



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

Prishtina, on 1 November 2021  
Ref. no.:AGJ1881/21

## JUDGMENT

in

**case no. KI01/21**

Applicant

**Ajshe Aliu**

**Constitutional review  
of Judgment ARJ-UZVP. no. 37/2020 of the Supreme Court of Kosovo,  
of 11 June 2020**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

#### **Applicant**

1. The Referral is submitted by Ajshe Aliu, who is represented by Artan Qerkini and Florin Vërtopi, lawyers in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Judgment [ARJ-UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [AA. no. 178/2019] of 15 May 2020, of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [A. no. 651/16] of 25 January 2019, of the Basic Court in Prishtina, Department for Administrative Matters (hereinafter: the Basic Court).
3. The Applicant was served with the challenged Judgment of the Supreme Court on 18 November 2020.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates 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), and Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR); Article 8 (Right to respect for private and family life) of the ECHR; and Article 7 [no title] of the Convention on the Rights of the Child.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 5 January 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral.
7. On 18 January 2021, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.
8. On 2 February 2021, the Court notified the legal representatives of the Applicant about the registration of the Referral and also requested them to submit valid power of attorney for representation before the Constitutional Court.
9. On 16 February 2021, the Court received the requested power of attorney for representation.

10. On 18 February 2021, the Court sent a copy of the Referral to the Supreme Court, and on the same date requested the Basic Court to submit the acknowledgment of receipt, which proves the date when the Applicant was served with the challenged Judgment of the Supreme Court.
11. On 19 February 2021, the Basic Court submitted to the Court the complete case file.
12. On 4 March 2021, the Court returned the case file to the Basic Court.
13. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi on 26 June 2021.
14. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court.
15. On 31 May 2021, the President of the Court Arta Rama-Hajrizi, by Decision No. KK160/21 determined that Judge Gresa Caka-Nimani be appointed as Presiding in the Review Panels in cases where she was appointed as member of Panels, including the present case.
16. On 1 June 2021, the President of the Court Arta Rama-Hajrizi, by Decision No. KI01/21, appointed Judge Radomir Laban as Judge Rapporteur instead of Judge Gresa Caka-Nimani.
17. On 8 June 2021, the President of the Court Arta Rama-Hajrizi rendered Decision No. K.SH.KI 01/21, on appointment of Judge Gresa Caka-Nimani replacing Judge Radomir Laban as a member of the Review Panel.
18. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court of 17 May 2021, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.
19. On 7 October 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court unanimously decided that the Applicant's Referral is admissible and that Judgment [ARJ-UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court: (i) is in compliance with Article 36 of the Constitution, in conjunction with Article 8 of the ECHR; and

(ii) is in compliance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

### Summary of facts

20. On 1 March 2016, the Applicant submitted a request to the Center for Social Work within the Directorate for Health and Social Welfare of the Municipality of Prishtina (hereinafter: the Center for Social Work) entitled "Request for notification of an adult child about his biological mother") by which she requested that her biological adult child, whom he had given for adoption in 1989, be notified: (i) in connection with the existence of his biological mother; and (ii) her interest to notify him.
21. The Applicant, by her request, expressly asked the following "[...], we ask you, as the competent body to which this matter is to be addressed, to take the necessary steps to inform the adult child, once named [X.X], about the existence of his biological mother, and to inform him about the interest of the latter to meet him".  
*"1. Therefore, taking into account all the arguments and facts provided above, we ask you, after reviewing the latter, to notify the adult in question about the adoption with the notes described above, in this submission, regarding the legal rights that belong to him, whether under our legislation or international law, so that he can decide whether he wants to exercise the right to contact his biological mother.  
[...]."*
22. The Applicant based her Referral on Article 194 [Principles] paragraph 2 of Law no. 2004/32 on the Family of Kosovo (hereinafter: Family Law), Article 8 of the ECHR and Article 22 [Access to and Disclosure of Information] of the Council of Europe Convention on the Adoption of Children, as amended and adopted on 27 November 2008 (hereinafter: the Convention on Adoption).
23. On 7 March 2016, the Center for Social Work by letter [Protocol no.: 05 / 55-128] to the request, dated 1 March 2016, of the Applicant, responded as follows: *"Based on the legislation in force, the Custodian Body at the CSW [Center for Social Work] has no legal support and no legal obligation to inform the adopted child about the biological family, under any circumstances, as this right is reserved exclusively for the abandoned child, regardless of whether or not the biological parents are known, as long as the biological child does not submit a written request for meeting the biological parent (s). In this case, the request submitted by the biological mother which in accordance with the above provisions [Article 194 of the Law on Family of Kosovo and Article 17 [After the establishment of adoption], paragraph 3 and Article 18 [Other provisions] paragraph 2 of the Administrative Instruction (MLSW) no. 09/2014 for regulation of adoption procedures for children without parental care] prevents the custodian body - CSW from providing information about the child. The exclusive right to search for the biological parent (s) belongs to the child"*.
24. On 11 March 2016, the Applicant submitted a request to the Center for Social Work for reconsideration of the response, dated 7 March 2016, of the Center



for Social Work. The Applicant in her request for reconsideration of the above Response specified that *"her request was not about informing [her] about the data and circumstances of the adoption, but was about the request and obligation that [the Center for Social Work] has to inform the adult child about his adoption"*.

