judgment, of 30 July 2024, paragraph 68; see, also ECtHR cases, *Andrejeva v.*

Latvia, 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; and *Brualla Gómez de la Torre v. Spain*, no. 26737/95, Judgement of 19 December 1997, paragraph 37).

51. However, the ECtHR has established that it is not its 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 (see, for example, *Platakou v. Greece* no. 38460/ 97, Judgment of 1 January 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).

52. 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 a revision on points of law may be stricter than for an ordinary appeal (see, case cited above, *Levages Prestations Services v. France*, cited above, paragraph 45; case cited above *Brualla Gómez de la Torre v. Spain* 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).

53. Based on the ECtHR case law, the Court stated 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 Court case KI199/22, applicant *P.T.P. "Arta XH"*, cited above, paragraph 71, see, ECtHR cases, *Brualla Gómez de la Torre v. Spain*, paragraph 36; case *Kozlica v. Croatia*, paragraph 33; case cited above *Bulfracht LTD*, 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).

54. 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, *Levages Prestations Services*, paragraphs 45-49; *Brualla Gómez de la Torre*, paragraphs 37-39; *Sotiris dhe Nikos Koutras ATTEE v. Greece*, no. 39442/98, Decision of 19 December 1998, paragraph 22; and *Nakov v. Former Yugoslav Republic of Macedonia* , no. 68286/01, Decision of 24 October 2002).

55. Having said that, the Court refers to the case of the Grand Chamber of the ECtHR in case *Zubac v. Croatia*, no. 40160/12, Judgment of 5 April 2018, through which, in relation to the issue of the permissibility of the revision and which is related to the value threshold defined by law, in principle reiterated that: *"the manner in which Article 6 paragraph 1 [of the ECHR] applies to courts of appeal or of cassation depends on the special features of the proceedings concerned and account must be taken of the entirety of the proceedings conducted before those courts. The conditions of*

admissibility of a revision may be stricter than for an ordinary appeal" (see, paragraph 82 of the Judgment and the references used therein such as the case *Kozlica v. Croatia*, no. 29182/03, Judgment of 2 November 2006, paragraph 32). Following this, the ECtHR emphasized that: "*the application of a statutory ratione valoris threshold for appeals to the supreme court is a legitimate and reasonable procedural requirement having regard to the very essence of the supreme court's role to deal only with matters of the requisite significance* (see, paragraph 83 of the Judgment in case *Zubac v. Croatia,* and the references used in this case, see *inter alia* the case *Jovanović v. Serbia*, no. 32299/08, Judgment of 2 October 2012, paragraph 48; and see also the Court's case KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 52, KI199/22, applicant: *P.T.P. "Arta XH"*, cited above).

56. In this respect, the ECtHR in the case *Zubac v. Croatia*, and regarding the application of *ratione valoris* legal restrictions for access to higher courts, developed a three-step test, through which must be examined and assessed: (i) foreseeability of limitations; (ii) the issue of whether the applicant or the state should bear the adverse consequences of errors made during the procedure; and (iii) the issue of "*excessive formalism*" in the application of restrictions (see paragraphs 80-86 of the Judgment in the case of *Zubac v. Croatia*, and the references used in this Judgment KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 53; KI199/22, applicant: *P.T.P. "Arta XH"*, cited above, paragraph 74).

57. Regarding the first, the ECtHR specified that (i) the issue of the legal remedy in this case was foreseeable from the point of view of the litigants. In this regard, the ECtHR added that (ii) the assumption that the restriction of access is foreseeable is met if there is coherent case law and (iii) consistent application of this practice, and further also assessed that (iv) it takes into account the approach of the applicant in the relevant case law and (v) if the same is represented by a qualified lawyer (see paragraphs 87-89 of the Judgment in the case *Zubac v. Croatia*, see also Court cases KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 54; and KI199/22, applicant: *P.T.P. "Arta XH"*, cited above, paragraph 75).

