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

Prishtina, on 27 September 2024
Ref. no.: AGJ 2550/24

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JUDGMENT

in

Case No. KI49/23

Applicant

Shaban Dulahu and others

Constitutional review of Judgment [ARJ.UZVP.NR.109/2022] of the Supreme Court, of 20 Of 20 October 2022

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
Nexhmi Rexhepi, Judge
Enver Peci, Judge, and
Jeton Bytyqi, Judge

Applicants

1. The Referral was submited by Shaban Dulahu, Suzana Gusija, Mustafë Zhinipotoku and Tasim Vehapi from Prishtina (hereinafter: the Applications), represented by Durim Osmani and Feim Alaj, lawyers of law firm “K.A.M & PARTNERS LLC”, from Prishtina.

Challenged decision

2. The Applicants challenge the constitutionality of the Judgment [ARJ-UZVP.NR.109/2022] of the Supreme Court, of 20 October 2022

3. The Applicants received the challenged decision on 14 November 2022.

Subject matter

4. The subject matter is the constitutional review of the Judgment [ARJ-UZVP. NR.109/2022] of the Supreme Court, which allegedly violates the Applicants' fundamental rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (1) (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on Article 113 (1) and (7) [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals) and 47 (Individual Requests) of the 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).

6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo No. 01/2023, were published in the Official Gazette of the Republic of Kosovo and entered into force fifteen (15) days after their publication. Consequently, during the examination of the Referral, the Constitutional Court refers to the provisions of the aforementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure No. 01/2023, exceptionally, certain provisions of the Rules of Procedure No. 01/2018, will continue to be applied in cases registered in the Court before its abrogation, only if and to the extent that they are more favourable for the parties.

Proceedings before the Constitutional Court

7. On 24 February 2023, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 2 March 2023, the Applicants were notified of the registration of the Referral and a copy of the Referral was sent to the Supreme Court.

9. On 7 March 2023, the President of the Court, by Decision [GJR. No. KI49/23], appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci, and Enver Peci (members).

10. On 22 May 2023, the Court requested from the representative of the Applicants to submit a copy of the request for extraordinary review of the judicial decision submitted to the Supreme Court.

11. On 7 July 2023, the representative of the Applicants submitted the aforementioned document.

12. On 11 March 2024, Judge Jeton Bytyqi took the oath before the President of the Republic of Kosovo, thereby commencing his mandate at the Court.

13. Judge Remzije Istrefi-Peci did not participate in the process of reviewing and decision-making regarding this case, based on Decision [Ref. No.: KK546/24] of 5 September 2024, whereby her request for recusal from the process of reviewing and decision-making concerning Referral KI49/23 was approved.

14. On 11 September 2024, the Court unanimously decided to: (i) declare the Referral admissible; (ii) hold that there has been a violation of 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; (iii) declare the Judgment [ARJ-UZVP.no.109/2022] of 20 October 2022 of the Supreme Court invalid; and (iv) remand the case for reconsideration to the Supreme Court, in accordance with this Judgment of the Court.

Summary of facts

Procedures conducted by the Applicant Shaban Dulahu regarding the contesting of the Regulation on the Internal Organization of the Central Administration of the University of Prishtina and the Regulation concerning Personal Incomes at the University of Prishtina

15. On 2 December 2011, the Independent Oversight Board for the Civil Service of Kosovo (hereinafter: the IOBK) through Decision [02/262/2011] rejected the complaint no. 2429/11, dated 10 November 2011, submitted by the Applicant Shaban Dulahu, in the legal matter of amending and supplementing of the Regulation on the Internal Organization of the Central Administration of the University, the models of systematization for faculties, and the Regulation concerning Personal Incomes at the University of Prishtina, as unfounded.

16. The IOBK reasoned: **(i)** The competent Panel of the IOBK for reviewing this matter, based on Article 12, paragraph 12.1 of Law No. 03-L-192 on the IOBK, held a closed session for deliberation and voting, analyzed the complainant's evidence, and in this case finds that the complaint is unfounded; **(ii)** The employer, the University of Prishtina – Faculty of Law, in its response to the complaint no. 31793 dated 29 November 2011, claims that the regulations, which are the object of the complaint, have not been approved, while the draft proposals have been entirely changed after reconsideration by the Steering Council of the University of Prishtina; **(iii)** Within the changes made, the complainant's job position has been corrected and designated as "Responsible for Postgraduate MA, PHD Studies. The Regulation on Personal Incomes has been changed, specifically regarding the complainant's job position, it has been proposed that the salary be higher than the current salary; **(iv)** Both regulations have not yet been approved nor allowed by the Ministry of Internal Affairs and the Ministry of Finance, therefore, in the present case, there is no basis for the object of the complaint; **(v)** After analyzing and systematizing the evidence of the Applicant Shaban Dulahu and the employer, based on the case file and the applicable legal acts, as a result of the general adjudication, the Panel of the IOBK has concluded that the complaint is unfounded and has decided as in the enacting clause of this decision.

17. On 23 December 2011, the Applicant Shaban Dulahu filed a lawsuit with the Basic Court in Prishtina – Department for Administrative Matters, thereby initiating an administrative conflict against the defendant IOBK, requesting that the statement of claim be approved and the decision of the IOBK be annulled as unlawful.

18. On 14 August 2013, the Basic Court in Prishtina – Department for Administrative Matters, through Judgment [A.no.1519/11], rejected the statement of claim of the

Applicant Shaban Dulahu, submitted against the Decision of the IOBK [02/262/2011] of 2 December 2011, as unfounded.

19. The Basic Court reasoned: **(i)** in the complaint procedure, the defendant IOBCSK, by Decision no. 02/262/2011 dated 02 December 2011, rejected as unfounded the complaint of the Applicant Shaban Dulahu regarding the amendment and supplementation of the Regulation on the Internal Organization of the Central Administration of the University and the Regulation concerning Personal Incomes at the University of Prishtina; **(ii)** the court, taking into account the facts established in the administrative procedure, accepted the findings of the defendant IOBCSK (response to the lawsuit dated 24 January 2012), that it does not have jurisdiction to interfere in the policies or internal organization of an institution, because they are independent in the internal organization of their regulations; **(iii)** The court assesses that the defendant IOBCSK, within the functional competencies given by law, should have, in the complaints procedure in accordance with the provisions of Article 10 of Law No. 03/L-192 on the IOBCSK, preliminarily examined the fact whether there is a valid administrative act against which a complaint can be filed, and whether an internal administrative procedure was conducted before the administrative act was issued, since even the defendant itself, in its response to the lawsuit dated 24 January 2012, admits the fact that it does not have competencies to interfere in the policies or internal organization of an independent institution; **(iv)** since the Applicant Shaban Dulahu has initiated this administrative conflict with a lawsuit, the court has reviewed this administrative matter in accordance with the legal provisions of Article 13 of the Law on Administrative Conflicts, since in this case the contested decision of the IOBCSK is a final decision issued in the administrative procedure; **(v)** from the case files and from the response to the complaint dated 29 November 2011 of the administrative body of the first instance, the University of Prishtina, the court assesses that the internal regulations which the Applicant Shaban Dulahu contests were being drafted and that they underwent changes after the reconsideration by the Steering Council of the University of Prishtina; **(vi)** the court assesses that this administrative body has not issued an administrative act against which an appeal can be filed in the regular administrative procedure, since the administrative act must contain information as stipulated by the legal provision of Article 84 paragraph 2 of Law No. 02/L-28 on Administrative Procedure; **(vii)** Regarding the claims of the Applicant Shaban Dulahu, the court found that in this administrative conflict, they do not influence the making of another decision, since with the administered evidence and in view of the mentioned legal provisions, it has been established that the claims of the Applicant to change the internal regulations of an independent institution cannot be accepted.

20. The Applicant Shaban Dulahu filed an appeal with the Court of Appeals, alleging erroneous assessment of the factual situation and essential violation of the provisions of the Law on Administrative Procedure and the Law on Administrative Conflicts, proposing also that the judgment of the court of first instance and the decision of the IOBCSK be annulled.

21. On 10 January 2014, the Court of Appeals, through Judgment [A.A.no.314/2013], rejected the appeal of the Applicant Shaban Dulahu and upheld the Judgment of the Basic Court in Prishtina – Department for Administrative Matters [A.no.1519/11] of 14 August 2013, as unfounded.

