REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, on 19 April 2021
Ref.No:AGJ 1750/21

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JUDGMENT

in

Case No. KI195/20

Applicant

Aigars Kesengfelds,
owner of non-bank financial institution "Monego"

Constitutional review of Judgment ARJ-UZVP.no.42/2020 of the Supreme Court, of 25 June 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Aigars Kesengfelds, owner of the non-bank financial institution "Monego" having its seat in Prishtina (hereinafter: the Applicant), represented by lawyers Arianit Koci and Granit Vokshi, from the Law Firm "Koci & Vokshi", Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment ARJ-UZVP.no. 42/2020 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 25 June 2020.

3. The Applicant has received the challenged decision on 6 October 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged Judgment, which llegedly has violated the Applicant's 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); Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the ECHR; as well as Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol no. 1 of the ECHR, as well as Articles 7, 8 and 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 30 December 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 8 January 2021, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.

8. On 12 January 2021, the Applicant was notified about the registration of the Referral, and the Court requested from him to sign the Referral Form, and to attach Decision No. 77-32/2019 of the Central Bank of the Republic of Kosovo (hereinafter: the CBK). On the same day, a copy of the Referral was sent to the Supreme Court and the CBK. The latter was given the opportunity to submit its comments on the Referral, if any. The Court also notified the Basic Court in Prishtina, Department for Administrative Matters (hereinafter: the Basic Court) about the registration of the Referral and requested from the latter submit to the Court the acknowledgment of receipt which proves the time when the Applicant had received the challenged Judgment of the Supreme Court.

9. On 14 January 2021, the Basic Court submitted the acknowledgment of receipt to the Court, which proves that the Applicant has received the challenged Judgment of the Supreme Court on 6 October 2020.

10. On 22 January 2021, the Applicant submitted the requested documentation to the Court.

11. On 25 January 2021, the CBK submitted to the Court its comments regarding the case. The Applicant was also notified about these comments.

12. On 29 March 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the admissibility of the Referral. On the same date, the Court unanimously found that (i) the Applicant's Referral is admissible; and that (ii) the Judgment ARJ-UZVP.no. 42/2020, of the Supreme Court, of 25 June 2020 is in accordance with Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

Summary of facts

13. On February 26, 2018, the CBK by its license [no. 07-04/2018] registered the Applicant as a non-bank financial institution to exercise the financial activity of lending.

14. On 6 December 2019, the CBK by Decision No. 77-32 / 2019 (hereinafter: the Decision of the CBK) having found that the Applicant *"since the beginning of operation, NBFI Monego has applied effective interest rates on loans significantly higher than the effective rate presented in the business plan submitted to the CBK, according to which it is registered as a non-bank financial institution. [...]"* decided: (i) to revoke the license [no. 07 - 04/2018] on the registration of the Applicant as a non-bank financial institution; (ii) to commence liquidation proceedings based on the Law No.04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions (hereinafter: the Law on Banks); and (iii) appointed V.Z. as a liquidator.

15. The CBK reasoned its decision to revoke the Applicant's license for operating as a non-bank financial institution as follows:

> *[...]*
>
> *"Overseeing the implementation of decision no. 16 - (07/2019) a focused examination was performed in this institution. Based on this examination at NBFI Monego it was found that the NBFI Monego has made a partial reduction of interest rates compared to the business plan submitted to the CBK at the time of registration wherein it had planned for the effective interest rate to be 26.8%. Based on the sample selected for examination, it was confirmed that the loan with the lowest effective rate, with exception of those without interest is 81.05%, while the highest is 332.97%, including the fee for the disbursement of cash loans, which as a service is optional and as such should not be included in the calculation of the effective interest rate. Upon recalculations of the effective interest rate where the*

fee for the disbursement of cash loans was excluded, it was concluded that the loan with the lowest effective interest rate, excluding those without interest, is 81.05% while the highest is 236.20%.

Implementing the Regulation of the CBK on Procedures for Imposing Administrative Penalties related to the examination conducted from 05 to 09 September 2019, the CBK on 27 September 2019 sent to the NBFI Monego the Notification on the Purpose of Imposition of Administrative Penalties, where through advice has it been informed of its right to file a request for review to the Review Division of the CBK, within 15 days from the date of receipt of the Notification. On 15 October 2019, NBFI Monego submitted a request for review of the Notification on the Purpose of Imposition of Administrative Punitive Measures to the Review Division at the CBK.

The Review Division having reviewed the request in accordance with the Regulation on Procedures for Imposing Administrative Penalties and after administering all the available evidence found that the violations identified during the examination remain and as such these violations are properly addressed in the Notification on the Purpose of Imposition of Administrative Penalties, therefore on this basis the request for reconsideration of NBFI Monego has been assessed as ungrounded."

16. On 17 December 2019, the Applicant filed a claim with the Basic Court seeking the annulment of the Decision of the CBK. Based on the case file, it results that the Applicant's request for annulment of the Decision of the CBK is still in the procedure of review before the regular courts.

17. Also on 17 December 2019, the Applicant filed a request with the Basic Court with seeking the postponement of the execution of the Decision of the CBK No. 77-32/2019.

18. The Applicant submitted his request for postponement of the execution of the Decision of the CBK pursuant to Article 22, paragraphs 2 and 6 of the Law No. 03/ L-202 on Administrative Conflicts (hereinafter: the LAC). In the context of fulfilment of the criteria under paragraph 2, article 22 of the LAC, he stressed that he will *"incur great and irreparable damage if the Court does not take a decision to postpone the execution of Decision no.77-32 / 2019 of the Central Bank of Kosovo."* In this regard, the Applicant, referring to Article 71 and Article 73 of the Law on the CBK, which provisions refer to the liquidation procedure, reasoned that *"The liquidator takes over all Monego operations and deprives the shareholder of all his rights."* In this context, the Applicant reasoned that *"As defined by the Law on Banks, the liquidation is expected to be completed within a period of approximately one year, [...] and Monego will cease to exist".*

19. In his request for postponement of the execution of the Decision of the CBK, the Applicant, having referred to Article 22, paragraphs 2 and 6 of the LAC, stated that the decision of the CBK is causing him: (i) great and irreparable damage; and that (ii) the postponement of execution is not contrary to the public interest. In relation to point (i), namelythe issue of great and irreparable

damage, the Applicant, among other things, stated that in addition to the real damage, he will also suffer damage due to lost profit. At this point, the Applicant, in his request for postponement of the execution of the decision, also referred to the Judgment of the Court in case KI122/17 with Applicant *Česká Exportní Banka A.S.* [Judgment of 18 April 2018], stating, inter alia, that the interim measures based on Article 6 of the ECHR are constitutional categories, and if the court does not decide to postpone the execution of the decision, his right to property will be violated. In relation to point (ii) that the postponement of the execution is not contrary to the public interest, the Applicant stated that his company had served more than 80,000 people, a fact which according to him means that citizens need the services provided by him. The Applicant also stated that his participation in the credit market does not pose a form of risk to the country's financial stability and that the public interest would be further violated if the CBK Decision remains in force. The latter is justified by the Applicant with the fact that two hundred and fifty (250) employees, employed in this institution with immediate effect will be out of work.

20. On 20 December 2019, the Basic Court, by Decision A.nr. 3029/2019 rejected the Applicant's request for postponement of the execution of the Decision of the CBK as ungrounded. The Basic Court, having referred to Article 22, paragraphs 2 and 6 of the LAC, assessed that: (i) the Applicant has not made credible with the evidence contained in the case file that the Decision of the CBK will cause damage which would be difficult to be repaired; and (ii) that postponing the execution of the said Decision is not in the public interest.

21. On 30 December 2019, the Applicant filed an appeal with the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) against the Decision A.no. 3029/2019 of the Basic Court, of 20 December 2019 alleging (i) violation of the provisions of the contested procedure on the grounds that the Basic Court has not analysed the evidence and the reasoning of the decision is in contradiction with the content of the case file. In this respect, the Applicant refers to Article 106 of the Law no. 03 L/-006 on Contested Procedure (hereinafter: the LCP) which according to him determines what should contain a Decision; and (ii) erroneous determination of the factual situation, due to erroneous assessment of the evidence. The Applicant in his complaint again stated that he will be caused great and irreparable damage, due to the initiation of the liquidation procedure, on which occasion the Applicant "*is deprived of all his rights*". The Applicant, in his appeal, also refers to the case law regarding the imposition of interim measures, namely the case of the European Court of Human Rights (hereinafter: the ECHR), Micallef v. Malta, and in this context states that since the Basic Court is in charge, and his case is not expected to be resolved for at least three (3) years, he would suffer irreparable damage because "Monego would cease to exist21. On 30 December 2019, the Applicant against the Decision A.nr. 3029/2019, of 20 December 2019 of the Basic Court filed an appeal with the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) alleging (i) violation of the provisions of the contested procedure on the grounds that the Basic Court has not analyzing the evidence and reasoning the decision is inconsistent with the content of the case file. In this regard, the Applicant refers to Article 106 of Law no. 03 L / -006 on Contested Procedure (hereinafter: the LCP) which according to him determines

what should contain a Decision; and (ii) erroneous determination of the factual situation, due to erroneous assessment of the evidence. The Applicant in his complaint again stated that he will be caused great and irreparable damage, due to the opening of the liquidation procedure, in which case the Applicant *"is deprived of all his rights"*. The Applicant, in his appeal also refers to the case law concerning the imposition of interim measures, namely the case of the European Court of Human Rights (hereinafter: the ECtHR), *Micallef v. Malta*, and in this context states that given that the Basic Court is assigned, and his case is not expected to be resolved for at least for three (3) years, he would suffer irreparable damage because *"Monego would cease to exist"*.