58. Regarding whether the applicant or public authorities should bear the adverse consequences of errors made during the procedure, the Court, applying the criteria defined in the case *Zubac v. Croatia*, emphasized that it must be determined whether the applicant was represented during proceedings, as well as whether he has shown due diligence in undertaking the relevant procedural actions, proceeding with the determination of the issue whether the errors could have been avoided from the beginning and whether the errors can be attributed mainly to the applicant or the competent authorities (see, paragraphs 90-95 of the Judgment of the ECtHR in case *Zubac kundër Kroacisë*; and see the cases of the Court KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 55; KI199/22, applicant: *P.T.P. "Arta XH"*, cited above, paragraph 76).

59. Regarding the third, namely the issue of excessive formalism, the Court based on the ECtHR case law has reiterated that excessive formalism on the regard of the courts may be in conflict with the right of access to the court. In this sense, the ECtHR emphasized that, *"however, the right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court"* (see paragraph 98 of the Judgment in case *Zubac v. Croatia*; as well as see Court cases KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 56; KI199/22, cited above, paragraph 102).

60. The Court affirmed that the restriction of access to the Supreme Court by setting a legal *ratione valoris* threshold is justified by the legitimate aim of the Supreme Court to deal only with more significant cases. According to it, the resolution of irregularities committed by the lower courts in determining the value of the dispute also aimed at a legitimate aim, namely respect for the rule of law and the proper functioning of the judicial system (see cases of the Court KI96/22, applicant *Naser Husaj and Uliks Husaj*, cited above, paragraph 57; KI199/22, cited above, paragraph 78; see in this specific context paragraphs 101-125 of the Judgment in case of the ECtHR *Zubac v. Croatia*).

61. The Court considers that in such circumstances, the regular courts enjoy a wide margin of appreciation of the manner of application of the relevant limitations *ratione valoris* in this case. However, this does not mean that the courts enjoy unlimited discretion in this sense. When considering whether this margin of appreciation has been exceeded, the Court must pay special attention to three criteria, namely (i) the foreseeability of the procedure which is applied in relation to the revision; (ii) the issue of who should bear the adverse consequences of errors made during the procedure, and (iii) the issue of whether the applicant's access to the Supreme Court was limited by excessive formalism (see, case of the Court, KI199/22, cited above, paragraph 78).

62. Therefore, in what follows, the Court will apply the aforementioned principles and test developed by the ECtHR in the circumstances of the present case, namely (i) in relation to the criterion of foreseeability of the restriction through the legal threshold, it will assess whether the case law of the Supreme Court is consistent and clear about the permissibility of revision; then (ii) will assess whether the limitation of access to the Supreme Court can be attributed to the error of the applicants; and (iii) will assess whether the Supreme Court applied excessive formalism during the interpretation and application of the legal provisions in force that were related to the threshold of permissibility of the revision.

(i) Foreseeability of the procedure which is applied in relation to the revision

63. Following this, and returning to the circumstances of the present case, in relation to (i) the issue of foreseeability of the limitation, the Court will, first, carefully assess the way the Supreme Court examined the revision of the applicant to determine whether the Supreme Court has a consolidated case law regarding the legal threshold for the permissibility of revision. In support of this, the Court notes that in the legal order, access to the Supreme Court in civil cases is provided through revision based on Article 211 of the LCP. Revision refers to disputes in which the affected part of the judgment exceeds a certain value threshold. When this value threshold is reached, access to the Supreme Court becomes a matter of individual right. As part of the revision, the Supreme Court can annul the judgments of the lower courts and remand the case for retrial or, in certain cases, modify the contested judgment. In any case, the Supreme Court is authorized to declare impermissible any revision that does not fulfill the relevant legal requirements.

