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

Prishtina, on 4 March 2024 2024
Ref. no.: AGJ 2384/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI103/23

Applicant

The Energy Regulatory Office of the Republic of Kosovo

Constitutional review
of Judgment Arj. no. 116/2022 of 9 March 2023 of the Supreme Court of the Republic of Kosovo

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by the Energy Regulatory Office of the Republic of Kosovo (hereinafter: ERO) which is represented by Ymridin Misini.

Challenged decision

2. The Applicant challenges the Judgment [Arj. no. 116/2022] of 9 March 2022 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), in conjunction with the Judgment [Aa. no. 990/21] of 4 October 2022, of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals] and the Judgment [A. no. 1373/2017] of 15 September 2021, of the Basic Court in Prishtina-Department for Administrative Matters (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the contested Judgment of the Court of Appeals, whereby the Applicant alleges that its fundamental rights and freedoms, 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: the ECHR) have been violated.

4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 (Processing Referrals) and 47 (Individual Requests) of Law no. 03L-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 No. 01/2023 (hereinafter: the Rules of Procedure).

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

Proceedings before the Constitutional Court

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

8. On 31 May 2023, the President of the Court, by Decision [no. GJR. KI103/23], appointed judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel, composed of judges: Bajram Ljatifi (Presiding), Safet Hoxha and Remzije Istrefi Peci (members).

9. On 13 June 2023, the Court notified the Applicant about the registration of the Referral.

10. On the same date, the Court notified the Supreme Court about the registration of the Referral by sending a copy of the Referral.

11. On 13 June 2023, the Court notified the Ombudsperson in capacity of the interested party about the registration of the Referral by sending a copy of the Referral.

12. On 23 January 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

13. On the same date, the Court unanimously decided that the Referral is admissible; to reject unanimously the request for interim measure; to hold, unanimously, that the Judgment [Arj. no. 116/2022] of the Supreme Court of 9 March 2023, is not contrary to Article 31 [Right to Fair and Impartial Trial] of the Constitution, and Article 6 (Right to a fair trial) of the ECHR; held that this Judgment enters in fore on the date of its publication in the Official Gazette, in accordance with paragraph 5 of Article 20 of the Law.

Summary of facts

14. On 13 June 2017, the Ombudsperson compiled the report: *Ex officio Case No. 265/2017; Report with Recommendations of the Ombudsperson of the Republic of Kosovo regarding the billing of electricity costs consumed in four northern municipalities of the Republic of Kosovo,* addressed to: (i) Chairmen of the ERO Board; (ii) Head of the Department for Energy, Ministry of Economic Development (hereinafter: MED); and (iii) Head of the Consumer Protection Department , Ministry of Trade and Industry. The report, among other things, emphasized that the electricity spent in the four municipalities of the north of the Republic of Kosovo (North Mitrovica, Zubin Potok, Leposavic and Zvecan) was billed to "*consumers of the rest of the Republic*", which according to the claims of ERO and the Department for Energy of MED was in accordance with Law No. 05/L-084 on the Energy Regulator and Law No. 05/L-085 on Electricity.

15. Report *Ex officio Case No. 265/2017* of the Ombudsperson, on the basis of the assessment made, found that: (1) The billing of electricity consumed in the four northern municipalities of the Republic of Kosovo to other consumers in the rest of the country, represents a violation of Law No. 05/L-084 on the Energy Regulator and Law no. 05/L-085 on Electricity; (2) This billing practice represents a violation of the right to property, guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the ECHR, and leads to unjust enrichment according to Article 194 of Law No. 04/L-077 on Obligational Relationships; (3) This billing practice represents a violation of the right not to be discriminated against, guaranteed by Article 24 of the Constitution and Law No. 05/L-021 on the Protection from Discrimination; (4) This billing practice represents a violation of consumer rights, guaranteed by Law No. 04/L-121 on Consumer Protection.

16. Based on the findings above, the Ombudsperson gave the following recommendations: (1) ERO to urgently terminate unlawful practice of billing of the consumed electricity t in the northern part of the Republic of Kosovo to consumers other parts of the country; (2) The Government, in cooperation with ERO and KEDS, to find alternative way to evade losses in the north of the country, by treating all consumers equally according to constitutional and legal norms against discrimination; (3) ERO, in compliance with Law No. 05/L-084 on the Energy Regulator, to issue a decision by which it will approve tariffs' reduction up to that level which will enable customers' reimbursement that unjustly have been invoiced, and continue to be invoiced for the energy consumed in four northern municipalities of the country.

17. On 12 July 2017, the Ombudsperson received a response from the ERO regarding the Report with Recommendations of the Ombudsperson, in which case the ERO opposed the findings of the Ombudsperson regarding electricity billing in the north of the country.

18. On 15 August 2017, disagreeing with the clarifications provided by the ERO, from the case file it follows that the interested party "*the Ombudsperson"* as the claimant filed a lawsuit with the Basic Court, for: (1) annulment of the decision [no. V399_2022] of 6 February 2012 of ERO (the Applicant), for the reduction of distribution losses; as well as (ii) ERO is obliged to compensate consumers who are billed for electricity consumption in the four northern municipalities of the Republic of Kosovo.

19. The Ombudsperson emphasized in the lawsuit that the Decision of the ERO is of a technical nature and as such is difficult to understand for the citizens, who based on this decision, without their knowledge, paid to reduce losses and reduce the level of bad debt from the four municipalities of the north of Kosovo. Consequently, according to the Ombudsperson , the decision had no support in the law and it violated the right of citizens not to be discriminated against, the right to property and the right of consumers. (See for more details Report *Ex officio Case No. 265/2017; Report with Recommendations of the Ombudsperson of the Republic of Kosovo regarding the Billing of electricity costs consumed in four northern municipalities of the Republic of Kosovo; Prishtina, on 13 June 2017).*

20. On the other hand, the Applicant submitted a response to the lawsuit requesting that the lawsuit of the Ombudsperson for the annulment of the decision [V _399_2012] of 6,February 2012 be rejected as ungrounded, while for point II of the lawsuit, the lawsuit should be dismissed as impermissible.