22. On 24 January 2020, the Court of Appeal by Decision AA.No.48/2020, approved the Applicant's appeal as grounded, and annulled the Decision of the Basic Court A.no.3029/2019, of 20 December 2019 by remanding the case for reconsideration.

23. The Court of Appeals reasoned that the Decision of the Basic Court A.no. 3029/2019, of 20 December 2019, contains essential violations of the provisions of the LCP, namely *"from article 182 para.2, subpara.n) and from article 183 of the LCP, applicable according to article 63 of the LCA"* because it is legally unclear, contradictory, and the factual situation was not determined completely. The Court of Appeals further reasoned that *"Due to the erroneous legal position and non-reasoning of the appealed decision, the proposed interim measure must not include the claim; the court of the first instance has failed to assess the claimant's allegations whether the conditions for the approval of the proposed interim measures have been met cumulatively."* Also, the Court of Appeals stated that *"the court of the first instance must act pursuant to Article 305 para.1 and 2 of the LCP, applicable with Article 63 of the LAC, so that the request for postponement of the execution of the challenged decision is sent together with the case file to the respondent along with a notification that it can submit a response within the legal deadline, which is a prerequisite."* Finally, the Court of Appeals emphasized that the court of first instance should confine itself to ascertaining the merits of the request for postponement of the execution of the decision, within the meaning of Article 22 paragraph 2 of the LAC, and whether the conditions have been met ina cumulative manner.

24. On 3 February 2020, the Basic Court, in the retrial procedure, by Decision A.nr. 3029/2019 rejected the Applicant's request for postponement of the execution of the Decision of the CBK as ungrounded. As for the issue of the applicability of the LCP, the Basic Court emphasized that the said law cannot be applied, due to the fact that according to Article 63 of the LAC, Article 305 of the LCP can be applied only if it does not contain provisions for the procedures on administrative conflict. The Basic Court having referred to Article 22, paragraphs 2 and 6 of the LAC reasoned that the Applicant has not made credible with the evidence contained in the case file, that the Decision of the CBK (i) will cause damage to him which would be difficult to repair and that (ii) the postponement is not in the public interest or that the postponement would not cause any harm to the opposing party.

25. On 12 February 2020, the Applicant filed an appeal with the Court of Appeals. In his appeal, the Applicant initially stated that the LAC does not provide a specific provision regarding the procedure for rendering or appealing decisions whereby the requests for postponement of the execution of decisions are rejected or approved. Consequently, the Applicant in his complaint states *"in the absence of specific provisions regulating this issue, the LAC in Article 63 provides that if this law does not contain provisions for the procedures on administrative conflicts, the provisions of the law on contested procedure will be applied accordingly."* In this respect, the Applicant as regards the allegations for violation of the provisions of the contested procedure, referred to Article 182, paragraph 1 of the LCP in conjunction with Article 8, paragraph 2 and Article 160, paragraphs 4 and 5 of the LCP- and Article 182 paragraph 2 point n) with the claim that *"the court has not carried out the analysis of evidence at all [...]."* Further, according to the Applicant, even though the LAC does not envisage any specific provision which determines what should be contained in the decision whereby the requests for postponement of the execution of decisions are accepted or rejected, Article 63 of the LAC is applicable in his case.

26. On 26 February 2020, the Court of Appeals by Decision AA. No.164/2020 rejected the Applicant's appeal as ungrounded and confirmed the Decision of the Basic Court.

27. The Court of Appeals initially found that *"the court of the first instance, after reviewing the claimant's proposal to postpone the execution of the Decision of the CBK No. 77-32/2019, of 06.12.2019, found that such proposal is ungrounded because the claimant has not made credible with any single evidence his allegation that by the execution of the decision of the respondent, it would bring him damage which would be difficult to be repaired and that the postponement is not in contradiction with the public interest, neither that the postponement would not cause any major damage to the opposing party, namely the interested person, a legal condition which must be proved by the claimant, in order for the court afterwards to postpone the execution of the challenged decision. Therefore, when assessing the claimant's proposal to postpone the execution of the challenged decision, the court has referred to the legal provisions of Article 22 para.2 and 6 of the Law on Administrative Conflicts".*

28. Further, the Court of Appeals by its Judgment *"assessed that the [Applicant's] appeal is entirely ungrounded. All this because the Law no. 03/L-209 on Central Bank of the Republic of Kosovo has determined immunity to the imposition of an interim court measure on the respondent because Article 76 of the same law stipulates that "1. No attachment or execution shall be issued against the Central Bank or its property, including gold, special drawing rights, currency, credits, deposits or securities, and any proceeds thereof, before the issuance of a final judgment in any legal action brought before the courts of Kosovo. 2. The Central Bank may, in whole or in part, waive this protection, explicitly and in writing, except with respect to its gold and the Special Drawing Rights held in the account of Kosovo in the International Monetary Fund."* In this context, the Court of Appeals found that *"In the concrete case the proposer-claimant by the filed appeal requests the*

postponement of the execution of decision No. 77-32 / 2019 of the Central Bank of Kosovo, of 06.12.2019 on Revokation of the Registration of the Banking Financial Institution "Monego" pending a court decision by the court. Therefore, based on the aforementioned provision in the court proceedings against the respondent [Central Bank], no interim measures can be imposed in relation to the activity mentioned in the above provision".

29. The Court of Appeals further stated that "*On the basis of this state of facts the panel finds that the Basic Court in Prishtina-Department for Administrative Matters has correctly determined the factual situation by having correctly applied the procedural and substantive provisions, when rejecting the claimant's request, whereby he has requested the postponement of the execution of the Decision of the CBK, but to support this legal position of the first instance, this factual situation is also based on Article 76 of the Law No. 03/L-209 on Central Bank of the Republic of Kosovo, and that the law has not been infringed to the detriment of the claimant on the occasion of rejection of the proposal for postponement of the execution of the challenged decision. Therefore, the appeal claims that the court of the first instance when issuing the decision has not correctly assessed the evidence submitted, and that it did not ascertain at all the important facts for the resolution of the case, are ungrounded and unsustained. Because, according to the assessment of the panel of this court, the challenged ruling of the court of the first instance, although it lacked the reasoning and concrete substantive legal provisions mentioned above, this did not have a bearing so as to have a different decision rendered in this case, therefore the appealed ruling is clear and comprehensible, while in its reasoning are provided reasons for the decisive facts which are accepted by this court as well. Therefore, the appeal as such is rejected, whilst the appealed ruling is confirmed as being fair and lawful".*

30. On 19 March 2020, the Applicant filed a request with the Supreme Court for extraordinary review of the court decision, respectively Decision AA.No. 164/2020 of the Court of Appeals. In his request for extraordinary review of the Decision, the Applicant alleged (i) erroneous application of substantive law; (ii) that the execution of the Decision of the CBK would cause great and irreparable damage to him; and that (iii) postponing the execution of the CBK Decision is not contrary to the public interest.

31. First, in relation to his allegation for erroneous application of substantive law, the Applicant specified that the Court of Appeals has erroneously applied Article 76 of the Law on CBK by stating that *"Such an interpretation of this provision is completely erroneous and does not comply neither with the spirit of the Law on CBK as a whole, nor with the content of the provision in question in particular"* by further reading this provision *"[...] attachments and executions in question cannot be issued against the CBK and its assets, whilst in the present case the request for postponement of the execution of the decision is proposed to be issued against the liquidation process of Monego, namaley this process to be suspended pending a final decision."* In this respect, the Applicant further specified that by the Decision of the Court of Appeals the subject matter of the case has been confused, namely according to him *"Article 76 of the Law on CBK is considered in cases when against the Republic of Kosovo or the CBK- exist claims by third parties and an interim*

measure is proposed to be imposed on the assets of the latter." The Applicant further argues that the application of Article 76 of the Law on CBK, according to him, means that the Decisions of the CBK can not be subject to judicial review, which is contrary to Article 54 of the Constitution.

32. Secondly, the Applicant in his request has also reasoned that the Decision of the CBK would cause him great and irreparable damage, namely he would incur great damage in terms of material damage, but also loss in terms of lost profit. In this context, the Applicant alleged a violation of his right to property.

33. Thirdly, the Applicant reasoned that the postponement of the execution of the Decision of the CBK is not contrary to the public interest. In the context of the latter, the Applicant specifies that (i) his financial institution has served to more than 80,000 persons; (ii) persons who do not have an account in Kosovo are given access to funds; (iii) its participation in the financial market *"does not pose any form of risk to the country's financial stability"*; (iii) because this institution can not keep deposits for the loans granted in this way, citizens' money is not used and is jeopardized as it is done by classical banks; and (iv) keeping in force the CBK Decision would cause more than two hundred and fifty employees employed in this institution lose their jobs.

34. On 25 June 2020, the Supreme Court by Judgment ARJ-UZVP.42/2020 rejected as ungrounded the Applicant's request for extraordinary review of Decision AA.No. 164/2020 of the Court of Appeals, of 19 March 2020.

35. The Supreme Court, in its Judgment, first referring to paragraphs 2 and 6 of Article 22 of the LAC, stated that *"this provision stipulates that the postponement can be made at the request of the claimant, the body , whose act is being executed, respectively the competent body for execution can postpone the execution pending the final legal decision, if the execution of the administrative act would cause damage the claimant, which would be difficult to be repaired, and the postponement is not in contradiction with the public interest nor the postponement would bring any damage to the opposing party respectively to the interested person. Whereas by the provision of Article 22.6 of the same law it is stipulated that the claimant can claim from the court the postponement of the execution of the administrative act until the court decision is taken, according to the conditions foreseen by Article 22 para.2 of the LAC."*

36. Secondly, the Supreme Court stated that *"In addition to this, Article 76 of the Law No.03 / L-209 on Central Bank of Kosovo determines immunity from the imposition of an interim court measure, namely no attachment or execution may be issued against the Central Bank or its property."*

37. Finally, the Supreme Court found that *"[...] the court of the second instance has acted correctly when rejecting as ungrounded the claimant's appeal and confirming the decision of the first instance whereby the claimant's proposal was rejected. This Court assesses that the court of the second instance has fully and correctly applied the provisions of the Law, the provisions of the administrative procedure, and those of the Law on Administrative Conflicts. The claimant's statements regarding the violations are ungrounded because*

the challenged decision is clear and comprehensible. The reasoning of the challenged decision contains sufficient reasons and decisive facts on rendering lawful decisions. This Court also considers that the substantive law has been correctly applied and the law has not been violated to the detriment of the claimant."