25. On 17 March 2016, the Center for Social Work, by its letter [05/55-141] addressed the Applicant's request to the Department for Social and Family Policy in the Ministry of Labor and Social Welfare [hereinafter: MLSW Department].
26. On 25 March 2016, the Commission for Review and Settlement of Complaints in the second instance within the Department of MLSW (hereinafter: the Complaints Commission of MLSW), by Decision [DPSF no. 521] rejected the Applicant's request for reconsideration of the response of the Center for Social Work, of 11 March 2016 as ungrounded. The Appeals Commission, in its Decision, referring to paragraph 1 of Article 194 of the Law on Family and paragraph 3 of Article 17, and paragraph 1 of Article 18 of the Administrative Instruction (MLSW) no. 09/2014 on the regulation of adoption procedures of children without parental care (hereinafter: Administrative Instruction of MLSW) concluded that *"[Center for Social Work] has no legal support and legal obligation to inform the adopted child about the biological family as long as the biological child does not submit a written request for recognition of the biological parents. The exclusive right to search for the biological parent (s) belongs to the child"*.
27. On 29 April 2016, the Applicant filed a lawsuit with the Basic Court for an administrative dispute, requesting that: (i) her lawsuit be approved; (ii) annul the Decision of 25 March 2016 of the MLSW Complaints Commission, and (iii) oblige the MLSW Department to inform the child about his rights deriving from Article 194, paragraph 2 of the Law on Family and Article 18, paragraph 1 of the MLSW Administrative Instruction.
28. On 7 May 2018, the State Attorney at the Ministry of Justice, in his capacity as the representative of the MLSW Department, as a respondent in the procedure, submitted a response to the Applicant's lawsuit requesting that the Applicant's lawsuit be dismissed as ungrounded. The reasoning of the response to the lawsuit was based on the legal provisions in force, according to which MLSW in its capacity as a respondent stated that; (ii) the exclusive right to information belongs to the adopted child; and (iii) The Center for Social Work is obliged to maintain the confidentiality and privacy of the child throughout the adoption process and after adoption and in no circumstances should it provide documentation or information from the child's file, except to competent officials in the CSW, DSWF and court.
29. On 25 January 2019, the Basic Court by Judgment [A. no. 651/16] rejected the Applicant's lawsuit as ungrounded.
30. The Basic Court, in its Judgment, initially referred to Article 194 of the Family Law, paragraph 3 of Article 17 and paragraphs 1 and 2 of Article 18 of the MLSW Administrative Instruction, Article 8 of the ECHR, Article 7 of the

Convention on the Rights of the Child and Article 22 of the European Convention on the Adoption of the Child. Based on the above provisions and the evidence administered, the Basic Court found that: “[...] *the data of the adoptee must be stored throughout and after the adoption process, and the CSW [Center for Social Work], has the duty to disclose them only in the case before and as required by law, and in case the applicant is the adult adoptee, which means that the right of access to them, which cannot be denied by anyone, has the adult adoptee*”.

31. Following the latter, the Basic Court concluded that the MLSW Complaints Commission, based on the complete and correct determination of the factual situation, has correctly applied the provisions of procedural and substantive law.
32. On 6 February 2019, against the above Judgment of the Basic Court, the Applicant filed an appeal with the Court of Appeals on the grounds of: (i) erroneous application of substantive law; and (ii) essential violation of the provisions of the Law on Contested Procedure (hereinafter: LCP). In her complaint, the Applicant, in terms of the allegation of essential violation of the provisions of the LCP, specified, *inter alia* that: (i) she has never requested that she be granted access to the documentation of the adoption of her biological child, being aware that in this regard she would have encountered legal obstacles set out in Article 194 of the Family Law but that he had requested that “*her biological child be informed about the circumstances of the adoption, so that he if he wishes to have the opportunity, as provided in Article 194 of the Family Law, to be informed about the fact who is his biological mother*”; (ii) the Basic Court did not provide a reason why the Center for Social Work is forbidden to notify her biological child “*that he has been adopted into the adoptive family*”; (iii) reiterates the fact that “*blood gender is a marital barrier, while potentially the claimant’s biological child, already adopted, may marry the claimant’s biological children, who were born in her existing marriage*”; (iv) the Basic Court did not reason why in her case Article 7 of the Convention on the Rights of the Child does not apply; and (v) the challenged Judgment does not meet the standards of a reasoned judicial decision, as guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
33. On 15 May 2020, the Court of Appeals by Judgment [AA. no. 178/2019] rejected the Applicant’s appeal as ungrounded.
34. In the context of the latter, the Court of Appeals found that: (i) there is no legal support and legal obligation for the Center for Social Work to notify the already adopted adult child about his biological mother as long as he has not filed a request to know about his biological parents; and (ii) “[...] *the adoption data and its circumstances should not be disclosed or investigated without the consent of the adopter and the child unless otherwise required by special reasons of public interest. In the present case we have no special circumstances of public interest and that such a request is admissible only to the adoptee and not to his biological parents.*” The Court of Appeals, in relation to the Applicant’s allegation of erroneous interpretation of Article 194 of the Family Law, emphasizes the content of paragraph 2 of the same Article,