21. On 15 September 2021, the Basic Court by Judgment [A. no. 1373/2017]: (I) Approved as grounded the statement of claim of the claimant-the Ombudsperson; (II) Annulled as unlawful the Decision [V_399_2012] of 6 February 2012 of the ERO, and obliged the Applicant to undertake actions that oblige the Electricity Distribution Service in Kosovo j.s.c. (KEDS) to return the invoiced amount, respectively the compensation of damages to consumers who have been invoiced for the consumption of electricity in the four northern municipalities of the Republic of Kosovo, for the period from 6 February 2012 to 20 October 2017, in the amount of forty million eight hundred and fifty five thousand four hundred and eighty euro (40,855,480.00 EUR), all this within a period of 15 days from the day of receipt of this judgment under the threat of forced execution.

22. Against the aforementioned judgment, the Applicant filed and appeal on the grounds of violations of the legal provisions of the Law on Administrative Conflicts and the Law on Contested Procedure; violation of the legal provisions of the Law on the Energy Regulator and the Law on Electricity; erroneous and incomplete determination of factual situation and the erroneous application of substantive law, proposing that the Court of Appeals approve the appeal as grounded, and annul the judgment of the Basic Court and remand the latter for retrial and reconsideration.

23. On 4 October 2022, the Court of Appeals by the Judgment [AA. no. 990/21] rejected the Applicant's appeal as ungrounded, while upholding the judgment of the Basic Court [A. no. 1373/17] of 15 September 2021. Among other things, the Court of Appeals emphasized that the Applicant's allegations are not grounded according to which the Ombudsperson filed a lawsuit out of legal time and that the relative and absolute statute of limitations had passed. The Court of Appeals reasoned that in this case we were

dealing with violations of a continuous nature. In addition, the Court of Appeals reasoned as follows: "*The first instance court in the specific legal matter has fully and correctly determined the factual situation, which is not questioned by the appealing allegations. [...] the first instance court has given sufficient and convincing factual and legal reasons for its assessment on the relevant facts to decide on this legal matter, which the second instance court approves in entirety, since: By the Law on Obligational Relationships No. 04/L-077, Article 194, it is specified that: "1. Any person that without a legal basis becomes enriched to the detriment of another shall be obliged to return that which was received or to otherwise compensate the value of the benefit achieved. 2. The term enrichment also covers the acquisition of benefit through services. 3. The obligation to return or compensate shall also arise if a person receives something in respect of a basis that is not realized or subsequently disappears." Based on these provisions, consumers who have unknowingly paid for the energy spent in the north of the Republic of Kosovo, have the right to return the amount they were forced to pay. And in this case, the Electricity Distribution Service in Kosovo JSC (KEDS) was enriched without a legal basis, when it was based on its decision and billed consumers outside the four northern municipalities of Kosovo for the electricity spent, and the civil liability falls precisely on the respondent by the Law on Electricity, the Law on Consumer Protection and the Law on the Electricity Regulator."*

24. On an unspecified date, the Applicant submitted a request for an extraordinary review of the court decision, by which it contested the judgments of the Basic Court and the Court of Appeals on the grounds of violation of the substantive law and violation of the provisions of the procedure, with a proposal, to approve the request as grounded, while the judgment of the Basic Court and the judgment of the Court of Appeals be modified, under the claim that the latter were rendered in violation of the substantive and procedural provision which have an impact on fair resolution of the case, respectively the request of the respondent to be approved, while the contested judgments as above be annulled and the case be remanded to the of first instance court for retrial.

25. On the other hand, the claimant – the Ombudsperson submitted a response to the request for review of the Applicant ERO, by which he opposed the allegations presented against the judgments of the lower instances by the Applicant and requested that the request be rejected as ungrounded in entirety.

26. On 9 March 2023, the Supreme Court by the Judgment [ARJ. no. 116/2021] rejected as ungrounded the request for an extraordinary review of the court decision, submitted by the Applicant ERO, against the Judgment [AA no. 990/2021] of 4 October 2022, of the Court of Appeals. In the reasoning of its Judgment, the Supreme Court, among other things, emphasized the following:

> *The claims, among others, in the request related to the erroneous application of substantive law by the courts of lower instances [...] the panel of the Supreme Court examined them in their entirety on a legal basis and assesses that the competencies that originate for the ERO are not disputed according to Article 48 of the Law on RE regarding the treatment of regulatory parameters, and the billing of the cost of lost electricity in the transmission and distribution system, and the supervision related to the regular supply of electricity to consumers as a legal obligation, but these claims are not relevant and ungrounded in relation to the subject of the case under consideration, invoicing the citizens of the Republic of Kosovo, for the electricity spent but not paid for in the four northern Municipalities of the Republic of Kosovo, so that from KEDS the electricity spent there, based on the decision of the ERO, has been billed to the citizens of other parts in the name of returning the costs*

and other losses in the transmission system, without the right and legal basis. Therefore, the claims related to the justification of non-billing in the four municipalities due to security reasons and not having access to reading the meters in that part are not grounded, because it is not justified that the citizens for any reason should be charged with the payment of the electricity consumed without a legal basis. Therefore, with this invoicing and payment, the citizens of the Republic of Kosovo have been treated unequally, which contradicts article 55 paragraph 4 of the Constitution, unequal treatment, citing as in the judgments of the lower instance courts, because human rights have been restricted. Therefore, based on article 194 of the LOR, the consumers who without legal basis and without their knowledge were billed and paid for the energy spent in the north, had the right to transfer the amount paid as decided by the lower instance courts.

Applicant's allegations

27. The Applicant alleges that the contested decision was rendered in violation of his constitutional rights and freedoms, specifically Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR, on the grounds of (i) erroneous application of the law by the regular courts, respectively the Supreme Court, the Court of Appeals and the Basic Court and (ii) the lack of reasoning of the court decision.

28. Regarding the allegation of *erroneous application of substantive law*, the Applicant considers that taking into account the fact that the erroneous application of procedural and substantive law has led to the violation of the rights protected by the Constitution, the Court is obliged to enter the errors of the Supreme Court and two (2) other instances related to the erroneous application of procedural and/or substantive law. In connection with this allegation, the Applicant refers to Court case KI195/20, with Applicant *Aigars Kesengfels*.