Applicant's allegations

38. The Applicant alleges that the Judgment of the Supreme Court, has violated his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the ECHR; as well as Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR; and Articles 7, 8 and 10 of the UDHR.

In relation to allegations for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

39. As regards the applicability of Article 31 of the Constitution in conjunction with Article 6, the Applicant having referred to the Judgment of the ECHR in the case *Micallef v. Malta* (Judgment of 30 April 2018) considers that this Article is applicable in his case. In this respect, and as to the fulfillment of the criteria established in the Judgment of the ECHR in the case *Micallef*, the Applicant clarifies that *"The license which [he] has possessed constitutes a civil right" in the form of an authorization to undertake certain actions within the scope of financial institutions - for the very fact that the license - which constitutes a right - can be revoked."* In the following, in respect of the "civil character" of the infringed, the Applicant right specifies that *"[...] the revocation of the license as well as the initiation of liquidation proceedings has had a clear and decisive impact on the [his] right to manage his financial affairs as well as to administer his property."*

40. The Applicant concludes that *"The fact that financial institutions are legal entities and the fact that the banking industry is an in detail -regulated industry - due to its vital importance - is not a sufficient reason to conclude that the proceedings which include financial institutions - do not fall within the scope of Article 32 of the Constitution and Article 6 of the ECHR (see, mutatis mutandis, Judgment of the European Court of Human Rights of 24 February 2006, Capital Bank AD v. Bulgaria, No. 49429/99, paragraphs 86-87).* Consequently, the Applicant considers that *"Article 31 of the Constitution and Article 6 of the ECHR are to be applied in the present case."*

41. The Applicant states that the LAC provides legal opportunities for challening administrative decisions by claims for administrative conflict, appeals against administrative acts and objections in cases determined by law. At this point, the Applicant refers to Article 22, paragraphs 2 and 6 of the LAC, by emphasizing that the main function of the request for postponement of the execution of the decision is to prevent causing damage to the person submitting the request.

42. The Applicant specifies that *"In the present case, the Supreme Court having relied on the Law No.03/L-209 on Central Bank [...] has erroneously interpreted the provision of Article 76 of this law - by applying it in arbitrary manner".*

43. In this connection, the Applicant specifies that *"The erroneous application of substantive law by the Supreme Court consists of two aspects: (a) the addressing of the request for postponement of the execution of the decision from Article 22, paragraph 6 of the Law on Administrative Disputes and Interim Measures under Article 76 of the Law on Central Bank - as being identical or replaceable; and (b) erroneous conclusion for the entity to whom the request for postponement of the execution of the decision is addressed. Initially, it should be noted that the Supreme Court - by reading the text of the title of the provision of Article 76 of the Law on Central Bank – equates in respect of the effect as well as the legal charactersits both the request for postponement of the execution of the decision from Article 22, paragraph 6 of the Law on Administrative Disputes as well as the Interim Measure from Article 76 of the Law on the Central Bank - a measure, which viewed on its grounds, can relate only to the interim measures from Article 306 of the Law No. 03/L-006 on Contested Procedure".*

44. Further, the Applicant alleges that these two legal remedies differ in their essence because according to him the LAC provides the conditions for approval of the request for postponement of the execution of the decision but does not provide the notion of the interim measures. The Applicant specifies that *"the interim measure referred to in the Law on Central Bank is not and cannot be considered the same or similar to the Request for postponement of the execution of the decision - but only with the interim measure according to the Law on Contested Procedure".*

45. The Applicant states that Article 76 of the Law on CBK does not grant immunity to the latter against the request for postponement of the execution of the decision, but only against the interim measures, and according to the Applicant "attachments" and "executions" referred to in Article 76 are attributed to the CBK and its property and as such belong to the contested and enforcement field, and in no way to the administrative field. In regard to this point, the Applicant argues that "attachments" refer to Articles 297, 299, 300, 301 and 306 of the LCP, while "execution" implies the initiation of enforcement proceedings, according to Article 4 of the Law No.04/L- 139 on Enforcement Procedure (hereinafter: the LEP). The Applicant further alleges that the Supreme Court has violated the substantive law because the finding of the latter was attributed to the erroneous entity for the fact that Article 76 is attributed to the CBK, and not to the Applicant.

46. The Applicant further alleges that the Judgment of the Supreme Court did not meet the criteria of Article 31 of the Constitution and Article 6 of the ECHR, for the fact that is an unreasoned decision and because it has not addressed the Applicant's allegations and arguments. In the context of his allegation for non-reasoning of the court decision, the Applicant reiterates that since the LAC does not envisage what should be contained in the Judgment rejecting or approving the requests for postponement of the execution of decisions, in the

absence of such provisions Article 63 the LAC is to be applied, and consequently there should apply the Article 160 of the LCP which determines what should be contained in the Judgment.

47. The Applicant further also specifies that: *"Consequently, the Supreme Court has at no time taken the opportunity to provide arguments on the decisive facts – but it has limited itself to a weak legal reasoning*. In this respect, the Applicant refers to and cites the case of the ECtHR *Oleynikov v. Russia,* in which case it was stated that *"Furthermore, it t would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6, paragraph 1 of the ECHR – that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on categories of persons* [Application no. 36703/04, paragraph 65] ". In the following, the Applicant also refers and cites the case *Fayed v. The United Kingdom,* in which case the ECtHR stated that*: "Thus, in cases where the application of the provisions of state immunity restricts the exercise of the right of access to court - the court must determine whether the circumstances of the case justify such a restriction"* [Application no. 17101/90, paragraph 59]. In the following, the Applicant alleges that *"However, the Supreme Court has not addressed the principle of proportionality at all whether the circumstances of the case justify such a restriction. ".*

48. In the context of the allegation for non-reasoning of the court decision, the Applicant also refers to the case KI72/12 of the Court with Applicant *Veton Berisha* [Judgment of 17 December 2012].

49. The Applicant reiterates that until a meritorious decision is rendered by the regular courts, this decision will be void because, in his view, *"the damage would by now be irreparable - because Monego would cease to exist. Therefore, the decision on the request for postponement of the execution of the decision of the CBK is crucial for the protection of the rights of [the Applicant]."*

In relation to the allegation for violation of Article 32 of the Constitution, in conjunction with Article 13 of the ECHR

50. The Applicant, by referring to the case of the ECtHR *Aksoy v. Turkey* [Judgment of 31 October 2006], alleges that the legal remedy in his case is ineffective due to the failure to have the merits of the case addressed. Consequently, the Applicant states that the applicable legislation has provided for the request to postpone the execution of the decision as an accessible remedy by law, which according to him has been proven to be ineffective in practice, as a result of flagrant interpretation by the Supreme Court.

In relation to allegation for violation of Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR

51. In regard to this allegation, the Applicant states that on the basis of the case law of the ECHR, in his case there is a legitimate expectation because according

to him *"by obtaining a license-to exercise this economic activity pursuant to the defined legal requirements (according to the criteria provided by the relevant legislation on Banks) constitutes an asset in sense of possession deriving from the exercise of economic activity in the financial sector [...]." In this context*, the Applicant refers to the ECtHR case *Tre Traktorer AB [Judgment of 7 July 1989] emphasizing that the economic interests stemming from running a business represent possession or asset.*

52. The Applicant further states that the ECtHR in the case *Lonnroth v. Sweden* [Judgment of 13 September 1982], has established three distinc rules: *"(i) the general principle of the unihindered exercise of the property right; (ii) the rule that any deprivation of the right to possessions must be subjected to certain conditions [...] (iii) the principle that the state can control the use of property in accordance with the general interest by enforcing such laws as they deem necessary for the purpose[...]."* Therefore, the Applicant states that the three basic principles in cases of restriction are in (i) The Principle of legality; (ii) The principle of the existence of a legitimate aim in the protection of the public interest; and (iii) The Principle of Proportionality.

53. The Applicant also cites the case of the ECtHR *Capital Bank AD v. Bulgaria* [Judgment of 24 November 2005] and alleges that the principle of legality presupposes that domestic law must provide a mechanism for protection against arbitrary interference by the public authorities. In this respect, the Applicant states that he could not present his case before the regular courts because the Supreme Court interpreted Article 76 of the Law on the CBK in an erroneous manner.

54. Consequently, the Applicant alleges that the interference with his property rights *"was not accompanied by sufficient safeguards against arbitrariness, and consequently was not in accordance with Article 1 of Protocol 1 to the ECHR."*

55. Finally, the Applicant requests from the Court to declare his Referral admissible and to find: (i) violations of Articles 31, 32, 46 and 54 of the Constitution and Articles 6, 13 of the ECHR, as well as Article 1 of Protocol no. 1 of the ECHR, and (iii) remand the Judgment of the Supreme Court for reconsideration.