reasoning under this provision, the right to file a request for knowing his biological parents has only the adult adoptee. Consequently, the Court of Appeals concluded that the Basic Court, on the basis of a complete and correct determination of the factual situation, correctly applied the provisions of the procedural and substantive law.

35. On an unspecified date, the Applicant filed a request with the Supreme Court for an extraordinary review of the court decision, namely Judgment [AA. no. 178/2019] of 15 May 2020, of the Court of Appeals on the grounds of: (i) erroneous application of substantive law; and (ii) essential violation of the provisions of the LCP, with a request that: (i) her lawsuit be approved as grounded; (ii) annul the Decision of 25 March 2016 of the MLSW Complaints Commission; and (iii) oblige the MLSW Department and the Center for Social Work to inform the child about his rights deriving from Article 194, paragraph 2 of the Family Law and Article 18, paragraph 1 of the MLSW Administrative Instruction .
36. First, with regard to her allegation of erroneous application of substantive law, the Applicant, referring to paragraph 1 of Article 194 of the Family Law, states that: *“It is the duty of the custodian body, in addition to the advice, to inform and instruct the adoptive parents as well as the children of this age that, as soon as the child reaches the age of 18, he acquires the legal right to see the adoption data, including the data for the biological parents. According to her “then it is only the exclusive right of the adoptee whether he wants to know and contact his biological parents”.*
37. Secondly, the Applicant in her request also referred to paragraph 5 of Article 22 of the European Convention on the Adoption of the Child, paragraph 1 of Article 7 of the Convention on the Rights of the Child, and Article 8 of the ECHR. In regard to the latter, the Applicant did not provide any relevant reasoning as to how her specific request is supported by the provisions of Article 22 of the European Convention on the Adoption of the Child and paragraph 1 of Article 7 of the Convention on the Rights of the Child, however with regards to Article 8 of the ECHR she referred to the case law of the European Court of Human Rights (hereinafter: the ECHR), namely the cases *Odièvre v. France* (Judgment, of 13 February 2003); *Gaskin v. the United Kingdom* (Judgment of 7 July 1989); *Mikulić v. Croatia* (Judgment of 7 February 2002); *Jäägi v. Switzerland* (Judgment of 13 July 2006) and *Phinikaridou v. Cyprus* (Judgment of 20 December 2007). With regard to the latter, the Applicant stated that: *“in all cases of the Court [ECHR], the right of the child, and the right of knowing the origin, in one form or another takes precedence over the interests of third parties, and where they have previously signed confidentiality clauses. This means that in an own interpretation of these cases with the situation in question, given the fact that the only parties who oppose the provision of information to their adult child in this case are the adoptive parents, it can be concluded that: the adoptive parents have no right to deprive their adopted child from raising awareness of the rights of the child under Article 194 of the Family Law of Kosovo, or under Article 8 of the European Convention on Human Rights”.*

38. Third, the Applicant alleged that the Judgment of the Court of Appeals lacks the reasoning for the court decision. In this context, the Applicant stated that the Court of Appeals has approved in entirety the positions of the Basic Court, but has not addressed her appealing allegations raised before this court.
39. Finally, the Applicant stated that she did not request that she personally have access to her biological child's adoption documentation, but requested that her biological child be informed about the fact of his adoption, in order that he has the right to decide if he wants to know his biological mother.
40. On 11 June 2020, the Supreme Court by Judgment [ARJ-UZVP. No. 37/2020] rejected the Applicant's request for extraordinary review of the court decision as ungrounded.
41. The Supreme Court emphasized: (i) paragraphs 1 and 2 of Article 194 of the Family Law; and (ii) in paragraphs 1 and 2 of Article 17, and paragraphs 1 and 2 of Article 18 of the MLSW Administrative Instruction, reasoning that the Center for Social Work is obliged to maintain the confidentiality and privacy of the child throughout the adoption process and after it.
42. Based on the above, the Supreme Court interpreted the abovementioned provisions as follows: (i) *pursuant to Article 194 paragraphs 1 and 2 of the Family Law the facts which could reveal the existence and circumstances of the adoption of the child may not be discovered or investigated without the consent of the adopter and the child, unless this is required for special reasons and is in the public interest. Upon reaching the age of majority, the adoptee acquires the right of access to all information related to his adoption and at his request personal information about his biological parents will be provided;* (ii) *in accordance with Article 17, paragraphs 1 and 2 of the MLSW Administrative Instruction, the competent CSW is obliged to maintain the confidentiality and privacy of the child throughout the adoption process, and in no circumstance should provide the documentation from the file of the child, except for competent officials from the CSW, DSWF (MLSW) and the court;* (iii) *based on Article 18 paragraph 1 of the MLSW Administrative Instruction, responsible for data protection and privacy of information collected during the adoption process, are responsible: the Basic Court where the adoption was made and the Custodian Body competent for protection of the child. While in paragraph 2 of the same article it is determined that the adoptee in adulthood has the right to all information related to his adoption and at his request, he will be provided personal information about his biological parents.*
43. In the context of the above, the Supreme Court held "[...] that is, the biological mother of the adopted child has no legal basis to inform the adopted child about his biological mother until the adopted child submits a written request to know his biological parents", reasoning that this right belongs only to the adopted child.
44. The Supreme Court further found that: (i) the facts and circumstances of the adoption should not be disclosed or investigated without the consent of the adopter and the child; and (ii) in the present case there are no "public benefit



