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

Prishtina, 23 December 2024
Ref. no.: AGJ 2596/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

Case No. KI117/23

Applicant

Exclusive L.L.C.

Constitutional review of Decision [E. Rev. no 1/2023] of 17 January 2023 of the Supreme Court of Kosovo,

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Selvete Gërxhaliu-Krasniqi, Judge
Bajram Ljatifi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge
Nexhmi Rexhepi, Judge
Enver Peci, Judge, and
Jeton Bytyqi, Judge

Applicant

1. The Referral was submitted by Exclusive L.L.C., headquartered in Gjilan (hereinafter: the Applicant), represented by Faton Qirezi, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges the Decision [E. Rev. No. 1/2023] of 17 January 2023 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

3. The Applicant received the challenged decision of the Supreme Court on 3 February 2023.

Subject matter

4. The subject matter is the constitutional review of the challenged Decision which allegedly violates the rights of the Applicant 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), and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 20 (Decisions) and 22 (Processing Referrals) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 25 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 1 June 2023, the Applicant submitted the Referral via post, which was received and registered on 5 June 2023 in the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 8 June 2023, the President of the Court, by Decision [GJR. KI117/23], appointed judge Remzije Istrefi-Peci Judge Rapporteur and by Decision [No. KSH. KI117/23] appointed the Review Panel composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Safet Hoxha and Radomir Laban (members).

8. On 14 June 2023, the Court notified the representative of the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. 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.

10. On 5 November 2024, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

11. On the same date, the Court unanimously decided: (i) to declare the Referral admissible; (ii) to hold that the Decision [E. Rev. No. 1/2023] of 17 January 2023 of the Supreme Court, is not in compliance with paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a Fair Trial) of the ECHR.

Summary of facts

12. Based on the case files, the Applicant had entered into a contract with the Government of the Republic of Kosovo – the Ministry of Health – the Kosovo Medicines Agency for the supply of medicines and medical consumables from the company Zdravlje Actavis, a company from Serbia, with business number in Serbia 07204817, in Leskovc, Serbia (hereinafter: Zdravlje Actavis Leskovc). The Applicant had received a shipment of goods from Zdravlje Actavis Leskovc according to the import agreement concluded with this company. In January 2012, the Ministry of Health of the Republic of Kosovo temporarily suspended the marketing authorization certificates for medical products from Serbia, including the one of Zdravlje Actavis Leskovc, with the motivation that the CPP (Certificate of a Pharmaceutical Product) issued by the Serbian authorities needed to be confirmed. Furthermore, for the purpose of fulfilling the contract with the Kosovo Medicines Agency and supplying the medicinal products with which the Applicant would meet its contractual obligations toward Zdravlje Actavis Leskovc, the Applicant also concluded an agreement with Actavis International Limited, a company from Malta with business number in Malta no. 10 C33922, Zejtun, Malta, (with its branch in Kosovo - Actavis International LTD, Prishtina, with business registration number in Kosovo 70570793).

13. On 26 October 2017, the Applicant filed a claim for compensation of damages and lost profit with the Basic Court in Prishtina (hereinafter: the Basic Court) against the respondents Actavis International Limited, Zdravlje Actavis Leskovc, and the Kosovo Medicines Agency, due to the fact that, with the suspension of the marketing authorization certificates for Zdravlje Actavis Leskovc, the Applicant was left with stocks of stored medicines and medical devices that it could not place on the market because they lacked the legally required documentation, claiming that it had suffered material damage and lost profit. Through the claim, the Applicant requested the Basic Court to: (i) approve in its entirety the statement of the claim of the Applicant as grounded; (ii) oblige the respondents Actavis International Limited, Zdravlje Actavis Leskovc, the Government of the Republic of Kosovo - Ministry of Health, and the Kosovo Medicines Agency, to jointly pay the Applicant an amount in euros, to be determined during the examination of this legal matter, as compensation for material damage, non-material damage, and lost profit, together with annual interest of 3.5% calculated from 19 January 2012 until 1 January 2013, and annual interest of 8% calculated from 1 January 2013 until the enforcement of that Judgment; (iii) oblige the respondent Kosovo Medicines Agency to withdraw the expired goods from the Applicant's stored inventory and destroy them in accordance with the applicable procedures; and (iv) oblige the respondents Actavis International Limited, Zdravlje Actavis Leskovc, the Ministry of Health of the Republic of Kosovo, and the Kosovo Medicines Agency, to jointly pay all court costs of this judicial dispute to the Applicant.

14. On 19 March 2018, the Applicant, through a submission addressed to the Basic Court, amended the claim by withdrawing the claim against the first respondent, Actavis International Limited.

15. On 18 September 2019, at the preparatory hearing held at the Basic Court, the Applicant's representative proposed the administration of evidence through financial expert's report, to accurately determine the amount of damage. The Basic Court found that the Applicant had withdrawn the claim against the first respondent, Actavis International Limited, and rejected the proposal of the Applicant's representative's to administer the financial expert's report.

16. On 23 September 2019, in the final statement submission, the Applicant specified the statement of claim, requesting: (i) that the respondents Zdravlje Actavis Leskovc, the Government of the Republic of Kosovo - Ministry of Health, and the Kosovo Medicines

Agency be obliged, in the name of compensation for the actual material damage of the imported products which were later removed from legal circulation, to jointly pay the Applicant the amount of 318,340.98 euros (three hundred eighteen thousand three hundred forty euros and ninety-eight cents), including annual interest of 3.5% calculated from 19 January 2012 until 1 January 2013, and annual interest of 8% calculated from 1 January 2013 until the enforcement of this Judgment; (ii) that the respondents Zdravlje Actavis Leskovc, the Government of the Republic of Kosovo - Ministry of Health, and the Kosovo Medicines Agency be obliged, in the name of compensation for lost profit for the imported products that were later removed from legal circulation, to jointly pay the Applicant the amount of 125,000.00 euros (one hundred twenty-five thousand euros), as well as annual interest of 8% calculated from 1 January 2013 until the enforcement of this Judgment; (iv) that the respondents, the Government of the Republic of Kosovo - Ministry of Health and the Kosovo Medicines Agency, in the name of compensation for the rent paid for the non-destroyed goods until 2018, pay the Applicant the amount of 50,000.00 euros (fifty thousand euros), as well as annual interest of 8% calculated from 1 January 2013 until the enforcement of this Judgment; (v) that the respondents Zdravlje Actavis Leskovc, the Ministry of Health of the Republic of Kosovo, and the Kosovo Medicines Agency be obliged to pay the Applicant the amount of 2,360 euros (two thousand three hundred and sixty euros) in the name of the court expenses of this dispute.