CBK comments

56. The CBK submitted its comments on the Applicant's allegations, and in this context in respect of the applicability of Article 76 of the Law on CBK stated the following::

> *"The allegations of the Applicant are ungrounded also in respect of Article 76 of Law no. 03/L-209 on CBK. The Court has correctly assessed that according to this article, Immunity has been determined against the imposition of an interim court measure against the CBK [...] In the present case, the proposer-claimant by the filed appeal requests to postpone the execution of Decision No.77-32/2019 of the CBK, of 06.12.2019, on Revokation of the registration of the Non-Bank Financial Institution "Monego" L.L.C. until a court decision is made. Therefore, based on the*

above provision in the court proceedings against the respondent no interim measures can be issued in relation to the activity as mentioned in the above provision".

57. The CBK further states that *"The Supreme Court by Judgment no. ARJ-UZVP.no.42/2020 has assessed that the court of the second instance has implemented in a complete and correct manner the provisions of the Law, the provisions of the administrative procedure, and those of the Law on Administrative Conflicts. Whereas, the allegations of the Applicant concerning the violations are ungrounded because the challenged decision is clear and comprehensible".*

58. Further, the CBK argues that *"the Central Bank as a supervisory body and authorized by applicable law to monitor the conduct of the financial system in Kosovo has acted correctly when revoking the license of NBFI "Monego" L.L.C. due to the violations found and taking into consideration the public interest and the damage it can cause to financial consumers by applying high interest rates, and thus endangering financial stability in the country. The CBK revoked the license of this institution due to systematic violations of legislative requirements. The said institution, by failing to implement the regulatory-legal requirements, continued to apply interest rates significantly higher than what was envisaged in the business plan, on the basis of which it had obtained a work permit".*

59. In its comments, the CBK also refers to Article 77, paragraph 4 of Law No. 03/L-209 on CBK, stating that *"Furthermore, given the importance of maintaining financial stability in the country, Article 77 (4) of Law No.03/L-209 on CBK, has itself provided that "in any court or arbitration proceedings against the Central Bank, the court or arbitration panel shall not stay, suspend, suspend or set aside the actions of the Central Bank."*

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.

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.

[...]

Article 46
[Mbrojtja e Pronës]

1. The right to own property is guaranteed.
2. Use of property is regulated by law in accordance with the public interest.
3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.
[...]

Article 54
[Judicial Protection of Rights]

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

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.
[...]

Article 13
(Right to an effective remedy)

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Protocol No. 1 to the European Convention on Human Rights

Article 1
(Protection of property)

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

[...]

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

LAW No. 03/L-202 ON ADMINISTRATIVE CONFLICTS

Article 22

1. The indictment does not prohibit the execution of an administrative act, against which the indictment has been submitted, unless otherwise provided for by the law.
2. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.
3. Together with the postponing request, proves that show the indictment has been submitted should be presented.
4. For postponement of execution, the competent body shall issue decision not later than three (3) days from the date of receiving the request for postponement.
5. The body under paragraph 2 of this Article may postpone the execution of contested act also for other reasonable reasons until the final legal decision, if it is not in contradiction with public interest.

6. The plaintiff can claim from the court to postpone the execution of administrative act until the court decision is taken, according to the conditions foreseen by the paragraph 2 of this Article.
7. The court decides within three (3) days upon receiving the claim.
[...]

Article 63
Other procedure provisions

If this law does not contain provisions for the procedures on administrative conflicts, the law provisions on civil proecedures shall be used.

LAW NO. 03/L-006 ON CONTESTED PROCEDURE

Article 160

160.1 A verdict compiled in written should have: summary, disposition, justification and guide on the right to file a complaint against the verdict.
160.2 The summary of the verdict should have: the name of the court, the name of the judge, the names of the parties and their address, the names of their legal representatives, brief narrative of the contesting issue and the amount, the ending day of the main hearing, the narrative of the parties and their legal representatives and with proxy that were present in the session of the kind as well as the day when the verdict was issued.
160.3 The verdict disposition consists of: decision which approves or rejects special requests dealing with issue at stake and accessing requests, decision for existence or non-existence of the proposed requests to compensate it with statement of claim as well as the decision on procedural expenses.
160.4 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.
160.5 The court specifically should show which provisions of the material right are applied in the case of deciding upon the requests from the parties. If necessary, the court will pronounce on the standing of the parties regarding the judicial basis for the contests, as well as for their proposals and turndowns, for which the court hasn't justified decisions issued earlier in the process.
160.6 In the contumacy verdict, verdict on the basis of pleading guilty, verdict on the basis of withdrawing the charges, or the verdict due to the lack of attendance, the justification consists of only the reasons for issuing the verdict of the kind.

[...]
Article 306

306.1 The court can set temporary measures of insurance without a notification or a preliminary hearing of the objector of insurance based on the proposal for the insurance presented, if the proposed insurance shows

plausible pretence that measures of insurance is based and urgent, and if acted otherwise it will loose the aim of the insurance measures.
306.2 The verdict from the paragraph 1 of this article is sent by the court to the objector of the insurance immediately. The objector of insurance in his reply within a period of 3 days can contest the causes for setting temporary measures, and after that the court can set a hearing after three days. The answer of the objector should contain a justification part.
306.3 After the hearing from the paragraph 2 of this article, the court by a special verdict annuls the verdict that sets temporary measures or replaces it with a new verdict for setting measures in accordance to the article 307 of this law. An appeal against the verdict setting measures of insurance is allowed.

LAW NO. 03/L-209 ON CENTRAL BANK OF THE REPUBLIC OF KOSOVO

Article 76
Immunity from prejudgment attachment

1. No attachment or execution shall be issued against the Central Bank or its property, including gold, special drawing rights, currency, credits, deposits or securities, and any proceeds thereof, before the issuance of a final judgment in any legal action brought before the courts of Kosovo.
2. The Central Bank may, in whole or in part, waive this protection, explicitly and in writing, except with respect to its gold and the Special Drawing Rights held in the account of Kosovo in the International Monetary Fund.

Article 77
Judicial review

1. In any court or arbitration proceeding against the Central Bank, a member of the Central Bank's decision-making bodies or its staff, or an agent of the Central Bank in carrying out their duties to the Bank:
[...]
and 1.4. the court or arbitration panel shall be authorized, in appropriate cases, to award monetary damages to injured parties, but shall not enjoin, stay, suspend or set aside the actions of the Central Bank.

LAW No. 04/L-093 ON BANKS, MICROFINANCE INSTITUTIONS AND NON BANK FINANCIAL INSTITUTIONS

Article 3
Definitions

Non Bank Financial Institution (NBFI) - a legal entity that is not a bank and not a microfinance institution that is licensed by the CBK under this Law to be engaged in one or more of the 3 following activities: to extend credit, enter into loans and leases contracts financial-leasing, underwrite, trade in or distribute securities; act as an investment company, or as an investment advisor; or provide other financial services such as foreign exchange and money changing; credit cards; factoring; or guarantees; or

provide other financial advisory, training or transactional services as determined by CBK;
[...]

Article 4
Përgjegjësia e BQK-së për dhënien e licencave

1. *The CBK shall have sole responsibility for the issuance of licenses to all banks and registration of all Microfinance Institutions and NBFIs and for the issuance of permits to foreign banks with respect to the establishment of representative offices.*
2. A central register shall be kept by the CBK for inspection by the public that shall record for all Financial Institutions the name, the head office and branch office addresses, and current copies of its charter or equivalent establishing documentation and by-laws. A list of all Financial Institutions the licenses or registration of which have been revoked, shall also be maintained in the register, but their chartering documentation and by-laws shall be removed.

[...]

PART XXII VOLUNTARY LIQUIDATION, MANDATORY RECEIVERSHIP AND OFFICIAL ADMINISTRATION

[...]
Article 108
Mandatory receivership

If the CBK determines that a Microfinance Institution or NBFI is insolvent or that it may reasonably be expected to become insolvent, the CBK may revoke the registration of that Microfinance Institution or NBFI and shall forthwith take possession and control of that Microfinance Institution or NBFI through a Receiver appointed by the CBK. This proceeding shall be known as Receivership and the provisions of this Law particularly Part XI shall apply.

Assessment of the admissibility of Referral

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

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

"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."

62. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which states: *"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable."*

63. In this connection, the Court notes that the Applicant, in his capacity as the owner of the non-bank financial institution, is entitled to submit a constitutional complaint, by calling upon alleged violations of his fundamental rights and freedoms, which are valid for individuals as well as for legal persons (see, the case of Court KI41/09, Applicant *University AAB-RIINVEST L.L.C.*, Resolution on Inadmissibility of 3 February 2010, paragraph 14).

64. In the following, the Court also examines whether the Applicant has fulfilled the admissibility criteria as provided for by Law. In this regard, the Court first 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..."

65. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, who is challenging an act of a public authority, namely the Judgment, ARJ-UZVP.no.42/2020 of The Supreme Court, of 25 June 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms which he 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 established in Article 49 of the Law.

66. In this respect, the Court recalls that the Applicant, in his Referral, alleges a violation of his fundamental rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the ECHR; as well as Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol no. 1 of the ECHR, as well as Articles 7, 8 and 10 of the UDHR.

67. On the basis of the foregoing, the Court notes that the Applicant alleges a violation of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR for (i) due to erroneous interpretation of the law by the regular courts, respectively the Supreme Court and (ii) lack of reasoning of the court decision.

68. However, in the circumstances of the present case, the Court first refers to point (b) of paragraph (3) of Rule 39 of the Rules of Procedure, according to which the Court may consider a Referral inadmissible if it is incompatible *ratione materiae* with the Constitution.

69. Therefore, in the context of the latter, the assessment of this criterion in the circumstances of the case is important because the proceedings conducted before the regular courts, namely the challenged Judgment of the Supreme Court are relates to the request for postponement of the execution of the Decision of the CBK in the sense of Article 22, paragraphs 2 and 6 of the LAC whilst the statement of claim for annulment of this Decision is in the procedure of review of merits, and consequently falls within the scope of "preliminary proceedings". Consequently, the Court will assess whether Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is applicable in the circumstances of the Applicant's case.