64. In this case, the applicants submitted a revision to the Supreme Court, claiming essential violation of the provisions of the contested procedure and erroneous application of substantive law. Further, the Supreme Court rejected as impermissible the revision filed by the applicants, concluding that the relevant value of the disputed object is below the legal minimum. In assessing the admissibility *ratione valoris*, the Supreme Court emphasized: *"[...]in this contested legal matter, it first assessed the permissibility of the revision based on Article 211.3 of the Law on Contested Procedure, where it is determined that se: "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 €". Whereas, article 30 paragraph 1 of the LCP stipulates that: "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", whereas paragraph 2 of this article foresees that*: "If not included in the main claim, the interest, procedural expenditure, contracted penalties and other claims are not taken into consideration".*

In this case, the claiming parties have not determined the value of the dispute with the lawsuit, nor with the later specification of the request, while the court with the judicial notice of 09.03.2017 has invited the claiming party to pay the tax in the name of the court fee for the lawsuit of €15 which was paid by the claiming party. The Supreme Court is obliged to assess the permissibility of the revision and in this case the revision is not allowed due to the value of the dispute, based on the fact that the claimants did not mention the value of the dispute in the lawsuit and the subsequent specification of the request, while the fee paid for the lawsuit does not exceed the value of the dispute over €3,000 according to the administrative instruction on the unification of court fees and the nature of the dispute does not constitute an exception for the admissibility of the revision (exceptions regardless of the value)."

65. Based on such a conclusion of the Supreme Court, it is more than clear that the Supreme Court, when deciding on the revision, rejected the request for revision based on the legal provisions of paragraph 3 of Article 211 of the LCP, not entering into the essence of the appealing allegations of the applicants.

66. Therefore, despite the clear explanation in the request for revision, it is more than evident that the Supreme Court acted in full compliance with the legal provision of articles 30 and paragraph 3 of article 221 of the LCP, which concretely define the legal limitations of review of revision, if the value of the dispute has not been determined at all by the applicants.

67. Therefore, the Court finds that the legal provisions referred by the Supreme Court certainly contain limitations regarding the approval of revision in the formal sense and as such, it is clear and foreseeable both for the applicants and for the Court. However, the foreseeability of legal restrictions and their application depend on the case, and, as such, should be the subject of a comprehensive assessment, where in their assessment a formalistic approach should be avoided when the restrictions are applied in a particular case.

(ii) Regarding who should bear the adverse consequences of errors made during the procedure

68. By careful examination of the second requirement (ii) whether the limitation of access to the Supreme Court can be attributed to the errors of the applicant, the Court, in order to reach an answer, must take into account the very beginning of filing the claim as well as the legal provisions of the LCP, which regulate the issue and the procedure for determining the value of the dispute when filing a claim.

69. Precisely in support of this, the Court recalls that the restriction of access to the Supreme Court is covered by the generally accepted legitimate purpose of the legal threshold *ratione valoris* for appeals to the Supreme Court, the purpose of which is to ensure that the Supreme Court, considering the very essence of its role, to deal only with matters of importance. In support of this, the Court recalls that the role of the Supreme Court, among other things, is to ensure the unique application of the law, as well as the equality of all in its application. Given this function, the Court finds it necessary to assess whether the decision of the Supreme Court pursues a legitimate aim, namely

respect for the rule of law and the proper functioning of the justice system (see, aforementioned case of the Court: KI199/22).

70. In this regard, the Court will carefully examine the extent to which the applicant's case has been addressed before the lower courts, more specifically how his request for determining the value of the dispute has been addressed, as well as the nature of the role of Supreme Court.

71. Therefore, for the Court, the fact that the applicant filed a lawsuit in the Basic Court without specifying the value of the claim is not disputed, even though paragraph 1 of article 30 of the LCP states that "*The claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility […]*".

72. However, carefully examining the provision of article 36 of the LCP, the Court also notes that if the claimant does not act in accordance with article 30 of the LCP and does not determine the value of the object of the dispute in the claim, he will not to bear the procedural consequences because precisely by Article 36 of the LCP an exception is made, in such a way that the obligation to determine the value of the dispute as a procedural action passes on the court. More specifically, *"[…] 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".*

73. Therefore, from the text of the legal provision of article 36 of the LCP, it can be seen that the value of the object of dispute is one of the elements of the lawsuit, the determination of which element is defined by law, but is not a necessary prerequisite for filing a lawsuit. Therefore, even in cases where the party has not determined the value of the object of the dispute at the time of filing the claim, the court will not reject the claim, nor will it return the claim to the claimant for correction.