17. On 30 September 2019, the Basic Court, by Judgment [III. Ek. no. 489/2017], decided as follows: (i) Rejected in its entirety, as ungrounded, the statement of the claim of the Applicant filed against the respondents: 1. Actavis International Limited based in Malta; 2. Zdravlje Actavis Leskovc based in Serbia; 3. The Government of the Republic of Kosovo - Ministry of Health; and 4. The Kosovo Medicines Agency based in Prishtina, by which it had requested compensation for material damage and lost profit, with legal interest of 3.5% calculated from 19 January 2012 until 1 January 2013, as well as annual interest of 8% calculated from 1 January 2013 until final payment, and had also requested that the respondent, the Kosovo Medicines Agency, be obliged to withdraw the expired goods from the Applicant's stored inventory and destroy them according to the applicable procedure; (ii) Held that the Applicant had withdrawn the claim against the first respondent, Actavis International Limited, based in Malta, in this civil legal matter. In its judgment, inter alia, the Basic Court emphasized: "*... The Court, based on the administered evidence and the statements of the parties in the proceedings, found that the request for compensation of damage and lost profit resulting from contract no. 71300 10 647 111, signed and sealed by the Ministry of Health and Exclusive on 25.02.2011, and for the suspension of marketing authorization certificates for manufacturers of Serbian companies, was made known by the Kosovo Medicines Agency of the Republic of Kosovo through electronic correspondence dated 19.01.2019, therefore, since the claimant was made aware of the alleged damage on 19.01.2019, whereas the claimant's claim was filed with the court on 26.10.2017, this Court considers that in terms of the timely submission of the claim for compensation of damage and lost profit, it is time-barred under Article 355, paragraph 1, of the LOR, which expressly stipulates that "Claims from commercial contracts and claims for the return of expenditure arising in connection with such contracts shall become statute-barred after three (3) years", as invoked by the respondent, stating that the statute of limitations for the statement of claim is 3 years. Also, the Court found that the claimant's statement of claim is also time-barred under Article 357, paragraph 1, of the LOR, which clearly provides that "Compensation claims for damage inflicted shall become statute-barred three (3) years after the injured party learnt of the damage and of the person that inflicted it.*".

18. On 9 October 2019, the Applicant filed an appeal with the Court of Appeals against Judgment [III. Ek. no. 489/2017] of 30 September 2019 of the Basic Court, due to violations of the provisions of the Law on Contested Procedure, erroneous and incomplete establishment of the factual situation, and erroneous application of substantive law.

19. On 17 December 2020, the Court of Appeals in Prishtina, by Decision [Ae. no. 380/19], approved the Applicant's appeal as grounded, quashed Judgment [III. Ek. no. 489/2017] of 30 September 2019 of the Basic Court and remanded the case to the first instance for retrial and reconsideration. On that occasion, the Court of Appeals in Prishtina reasoned that the first instance court had committed violations of the contested procedure provisions provided by Article 182, paragraph 2, item (n) of the LCP, which must be rectified in the retrial; and that the first instance court must assess all decisive facts in accordance with the requests and objections of the parties and then render a lawful and fair decision, giving specific reasons for each decisive fact.

20. On 16 March 2021, at the preparatory hearing in the Basic Court, the authorized representative of the Applicant, *inter alia*, stated: "*The authorized representative of the Claimant declares that he fully adheres to the claim and the statement of claim, by the decision of the Court of Appeals, in the reasoning of its decision, instructed the court to assess all decisive facts according to the requests and objections of the parties, and based on this, I repeat the proposal that a financial expertise be ordered, which would assess the actual damage and the lost profit suffered by the Claimant, and from other evidence submitted to the court, it is proven that the first respondent sold medicines without a valid CRY, and the liability of the second and third respondents consists in the fact that they, through the contract for the supply of medicines as well as from the case files on page 2, obliged the claimant to import certain types of medicines precisely from the manufacturer Zdravlje, and I consider that these two circumstances justify the ordering of a financial expertise. Also, the respondent's claim that the request is time-barred does is unfounded, because the actual damage for the claimant occurred at the moment of enforcement of the court decision according to the invoice, while as regards the statute of limitations claim, I believe it should also be taken into account that the imported medicines were removed from legal circulation due to the lack of a CRP, and this makes the contract null, and a null contract is not subject to any statute of limitations*".

21. On 19 March 2021, the Basic Court, upon retrial, by Judgment [III. Ek. no. 31/2021], decided as follows: (i) Rejected in its entirety, as ungrounded, the statement of the claim of the Applicant filed against the respondents: 1. Actavis International Limited based in Malta; 2. Zdravlje Actavis Leskovc based in Serbia; 3. The Government of the Republic of Kosovo - Ministry of Health; and 4. The Kosovo Medicines Agency based in Prishtina, by which it had requested compensation for material damage and lost profit, with legal interest of 3.5% calculated from 19 January 2012 until 1 January 2013, as well as annual interest of 8% calculated from 1 January 2013 until final payment, and had also requested that the respondent, the Kosovo Medicines Agency, be obliged to withdraw the expired goods from the Applicant's stored inventory and destroy them according to the applicable procedure; (ii) Held that the Applicant had withdrawn the claim against the first respondent, Actavis International Limited, based in Malta, in this civil legal matter. In its judgment, inter alia, the Basic Court emphasized: "*... After elaborating on the legal matter concerning the compensation of damage in the amount of 378,340.98 euros and lost profit in the amount of 50,000 euros, the Court did not proceed with administering other evidence, due to the fact that when dealing with the statute of limitations of a claim, other evidence cannot be*

considered valid in rendering a decision on the merits, and for this reason, the court rejected the proposal for ordering a financial expertise".

