



# RIGHT OF ACCESS TO COURT



REPUBLIKA E KOSOVËS – REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
USTAVNI SUD  
CONSTITUTIONAL COURT**

Thematic Summary  
of case law of the  
Constitutional Court



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## Foreword

This Thematic Summary of the case law published by the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) aims to inform the legal community, in particular the representatives of the parties and the parties themselves, regarding the case law of the Court, through which the principles and criteria related to the examination of referrals have been developed and established, whereby the violation of the right of access to a court, as guaranteed by Article 31 [Right to Fair and Impartial trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR) is claimed.

The Thematic Summary of the Court's cases refers only to those aspects, for which the Court has developed case law, through which the principles and criteria established through the case law of the European Court of Human Rights (hereinafter: ECtHR) have been applied. As for other aspects not covered by the Court's case law until now, legal practitioners and readers can refer themselves to the ECtHR decisions and relevant guides and documents published on its website.

By elaborating on the case law of the Court related to the assessment of the limitation of the right of access to a court, this thematic Summary will, *inter alia*, briefly elaborate the case law of the Court, specifying the most relevant cases in which the Court has developed the general principles and criteria of the right of access to a court, as an integral part of the right to a fair and impartial trial, in which cases, taking into account the features of each case separately, has applied these criteria to decide whether the contested decisions of the regular courts have limited the right of the respective applicants to access the court.

More specifically, in three content chapters, this Thematic Summary in its first part outlines and elaborates the general and most essential principles regarding the right to fair trial within reasonable time and includes concrete examples as to when this right could be violated, listing cases for each situation in which the case law of the Court has already developed and on which these principles have been consolidated. While, through in the second part, the summaries of some concrete decisions will be reflected, in which the Court, applying the principles and criteria developed through the case law, has assessed and examined whether in the circumstances of the cases before it, the right of the applicants of access to the Court has been violated. Finally, this thematic Summary also contains the list of the most relevant decisions of the ECtHR and the Court that are related to the right of access to a court.

It should be noted that this document is informative in nature and that the elaborations and any reference used in it, must however be understood and interpreted in the context of the factual and legal circumstances of the relevant case. Therefore, since each case contains almost unique factual and legal aspects and the assessment of admissibility is subject to a special case-by-case review by the Court, the reference in this document does not necessarily lead to a specific result before the Court.

Furthermore, it should be clarified that the content of this document and the references in the Court cases are not exhaustive. Considering the dynamic nature and continuous development of the case law, this Thematic Summary will be subject to continuous updating. All decisions referred to in this Summary are published on the Court's website and are accessible in Albanian and Serbian, as official languages in the Republic of Kosovo, as well as in English in certain cases.

## I. Right of access to court – General principles

### Article 31(1) and (2) of the Constitution

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

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

### Article 6(1) of the European Convention on Human Rights

*“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. [...]”*

The Court, affirming the findings and principles established through the case law of the ECtHR that also derive from its obligation established by Article 53 [Interpretation of Human Rights Provisions] of the Constitution, has a relatively consolidated case law in relation to the right of access to a court as an integral part of the right to a fair and impartial trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR, which, among others, include cases (i) *Golder v. the United Kingdom*, no. 4451/70, Judgment of 21 February 1975; (ii) *Běleš and Others v. Czech Republic*, no. 47273/99, Judgment of 12 November 2002; (iii) *Miragall Escolano and Others v. Spain*, no. 38366/97 and nine others, Judgment of 25 January 2000; and (iv) *Naït-Liman v. Switzerland*, no. 51537/07, Judgment of 15 March 2018. Having said that, the Court’s cases through which it has affirmed the principles established by the ECtHR and has applied the same to the cases for review before it, include but are not limited to the cases (i) [KI62/17](#), applicant *Emine Simnica*, Judgment of 29 May 2018; (ii) [KI224/19](#), applicant *Islam Krasniqi*, Judgment of 10 December 2020; (iii) [KI20/21](#), applicant *Violeta Todorović*, Judgment of 13 April 2021; (iv) [KI54/21](#) applicant *Kamber Hoxha*, Judgment of 4 November 2021; (v) [KI55/21](#), applicant *Muhamet Ademi*, Judgment of 10 March 2022; and (vi) [KI04/23](#), applicant *Avdyl Bajgora*, Judgment of 30 May 2024. According to the clarifications given in the aforementioned Judgments, the right of access to a court must be practical and effective right, so that an individual must have a clear and real opportunity to contest an act that is claimed to violate his/her rights guaranteed by the Constitution. Having said that, and to give concrete examples in which cases the right of access to a court can be violated, the Court will present cases from its case law for each situation in which its case law has already been developed. For this purpose, in what follows the most essential principles that have been developed through the case law in this context will be presented, followed by the enumeration of the main cases on which these principles have been consolidated.

The right of access to a court stipulates that litigants must have an effective legal remedy that enables them to protect their civil rights.

- [KI224/19](#), applicant *Islam Krasniqi*, paragraph 35; and
- [KI20/21](#), applicant *Violeta Todorović*, paragraph 41.

The right of access to a court is not absolute, but may be subject to limitations, since by its very nature it calls for regulation by the state, which enjoys a certain margin of appreciation in this regard. However, limitations on this right (i) must not reduce access to the court in such a way or to such an extent that they impair the very essence of the right; and (ii) 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.

- [KI20/21](#), applicant *Violeta Todorović*, paragraph 44;
- [KI54/21](#), applicant *Kamber Hoxha*, paragraph 63; and
- [KI04/23](#), applicant *Avdyl Bajgora*, paragraph 63.