74. In other words, in cases where the claimant has not determined the value of the object of the dispute or if he has determined its value too low or too high, the court, *ex-officio* or according to the respondent's objection, at the latest in the preparatory session, and if the preparatory session has not been held, then before the start of the main hearing, it appropriately determines the value of the object of the dispute, taking into account the objective circumstances of the claim in question.

75. The Court finds that the legal provision of Article 36 of the LCP is quite clear, both in terms of rights and in terms of procedural actions and obligations, and clearly determines that the Basic Court has the obligation to determine the value of the dispute in 3 different situations, and they are: *i) when the claimant has not determined the value of the dispute, ii) when the claimant has determined the very low value of the dispute; and iii) when the claimant has set the value of the dispute too high*. Moreover, the obligation of the Basic Court, when a claim is filed from article 36 of the LCP, is to determine the value of the object of the dispute *ex-officio* by decision before the start of the main hearing session. Therefore, the prerequisite for the Court to be able to act upon the claim on the merits is to first determine the value of the dispute in question through a separate decision in a special session.

76. Regarding the manner of determining and verifying the value of the object of the dispute, the court is obliged, according to objective criteria, to determine the monetary equivalent of the claim based on the data from the claim and only if this is possible due to the nature of the case, namely to determine in advance the value of the object of the

dispute, namely if the value of the object of the dispute has been marked and if it has been marked as too high or too low. This verification is applied up to the limit of acceptable probability, because any deeper examination of the problem, namely the claim, would jeopardize the realization of the basic duty of the court, which is to ensure legal protection.

77. Therefore, the very fact that the applicant requested the Basic Court to determine the value of the dispute qualifies his claim as a claim of category *i) when the claimant has not determined the value of the dispute* from Article 36 of the LCP, according to which had initiated the procedure in which the Basic Court has the obligation to deal with this request according to its official duty.

78. The Court finds from the Judgment of the Basic Court that the latter did not act in accordance with the manner required by Article 36 of the LCP. The Court must emphasize that the failure of the court to act in any part of the proceedings may create negative consequences for the applicants and therefore these errors cannot be defined as errors of the claimant.

79. More specifically, the Court notes that the applicants during the procedure of submitting the claim, in accordance with Article 30 of the LCP in conjunction with Article 36 of the LCP, did not make errors regarding the determination of the value of the object of the dispute, and consequently, the errors, if they occurred before the Basic Court, in the opinion of this Court, cannot be objectively attributed to the applicants.

80. Furthermore, in the opinion of the Court, no reasonable expectation can arise from the failures of the Basic Court and the Court of Appeals in this case. Also, the fact that the applicants have paid the fee in the amount of €15 when submitting the claim to the Basic Court, cannot be attributed to him as an error and be a determining fact that can be used when determining the value of object of the dispute, for the reason that for the Court it is not a disputed fact that the applicants, when submitting the claim in accordance with the value of the object of the dispute, must also pay the court fee determined by the Administrative Instruction of the Kosovo Judicial Council. In essence, the payment of the fee in the amount of €15 cannot serve as the only parameter for determining the value of the dispute in question, especially for the reason that the applicants have paid the court fee in the amount of €15 as a conditional amount that the party is obliged to pay when the value of the dispute is unknown, while the fee itself in the amount of €15 is a condition that enables the party to have its claim accepted by the court in a procedural sense, and not be dismissed as an incomplete claim before the start of the procedure.

81. In support of this, the Court would like to add that, if the Basic Court had not made the procedural flaw (error) in the procedure for determining the value of the dispute and if the value had been determined by the Basic Court as required by article 36 of the LCP, a situation would have been created that would have enabled the applicants to pay the additional amount (difference) of the court fee value for the determined value of the dispute in order to reach the necessary amount of the determined value of the dispute.

