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

Prishtina, 17 May 2021
Ref.no.:RK1774/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI136/19

Applicant

L.L.C. "CO COLINA"

Constitutional review of Law [No.06/L-155] on the Prohibition of Games of Chance

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 L.L.C. "CO COLINA" (hereinafter: the Applicant) which is represented by Mr. Bashkim Latifi, a lawyer from Prishtina.

Challenged Law

2. The Applicant challenges the Article 1 of Law No. 06 / L-155 on the Prohibition of Games of Chance (hereinafter: the challenged Law), adopted by the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

Subject matter

3. The subject matter is the constitutional review of Article 1 of the challenged Law, which, according to the Applicant's allegation has violated its rights guaranteed by Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 1 of Protocol No. 1 to the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121 (hereinafter: the Law) and Rule 29 of the Rules of Procedure no. 01/2018 of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 28 August 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 29 August 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

7. On 4 October 2019, the Court notified the Applicant about the registration of the Referral.

8. On 9 October 2019, the Court also notified the President of the Republic of Kosovo, the Prime Minister of the Republic of Kosovo, the Secretary of the Assembly and the Ombudsperson about the registration of the Referral.

9. On 18 October 2019, the Ombudsperson submitted his comments to the Court. The other parties did not submit comments.

10. On 30 October 2019, the Court notified the Applicant, the President of the Republic of Kosovo, the Prime Minister of the Republic of Kosovo and the Secretary of the Assembly about the Ombudsperson's comments, by providing a copy thereof to them.

11. On 19 November 2019, the Court sent several questions to the Venice Commission Forum, as follows:

> "1. *Can individuals (natural/legal persons) challenge a law, in the absence of an individual measure of implementation, directly before your Court*

upon the entry into force of this Law? In other words, are individuals authorized parties to challenge a Law directly before your Court??

2. If the answer to the first question is yes, then can you please explain to us on what basis and for what reasons individuals can challenge a Law before your Court? Have you had any such case? If yes, please send us the case link [...].

3. If the answer to the first question is negative, then please explain to us if individuals have any other legal remedy to challenge a law that may directly violate any of their rights, in your legal system? What legal remedies are available to individuals who may be direct victims of a new law adopted by the Parliament [Assembly]*?*

4. When reviewing the constitutionality of a law, what tests does your Court use to determine whether: (i) a law affects a specific individual or not; and, (ii) if it does affect him, does that law affect his/her rights?

5. Are actio popularis applications (claims) allowed before your Court? If yes, in what cases? If not in principle, are there any exceptions to this rule and how do you apply the actio popularis rule if it already exists in your case law? In this respect, what is the importance in your decision-making of the definition that the ECHR gives to the concept of "actio popularis" [...]?

6. Have you had a case in which you have considered issues with "licenses" and "work permits" of businesses and, potentially, their withdrawal or termination, in respect of arguments for a possible violation of Article 1 of Protocol No. 1 of the ECHR? [...]"

12. The Court received, within the time limit, responses from the following respective courts of the member states of the Venice Commission: Austria, Czech Republic, Germany, Croatia, Liechtenstein, Malta, Slovakia, Brazil, Netherlands, Mexico, Sweden, and Poland.

13. On 18 February 2021, the Court reviewed the case KI136/19 and decided to postpone the decision-making in this case to another session, after the case file is supplemented with additional information and clarifications.

14. On 22 February 2021, the Court sent a letter to the Applicant seeking additional clarifications, asking it to answer the following two questions, within a term of 7 days:

    (1) *In addition to Law No.06/L-155 on the Prohibition of Games of Chance, has there been issued any other subsequent act by any public authority implementing the challenged Law that has had an effect on your business license / work permit?*
    (2) *On what exact date and by which act of which public authority was your business license revoked? So, when and by which act of public authority was your business activity terminated?*

15. On 23 February 2021, the Court sent a letter to the Government seeking additional clarifications, and requesting an answer to the following question:

> *(1) In addition to Law No.06/L-155 on the Prohibition of Games of Chance, has there been issued any other subsequent act by any public authority implementing the challenged Law that has had an effect on revocation of Applicant's business license / work permit?*

16. Between 3 and 8 March 2021, the Court received responses from the Applicant and the Government.

17. On 28 April 2021, the Review Panel considered the case KI136/19 and unanimously decided to declare the Referral inadmissible.

Summary of facts

18. The Applicant had started to exercise the business of games of chance in Kosovo in 2007, when it was equipped with a license and work permit to exercise the business activity of sports betting.

19. On 6 April 2012, the Assembly adopted the Law [No. 04/L-080] on the Games of Chance, respectively the previous Law on Games of Chance which was thereafter repealed by the challenged Law.

20. The Applicant was equipped with a business license in conformity with the previous Law on the Games of Chance [No. 04/L-080]. The last license with no. 35/2017 was issued to it on 12 October 2017 for a period from 8 August 2018 to 7 August 2019. It was also equipped with a work permit no. 35/2017 for exercising the business of games of chance, valid through the same deadline, respectively from 8 August 2018 to 7 August 2019.

21. On 28 March 2019, the Assembly adopted the challenged Law [No.06/L-155] whereby the previous Law on the Games of Chance [No.04/L-080] was repealed. By Article 1 of the challenged Law, *"all games of chance in the entire territory of the Republic of Kosovo"* were prohibited and closed.

22. On 24 April 2019, the challenged Law was published in the Official Gazette, whilst it entered into force on 10 May 2019, namely fifteen (15) days after the publication in the Official Gazette.

23. On 3 May 2019, a few days before the entry into force of the challenged Law, the Tax Administration of Kosovo sent the Notification No. ATK/DLF07/18-2019 to the Applicant, informing it about the revocation of its business license from 10 May 2019. More specifically, in the Notification that the Applicant had received from the Tax Administration of Kosovo was stated as follows:

> *"Dear Sir, Madam*
>
> *Tax Administration of Kosovo as a Regulatory Authority of the Games of Chance pursuant to Article 4, paragraph 2 of the Law No. 04/L-080 on*

the Games of Chance, on 12.10.2017, has issued the license with no.35/2017 to your entity for organizing games of chance.