22. The Court of Appeals reasoned: **(i)** the Panel of the Court of Appeals, starting from such a state of the matter and reviewing the judgment of the first instance based on the appeal of the Applicant Shaban Dulahu and ex officio, confirms it in its entirety as correct and based on evidence and law; **(ii)** the challenged judgment is not involved in substantial violations of the provisions of the Law on Administrative Conflict, violations which the

court of second instance investigates ex officio based on Article 63 of the LAC, in conjunction with Article 194 of the LCP; **(iii)** the competent courts in administrative matters assess the legality of final administrative acts which are the object of review based on the lawsuit as per Article 9 and 44 of the LAC; **(iv)** The Panel of the Court of Appeals finds that in this administrative legal matter, in the administrative procedure and in the judicial procedure in the court of first instance, the factual situation was correctly established, the right was not violated, and the substantive law was correctly applied; **(v)** from the claims in the statement of claim against the Decision of the IOBCSK, and in the appeal against the judgment of the first instance, it is not proven that the contested Regulations have violated his interests and personal rights, as the Applicant Shaban Dulahu states regarding the designation of his position — job position — and that he has been harmed in personal incomes, therefore, such appeal claims are unfounded and without impact to decide otherwise in this administrative legal matter; **(vi)** whereas, according to Article 56 of the LAP, the burden of proof for the alleged facts falls on the interested parties in the administrative proceeding, despite the obligation that the bodies provide available evidence to the parties, and that in his submissions, the Applicant Shaban Dulahu did not attach evidence on his appeal claims.

Procedures conducted by all Applicants regarding compensation for overtime work after regular working hours

23. On 31 March 2014, the Applicants filed a lawsuit against the University of Prishtina (UP), requesting that, in the name of compensation of salaries for overtime work after regular working hours and in commissions starting from 2006 until 01 October 2012, the Applicants be paid the total amount of 30,962.00 euros, the amount of 7,136.00 euros in the name of 20% tax for overtime work which should be paid to the Tax Administration of Kosovo, and the amount of 4,173.25 euros in the name of pension contribution, which should be paid to the Kosovo Pension Savings Trust.

24. On 30 April 2014, the Basic Court in Prishtina – General Department (hereinafter: the Basic Court), through Judgment [1309/11], decided: The statement of claim of the Applicants is **APPROVED**. The Defendant, the University of Prishtina "Hasan Prishtina" Prishtina, is **OBLIGED** to pay the Applicants, in the name of compensation of salaries for overtime work after regular working hours and in commissions starting from 2006 until 01 October 2012, the total amount of 30,962.00 euros, the amount of 7,136.00 euros in the name of 20% tax for overtime work which should be paid to the Tax Administration of Kosovo, and the amount of 4,173.25 euros in the name of pension contribution, which should be paid to the Kosovo Pension Savings Trust. The Defendant is **OBLIGED** to compensate the Applicants' procedural costs in the amount of 1,155 euros within 15 days from the receipt of the judgment.

25. The Basic Court reasoned: **(i)** After conscientiously and carefully reviewing each piece of evidence individually and in relation to each other, the court assessed that the statement of claim of the Applicants is founded, and therefore decided as in the enacting clause of this judgment; **(ii)** From the reviewed evidence and the statements of the litigants, it resulted that it was not disputed that the Applicants, during the described period as in the contracts, were employed with the Defendant, namely: the Applicant Shaban Dulahu in the position of Senior Officer for Master's and Doctoral Studies; the Applicant Mustafë Zhinipotoku – Senior Officer of Postgraduate Services; the Applicant Tasim Vehapi – Officer of Student Services for Master's Studies; and the Applicant Suzana Gusija – Officer of Master's Studies Services; **(iii)** It was not disputed that according to the Regulation on the Internal Organization of the Administration of the Faculty of Law and the systematization of job positions (October 2008), among others, the senior officers for Master's and Doctoral Studies at the Faculty of Law have a criterion of 250 students per officer; (iv) The court recalls that according to the internal

Regulation of the Faculty of Law, the work of responsible officers is determined at 250 students, whereas the number of students for each Applicant was about three times higher — which was not disputed by the Defendant; **(v)** Therefore, based on this situation, the court considered that management and efficient performance of tasks within the specified working hours could not be achieved, and as a result, the Applicants had to perform overtime work - after the regular working hours specified in the employment contract; **(vi)** Moreover, the right of the Applicants to be compensated for overtime work was also recognized by the decision of the Steering Council of the Defendant; **(vii)** The duration of work that the Applicants worked after working hours and performed additional work was described in detail by the authorized judicial expert, compiled on 20 November 2012; **(viii)** According to the expert's findings, the gross amount of money for compensation of the Applicants for exceeding the workload during the contested period, along with interest calculated until the compilation of the expert's report, was evaluated as follows: for the Applicant Shaban Dulahu 7,546 euros (seven thousand and five hundred and forty-six euros), for the Applicant Mustafë Zhinipotoku 10,052 euros (ten thousand and fifty-two euros), for the Applicant Suzana Gusija 6,854 euros (six thousand and eight hundred and fifty-four euros), and for the Applicant Tasim Vehapi 7,158 euros (seven thousand and one hundred and fifty-eight euros); **(ix)** The expert found that due to the work overload, the Applicants had no chance to perform the work during the regular working hours of 40 hours per week and neither with an additional 40 hours per month, but despite this finding, the expert based the evaluation for compensation of the amount of money for overtime work on the Applicants' employment contract and the internal Regulation of the Defendant; **(x)** The court found that the aforementioned financial expert's report was conducted professionally and based on proven facts, therefore, giving it full credence, approved the amount of compensation for the Applicants' additional work as determined by the expert; **(xi)** Moreover, the decision of the court to approve the statement of claim as founded was based on the provisions of Articles 23 and 56 of the Law on Labour.

26. On 4 June 2014, the Defendant UP filed an appeal with the Court of Appeals, alleging erroneous and incomplete determination of the factual situation and erroneous application of substantive law, proposing that the appealed judgment be quashed and the case remanded to the same court for retrial.

27. On 31 October 2016, the Court of Appeals, through Decision [CA.no.2736/2014], quashed the Judgment of the Basic Court [C.no.1309/2011] dated 30 April 2014 and remanded the case to the court of first instance for retrial.

28. The Court of Appeals reasoned: **(i)** Based on the case file, it results that the court of first instance rendered the appealed judgment in essential violations of the provisions of the contested procedure referred to in Article 182 paragraph 2 k) of the LCP, because the Defendant was not represented by an authorized person with the right to undertake all procedural actions, but was granted an authorization in the capacity of an observer and, from a legal point of view, such a form of authorization is not recognized. The authorization of the Defendant's representative in this case must derive from the Statute of the University or from the competent person based on which authorization for representation can be granted; **(ii)** The court of second instance has the duty to address this procedural violation ex officio in terms of Article 194 of the LCP, and in the presence of such a violation, the appealed judgment must be quashed under Article 198 paragraph 2 of the LCP, and the case remanded to the court of first instance for retrial; **(iii)** The court of first instance did not correctly and fully determine the contested facts whether the Applicants had established an employment relationship with the Defendant UP during the time period described in the statement of claim, since in the case file there is evidence that: **a)** Applicant Shaban Dulahu has an employment contract from 01 April 2010 until 01 April 2013; **b)** Applicant Mustafë Zhinipotoku has

an employment contract from 01 October 2009 until 01 October 2012; **c)** Applicant Tasim Vehapi has an employment contract from 09 August 2011 until 09 August 2014; **ç)** Applicant Suzana Gusija has an employment contract from 01 October 2010 until 01 October 2013 (copies of the contracts in the file); **(iv)** There is no evidence—contracts—that they had established an employment relationship with the Defendant UP from the year 2006; **(v)** Furthermore, in the case file, there is no evidence of overtime work; the Defendant UP has accurate data on the overtime work performed after regular working hours that each Applicant performed at the Defendant UP; **(vi)** In the case file, there is no evidence that the expert who provided his opinion and finding in written form was summoned to the main hearing session of the case, but only the finding that the expertise was read by the judicial expert A.B.; **(vii)** With such a method of obtaining the expert's opinion, in this case, the principle of objection has been violated because the parties or their representatives, nor the court, had the opportunity to pose questions to the expert regarding the circumstances of his findings expressed in writing; **(viii)** Such a right derives from the legal provision of Article 4 of the LCP; **(ix)** Additionally, in this case, the principle of direct examination of the case in the main hearing session has been violated, wherein evidence is taken directly before the court, including the questioning of the relevant expert; **(x)** The court of first instance in the retrial is obliged to eliminate all the aforementioned procedural violations, to correctly and fully establish the factual situation, and to correctly apply the substantive law; **(xi)** It is obliged, especially, to verify the accurate records of the competent official regarding the work that the Applicants claim to have performed overtime work after regular working hours during the time period mentioned in the statement of claim, to summon the competent expert to provide his finding and opinion in written form, based on relevant and credible facts and evidence, and then to summon the same to the court session to be available to the parties and the court to be heard in the capacity of an expert; **(xii)** That the Defendant UP be represented by the competent person, whose authorization derives from the Statute of the University, or another normative act, or from the competent person for authorizing the respective representative.

29. On 23 February 2018, the Basic Court in Prishtina - General Department - Civil Division, through Decision [C.no.2611/16], decided: **(i)** The Basic Court in Prishtina - Civil Department is DECLARES to have no subject matter jurisdiction to decide in this legal matter; **(ii)** After the decision becomes final, the case will be transferred to the Department for Administrative Matters of the Basic Court in Prishtina.