22. On 6 April 2021, the Applicant filed an appeal with the Court of Appeals against Judgment [III. Ek. no. 31/2021] of 19 March 2021 of the Basic Court, alleging violations of the provisions of the contested procedure, erroneous and incomplete establishment of the factual situation, and erroneous application of substantive law. Inter alia, in the appeal, the Applicant stated: "*At the hearing of 16.03.2021, the first instance court unfairly rejected the proposal of the claimant's representative for financial expertise, which would not only accurately determine the amount of the financial damage suffered by the claimant, but would also accurately determine the moment when this damage occurred, which would be decisive for determining the starting point of the statute of limitations period, which is the reason for rejecting the statement of claim by the first instance court*".

23. On 1 August 2022, the Commercial Court commenced its operation, and the appeal filed with the Court of Appeals was transferred for review to the Commercial Court – Second Instance Chamber.

24. On 13 October 2022, the Commercial Court – Second Instance Chamber, by Judgment [K. DH. SH. II. no. 802/22], rejected the appeal of the Applicant, of 6 April 2021, as ungrounded, and upheld Judgment [III. Ek. no. 31/2021] of 19 March 2021 of the Basic Court in Prishtina - Commercial Matters Department.

25. On 1 November 2022, the Applicant filed a revision with the Supreme Court of Kosovo against Judgment [K. DH. SH. II. no. 802/22] of the Commercial Court – Second Instance Chamber, of 13 October 2022, on the grounds of violation of the provisions of the contested procedure and erroneous application of substantive law, proposing that the revision be approved and that the challenged judgment be modified and the case be remanded to the Commercial Court – First Instance Chamber for retrial.

26. On 17 January 2023, the Supreme Court, by Decision [E. Rev. no. 1/2023], dismissed the revision of the Applicant filed against Judgment [K. DH. SH. II. no. 802/22] of 13 October 2022 of the Commercial Court – Second Instance Chamber in Prishtina, as inadmissible, reasoning that the condition for the admissibility of the revision was not met, as the value of the object of the dispute must exceed 3000 euros. The Supreme Court, inter alia, emphasized: "... In the present case, the claim of the claimant concerns compensation of material damage and lost profit, without specifying at any point the amount of such requested compensation, neither in the claim nor during the further course of proceedings. The value of the dispute was not indicated in the claim, even though Article 30.1 requires the claimant in property-related disputes to determine the value of the dispute in the claim, whereas the value of the dispute is considered only the value of the principal claim; interest, proceedings costs, and other accessory claims are not taken into account unless they constitute a principal claim... Even if the admissibility of this revision were considered in accordance with Article 211, paragraph 2 of the LCP, for the same reasons given above, it would result that revision would not be admissible because of the low value assessed based on the amount of the court fee of 20 euros paid by the claimant for its claim, which refers to a dispute value of 1,000.00 euros. Since this paragraph also provides that in the challenged part of the judgment the object of the dispute must exceed 3,000 euros as a condition for the admissibility of the revision, in the present circumstances the revision would not be admissible even under Article 211, paragraph 2 of the LCP".

Applicant's allegations

27. The Applicant alleges that its rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution have been violated.

28. The Applicant alleges that the Supreme Court violated the Applicant's right to a fair and impartial trial guaranteed by Article 31 of the Constitution, by failing to consider all the evidence presented in the Applicant's revision and dismissing it solely based on the amount of the paid court fee. In this regard, the Applicant states that "*If the Supreme Court had also examined other evidence, and not only the paid fee, it would have noticed that the dispute is of a much higher value than what it has alleged. Moreover, the Supreme Court of Kosovo, by the challenged decision in this referral, did not take into account at all the fact that the claimant specified the statement of the claim to over 500,000.00 euros during the proceedings. Thus, the Supreme Court of Kosovo, by its Decision E. Rev. no. 1/2023, gave greater weight to an act of court administration related to the fee than to the evidence in the case file and the procedural action of the party when specifying the statement of claim. In this way, the Supreme Court, by selectively using the case files to render an easier decision to it, violated the claimant's right to a fair and impartial trial guaranteed by Article 31.1 of the Constitution, as it denied the claimant the right to defend his rights in judicial proceedings*".

29. The Applicant also alleges that the Supreme Court violated its right to legal remedies guaranteed by Article 32 of the Constitution, as he emphasizes: "*... because without a serious and careful review of the case, it unjustly dismissed the claimant's revision, based on unfounded reasoning and non-existent or irrelevant facts. In this way, the Supreme Court of Kosovo, based on a decision concerning the amount of the court fee taken by the court administration itself, transformed the extraordinary legal remedy - the revision - into an ineffective legal remedy, simply because it did not carefully review the case on which it was supposed to decide*".

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 31
[Right to Fair and Impartial Trial]

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

6. Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.
7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.

Article 32
[Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 6.1
(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."
[...]

Relevant legal provisions

LAW No. 03/L-006 ON CONTESTED PROCEDURE

4. Determination of the value of the disputable facility

Article 30
(no title)

"30.1 The claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility. Only the value of the disputed facility included in the main claim is taken into consideration."

Article 36
(no title)

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

REVISION
Article 211

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

Article 253
[Content of the claim]

[…]
253.4 The plaintiff should attach the certificate of the paid court taxes to the claim.

253.5 If the plaintiff doesn't pay the court tax determined for the claim even after the notice is sent by the court, through there are no reason for freeing the plaintiff from paying the tax, the claim will be considered as withdrawn.

Article 468
[Exemption from paying court expenses]

[…]
468.3 The court can only exempt a party from court taxes, if those will drastically affect persons close family in food.