29. The Applicant in the framework of these allegations of erroneous application of substantive law, relates the latter to *non-reasoning of* the court decision, where it was emphasized that: "the legal standard is an obligation expressly defined by par. 4 of Article 160 of the LCP, where it is explicitly stated that: "*Justification of the verdict consists of: requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated.*"

30. As a result of not providing sufficient reasoning for the court decision of the regular courts, the Applicant emphasizes that *"the courts of three instances have violated basic constitutional rights: the right to equality before the law, and the right to fair and impartial trials, to the detriment of the public interest. This is due to the fact that the courts have decided in favor of the opposing party, and consequently, they have denied the applicant the legitimate right provided for by the Constitution, the right to a fair trial, and the protection of the public , humanitarian interest and territorial sovereignty of the country."*

31. In what follows, the Applicant states that the Judgment of the Supreme Court *"would have been regular and legally acceptable if the court had acted correctly [...] taking as a basis the application of the substantive provisions by which was rendered the decision V -399_2012 of 06.02.2012 which is based on Article 48 paragraph 3 sub-paragraph 3.3 of the Law on the Energy Regulator."*

32. The Applicant also emphasizes that the Supreme Court rejected the request for review of the court decision, although by the same request the latter emphasized that the contested decision is annulled, by the Decision [V 1019_2018] of the ERO of 20 August 2018.

33. In the following, the Applicant builds his case similarly to the case KI11/2009, "*where the Constitutional Court in that case had granted interim measure for the implementation of Article 20.1 of the RTK Law, until the decision of the case and that the Assembly of Kosovo was recommended to review the nature of Article 20.1 and the practices based on it, no later than 1 December 2009, where after consideration, the Assembly of Kosovo in the plenary session held on 28 January 2010 adopted Decision No. 03/237 on the temporary financing of RTK from 1 January 2010, and the court noted that from that date no fees are charged or collected directly from individuals or houses for providing RTK services.*"

34. In addition to the aforementioned claims, the Applicant also refers to several paragraphs of the Court's Judgment in case KO93/21, with Applicant *Blerta Deliu-Kodra and 12 other deputies of the Assembly of the Republic of Kosovo, Constitutional review of the Recommendations of the Assembly of the Republic of Kosovo, No. 08-R-01, of 6 May 2021,* which were relevant during the handling of that case by the Constitutional Court.

35. Therefore, the Applicant basically states that *"regular courts are obliged to deal with all evidence presented by litigants with care. In the legal-administrative case according to the lawsuit of the Ombudsperson, we are dealing with the request for the annulment of the decision V.-399_2012, of 6 February 2012, initiated after more than 5 years from the time of issuance by the respondent, which has adjusted regulatory parameters of the respondent, in relation to the evidence it assesses when rendering the decision, the court is obliged to provide sufficient reasoning, namely to include it in the reasoning of the decision it takes. This standard is a legal obligation expressly defined in par. 4 of Article 160 of the LCP, which defines as follows: "Justification of the verdict consists of: requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated."*

36. On the other hand, in essence, the Applicant claims that the contested decision does not fulfill the premises of the *reasoned court decision, emphasizing that "[...] since the Supreme Court has rejected as ungrounded the request for an extraordinary review of the court decision, and upheld the Judgment of the Court of Appeals which upheld the Judgment of the Basic Court in Prishtina, the latter was obliged to reason its decision in detail in terms of the merits, where the contested act was annulled by the Applicant, while the compensation did not have to be decided at all in the absence of decisive facts and material evidence on which it based its finding."*

37. In the context of the allegation for lack of reasoning of the court decision, the Applicant emphasizes that the Supreme Court did not address the claims and evidence presented by it. Consequently, according to the Applicant, the contested judgment is an unfair and unlawful decision, which has resulted in the violation of the right to fair and impartial trial.

38. The Applicant has also submitted a request for interim measure since *"based on the above elaboration, has shown the prima facie case for the merits of the request."*

39. In relation to this claim, the Applicant states that: "The implementation of the Judgment of the Supreme Court in conjunction with the Judgment of the Court of Appeals and the

Basic Court in Prishtina for Administrative Matters, will cause irreparable material and non-material damages for the Applicant, based on the obligation for the applicant to undertake actions that oblige the Electricity Distribution Services in Kosovo KEDS J.S.C. to return the invoiced amount, respectively compensation for the damage to consumers who were invoiced for the energy used, but not paid for by the consumers of the four (4) northern municipalities of the Republic of Kosovo, calling into question the legal security established by the Constitution.

40. Finally, the Applicant requests the Court, that by the Judgment: (I) renders a Decision on interim measure, according to which: Allow the interim measure for the duration determined by the Constitutional Court; (II) To immediately suspend the implementation of the Judgment [ARJ. no. 116/2022] of the Supreme Court of 9 March 2023, the Judgment [AA. No. 990/21] of the Court of Appeals of 4 October 2022 and the Judgment [A. No. 1373/2017] of the Basic Court of 15 September 2021; (III) To declare the Referral admissible; (IV) to hold that there has been a violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution, Article 6 (Right to a fair), of the ECHR; (V) to hold that there has been a violation of Article 46 (Protection of Property) of the Constitution; (VI) to declare, invalid, the Judgment [ARJ. no. 116/2022] of the Supreme Court of 9 March 2023, the Judgment [AA No. 990/21] of the Court of Appeals of 4 October 2022 and the Judgment [A. No. 1373/2017] of the Basic Court of 15 September 2021; (VII) to remand, for reconsideration, the Judgment [CA. no. 1373/2017) of the Basic Court, in accordance with the Judgment of the Constitutional Court; (VIII) To grant the interim measure until the time when the Supreme Court of Kosovo decides the merits of the case.

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.

[...]

European Convention on Human Rights

Article 6
(Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
[…]

LAW No. 05/L – 084 ON THE ENERGY REGULATOR

Article 48
Approval of Tariffs

[…]

3. In approving or fixing tariffs, the Regulator shall ensure that licensees are permitted to recover all reasonable costs, including:

[…]

3.3. the costs of reasonable levels of energy losses in the transmission and distribution systems;

LAW NO. 04/L-077 ON OBLIGATIONAL RELATIONSHIPS

CHAPTER 3
UNJUST ACQUISITION
SUB-CHAPTER 1
GENERAL RULE

Article 194
General rule

1. Any person that without a legal basis becomes enriched to the detriment of another shall be obliged to return that which was received or to otherwise compensate the value of the benefit achieved.