The Court has found that the right of access to a court also applies to criminal cases.

- [KI62/17](#), applicant *Emine Simnica*, paragraph 54.

In this way, depending on the circumstances of the case, the right of access to a court may be violated in cases that, among others, are related to (1) time limits; (2) *ratione valoris* limitations of access to the Supreme Court; (3) procedural obstacles that prevent or limit the possibilities of access to the court, which, *inter alia*, are related to (a) non-payment of the court fee; and (b) the authorization of the legal representative, both in civil and criminal proceedings; (4) non-examination of administrative acts of public authorities; (5) non-examination of claims/complaints of the parties in the court proceedings and (6) the procedural limitations that are related to the principle of the sovereign immunity of states.

## 1. Limitations related to time limits

The Court, affirming the principles developed through the case law of the ECtHR, emphasized that (i) the rules that define the formal criteria that must be respected in relation to the time limit for submitting a complaint are aimed in the context of proper administration of justice and the same must be examined in compliance, and in particular in accordance with the principles of legal certainty; (ii) each case must be examined in the light of the circumstances and specific elements of the procedure in that case; and (iii) courts must avoid both “*excessive formalism*” that would prevent fair procedure and “*excessive flexibility*” that would render the procedural criteria established by law ineffective.

- [KI54/21](#), applicant *Kamber Hoxha*, paragraph 76; and
- [KI55/21](#), applicant *Muhamet Ademi*, paragraph 72.

The Court, from the point of view of proper administration of justice and respect for the principle of legal certainty in interpreting and applying the relevant legal provisions by the relevant court, must assess whether the latter (i) has taken into account the specific circumstances of the case, namely the circumstances of the proceedings conducted before the regular courts, and in terms of the latter (ii) has avoided “*excessive formalism*”.

- [KI54/21](#), applicant *Kamber Hoxha*, paragraph 77; and
- [KI55/21](#), applicant *Muhamet Ademi*, paragraph 73.

In assessing what is the result of the formalistic interpretation and application of the relevant procedural rules related to the timeliness of filing submissions and complaints by the regular

courts, the Court has held that their findings regarding the timeliness of submissions/ complaints has ceased to be in the service of the principle of legal certainty, which consequently violated the applicant's right of access to the court.

- [KI54/21](#), applicant *Kamber Hoxha*, paragraph 86; and
- [KI55/21](#), applicant *Muhamet Ademi*, paragraph 82.

The incorrect calculation of the time-limits by the Supreme Court as set forth by the Law on Labor resulted in the denial of the applicant's right of access to court as an integral part of the right to fair and impartial trial.

- [KI38/23](#), applicant *Flamur Dylhasi*, paragrafi 86.

The Court has emphasized that the restriction imposed by the Supreme Court on access to this court as a result of its finding that the revision filed by the applicant was submitted out of the deadline, ignoring the applicant's right to be served with the decision of the Court of Appeals in her native language despite the fact that based on the applicable law this was the language chosen in the court proceedings, was disproportionate and consequently violated the very essence of the right of access to a court.

- [KI84/22](#), applicant *Slavica Đorđević*, paragraph 87.

## **2. *Ratione valoris* limitations on the right of access to the Supreme Court**

Based on paragraph 2 of Article 211 (no title) of the Law on Contested Procedure (hereinafter: the LCP): "*Revision is not permitted in the property-judicial contests, in which the charge request involves money requests, handing items or fulfillment of a proposal if the value of the object of contest in the attacked part of the decision does not exceed 3, 000 €*". Consequently, the nature of the *ratione valoris* limitation and based on the aforementioned legal provisions is based on paragraph 2 of Article 211 (no title) of the LCP. Having said that, at the moment of reaching this threshold, the Supreme Court based on Article 223 (no title) of the LCP can annul the decisions of the lower instance courts and remand the case to the lower instance court for retrial or annul the decisions of the lower instance courts and consequently reject the claim of the parties.

- [KI04/23](#), applicant *Avdyl Bajgora*, paragraph 76; and
- [KI172/23](#), applicants *Rejhane Ceka, Fiknete Ceka, Lejlane Ceka and Sara Ceka*, paragraph 77.

The Court has emphasized that in terms of the proper administration of justice, the application of formal and procedural rules related to the permissibility of revision is of such importance that it serves legal certainty during the conduct of court proceedings before the Supreme Court. In determining these principles, the Court applying the principles and criteria established by the case law of the ECtHR, in particular the case of *Zubac v. Croatia*, emphasized that (i) limiting access to that court by establishing a legal *ratione valoris* threshold is justified by the legitimate aim of the Supreme Court to deal only with more significant issues; and (ii) the resolution of irregularities committed by the lower courts in determining the value of the dispute also aims at a legitimate aim, namely respect for the rule of law and the proper functioning of the judicial system.

Following this position, the Court applies the criteria developed by the ECtHR in case *Zubac v. Croatia*, and affirmed through its already consolidated case law in these cases, namely it continues

with the assessment of whether (a) in relation to the criterion of the foreseeability of the limitation through the legal threshold, the case law of the Supreme Court is consistent and clear regarding the permissibility of revision; (b) the limitation of access to the Supreme Court can be attributed to the applicant; and (c) whether the Supreme Court in interpreting and applying the legal provisions in force that are related to the threshold of permissibility of the revision has used “*excessive formalism*”.