30. The Basic Court reasoned: "*The Court, after receiving the additional documents of the case, assessing all the case files, and the statements of the litigants in the preliminary session dated 23 February 2018, and in accordance with Article 19 of the Law on Contested Procedure of Kosovo which stipulates: Each court during the entire procedure of the first instance ex officio takes care of its subject matter jurisdiction, in conjunction with No. 03/L-149 on the Civil Service of the Republic of Kosovo, Articles 3 and 4 of the law, regarding the lack of subject matter jurisdiction, the court has found that the Plaintiffs have been and are Career Civil Servants, which is verified by the contracts concluded based on Article 3.1(c) and point 3.3 of the Regulation on the Civil Service of Kosovo and the Appointment Acts of the Plaintiffs based on Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, as well as based on the Decision of the Independent Oversight Board for the Civil Service of Kosovo No. 02262/2011 dated 02 December 2011 — part of this case — where the reasoning of this decision in the first sentence confirms that the complainant Shaban Dulahu, now Plaintiff, is in the capacity of a Civil Servant in the position of Senior Officer for Postgraduate Studies at the Faculty of Law in Prishtina*".

31. On 30 April 2020, the Court of Appeals, through Decision [Ac. No. 2447/18], decided: The appeal of the Applicants is **REJECTED** as unfounded, whereas the Decision of the

Basic Court in Prishtina - General Department [C.no.2611/16] of 23 February 2018 is **UPHELD**.

32. The Court of Appeals reasoned: **(i)** The Court of Appeals, starting from this state of the matter, assesses that the stance and legal conclusion of the court of first instance is correct and lawful, since the challenged decision is not involved in essential violations of the provisions of the contested procedure referred to in Article 182 paragraph 2 items (b), (g), (j), (k), and (m) of the LCP, for which the Court of Appeals takes care ex officio in terms of the provision of Article 194 of the LCP, and it is not involved in other violations of the provisions of the contested procedure which the appellant party has alleged in the appeal; **(ii)** The legal assessment of the court of first instance is correct, since the court during the entire procedure ex officio ensures whether it has subject matter jurisdiction to decide on the contested matter; **(iii)** This legal obligation is determined by the provision of Article 19 of the LCP, whereas Article 14 of the Law on Courts determines the subject matter jurisdiction of the Department for Administrative Matters of the Basic Court in Prishtina, which provides that this department has jurisdiction to adjudicate and decide in administrative conflicts according to lawsuits against final administrative acts and for other matters determined by law; **(iv)** The Court of Appeals, assessing the appeal claims and the challenged decision, finds that the court of first instance has correctly and lawfully assessed its subject matter jurisdiction, whereby it found that the subject matter jurisdiction in this matter lies with the Department for Administrative Matters of the Basic Court in Prishtina; **(v)** The provisions of Article 4 of the Law on the Civil Service of the Republic of Kosovo determine the categories of public employees who are not part of the civil service, from which follows that the category of employees as officers of student services of the University — Career Civil Servants — are not excluded from the category of civil servants; **(vi)** The Court of Appeals finds that the Applicants have established their employment relationship in accordance with the provisions of the Law on the Civil Service of the Republic of Kosovo, a circumstance confirmed also by the employment contracts of the Applicants submitted as evidence in the case file.

33. On 6 July 2021, the Basic Court in Prishtina - Department for Administrative Matters, through Decision [A.no.1015/20], decided: "*The lawsuit of the Plaintiffs Shaban Dulahu, Suzana Gusija, Teuta Zhinipotoku, and Tasim Vehapi, against the Defendants University of Prishtina and the Independent Oversight Board for the Civil Service of Kosovo (IOBCSK), with a request for annulment of Decision No. 2/262/2011 dated 02 December 2011, is DISMISSED as inadmissible, since this legal matter has been adjudicated by a final judgment*".

34. The Basic Court reasoned: "*The Plaintiffs Shaban Dulahu, Suzana Gusija, Teuta Zhinipotoku, and Tasim Vehapi, on 29 December 2011, filed a lawsuit in this court against the Defendant University of Prishtina, requesting compensation of incomes based on the decision. With the submission dated 06 July 2021 and in the main hearing session, through the authorized representative, they requested the annulment of the decision of the Defendant IOBCSK, No. 2/262/2011 dated 02 December 2011. In the response to the lawsuit dated 01 July 2021, and in the main hearing session, through the authorized representative, the Defendant IOBCSK contested the Plaintiffs' lawsuit, proposing that it be dismissed, reasoning that this matter has been decided by a final judgment of the first instance [A.no.1519/11] and the Court of Appeals of Kosovo [AA.no.314/13]. The Court reviewed the claims of the parties and the evidence in the case file and found that regarding the legality of the decision now challenged with this lawsuit, it has been decided by the Judgment of this court, A.no.1519/11, dated 14 August 2013 and the Judgment of the Court of Appeals of Kosovo, AA.no.314/13, dated 10 January 2014, and the judgment has become final. Therefore, based on the fact that the matter raised by the lawsuit constitutes res judicata with a final judgment, in*

accordance with Article 166 item 2 and Article 391 item (d) of the LCP, the court decided as in the enacting clause of this decision".

35. The Applicants filed an appeal with the Court of Appeals, alleging violations of the provisions of the Law on Administrative Conflicts, proposing that the appeal be approved and the challenged decision be modified so that the claim is approved in its entirety, or the matter be remanded for reconsideration.

36. On 26 July 2022, the Court of Appeals, through Decision [AA.no.976/2021], decided: The appeal of the Applicants is **REJECTED** as unfounded, whereas the Decision of the Basic Court in Prishtina - Administrative Matters Department [A.no.1015/20] of 6 July 2022 is **UPHELD**.

37. The Court of Appeals reasoned: **(i)** Based on these legal provisions (Article 166.2 and Article 391.1(d)), the panel of this court assesses that the Basic Court in Prishtina — Administrative Matters Department, correctly dismissed the lawsuit of the Applicants in this legal-administrative matter, because this legal matter is res judicata with a final judgment (A.no.1519/11 and AA.no.314/13); **(ii)** Therefore, the panel of this court assesses that in this contested matter, the conditions for initiating an administrative conflict are not fulfilled; **(iii)** The Applicants claimed that by dismissing their lawsuit as inadmissible, the provisions of the LCP and Article 34 of the LAC have been violated because they have been denied the right to judicial protection of the right to compensation for overtime work; **(iv)** These appeal claims, the panel of this court did not approve, since it assesses that they are unfounded and without impact for a different decision in this administrative legal matter.

38. On 14 September 2022, the Applicants submitted a request for extraordinary review of the court decision against the decision of the Court of Appeals, whereby they contest the legality of the challenged decision due to violations of the provisions of the LAC, proposing that the Supreme Court approve the request, annul the challenged decision of the Court of Appeals, and approve the statement of claim of the Applicants.

39. In the procedure before the Supreme Court, the Applicants emphasize the distinction between: (i) The procedure conducted by the Applicant Shaban Dulahu regarding the Regulation on the Internal Organization of the Central Administration of the UP and the Regulation concerning Personal Incomes at the UP; and (ii) The procedure conducted by all Applicants regarding compensation for overtime work.

40. In the request for extraordinary review of the court decision, the Applicants emphasized: "*By examining the content of the decision A.no.1519/11, it is evident that plaintiff there was only Shaban Dulahu and not the other plaintiffs, and that it was decided, quote, '...in the legal matter of amendment and supplementation of the Regulation...'. Therefore, these facts prove that the matter was not the same and the parties were not the same. Consequently, the Plaintiffs' lawsuit could not be dismissed as res judicata since it was not the same claim. On this basis, we consider that even the court of second instance has incorrectly applied Article 166 paragraph 2 of the LAC. The court of second instance also incorrectly applies Article 34 of the LAC when it considers that the stance of the court of first instance to dismiss the lawsuit is correct. The fact that the dismissal constituted a denial of the Plaintiffs' right to judicial protection for compensation for overtime work is not assessed at all. Thus, the second instance also incorrectly applies Article 2 of the LAC, according to which the purpose of the law is to ensure the protection of the rights and legal interests of natural persons whose rights have been violated by individual decisions or actions of public administration bodies. In the present case, the Plaintiffs had proven that the interested party — UP, by Decision 207 dated 24 January 2011, had decided that compensation*

for overtime work be paid to them. Since the decision was not executed by the UP bodies, the Plaintiffs had followed the legal procedure for the compensation recognized by decision. Thus, they had submitted a request to the UP on 08 June 2011, then on 07 July 2011, and in the absence of a response, they had submitted a complaint to the Steering Council of the UP on 13 September 2011; the fact that it was not decided according to the Plaintiffs' requests constituted a violation of rights of the employment relationship, and based on Article 2 of the LAC, the Plaintiffs should have enjoyed judicial protection. Thus, the Plaintiffs filed a lawsuit in the contested procedure. At the same time, Plaintiff Shaban Dulahu alone had also submitted a complaint to the Defendant on 10 November 2011, but with the subject matter 'amendment and supplementation of the Regulation.' The Defendant, without correctly applying the provisions of the LAC, conducted verification of facts, and with Decision 2/262/2011 dated 02 December 2011, had rejected the complaint of Plaintiff Shaban Dulahu, quote, 'amendment and supplementation of the Regulation.' The Plaintiffs consider that the court of second instance, by approving the conclusions of the court of first instance without giving concrete reasoning on the appeal claims, has violated the provisions of the LAC. The Plaintiffs hope that the decision-making court will review these allegations, approve the request, and issue a fair decision based on law".