Taking into consideration that starting from 10 May 2019 the Law No. 06/ L-155 on the Prohibition of Games of Chance shall enter into force, through this official letter, we inform you that pursuant to the legal provisions under Article 1 of this Law which requires the prohibition and closure of all games of chance in the Republic of Kosovo, the Tax Administration of Kosovo/ Directorate of Games of Chance REVOKES the license with no. 35/2017 issued on: 12.10.2017 to the entity "CO COLINA" L.L.C with FN. 600241963.

This revocation of the license shall enter into force on 10 May 2019, and any exercise of the activity of the games of chance after this date shall be considered illegal activity and the law enforcement agencies will act ex officio as needed.

The Tax Administration of Kosovo encourages you to undertake all actions in compliance with the provisions of the new Law No.06/L-155 on the Prohibition of Games of Chance, without needing to become subject to the measures of state institutions that are responsible for the implementation of the law."

24. On 10 May 2019, the Applicant's license was revoked and its business activity was terminated.

25. On 3 June 2019, the Applicant filed a complaint against the Notification [No. ATK/DLF07/18-2019, of 3 May 2019] of the Tax Administration of Kosovo.

26. On 4 July 2019, the Tax Administration of Kosovo issued the Decision No. 238/2019, whereby it rejected the Applicant's complaint as ungrounded.

27. On 5 August 2019, the Applicant filed a claim for an administrative conflict in the Basic Court in Prishtina against the Tax Administration of Kosovo. Through this claim, the Applicant requested that: (i) its claim submitted against the Tax Administration of Kosovo be approved; (ii) the Decision No. 238/2019 of the TAK of 4 July 2019 and the "Decision-Notification" of the Directorate of Games of Chance of TAK with reference number ATK/DLF07/18-2019, of 3 May 2019, be annulled; and (iii) its business license no. 35/2017 issued by TAK on 12 October 2017 to remain in force.

28. Among other things, in his claim, the Applicant had requested from the Basic Court in Prishtina, as follows: *"Since the provisions of Article 1 and 2 of the Law No. 6/L-155 on the Prohibition of Games of Chance in this administrative case should be directly applied, if the court [the Basic in Prishtina] is not sure about the compatibility of these provisions with the Constitution, we propose to the court [the Basic in Prishtina] that in conformity with the provisions [of] Article 3 point 8 of the Constitution of Kosovo it refers the case to the Constitutional Court for assessing the compatibility of this law with the Constitution of Kosovo. Based on the provisions of Article 51.2 of the Law on the Constitutional Court and according to the provisions of Article 52 of the*

Law on the Constitutional Court, to suspend the decision-making procedure in this administrative conflict case pending the decision of the Constitutional Court."

29. In the meantime, on 28 August 2019, in addition to (and after) filing a claim with the Basic Court in Prishtina, the Applicant had submitted his Referral to the Constitutional Court alleging that the challenged Law violates his rights, with the main request to the Court to annul the challenged Law as unconstitutional.

30. On 12 February 2021, the Basic Court in Prishtina, by Judgment [A.no. 1861/19] rejected as ungrounded the Applicant's claim filed against Decision No. 238/2019 of the Tax Administration of Kosovo, of 4 July 2019.

31. The Basic Court in Prishtina reasoned its decision as follows:

> *"The respondent [Tax Administration of Kosovo] referred the challenged decision whereby it rejected the claimant's complaint as ungrounded, to the provision of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance, by which it is required to prohibit and close all games of chance in the Republic of Kosovo. In this respect, the Tax Administration of Kosovo – Directorate of Games of Chance has revoked the license no. 35/2017 issued on 12.10.2017 to the entity Co-Colina L.L.C., the herein claimant. This revocation of the license has entered into force on 10.05.2019* [the day of entry into force of the challenged Law] *and any exercise of the activity of games of chance after this date shall be considered illegal activity and the law enforcement agencies shall act ex officio as required. The court considers that the respondent [Tax Administration of Kosovo] has acted correctly when by the Notification on License Revocation of 03.05.2019 it informed the claimant that pursuant to the provisions of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance, the license no. 35/2017 issued on 12.10.2017 is revoked. This action of the respondent is considered correct by the court because in this case the respondent has had the obligation to implement the Law in question which entered into force on 10.05.2019. The provision of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance provides: By this Law shall be prohibited and closed all games of chance in the entire territory of the Republic of Kosovo. Based on the interpretation of this legal provision, the court finds that the respondent [Tax Administration of Kosovo] has correctly applied the law, and on the other hand the claimant's allegations were not approved by the court, because it considered that they have no bearing as to have established a different factual situation than the one confirmed by the administrative body."*

32. Also, as regards the Applicant's request for having the case referred to the Constitutional Court, the Basic Court in Prishtina has reasoned as follows:

> *"Allegations that the provision of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance has been applied contrary to the specific norms of the Constitution of the Republic of Kosovo, namely Article 46 of the Constitution which guarantees the protection of property and Article 1*

of Protocol 1 of the European Convention on Fundamental Freedoms and the decisions of the European Court on Fundamental Freedoms [ECtHR]. In the administrative conflict procedure, the court cannot provide an assessment regarding the allegations that they are in contradiction with the Law No.06/L-155 on the Prohibition of Gams of Chance, with the norms of the Constitution of the Republic of Kosovo, and other international acts, therefore in its hearing session the court did not approve the proposal of the claimant's authorized representative to have this Court address the Constitutional Court of the Republic of Kosovo, during the administrative proceeding, seeking review of the compatibility of the Law in question with the Constitution of the Republic of Kosovo. "

33. At the end of the above Judgment of the Basic Court in Prishtina, of 12 February 2021 it was stated: "*LEGAL REMEDY: An appeal may be filed with the Court of Appeals in Prishtina against this Judgment, within 60 days upon receipt thereof.The appeal must be submitted through this* "

Applicant's allegations

34. The Applicant alleges that the Law No.06/L-155 has violated its rights protected by Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 to the ECHR.

In relation to the admissibility of the Referral in terms of the right of individuals to directly challenge laws before the Constitutional Court

35. In regard to the admissibility of the Referral, the Applicant states that its Referral should be declared admissible for review on the merits for the fact that it is a direct victim that is affected by the challenged Law and that it's Referral meets all the admissibility criteria.