*interests and such a request is approved only if submitted by the adoptee and not by his biological parents”.*

45. Finally, the Supreme Court, addressing the Applicant’s allegation of lack of a reasoned court decision, found that the reasoning given in the Judgment of the Court of Appeals is clear and understandable, namely it contains sufficient reasoning in relation to the decisive facts, which are accepted by this court as well, and concluded that the substantive law has been correctly applied and the law has not been violated to the detriment of the Applicant.

### **Applicant’s allegations**

46. The Applicant alleges that the Judgment [ARJ-UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court was rendered in violation of her 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 and Article 10 [no title] of the UDHR; Article 8 (Right to respect for private and family life) of the ECHR, as well as Article 7 of the Convention on the Rights of the Child.
47. The Applicant initially refers to the issue of direct implementation of international agreements and instruments directly applicable in the Republic of Kosovo under Article 22 of the Constitution, namely the UDHR, the ECHR and the Convention on the Rights of the Child.
48. In the following, the Applicant in her Referral refers to paragraph 2 of Article 194 of the Law on Family, and Articles 1 and 12 of the Law on Social and Family Services.
49. In relation to paragraph 2 of Article 194 of the Family Law, the Applicant refers to the “Commentary on the Family Law” [authors: *Haxhi Gashi, Abdullah Aliu and Adem Vokshi*, published in 2012, page 144. Commentary on in relation to paragraph 2 of Article 194 contains the following: *“Paragraph 2 provides for the possibility that the adopted child after reaching the age of majority has the right to access or otherwise disclose data related to adoption. He can get acquainted with the entire adoption procedure, documents or data related to him and the adoptive family, but also with other data related to other participants in the adoption procedure. Another important aspect envisaged in this paragraph is the right of the child to be informed about the data relating to his or her biological family. So, the child is recognized another personal right, but also a natural right to have information and to find out who was his biological family, namely biological parents and other data related to biological parent”.*
50. In the context of the latter, the Applicant states that: *“[...] in the legal system, access to data related to his adoption applies to a child who has reached the age of 18 years. In fact, it is the duty of the custodian body, in addition to the advice, to inform and instruct the adoptive parents as well as the children of this age that, as soon as the child reaches the age of 18, he acquires the legal right to see the adoption data, including personal data for biological parents.*

*Then, it is only the exclusive right of the adoptee whether he wants to know and contact his biological parents”.*

*Regarding the allegation of a violation of Article 31 in conjunction with Article 6 of the ECHR*

51. The Applicant substantiates her allegation of a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, with a lack of reasoning of the challenged Judgment of the Supreme Court. The Applicant relates the alleged violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, to the violation of Article 10 of the UDHR.
52. In the context of this allegation, the Applicant alleges that her request raised before the court instances was misunderstood because she did not request that she personally have access to her biological child adoption documentation, but requested that her child be informed about the fact of his adoption, so that he has the right to decide *“whether or not he wants to know his biological mother”*. In the following, the Applicant specifies that this basic request filed in her lawsuit before the Basic Court has not been addressed by the regular courts.
53. In this regard, the Applicant states that *“The Supreme Court has not addressed the substance of the request. The Applicant in none of the instances of the regular courts has received a response to her request as to why the Respondent (Ministry of Labor and Social Welfare/Municipality of Prishtina) has no competence to notify her biological child that he is adopted and that he has the right under Article 194 of the Family Law to be aware of his biological mother. No right, including the right of access to the adoption documentation by the child, can be exercised if it is not known to its potential user”*.
54. Subsequently, the Applicant specifies that: *“as a result of [misunderstanding] of [her] claim, she was denied the right to have a reasoned court decision, because failure to address the claims filed in the lawsuit made the court decision unreasoned. This is due to the fact that the court decision must address the requests of the party to the proceedings in such a way that if her requests are rejected she be aware of the reasons for this rejection. The court decision that does not address the basic claim of the lawsuit cannot have the features of a reasoned court decision, because even in theory it cannot give reasons for the decisive facts”*.
55. In the context of this allegation, the Applicant underlines that the principle of reasoning of court decisions has been affirmed through the case law of the Court, and in this connection refers to the case KI72/12 Applicant Veton Berisha, Judgment of 17 December 2012.
56. In addition, the Applicant also states that the regular courts have never given reasons why the provisions of the Law on Social and Family Services are not applicable.