41. On 20 October 2022, the Supreme Court, through Judgment [ARJ-UZVP.no.109/2022], rejected the request for extraordinary review of the court decision, submitted against the Decision of the Court of Appeals [AA.no.976/2021] dated 26 July 2022, as unfounded.

42. The Supreme Court reasoned: "*From the case file, it results that by the challenged decision of the Court of Appeals of Kosovo, AA.UZH.976/2021, dated 26 July 2022, the appeal of the Plaintiffs Shaban Dulahu, Suzana Gusija, Teuta Zhinipotoku, and Tasim Vehapi, submitted against the decision of the Administrative Department of the Basic Court in Prishtina, A.U.no.1015/2021, dated 06 July 2021, by which the lawsuit of the Plaintiffs against the Defendant IOBCSK for annulment of Decision No. 2/262/2011, dated 02 December 2011, was dismissed as inadmissible, since this matter has been adjudicated by a final judgment, was rejected as unfounded. Deciding according to the request for extraordinary review of the court decision, the Supreme Court of Kosovo, after reviewing the challenged decision, the case file, and assessing the claims in the request, found that the court of second instance acted correctly when it rejected the statement of claim of the Plaintiffs as unfounded and upheld the decision of the court of first instance. This Court fully accepts the legal stance of the Court of Appeals, since the challenged decision is not involved in violations as alleged in the request. The provision of Article 166 paragraph 2 stipulates that the Court during the entire proceeding of the matter ensures ex officio whether the matter raised by the lawsuit is res judicata, and if it finds that the procedure has been initiated for a matter for which there is a final decision, the lawsuit must be dismissed as inadmissible. Therefore, in the concrete situation, this Court finds that this matter is res judicata by the Basic Court in Prishtina, through Judgment A.U.no.1519/11, dated 14 August 2013, when the statement of claim of the Plaintiffs was rejected, but also through the Judgment of the Court of Appeals, AA.UZH.314/2013, dated 10 January 2014. Therefore, this Court assesses that the court of second instance acted correctly when it rejected the appeal of the Plaintiffs as unfounded and upheld the decision of the first instance. For these reasons, the Supreme Court of Kosovo considers that the claims of the Plaintiffs are unfounded and do not influence the verification of another factual situation from that established by the court of second instance. The challenged decision of the court of second instance is clear and understandable. Moreover, the substantive law has also been correctly applied and the law has not been violated to the detriment of the Plaintiffs*".

Applicant's allegations

43. The Applicants allege that their fundamental rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 6 (1) (Right to a fair trial) of the ECHR, have been violated.

44. The Applicants claim: "*In the present case, the submitted lawsuit was related to the compensation of additional income from the employment relationship of the four plaintiffs against the University of Prishtina, which is not an administrative body but a legal person; on the other hand, the lawsuit filed by the party Shaban Dulahu in the administrative matter with reference A. No. 1519/11 was initiated solely by Shaban Dulahu, and the subject matter of the administrative conflict was the annulment of Decision No. 02/262/2011, dated 02 December 2011; the defendant party was the Independent Oversight Board for the Civil Service, while in the administrative procedure before the IOBK, the appeal dated 10 November 2011, with reference No. 2491/11, sought the amendment and supplementation of the Regulation on the Internal Organization of the Central Administration of the UP*".

45. The Applicants allege: "*Therefore, it is clear that between the case initiated according to the lawsuit with reference C. No. 1309/11 and the case according to the administrative conflict A. No. 1519/11, the subject matter of the dispute is not the same, the parties are not the same, the facts of the case and the identity of the parties differ; in this context, the decision of the lower courts to dismiss the lawsuit as inadmissible on the grounds of res judicata are arbitrary decisions, contrary to the evidence and the law*".

46. The Applicants allege that they have been denied the right of access to court. They emphasize: "*In the present case, the decision of the Supreme Court of Kosovo, with reference ARJ-UZP. NO. 109/2022, dated 20 October 2022, was issued regarding the Request for Extraordinary Review of the court decision concerning the admissibility of the plaintiff's lawsuit, and the decisions of the lower courts are decisions issued by court having no jurisdiction, and they have deprived the plaintiffs of the right to legal remedies, access to court, and a fair and proper trial*".

47. The Applicants allege that based on Article 13 of the LAC, the administrative departments of the regular courts did not have jurisdiction to adjudicate their case. The Applicants allege: "*The Administrative Department of the Courts has jurisdiction to assess 'only' the final administrative acts of administrative bodies; in the present case, the plaintiffs have sought compensation of additional income from the University of Prishtina as the employer*".

48. The Applicants claim that in their case, the Law on Labour is applicable rather than the Law on the Civil Service. The Applicants emphasize: "*In the present case, the plaintiffs have never been civil servants, they are or have been employed by the University of Prishtina, and the Employment Contract applies to them, not the Law on the Civil Service, while it is true that they have an appointment act, they also have an Employment Contract to which the Law on Labour applies as the applicable law, and it is the law that determines the nature of the legal relationship; in the present case, based on all circumstances, they are not civil servants as defined in Article 2, paragraph 1, subparagraph 1.1 of the Law on the Civil Service and older laws*".

49. The Applicants allege a violation of the right to a reasoned decision as guaranteed by Article 31 of the Constitution and Article 6 (1) of the ECHR. They emphasize that the regular courts are obliged to provide specific and clear answers to the arguments, raised by the litigant, that are decisive for the outcome of the case.

50. The Applicants claim: "*The Supreme Court of Kosovo, through an arbitrary assessment of the facts and a decision contradictory to the facts of the case, as well as by deciding without having functional jurisdiction, has violated the rights under Article 6 of the European Convention on Human Rights. Therefore, in this case, the Constitutional Court of Kosovo is permitted to examine whether the interpretation of the law was made in an arbitrary, erroneous manner and in contradiction with the Constitution and the European Convention on Human Rights*".

51. The Applicants also allege arbitrariness by the regular courts, which contradicts the procedural guarantees of Article 31 of the Constitution and Article 6 (1) of the ECHR. In this regard, they emphasize: "*The arbitrariness during these proceedings is evident. Thus, the fundamental principles of the administration of justice have been violated, and the fundamental freedoms and rights of the Applicants have been infringed, as they have been denied a fair and impartial trial*".

52. Finally, the Applicants request the Court to: (i) declare the Referral admissible; (ii) held that there has been a violation of Articles 31 and 32 of the Constitution; (iii) annul the Judgment of the Supreme Court [ARJ.UZVP. No. 109/2022] of 20 October 2022; and (iv) remand the case to the Supreme Court for reconsideration.

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.

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

Article 53
[Interpretation of Human Rights Provisions]

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

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 ON LABOUR No. 03/L-212

Article 23
Extended Working Hours – Overtime

"1. In extraordinary cases, with the increase of volume of works and other necessary cases, on request of the employer, an employee shall work extended working hours (overtime) for a maximum of eight (8) hours per week.

2. Extended working hours, in compliance with paragraph 1 of this Article, may only last as long as it is necessary;

3. Work in excess of the stipulated limit from Article (1) of this Article may only be performed in case of urgencies to prevent accidents and ther un-foreseen force majeure.

4. In addition to compulsory overtime from paragraph 1 of this Article, employees may perform paid voluntary overtime in agreement with the employer and according to Article 56 of this Law.

5. Extended working hours are prohibited for employees under eighteen (18) years of age;
6. An employee working on reduced or part-time working hours cannot work more than the full time working hours;

7. An employer is obliged to keep a full record of overtime performed and to produce it upon request to the Labour Inspectorate

8. Labour Inspectorate shall prohibit overtime, if it represents a harmful effect to the health and the competency of an employee.

9. The employer is obliged to announce the working hours in a visible place."

LAW No. 03/L-202 ON ADMINISTRATIVE CONFLICTS

Article 34
No title

"1. The court shall disprove with a decision, if it ascertains that:

1.1. the indictment has been submitted after the timeline or it is premature;

1.2. the act contested by indictment is not an administrative act;

1.3. it is clear that the administrative act contested by an indictment does not affect the rights of the claimant or his/her direct interest based on the law;

1.4. against the administrative act, contested by indictment, a claim may be filed, whilst the claim hasn't been filed at all or hasn't been filed on time;

1.5. it is about the issue on which according to the provision of the law, an administrative conflict can not be made;

1.6. that there is a firm decision, issued in the administrative conflict, on the same issue.