70. In this specific context, the Court notes that the question of the applicability of Article 6 of the ECHR to preliminary proceedings has been interpreted by the ECtHR through its case-law, in accordance with which the Court, pursuant to Article 53 [Interpretation of Provisions for Human Rights] of the Constitution, is obliged to interpret human rights and fundamental freedoms guaranteed by the Constitution.

71. The Court also points out that the criteria in respect of the applicability of Article 31 of the Constitution concerning pre-trial procedures are also set out in the cases of this Court, including but not limited to cases KI122/17, Applicant *Česká Exportní Banka AS*, Judgment of 30 April 2018; KI150/16, Applicant *Mark Frrok Gjokaj*, Judgment of 31 December 2018; KI81/19, Applicant *Skender Podrimqaku*, Resolution on Inadmissibility of 9 November 2019; KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, of 11 March 2020. The general principles established through these above-mentioned Court

decisions are based on the ECtHR case, *Micallef v. Malta*, Judgment of 15 October 2009.

72. Consequently, in order to determine whether the Applicant's Referral is compatible rationae materiae with the Constitution, the Court will first refer to the general principles established through the case law of the ECHR and that of the Court as regards the applicability of procedural guarantees of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR in the circumstances of the present case, and which relate to the Applicant's request for postponement of the execution of the Decision of the CBK, and then it will apply the same to the circumstances of the present case.

(i) General principles on the applicability of Article 31 of the Constitution and Article 6 of the ECHR to preliminary proceedings

73. The Court first points out that Article 31 of the Constitution and Article 6 of the ECHR, in the civil limb, apply to proceedings determining civil rights or obligations (see, the ECtHR case: *Ringeisen v. Austria*, Judgment of 22 June 1972, and see the case of the Court, KI122/17, Applicant *Česká Exportní Banka AS*, cited above, paragraph 125). In this context, the Court further notes that, in principle, based on the case law of the ECtHR, "preliminary proceedings", like those concerned with the granting of an interim measure/injunctive relief, are not considered to determine "civil rights and obligations" and therefore, in principle, do not fall within the ambit of such protection of Article 6 of the ECHR(see, the ECtHR case *Micallef v. Malta*, cited above, paragraph 75 and references therein, see the case KI122/17, Applicant *Česká Exportní Banka AS*, paragraph 126).

74. However, through Judgment *Micallef v. Malta*, the ECtHR altered and consolidated its previous approach regarding the non-applicability of the procedural guarantees of Article 6 of the ECHR to the "preliminary proceedings."

75. Through this Judgment, the ECtHR assessed as follows:

> *"79. The exclusion of interim measures from the ambit of Article 6 has so far been justified by the fact that they do not in principle determine civil rights and obligations. However, in circumstances where many Contracting States face considerable backlogs in their overburdened justice systems leading to excessively long proceedings, a judge's decision on an injunction will often be tantamount to a decision on the merits of the claim for a substantial period of time, even permanently in exceptional cases. It follows that, frequently interim and main proceedings decide the same civil rights or obligations and have the same resulting long-lasting or permanent effects."* (see, the ECtHR case: *Micallefv.Malta,* application no. 17056/06, Judgment [GC], 15October 2009, para.79)."

76. Based on this Judgment of the ECtHR, the Court notes that not all injunctive relief/interim measures determine civil rights or obligations and in order for Article 6 of the ECHR to be applicable, the ECtHR determined the criteria on the basis of which the applicability of Article 6 of the ECHR to the "preliminary

proceedings" should be assessed (see, the ECtHR case, *Micallef v. Malta*, cited above, paragraphs 83-86).

77. According to the criteria determined in the case *Micallef v. Malta*, which have been accepted also by this Court through case law, firstly, the right at stake should be "civil" in both the main trial and in the injunction proceedings, within the autonomous meaning of this notion under Article 6 of the ECHR (see, in this context, the ECtHR case, *Micallef v. Malta*, cited above, paragraph 84, and references cited therein, as well as see the cases of Court KI122/17, Applicant *Česká Exportní Banka AS*, cited above, paragraph 130; KI81/19, Applicant *Skender Podrimqaku*, cited above, paragraph 47; and KI107/19, Applicant *Gafurr Bytyqi*, cited above, paragraph 53). Secondly, this procedure must effectively determine the relevant civil law (see the ECtHR case, *Micallef v. Malta*, cited above, 85 and references cited therein, as well as the Court cases, KI122/17, Applicant *Česká Exportní Banka AS*, cited above, paragraph 131 and KI81/19, Applicant *Skender Podrimqaku*, cited above, paragraph 48 and KI107/19, Applicant *Gafurr Bytyqi*, cited above, paragraph 53).

78. Consequently, the Court must further assess whether these two criteria are fulfilled in the circumstances of the present case, by consequently enabling the applicability of the procedural guarantees set out in Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

(ii) Application of the above referred principles to the Applicant's circumstances

79. The Court recalls that the circumstances of the Applicant's case refer to the Decision of the CBK revoking the license [no. 07 - 04/2018] issued to the Applicant, and through which Decision it was decided to revoke his registration of 26 February 2018 as a non-bank financial institution and to initiate the liquidation proceedings against him on the basis of the Law on Banks.

80. The possibility of initiating court proceedings in respect of the Decision of the CBK, as an administrative decision is also determined by the cited laws and rules, respectively the provisions of the LAC that regulate the procedure of administrative conflict. The legal remedies determined by the provisions of the LAC enable the Applicant to challenge the Decision of the CBK regarding the revocation of the license to operate as a financial institution, thus resulting in the existence of a civil right.

81. Consequently, the purpose of the request for postponement of the execution of the Decision of the CBK in the present case is to ensure at least for a certain period of time the same right that is being challenged in the administrative proceedings regarding the merits of the case. In this context, paragraph 6 of Article 22 of the LAC stipulates that *"The plaintiff can claim from the court to postpone the execution of administrative act until the court decision is taken, according to the conditions foreseen by the paragraph 2 of this Article."*

82. Therefore, based on the above, the Court finds that the first criterion for the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the relevant preliminary proceedings is fulfilled.

83. The Court further notes that in the Applicant's circumstances, the request for postponement of the execution of the Decision of the CBK is determinative of this right because it is the only possible mechanism for the Applicant to suspend the prohibition of exercising the activity as a financial institution and the liquidation procedure. Consequently, the Court finds that also the second criterion for the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the relevant preliminary proceedings, is fulfilled.

84. Therefore, the Court finds that in the Applicant's circumstances, on the basis of its case law and that of the ECHR, the criteria for the applicability of the procedural guarantees set out in Article 31 of the Constitution in conjunction with Article 6 of the ECHR have been fulfiled.

85. Consequently, the Court finds that the Applicant's Referral is compatible *rationae materie* with the Constitution.

86. As regards the fulfillment of other admissibility criteria set out in the Constitution and the Law and elaborated above, the Court finds that the Applicant is an authorized party who ic challenging an act of a public authority, namely the Judgment ARJ-UZVP.no.42/2020 of the Supreme Court, of 25 June 2020, and has exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental rights and freedoms for which he alleges to have been violated, pursuant to the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.

87. The Court finds that the Applicant's Referral also meets the admissibility criteria set out in paragraph (1) of Rule 39 of the Rules of Procedure. The same cannot be declared inadmissible on the basis of the conditions established in paragraph (3) of Rule 39 of the Rules of Procedure.

Merits of the Referral

88. The Court initially recalls that the subject matter of the Referral are the preliminary proceedings, initiated by the Applicant in the Basic Court based on Article 22, paragraphs 2 and 6 of the LAC, in which procedure was requested the postponement of the execution of the Decision of the CBK pending the review of his statement of claim for the annulment of the said decision.

89. The Court recalls that the Applicant was registered as a non-bank financial institution for lending by the license of the CBK. As a result of the Decision of the CBK [No.77-32/ 2019], on 6 December 2019, the Applicant's license was revoked on the grounds that the Applicant had applied effective interest rates on loans significantly higher than the effective rate presented in the business plan submitted to the CBK. Against the Decision of the CBK, the Applicant had filed a claim in the administrative proceedings for the annulment of the decision and at the same time based on paragraphs 2 and 6 of Article 22 of the LAC he had submitted a request for postponement of the execution of the Decision of the CBK. The Basic Court had rejected his request for postponement of the execution of the Decision by having applied the criteria of paragraphs 2 and 6 of Article 22 of the LAC, on which occasion it found that

the Applicant had not proved that (i) the execution of the Decision pending the decision on the merits of the case before the courts would bring great and irreparable damage to him and that (ii) the postponement of the execution of the Decision would not be contrary to the public interest. As a result of his appeal against the second Decision A.no. 3029/2019 of the Basic Court, of 3 February 2020, the Court of Appeals had confirmed the finding of the Basic Court in respect of the non-fulfilment of the criteria of Article 22 of the LAC for the postponement of the execution of the Decision of the CBK, and having applied Article 76 of the Law on the CBK rejected the Applicant's appeal as ungrounded. Finally, following the Applicant's request for extraordinary review of the court decision, namely the Decision of the Court of Appeals, filed with the Supreme Court, the latter rejected his request as ungrounded and confirmed the finding of the Court of Appeals.

90. The Applicant challenges the findings of the Supreme Court by alleging a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR; Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the ECHR; as well as Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of Property) of Protocol no. 1 of the ECHR, as well as Articles 7, 8 and 10 of the UDHR.