[…]
CHAPTER XXX
PROCEDURE IN TRADE DISPUTE

[…]

Article 508
(no title)

"Revision in trade disputes is not allowed if the value of the disputed subject dispute does not exceed 10.000 Euro."

ADMINISTRATIVE INSTRUCTION NO. 01/2017 ON UNIFICATION OF COURT TAXES

Article 2
[Definitions]

[…]
2.4 "Submission" shall mean a claim, counter-claim, complaint, objection, request, revision, enforcement proposal, proposal for imposition of insurance measure, etc.

Article 3
[Determination of taxes for submissions related to civil claims]

The amount of court taxes to be paid when the submission is filed shall be set based on the value of the dispute i.e. the type of submission, based on the court tax fee (CTF) provided by the present Instruction.

Article 5
[Tax collection and consequences of failure to pay]

[…]

5.5 The party must pay the tax by the deadline set by the judge i.e. presiding judge, which may not be shorter than 15 days. Should the tax not be paid within the set timeline, the court shall conduct the prescribed procedures, as follows:

5.5.1 Should the fee for the submission not be paid by the final date set under the present Article and should conditions for exemption therefrom not be met, the court shall dismiss the submission, with the exception of submissions related to the remedies.

Article 8
[Exemption from tax payment]

8.1 The following categories of persons shall be exempt from tax payment:

8.1.1 the person who submits the request dealing with the employment relationship, except for: cash claims
8.1.2 a person in a difficult economic situation, if the payment of the tax directly puts his existence or the existence of his family members or other persons who depend on him in direct risk.
[...]

8.3 Categories of persons under Article 8.1, in order to get exempted from the tax, must provide the following evidence:
8.3.1 proof that he/she is a beneficiary of social aid provided by the Ministry of Labour of Social Welfare.
8.3.2 proof that he/she is receiving legal assistance from the Free Legal Aid Office.

Admissibility of the Referral

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

31. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], in conjunction with paragraph 4 of Article 21 [General Principles] of the Constitution, which establish:

21.
[General Principles]

"4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."

Article 113
[Jurisdiction and Authorized Parties]

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

[...]

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

[...]

32. The Court further examines whether the Applicant has fulfilled the admissibility criteria, as further prescribed in the Law, namely in Articles 47, 48 and 49 of the Law, which stipulate:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.
2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced..."

33. The Court initially notes that, in accordance with paragraph 4 of Article 21 of the Constitution, the Applicant has the right to submit a constitutional complaint, referring to the alleged violations of its fundamental rights and freedoms, applicable to individuals and legal persons (see the Constitutional Court's case no. KI41/09, Applicant *University AAB-RIINVEST L.L.C.*, Resolution on inadmissibility of 3 February 2010, paragraph 14; and KI35/18, with Applicant "*Bayerische Versicherungsverbrand*", Judgment of 11 December 2019, paragraph 40).

34. Regarding the fulfillment of the above-mentioned criteria, the Court considers that the Applicant: i. is an authorized party, within the meaning of Article 113.7 of the Constitution; ii. challenges the constitutionality of Decision E. Rev. no. 1/2023 of the Supreme Court, of 17 January 2023; iii. has exhausted all available legal remedies, within the meaning of Article 113.7 of the Constitution and Article 47.2 of the Law; iv. has clearly specified the rights guaranteed by the Constitution, which have allegedly been violated, in accordance with the requirements of Article 48 of the Law; and v. has submitted the Referral within the legal deadline of four (4) months, as stipulated by Article 49 of the Law.

35. The Court also finds that the Referral meets the admissibility criteria set out in paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure. It cannot be declared inadmissible on the basis of the conditions set out in paragraph 3 of Rule 34 of the Rules of Procedure. Furthermore, and finally, the Court emphasizes that the

Referral cannot be declared inadmissible on any other basis. Therefore, it must be declared admissible and its merits assessed.

Merits of the Referral

36. In the context of assessing the admissibility of the Referral, the Court will first recall the essence of the case and the respective allegations of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms of guaranteed by the Constitution.

37. The Court first recalls that the essence of the judicial dispute before the regular courts concerns the failure to fulfill the obligations or compensation thereof by Actavis International Limited enterprise, Zdravlje Actavis Leskovc, and the Government of the Republic of Kosovo – Ministry of Health – the Kosovo Medicines Agency, as respondents. More specifically, the Applicant had entered into a contract with the Government of the Republic of Kosovo – Ministry of Health – the Kosovo Medicines Agency for the supply of medicines and medical consumables from the company Zdravlje Actavis Leskovc. The Applicant had received a shipment of goods from Zdravlje Actavis Leskovc pursuant to the contract. In January 2012, the Ministry of Health of the Republic of Kosovo had temporarily suspended the marketing authorization certificates for medicinal products from Serbia, including the certificate of Zdravlje Actavis Leskovc, with the reasoning that the CPP issued by the Serbian authorities needed to be confirmed.

38. The Applicant initiated judicial proceedings before the Basic Court, because, due to the suspension of the marketing authorization certificates for Zdravlje Actavis Leskovc, it had been left with stocks of stored medicines and medical devices that it could not release onto the market due to the lack of legally required documentation, claiming that it had suffered material damage and lost profit, filing the statement of claim without specifying the value of the dispute, but requested the competent court that it be paid the compensation for material damage and lost profit, including legal interest of 3.5% calculated from 19 January 2012 until 1 January 2013, and an annual interest rate of 8% calculated from 1 January 2013 until the final payment, and also requested that the Kosovo Medicines Agency be obliged to withdraw the expired goods from its stored stocks and destroy them in accordance with the applicable procedure. On 23 September 2019, through a submission of final statements, the Applicant specified its statement of claim, thereby determining the value of the damage as exceeding 500,000 euros, while having withdrawn the claim with respect to the respondent Actavis International Limited.