36. The Applicant states that individuals are entitled to challenge Laws when they are direct victims and that "*Article 49 of the Law* [on the Constitutional Court] *eliminates all doubts about the individual's right to challenge laws under Article 1113 (7) of the Constitution.*" In this connection, the Applicant cites the Article 49 of the Law on the Constitutional Court which states: "*If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.*" This, according to the Applicant, means that "*individuals may challenge a law before the Constitutional Court, as an act of a public authority*" in cases where: (i) individuals prove that they are direct victims of the challenged Law; (ii) there is no other legal remedy to be exhausted; and (iii) on the condition that the Law is challenged within a period of 4 months from its entry into force.

37. In support of his allegations, the Applicant also refers to several decisions of the European Court of Human Rights (hereinafter: the ECtHR), such as: *Tănase v. Moldova* (see, the application no. 7/08, Judgment of the Grand Chamber of the ECtHR, of 27 April 2010, paragraph 104) wherein it is stated: "*it is open to a person to contend that a Law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or if he is a member of a class of people who risk being directly*

affected by the legislation". So, in order to file an application, the Applicant states that individuals are required to prove that they are victims of a violation of their rights under the ECHR.

38. Among other things, the Applicant states that there are cases when not only the laws but also the Constitutions of the member states have been challenged in the ECtHR, even when the complainants were not direct but indirect victims. In relation to this argument, the Applicant refers to the case *Sejdić and Finci v. Bosnia and Herzegovina* (see, the applications no. 27996/06 and 34836/06, Judgment of the Grand Chamber of the ECtHR, of 22 December 2009).

39. The Applicant argues that a Law can be challenged by individuals directly in the Constitutional Court *"taking into consideration the fact that there is no other accessible legal possibility for persons to directly challenge a law that is unconstitutional."* Other possibilities, says the Applicant, which are at the discretion of other institutions, such as the request to address the Ombudsperson for submitting a request to the Constitutional Court or through other courts that themselves do not have the right to annul the law, have been declared ineffective by the ECtHR. In this regard, the Applicant cites the paragraph 122 of the Judgment in the case *Tănase v. Moldova* (cited above) where it is stated that: *"the possibility of lodging a complaint with the Ombudsman, who in turn could challenge the Law before the Constitutional Court, was not an effective remedy because it was not open to the applicant to complain directly to the court."*

40. The Applicant further states that even if it would address the other courts in Kosovo or the Ombudsperson, its request *"would have been at their discretion to address the Constitutional Court or not, according to their conviction."* If they would refuse to send questions to the Constitutional Court, the Applicant would miss the deadline to file the Referral itself. Consequently, according to the Applicant, *"the sole directly accessible legal possibility that has the power to annul an unconstitutional law is the Constitutional Court."*

41. As regards the case law of the Constitutional Court so far, the Applicant has stated that its case *"differs from other cases which the Constitutional Court normally declares inadmissible as actio popularis, since the circumstances of this case are not the same as when individuals have no direct interest in the law which they are challenging."* He argues that all ECtHR standards for having the laws challenged by individuals comply in this case for the fact that the challenged Law *"does not require the issuance of measures for implementation of the Law but prohibits the exercise of the activity of games of chance automatically upon its entry into force."* In this case, the Applicant *"as a company that has been exercising this activity based on a valid license had to modify his conduct, stop the work activity and is a victim of the law by an unprecedented violation of the constitutional right under Article 46 of the Constitution and Article 1 of Protocol 1 to the European Convention."*

42. Based on these arguments, the Applicant proposes that its Referral be declared admissible for review based on its merits.

In relation to the merits of the Referral and allegation for violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR

43. In regard to the merits of the Referral, the Applicant considers that the challenged Law is in contradiction with Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 to the ECHR, as well as contrary to the case law of the ECtHR.

44. The Applicant states that the ECtHR has strictly interpreted what is meant by the concept of "property/possessions" under Article 1 of Protocol No. 1. 1 of the ECHR in the case *Megadat.com SRL v. Moldova* (see, the application no. 21151/04, Judgment of 8 April 2008, paragraph 63). In that case, the Applicant states, the ECtHR had espressed that *"the revocation of a business license clearly amounts to an interference with the right to enjoy property/ possessions" [...].*" Further, the Applicant states that: *"under point 63 of this decision [it is stated] that on the occasion of revocation of licenses, even though the company facilities/properties will remain in your possession after the revocation of the license, the companies cannot use their properties for the purpose of exercising their business activity, and for which they are equipped with a license, and this constitutes a violation/restriction of the right to property, contrary to the European Convention - Protocol 1, as a measure to "control the use of property" which falls under paragraph 2 of Article 1 of Protocol No. 1 to the European Convention."*

45. In the aforementioned case, *Megadat.com SRL v. Moldova*, the Applicant argues that the *"property-possessions" protected by Protocol 1 to the Convention "was restricted" due to the fact that a company providing internet services had been revoked its license by the state authorities."* In that case, the ECtHR *"had found that although the revocation of the license [...] was based on the law (of Moldova), the restriction or acquisition of the license by this company was not proportionate to the purpose of the legal norm".*

46. In this respect, the Applicant argues that according to the case law of the ECtHR it is not disputable that the license constitutes a "property/possessions" and that the same is protected by Article 1 of Protocol No. 1 to the ECHR. In this regard, it cites also other cases of the ECtHR in support of its argument, such as the case: *Bimer SA v. Moldova*, application no. 15084/03, Judgment of 10 July 2007.

47. As regards the fact whether the challenged Law meets the standards established in the above cases of the ECtHR, the Applicant states that it remains to be seen whether the interference made according to the challenged Law can be *"justified by the general interest and whether the principle of proportionality is respected."* According to the Applicant, Article 1 of the challenged Law does not meet any of the mentioned standards since by its very purpose, the Law *"has in an unprecedented manner prohibited all games of chance without reasoning what is in the general interest."*

48. Consequently, according to the Applicant, *"the legitimate justification/ purpose of the interference /restriction of this constitutional right in this case does not exist. It is the opposite that is true."* At this point, the Applicant refers

to the concept paper of the challenged Law where on page 24 of Chapter 4 it is concluded that *"it is in the general interest to allow and regulate by law the games of chance as they are in the interest of Kosovo, as they increase the number of businesses in Kosovo, create jobs, increase direct investments, and promote competition in the market."* This concept paper, according to the Applicant, provides arguments that the games of chance in Kosovo reduce unemployment and increase the overall well-being.