I. In relation to the allegation for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

91. The Court initially recalls that the Applicant alleges a violation of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR as a result of (i) "erroneous application of the law" and (ii) non-reasoning of the court decision. In the context of his allegation of "erroneous application of the law", the Applicant specifies that the Supreme Court has erroneously applied Article 76 of the Law on the CBK, arguing that this provision is not applicable in the present case.

92. In this respect, the Court first notes that the right to a 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.

93. Consequently, as regards the interpretation of the allegations for violation of the right to a fair and impartial trial as a result of the "manifestly erroneous application and interpretation of the law" and the failure to reason the judgment, the Court will refer to the case-law of the ECHR. To this end, the Court will first (i) elaborate on the general principles regarding the "*manifestly erroneous application and interpretation of the law*" through the aforementioned articles of the Constitution and the ECHR; and thereafter, (ii) will apply the same to the circumstances of the present case, before proceeding with the review and elaboration of his claim for non-reasoning of the court decision.

(i) General principles regarding the manifestly erroneous or arbitrary application of the law

94. The Court notes that with respect to the interpretation of the allegations for violation of the right to a fair and impartial trial as a result of *"manifestly erroneous interpretation and application of the law"*, it will refer to its case-law and that of the ECtHR.

95. In connection to the allegations in the present case, the Court first notes that, as a general rule, the allegations for erronesous interpretation of the law allegedly made by the regular courts relate to the field of legality and, as such, are not within the jurisdiction of the Court, and therefore, in principle, the Court cannot consider them. (see, the cases of the Court: KI06/17, Applicant *LG and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 36; KI122/16, Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; KI75/17, Applicant *X*, Resolution on Inadmissibility, of 6 December 2017; KI154/17 and KI05/18, Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company "Barbas"*, Resolution on Inadmissibility of 28 August 2019, paragraph 60; KI119/19, Applicant: *Privatization Agency of Kosovo (PAK)* Resolution on Inadmissibility of 2 September 2020, paragraph 58).

96. The Court, however, emphasizes that the case-law of the ECtHR and of the Court also provide for the circumstances under which exceptions from this position can be made. The ECtHR has reiterated that while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of legislation, the role ofthe Court is to verify whether the effects of such interpretation are compatible with the Convention (see the case of the ECtHR, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39; as well as see the case of Court KI119/19, Applicant: Privatization Agency of Kosovo (PAK) Resolution on Inadmissibility of 2 September 2020, paragraph 61). Consequently, the Court has emphasized that it is primarily the role of the regular courts to deal with the issue of interpretation of the law, whilst the role of the Constitutional Court is to verify whether the consequences of such an interpretation are in accordance with the Constitution (see the case cited above KI75/17, Applicant *X*, paragraph 58).

97. In this sense, the Court pursuant to the case law of the ECtHR has emphasized that even though the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take measures when it observes that a court has "applied the law manifestly erroneously" in a particular case or so as to reach *"arbitrary conclusions"* or *"manifestly unreasonable"* for the Applicant concerned (see the cases of the ECtHR, *Anheuser-Busch Inc.*, Judgment, paragraph 83, *Kuznetsov and Others v. Russia*, no. 184/02, paragraphs 70-74 and 84; *Păduraru v. Romania*, no. 63252/00, paragraph 98; *Sovtransavto Holding v. Ukraine*, no. 48553/99, no. 79, 97 amd 98; *Beyeler v. Italy* [GC], application no. 33202/96, paragraph 108; *Koshoglu v. Bulgaria*, Judgment of 10 May 2007, paragraph 50; see also the above-mentioned case KI122/16, Applicant *Riza Dembogaj*, paragraph 57; cases KI154/17 and 05/18, Applicants, *Basri Deva, Afërdita Deva and the Limited Liability Company "BARBAS"*, paragraphs 60 to 65; as well as case KI121/19, Applicant *Ipko Telecomunications*, Resolution on Inadmissibility of 29 July 2020, paragraph 58, and the references used therein).

98. Further, the ECtHR in its case law in the context of Article 6 of the ECHR, namely in the case *Barać and Others v. Montenegro* found a violation because the decision on the right to compensation for the Applicant in this case was issued by the courts based on in the law which was no longer in force, and which had been previously declared unconstitutional (see the case of the ECtHR *Barać and Others v. Montenegro*, no. 47974/06, Judgment of 13 December 2011, paragraphs 30 to 34). On the other hand, in the case *Anđelković v. Serbia*, the ECHR found a violation because, given that legislation on the employment right had clearly determined the cases in which an employee is entitled to claim compensation in the name of holiday pay, the court of the second instance had arbitrarily modified the decision of the first instance court and denied this right of the Applicant, by a reasoning without any legal basis (see, the ECtHR case, *Anđelković v. Serbia*, no. 1401/08, Judgment of 9 April 2013, paragraphs 24-29, and references therein).

(ii) Application of these principles to the Applicant's circumstances

99. In applying the principles established by the ECtHR and accepted by the Court through its case law with respect to the manifestly erroneous application or interpretation of the law, the Court first recalls that the Applicant alleges that the Court of Appeals and the Supreme Court have applied Article 76 [Immunity from prejudgment attachment] of the Law on the CBK in an erroneous manner, thus resulting in a violation of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

100. The Applicant specifically alleges that the Supreme Court has dealt with the request for postponement of the execution of the decision as defined by paragraph 6 of Article 22 of the LAC and the "Immunity from prejudgment attachment" defined in Article 76 of the Law on CBK as being the same or replaceable. Subsequently, the Applicant emphasizes that the "attachments" are attributed to the provisions of the LCP, whilst the "executions" are attributed to the provisions of the LEP and consequently, also the Supreme Court has reached an erroneous finding regarding the subject matter addressed to it.

101. In this respect, the Court again recalls the procedure conducted before the regular courts, which preliminary procedure was initiated at the request of the Applicant to postpone the execution of the Decision of the CBK, as an administrative decision based on Article 22 of the LAC.

102. In this context, the Court considers that the basis for reviewing the request for postponement of the execution of the Decision of the CBK, in the Basic Court was Article 22 of the LAC, paragraphs 2 and 6, a provision which determines the criteria to be met in in order for the court to allow the postponement of the execution of an administrative decision, as is the case with the CBK Decision.

103. Subsequently and in this contexts, paragraphs 2 and 6 of Article 22 of the LAC stipulate that:

[...]
1. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.
[...]

6. The plaintiff can claim from the court to postpone the execution of administrative act until the court decision is taken, according to the conditions foreseen by the paragraph 2 of this Article.

104. In the present case, the Basic Court by its second Decision A.no. 3029/2019, of 3 February 2020, by referring to Article 22, paragraphs 2 and 6 of the LAC in the retrial procedure reasoned that the Applicant has not made credible with the evidence contained in the case file, that the Decision of the CBK: (i) will cause damage to him which would be difficult to repair and that (ii) the postponement is not in the public interest or that the postponement would not cause any harm to the opposing party.

105. The Court further recalls that the Court of Appeals, by Judgment AA.No. 164/2020 rejected the Applicant's appeal as ungrounded and confirmed the Decision of the Basic Court. In this case, the Court of Appeals specified that the Basic Court based its finding on the rejection of the request for postponement of the CBK Decision on the non-fulfillment of the criteria established in paragraph 2 of Article 22 of the LAC. Further, the Court of Appeals, in its Decision refers to Article 76 of the Law on CBK, finding that the Applicant's appeal is ungrounded *"All this because the Law no. 03/L-209 on Central Bank of the Republic of Kosovo has determined immunity to the imposition of an interim court measure on the respondent because Article 76 of the same law stipulates that "1. No attachment or execution shall be issued against the Central Bank or its property, including gold, special drawing rights, currency, credits, deposits or securities, and any proceeds thereof, before the issuance of a final judgment in any legal action brought before the courts of Kosovo. 2. The Central Bank may, in whole or in part, waive this protection, explicitly and in writing, except with respect to its gold and the Special Drawing Rights held in the account of Kosovo in the International Monetary Fund."* Consequently, the Court of Appeals concluded that *"Therefore, based on the aforementioned provision in the court proceedings against the respondent [Central Bank], no interim measures can be imposed in relation to the activity mentioned in the above provision".*

106. In the context of the reasoning of the Court of Appeals, the Court recalls the conclusion provided in this Decision, whereby it was concluded that the Basic Court has correctly applied the procedural and substantive provisions when rejecting the Referral, and further added that *"[...]to support this legal position of the first instance, this factual situation is also based on Article 76 of the Law No. 03/L-209 on Central Bank of the Republic of Kosovo, and that the law has not been infringed to the detriment of the claimant on the occasion of*

rejection of the proposal for postponement of the execution of the challenged decision."

107. The Court further recalls that the Applicant in his request for review of the court decision submitted to the Supreme Court, among other things, had raised also the issue of application of Article 76 of the Law on CBK by the Court of Appeals in its ruling. In this context, the Applicant specified that the Court of Appeals has erroneously applied Article 76 of the Law on CBK stating that *"Such an interpretation of this provision is completely erroneous and does not comply neither with the spirit of the Law on CBK as a whole, nor with the content of the provision in question in particular"* by further reading this provision *"[...] attachments and executions in question cannot be issued against the CBK and its assets, whilst in the present case the request for postponement of the execution of the decision is proposed to be issued against the liquidation process of Monego, namaley this process to be suspended pending a final decision."* In this respect, the Applicant further specified that by the Decision of the Court of Appeals the subject matter of the case has been confused, namely according to him *"Article 76 of the Law on CBK is considered in cases when against the Republic of Kosovo or the CBK- exist claims by third parties and an interim measure is proposed to be imposed on the assets of the latter".*

108. In the following. the Court also refers to the challenged Judgment of the Supreme Court, whereby the latter had applied Article 22, paragraphs 2 and 6 of the LAC and having referred to Article 76 of the Law on CBK had confirmed that:

> *"[...] the court of the second instance has acted correctly when rejecting as ungrounded the claimant's appeal and confirming the decision of the first instance whereby the claimant's proposal was rejected. This Court assesses that the court of the second instance has fully and correctly applied the provisions of the Law, the provisions of the administrative procedure, and those of the Law on Administrative Conflicts."*

109. On the basis of the above, the Court notes that Article 22 of the LAC respectively paragraphs 2 and 6, were the basis for the review and decision-making of the Basic Court. The provisions of Article 22 of the LAC, respectively paragraphs 2 and 6, were also implemented through decisions of the Court of Appeals and the Supreme Court. Consequently, the Court of Appeals and finally the Supreme Court, respectively, had confirmed the findings of the Basic Court regarding the interpretation and application of Article 22 of the LAC in the preliminary procedure in the Applicant's case.