- [KI04/23](#), applicant *Avdyl Bajgora*, paragraph 74;
- [KI172/23](#), applicant *Rejhane Ceka, Fiknete Ceka, Lejlane Ceka and Sara Ceka*, paragraph 75;
- [KI199/22](#), applicant *N.P.T. “Arta XH”*, paragraph 79; and
- [KI96/22](#), applicant *Naser Husaj dhe Uliks Husaj*, paragraph 58.

### 3. Procedural restrictions that prevent or limit the possibilities of access to a court

- *Restrictions related to the authorization of the legal representative in the proceedings before the regular courts*

The right of “*access to a court*” does not only mean the right to initiate proceedings before a court, but, in order for the right of access to court to be effective, the individual must also have a “*clear and real*” opportunity to contest the decision that violates his/her rights and for his/her case to be dealt with on its merits. Thus, the rejection of the legal remedies filed by the applicants before the regular courts, where the latter had not undertaken any procedural action stemming from the law to ascertain the truth of the facts about the representation, according to the Court, constitutes a limitation of the right of access to a court.

- [KI62/17](#), applicant *Emine Simnica*, paragraph 74 [criminal procedure]; and [KI182/20](#), applicants *Sedat Kovaçi, Servet Ergin, Ilirjana Kovaçi and Sabrije Zhubi*, paragraph 99 [civil procedure].
- *Non-payment of the court fee*

The Court assessed that the burden of responsibility for the non-administration of the applicant’s submissions lies on the court, in the event that the applicant has taken every action required by the legal provisions in force, to ensure that his complaint was examined on merits.

- [KI224/19](#), applicant *Islam Krasniqi*, paragraph 53; and
- [KI80/19](#), applicant *Radomir Dimitrijević*, paragraph 62.

### 4. The failure to examine individual administrative acts of public authorities

The failure to examine the applicant’s lawsuit, which is related to the assessment of the decree of the President of the Republic of Kosovo by the Basic Court, the Court of Appeals and the Supreme Court, violated the applicant’s right of access to justice.

- [KI214/21](#), applicant *Avni Kastrati*, Judgment of 7 December 2022, paragraph 129.



The rejection of regular courts to examine the legality of sub-legal acts is a violation of the right of access to a court. Reviewing the legality of sub-legal acts by regular courts is a legal and constitutional obligation of the latter.

- [KI10/22](#), applicant *Trade Union of the Institute of Forensic Medicine*, Judgment of 17 July 2022, paragraph 80.

## 5. Non-examination of claims/complaints of the parties

The inability to address the subject of the claim and the essential allegations raised by the applicants through complaints/legal remedies, respectively by the regular courts, and the failure to remedy the violation of this right by the higher court constitutes a procedural flaw, which consequently violates the very essence of the right of the applicants to receive a meritorious response regarding their case.

- [KI49/23](#), applicant *Shaban Dulahu and others*, paragraph 93; and
- [KI121/22](#), applicant *Mexhid Asllani, Ekrem Asllani and Nuredin Xhaferi*, paragraph 82.

## 6. Procedural limitations - the principle of sovereign immunity of states

The Court, based on the case law of the ECtHR, has affirmed that the limitation of the right of access to court follows a legitimate aim and is proportionate in case of procedural restrictions imposed by the principle of sovereign immunity on states - as one of the fundamental principles of public international law - in relation to the court proceedings that can be conducted against a state in the domestic courts of another state (see, cases of the ECtHR: [Jones and others v. the United Kingdom](#), no. 34356/06 and 40528/06, Judgment of 14 January 2014 and [Al-Adsani v. the United Kingdom](#), no. 35763/97, Judgment of 21 November 2001).

In the cases related to the referrals before the Court, which refer to the applicants' requests against the Government of Serbia for compensation of war damages caused during the war in Kosovo, the Court found that the regular courts of Kosovo have not ruled on the right of the applicants to seek compensation for damage, but only in relation to the territorial competence of Kosovo courts to conduct proceedings against another state.

- [KI147/20](#), [KI148/20](#), [KI149/20](#), [KI150/20](#), [KI151/20](#) and [KI152/20](#), applicants *Nezir Neziri and 5 others*, Resolution on Inadmissibility, of 1 January 2021, paragraphs 58-60; (see, and all the decisions of the Court related to similar referrals submitted before it).

## II. Examples of Court cases related to the right of access to court

In the following, the summaries of some concrete decisions will be reflected, in which the Court, applying the aforementioned principles and criteria developed through the case law, has assessed and examined whether the applicants' right of access to the Court has been violated in the circumstances of the cases before it. The summaries reflected as follows are simplified and contain the essence of the claims of the applicants and the finding of the Court, and for this reason any of their interpretation and analysis must be done in the light of the published Judgment/Resolution.

### 1. Time limits

KI54/21, applicant *Kamber Hoxha*, Judgment of 4 November 2021

#### **Principle:**

The finding of the Supreme Court that the applicant's claim was filed out of time as prescribed by law, after a decade of proceedings in which the applicant's lawsuit was decided and re-decided on merits, including by the Supreme Court itself, is not proportionate to the aim pursued to guarantee legal certainty and proper administration of justice, as one of the basic principles of the rule of law in a democratic society.