*Regarding the allegation of violation of Article 8 of the ECHR*

57. In the context of this allegation, the Applicant first refers to and cites the content of Article 22, paragraph 5 of the Convention on Adoption and Article 7 of the Convention on the Rights of the Child. According to the Applicant, these provisions clearly state *"the importance of knowing the origin and identity, and in the way they are compiled, consider that the right to know origin is implied"* and further underlines that *"the international practice has shown that knowing the origin is considered to be an integral part of the rights deriving from Article 8 of the [ECHR]"*.
58. The Applicant supports her reasoning for allegation of violation of Article 8 of the ECHR by referring to and providing a brief summary of the ECtHR cases, namely: *Odièvre v. France* (Judgment of 13 February 2003); *Anayo v. Germany* (Judgment of 21 December 2010); *Gaskin v. The United Kingdom* (Judgment of 7 July 1989); *Mikulić v. Croatia* (Judgment of 7 February 2002); *Jäägi v. Switzerland* (Judgment of 13 July 2006); and *Phinikaridou v. Cyprus* (Judgment of 20 December 2007) providing a summary of the ECtHR findings in these cases.
59. Subsequently, the Applicant states that in all cases of the ECtHR *"the right of the child, and the right to know the origin, in one form or another, takes precedence over the interests of third parties, even when they have previously signed confidentiality clauses. This means that, an own interpretation of these cases with the situation in question, given the fact that the only parties who oppose the provision of information to their adult child in this case are the adoptive parents, we can conclude that: adoptive parents have no right to deprive the child adopted from the notification of the rights of the child under Article 194 of the Family Law of Kosovo, or under Article 8 of the European Convention on Human Rights"*.
60. Finally, the Applicant specifies that *"[...] any other interests that the adoptive parents may have in not informing the adult child have no legal basis to refrain from this information. Furthermore, adoptive parents may not invoke any personal or emotional interests in an attempt to protect those interests, depriving their child of presenting very important information on the life and development of the child, rights protected about the origin and interests of the child, as defined in numerous national and international instruments"*. Finally, the Applicant also refers to Article 21 [Consanguinity] of the Family Law, stating that *"This legal provision of an imperative nature and with criminal-legal consequences can be violated if [her] biological child is not informed about who is his biological mother"*.
61. Finally, the Applicant requests the Court to: (i) declare her Referral admissible, (ii) find that the Judgment [ARJ-UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court contains violation of Article 31 of the Constitution in conjunction with paragraph 1, Article 6 of the ECHR; Article 8 of the ECHR; and Article 7 of the Convention on the Rights of the Child; (iii) declare invalid the Judgment [ARJ-UZVP. No. 37/2020] of 11 June 2020, of the Supreme Court, remanding her case for retrial to the Supreme Court.

## **Relevant constitutional and legal provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 31 [Right to Fair and Impartial Trial]**

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

1. *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 36 [Right to Privacy]**

1. *Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication.  
[...]*

#### **Article 55 [Limitations on Fundamental Rights and Freedoms]**

1. *Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
2. *Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.*
3. *Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*
4. *In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
5. *The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.*

### **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 8** **(Right to respect for private and family life)**

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

## **Convention on the Rights of the Child**

### **Article 1**

*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*

### **Article 2**

*1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

*2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

### **Article 7**

*1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.*

*2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

**Council of Europe Convention on the Adoption of Children [opened for signature on 27 October 2008 and entered into force on 1 September 2011]**

**Article 22 – Access to and disclosure of information**

*1 Provision may be made to enable an adoption to be completed without disclosing the identity of the adopter to the child's family of origin.*

*2 Provision shall be made to require or permit adoption proceedings to take place in camera.*

*3 The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.*

*4 The adopter and the adopted child shall be able to obtain a document which contains extracts from the public records attesting the date and place of birth of the adopted child, but not expressly revealing the fact of adoption or the identity of his or her parents of origin. States Parties may choose not to apply this provision to the other forms of adoption mentioned in Article 11, paragraph 4, of this Convention.*

*5 Having regard to a person's right to know about his or her identity and origin, relevant information regarding an adoption shall be collected and retained for at least 50 years after the adoption becomes final.*

*6 Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning whether a person was adopted or not, and if this information is disclosed, the identity of his or her parents of origin.*