2. For the reasons set out in paragraph 1 of this Article, the court can disprove the indictment at any phase of the proceeding.

LAW No. 03/L-006 ON CONTESTED POCCEDURE

Article 166
No title

166.1 The decision that can be attacked through a complaint becomes an absolute decree one for as much it is decided over the claim charge or against claim charge.

166.2 The court, in accordance to its official task during the proceedings looks into the possibility of the same issue being examined before, f it ascertains that the procedure was initiated for the request for which a verdict of absolute decree exists, the charges will be dropped as not allowed ones.
166.3 If in the process was decided over the request for which the charged party has submitted through a turndown aiming at compensation through a request charge, than the decision for existing or non-existence of this request of the charged will be issued as an absolute.

Article 182
No title

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

182.2 Basic violation of provisions of contested procedures exists always:

a) when the court is not made based on provisions or when during the issuance of the verdict was done by the judge who didn't participate in the main hearing;

b) when it is decided on a request which isn't a part of the legal jurisdiction;

c) when the in the issuance of the decision participated the judge who according to the law should be dismissed, respectively the judge was already dismissed by a court decision or in the cases when a person not qualifies as a judge participated in the issuance of the verdict;

d) in cases when the court based on rejection of parties has wrongly decided that it belonged to subject competencies;

e) if it was decided for the request based on the charges raised after the time period previously set by the law;

f) if the court has decided for the claim for which is subject of the highest court of the kind, a court of different kind;

g) if it's contrary to the provisions of this law, the court has based its decision on illegal possession of parties, (article 3. paragraph 3);

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

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

j) if in opposition with provisions of this law the court has refused the request of the party that in the procedure use its own language and writing, and follow the procedure in ones own language, and for this reason complaints;

k) if in the procedure as a plaintiff or as the accused has participated a person who couldn't be part of the procedure; when the party which is a legal entity was not represented by the authorized person; when the party with lack of procedural knowledge wasn't represented by a legal representative; when the legal representative, respectively the representative with proxy of the party had no necessary authorization for conducting a procedure, respectively performing specific actions in the procedure if the conducting the proceeding, respectively exercising of special actions in proceeding is not alowed;

l) if it was decided for the request for which the procedure is ongoing or for which earlier an absolute decree was reached; or for which the plaintiff once has withdrawn; or for which a court agreement was reached;

m) if in opposition with law the audience was expelled from the main hearing;

n) if the decision has leaks due to which it' can't be examined, especially if the disposition of the decision is not understandable or contradictory in itself with the reasoning of the verdict, or when the verdict has no reason or which gives no justification for the final facts, or which reasoning are unclear, contradictory, or if in the final facts there are contradictions between what is said in the verdict, the main document or the procedural records and of the document or the minutes of proceeding;

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

Article 194
No title

"The complaint court examines the court case of the first instances in the part that complaint refers to, and that is done within the boundaries of causes shown in the complaint, considering them in accordance to the official tasks for applying the material right and violation of provisions for contested procedure from the article 182 paragraph 2, point. b), g), j), k) and m) of this law."

Article 198
No title

"198.1 If the second instance court considers that the first instance court has decided about a request which doesn't fall under judicial competencies, a request for which a litispendence exists in a different trial, or for which there is a court ruling of decree absolute, or for which the party that raised charges withdrew, or for which there is a court consent than this court can revoke the decision of the first instance and reject the charge.

198.2 If the second instance court considers that during the procedure of the first instance there was a presence of the person that can not act as an intermediate party, when a legal entity was represented by a person not authorized as their legal representative, or if the party with no legal background wasn't represented by their legal representative or when the legal representative, the one with proxy or the one for conducting specific procedural acts wasn't authorized respectively the act weren't approved by their client, the court can revoke the decision of the first instance and reject the charge.

198.3 When the second instance court revokes the decision of the first instance court and the case is sent to the same for retrial, the court can decide that another judge resides over the case.

198.4 The justification part of the verdict, which revokes the decision of the first instance, should show which provision of the contested procedure are violated and what consists that violation.

LAW No. 06/L-054 ON COURTS

Article 14
Competences and Responsibilities of the President and Vice-President of the Court

"1. The President of the Basic Court and of the Court of Appeal shall be responsible for the day-to-day administration
of the court in accordance with the rules and procedures set forth by the Council. The President of the Court organizes and coordinates the functioning of the court; oversees the financial activities of the court; and undertakes certain activities as set out in the rules, procedures or orders issued by the Council.

2. The President of the Court has the following responsibilities:

2.1. authorizes and initiates employment procedures, disciplining and dismissal of nonjudicial personnel in accordance with applicable staff regulations;

2.2. the President of a Court shall have general administrative authority for management of
the court and shall ensure the efficient and effective administration of justice by all branches,
departments and divisions of the court;

2.3. the Court President, in co-operation with court judges, develops an annual case
management plan and assigns cases to the departments and judges in such a way as to ensure the efficient resolution of cases;

2.4. the President of the Court annually sends to the Council a report on the success of
the implementation of the previous annual case management plan;

2.5. the President of the Court sends to the Council a quarterly written report addressing

the work

of the court, identifying any problems the court faces, and proposes Remedial steps to address such problems;

2.6. the President of the Court, within the Council's rules and orders, shall take all necessary measures to ensure effective and efficient management of the court and its resources as well as adjudicating cases within the reasonable time;

2.7. the President of the Court is responsible for ensuring that the court and its proceedings are open and transparent to the public;

2.8. upon consideration and receipt by the Council, quarterly and annual reports on the case management plan will be made public;

2.9. the President of the Court is responsible for ensuring public access to the courts, including the access of persons from communities that do not constitute majority in Kosovo.

2.10. the President of the Court shall convene an annual meeting of all judges in that court for counseling on the administration of justice within that court; to analyze the organization of the court; to review and propose changes to procedures and practices; to examine the work accomplished by the court; and to address any problem of the administration which faces the court. The President of the Court shall, within ninety (90) days, submit to the Council a report on the results of the annual meeting of the judges.

2.11. the President of the Court shall, also, perform other duties determined by the Law and Regulation of the Council. The president for its work shall report to the Council;

2.12. The President of the Court may delegate certain powers.

3. The President of the Court in consultation with the Kosovo Judicial Council shall appoint the Vice-President of the court from the rank of the judges of the respective court. The mandate of the Vice-President of the court is the same as the mandate of the certain President.

4. The Vice-President of the court shall exercise duties of the President of the court in his/her absence or when the president is unable to exercise his duties. The Vice-President shall perform other duties which are delegated to him in writing by the President of the Court.

Admissibility of the Referral

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

54. In this regard, the Court refers to paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

"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."

55. The Court further examines whether the Applicant has met the admissibility criteria as set out in the Law. In this regard, the Court first refers to Articles 47 (Individual Request), 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 ...".

56. In assessing the fulfillment of the admissibility criteria as referred above, the Court notes that the Applicants specified that they challenge an act of a public authority, namely the Judgment [ARJ-UZVP.no.109/2022] of the Supreme Court, of 20 October 2022, after having exhausted all legal remedies established by law. The Applicants also clarified the rights and freedoms they allege to have been violated, in accordance with the requirements of Article 48 of the Law, and submitted the Referral in accordance with the deadline set in Article 49 of the Law.

57. In addition, the Court examines whether the Applicant has met the admissibility requirements specified in Rule 34 [Admissibility Criteria] of the Rules of Procedure. Rule 34 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 34 (2) states that:

"The Court may consider a referral as inadmissible if the referral is intrinsically unreliable when the applicant has not sufficiently proved and substantiated his/her allegations."

58. Finally and following the review of the constitutional complaint of the Applicants, the Court considers that the Referral cannot be considered manifestly ill-founded on constitutional grounds, as provided by paragraph (2) of Rule 34 of the Rules of Procedures, and consequently, the Referral is declared admissible for review based on

the merits. (see also the ECtHR case, *Alimuçaj v. Albania*, no. 20134/05, Judgment of 9 July 2012, paragraph 144, and also see Court cases KI75/21, Applicant "*Abrazen LLC", "Energy Development Group Kosova LLC", "Alsi&Co. Kosovë LLC" and "Building Construction LLC",* Judgment of 19 January 2022, paragraph 64; KI27/20, Applicant, *Lëvizja VETËVENDOSJE!*, Judgment of 22 July 2020, paragraph 43).

59. As a result, the Court declares the Referral admissible.

Merits of the Referral

60. The Court recalls that the Applicants allege that their fundamental rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 6 (1) (Right to a fair trial) of the ECHR, have been violated.