#### **Facts:**

The applicant was employed in the Correctional Service. In 2004, he was notified by decision about the termination of the employment relationship as a result of disciplinary violations. Initially, the applicant initiated an administrative procedure contesting the decision, and then initiated the procedures before the regular courts. The claim of the applicant was examined from the procedural point of view and that of the merits, in the proceedings conducted before the District Court, the Independent Oversight Board for the Civil Service, the Court of Appeals and the Supreme Court. The case was remanded to the Basic Court, which again upheld the applicant's claim in its entirety. The Court of Appeals quashed the Judgment of the Basic Court, rejecting the applicant's claim, this time finding that the initial claim was filed out of the legal time limits as defined in the Law on Basic Rights of Employment Relationship of 28 September 1989 of the SFRY. In the revision procedure before the Supreme Court, the latter upheld the findings of the Court of Appeals.

#### **Allegations:**

The applicant before the Court contested the aforementioned findings of the Supreme Court, including those of the Court of Appeals, claiming that they were rendered in violation of the guarantees embodied in his constitutional rights that are related to his right to a legal remedy and judicial protection of rights.

#### **Assessment of the Court:**

The Court concluded that in the circumstances of the present case, it should be taken into account that both the Court of Appeals and the Supreme Court had once decided on the lawsuit of the applicant, never raising the issue of the legal deadline of the initial lawsuit. In such circumstances, the Court emphasized the very formalistic interpretation regarding the applicability of the provisions of the Law on Basic Rights of Employment Relationship of 28 September 1989 of the SFRY by the Supreme Court, resulting in the finding that the initial lawsuit filed by the applicant was out of time, despite the fact that the Supreme Court, in examining this case for the first time, had not raised the issue of the time-limit of the claim.

According to the Court's assessment, the finding of the Supreme Court, after a decade of proceedings in which the applicant's claim was decided and re-decided on merits including the Supreme Court itself, is not proportionate to the aim pursued to guarantee legal certainty and proper administration of justice, as one of the basic principles of the rule of law in a democratic society.

**Conclusion:**

The Court held that there had been a violation of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR because as a result of this interpretation and finding of the Supreme Court, the applicant was denied "*his right of access to court*".

**Reference:** [KI54/21](#)

[KI20/21](#), applicant *Violeta Todorović*, Judgment of 13 April 2021

**Principle:**

Rejection of the applicant's request for correction of the technical error of the Judgment of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, as a result of which error the applicant did not have the opportunity to avail herself of the legal remedy - the appeal, because the latter was rejected as out of time, thereby violating her right of access to court.

**Facts:**

The applicant was employed at SOE "Yumco" since 1990. After the privatization of the latter, the Privatization Agency of Kosovo published the final list of employees with legitimate rights in SOE "Yumco", in which list the applicant was not included. She filed a complaint with the Specialized Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (SCSC), which refused the complaint as ungrounded. Acting according to the appeal, the Appellate Panel of the SCSC also rejected the applicant's appeal because it was submitted out of time as foreseen by law. Before the Appellate Panel of the SCSC, the applicant submitted a request for the correction of the technical error of the Decision of the Appellate Panel, reasoning that she had submitted the appeal within the prescribed time limit. The Appellate Panel of the SCSC, in its follow-up Decision, rejected the applicant's request as inadmissible, adding that the decision of the Appellate Panel is final, even though it concluded that the applicant's statements for being served with the decision of the Specialized Panel of the SCSC on 3 June 2016 were correct.

**Allegations:**

The applicant essentially claimed before the Constitutional Court that the contested Decision of the Appellate Panel of the SCSC violated her fundamental rights and freedoms guaranteed by her right of access to court, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the ECHR.

**Assessment of the Court:**

The Court found that the Appellate Panel of the SCSC, despite the fact that it found that the applicant's allegations regarding the error were correct, and that, consequently, her complaint was submitted on time as established by Law no. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, the latter

rejected the applicant's request for correction of the error of the Appellate Panel of the SCSC by judgment of 4 October 2019, considering it as a request for reconsideration of the court decision. Accordingly, the Appellate Panel of the SCSC limited the applicant's access to the court, as one of the main principles of a fair trial.

**Conclusion:**

The Court held that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR because the decisions of the Appellate Panel of the SCSC resulted in the impossibility that the applicant's appeal against the Judgment of the Specialized Panel be treated on its merits despite the fact that her appeal was submitted on time.

**Reference:** [KI20/21](#)

## 2. *Ratione valoris* limitation

**KI04/23**, applicant *Avdyl Bajgora*, Judgment of 30 May 2024

**Principle:**

The very formalistic interpretation of the procedural rules by the Supreme Court regarding the value of the object of the dispute, namely the *ratione valoris* limitation, as a criterion for the permissibility of the legal remedy - revision, in the present case, resulted in the limitation of the applicant's right of access to a court.

**Facts:**

The applicant submitted his first referral to the Court, registered with the number KI143/21, whereby he contested the respective Decision of the Supreme Court of 22 February 2021, which was related to his claim for compensation of three (3) jubilee salaries from the Kosovo Energy Corporation, after the latter rejected his request for recognition of the right to the aforementioned compensation. The Basic Court in Prishtina approved the claim of the applicant as grounded, while the Court of Appeals modified the Judgment of the Basic Court in point I of the enacting clause and rejected the claim of the applicant in its entirety, namely the total amount of the subject of dispute, the amount of 3,286.80 euro. In considering the request for revision of the applicant, the Supreme Court, by the Decision of 22 February 2021, found that the revision in this case is not permitted, because the value of the dispute did not exceed the amount of 3,000.00 euro as established in paragraph 2 of Article 211 (no title) of the LCP. In case KI143/21, the Court, by its Judgment of 25 November 2021, found that Decision [Rev. no. 558/2020] of the Supreme Court, of 22 February 2021, was rendered in violation of the applicant's right of access to court, as an integral part of the right to a fair and impartial trial, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights, and consequently remanded the case to the Supreme Court for retrial. In the following, the Judgment clarifies that as a result of the Judgment of the Constitutional Court, of 25 November 2021 in case KI143/21, the Supreme Court on 10 October 2022, rendered Decision [Rev. no. 43/2022] by which rejected again the revision of the applicant as impermissible, this time also expressing its disagreement with the findings given in the Judgment of the Constitutional Court. The Supreme Court, in essence, found that the value of the dispute did not exceed the amount of 3,000.00 euro as defined by paragraph 2 of article 211 of the LCP, this is because according to it (i) the response to the complaint cannot be treated as a complaint and the same is not a legal remedy for appeal, and therefore, it