**Law no. 2004/32 Family Law of Kosovo**

**Article 21  
Consanguinity**

*(1) Persons related by blood in a direct blood line (consanguinity) or indirect blood line (kin), such as a brother and a sister from the same father and mother, father's and mother's sister and brother, uncle (mother's brother) and niece, aunt (father's sister) and nephew, children of mother's and father's sisters and brothers from the same mother and father (nephews and nieces), as well as sisters' and brothers' children of the same mother and father, shall not enter into wedlock;*

*(2) This also applies for brothers and sisters from one mother or father as well as if the relationship has ceased to exist because of an adoption.*

*(3) Extra-marital consanguinity is the same marriage ban as the marital one.*

## **9. Prohibition of Disclosure and Inquiry**

### **Article 194 Principle**

*(1) Information about the adoption and its circumstances shall not be disclosed or investigated without the consent of the adopter and the child, unless special reasons of public interest require this.*

*(2) At full age the adoptee has the right of access to all information concerning his adoption and shall on request be provided with personal information about his biological parents.*

*[...]*

## **11. Rights and Obligations of the Adopting Party and Adoptee**

### **Article 201 Creation and Termination of Family Relations**

*(1) Upon adoption family relations are created between the adopting party and persons in his family on the one hand, and the adoptee and his descendants on the other, with all the rights and obligations thereby.*

*(2) Adoption terminates the rights and obligations of the adoptee towards his parents and other persons in the family, as well as the rights and obligations of the parents and family towards him.*

## **Law No. 02/L-17 on Social and Family Services**

### **Article 1 [General provisions]**

#### **1.3. Definitions**

*1. Counseling is a systematic and programmed process of providing information, advice and guidance aimed at helping an individual or a family to improve their social or interpersonal circumstances.*

### **Article 12 [Services to Adults]**

*12.1. In cooperation with families, communities, non-Government organizations and other statutory bodied, a Municipality provides social care, counseling and, in exceptional circumstances, material assistance to people in need of social services residing in or, and in its territory, based on their assessed need for such services and the Municipality's ability to reasonably provide them.*

## **Administrative Instruction (MLSW) no. 09/2014 for regulation of procedures for adoption of children without parental care**

**Article 17**  
**After the establishment of adoption**

[...]

*3. CSW responsible for the child is obliged to maintain the confidentiality and privacy of the child during the entire process of adoption and post-adoption and under no circumstances shall provide documentation or information from the child dossier, except for the competent officials in the CSW, DSFW, MLSW and the Court.*

**Article 18**  
**Other provisions**

- 1. For data protection and privacy of information collected during the process of adopting responsible are fundamental Court where has become the foundation for the adoption and the Custodian body competent for child protection.*
- 2. At the adulthood the adoptee has the right to access in all information related to his/her adoption and with the request of his/her will be offered the personal information for his/her biological parents.*

**Relevant legal provisions of other countries**

**Family Code of Albania**

Article 262

*The minor, biological parents and adoptive parents are entitled to the right of confidentiality regarding the adoption process. When age and maturity allow, the adoptee has the right to know his/her history, and if available to obtain information about his/her biological parents.*

**Family Act of Croatia**

Article 142

- (1) A welfare centre keeps files of subjects and a register of the subjects of adoption.*
- (2) Information about adoption is an official secret.*
- (3) An adult adopted child, an adoptive parent and a parent who has given consent for the adoption of a child in line with Article 129 paragraph 2 of this Law will be allowed to inspect the files of subjects of adoption and the register of births of an adopted child.*
- (4) A minor adopted child will be allowed by a welfare centre to see the files of subjects concerning adoption, and a registrar into the register of births of adopted children, if the welfare centre determines that a sight of the adoption files and the register of births is in the child's interest.*
- (5) Close blood relatives of the adopted child will be allowed to look into the files of adoption subjects if the welfare centre obtains the consent of an adult adopted child.*



*(6) The minister competent for welfare matters will prescribe the manner of keeping register and files of adoption subjects.*

### **German Civil Code**

#### **Article 1751**

#### **Effect of parental consent, maintenance obligation**

*(1) On the consent of one parent to the adoption, the parental custody of this parent is suspended; the power to have personal contact with the child may not be exercised. The youth welfare office becomes the guardian; this does not apply if the other parent exercises parental custody alone or if a guardian has already been appointed. An existing curatorship is unaffected. The adoptive parent, during the time of personal care prior to adoption, is governed by section 1688 (1) and (3) with the necessary modifications.*

*(2) Subsection (1) does not apply to a spouse whose child is adopted by the other spouse.*

*(3) Where the consent of one parent has ceased to apply, the family court must transfer the parental custody to the parents if and to the extent that this does not conflict with the best interests of the child.*