61. The Court notes that the essence of this case is related to the complaint submitted by the Applicant, Shaban Dulahu, to the IOBK, concerning the amendment and supplementation of the Regulation on the Internal Organization of the Central Administration of the University of Prishtina of the models of systematization for faculties, as well as the Regulation on Personal Incomes at the University of Prishtina. The IOBK rejected the complaint of the Applicant as unfounded. The Basic Court also rejected the lawsuit of the Applicant, Shaban Dulahu, submitted against the decision of the IOBK. The Court of Appeals rejected the appeal of the Applicant, Shaban Dulahu as unfounded, and upheld the Judgment of the Basic Court. Meanwhile, Applicants Shaban Dulahu, Suzana Gusija, Mustafë Zhinipotoku, and Tasim Vehapi, filed a lawsuit against the University of Prishtina (UP) in the name of compensation of salaries for overtime work after regular working hours and in commissions, starting from the year 2006 until 01 October 2012. The Basic Court in Prishtina - General Department approved the statement of claim of the Applicants and obliged the Defendant, UP "Hasan Prishtina," to pay the Applicants the compensation of salaries for overtime work after regular working hours and in commissions, starting from the year 2006 until 01 October 2012. The Defendant UP filed an appeal with the Court of Appeals, alleging erroneous and incomplete determination of the factual situation and incorrect application of substantive law, proposing that the appealed judgment be annulled and the case be returned to the same court for retrial. The Court of Appeals quashed the judgment of the Basic Court and remanded the case to the court of first instance for retrial. The Basic Court - General Department - Civil Division decided: (**i**) The Basic Court - Civil Department is DECLARED to have no subject matter jurisdiction to decide in this legal matter; (**ii**) after the finality of this decision, the case will be transferred the Administrative Matters Department of the Basic Court in Prishtina. The Applicants filed an appeal with the Court of Appeals. The Court of Appeals rejected the appeal of the Applicants as unfounded and upheld the Decision of the Basic Court - General Department. The Basic Court - Administrative Matters Department decided to dismiss the lawsuit of the Applicants as inadmissible. The Applicants filed an appeal with the Court of Appeals, alleging violations of the provisions of the Law on Administrative Conflicts, proposing that the appeal be approved and the appealed decision be modified that the claim is approved in its entirety, or the case be remanded for reconsideration. The Court of Appeals rejected the appeal of the Applicants as unfounded and upheld the Decision of the Basic Court - Administrative Matters Department. The Court of Appeals assessed that the Basic Court - Administrative Matters Department rightly dismissed the lawsuit of the Applicants in this legal-administrative matter, because this legal matter is res judicata with a final judgment. The Applicants filed a request for extraordinary review of the court decision against the decision of the Court of Appeals, alleging violations of the provisions of the LAC, proposing that the Supreme Court approve the request, annul the challenged decision of the Court of Appeals, and approve

the statement of claim of the Applicants. The Supreme Court rejected the request for extraordinary review of the court decision submitted against the Decision of the Court of Appeals, as unfounded.

62. The Court recalls that the Applicants essentially allege that the regular courts have violated their fundamental rights guaranteed by Articles 31 and 32 of the Constitution in conjunction with Article 6 (1) of the ECHR. The Applicants claim that the regular courts have erroneously applied substantive and procedural law when they treated their request for additional compensation for overtime work after regular working hours and for work in commissions as a res judicata matter because one of them (Shaban Dulahu) had, in an administrative procedure, requested the amendment and supplementation of the Regulation on the Internal Organization of the Central Administration of the UP. The Applicants emphasize that their request for additional compensation for overtime work after regular working hours and for work in commissions differs from the administrative procedure initiated by the Applicant Shaban Dulahu. The Applicants note that differences exist regarding the subject matter of the dispute, the parties and their identity which is not the same, and the facts of the case which are also not the same. Therefore, the Applicants claim that the treatment of their case as res judicata has violated the right of access to a court, the right to a reasoned decision, and the right to effective legal remedies as guaranteed by Articles 31 and 32 of the Constitution in conjunction with Article 6 (1) of the ECHR.

63. The Court considers that, considering the nature of this case, the Applicants' allegations will be examined in the context of the right of access to court.

64. The Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution, which provides:

> *"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.*

65. The Court also refers to Article 6 (1) (Right to a fair trial) of the ECHR, which provides:

> *"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."*

66. The Court notes that the right to a fair and impartial trial is guaranteed by Article 31 of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, and its application has been interpreted by the European Court of Human Rights (ECtHR). Based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court has a constitutional obligation to interpret fundamental rights and freedoms in accordance with the case law of the ECtHR.

67. Consequently, regarding the interpretation of the allegations for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court will refer to the general principles of the consolidated case law of the ECtHR.

(i) General principles of the case law of the ECtHR regarding the right of access to a court

68. Regarding the right of "access to a court", a right guaranteed by paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, the Court initially emphasizes that it already has a case law built upon the principles established through the case law of the ECtHR (including but not limited to the cases of *Golder v. the United Kingdom*, no. 4451/70, Judgment of 21 February 1975; *Běleš and Others v. the Czech Republic*, no. 47273/99, Judgment of 12 November 2002; *Miragall Escolano and Others v. Spain*, nos. 38366/97 and nine others, Judgment of 25 January 2000; and *Naït-Liman v. Switzerland*, no. 51537/07, Judgment of 15 March 2018). That said, the cases through which the Court has affirmed the principles established by the ECtHR and has applied the same in cases under its review include but are not limited to cases KI62/17, Applicant *Emine Simnica* [Judgment of 29 May 2018]; KI224/19, Applicant *Islam Krasniqi* [Judgment of 10 December 2020]; KI20/21, Applicant *Violeta Todorović* [Judgment of 13 April 2021]; KI54/21, Applicant *Kamber Hoxha* [Judgment of 4 November 2021]; KI55/21, Applicant *Muhamet Ademi* [Judgment of 10 March 2021].

69. The Court in this regard notes that the right to a court, as an integral part of the right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, provides that all litigants should have an effective judicial remedy enabling them to assert their civil rights (See cases of the Court K224/19, Applicant *Islam Krasniqi*, cited above, paragraph 35; and KI20/21, Applicant *Violeta Todorović*, cited above, paragraph 41; and the cases of ECtHR, *Běleš and Others v. the Czech Republic*, cited above, paragraph 49; and *Naït-Liman v. Switzerland*, cited above, paragraph 112).

70. Therefore, based on the case law of the ECtHR, everyone has the right to file a "lawsuit" related to their respective "civil rights and obligations" with a court. Article 31 of the Constitution in conjunction with Article 6 of the ECHR embodies the "right to a court", that is, "the right of access to a court", which implies the right to institute proceedings before the courts in civil matters (see ECtHR case *Golder v. the United Kingdom*, cited above, paragraph 36). Therefore, anyone who considers that there has been unlawful interference with the exercise of his/her civil rights and claims to have been denied the opportunity to challenge such a claim before a court may refer to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, invoking the relevant right of access to a court.

71. More specifically, according to the ECtHR case law, there must first be "a civil right", and second a"dispute" as to the legality of an interference that affects the very existence or scope of "a civil right" protected. The definition of both of these concepts should be substantial and informal. (See, inter alia, the cases of ECtHR *Le Compte, Van Leuvenand De Meyere v. Belgium*, no. 6878/75; 7238/75, Judgment of 23 June 1981, paragraph 45; *Moreira de Azevedo v. Portugal*, no. 11296/84, Judgment of 23 October 1990, paragraph 66; *Gorou v. Greece* (no. 2), no. 12686/03, Judgment of 20 March 2009, paragraph 29; and *Boulois v. Luxembourg*, no. 37575/04, Judgment of 3 April 2012, paragraph 92). The "dispute", however, based on the ECtHR case law, must be (i) "genuine and serious" (see, in this context, the ECtHR cases *Sporrong and Lönnroth v. Sweden*, no. 7151/75; 7152/75, Judgment of 23 September 1982, paragraph 81 and *Cipolletta v. Italy*, no. 38259/09, Judgment of 11 January 2018, paragraph 31); and (ii) the outcome of the proceedings before the courts must be "*decisive*" for the civil right in question. (See, in this context, the case of the ECtHR, *Ulyanov v. Ukraine*, no. 16472/04, Decision of 5 October 2010). According to the ECtHR case law, the "tenuous links" or "remote consequences" between the civil right in question and the outcome of these proceedings are not sufficient to fall within the scope of Article 6 of the ECHR. (See, in this context, ECHR cases, *Lovrić v. Croatia*, no. 38458/15 Judgment of 4 April 2017, paragraph 51 and *Lupeni Greek Catholic Parish and Others v. Romania*, cited above, paragraph 71 and references therein).