cannot be treated as such regardless of what the requesting party proposes; (ii) even if the response to the complaint was treated as a complaint, it turns out that it was submitted outside the legal deadline stipulated by the provisions of the LCP; and that (iii) the response to the complaint does not contain the elements defined by Article 178 of the LCP.

#### **Allegations:**

The applicant claimed that his right to a fair and impartial trial has been violated again because the Supreme Court acted contrary to the findings of the Judgment of the Constitutional Court in case KI143/21.

#### **Assessment of the Court:**

The Court elaborated the principles of the right of access to the court, relying on the case law of the ECtHR, more specifically in the case of [Zubac v. Croatia](#), including the principles and criteria developed by the ECtHR that are related to the *ratione valoris* limitation of access to the courts of the highest instance. The Court found that taking as a basis the essence of the Supreme Court's jurisdiction and competence to adjudicate on issues of legality of decisions issued by the lower instance court as the highest judicial authority, the *ratione valoris* threshold (i) is prescribed by law; (ii) pursues a legitimate aim, which serves the respect for the rule of law and the proper administration of justice; however, (iii) in assessing whether this limitation was proportionate to the legitimate aim, the Court highlighted the determinations of the contested Judgment of the Court of Appeals in point I of its enacting clause, where it had determined the rejection of the applicant's claim "*in a total amount of 3,286.80 euro*", which exceeds the *ratione valoris* limitations according to the provisions of the applicable law.

The Court assessed that a very formalistic interpretation of the rules of the threshold value of the object in the circumstances of the applicant's case, which are directly related to the contested Judgment of the Court of Appeals, contradicts the criterion of guaranteeing the practical and effective right of access to a court within the meaning of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (Right to a fair trial) of the ECHR.

#### **Conclusion:**

The Court found that the contested Decision of the Supreme Court, which for the second time rejected the revision of the applicant as impermissible, constitutes an excessive formalism based on the case law of the ECtHR, which has resulted in a very strict interpretation and application of the procedural rules, defined by the legislation in force, and as a result in an unjustified way violated the applicant's access to its jurisdiction, and accordingly it created a restriction for his case to be decided on the merits. The Court concluded that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

**Reference:** [KI04/23](#)

**KI172/23**, applicants *Rejhane Ceka, Fiknete Ceka, Lejlane Ceka and Sara Ceka*, Judgment of 30 May 2024

### **Principle:**

The application of the *ratione valoris* threshold by the Supreme Court did not take into account the interrelation between the claims of the applicants, which were based on the same factual and legal basis, a conduct that resulted in “*excessive formalism*”, and therefore limited the right of the applicants to receive a decision on merits.

### **Facts:**

The applicants, together with their parents, filed a lawsuit against an insurance company for compensation of material and non-material damage for the death of their brother in a traffic accident, where he was insured. The Basic Court approved the request and compensated the applicants with 8,000.00 euro each for non-material damage, while the parents with 10,000 euro each. After the insurance company appealed, the Court of Appeals reduced the amount for the applicants to 5,000.00 euro each, approving the compensation for the parents. The Applicants filed a revision with the Supreme Court, but the latter dismissed it as impermissible, arguing that the value of the dispute for each Applicant did not exceed the value of 3,000.00 euro.

### **Allegations:**

The applicants claimed that the decision of the Supreme Court violates their rights to a fair and impartial trial, guaranteed by article 31 [Right to Fair and Impartial Trial] of the Constitution, arguing that that (i) the value of the dispute exceeds the threshold of 3,000 euro; and that (ii) their claims are connected and constitute a single claim based on the same factual and legal circumstances. They argue that the restriction of access to the Supreme Court has been done in an excessive and formalistic manner, thereby infringing their right for access to court.

### **Assessment of the Court:**

The Court elaborated the principles of the right of access to court, based on the case-law of the ECtHR, more specifically in the case *Zubac v. Croatia*, including here the principles and criteria developed by the ECtHR related to the *ratione valoris* limitation for access to higher courts. The Court assessed that the limitation of access to the Supreme Court due to the *ratione valoris* threshold was a legitimate limitation, but it had to be examined whether it was proportionate. The Court assessed that the decision of the Supreme Court was characterized by excessive formalism, thus resulting in an “*isolated*” interpretation and application of law. Moreover, the Court emphasized that it was the duty of the Supreme Court to examine the legal provisions as a whole and to take into account their connection with the claims of the applicants. The Court clarified that the primary duty of the Supreme Court is to elaborate and apply the relevant provisions of the LCP related to co-litigation and the determination of the value of the object of the dispute in their entirety and not in isolation, respectively, that the latter should not have applied article 211 (no title) in conjunction with article 268 (no title) of the LCP in complete disregard of article 32 (no title) of the LCP, which specifies the determination of the object’s value when the respective claims are based on the same factual and legal basis, since the application and/or reasoning for their non-application was decisive for the parties or applicants who filed the revision, in the circumstances of this case.