49. In this regard, he argues that the challenged Law prohibits all games of chance, including *"sports betting shops and lotteries, which do not pose any harm or danger to the state or the citizen but only serve for recreational purposes"*. According to him, *"even if there could exist a general interest in restricting games of chance in any way, the total and immediate restriction (by not sparing sports betting shops and companies that have a valid license for a certain time period) of this business activity does not respects the principle of proportionality, as this principle requires that more lenient measures be taken to achieve the purpose of protection of the general interest."* According to the Applicant, this argues that the total and immediate termination of economic activity of games of chance amounts to an interference and restriction of the right to protection of property in contradiction with Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR.

50. The Applicant states that despite the valid license and work permit which it possessed the challenged Law had *"directly, and with immediate effect, without requesting any other measure of implementation, prohibited the games of chance and, de facto, revoked the license to exercise the sports betting activity, thus making illegal any exercise of this activity after its entry into force."*

51. The Applicant also alleges that there is an *"unprecedented arbitrariness"* for the fact that the challenged Law was issued within an *"extremely short period of time, without obtaining the opinion of the stakeholders and contrary to the state document itself - the Concept Paper for the Games of Chance."*

52. Finally, the Applicant requests from the Court to: (i) declare the Referral admissible and (ii) find that Article 1 of the Law [No.06/L-155] on the Prohibition of Games of Chance violates the Constitution and the same to be repealed.

Comments submitted by the Ombudsperson

53. The Ombudsperson requests from the Court to declare the challenged Law as being *"incompatible with the Constitution, in terms of property rights and legal certainty of legal entities."*

54. To support his opinion, the Ombudsman has submitted comments concerning (i) the procedure for drafting the challenged Law; and (ii) legal certainty.

55. As to the procedure for drafting the challenged Law, the Ombudsperson emphasized that there are dilemmas as to whether the procedure has been *"transparent, reasoned and democratic"*. In this respect, he points out some

facts of the procedure for drafting the challenged Law, such as the fact that: on 28 March 2019, was carried out the review and approval in principle by the Functional Committee of the challenged Law, which recommended to the deputies to adopt it; on 28 March 2019 was carried out the first review; on 28 March 2019 the Functional Committee reviewed the amendments to the Draft Law; on 28 March 2019, the Draft Law was reviewed by the other committees in the Assembly; on 28 March 2019, the second reading of the Law took place.

56. In this respect, the Ombudsperson states that it is noticed that the whole procedure of drafting the Draft Law, from its proposal by the Government to its adoption has lasted two days. This procedure of approval raises the questions: *"Whether these procedures have been transparent, reasoned, inclusive and democratic? [....] whether the public had access to the Draft Law [...] if assessments were made regarding the impact of the law, before its adoption, i.e.: its impact on human rights and budgetary implications?"* According to the Ombudsperson, *"the deadline was so short that hardly anyone could have had the opportunity to access the Draft Law, whilst the public input is out of the question."*

57. As rgerds the legal certainty, the Ombudsperson emphasized that in order to meet the criteria of legal certainty, a law must be predictable, sustainable and consistent, and meet the legitimate expectations of legal entities. In this regard, he states that *"The predictability of the law means that the law should not only be proclaimed before its implementation but should also be predictable in terms of its impact, and be formulated in a way as to enable the legal entities to regulate their conduct in accordance with this law. The sustainability and consistency of the law affects the ability of individuals to plan their actions."*

58. The Ombudsperson considers that the challenged Law does not meet the criteria of legal certainty, in particular the legitimate expectations, this *"for the reason that the entities have been operating in compliance with the previous law, have been equipped with work permits, have invested in businesses and their legitimate expectations have been based upon the Law No.04/L-080 on the Games of Chance, now already repealed by the Law No.06/L-155 on Prohibition of the Games of Chance, which has been adopted unpredictably and which does not contain at least any provision which determines a timeframe within which the entities may be able to plan their actions."*

59. In conclusion, the Ombudsperson considers that the Court should declare the challenged Law unconstitutional.

Answers and additional clarifications received from the Applicant

60. As stated in the proceedings before the Court, the latter had requested from the Applicant to answer two questions of the Court which were necessary for the clarification of the case facts.

61. With respect to the questions of the Court, namely: *"In addition to Law No. 06 /L-155 on the Prohibition of Games of Chance, has there been issued any other subsequent act by any public authority implementing the challenged Law that*

has had an effect on your business license/work permit" and *"On what exact date and by which act of which public authority was your business license revoked? So, when and by which act of public authority was your business activity terminated",* the Applicant answered as follows:

"The activity of the company I represent has been directly terminated by Law No.06/L-155 on the Prohibition of Games of Chance, because according to the textual content of the same, it is explicitly provided "By this law shall be prohibited and closed all games of chance in the entire territory of the Republic of Kosovo." Since the Law itself states "By this Law" (it does not state that there should be other acts) the prohibition of our scope of activity was done by the Law that we challenged before the Constitutional Court. Our activity, as well as our license was terminated exactly on 10 May 2019, on the day of entry into force of the Law."