72. In such cases, when it is found that there is a "civil right" and a "dispute", Article 31 of the Constitution in conjunction with Article 6 of the ECHR guarantee to the affected individual the right "to have the question determined by a tribunal". (See ECtHR case, *Z and Others v. the United Kingdom*, no. 29392/95, Judgment of 10 May 2001, paragraph 92). A court's refusal to consider the parties' claims as to the compatibility of a procedure with the basic procedural guarantees of fair and impartial trial, limits their access to the court (See the case of ECtHR *Al Dulimi and Montana Management Inc. v. Switzerland*, no. 5809/08, Judgment of 21 June 2016, paragraph 131).

73. The Court, based on its case law and that of the ECtHR, in principle, emphasized that the right of access to a court should be "practical and effective" and not "theoretical and illusory" (see, among others, the Court cases, KI20/21, applicant Violeta Todorović, cited above, paragraph 43 and KI224/19, applicant Islam Krasniqi, cited above, paragraph 39 and the ECtHR case, Lupeni Greek Catholic Parish and others v. Romania [GC], no. 76943/11, Judgment of 29 November 2016, paragraph 84). According to the case law of the ECtHR, affirmed through the Court's own case law, this right is not absolute, but may be subject to restrictions which should not reduce access to court in such a way or to an extent that they violate the very essence of the right. Such restrictions will not be justified if they do not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, the case of the Court KI96/22, applicant Naser Husaj and Uliks Husaj, cited above, paragraph 51; KI20/21, applicant Violeta Todorović, cited above, paragraph 45; and KI54/21, applicant Kamber Hoxha, Judgment of 4 November 2021, paragraphs 63-64 and cases of the ECtHR: Sotiris and Nikos Koutras ATTEE v. Greece, no. 39442/98, Judgment of 16 November 2000, paragraph 15; Běleš and others v. Czech Republic, no. 47273/99, Judgment of 12 November 2002, paragraph, 61; and Lupeni Greek Catholic Parish v. Romania, cited above, paragraph 89). .

74. The Court, as a preliminary matter, reiterates that the assessment of proceedings is made in their entirety, that is, whether they were fair or not is assessed taking into account their development in their entirety (see the cases of the ECtHR, *Ankerl v. Switzerland*, no. 17748/91, Judgment of 23 October 1996, paragraph 38; and *Centro Europa 7 Srl and Di Stefano v. Italy*, no. 38433/09, Judgment of 7 June 2012, paragraph 197). Consequently, any defect in the correctness of the proceedings can, under certain conditions, be corrected at a later stage, or at the same instance (see ECtHR case *Helle v. Finland*, no.157/1996/776/977, Judgment of 19 December 1997, paragraph 54), or by a higher court (see ECtHR case *Schuler Zgraggen v. Switzerland*, no. 14518/89. Judgment of 24 June 1993, paragraph 52).

(i) Application of general principles to the circumstances of the present case

75. The Court reiterates that it is not its duty to replace regular courts, which are in a better position to assess the evidence at their disposal, establish the facts and interpret local law (see, for example, the ECtHR case *Khamidov v. Russia*, no. 72118/01, Judgment of 15 November 2007, paragraph 170); the Court emphasizes that when it comes to establishing the facts and interpreting the law, it is "sensitive" of the subsidiary nature of its role and that it should be careful in assuming the role of the court of fact, except when such a thing is made unavoidable by the circumstances of the case (see, for example, the ECtHR case *Bărbulescu v. Romania*, no. 61496/08, Judgment of 2017, paragraph 129).

76. The need for the Court to take on this role in this particular case is also reinforced by the principle that Article 31 of the Constitution and Article 6 (1) of the ECHR, as well as

the Constitution and the ECHR as a whole, must be interpreted in such a way as to guarantee rights that are practical and effective and not theoretical or false (see, inter alia, the ECtHR case *Vistiņš and Perepjolkins v. Latvia*, no. 71243/01, Judgment of 25 October 2012, paragraph 114);

77. The Court emphasizes that in its case law in many cases it has established that the matters of facts and the matters of interpretation and application of the law are within the scope of regular courts and other public authorities pursuant to Article 113.7 of the Constitution and as such, they are matters of legality, unless and as long as such matters result in the violation of fundamental human rights and freedoms or create an unconstitutional situation (see, inter alia, the Court Case no. KI33/16, Applicant *Minire Zeka* Judgment of 6 July, paragraph 91). Regardless of the assessment scope of the regular courts, the final decision regarding compliance with the requirements of the Constitution and the ECHR remains with the Constitutional Court (see, *mutatis mutandis*, the ECtHR case *Konstantin Markin v. Russia*, no. 30078/06, Judgment of 22 March 2012, paragraph 126);

78. Returning to the circumstances of the present case, the Court notes that the Applicants, in their request for extraordinary review of the court decision before the Supreme Court – in substance and explicitly – have emphasized that their lawsuit concerns compensation for overtime work. Meanwhile, the request of the Applicant Shaban Dulahu pertained to the amendment of the Regulation on the internal organization of the central administration of the University of Prishtina (UP) and the Regulation on personal incomes at UP. The Applicants emphasize that these are two different issues and that the regular courts, including the Supreme Court, have violated their rights – the right of access to court, the right to a reasoned decision, and the right to effective legal remedies as guaranteed by Articles 31 and 32 of the Constitution in conjunction with Article 6(1) of the ECHR.

79. Considering the nature and content of this case, the Court assesses that the allegations raised by the Applicants can best be examined within the framework of the right of access to court as guaranteed by Article 31 of the Constitution in conjunction with Article 6(1) of the ECHR.

80. The Supreme Court once again highlights the reasoning of the Supreme Court: "*From the case file, it results that by the challenged decision of the Court of Appeals of Kosovo, AA.UZH.976/2021, dated 26 July 2022, the appeal of the Plaintiffs Shaban Dulahu, Suzana Gusija, Teuta Zhinipotoku, and Tasim Vehapi, submitted against the decision of the Administrative Department of the Basic Court in Prishtina, A.U.no.1015/2021, dated 06 July 2021, by which the lawsuit of the Plaintiffs against the Defendant IOBCSK for annulment of Decision No. 2/262/2011, dated 02 December 2011, was dismissed as inadmissible, since this matter has been adjudicated by a final judgment, was rejected as unfounded. Deciding according to the request for extraordinary review of the court decision, the Supreme Court of Kosovo, after reviewing the challenged decision, the case file, and assessing the claims in the request, found that the court of second instance acted correctly when it rejected the statement of claim of the Plaintiffs as unfounded and upheld the decision of the court of first instance. This Court fully accepts the legal stance of the Court of Appeals, since the challenged decision is not involved in violations as alleged in the request. The provision of Article 166 paragraph 2 stipulates that the Court during the entire proceeding of the matter ensures ex officio whether the matter raised by the lawsuit is res judicata, and if it finds that the procedure has been initiated for a matter for which there is a final decision, the lawsuit must be dismissed as inadmissible. Therefore, in the concrete situation, this Court finds that this matter is res judicata by the Basic Court in Prishtina, through Judgment A.U.no.1519/11, dated 14 August 2013, when the*

statement of claim of the Plaintiffs was rejected, but also through the Judgment of the Court of Appeals, AA.UZH.314/2013, dated 10 January 2014. Therefore, this Court assesses that the court of second instance acted correctly when it rejected the appeal of the Plaintiffs as unfounded and upheld the decision of the first instance. For these reasons, the Supreme Court of Kosovo considers that the claims of the Plaintiffs are unfounded and do not influence the verification of another factual situation from that established by the court of second instance. The challenged decision of the court of second instance is clear and understandable. Moreover, the substantive law has also been correctly applied and the law has not been violated to the detriment of the Plaintiffs".

81. Based on the above, and insofar as it is relevant to the circumstances of the present case, the Court emphasizes that the right of access to a court, in principle, is guaranteed in relation to "genuine and serious disputes" concerning a "*civil right*." In this context, the Court considers that to determine the applicability of Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR, it should be taken into account that there are two essential matters: the first relates to a "*civil right*," and the second to the existence of a "genuine and serious dispute.", (See the case of the Court KI143/21, Applicant Avdyl Bajgora, Judgment of 25 November 2021, paragraph 62).

82. Regarding the first condition, the Court recalls that the subject matter that the Applicants had claimed with the lawsuit in the regular courts is the request for compensation of salaries for overtime work and in commissions starting from the year 2006 until 01 October 2012. Considering the circumstances of the case, the Court considers that the request for monetary compensation falls within the scope of civil rights and obligations. (See the case of the Court KI143/21, Applicant Avdyl Bajgora, cited above, paragraph 63).

83. Regarding the second condition, the Court considers that in the present case we are dealing with a "*genuine and serious dispute*" between the Applicants, as plaintiffs, and their employer UP as the respondent party, which is claimed to have a legal obligation (monetary obligation) to fulfill towards the Applicants (See the case of the Court KI143/21, Applicant Avdyl Bajgora, cited above, paragraph 64).

84. Considering that both of the aforementioned conditions have been fulfilled, the Court will proceed to assess whether the Supreme Court, by rejecting the request for extraordinary review of the court decision as unfounded, has denied the Applicants the right of "access to a court", namely the resolution of their case based on merits.