*(4) The adoptive parent has an obligation to pay maintenance before the relatives of the child as soon as the parents of the child have given the necessary consent and the child has been taken into the care of the adoptive parent with the purpose of adoption. If a spouse wishes to adopt a child of his spouse, the spouses have an obligation to the child before the other relatives of the child to pay maintenance as soon as the necessary consent of the parents of the child has been given and the child has been taken into the care of the adoptive parent with the purpose of adoption.*

### **Section 1758**

#### **Prohibition on disclosure and exploratory questioning**

*(1) Facts that are suited to reveal the adoption and its circumstances may not be revealed or discovered by exploratory questioning without the approval of the adoptive parent and of the child unless special reasons of the public interest make this necessary.*

*(2) Subsection (1) applies with the necessary modifications if the consent under section 1747 has been given. The family court may order that the effects of subsection (1) occur if an application for substitution of the consent of a parent has been made.*

### **Belgian Civil Code**

*368-6. The competent authorities shall keep information on the origin of the adoptee, including those relating to the identity of the mother and his father, as well as the data necessary to monitor the health status of the adoptee and his family, in order to later allow the adoptee, if he/she so wishes, to discover his origin. They provide the adoptee or his/her representative with access to this information, with appropriate advice, to the extent permitted by Belgian law. Collection, storage and access to information are regulated by a royal decree approved by the Council of Ministers.*

### **Family Law of Serbia**

- (1) Ruling on new entry of birth of adoptee shall be serviced without delay to the registrar keeping the register of births for the child.*
- (2) After the new entry of birth of adoptee, right of insight into the register of births shall pertain only to the child and child's adopters.*
- (3) Before allowing the child insight into the register of births, the registrar shall be under the obligation to refer the child to psychosocial counselling in the guardianship authority, family counselling service or in other institution specialised in mediation in family relations.*

### **Montenegrin Family Law**

#### **Article 143**

*Guardianship authority shall keep records and documents in reference to adoption. The data on adoption constitute an official secret. A major adoptee, the adopter and the child's parent who gave consent to adoption by the step-father or step-mother shall have insight into the case file. Guardianship authority shall allow insight into the case file to a minor adoptee if it determines that this is in his best interests. Detailed conditions for keeping records and retaining documents, or the case file, shall be set forth by the ministry responsible for social welfare.*

#### **Article 145**

*Through adoption mutual rights and duties of the adoptee and his blood relatives cease to exist, except if the child is adopted by a step-mother or a step-father.*

### **Admissibility of the Referral**

62. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law and in the Rules of Procedure have been met.
63. 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.”*
64. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court

refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

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. The Court first recalls that the Applicant alleges that the challenged Judgment of the Supreme Court violated her fundamental rights and freedoms guaranteed by Article 8 of the ECHR, Article 7 of the Convention on the Rights of the Child and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
66. In the context of these allegations, the Applicant alleges a violation of Article 7 of the Convention on the Rights of the Child, which is one of the international instruments, which according to Article 22 of the Constitution is directly applicable in the Republic of Kosovo and *“in the case of conflict, have priority over provisions of laws and other acts of public institutions”*.
67. In this regard, the Court also recalls its case law where it stated that human rights and fundamental freedoms guaranteed by the international instruments contained in Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution are directly applicable and are part of the legal order of the Republic of Kosovo (see, *inter alia*, case no. KO162/18, Applicant: *President of the Assembly of the Republic of Kosovo*, Judgment of 19 December 2018, paragraph 36 and KI207/19, Applicant *NISMA Social Democratic, the New Kosovo Alliance and the Justice Party*, Judgment of 10 December 2020, paragraph 107).
68. Having said that, however, the Court must assess whether the Applicant can raise allegations of a violation of Article 7 of the Convention, or more

specifically whether this provision applies in her case. The Applicant neither in her submissions before the regular courts nor in her Referral before this Court did specify how this provision of this Convention applies in her case, namely did not specify how this provision supports her Referral to oblige the public authority, namely the Center for Social Work to notify her biological child that he is adopted.

69. The Court also refers to Article 1 of this Convention, which provides that: “*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*”. In view of the latter, the Court recalls that the Applicant filed her request with the Center for Social Work in 2016, when her biological child had reached the age of majority.
70. Therefore, taking into account the scope of this Convention, the Court considers that in the present case the Applicant cannot raise allegations of a violation of the rights guaranteed by the provisions of this Convention on the grounds that her biological child, at the time of filing her application at the Center for Social Work had reached adulthood.
71. Finally, and returning to the Applicant’s allegation that the regular courts have also violated Article 7 of the Convention on the Rights of the Child, the Court finds that this Article does not apply in her case.
72. As regards the Applicant’s allegations of a violation of Article 8 of the ECHR and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Court finds that the Applicant is an authorized party who also challenges an act of a public authority, namely Judgment [ARJ-UZVP. No. 37/2020] of 11 June 2020 of the Supreme Court, having exhausted all legal remedies provided by law. The Applicant also clarified the fundamental rights and freedoms she alleges to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.
73. The Court also finds that the Applicants’ Referral meets the admissibility criteria set out in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements set out in paragraph (3) of Rule 39 of the Rules of Procedure.
74. In addition and finally, the Court considers that this Referral is not manifestly ill-founded as set out in paragraph (2) of Rule 39 of the Rules of Procedure and, consequently, it must be declared admissible and its merits examined in respect of the Applicant’s allegations that the decisions of the regular courts, namely the challenged Judgment of the Supreme Court has violated her rights guaranteed by: (i) Article 8 of the ECHR, and (ii) Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