39. The Applicant's statement of claim was entirely rejected by the Basic Court. Against the judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals, challenging the findings of the Basic Court. Among its main allegations, the Applicant also noted the rejection of its representative's proposal for a financial expertise, which, would not only have established the exact amount of the financial damage suffered, but also would have determined the moment when the damage had occurred, which would be decisive for establishing the commencement date of the statute of limitations. After the Commercial Court was established, the case was transferred from the Court of Appeals to the Commercial Court – Second Instance Chamber for review of the appeal of the Applicant, but the latter rejected the appeal and upheld the judgment of the Basic Court. The Applicant filed a revision with the Supreme Court, which was dismissed as inadmissible due to the value of the dispute.

40. After the Supreme Court rejected the Applicant's request for revision on procedural grounds, the Applicant filed the Referral with the Court, alleging that the decision of the Supreme Court violated its right of "*access to court*", guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. More specifically, the Applicant emphasized that it used the legal remedy available under the applicable legislation and that the Supreme Court violated its access to court by rejecting the revision based on the paid court fee, because "*without a serious and careful examination of the case, it unjustly dismissed the claimant's revision, based on unfounded reasoning and non-existent or irrelevant facts. In this way, the Supreme Court of Kosovo, based on the decision regarding the amount of the tax determined by the court administration itself, transformed the extraordinary legal remedy – the revision into an ineffective legal remedy, merely because it did not carefully review the case on which it was supposed to decide*".

41. In the light of the foregoing, the Applicant highlights that a revision may be dismissed only if the value of the dispute does not exceed the amount of 3,000 euros, while in commercial disputes if it does not exceed the amount of 10,000 euros, but in the present case the value of the dispute has been determined and, for this reason, the revision cannot be dismissed. In this regard, the Applicant claims that: "*If the Supreme Court had also examined other evidence, and not only the paid fee, it would have noticed that the dispute is of a much higher value than what it has alleged. Moreover, the Supreme Court of Kosovo, by the challenged decision in this referral, did not take into account at all the fact that the claimant specified the statement of the claim to over 500,000.00 euros during the proceedings. Thus, the Supreme Court of Kosovo, by its Decision E. Rev. no. 1/2023, gave greater weight to an act of court administration related to the fee than to the evidence in the case file and the procedural action of the party when specifying the statement of claim. In this way, the Supreme Court, by selectively using the case files to render an easier decision to it, violated the claimant's right to a fair and impartial trial guaranteed by Article 31.1 of the Constitution, as it denied the claimant the right to defend his rights in judicial proceedings*".

42. Therefore, before analyzing the allegations of the Applicant, the Court points out that in this Referral, it will not address the contractual relationship between the Applicant and the respondents, but it will focus exclusively on the issue of a possible violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the context of the violation of the right of access to court, specifically whether the procedural errors of the regular courts resulted in the Applicant's request being dismissed by the Supreme Court on the grounds that the latter, when assessing the admissibility of the revision, took a formalistic approach and did not consider the possible procedural errors of the lower instance courts.

43. The present case examined by the Court is related to how the existing *ratione valoris* conditions operated in the case of the Applicant. Specifically, the case concerns whether the Supreme Court, under the particular circumstances of the case, by declaring the revision of the Applicant inadmissible, applied excessive formalism and disproportionately affected its ability to adjudicate the essence of the case initiated by the Applicant for compensation of damage and lost profit, as guaranteed by legal provisions. In the light of the above, the Court will examine whether the actions of the lower instance courts and their undertaking or omission of procedural actions resulted in limiting access to the highest court.

44. In conducting this analysis, the Court will first refer to its own case law, as well as the case law of the ECtHR, concerning limitations on access to court, including the case law related to limitations on access to higher courts. It will then apply the principles

established in the case law relating to the issue of *ratione valoris* limitation on access to higher courts, as well as the specific proportionality issues raised in this case, namely who should bear the harmful consequences of the errors made during the proceedings, and the question of the existence of excessive formalism.

45. In this regard, the Court first notes that the issue of rejecting or disallowing a revision because it does not reach the value set by law falls within the principle or the right of access to court, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR (see the Court's case KI96/22, Applicant *Naser Husaj and Uliks Husaj*, Resolution on inadmissibility of 29 August 2023, paragraph 49). Consequently, the denial of the right of access to court may also result in the denial of an effective legal remedy and judicial protection of rights, which the Applicant claims were violated by the Supreme Court's arbitrary conclusion regarding the assessment of the value of the dispute as a prerequisite for assessing the merits of the case (see the Court's case KI143/21, Applicant *Avdyl Bajgora*, Judgment of 25 November 2021, paragraph 60; KI199/22, Applicant *N.P.T. "Arta XH"*, Judgment of 24 July 2024, paragraph 64).

46. Having said this, the Court refers to the conclusion of the Supreme Court that the revision of the Applicant is inadmissible because, "*[...] revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 Euro*", where "*Even if the admissibility of this revision is considered in accordance with paragraph 2 of Article 211 of the LCP, for the same aforementioned reasons, it follows that the revision would not be admissible due to its low assessed value, based on the court fee of 20 euros paid by the claimant for the lawsuit, an amount which corresponds to a dispute value of 1,000.00 euros. Since this paragraph also stipulates that, in the challenged part of the judgment, the value of the dispute must exceed 3,000 euros as a condition for the admissibility of the revision, in the present situation the revision would also not be admissible under Article 211, paragraph 2 of the LCP*".

47. Considering the above, the circumstances of the present case relate to whether the Supreme Court, by declaring "*the revision inadmissible*" on an entirely legal/procedural grounds, has disproportionately affected the Applicant's possibility of obtaining a decision on the merits of the case from the Supreme Court (see the Court's case KI96/22,Applicants *Naser Husaj* and Uliks Husaj, cited above, paragraph 50).

48. The Court, based on its own case law and that of the ECtHR, has emphasized, in principle, that the right of access to court must be "*practical and effective*" and not "*theoretical and illusory*" (see, inter alia, the Court's cases KI20/21, Applicant *Violeta Todorović*, Judgment of 13 April 2021, paragraph 43, and KI224/19, Applicant *Islam Krasniqi*, Judgment of 10 December 2020, paragraph 39; KI199/22, Applicant *N.P.T. "Arta XH"*, Judgment of 24 July 2024, paragraph 67; see also the ECtHR's 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 Court and that of the ECtHR, 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).