62. Further, the Applicant stated that it was notified by TAK about the adoption of the challenged Law and the fact that its license was revoked according to the challenged Law. However, according to it, *"The TAK has only informed us that as a consequence of the Law that shall enter into force on 10 May 2019, which prohibits and closes all games of chance, the company "CO Colina" is being revoked its license and we are further informed by the TAK about legal consequences in case we do not stop with our activity. [...]"* The notification of TAK, says the Applicant, we have thereafter *"challenged by administrative remedies and by a claim where the last decision that we have received is the one of the Basic Court."*

63. The Applicant further stated that, however, *"we re-emphasize what we have stated in the constitutional complaint that our activity was terminated as a result of the entry into force of the Law which prohibited completely and with immediate effect and has made illegal the conduction of games of chance and the Law does not provide for any measure of implementation by any state authority. The law does not even state the issuance of measures by TAK, as the same law has only 3 Articles. In case the company would continue with the activity, with or without the notification of the TAK, after the 10th of May 2019, when the Law entered into force, it would risk committing criminal offences since this activity has been declared illegal by the Law. The company which I represent could not exercise its activity, as a result of this unconstitutional Law and not as a result of the notification of the TAK. This must be taken into account by the Court. Even the Basic Court in Prishtina, which rejected our claim, has based its Judgment only on the Law on the Prohibition of Games of Chance. The Basic Court did not even find it necessary to refer the case to the Constitutional Court."*

64. Finally, the Applicant also stated that: *"there is no institution other than the Constitutional Court that has the power to annul the Law." Consequently, "The only accessible institution that has the capacity to provide a solution to the case of the company which I represent, to assess and annul the Law [...] that directly affects the complainant, is the Constitutional Court. As we have also stated in the constitutional complaint, the European Court has stated that those legal remedies, which are not directly accessible to the complainant but depend on other authorities (ombudsperson or other courts) are not*

effective and should not be exhausted in order to be entitled to address the institutions such as the Constitutional Court. For this reason we consider that the Constitutional Court should issue a meritorious decision."

Answers and additional clarifications received from the Government

65. As stated in the proceedings before the Court, the latter had asked the Government to answer a question from the Court which was necessary for the clarification of the case facts.

66. On the question of the Court: "*In addition to Law No.06/L-155 on the Prohibition of Games of Chance, has there been issued any other subsequent act by any public authority implementing the challenged Law that has had an effect on revocation of Applicant's business license/work permit*", the Government answered as follows:

"We would like to inform you that no other act has been issued for the implementation of the above Law.
We also would like to inform you that the Draft Law on the Prohibition of Games of Chance was approved at the meeting of the Government of the Republic of Kosovo by decision no.02/95, of 26.03.2019, which is published on the website of the Office of the Prime Minister.
We inform you that during the review in the proceedings of the Assembly, the content of the Draft Law on the Prohibition of Gambling has been amended."

Responses received from the constitutional/supreme courts of the Venice Commission Forum

67. The Swedish Constitutional Court has responded that: "*The Swedish legal system does not provide for independent action to examine whether the national provisions are compatible with the Constitution or other higher-rank rules. There is no Constitutional Court in Sweden and neither the Supreme Court nor the Supreme Administrative Court may declare an act of legislation invalid. Therefore, a law cannot be challenged in the Supreme Court - or in any other court - in this sense. [...] However, the issue of constitutionality can be adjudicated as a preliminary issue in proceedings brought before general courts or administrative courts.*" In regard to the actio popularis applications, they stated that "*actio popularis applications are in principle not allowed in the Swedish legal system. An exception, however, is that every member of a municipality or county ("landsting") is entitled to a review whether a decision issued by the municipality or the District Council is in compliance with the law. It is not required that the matter which concerns the Applicant himself - the right to challenge such a decision is open to any member of the municipality or district.*"

68. The German Constitutional Court responded by indicating its case law in similar cases as follows: "*By filing a constitutional complaint, individuals can challenge all acts of public authority - including laws - before the Federal Courts and allege violations of their fundamental rights or rights equivalent to fundamental rights (§ 90 (1) of the Federal Constitutional Court Act) [...]. As a general rule, however, the statutes [laws] - by their very nature - must*

be executed through decisions taken by public authorities or courts; individuals affected by such decisions must first challenge these decisions before the competent courts, thus exhausting all possible remedies. Generally, in such cases, a constitutional complaint is admissible only after the decision of the court of the last instance. The law must affect the complainant personally, currently and directly. As a general rule, the complainant is personally and currently affected if there is any probability that the law will affect the complainant's fundamental rights. The complainant's rights are directly affected if the challenged law does not require an act of implemetation. In exceptional cases, the constitutional complaint may be filed against a law which has not yet been implemented, e.g. if the legal remedy is not possible or if it would be unreasonable to expect the complainant to address the courts. [...] The Federal Constitutional Court has had various options for deciding on the admissibility requirements for a constitutional complaint challenging a law; the most recent case concerned the automatic recognition of license plates in Länder Baden-Württemberg and Hesse. The admissibility criterion of being personally affected is intended to exclude actio popularis. In Germany, actio popularis is possible only in exceptional cases under regular law - at the level of constitutional complaints actio popularis is inadmissible. In the proceedings of the Federal Constitutional Court, the ECHR and in the case law of the ECtHR are not applied directly, but they are rather used as a guide for the implementation and interpretation of fundamental rights. When submitting a constitutional complaint, complainants must specify the fundamental rights of the Basic Law which they consider to have been violated by the public authority. In the case of the games of chance premises, they alleged violations of Article 12 of the Basic Law. In the end, the constitutional complaint of the games of chance premises was unsuccessful for various reasons - in part, they were inadmissible and in part, they were ungrounded".

69. The Austrian Constitutional Court responded as follows: *"According to Article 140 of the Austrian Constitution, the Constitutional Court has jurisdiction over constitutional complaints filed by individuals alleging violations of their rights by an unconstitutional law, provided that the law becomes immediately effective for the individual, without the issuance of a Judgment of the Court or an administrative decision. This type of constitutional complaint (called "individual application" [Individualantrag] as opposed to requests for constitutional review filed by the courts or political bodies) was introduced following the amendment of the Austrian Constitution in 1975. This amendment entered into force on 1 July 1976 and ever since, hundreds of such constitutional complaints have been filed and decided by the Constitutional Court. A basic requirement for any such complaint is for the law in question to have the Applicant as a target, namely, the Applicant to be the one to whom the law is addressed. In other words, such a complaint cannot be based solely on the "striking effects" that the law can bring. If a business or work permit is revoked (by an administrative decision or directly by law), this can of course affect the fundamental right to property. However, in Austria such an act is regarded primarily as a matter of proportionality or, more precisely, as an interference with the freedom to exercise a business under Article 6 of the Austrian Basic Law of Fundamental Rights of 1867 as wel as Article 16 of the Charter of Fundamental Rights of the European*

Union. For example, in 2016 the Constitutional Court decided that a legal provision that is introduced immediately, without a transitional period, a license requirement for companies conducting the betting business is a disproportionate interference with the right to conduct a business and is therefore unconstitutional (see, the annex, available in German language only, pgs. 993/994)".