2. The term enrichment also covers the acquisition of benefit through services.

3. The obligation to return or compensate shall also arise if a person receives something in respect of a basis that is not realized or subsequently disappears.

LAW No. 04/L-121 ON CONSUMER PROTECTION

Article 4
Consumer rights

1. This Law shall guarantee the following basic consumer rights:

1.1. the right to protect the economic interests of consumers;

1.2. the right to be protected from danger the life, health and property;

1.3. the right to legal protection of consumer;

1.4. the right to complain;

1.5. the right to compensation in certain cases for indemnity;

1.6. the right to consumer information and education;

1.7. the right to use public services;

1.8. the right of organization in consumer association, to protect their interests;

1.9. the right to represent consumer interests;

1.10. the right to receive services in his language in compliance with the Law on the Use of Official Languages.

Article 29
Invoicing of electricity, water and telecommunication services

1. Invoicing of electricity and water is calculated based on actual consumption read in the meter of the consumer.

2. The method of measuring and calculating the electricity and water is regulated by laws and other bylaws.

3. The supplier is obliged to notify the consumer in advance with all the conditions of electricity and water consumption.

4. The supplier shall submit on the invoice the data that enables the consumer to control the quantity and value for electricity and water consumption.

5. The supplier is obliged to adhere to the prescribed standards of quality and continuity of electricity and water services.

6. Electricity and water invoicing must be calculated on the basis of actual consumption and estimated through calibrated meters.

LAW No. 05/L -021 ON THE PROTECTION FROM DISCRIMINATION

Article 2
Scope

1. This law applies to all acts or omissions, of all state and local institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life, especially related to:

Article 3
The concept of discrimination

1. The principle of equal treatment shall mean that there shall be no discrimination, direct or indirect in the sense of any of the grounds set out in Article one (1) of this Law.

2. Discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article one (1) of this law, which has the purpose or impact of depreciation or violate the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution and other applicable legislations of the Republic of Kosovo.

Admissibility of the Referral

41. The Court initially examines whether the Applicant has met the admissibility criteria established in the Constitution, and further specified in the Law and the Rules of Procedure.

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

Article 113
[Jurisdiction and Authorized Parties]

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

[...]

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

[...]

Article 21
[General Principles]

[...]

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

43. In this respect, The Court notes that the Applicant, in the capacity of a legal person, has the right to file a constitutional complaint, citing alleged violations of his fundamental rights and freedoms, which apply to individuals and legal persons (see the case of the Court KI195/20, Applicant *Aigars Kesengfelds, owner of the non-banking financial institution "Monego", Judgment of the Court of 19 April 2021, paragraph* 63; KI41/09, Applicant *AAB-RIINVEST L.L.C. University*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

44. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
(Individual Requests)

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

Article 48
(Accuracy of the Referral)

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

Article 49
(Deadlines)

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

45. Regarding the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely the Judgment [ARJ. no. 116/2022] of 9 March 2023 of the Supreme Court, after exhausting all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms that it alleges to have been violated in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.

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

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

47. In light of the allegations of the Applicant and their argumentation, the Court considers that the Referral raises serious constitutional issues and their addressing depends on the consideration of the merits of the referral. Also, the referral cannot be considered as manifestly ill-founded, within the meaning of Rule 39 of the Rules of Procedure, and no other basis has been established to declare it inadmissible (see Court case KI97/16, Applicant *IKK Classic*, Judgment of 4 December 2017). The Court declares the Referral admissible for review on the merits.

Merits of the Referral

48. The Court initially brings to attention that the essential issue in the circumstances of the present case is related to the Applicant's claim regarding erroneous application of the law and the lack of reasoning of the court decision. In the present case, the Court brings to

attention that the Ombudsperson by the *Ex officio* Report with Recommendations *Case No. 265/2017*, had found that: (i) the billing of electricity consumed in the four northern municipalities of the Republic of Kosovo to other consumers in the rest of the country, represents a violation of Law No. 05/L-084 on the Energy Regulator and Law no. 05/L-085 on Electricity; (ii) this billing practice represents a violation of Article 46 of the Constitution; (iii) a violation of the right not to be discriminated against, guaranteed by Article 24 of the Constitution, and (iv) violation of consumer's rights. In this regard, the Ombudsperson sued the ERO for (i) annulment of the Decision [no. V399_2022] of 6 February 2012 of ERO, for the reduction of distribution losses; as well as (ii) ERO is obliged to compensate consumers who are billed for electricity consumption in the four northern municipalities of the Republic of Kosovo. On the other hand, the Applicant submitted a response to the lawsuit requesting that the lawsuit of the Ombudsperson for the annulment of the decision [V_399_2012] be rejected as ungrounded, while for point II of the statement of claim, the lawsuit should be dismissed as inadmissible. The Basic Court by the Judgment (I) approved the lawsuit as grounded; as well as (II) annulled as unlawful the Decision [V_399_2012] of the ERO, obliging the Applicant to undertake actions that oblige the Electricity Distribution Service in Kosovo (KEDS) to return the invoiced amount, respectively the compensation of damages to consumers who were billed for the consumption of electricity in the four northern municipalities of the Republic of Kosovo, and for the period from 6 February 2012 to 20 October 2017, in the amount of forty million eight hundred and fifty five thousand and four hundred and eighty euro (40,855,480.00 EUR), all within 15 days from the day of receipt of this judgment under the threat of forces execution. Against the aforementioned judgment, the Applicant filed a complaint on the grounds of violations of the legal provisions of the Law on Administrative Conflicts and the Law on Contested Procedure; violation of the legal provisions of the Law on the Energy Regulator and the Law on Electricity; erroneous and incomplete determination of factual situation and erroneous application of the substantive law, proposing that the Court of Appeals approves the appeal as grounded, and annul the judgment of the Basic Court remand the case for retrial and reconsideration. The Court of Appeals, by its Judgment rejected the Applicant's appeal as ungrounded. The Applicant submitted a request for an extraordinary review of the court decision, while the Ombudsperson submitted a response to the request for review of the Applicant, which the Supreme Court rejected as ungrounded.

49. In this regard, the Court recalls that the Applicant challenges the findings of the regular courts before the Court, claiming a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, as a result of (i) erroneous application of the law and (ii) lack of reasoning of the court decision.