**Conclusion:**

The Court found that the contested Decision of the Supreme Court is not in compliance with article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with of article 6 (Right to a fair trial) of the ECHR in the context of the guarantees related to the right of access to a court.

**Reference:** [KI172/23](#)

[KI199/22](#), applicant *N.P.T. “Arta XH”*, Judgment of 30 May 2024

**Principle:**

Failure of the lower instance courts to determine the value of the dispute may result in the impossibility of the applicant to have access to the Supreme Court.

**Facts:**

The case is related to a dispute for damages between the applicant and a company with which they had entered into a contract for the sale of scrap metal in 2002. In December 2010, the company was privatized and registered as a new legal entity, continuing to fulfil the contractual obligations until 19 August 2011, when it unilaterally terminated the contract with the applicant. After that, the applicant started a legal procedure to seek compensation for the damage, requesting that the value of the object of the dispute be determined through evidence and financial expertise. The Basic Court and the Court of Appeals rejected the lawsuit in its entirety, including the request for the determination of the value of the dispute. Subsequently, the request for revision in the Supreme Court was dismissed for procedural reasons, on the grounds that the value of the object of the dispute did not exceed the threshold of 10,000 euro according to article 508 (no title) of the LCP.

**Allegations:**

The applicant contests the Decision of the Supreme Court, claiming that it violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR, arguing that (i) the decision of the Supreme Court violated his right of access to a court, because, despite the constant request, the value of the dispute was not determined in the court proceedings; (ii) the courts failed to determine the value of the object of the dispute *ex officio*, as required by the LCP; and (iii) the Supreme Court rejected the request for revision on the grounds of the value of the dispute, ignoring the failure of the lower instance courts to determine this value.

**Assessment of the Court:**

The Court elaborated the principles of the right to access to the court, relying on the practice of the ECtHR, more specifically in the case *Zubac v. Croatia*, including here the principles and criteria developed by the ECtHR related to the *ratione valoris* limitation for access to higher courts. The Court assessed that the decision of the Supreme Court, based on a narrow interpretation of the law, constituted “*excessive formalism*” and that the failure of the lower courts to determine the value of the object of the dispute, an obligation established in Article 36 (no title) of the LCP, should not infringe upon the rights of the applicant. Therefore, the Court concluded that the limitation imposed by the Supreme Court was not proportionate to the legitimate aim of guaranteeing access to higher courts.

**Conclusion:**

The Court found that the contested Decision of the Supreme Court is not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR in the context of the guarantees related to the right of access to court.

**Reference:** [KI199/22](#)

[KI96/22](#), applicants *Naser Husaj and Uliks Husaj*, Resolution on Inadmissibility, of 29 August 2023

**Principle:**

The limitation of access to the Supreme Court through the *ratione valoris* legal threshold is justified by the latter's legitimate purpose and as a result, the application of procedural rules by the regular courts that are related to the determination of the object's value at an earlier stage of the procedure, based on the procedure set forth by applicable laws, does not constitute a non-proportionate restriction of the applicants' right of access to court.

**Facts:**

The applicant in the capacity of the alleged representative of the deceased owner M.M. concluded a contract for the sale - purchase of the property [owned by M.M.] with the other applicant, at the same time also his son, which contract was certified by the Municipal Court in Istog. The heirs of the deceased, M.M., filed a lawsuit with the Basic Court requesting the annulment of such contract, since it was concluded without valid authorization by the owner of the immovable property, namely M.M. The Basic Court annulled the contract, on the grounds that the authorization by which the applicant was authorized was invalid due to the fact that the owner of the immovable property passed away before signing it. At the same time, in the Basic Court, the value of the dispute was determined below the amount of 3,000.00 euro. The Court of Appeals upheld the findings of the Basic Court, while the revision submitted to the Supreme Court by the applicants was rejected as impermissible because the value of the object of the dispute does not exceed the amount of 3,000.00 euro according to the provisions of the LCP.

**Allegations:**

The applicants claimed that the finding of the Supreme Court that their revision is impermissible constitutes a violation of their fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and contested the findings of the Basic Court and the Court of Appeals related to the annulment of the sales contract on the grounds of invalid authorization, thus claiming a violation of the right to a fair and impartial trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and their right to property guaranteed by Article 46 [Protection of Property] of the Constitution.

**Assessment of the Court:**

The Court, in examining this case, referred to the case of the ECtHR, *Zubac v. Croatia*. In this way, the Court concluded that the limitation of access to the Supreme Court was not the result of inflexible procedural rules, because the provisions of the LCP, namely Article 36 (no title) thereof, provide for the possibility of changing value of the object of the dispute at an earlier stage of the judicial process, namely during the conduct of the procedure before the Basic Court. In addition, the applicant had at his disposal the other extraordinary remedy,



that of the request for protection of legality, established by Article 245 (no title) of the LCP, which he did not use.

The Court, in accordance with the findings of the ECtHR, concluded that the limitation of access to the Supreme Court through the *ratione valoris* legal threshold is justified by the legitimate aim of the Supreme Court to deal only with more significant issues, and therefore, in the circumstances of the present case, it does not constitute a non-proportionate limitation of the applicants' right of access to court, considering that the procedures set forth by applicable laws were respected.