70. The Constitutional Court of Brazil stated that *"The Brazilian Constitution of 1988 does not provide for a citizen to challenge a law directly before the Federal Supreme Court. Individual challenging of a law can reach the Supreme Court, however, after having gone through the relevant instances of the Judiciary branch."*

71. The Croatian Constitutional Court responded as follows: *"Yes, an individual may challenge a law or another regulation (namely, proposal for abstract control) in the Constitutional Court. According to Article 38.1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (hereinafter: CACCRC) every natural or legal person is entitled to propose the initiation of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations. In other words, Article 38.1 of the CACCRC allows actio popularis. Natural and legal persons are allowed to submit proposals to the CC if they simply consider that certain laws or other regulations (or a single provision of a law or other regulation) are not in compliance with the Constitution because they are in conflict with certain principles (e.g. rule of law, separation of powers, independence of the judiciary, etc.) or human rights guaranteed by the Constitution. In Croatia, actio popularis proposals for abstract control are allowed (see answers 1 and 2 above), but there is one exception that can be found in the case law of the CC in relation to Article 56 of the CACCRK which provides: (1)The Constitutional Court may review the constitutionality of a law, and the constitutionality and legality of another regulation, or some of their provisions, even though they are no longer in legal force, if no more than a year elapsed between the date they went out of force and the date when the request or proposal to initiate proceedings was lodged. (2) If in its proceedings of review it establishes that the act in paragraph 1 of this Article is not in accordance with the Constitution or the law, the Constitutional Court shall pass a decision declaring the unconstitutionality of the law, or the unconstitutionality and illegality of another regulation, or some of their provisions (3) In the case of paragraph 2 of this Article the provisions of Articles 58 and 59 of this Constitutional Act shall accordingly be applied. In certain cases, by assessing the constitutionality of laws that were no longer in force under Article 56.1 of the CLCCRK, the CC dismissed proposals to initiate a constitutional review of a law by taking into consideration, inter alia, the legal interest of supporters and the general interest (i.e. decision no: UI-2265/2005 of 31 January 2012, decision no: UI-2317/2007 of 15 October 2013, etc.). There is no significant case law of the CC."*

72. The Constitutional Court of Malta stated *"In Malta, any person may challenge a law by alleging that it is unconstitutional and only in cases of human rights does the claimant show a legal interest. These cases were brought before the First Chamber of the Civil Court in its constitutional jurisdiction. The*

complaint is available before the Constitutional Court. In such cases we refer to or have the case law (dating back to 1964 - when our Constitution came into effect) and of course the judgments of the ECtHR."

73. The Constitutional Court of Slovakia stated that *"In the legal system of the Slovak Republic, private persons cannot initiate proceedings in respect of the constitutional compliance of the laws in the Constitutional Court of the Slovak Republic ("Constitutional Court"). Nor can the Constitutional Court initiate these proceedings on the basis of an individual constitutional complaint. The case law of the Constitutional Court is consistent in this regard, without any exceptions up to the present. As to the legal remedies available in cases where laws violate the rights of specific persons, the persons in question may file applications directly with the ECtHR. For example, the ECHR has consistently reiterated that the legal norms governing the maximum amount of rent violate the property right of the affected owners (see, for example the case Riedel and others v. Slovakia). In relation to 'licence' cases, in the case ref. no. PL. US 49/03, the Constitutional Court assessed the constitutional compliance of the law governing the conditions for the performance of the duty of the enforcement agent".*

74. The Council of State in the Netherlands in its responses stated, inter alia: *"No, in order to lodge a complaint with the Council of State or any other court there must be an individual measure of implementation/the rights of an individual must be directly affected. If not, there can be no complaint. To answer this question, a distinction must be made between the laws adopted directly by the parliament (wetin formele zin) and the delegated legislation. The Laws adopted by the parliament: Article 120 of the Dutch Constitution provides that the constitutionality of Acts of Parliament and treaties are not reviewed by the courts. The idea behind this is that the lawmaker is the authority that interpretes the Constitution. However, Article 94 of the Dutch Constitution provides that laws passed by parliament are not enforceable if they are in conflict with a directly applicable provision of an international treaty (for example the ECHR). The Delegated legislation: Courts may consider whether the delegated legislation complies with any higher form of legislation (for example a law adopted by the parliament, the Constitution). Article 94 of the Constitution is also applicable. In a case where fishermen were partially removed their fishing licenses (they were allowed to fish 85% less than in previous years) the Council of State decided that there was an interference with Article 1 of Protocol 1. The interference was considered proportionate. In a case where a parliamentary law prohibited the breeding of animals for their wool, cultivators of wool argued that the law affected their civil rights. They argued that the law violated Article 1 of Protocol No. 1 because it forced them to discontinue their businesses. The Supreme Court of the Netherlands (Hoge Raad) ruled that there was a proportionate interference with Article 1 of Protocol 1 (Supreme Court, 16-12-2016, ECLI: NL: HR: 2016: 2888)".*

75. The Constitutional Court of the Czech Republic stated: *"No, this scenario is not possible in the Czech Republic. According to Article 72 (1) a) of the Law on the Constitutional Court "if a natural or legal person claims that his/her fundamental rights and fundamental freedoms guaranteed by the*

constitutional order have been violated as a result of a final decision in a proceeding to which he/she was a party, a measure or other violation by a public authority (hereinafter "action by a public authority"). Individuals can raise the issue of the unconstitutionality of a law within their legal action before the regular courts, i.e. an administrative action against an authority. The regular courts are authorized to file a request with the Constitutional Court by proposing the annulment of a law under Article 64 of the Law. Individuals can also lobby to other entities that are entitled to appear before the Constitutional Court for these purposes under Article 64 of the Law. Once individuals reach the Constitutional Court with their constitutional complaint, they, too, can propose the annulment of a law. This issue is usually not reviewed. The Constitutional Court examines whether the final decision in a proceeding to which the individual was a party interfered with his/her rights. Or if the law violates the constitutional order in abstract assessment. [...] actio popularis not allowed".