49. The general principles of access to higher courts and the *ratione valoris* limitations in this context have been addressed in the cases of this Court (see the Court's cases KI143/21, Applicant *Avdyl Bajgora*, Judgment of 25 November 2021; KI199/22, Applicant *N.P.T. "Arta XH"*, Judgment of 24 July 2024; KI43/24, Applicants *Merita Visoka, Eroll Visoka, and Melinde Visoka*, Judgment of 24 September 2024), where in those cases, by applying the general principles of access to higher courts and the *ratione valoris* limitations, and referring to the case of the Grand Chamber of the ECtHR in *Zubac v. Croatia* [no. 40160/12, Judgment of 5 April 2018, and the Court's own case law, the Court found a violation of paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the ECHR, related solely to the principle of access to court.

50. The Court recalls that in case *Zubac v. Croatia*, regarding the application of legal limitations *ratione valoris* to access to higher courts, the ECtHR developed a three-step test whereby must be examined and assessed: (i) the foreseeability of the limitations; (ii) the question of whether the applicant or the state should bear the harmful consequences of the errors made during the proceedings; and (iii) the issue of "*excessive formalism*" in the application of the limitations (see paragraphs 80-86 of the Judgment in case *Zubac v. Croatia*, and the references used in this Judgment) and these same principles have been also affirmed and applied through the case law of the Court (see the Court's cases KI96/22, Applicants *Naser Husaj and Uliks Husaj*, cited above, paragraph 53; KI199/22, Applicant *P.T.P. "Arta XH"*, cited above, paragraph 74; KI43/24, paragraph 56). In this sense, and based on the above, the Court will apply these principles to the present case, which relate to: (i) *the foreseeability of the procedure applied in relation to the revision; (ii) who should bear the harmful consequences of the errors made during the proceedings; and (iii) the use of excessive formalism in the interpretation and application of the applicable legal provisions concerning the admissibility threshold of the revision.*

Application of general principles to the circumstances of the present case

(i) Regarding the foreseeability of the procedure applied in relation to the revision

51. Returning to the circumstances of the present case concerning (i) the issue of the foreseeability of the limitation, the Court will first carefully assess how the Supreme Court examined the Applicant's revision to determine whether the Supreme Court has a consolidated judicial practice regarding the legal threshold for the admissibility of the revision. Based on this, the Court notes that in the legal order, access to the Supreme Court in civil matters is ensured through the revision based on Article 211 of the LCP. The revision refers to disputes in which the challenged part of the judgment exceeds a certain value threshold. Once this value threshold is reached, access to the Supreme Court becomes a matter of individual right. Within the revision, the Supreme Court may annul the judgments of lower courts and remand the case for retrial or, in certain cases, modify the challenged judgment. In any case, the Supreme Court is authorized to declare any revision that does not meet the relevant legal conditions as inadmissible.

52. In this case, the Applicant filed a revision with the Supreme Court, alleging fundamental violations of the provisions of the contested procedure, as well as erroneous application of substantive law. Subsequently, the Supreme Court dismissed the revision filed by the Applicant as inadmissible, reaching the conclusion that the

relevant value of the dispute was below the legal minimum. When assessing the *ratione valoris* admissibility, the Supreme Court first examined in this legal and contested matter the admissibility of the revision based on Article 211.3 of the Law on Contested Procedure, which provides that: "*Revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 €*". The Supreme Court further reasoned that "*... In the present case, the claim of the claimant concerns the compensation of material damage and lost profit, without specifying at all the amount of this requested compensation, either in the claim or during the further development of the proceedings. The value of the dispute was not indicated in the lawsuit, even though Article 30.1 provides that in property-legal disputes, the claimant is obliged to determine the value of the subject matter of the dispute in the lawsuit, where only the value of the principal claim is taken into account, while interest, procedural costs, and other accessory claims are not considered unless they constitute a principal claim ... The admissibility of this revision, even if considered in accordance with paragraph 2 of Article 211 of the LCP, for the same reasons mentioned above, results that it would not be admissible due to its low value assessed based on the court fee of 20 euros paid by the claimant for the lawsuit, and amount which refers to a dispute value of€1,000.00 euros. Since this paragraph also provides that in the challenged part of the judgment, the value of the subject matter of the dispute must exceed 3,000 euro as a condition for the admissibility of the revision, in the present situation the revision would also not be admissible under Article 211, paragraph 2 of the LCP.*"

53. Based on such a conclusion of the Supreme Court, it is quite clear that when deciding on the revision, the Supreme Court rejected the request for revision on the basis of the legal provisions of paragraph 3 of Article 211 of the LCP, without examining the substance of the appellate allegations of the Applicant.

54. Therefore, despite the explanation provided in the request for revision, it is more than evident that the Supreme Court acted fully in accordance with the legal provision of paragraph 1 of Article 30 and paragraph 3 of Article 221 of the LCP, which specifically set forth legal limitations on reviewing the revision if the value of the dispute does not exceed 3,000 euros or is not specified at all by the Applicants.

55. Consequently, the Court holds that the legal provisions referred to by the Supreme Court undoubtedly contain limitations regarding the formal approval of the revision, and as such, they are clear and foreseeable both for the Applicants and for the Court. However, the foreseeability of legal limitations and their application depend on the case, and as such, they must be subject to a comprehensive assessment, and in their assessment, formalistic approach must be avoided when these limitations are applied in a particular case.

(ii) Regarding who should bear the harmful consequences of errors committed during the proceedings

56. Carefully examining the second criterion (ii) *whether the limitation of access to the Supreme Court can be attributed to the errors of the Applicant*, the Court, in order to find an answer, must consider the initial act of filing the statement of claim as well as the legal provisions of the LCP governing the issue and procedure for determining the value of the dispute at the time of submitting the statement of claim.