50. In this respect, the Court first emphasizes that the right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR and its application, has been widely interpreted by the ECtHR through its case law. Consequently, as regards the interpretation of allegations for the violation of the right to fair and impartial trial as a result of *"manifestly erroneous application and interpretation of the law"* and the lack of reasoning of the court decision, the Court will refer to the case law of the ECtHR. To this end, in what follows, the Court will first elaborate on the general principles regarding the *"manifestly erroneous application and interpretation of the law"* as well as *the lack of reasoning of the court decision* through the aforementioned article of the Constitution and the ECHR; and then, will apply the latter in the circumstances of the present case.

Allegations of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution

51. The Applicant claims that the contested Decision was rendered in violation of the rights related to Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of ECHR, on the grounds of (i) erroneous application of the law by the regular courts, respectively the Supreme Court, the Court of Appeals and the Basic Court and (ii) the lack of reasoning of the court decision.

52. The Applicant in the framework of these allegations of erroneous application of the substantive law, relates them to the lack of reasoning of the court decision, therefore, in the following the Court will deal with these principles and apply them in the circumstances of the present case.

(i) general principles regarding erroneous interpretation of the law

53. The Applicant challenges before the Court the findings of the regular courts, essentially claiming violations related to the way of interpretation and application of the substantive law, in which case he claims that the procedural guarantees of a fair trial have been violated.

54. In examining these claims, the Court emphasizes that they are essentially related to the incorrect application of the applicable law by the regular courts, which claims the Court, in accordance with its case law and that of the ECtHR, considers as *"fourth instance claims"*.

55. In the context of this category of claims, the Court emphasizes that based on the case law of the ECtHR, but also taking into account its peculiarities, as are determined through the ECHR, the principle of subsidiarity and the doctrine of the fourth instance; it has consistently emphasized the difference between "*constitutionality*" and "*legality*" and has asserted that it is not its duty to deal with errors of facts or erroneous interpretation and application of the law, allegedly committed by a regular court, unless and insofar as such errors may have infringed the rights and freedoms protected by the Constitution and/or the ECHR. (See, in this context, among others, the cases of Court KI96/21, Applicant *Xhelal Zherka*, Resolution on Inadmissibility of 23 September 2021, paragraph 49; KI145/20, Applicant *Hafize Gashi*, Resolution on Inadmissibility of 22 April 2021, paragraph 33; KI179/18, Applicant *Belgjyzar Latifi*, Resolution on Inadmissibility of 23 July 2020, paragraph 68; KI49/19, Applicant *Joint Stock Company Limak Kosovo International Airport J.S.C., "Adem Jashari",* Decision of 31 October 2019, paragraph 47; KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35; and KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and Limited liability company "Barbas"*, Resolution on Inadmissibility, of 12 August 2019, paragraph 60).

56. The Court has also consistently reiterated that it is not the role of this Court to review the findings of the regular courts which concern the factual situation and the application of substantive law, and that it may not by itself assess the facts which have led a regular court to adopt one decision rather than another. If it were otherwise, the Court would act as a court of *"fourth instance*", which would result in exceeding the limits imposed on its jurisdiction. (See, in this context, the case of the ECtHR *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and the references used therein; and see also the cases of the Court, KI49/19, cited above, paragraph 48; and KI154/17 and KI05/18, cited above, paragraph 61).

57. The Court, however, states that the case law of the ECtHR and the Court also provide for the circumstances under which exceptions from this position must be made. As stated above, while it is the primary duty of the regular courts to resolve problems of interpretation of the applicable law, the role of the Court is to ensure or verify whether the effects of such interpretation are compatible with the Constitution and the ECHR. (See ECtHR case, *Miragall Escolano and others v. Spain*, Judgment of 25 January 2000, paragraphs 33-39; and see also the case of the Court KI154/17 and KI05/18, cited above, paragraph 63). In principle, such an exception relates to cases which result to be apparently arbitrary, including those in which a court has "*applied the law manifestly erroneously*" in a particular case and which may have resulted in "*arbitrary conclusions*" or "*manifestly unreasonable*" for the respective applicant.

ii) general principles regarding the right to a reasoned court decision

58. As to the right to *a reasoned court decision* guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court first notes that it already has a consolidated case-law regarding this issue. This case-law was built based on the case law of the ECtHR (including but not limited to the cases *Hadjianastassiou v. Greece*, no. 12945/87, Judgment of 16 December 1992; *Van de Hurk v. The Netherlands*, no. 16034/90, Judgment of 19 April 1994; *Hiro Balani v. Spain*, no. 18064/91, Judgment of 9 December 1994; *Higgins and others v. France*, no. 26 20124/92, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 21 January 1999; *Hirvisaari v. Finland*, no. 49684/99, Judgment of 27 September 2001; *Suominen v. Finland*, no. 37801/97, Judgment of 1 July 2003; *Buzescu v. Romania*, no. 61302/00, Judgment of 24 May 2005; *Pronina v. Ukraine*, no. 63566/00, Judgment of 18 July 2006; and *Tatishvili v. Russia*, no. 1509/02, Judgment of 22 February 2007. In addition, the fundamental principles concerning the right to a reasoned court decision have also been elaborated in the cases of this Court, including but not limited to cases KI22/16, Applicant *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant *IKK Classic*, Judgment of 9 January 2018; KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility of 13 June 2018; KI87/18, Applicant *IF Skadiforsikring*, Judgment, of 27 February 2019, and KI24/17, Applicant *Bedri Salihu*, Judgment of 27 May 2019, KI35/18, Applicant *Bayerische Versicherungsverbrand*, Judgment of 11 December 2019; an the case of the Court KI230/19, Applicant *Albert Rakipi,* Judgment of 9 December 2020, paragraph 135).

59. In principle, the Court notes that the guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR include the obligation of courts to provide sufficient reasons for their decisions. (See the ECtHR case, *H. V. Belgium* Judgment of 30 November 1987, paragraph 53; and see case of the Court KI230/19, cited above, paragraph 139 and case KI87/18, Applicant *IF Skadiforsikring*, cited above, paragraph 44).