#### **Conclusion:**

The Court held that the claims of the applicants for violation of their right to a fair and impartial trial, guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR, as a result of the finding that their revision was impermissible, are manifestly ill-founded on a constitutional basis on the grounds of "*clear or apparent absence of a violation*" as established in the Rules of Procedure of the Court.

**Reference:** [KI96/22](#)

### 3. Procedural restrictions

#### *a. Legal representative*

[KI62/17](#), applicant *Emine Simnica*, Judgment of 29 May 2018

#### **Principle:**

Failure to verify the authorization of the applicant's **legal representative** by the Supreme Court, and consequently the summarily rejection of the applicant's request in the circumstances of the present case, constitutes a violation of the right of access to court.

#### **Facts:**

The Basic Prosecutor's Office in Prishtina filed an indictment against the applicant and consequently by the judgment of the Basic Court in Prishtina, the applicant was found guilty of committing the corresponding criminal offense. The State Prosecutor filed an appeal with the Court of Appeals against this judgment and the Court of Appeals rendered a judgment in which it approved the State Prosecutor's appeal and modified the judgment of the first instance. The applicant had the same representative before the Basic Court and the Court of Appeals, while in the Supreme Court the applicant had a different legal representative. The applicant filed the request for protection of legality against the decision of the Court of Appeals with the Supreme Court, and the latter rendered a decision rejecting as impermissible the request for protection of legality of the applicant's legal representative without verifying her authorization.

#### **Allegations:**

The applicant claimed that the Supreme Court, by its decision to reject the request for protection of legality, did not fulfill its obligation provided by law, because it rejected her the opportunity to correct and complete her submissions, denying her the right of access to the court.

**Assessment of the Court:**

The Court assessed that the Supreme Court rendered a decision, by which it rejected the request of the applicant on procedural grounds, without allowing her to clarify the identity of her legal representative, despite the obligations stemming from the applicable law. In this way, the Court held that the Supreme Court limited the applicant's access to the court, because such limitations of the Supreme Court did not pursue a legitimate aim that would allow a decision to be rendered on the merits in this case, from which it turns out that there was no reasonable relationship of proportionality between the means used by the Supreme Court and the aim pursued, that would result in rendering a final decision regarding the the case.

**Conclusion:**

The Court found that the contested Decision of the Supreme Court is not in compliance with article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR in the context of guarantees related to the right of access to court.

**Reference:** [KI62/17](#)

[KI182/20](#), applicants *Sedat Kovaçi, Servet Ergin, Ilirjana Kovaçi and Sabrije Zhubi*, Judgment of 20 January 2022

**Principle:**

The rejection of the applicants' revision by the Supreme Court, which was filed by the latter's new lawyer, on the grounds that in the case file there is no authorization by which the applicants authorized the lawyer E.G. to represent them before the Supreme Court, constitutes a violation of the right of access to a court.

**Facts:**

The applicants initiated a contested procedure in the Municipal Court in Prizren, against the Municipality of Prizren, whereby they requested to be established that they are co-owners of a property. The applicants, each individually, authorized the lawyer S.R. to represent them, and in the given authorization they also included the clause that the lawyer S.R. has the right to transfer the authorization to another lawyer.

The case was remanded for retrial according to the decision of the Supreme Court, in which procedure the lawyer S.R. transferred the right to represent the applicants to the lawyer E.G., who submitted a revision to the Supreme Court. The latter rejected the revision as impermissible, arguing that the case file does not contain the authorization by which the applicants authorized the lawyer E.G. to represent them before the Supreme Court.

**Allegations:**

The applicants claimed that the Decision of the Supreme Court was rendered in violation of their rights and freedoms guaranteed by the Constitution, because the Supreme Court acted contrary to the procedural guarantees for access to court, thus not requesting the clarification/submission of the authorization by the applicants, within a certain time-limit and without giving them the opportunity to declare themselves regarding the legal status of the lawyer E.G., according to the provisions of the applicable law.

**Assessment of the Court:**

The Court emphasized that the claims of the applicants for violation of the right of "access to court" were founded, because the Supreme Court, based on the constitutional guarantees but

also the Law on Contested Procedure itself, before rejecting the revision in a completely formal way, should have given the opportunity to the applicants to clarify the issue of their representation by the lawyer E.G., or to give the opportunity for the lawyer E.G. to bring, within a certain period, the evidence of the representation of the applicants.

**Conclusion:**

The Court concluded that the Decision of the Supreme Court was rendered in violation of the procedural guarantees established by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

**Reference:** [KI182/20](#)

*b. Non-payment of the court fee*

[KI224/19](#), applicant *Islam Krasniqi*, Judgment of 10 December 2020

**Principle:**

Rejection of the applicant's appeal submitted in 2019 to the Special Chambers of the Supreme Court, for the imposition of the interim measure against the specified property to prohibit the sale, alienation and construction, on the grounds that the applicant did not pay the court fee resulted in a violation of the right of access to court.

**Facts:**

In 2017, the applicant submitted a request to the Special Chamber of the Supreme Court (SCSC) for the issuance of a preliminary injunction, namely the interim measure in relation to one of his properties. The Special Chambers had rejected such a request on the grounds that the applicant's request made sense only if he first filed the relevant lawsuit, accompanying the lawsuit with a request for an interim measure.

The applicant was not served with the decision of the SCSC panels in time due to the irresponsibility of the court mail service in question. Thus, the applicant requested the return of his right to file a lawsuit, since the deadline in question had passed without his fault. The applicant's appeal was rejected by the Appellate Panel of the SCSC, considering it as withdrawn because the applicant did not pay the court fee despite the fact that the latter had done so.