82. The Court is of the opinion that errors in the procedure could have been avoided from the beginning, if the Basic Court had acted in accordance with the legal provision of Article 36 of the LCP. From this it follows that these errors can be objectively attributed to the courts, and not to the applicants.

(iii) whether the Supreme Court has used excessive formalism in the interpretation and application of the applicable legal provisions regarding the threshold of permissibility of revision

83. Regarding the assessment of the fulfillment of the third criterion, the Court emphasizes that the observance of the formal rules of the contested procedure, through which the parties ensure the decision-making for the civil dispute, is valid and important because it can limit discretionary freedom, ensure equality of arms, prevent arbitrariness and ensure effectiveness in decision-making for the dispute and trial within a reasonable time, as well as legal certainty and respect of the court.

84. However, in the case law of the ECtHR, it is established that "*excessive formalism*" may be contrary to the requirement to ensure the practical and effective right of access to the court based on article 31 of the Constitution in conjunction with article 6 paragraph 1 of the ECHR. This usually happens in cases of a strict interpretation of a procedural rule that prevents consideration of the merits of the applicant's claim, with the corresponding risk that his or her right to effective judicial protection will be violated (see, among others, the Court's case KI199/22, applicant: *P.T.P. "Arta XH"*, cited above, paragraph 100, based on the ECtHR cases *Běleš and Others v. Czech Republic*, no. 47273/99, Decision of 12 November 2002, paragraphs 50-51 and 69, and *Walchli v. France*, no. 35787/03, Judgment of 26 July 2007, paragraph 29).

85. Therefore, in the present case, the Supreme Court should not have been bound by the errors of the lower courts when deciding whether to allow access to the applicants but should have examined whether access to it was prevented by procedural flaws of lower instance courts.

86. In this regard, it can be said that the Supreme Court's reference only to the legal provision of paragraph 3 of Article 211 of the LCP and giving the reasoning without prior consideration of the possible procedural flaw, that *"Revision in trade disputes is not allowed if the value of the disputed subject dispute does not exceed 10.000 Euro*", transferring the responsibility and error only on the applicant and justifying this with the fact that based on article 30 paragraph 1 of the LCP it is established that: "*revision is not allowed, claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility…*", according to the Court's conclusion, constitutes excessive formalism in the interpretation of legal regulations, especially because the Supreme Court did not take into account Article 36 of the LCP and, if it had done so and if it had examined the provision in the circumstances of the present case, it could have reached its conclusion about possible flaws or errors committed in the first place by the Basic Court, and in the further procedure also by the Court of Appeals.

87. Also, according to article 486 of the LCP, it is noted that the disputes related to immovable property, disputes from employment relationship and disputes due to obstruction of possession are not considered disputes of small values. Therefore, the LCP clearly determines that disputes related to immovable properties are not considered disputes of small value. However, the Supreme Court did not refer to this provision when assessing the value of the applicants' dispute, which was actually related to immovable property.

88. In these circumstances, taking into account that in the case of the applicants, two instances of the regular courts, the Basic Court and the Court of Appeals, which had full jurisdiction in this case, to determine the value of the dispute *ex officio* and that the role of the Supreme Court is also to review the implementation of the applicable law by the lower instance courts, it can be said that the decision of the Supreme Court in the present case constituted a disproportionate obstacle that violates the very essence of the right of the applicants, guaranteed by paragraph 1 of article 31 of the Constitution, in conjunction with paragraph 1 of article 6 of the ECHR and that the latter has exceeded the margin of appreciation.

89. 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.

FOR THESE REASONS

The Constitutional Court, in accordance with paragraph 1 of Article 113 and Article 116 of the Constitution, Article 20 of the Law and Rule 48 (1) (a) of the Rules of Procedure, on 24 September 2024, unanimously,

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD 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 Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court of the Republic of Kosovo;

IV. TO REMAND Decision [Rev. no. 382/2023] of 17 October 2023 of the Supreme Court of the Republic 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 24 March 2025, about the measures taken to implement the Judgment of the Court;

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

VII. TO HOLD that this Judgment is effective on the date of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Selvete Gërxhaliu Krasniqi	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.