60. The Court also notes that based on its case law in assessing the principle which refers to the proper administration of justice, the court decisions must contain the reasoning on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the specific case. It is the substantive arguments of the Applicants that need to be addressed and the reasons given need to be based on the applicable law (see, similarly ECtHR cases: *Garcia Ruiz v. Spain*, cited above, paragraph 29; *Hiro Balani v. Spain*, cited above, paragraph 27; and *Higgins and others v. France*, cited above paragraph 42, see also, cases of the Court KI97/16, Applicant *IKK Classic*, cited above, paragraph 48; and KI87/18, Applicant *IF Skadeforsikring*, cited above, paragraph 48).

By not seeking a detailed response to each complaint raised by the Applicant, this obligation implies that the parties to the proceedings may expect to receive a specific and explicit response to their claims that are crucial to the outcome of the conducted proceedings (see case *Moreira Ferreira v. Portugal (No. 2)*, no. 19867/12, Judgment of 5 July 2011, paragraph 84, and all references used therein; and case of the Court KI230/19, Applicant *Albert Rakipi,* Judgment of 9 December 2020, paragraph 137).

61. In addition, the Court refers to its case law where it is established that the reasoning of the decision must state the relationship between the merit findings and the examination of evidence on the one hand, and the legal conclusions of the court, on the other. A judgment of a court will violate the constitutional principle of ban on arbitrariness in decision-making, if the reasoning given fails to contain the established facts, the legal provisions and the logical relationship between them (see cases of the Court: KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58; KI97/16 *IKK Classic*, Judgment of 8 December 2017; KI87/18 Applicant *IF Skadeforsikring*, cited above, paragraph 44; KI138/19 Applicant *Ibish Raci*, cited above, paragraph 45; as the case of Court KI230/19, Applicant Albert Rakipi, Judgment of 9 December 2020, paragraph 138).

(iii) Application of these principles in the circumstance of the present case

62. In the context of the application of the aforementioned principles, the Court recalls that the Applicant claimed a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous application of substantive law, as well as the lack of reasoning of the court decisions by regular courts.

63. Regarding the Applicant's allegations of erroneous application of the legal provisions, the Court emphasizes that the Basic Court reasoned as follows:

> *The court notes that the respondent, by the decision contested by the lawsuit, has acted contrary to the Constitution of the Republic of Kosovo, namely Article 55, which establishes [...].*
>
> *According to the Court's assessment, the billing practice is not in accordance with the Law on the Electricity Regulator. Because the residents of the four northern municipalities of Kosovo have been treated unequally compared to residents in the rest of the Republic of Kosovo, and the same billing is not authorized by law and on this basis it is a non-proportional measure according to Article 55 of the Constitution of the Republic of Kosovo.*
>
> *According to paragraph 4 of Article 55 of the Constitution of the Republic of Kosovo [...] In this case, this provision requires that the ERO as well as all competent institutions for the legal regulation of the field of electricity, to examine whether the claimed purpose of the current billing practice, the purpose of not endangering the electricity system throughout the territory of the Republic of Kosovo, can be achieved with an equal treatment between all residents of the country.*
>
> *By the Law on Consumer Protection No. 04/L-121, Article 4, the fundamental rights of the consumer are guaranteed, such as the right to protect the economic interests of the consumer as well as the right to protect the property. While [...] Billing of energy and water is calculated on the basis of the real consumption read on the consumer's meter [...] And from the evidence administered in the main hearing*

session, the Court notes that the real billing of the energy spent by citizens outside the four northern municipalities of Kosovo has not been done as defined by this law, respectively, they were charged to pay for the energy that they did not actually spend.

By the Law on the Protection from Discrimination No. 05/L-021, [...] S, discrimination is any distinction, exclusion, restriction or preference on any ground specified in Article 1 of this law, which has the purpose or impact of depreciation or violation of the recognition, enjoyment or exercise of human rights and fundamental freedoms guaranteed by the Constitution of the Republic of Kosovo and other applicable legislations of the Republic of Kosovo, same as the court decisions of the ECtHR, the law states that unequal treatment can be justified if there is "a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued". And in the present case, according to the Court's assessment, there has been no legitimate and proportional purpose between the means employed and the aim pursued", by the respondent, when based on its decision KEDS has obliged the citizens outside the four northern municipalities of Kosovo to pay for the energy of spent in the north.

By the Law on Obligational Relationships No. 04/L-011 [...] to the consumers who without their knowledge have paid for the energy spent in the north of the Republic of Kosovo, arises the right for return of the amount that they were forced to pay. And in this case, the Electricity Distribution Service in Kosovo J.S.C. (KEDS) in Prishtina was enriched without a legal basis, when it was based on the respondent's decision and billed consumers outside the four northern municipalities of Kosovo for the electricity not consumed.

Whereas by the decision of the respondent [V_ , 0 19_20 18] of 20 August 2018, which approved the loss reduction target and the allowed loss curve for the second period 2018-2022 for the transmission network (OST) and the distribution network (OSSH) that will start from the realized level of losses in 2017. Where in point IV of the same decision it is determined that "The goal of reducing losses and the curve of allowed losses is not applied to the amount of energy without billing in the four (4) northern municipalities of the Republic of Kosovo. So by this decision, the respondent has decided to apply the loss reduction target and the permitted loss curve only to the part of the Republic of Kosovo in which the licensees have control, while by the contested decision with the lawsuit, no such exception happened, this fact proves the claimant's allegation that the respondent's decision on the basis of which the consumers outside the four northern municipalities of Kosovo were then billed for the energy spent and not paid for in the four northern municipalities of Kosovo is illegal.

64. Finally, based on the above reasoning and in the context of the application of the substantive law in the circumstances of the present case, the Basic Court concluded as follows:

[...] from the evidence administered in the main hearing, it has been proven that the respondent has decided in violation of 55.4 of the Constitution of the Republic of Kosovo, in violation of Article 194 of the Law on Obligational Relationships No. 04 L-077, contrary to Article 4 and 12 of the Law on the Consumer Protection No. 04/L-121, contrary to Article 2. 3 and 4 of the Law on the Protection from Discrimination No. 05/L-021, in violation of Article 15, paragraph 1, subparagraph 1.4 of the Law

on the Energy Regulator No. 05/L-084, as well as in violation of Article 5 of paragraph 9 of the Law on Electricity, No. 05 /L-085.