57. Exactly on this basis, the Court recalls that limitation of access to the Supreme Court is covered by the generally recognized legitimate aim of the *ratione valoris* threshold for appeals to the Supreme Court, the purpose of which is to ensure that the Supreme

Court, given the very essence of its role, deals only with matters of significance. In this regard, the Court recalls that the role of the Supreme Court, *inter alia*, is to ensure uniform application of the law and equality of all in its application. Considering this function, the Court finds it necessary to assess whether the decision of the Supreme Court follows a legitimate aim, namely upholding the rule of law and ensuring the proper functioning of the justice system.

58. In this context, the Court will carefully examine the extent to which the case of the Applicant was addressed before the lower instance courts, more specifically the extent to which the request of the Applicant to determine the value of the dispute was addressed, as well as the nature of the role of the Supreme Court.

59. Therefore, for the Court, it is undisputed that the Applicant filed a lawsuit with the Basic Court without specifying the value of the statement of claim, even though Article 30.1 of the LCP states that "*The claimant is obliged, in the legal disputes over property, to determine the value of the disputed facility*. [...]". However, the Court refers to the provisions of Article 36 of the LCP, which provides as follows:

Article 36

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

60. Accordingly, from the text of Article 36 of the LCP it can be seen that the value of the dispute is one of the elements of the lawsuit, determining of which is an element provided by law, but it is not a necessary precondition for filing the lawsuit. Therefore, even in cases where the party has not determined the value of the dispute at the time of submitting the statement of claim, the Court will neither reject the lawsuit nor return it to the claimant for correction.

61. In other words, in cases where the claimant has not determined the value of the dispute, or if the value has been set too low or excessively high, the Court, ex officio or upon the respondent's objection, no later than at the preparatory hearing, and if the preparatory hearing did not take place, then before the commencement of the main hearing, accordingly shall determine the value of the dispute by taking into account the objective circumstances of the statement of claim in question.

62. The Court finds that the legal provision of Article 36 of the LCP is sufficiently clear, both in terms of rights and in terms of actions and procedural obligations, and it clearly stipulates that the Basic Court is obliged, *ex officio*, to determine the value of the dispute in 3 different situations, as follows: *i) when the claimant did not determined the value of the dispute; ii) when the claimant determined a very low value of the dispute; and iii) when the claimant determined an excessively high value of the dispute*. Moreover, the obligation of the Basic Court, when a claim is filed in accordance with Article 36 of the LCP, is to determine the value of the dispute *ex officio* and that by a decision before the commencement of the main trial. Therefore, the precondition for the Court to be able to act on the merits as per the statement of the claim is that it must first determine the value of the dispute in question through a separate decision at a separate hearing.

63. Regarding the method of determining and verifying the value of the dispute, the court is obliged, according to objective criteria, to determine the monetary equivalent of the statement of claim based on the information in the lawsuit, and only if this is possible given the nature of the matter, namely to preliminarily determine the value of the dispute if it has been indicated, or if it has been indicated as excessively high or low. This verification applies up to a threshold of acceptable probability, since any deeper review of the issue, namely the statement of claim, would jeopardize the court's fundamental duty of ensuring legal protection.

64. The Court notes that on 18 September 2019 and on 16 March 2021, respectively, during preparatory hearings, the Applicant proposed the administration of evidence through financial expert's report, in order to accurately determine the amount of the damage. Furthermore, the Court also notes that in its submission of 23 September 2019, filed with the Basic Court, where it specified the statement of claim, the Applicant explicitly specified the value of compensation wherein the Applicant requested from the respondents Zdravlje Actavis Leskovc, the Government of Kosovo – Ministry of Health, and the Kosovo Medicines Agency compensation for material damage in the amount of 378,340.98 euros (three hundred seventy-eight thousand, three hundred forty euros and ninety-eight cents) and for the lost profit the Applicant had requested the amount of 125,000.00 euros (one hundred twenty-five thousand euros), and in the name of the costs the amount of 2,360 euros (two thousand three hundred sixty euros). Based on the case file and the aforementioned statements, the Applicant proposed to the Basic Court to approve the statement of claim and oblige the respondents to compensate the aforementioned amount to the Applicant.

65. In the light of the foregoing, the Court considers that the Applicant specified the amount of 378,340.98 euros (three hundred seventy-eight thousand, three hundred forty, and ninety-eight cents), which it sought in the name of compensation for material damage, as well as the amount of 125,000.00 euros (one hundred twenty-five thousand) in the name of lost profit. It is clear that the value of the dispute is specified by the injured party through filing the lawsuit. Thus, it is within the injured party's discretion to decide whether to mention the value of the dispute, which the Applicant did by specifying the statement of claim, where the Applicant was clear in its claim addressed to the Basic Court, whereby it specified the statement of the claim by stating the monetary value claimed.

66. The Court further refers to the Judgment of the Basic Court, which stated: "*After elaborating the legal matter regarding the compensation of damage in the amount of 378,340.98 euros and lost profit in the amount of 50,000 euros, the Court did not proceed with administering other evidence, due to the fact that when dealing with the statute of limitations of the claim, then other evidence, which cannot be valid for rendering a decision based on merits, cannot be assessed, and for this reason the court rejected the proposal for the appointment of financial expertise…*".

67. In the present case, it is noted that the Applicant mentioned the value of the dispute when specifying the statement of claim. Consequently, the Applicant was rejected the amount of 378,340.98 euros claimed through the specification of the statement of claim, which in this particular case constitutes the value of the dispute within the meaning of Article 211.3 of the LCP.

68. The Court emphasizes that neither can the fact that the Applicant paid a fee of 20 euros when submitting the statement of claim to the Basic Court be attributed as its error and be a decisive fact that can be used for setting the value of the dispute, because for the Court, it is undisputed that when filing the statement of claim in

accordance with the value of the dispute, the Applicant must also pay the court fee determined by the Administrative Instruction of the Kosovo Judicial Council. In essence, payment of a fee of 20 euros cannot serve as the sole parameter for determining the value of the dispute in question, especially because the Applicant paid the 20 euro court fee as a conditional amount that the party is obliged to pay when the value of the dispute is unknown, while the fee itself in the amount of 20 euros is a condition that enables the statement of the claim of the party to be procedurally accepted by the court, rather than dismissed as an incomplete statement of the claim before the commencement of the proceedings. Moreover, the value of the dispute should take into account the entirety of the damage that may be caused to an applicant in judicial proceedings and not merely the court fee paid by the Applicant.