85. In the circumstances of the present case, the Applicants, in the proceedings conducted before the Supreme Court, contested and requested the annulment of the Decision of the Court of Appeals [AA.no.976/2021] of 26 July 2022 and the Decision of the Basic Court [A.no.1015/20] of 6 July 2021. The subject matter of the claim in these decisions was the obligation of UP to compensate the Applicants for overtime work after regular working hours.

86. The Court also notes that the Supreme Court had found that through the Decision of the Basic Court [A.U.no.1519/11] of 14 August 2013 and the Decision of the Court of Appeals [AA.no.314/2013] of 10 January 2014, the Decision of the IOBK [02/262/2011] of 2 December 2011 was upheld. The subject matter of the lawsuit in these decisions was the request of the Applicant Shaban Dulahu — without the other Applicants — for the amendment and supplementation of the Regulation on the internal organization of the central administration of the University and the Regulation on personal incomes at UP.

87. The Court also notes that the Applicants — neither explicitly nor in substance — have contested the Decision of the Basic Court [A.U.no.1519/11] of 14 August 2013 and the Decision of the Court of Appeals [AA.no.314/2013] of 10 January 2014, which upheld the Decision of the IOBK [02/262/2011] of 2 December 2011, because that procedure **(i)** concerns the personal lawsuit, as sole plaintiff, of the Applicant Shaban Dulahu; and, **(ii)** the subject matter of the lawsuit was the amendment and supplementation of the Regulation on the internal organization of the central administration of the University and the Regulation on personal incomes at UP; whereas, **(iii)** all the Applicants in the request for extraordinary review of the court decision before the Supreme Court — in substance and explicitly — have emphasized that their lawsuit concerns the obligation of UP to compensate the Applicants for overtime work after regular working hours.

88. In this regard, the Court notes that the Basic Court—General Department through Judgment [1309/11] of 30 April 2014 approved the statement of claim of the Applicants and obliged the respondent party UP "Hasan Prishtina" Prishtina to compensate the Applicants for overtime work after regular working hours. However, later, after the appeal of the respondent party UP, the Court of Appeals through Decision [CA.no.2736/2014] of 31 October 2016 remanded the case for retrial due to erroneous application of procedural provisions and incomplete determination of the factual situation. The Court of Appeals did not mention the issue of subject matter jurisdiction as to whether the case should be adjudicated by the Administrative Department of the Basic Court. In the subsequent proceedings, the Basic Court – General Department through Decision [C.no.2611/16] of 23 February 2018 declared itself to have no subject matter jurisdiction and decided that the case be transferred to the Administrative Department of the Basic Court. This decision was upheld through the Decision of the Court of Appeals [Ac.no.2447/18] of 30 April 2020.

89. The Court notes that in the administrative procedure conducted in the respective administrative departments of the Basic Court (Decision A.no.1015/20, dated 06 July 2021), Court of Appeals (Decision AA.no.976/2022, dated 26 July 2022), and Supreme Court (Judgment ARJ.UZVP.no.109/2022, dated 20 October 2022): **(i)** the explicit statement of claim of the Applicants for compensation from UP for overtime work afer regular working hours was not reviewed; but, **(ii)** instead, they reviewed the statement of claim of the Applicant Shaban Dulahu regarding the amendment and supplementation of the Regulation on the internal organization of the central administration of the University and the Regulation on personal incomes at UP, which they considered as a matter adjudicated *res judicata* based on **a)** Decision of the IOBK [02/262/2011] of 2 December 2011; **b)** Decision of the Basic Court [A.U.no.1519/11] of 14 August 2013; and, **c)** Decision of the Court of Appeals [AA.no.314/2013] of 10 January 2014, by which the Decision of the IOBK [02/262/2011] of 2 December 2011, was upheld.

90. The Court considers that the statement of claim of the Applicant Shaban Dulahu for the amendment and supplementation of the Regulation on the internal organization of the central administration of the University and the Regulation on personal incomes at UP differs and has a different subject matter compared with statement of claim of all the Applicants for compensation from UP for overtime work after regular working hours. This distinction has been made clear by the Applicants in the procedure before the regular courts as well as in the constitutional procedure before this Court, which is in full compliance with the subsidiary character of individual constitutional complaints.

91. In this context, the Court considers that the failure to review the statement of claim of the Applicants for compensation of overtime work after regular working hours by the regular courts, including the Supreme Court, demonstrates an approach of excessive formalism in the interpretation and application of the law, but also a failure to assess

the real situation of the Applicants (see cases of the ECtHR cases, *Gorou v. Greece* (no. 2) no. 12686/03, Judgment of 20 March 2009, paragraph 29; *Boulois v. Luxemburg*, no. 37575/04, Judgment of 3 April 2012, paragraph 92).

92. The Court considers that the concept of the right of access to court does not imply merely the formal submission of lawsuits, appeals, and submissions in the proceedings before the regular courts but also the merit-based review of disputes that are genuine and serious, as is the case with the Applicants (see ECtHR cases *Lupeni Greek Catholic Parish v. Romania*, cited above, paragraph 86; and *Kutić v. Croatia*, cited above, paragraphs 25 and 32).

93. The Court considers that the approach of the regular courts, including the Supreme Court, which did not examine the subject matter of the statement of claim regarding compensation for overtime work, is incompatible with the Applicants' right of access to court, because it prevents them from having a merit-based review of their case, despite the fact that it is a genuine and serious dispute. Moreover, the Court emphasizes that the ECtHR in its consolidated case law has held that an overly strict interpretation (excessive formalism) of procedural provisions may deprive applicants of the right of access to court (see ECtHR cases *Perez De Rada Cavanilles v. Spain*, , no. 116/1997/900/1112, Judgment of 28 October 1998, paragraph 49; and *Běleš and the Others v. Czech Republic*, cited above, paragraph 50).

94. In the context of this case, the Court reiterates that the principle of subsidiarity imposes a shared responsibility between this Court and the regular courts, including the Supreme Court, so that the latter must interpret and apply the relevant laws in a manner that gives full effect to the Constitution and the ECHR. Therefore, while it is primarily for the regular courts to interpret and apply the relevant laws, it ultimately falls to this Court to determine whether the way in which the law has been interpreted and applied produces consequences that are consistent with the principles of the Constitution and the ECHR (see, *mutatis mutandis*, the ECtHR case *Guðmundur Andri Ástráðsson v. Iceland*, no. 26374/18, Judgment of 1 December 2020, paragraph 250 and references therein).

95. The Court considers that it is not its task to adjudicate whether the civil or administrative department has subject-matter jurisdiction to adjudicate the Applicants' case. For the Court, it is of fundamental importance that the Applicants receive a merit-based response regarding their statement of the claim for compensation from UP for overtime work after regular working hours, without prejudice as to whether their case is decided by the civil or administrative department. And this is in full conformity with the well-established principle of the ECtHR that the rights guaranteed by the ECHR must be effective and practical, not "*theoretical or illusory*" (see ECtHR cases *Airey v. Ireland*, no. 6289/73, Judgment of 9 October 1979, paragraph 24; *Perez v. France*, no. 47287/99, Judgment of 12 February 2004, paragraph 80).

96. In the light of above, the Court finds that the circumstances of the present case disclose a violation of Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR.

97. Regarding the Applicants' claim for violation of Article 32 of the Constitution, the Court considers that this claim will not undergo constitutional review because it does not raise any new issue that has not been previously addressed under Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR. (see the case of the Court no. KI215/21,, Applicants *Arbër Shkreli and others*, Resolution on Inadmissibility of 15 February 2022, paragraph 93 and the references mentioned therein).

Conclusion

98. The Court, based on the above constitutional review, holds that the challenged Judgment [ARJ-UZVP.no.109/2022] of the Supreme Court, of 20 October 2022, violates the constitutional rights of the Applicants guaranteed by Article Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (1) (Right to a fair trial) of the ECHR.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113 (1) and (7) and 116 (1) of the Constitution, Articles 20 and 47 of the Law and Rule 48 (1) and 60 (5) of the Rules of Procedure, in the session held on 11 September 2024, unanimously

DECIDES

I. TO DECLARE the referral admissible;

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

III. TO DECLARE the Judgment [ARJ-UZVP.no.109/2022] of the Supreme Court of Kosovo, of 20 October 2022, invalid.

IV. TO REMAND the case for reconsideration to the Supreme Court, in accordance with the Judgment of this Court;

V. TO ORDER the Supreme Court to notify the Court, in accordance with Rule 60 (5) of the Rules of Procedure, by 11 March 2024, of the measures taken to implement the Judgment of this Court;

VI. TO NOTIFY this Judgment to the parties and, in accordance with Article 20.4 of the Law, to publish it in the Official Gazette;

VII. This decision is effective as of the date of its publication in the Official Gazette in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Safet Hoxha	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.