**Allegations:**

The applicant claimed that the SCSC instances, by their decisions violated, among other things, the right to a fair and impartial trial, because the first decision of the SCSC had not reached him due to the irresponsibility of the mail service and that by the same authority, his submissions, which consisted of the decision for free legal aid and the request for exemption from the payment of the court fee, had never been examined.

**Assessment of the Court:**

The Court concluded that the burden of responsibility for the non-administration of the applicant's submissions lies on the public authority, namely the Appellate Panel of the SCSC, because the applicant has taken every action required by the legal provisions in force, to ensure that his appeal, filed against the Decision of the SCSC, would be examined on its merits.

**Conclusion:**

The Court concluded that the contested Decision of the Appellate Panel of the SCSC, by which the applicant's appeal was considered withdrawn, did not respect the applicant's right of access to court. Therefore, the Court concluded that in the present case there had been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

**Reference:** [KI224/19](#)

#### 4. Failure to examine individual administrative acts of public authorities

[KI214/21](#), applicant *Avni Kastrati*, Judgment of 7 December 2022

**Principle:**

The rejection to consider the applicant's lawsuit related to the assessment of the decree of the President of the Republic of Kosovo by the Basic Court, the Court of Appeals and the Supreme Court violated the applicant's right of access to justice.

**Facts:**

The applicant was released from the position of the Ambassador of the Republic of Kosovo to the Republic of Slovenia, by the decree of the President of the Republic of Kosovo. Against this decree, the applicant filed a lawsuit before the Basic Court in Prishtina. The latter dismissed the lawsuit as inadmissible, on the grounds that the President's decree cannot be subject to assessment in the administrative conflict procedure, and that it can only be subject to the constitutional review procedure by the Constitutional Court. Such a decision of the Basic Court was upheld by the Court of Appeals and the Supreme Court.

**Allegations:**

The applicant alleges that he was denied the right to have effective judicial protection against the acts of public authorities, namely the Decree of the President of the Republic of Kosovo.

**Assessment of the Court:**

The Court found that the contested decree of the President of the Republic of Kosovo against the acts of public authorities, namely the Decree of the President of for the release of the applicant from his position, encompassed the "*civil rights*" of the applicant and "*dispute*" or "*disagreement*" in the sense of the right to a fair and impartial trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to a fair trial) of the ECHR, and consequently, and based on the provisions of the Constitution and the applicable legislation, fall into the group of decrees of an individual character which can be contested before the regular courts.

**Conclusion:**

The Court found that the Judgment of the Supreme Court, the Decision of the Court of Appeals and the Decision of the Basic Court in Prishtina, were rendered in violation of the applicant's right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (right to a fair trial) of the ECHR.

**Reference:** [KI214/21](#)

[KI10/22](#), applicant *Trade Union of the Institute of Forensic Medicine*, Judgment of 17 July 2022

**Principle:**

Rejection of the regular courts to examine the legality of sub-legal acts constitutes a violation of the right of access to court, because reviewing the legality of sub-legal acts by the regular courts is a legal and constitutional obligation of the latter.

**Facts:**

The circumstances of the case are related to contesting the legality of Regulation MD-No. 01/2020 of the Trade Union of the Institute of Forensic Medicine, which regulates the organization and systematization of this institution, arguing that it was contrary to Law no. 05/L-060 on Forensic Medicine, in particular its article 15 (Activity of the Institute) which defines the activity of the Institute. The regulation was approved by the Ministry of Justice and published in the Official Gazette on 3 January 2021. Despite requests from the Legal Office of the Prime Minister to change the regulation, the Ministry of Justice did not take actions. As a result, the Trade Union filed a lawsuit for the assessment of legality of the regulation with the Basic Court in Prishtina. However, the Court rejected the lawsuit, arguing that the regulation was not a final act in the administrative procedure against which its legality can be assessed in the court proceedings. The decision of the Basic Court was also upheld by the Court of Appeals and the Supreme Court.

**Allegations:**

The applicants contested the decisions of the Supreme Court claiming that the rejection to review the legality of the abovementioned Regulation has resulted in the failure of the courts to fulfill their constitutional duty. They argue that this conduct violated the rights guaranteed by the Constitution, including the right to a fair and impartial trial, as well as the right to legal remedies and judicial protection of rights. The Ombudsperson, in his letters, also emphasized the importance of clarifying the competencies of the courts for assessment of sub-legal acts and supported the position that the regular courts have the authority to review the legality of such acts under the applicable laws.

**Assessment of the Court:**

The Court assessed that the rejection of the regular courts to examine the legality of the contested Regulation infringed upon the applicant's right of "access to court". It emphasized that this obligation stems from the Constitution and is also established in Law 03/L-202 on Administrative Conflicts. The Court argued that it is the duty of the courts to ensure the supremacy of laws and to assess the compatibility of sub-legal acts with applicable law, including the Law on Forensic Medicine. By rejecting to examine this case, the courts denied the applicant the right to seek judicial protection, thus violating the guarantees set forth in the relevant articles of the Constitution and the ECHR.

**Conclusion:**

The Court found that in the present case there had been a violation of article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with article 6 (right to a fair trial) of the ECHR and at the same time held that the court decisions of the Supreme Court, the Court of Appeals and the Basic Court should be declared invalid, and the case should be remanded to the Basic Court for retrial.

**Reference:** [KI10/22](#)

## List of cases

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