69. In accordance with the above, it appears that the Applicant exercised due diligence in attempting to determine the value of the dispute, which is in line with the relevant legal provisions. As a result, the errors made during the proceedings cannot be attributed to the Applicant.

iii) regarding the use of excessive formalism in the interpretation and application of the applicable legal provisions related to the threshold of admissibility of the revision

70. With respect to assessing the fulfillment of the third criterion, namely whether excessive formalism was used in interpreting and applying the applicable legal provisions regarding the threshold of admissibility of the revision, the Court notes that compliance with the formal rules of contested procedure, whereby the parties ensure decision-making on the civil dispute, is valid and important because such compliance may limit discretionary freedom, ensure equality of arms, prevent arbitrariness, secure effectiveness in decision-making on the dispute and ensure adjudication within a reasonable time, as well as legal certainty and respect for the court.

71. However, the case law of the ECtHR has determined that "*excessive formalism*" may be in contradiction with the requirement to provide a practical and effective right of access to the court based on Article 6, paragraph 1 of the ECHR. This usually occurs in cases involving a strict interpretation of a procedural rule that prevents examination of the merits of the Applicant's lawsuit, thus risking the violation of his or her right to effective judicial protection (see the ECtHR cases Běleš and Others v. the Czech Republic, no. 47273/99, Judgment of 12 November 2002, paragraphs 50-51 and 69, and Walchli v. France, no. 35787/03, Judgment of 26 July 2007, paragraph 29).

72. Therefore, it is undisputed for the Court that the Applicant paid a fee of 20 euros when filing its lawsuit. Nevertheless, as stated above, it is noted that the Applicant indicated the value of the dispute when specifying the statement of claim, a value that was rejected upon reconsideration by the Basic Court through Judgment [III. Ek. no. 31/2021], against which the Applicant appealed to the Court of Appeals, namely the Commercial Court – Second Instance Chamber, and finally through the request for revision before the Supreme Court, whose Decision it now challenges before the Court. Under the circumstances of the present case, as described above, the Supreme Court should not have been bound by the errors of the lower instance courts in determining whether to grant access to the Applicant, but it should have examined whether access to it was rendered impossible by the procedural omissions of the lower instance courts.

73. The Court notes that the competence of the Supreme Court, determined by law, to review the admissibility of the revision in terms of the *ratione valoris* threshold before assessing the revision on merits is not disputed. However, the Court notes that the

reference of the Supreme Court to the legal provision of paragraph 3 of Article 211 of the LCP, and its reasoning, without first examining the possible procedural error, that "*revision is not permitted in the property-judicial contests, in which the charge request doesn't involve money requests, handing items or fulfillment of other proposal, if the value of the object of contest shown in the charge doesn't exceed 3,000 euros*", passing the responsibility and error solely onto the Applicant and justifying it by the fact that under Article 30, paragraph 1 of the LCP is provided that "*the revision is inadmissible, the claimant is obliged to determine in property-legal disputes the value of the dispute in the lawsuit….*". Based on the conclusion of the Court, this constitutes excessive formalism in interpreting the legal provisions, especially because the Supreme Court did not take into account Article 36 of the LCP and Article 5 of Administrative Instruction No. 01/2017 on Unification of Court Taxes, and, had it done so and examined the provisions under the circumstances of the present case, it might have reached its conclusion about possible omissions or errors made first by the Basic Court, and in subsequent proceedings also by the Commercial Court – Second Instance Chamber, which did not request that the Applicant pay an additional fee once it specified its statement of claim and stated the monetary value of the dispute – the damage claimed.

74. Under these circumstances, considering that two instances of the regular courts, the Basic Court and the Commercial Court, which had full jurisdiction over the case, decided on the case of the Applicant, that the Applicant raised the issue of their evident omission, and that the role of the Supreme Court is to also review the application of the applicable law by the lower instance courts, it results that the Supreme Court's decision in the present case constituted a disproportionate obstacle that violates the very essence of the right of the Applicant guaranteed by Article 31, paragraph 1 of the Constitution in conjunction with Article 6, paragraph 1 of the ECHR.

75. The Court also points out that its finding of violation of paragraph 1 of Article 31 of the Constitution in conjunction with paragraph 1 of Article 6 of the European Convention on Human Rights applies only to the specific circumstances of the present case, the assessment of which must be made on a case-by-case basis, and that it is related solely to the right of access to the court, namely to the Supreme Court, so that is does not prejudice the outcome of the merits of the case in any way.

Conclusion

76. The Court, based on the above analysis, holds that the challenged Decision [E. Rev. No. 1/2023] of the Supreme Court, of 17 January 2023, violates the constitutional rights of the Applicants guaranteed by paragraph 1 of 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, in accordance with paragraphs 1 and 7 of Article 113 of the Constitution, Articles 20 and 47 of the Law and Rule 48 (1) (a) of the Rules of Procedure, on 5 November 2024, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

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

III. TO DECLARE the Decision [E. Rev. No. 1/2023] of 17 January 2023 of the Supreme Court of Kosovo invalid;

IV. TO REMAND the Decision [E. Rev. No. 1/2023] of 17 January 2023 of the Supreme Court of Kosovo for reconsideration, in accordance with the findings of the Court in this Judgment;

V. TO ORDER the Supreme Court to inform the Court, in accordance with paragraph (5) of Rule 66 (5) of the Rules of Procedure, about the measures taken to enforce the Judgment of the Court, no later than 5 May 2025;

VI. TO NOTIFY this Judgment to the parties;

VII. TO PUBLISH this Judgment in the Official Gazette in accordance with paragraph 4 of Article 20 of the Law;

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

Judge Rapporteur	**President of the Constitutional Court**
Remzije Istrefi-Peci	Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.