110. The Court reiterates that in cases of issuing administrative decisions under Article 22 of the LAC, the parties may file a request for postponement of the execution of the decision by fulfiling the criteria established in paragraphs 2 and 6. Based on these provisions, the burden of proof in these cases falls on the party which is requesting the postponement of the execution of the decision. Consequently, and in the present case, the Applicant should have fulfiled the conditions cumulatively in order for such a request to be approved.

111. The Court recalls that the Applicant, in essence, alleges erroneous application of Article 76 of the Law on the CBK, due to (i) the content of this Article and (ii) the entity to which it is addressed. Regarding the first, the Applicant states that the "attachments" and "executions" apply to interim measures according to the contested procedure, and the executions refer to the enforcement procedure, while as regards the second, states that Article 76 of the Law on CBK refers to the CBK, and not to the Applicant.

112. The Court also recalls the comments of the CBK, which states that the Applicant is requesting *"to postpone the execution of Decision No.77-32/2019of the CBK, of 06.12.2019, on Revokation of the registration of the Non-Bank Financial Institution "Monego" L.L.C. until a court decision is made"*. Consequently, according to the CBK, based on Article 76 of the Law on the CBK, no interim measures can be issued against it in court proceedings. Further, the CBK, in its comments also refers to Article 77, paragraph 4 of the Law on the CBK, emphasizing that *"Furthermore, given the importance of maintaining financial stability in the country, Article 77 (4) of Law No.03/L-209 on CBK, has itself provided that "in any court or arbitration proceedings against the Central Bank, the court or arbitration panel shall not stay, suspend, suspend or set aside the actions of the Central Bank"*.

113. However, based on the above elaboration, the Court considers that the primary issue, in this case, is the finding of the regular courts whether the Applicant has fulfiled the criteria established in paragraphs 2 and 6 of Article 22 of the LAC in order for the courts to decide on the postponement of the execution of the Decision of the CBK. Therefore, with respect to the Applicant's allegation regarding Article 76 of the Law on CBK, the Court considers that the fact that the Court of Appeals and the Supreme Court in this preliminary procedure in addition to the application of Article 22 of the LAC have referred also to Article 76 of the Law on the CBK, only the reference to Article 76 of the CBK has not resulted in arbitrary conclusions.

114. Consequently, the Court reiterates that the decision and the finding of the regular courts to reject the postponement of the execution of the Decision of the CBK was based primarily on the assessment of the criteria of Article 22 of the LAC, and consequently the reference to Article 76 of the Law on CBK by the Court of Appeals, did not prevent this court and later the Supreme Court to find that the criteria set out in Article 22 of the LAC for postponing the execution of the Decision have not been fulfiled.

115. Finally, based on the above elaboration and by applying the principles of the case law of the Court and of the ECtHR in respect of the manifestly erroneous interpretation and application of the law, the Court considers that the interpretation and application of the relevant legal provisions stipulated in the LAC in this case, and the reference as support to Article 76 of the Law on CBK, could have not resulted in "arbitrary conclusions" or "manifestly unreasonable" for the Applicant. This for the reason that because the Court considers that the findings and conclusions of the regular courts in this preliminary procedure and which specifically refer to the Applicant's request for postponement of the execution of the Decision of the CBK are based primarily upon their

assessment on the fulfillment of the criteria provided in Article 22, paragraphs 2 and 6 of the LAC.

116. In light of the foregoing, the Court considers that there has not been proved that there is arbitrariness in the interpretation provided by the regular courts in this preliminary procedure, including also the Supreme Court when rejecting the Applicant's request for review of the court decision.

117. Consequently, the Court finds that Judgment ARJ-UZVP.no.42/2020 of the Supreme Court, of 25 June 2020, concerning the interpretation and application of the law, does not constitute a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

118. In the following, the Court will consider the Applicant's allegations about non-reasoning of the court decision.

In relation to the allegation for non-reasoning of the court decision

119. The Court recalls that the Applicant in his Referral alleges a lack of reasoning in the Judgment of the Supreme Court, specifying that the latter did not answer to his specific allegations concerning the application of Article 76 of the Law on CBK.Therefore, during the examination and elaboration of this claim, the Court will first elaborate on the general principles in respect of the right to reasoned court decision, before moving to the application of these principles to the circumstances of the concrete case.

(i) General principles regarding the reasoning of court decisions

120. With respect 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. This case law is build based on the case law of the ECtHR (including but not limited to the cases of *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and Others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, Judgment of 27 September 2001; *Suominen v. Finland*, Judgment of 1 July 2003; *Buzescu v. Romania*, Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. Moreover, the basic principles concerning the right to a reasoned court decision have been elaborated also in the cases of this Court, including but not limited to 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, 11 December 2019; as well as the case of Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 135).

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

122. The Court also notes that based on its case law when assessing the principle which refers to the proper administration of justice, court decisions must contain the reasons on which they are based. The extent to which the duty to give reasons applies may vary depending on the nature of the decision and must be determined in the light of the circumstances of the particular case. It is the essential arguments of the Applicants that need to be addressed and the reasons given must be based on the applicable law (see, analogically, the cases of the ECtHR *Garcia Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 29; *Hiro Balani v. Spain*, Judgment of 9 December 1994, paragraph 27; and *Higgins and Others v. France*, paragraph 42; see also the case of Court KI97/16, Applicant IKK Classic, cited above, paragraph 48; and case KI87/18 *IF Skadeforsikring*, cited above, paragraph 48). By not requiring a detailed response to each complaint raised by the Applicant, this duty implies that the parties to the proceedings may expect to receive a specific and explicit response to their allegations that are crucial to the outcome of the proceedings conducted (see, the case *Morerira Ferreira v. Portugal*, Judgment of 5 July 2011 paragraph 84 and all references used therein, as well as the case of Court KI230/19, Applicant Albert Rakipi, Judgment of 9 December 2020, paragraph 137).

123. 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 (the Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; no. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58, and KI96/16 *IKK Classic*, Judgment of 8 December 2017; see the cases of Court KI87/18 Applicant *"IF Skadeforsikring"*, Judgment of 27 February 2019, paragraph 44; KI138/19 Applicant *Ibish Raci*, cited above, paragraph 45, as well as the case of Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 138).

(ii) Application of these principles to the circumstances of the present case

124. The Court initially recalls that the Applicant in his request for extraordinary review of the court decision, filed with the Supreme Court, argued that (i) the substantive law had been erroneously applied; (ii) the execution of the CBK Decision would cause great and irreparable damage to him; and that (iii) postponing the execution of the CBK Decision is not contrary to the public interest. With respect to his allegation for erroneous application of substantive law, namely Article 76 of the Law on CBK, the Court recalls that the Applicant

has specified before the Supreme Court that *"Such an interpretation of this provision is completely erroneous and does not comply neither with the spirit of the Law on CBK as a whole, nor with the content of the provision in question in particular"* by further reading this provision *"[...] attachments and executions in question cannot be issued against the CBK and its assets, whilst in the present case the request for postponement of the execution of the decision is proposed to be issued against the liquidation process of Monego, namaley this process to be suspended pending a final decision"*.

125. Whereas in his Referral before the Court, the Applicant alleges a violation of his right to the reasoning of a court decision, a right guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, specifying that the Supreme Court did not answer to the Applicant's arguments, namely the Supreme Court did not answer to his allegation for the application of substantive law, namely the application of Article 76 of the Law on CBK. In the context of non-reasoning of the court decision, the Applicant also refers to Article 63 of the LAC which stipulates that if this law does not contain provisions for the procedure in administrative conflicts, the provisions of the law on contested procedure will be applied accordingly, and in this case the Supreme Court should have applied Article 160 of the LCP in respect of the elements that should be contained in the Judgment.

126. The Court, having referred also to its case law and that of the ECHR, and based on the circumstances and the reasoning of the regular courts given through their decisions in the Applicant's case, considers that the following criteria are to be applied and assessed whether the Supreme Court by its Judgment has violated his right to a reasoned court decision, respectively whether (i) the Applicant has raised his allegation for erroneous application of Article 76 of the Law on CBK before the Supreme Court; and (ii) whether his claim was decisive and determinant for the outcome of the case. In the context of these two criteria, the Court will also assess whether the approval of his claim raised before the Supreme Court would change the outcome of the case.

127. In this respect, as regards the first criterion, the Court reiterates that the Applicant before the Supreme Court, namely in his request for extraordinary review of the court decision, had raised the issue of erroneous application of Article 76 of the Law on CBK, and throughout his allegations, he had also alleged the issue of the applicability of the conditions established in Article 22 paragraphs 2 and 6 of the LAC, respectively on issues that (i) the execution of the decision of the CBK would bring damage to him that would be difficult to repair; (ii) the postponement of the execution is not contrary to the public interest and that (iii) the postponement of the execution would not be to the detriment of the opposing party.