76. The Supreme Court of Mexico stated that: *"According to Article 107 of the Mexican Constitution, individuals may submit a constitutional protection remedy called" Amparo ". The ultimate goal of Amparos is to determine the existence of any violation of constitutional provisions or fundamental rights. Moreover, the Amparo Law (which determines the specific rules of the remedy referred to in the Constitution), in Article 107, part I, recognizes the use of Amparo against the law even in the absence of an individual measure of implementation (something known in the Mexican legal terminology as indirect Amparo). It must be noted that - as stated in the first response - the norms may be challenged either by their first implementing act or by its sole entry into force. Consequently, when a person disputes a norm because of its first implementation act, he must also prove the existence of the act and how it affects him. On the other hand, when a person disputes the norm only because its entry into force, he must prove that the effects of the norm affect him without being implemented. The first is called by the Supreme Court of Mexico as unconditional individualization. [...] However, the fact that a rule affects the complainant's rights does not mean that it is invalid. To declare the invalidity of a law, the impact on the right must be disproportionate in relation to the purpose which is intended to be achieved. [...] In Mexico there is no actio popularis, understood as a process where every person can fight any norm without demonstrating either a legal or legitimate interest. As explained above, Amparo - which is the procedure through which individuals may challenge a law - requires the demonstration of a legal or legitimate interest. There are no exceptions to that rule."*

77. The Liechtenstein Court stated that: *"In principle, individuals cannot challenge a law in the Constitutional Court. However, Secton 15 (3) of the Law on the Constitutional Court (Staatsgerichtshofgesetz; StGHG) provides as follows: Moreover, the Constitutional Court shall decide on complaint to the extent that the complainant alleges an immediate violation by a law, ordinance or international treaty, of one of his/her rights guaranteed by the Constitution or one of his/her rights guaranteed by international conventions, for which the lawmaker has clearly recognized an individual right of complaint (paragraph 2), and the legal provisions in question has become effective for the complainant without obtaining a decision or order*

from a public authority. [...] Even if the law directly affects the individual without any other measure of implementation, an individual complaint under section 15 (3) StGHG is solely an assisting legal remedy. This means that if the remedy in the regular courts is possible and within reason, a complainant must exhaust those remedies first and thereafter file a regular constitutional complaint with the Constitutional Court. There are no guiding principles whether a law affects an individual, which means that the Constitutional Court uses the specific reasoning of the case. Usually, it is clear from the outset whether a law affects an individual or not. The same applies to the question of whether the impact by the law includes influence on one's fundamental rights."

78. The Constitutional Tribunal of Poland stated that: *"Pursuant to Article 79 (1) of the Constitution, in accordance with principles specified by statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution. [...] What follows from the above is that the constitutional complaint in the Polish legal system differs from actio popularis – namely it does not provide for the right to challenge any normative act, the implementation of which - in the complainant's view - violates the constitutional provisions, but requires the existence of a link between the application of the regulations that constitute the subject of the complaint and the individual situation of the complainant. The complainant must indicate a final determination which, in his/her opinion, resulted in the violation of constitutional rights or freedoms in his/her particular case, as well as the complainant is required to exhaust all legal remedies."*

Provisions of the challenged Law

Law No. 06/L-155 on the Prohibition of Games of Chance

Article 1
Purpose

By this Law shall be prohibited and closed all games of chance in the entire territory of the Republic of Kosovo.

Article 2
Abrogation

By this law, the Law no. 04/L-080 on Games of Chance and sub-legal acts issued for its implementation shall be abrogated.

Article 3
Entry into force

This law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Assessment of the admissibility of Referral

79. 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.

80. In this respect, the Court refers to the following relevant provisions, on the basis of which it shall decide regarding the admissibility of the present case :

Article 21 [General Principles] of the Constitution, paragraph 4

[...]

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

Article 113 [Jurisdiction and Authorized Parties] of the Constitution, paragraphs 1 and 7

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

[...]

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

Article 47 [individual Requests] of the Law

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 49 [Deadlines] of the Law

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

Rule 39 [Admissibility Criteria] of the Rules of Procedure, points (1) (a) and (b)

(1) The Court may consider a referral as admissible if:

(a) the referral is filed by an authorized party;
(b) *all effective remedies that are available under the law against the judgment or decision challenged have been exhausted;[...]*

Rule 76 [Referral pursuant to Article 113.7 of the Constitution and Articles 46, 47, 48 and 50 of the Law] of the Rules of Procedure

(1) A referral filed under this Rule must fulfill the criteria established under Article 113.7 of the Constitution and Articles 46, 47, 48, 49 and 50 of the Law.
(2) A referral under this Rule must accurately clarify what rights and freedoms claimed to have been violated and what concrete act of public authority is subject to challenge.
(3) If the Court determines that the challenged decision was rendered in violation of the Constitution, it shall declare such decision void and may remand the decision to the issuing authority for reconsideration in conformity with the Judgment of the Court.
(4) The referral under this Rule must be filed within four (4) months starting from the day upon which the claimant has been served with a challenged decision.

81. Based on the aforementioned provisions, the Court will next examine the fulfillment of the criterion of "exhaustion of legal remedies" in the light of the circumstances of the present case.

82. The Court first recalls that the Referral was filed by a legal person, namely the business company "CO Colina", which requests the constitutional review of Article 1 of Law No. 06/L-155 on the Prohibition of Games of Chance. The Applicant has submitted its Referral based on Article 113.7 of the Constitution.

83. The Applicant, in essence, alleges that it is a direct victim of the challenged Law because despite the valid license and work permit which it had possessed *"The Law has directly, and with immediate effect, without requiring any other measure of implementation, prohibited the games of chance and, de facto, revoked the license for conducting the activity of sports betting, thus making illegal any exercise of this activity after its entry into force".*

84. In his final petitum, the Applicant requested from the Court to: (i) declare its Referral admissible for review based on the merits because individuals are authorized parties to challenge a law in the Constitutional Court and that the Referral meets all other admissibility criteria, including that of exhaustion of legal remedies as justified by the Applicant; and, having assessed the merits, (ii) to repeal the challenged Law because Article 1 thereof is contrary to Article 46 of the Constitution in conjunction with Article 1 of Protocol No.1 of the ECHR.