65. As to the Applicant's claims regarding the erroneous application of the legal provisions and the failure to provide adequate reasoning within the guarantees of Article 31 of the Constitution, the Court of Appeals by the Judgment [A.A. no. 990/21] of 4 October 2022, reasoned by emphasizing as follows:

> *The appealing allegations that by the Judgment of the first instance court the substantive law has not been correctly applied are ungrounded, because based on the material provisions [...] the substantive law was correctly applied, the first instance court has given sufficient and convincing factual and legal reasons for its assessment on the relevant facts to decide on this legal matter, which the second instance court approves in entirety, since: By the Law on Obligational Relationships No. 04/L-077, Article 194, it is specified that: "1. Any person that without a legal basis becomes enriched to the detriment of another shall be obliged to return that which was received or to otherwise compensate the value of the benefit achieved. 2. The term enrichment also covers the acquisition of benefit through services. 3. The obligation to return or compensate shall also arise if a person receives something in respect of a basis that is not realized or subsequently disappears." Based on these provisions, consumers who have unknowingly paid for the energy spent in the north of the Republic of Kosovo, have the right to return the amount they were forced to pay. And in this case, the Electricity Distribution Service in Kosovo JSC (KEDS) was enriched without a legal basis, when it was based on its decision and billed consumers outside the four northern municipalities of Kosovo for the electricity spent, and the civil liability falls precisely on the respondent by the Law on Electricity, the Law on Consumer Protection and the Law on the Electricity Regulator.*

66. Finally, the Supreme Court in the Judgment [ARJ. no. 116/2022] in the context of the rejection as ungrounded of the request for extraordinary review of the court decision, reasoned as follows:

> *The claims, among others, in the request related to the erroneous application of substantive law by the courts of lower instances [...] the panel of the Supreme Court examined them in their entirety on a legal basis and assesses that the competencies that originate for the ERO are not disputed according to Article 48 of the Law on ER regarding the treatment of regulatory parameters, and the billing of the cost of lost electricity in the transmission and distribution system, and the supervision related to the regular supply of electricity to consumers as a legal obligation, but these claims are not relevant and ungrounded in relation to the subject of the case under consideration, invoicing the citizens of the Republic of Kosovo, for the electricity spent but not paid for in the four northern Municipalities of the Republic of Kosovo, so that from KEDS the electricity spent there, based on the decision of the ERO, has been billed to the citizens of other parts in the name of returning the costs and other losses in the transmission system, without the right and legal basis. Therefore, the claims related to the justification of non-billing in the four municipalities due to security reasons and not having access to reading the meters in that part are not grounded, because it is not justified that the citizens for any reason should be charged with the payment of the electricity consumed without a legal basis. Therefore, with this invoicing and payment, the citizens of the Republic of Kosovo have been treated unequally, which contradicts article 55 paragraph 4 of the Constitution, unequal treatment, citing as in the judgments of the lower instance*

courts, because human rights have been restricted. Therefore, based on article 194 of the LOR, the consumers who without legal basis and without their knowledge were billed and paid for the energy spent in the north, had the right to transfer the amount paid as decided by the lower instance courts.

67. In this respect, the Court considers that the regular courts, by their respective decisions, addressed and reasoned the allegations of the Applicant in the capacity of respondent, including those related to the erroneous interpretation of the legal provisions. In the light of the above, the Court notes that the regular courts clarified that: (i) the competencies that originate for ERO according to Article 48 of the Law on the Energy Regulator regarding the treatment of regulatory parameters, and the invoicing of the cost of electricity lost in the transmission and distribution system, and supervision related to the regular supply of electricity to consumers as a legal obligation are not contested; (ii) these claims are irrelevant and unsustainable regarding the billing of the citizens of Kosovo, for the electricity spent but not paid for in the four (4) northern municipalities of the Republic of Kosovo, so that from KEDS the electricity spent there based on ERO decision, was billed to the citizens of other parts in the name of reimbursement for other costs of losses in the transmission system, without right and legal basis; (iii) this has resulted in unequal treatment of the citizens of Kosovo, and moreover it contradicts the provisions of the Constitution of Kosovo and the Law on the Protection from Discrimination No. 05/L-021, because there was no legitimate aim and proportionality between the means employed and the aim pursued by ERO, where citizens outside the four municipalities of northern Kosovo were forced to pay for the energy spent in the north; (iv) the decision of the ERO is contrary to the provisions of articles 4 and 12 of the Law on the Consumer Protection No. 04/L-121, which guarantee the basic rights of the consumer, including the right to protect economic interests of the consumer, which also includes the right to protect the property. Also, the regular courts clarified that the energy billing is calculated based on the real consumption read on the consumer's meter; (v) the decision of the ERO contradicts the provisions of Article 194 of the Law on Obligational Relationships regarding the ungrounded enrichment and the obligation of the Applicant to compensate the damage to the consumers who were billed for electricity consumption in the four municipalities of northern Kosovo, during the period from 6 February 2012 to 20 October 2017.

68. In what follows, in terms of the correlation of the claims of the Applicant with the findings of the case KO93/21, *Applicant Blerta Kodra-Deliu and 12 other deputies,* the Court clarifies that in the circumstances of that case, the Court had assessed the constitutionality of the Recommendations [No. 08-R-01] of 6 May 2021, of the Assembly of the Republic of Kosovo. The Court in that case, after assessing the constitutionality of the procedure followed and the content of the contested Act of the Assembly, of 6 May 2021, found that it was in compliance with paragraphs 1, 5 and 14 of Article 65 [Competencies of the Assembly] and Article 24 [Equality Before the Law] in conjunction with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo and Article 1 (General Prohibition of Discrimination) of Protocol no. 12 of the of the ECHR, because the Assembly had acted in the exercise of the competencies established in paragraphs 1 and 14 of Article 65 of the Constitution, according to which the Assembly can issue acts related to the defined issues of general interest and that the difference in the treatment of electricity consumers based on residence, by the contested Act of the Assembly, has an "*objective and reasonable justification*", because (a) it was prescribed by law; (b) pursued a legitimate aim; and (c) was proportionate, namely reflected a relationship of proportionality between the restriction imposed and the aim that was intended to be achieved.