128. As regards the second criterion, namely whether the allegation raised by the Applicant was decisive and determinant, the Court initially reiterates that the preliminary procedure in the Applicant's case was initiated through Article 22, paragraphs 2 and 6 of the LAC, and consequently, the basis for the review and assessment of his request by the regular courts was the fulfillment of the criteria set out in the above provisions of the LAC.

129. Given that the proceedings were initiated pursuant to Article 22 of the LAC, as the main legal basis for determining the conditions for postponing the execution of decisions, in the present case, the Court notes that the Court of Appeals had also found that the Applicant did not meet the criteria set out in paragraph 2 of Article 22 of the LAC.

130. The Court recalls that as regards the Article 22 paragraph 2 and 6 of the LAC, the Court of Appeals by Decision AA.No.164/2020, of 26 February 2020, the Basic Court has found that the Applicant's proposal for the postponement of the execution of the decision is ungrounded because the Applicant has not made credible with any evidence his allegation and concluded that the Basic Court *"has correctly determined the factual situation by having correctly applied the procedural and substantive provisions, when rejecting the claimant's request"*, and moreover to support the legal stance of the Basic Cout, the Court of Appeals had stated that the factual situation is based also upon Article 76 of the Law on CBK.

131. In this regard, the Court first recalls that the Court of Appeals in Decision AA.UZH.no.164 / 2020, of 26 February 2020 had also referred to Article 76 of the Law on CBK, and stated *"although it lacked the reasoning and concrete substantive legal provisions mentioned above, this did not have a bearing so as to have a different decision rendered in this case"*.

132. In this connection, the Court recalls Article 76 (Immunity from prejudgment attachment) of the Law on CBK which stipulates:

> *1. No attachment or execution shall be issued against the Central Bank or its property, including gold, special drawing rights, currency, credits, deposits or securities, and any proceeds thereof, before the issuance of a final judgment in any legal action brought before the courts of Kosovo.*
>
> *2. The Central Bank may, in whole or in part, waive this protection, explicitly and in writing, except with respect to its gold and the Special Drawing Rights held in the account of Kosovo in the International Monetary Fund."*

133. In this respect, the Court recalls that the Supreme Court in its Judgment, by initially referring to paragraphs 2 and 6 of Article 22 of the LAC, stated that *"this provision stipulates that the postponement can be made at the request of the claimant, the body , whose act is being executed, respectively the competent body for execution can postpone the execution pending the final legal decision, if the execution of the administrative act would cause damage the claimant, which would be difficult to be repaired, and the postponement is not in contradiction with the public interest nor the postponement would bring any da,age to the opposing party respectively to the interested person. Whereas by the provision of Article 22.6 of the same law it is stipulated that the claimant can claim from the court the postponement of the execution of the administrative act until the court decision is taken, according to the conditions foreseen by Article 22 para.2 of the LAC."*

134. In relation to the application of Article 76 of the CBK, the Supreme Court had stated that *"In addition, Article 76 of Law No.03/L-209 on Central Bank determines immunity against the issuance of interim court measures, namely no attachment of execution can be issued against the Central Bank or its property."*

135. Consequently, the Court considers that the Applicant's allegation, raised in the Supreme Court, and referring to the erroneous application of Article 76 of the Law on CBK, was not decisive and determinant for the outcome of his request for extraordinary review of judicial decision (see, the Judgment of the ECtHR, *Ruiz Torija v. Spain*, no. 18390/91, Judgment of 9 December 1994, paragraph 30).

136. Finally, as to whether the addressing of the Applicant's allegation would change the outcome of the case, the Court notes that the Court of Appeals in its Decision had initially addedd, namely in its reasoning for rejecting his request for postponing the execution of the decision had relied also on the provision of Article 76 of the Law on CBK. Whereas, the Applicant in his request for extraordinary review had alleged erroneous application of the substantive law, as a result of the application of Article 76 of the Law on CBK, at the same time had asserted that in his case the criteria under paragraph 2 of article 22 of the LAC had been fulfiled.

137. In the context of the latter, the Court recalls that the Supreme Court found that *"[...] the court of the second instance has acted correctly when rejecting as ungrounded the claimant's appeal and confirming the decision of the first instance whereby the claimant's proposal was rejected. This Court assesses that the court of the second instance has fully and correctly applied the provisions of the Law, the provisions of the administrative procedure, and those of the Law on Administrative Conflicts. The claimant's statements regarding the violations are ungrounded because the challenged decision is clear and comprehensible. The reasoning of the challenged decision contains sufficient reasons and decisive facts on rendering lawful decisions. This Court also considers that the substantive law has been correctly applied and the law has not been violated to the detriment of the claimant."*

138. Finally, and referring to the Applicant's allegation for erroneous application of the substantive law, the Supreme Court concluded that: *"This Court also considers that the substantive law has been correctly applied and the law has not been violated to the detriment of the claimant."*

139. The Court considers that in cases where the regular courts give their reasoning in a case, the extent to which this duty to give reasons applies may vary depending on the nature of the decision (see the case of the ECtHR, *Ruiz Torija v. Spain*, no. 18390/91, Judgment of 9 December 1994, paragraph 29).

140. Consequently, based on the foregoing, and based on the circumstances of the present case, the Court considers that the examination or approval of the Applicant's allegation for erroneous application of Article 76 of the Law on CBK as grounded will not to change the outcome in his case (see, *mutatis mutandis*, the case of the ECtHR, *Ankerl v. Switzerland*, no. 17748/91, Judgment of 23

October 1996, paragraph 38). This is due to the fact that as elaborated above, the subject matter of review of the Applicant's request in the preliminary proceedings before the regular courts was the postponement of the execution of the Decision of the CBK and assessment by the latter whether the criteria set out in paragraph Article 22 of the LAC have been fulfiled.

141. Moreover, the Court also recalls that in cases where a court of the third instance, such as in the Applicant's case, the Supreme Court, confirms the decisions taken by the lower courts - its obligation to reason the decision making differs from cases where a court modifies the decision-making of lower courts. In the present case, the Supreme Court did not modify the decision of the Court of Appeals nor that of the Basic Court whereby the request for postponement of the execution of the Decision of the CBK was rejected but had only confirmed their legality, given that, according to the Court Supreme, there were no essential violations of the administrative procedure and erroneous application of the substantive law in this preliminary procedure (see, analogically, the cases of Court KI194/18, Applicant Kadri *Muriqi and Zenun Muriqi*, Resolution on Inadmissibility of 5 February 2020 , paragraph 106; and KI122/19, Applicant *FM*, Resolution on Inadmissibility, of 9 July 2020, paragraph 100).

142. In view of what is stated above, the Court considers that in the present case, the Applicant has been given procedural opportunities to address his allegations and that in essence, the Applicant has received a response to his substantive allegations in the request for extraordinary review of the court decision in the Supreme Court.

143. Therefore, on the basis of the above, the Court finds that Judgment ARJ-UZVP.no. 42/2020 of the Supreme Court of 25 June 2020 in relation to the right to a reasoned court decision does not constitute a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

144. Consequently, in the following, the Court will consider the Applicant's allegations for violation of Article 32 of the Constitution, in conjunction with Article 13 of the ECHR and Article 46 of the Constitution, in conjunction with Article 1 of Protocol No. 1. of the ECHR.

II. In relation to the allegations concerning the violation of Article 32 of the Constitution, Article 54 of the Constitution, in conjunction with Article 13 of the ECHR; and Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as Articles 7, 8 and 10 of the UDHR

145. The Court first recalls that the Applicant alleges a violation of Article 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 13 (Right to an effective remedy) of the ECHR specifying that the legal remedy in his case is ineffective due to the failure to have the merits of the case addressed, even though the applicable legislation has provided for the request to postpone the execution of the decision as a remedy accessible by law.

146. Secondly, the Court recalls that the Applicant also alleges that his rights guaranteed by Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 (Protection of Property) of Protocol No. 1 of the ECHR, have been violated, arguing that being equipped with a license constitutes an asset in the sense of possession, and consequently alleges that in his case there has been an interference with his property rights as a consequence of erroneous interpretation of Article 76 of the Law on CBK. In addition, the Applicant alleges a violation of Articles 7, 8 and 10 of the UDHR.

147. On the basis of the foregoing, the Court notes that the Applicant relates his above allegations in respect of Article 32 of the Constitution, in conjunction with Article 13 of the ECHR and Article 46 of the Constitution, and in conjunction with Article 1 of Protocol No.1 of the ECHR to the allegation for erroneous interpretation and application of the law, namely the application of Article 76 of the Law on CBK by the Court of Appeals and the Supreme Court, which allegation the Court upon its review and elaboration has found that the challenged Judgment of the Supreme Court, has not been issued in violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

148. Consequently, the Court, based on its findings regarding the relating to violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, will not proceed with the examination and assessment of the Applicant's allegations with repsect to Articles 32 and 45 of the Constitution, in conjunction with Article 13 of the ECHR and Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as Articles 7, 8 and 10 of the UDHR and as such declares them inadmissible as established in paragraph (2) of Rule 39 of the Rules of Procedure.

Conclusion

149. In conclusion, the Court finds that the Applicant's Referral is admissible and that:

I. As regards the allegation for a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to (i) erroneous application of the law and (ii) lack of reasoning of the court decision, the Court finds that the challenged Judgment ARJ-UZVP.no.42/2020 of the Supreme Court, of 25 June 2020, does not constitute a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. Whereas, as regards:

II. The alleged violations of Articles 32 and 54 of the Constitution, in conjunction with Article 13 of the ECHR and Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR, and Articles 7, 8 and 10 of the UDHR, the Court finds that they are inadmissible as established in paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in the sesion held on 29 March 2021, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that the Judgment, ARJ-UZVP.no.42/2020 of the Supreme Court , of 25 June 2020, is in compliance with 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 NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi Arta Rama-Hajrizi

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