85. In this connection, the Court initially notes that at the time of submission of its Referral to the Court on 28 August 2019, the Applicant stated that there is no measure of implementation issued based on the challenged Law and that it has no legal remedy at its disposal which could address the violations alleged by it.

86. However, the Court notes that in his initial Referral, the Applicant had not notified the Court about any other proceedings which it had initiated in respect of its case. The Applicant had not submitted to the Court the Notification no. ATK/ DLF07/18-2019 of the Tax Administration of Kosovo of 3 May 2019 nor his complaint submitted against this Notification to this public authority, which had thereupon taken the Decision No.238/2019 on 4 July 2019, at the level of the second administrative instance.

87. Moreover, the Court notes that before submitting his Referral to the Court the Applicant had also filed a claim for administrative conflict with the Basic Court in Prishtina on 5 August 2019, respectively several weeks prior to submitting its Referral to the Constitutional Court, against the Tax Administration of Kosovo (see the part of the facts reflected in the present Resolution). The Court was notified about all these facts only after its request for additional clarifications addressed to the Applicant on 22 February 2021 (see the part of the proceedings before the Constitutional Court reflected in this Resolution).

88. In this respect, the Court finds that the Applicant's allegation that there is no act, decision or measure of implementation that has been issued based on the challenged Law-is an inacurrate allegation that has not been substantiated by him. This is due to the fact that pursuant to the provisions of the challenged Law, the relevant public authorities, more specifically the Tax Administration of Kosovo, has reacted and undertaken measures to terminate the Applicant's license and work permit which it had obtained under the previous applicable legislation on the games of chance in the Republic of Kosovo. Based on this it results that the Applicant has failed to prove that there has been an interference with his rights and freedoms without any subsequent measure of implementation.

89. In this regard, the Court notes that in relation to the Applicant's case, the Tax Administration of Kosovo has issued *"acts, decisions or measures of implementation"* which have served for the implementation of the challenged Law. The Acts issued [the Notification no. ATK/DLF07/18-2019 of 3 May 2019 and the Decision no. 238/2019 of 4 July 2019] by the Tax Administration of Kosovo, the Applicant has had the legal opportunity to challenge in an administrative procedure before the regular courts, as he has also done.

90. Based on the supplemented case file, the Court notes that the Applicant has used such an opportunity despite the fact that in his initial Referral he claimed that there was no legal remedy available to pursue the realization of its constitutional rights.

91. As it can be seen from the facts of the case, the claim for administrative conflict initiated by the Applicant against the Decision [no.238/2019] of the Tax Administration of Kosovo in the Basic Court in Prishtina on 5 August 2019 - is a judicial process which is already under an ongoing a review. The Basic Court in Prishtina has reviewed the claim in question and decided to reject it as ungrounded on 12 February 2021. On the basis of the legal advice in the decision of the Basic Court but also of the provisions of the applicable legislation, the Applicant has had sixty (60) days to file an appeal with the Court of Appeals. The Court has no information whether the Applicant has

used this legal remedy or not, by implying the fact that it is entirely up to the Applicant to decide whether he wants to pursue this case further or no.

92. Moreover, the Court also notes that the Applicant has requested from the regular courts to refer the issue of the constitutionality of the law to the Constitutional Court based on Article 113.8 of the Constitution. Also, this issue may potentially be a part of the future decision-making of the regular judiciary and therefore the Court should refrain from any prior declaration regarding this aspect at this stage in order to not prejudice further developments in respect of this matter.

93. In the light of the foregoing and as long as various issues related to this case may still be pending before the regular courts and as long as the Applicant still has available legal remedies to pursue the realization of his rights, the Constitutional Court, based on the principle of subsidiarity, does not consider it reasonable to interfere with this matter.

94. The Court constantly respects the principle of subsidiarity, by considering that all Applicants should exhaust all procedural possibilities in the proceedings before the regular courts, in order to prevent a violation of the Constitution or, if any, to rectify the violation of such a fundamental right guaranteed by the Constitution.

95. As it has been consistently emphasized by the Court through its case law, the purpose and the resoning of the obligation to exhaust the legal remedies or the rule of exhaustion is to provide the relevant authorities, primarily the regular courts, with an opportunity to prevent or to rectify the alleged violations of the Constitution. It is based on the assumption reflected in Article 32 [Right to Legal Remedies] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR that the legal order of the Republic of Kosovo provides an effective remedy for protection of the rights and fundamental freedoms guaranteed by the Constitution. This is an important aspect of the subsidiary character of the constitutional justice machinery. (See, in this context, the cases of the ECtHR: *Selmouni v. France*, application no. 25803/94, Judgment of 28 July 1999, paragraph 74; and, inter alia, see also the case of the Court KI147/18, Applicant *Arbër Hadri*, Resolution on Inadmissibility of 11 October 2019, paragraph 42 and the references used therein).

96. In the end, the Court finds that in the circumstances of the present case there have existed measures of implementation for which it could have complained about in order to realize its rights and freedoms which the Applicant alleges to have been violated. Given that he has complained against those measures in the regular court proceedings, the present Referral is considered premature and must be rejected as inadmissible pursuant to Article 113.7 of the Constitution, Articles 47 and 49 of the Law and Rule 39 (1) (b) of the Rules of Procedure.

97. Finally, there must also be clarified the fact that in no way does the Court prejudice neither the constitutionality of the challenged Law nor the constitutionality of the application of that Law in the circumstances of the Applicant's case. In this case, the Court did not deal with such assessments but

has limited itself to the level of procedural assessment of the conditions of admissibility.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 21.4, 113.1 and 113.7 of the Constitution, Articles 20, 47 and 49 of the Law and Rule 39 (1) (b) of the Rules of Procedure, in the sesion held on 28 April 2021, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

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

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Nexhmi Rexhepi

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.