69. In this regard, the Court also brings to attention that the Supreme Court, by the contested decision, reasoned as follows the issue of the Applicant's claim in terms of relevance to the case KO93/21:

> *The Respondent in the referral also refers to the Judgment of the Constitutional Court KO93/21, [...], based on this judgment gives comments from its content in the sense of Article 14 of the Constitution and the position of the ECtHR through its case law in relation to Article 1 of protocol no. 12, of ECHR, and connecting it with the rights and obligation of consumers to pay for the energy spent, it further refers to Article 4 of the Law on Energy, the obligation to provide services and its Article 55, on invoicing and payments and concludes that, based on these two provisions, it turns out that electricity consumers who are offered the supply service and who are included in the billing system are obliged to pay for energy consumption, in this sense it also refers to Article 55 of the Constitution, regarding the restriction of fundamental rights and freedoms, consumers in the four northern municipalities who are not included in the system and do not pay for the consumption of electricity, reasoning that the essence of a guaranteed right should not be denied, and taking as examples some other cases of the constitutional court, etc. [...] Therefore, in this regard, the decision of the Energy Regulatory Office cannot be compared and used analogously with the decisions taken by the Assembly of the Republic of Kosovo in the general interest, based on the Constitution and the Law, while the Law on the Energy Regulator does not provide for the billing of energy to other citizens for the energy spent in the north, and these expenses to be calculated as a reasonable level of losses and to be treated as losses caused beyond its control due to the non-reach of DSO, to have access to this part of the country. Therefore, the claimant's claims are not grounded and the claimant has based its decision on the legal principles mentioned above, the decisions of the constitutional court and others, as in the referral and that it pursued a legitimate aim prescribed by law, because the Law on ER, or any other act of the competent authority does not authorize the billing of citizens without their knowledge and approval, for electricity that was not spent by them.*

70. In this context, based on the reasoning of the regular courts elaborated above, the Court recalls that it cannot become a court of fact and tell the regular courts what the most appropriate way of implementing the substantive law would be, because such a competence, as a rule, belongs to the courts of regular jurisdiction. The Court emphasizes that it can intervene only when the reasoning of the decisions of the regular courts is highly arbitrary and unjustifiable, and in the present circumstances we are not dealing with manifestly arbitrary or unjustified decisions.

71. Therefore, in relation to the Applicant's claim for erroneous application of substantive law, the Court emphasizes that the Applicant, beyond the claims of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of erroneous interpretation of the law, did not sufficiently support or argue before the Court, how this interpretation of the applicable law by the regular courts could have been "*manifestly erroneous*", resulting in "*arbitrary conclusions*" or "*manifestly unreasonable*" for the Applicant or that the proceedings before the regular courts, in their entirety, may not have been fair or even arbitrary. In addition, the Court assesses that the Supreme Court had taken into account all the facts and circumstances of the case, the claims of the applicant and reasoned the latter (see, in this context, the cases of the Court KI64/20, Applicant, *Asllan Meka*, Resolution on Inadmissibility of 3 August 2020, paragraph 41; and KI37/21 Applicant, *Isa Tusha, Naser Tusha and Miradije Tusha*, Resolution on Inadmissibility of 8 September 2021, paragraph 67).

72. From the above, the Court considers that the regular courts have addressed and responded to all the relevant claims of the Applicant raised through the response to the lawsuit, the appeal and the request for an extraordinary review of the court decision, regarding the issue of the erroneous application of the substantive law, in which case it has assessed that the courts had sufficient and convincing evidence to support their conclusion regarding the decision-making in the Applicant's case.

73. The Court wishes to recall also that Article 31 of the Constitution and Article 6 of the ECHR oblige the courts to give reasons for their decisions, but this does not imply a detailed response to every claim and argument of the parties (See ECtHR cases: *Van de Hurk v. the Netherlands*, cited above; *Garcia Ruiz v. Spain*, cited above, paragraph 26; *Jahnke and Lenoble v. France*, application no. 40490/98, Decision on admissibility of 29 August 2000, paragraph 81).

74. Based on the above, in the assessment of allegations which are related to alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court considers it important to reiterate its general position that "*justice*" requested by the aforementioned articles is not "*substantial*" justice but "*procedural*" justice. This concept mainly in practical terms, in principle, implies (i) the possibility of adversarial proceedings/adversarial proceedings principle; (ii) the possibility for the parties at various stages of these proceedings to bring arguments and evidence that they consider important to the relevant case; (iii) the ability to effectively challenge arguments and evidence presented by the opposing party; and (iv) the right that their arguments, which, objectively, are relevant to the resolution of the case, be properly heard and examined by the courts (see, *inter alia*, the case of the ECtHR *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, paragraph 68; and cases of the Court KI128/19, cited above, paragraph 58; and KI22/19, Applicant: *Sabit Ilazi*, Resolution on Inadmissibility of 7 June 2019, paragraph 42).

75. In this context, the Court considers from the above elaborations that the Applicant is merely dissatisfied with the outcome of the proceedings before the regular courts, however his dissatisfaction cannot by itself raise an arguable claim for the violation of the fundamental rights and freedoms guaranteed by Constitution (see the ECtHR case *Mezotur-Tiszazugi Tarsulat v. Hungary*, application no. 5503/02, Judgment of 26 July 2005, paragraph 21).

76. Finally, the Court concludes that under the circumstances of the present case, there has been no violation 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.

Assessment of the request for interim measure

77. The Court notes that the Applicant requested the imposition of an interim measure as it claimed that "*based on the above elaboration, it has shown a prima facie case for the merits of the request.*"

78. However, as specified above, the Court concluded that the contested decision of the Supreme Court is not contrary to Article 31 of the Constitution.

79. Therefore, in accordance with paragraph 1 of Article 27 (Interim Measures) of the Law and item (a) and item (b) of paragraph (2) of Rule 45 (Decision-making Regarding the Request for Interim Measure) of the Rules of Procedure, the Applicant's request for an interim measure must be rejected, because the latter cannot be the subject of review, as

the contested decision of the Supreme Court is not contrary to Article 31 of the Constitution.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113.1 and 113.7 of the Constitution, Articles 20 and 27 of the Law and Rules 45 (2) (b) and 48 (1) (a) of the Rules of Procedure, in the session held on 23 January 2024, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that the Judgment [Arj. no. 116/2022] of the Supreme Court of 9 March 2023, is not contrary to paragraph 1 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO REJECT the request for interim measure;

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

V. TO HOLD that this se Judgment enters into force on the day of its publication in the Official Gazette, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur	**President of the Constitutional Court**
Nexhmi Rexhepi	Gresa Caka Nimani

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