### **Merits of the Referral**

75. The Court recalls that the Applicant filed a request with the Center for Social Work on 1 March 2016, requesting that her biological adult child, whom she had

given up for adoption in 1989, be notified about the biological mother's existence and her interest in notifying him. On 7 March 2016, the Center for Social Work responded that: (i) there is no legal basis to notify her biological child about his adoption; and that (ii) only adult adopted child has access to information regarding the biological parents at his/her request. On 11 March 2016, the Applicant filed a request for reconsideration of the response of 7 March 2016 of the Center for Social Work in the same center. On 17 March 2016, the Center for Social Work, by its letter [05/55-141] addressed the Applicant to the Department of MLSW. On 25 March 2016, the Complaints Commission of the MLSW, by Decision [DPSF no. 521] rejected the Applicant's request for reconsideration of the response of 11 March 2016 as ungrounded. Therefore, on 29 April 2016, the Applicant filed a lawsuit with the Basic Court. As a result of her lawsuit, the Basic Court by Judgment [A. No. 651/16] of 25 January 2019 rejected the Applicant's lawsuit as ungrounded. Subsequently, as a result of the appeal filed against the Judgment of the Basic Court by the Applicant, the Court of Appeals by Judgment [AA. No. 178/2019] of 15 May 2020, rejected her complaint as unfounded. On an unspecified date, the Applicant filed a request with the Supreme Court for an extraordinary review of the court decision, namely Judgment [AA. No. 178/2019] of 15 May 2020, of the Court of Appeals on the grounds of erroneous application of the substantive law and essential violations of the provisions of the LCP, with the request that: (i) her lawsuit be approved as grounded; (ii) annul the Decision of 25 March 2016 of the MLSW Appeals Commission; and (iii) oblige the MLSW Department and the Center for Social Work to inform the child about his/her rights deriving from Article 194, paragraph 2 of the Family Law and Article 18, paragraph 1 of the MLSW Administrative Instruction. The Supreme Court by Judgment [ARJ-UZVP. No. 37/2020] of 11 June 2020, rejected the Applicant's request for extraordinary review of the court decision as ungrounded.

76. The Supreme Court by the challenged Judgment emphasized that the data and circumstances of the adoption should not be disclosed or investigated without the consent of the adopter and the child, unless this is required for special reasons and for reasons of public interest. Following this, the Court found that in the circumstances of the present case *"there are no public benefit interests and such a request is approved only if submitted by the adoptee and not by his biological parents"*.
77. In her Referral to the Court, the Applicant challenges the abovementioned findings of the Supreme Court, including those of the regular courts, alleging: (i) a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to non-reasoning of the court decision, and (ii) violation of Article 8 of the ECHR.
78. The Court recalls that the Applicant during the conduct of all proceedings before the public authorities and those of the regular courts, namely the request for reconsideration of the response of the Center for Social Work, her claim to the Basic Court, the appeal to the Court of Appeals and the request for extraordinary review of the court decision by the Supreme Court had specified that her request to the Center for Social Work contained the specific request that her biological child, an adult, whom she had given up for adoption in 1989, be notified: (i) in connection with the existence of his biological mother; and (ii)



her interest in notifying him. This request was supported by the Applicant in paragraph 2 of Article 194 of the Family Law, interpreting this provision as an obligation of the relevant body that her biological child should be informed about his right deriving from this provision.

79. Having said that, the Court notes that the Applicant's specific Referral submitted to the Court contains two elements, namely: (i) the allegation that the relevant custodian authority has an obligation to notify her biological child about the circumstances of his adoption; and (ii) expressing her interest in informing her biological child. However, the Court, referring to the second element in her Referral, through which it expresses her interest in notifying her biological child, considers that the Applicant, by requesting or claiming that the responsible custodian body is obliged to notify her biological child for his adoption aims to exercise a right related to the aspect of her private life.
80. Therefore, in relation to the abovementioned allegations, the Court considers that the substance of the Applicant's allegation is that the regular courts have violated her right to privacy guaranteed by Article 8 (Right to respect for private and family life) of the ECHR by not approving her request for notification of her biological child regarding the existence of his biological mother and the Applicant's interest to notify him. The Applicant's allegation in relation to Article 8 of the ECHR, which encompasses aspects of her right to privacy is also guaranteed by paragraph 1 of Article 36 [Right to Privacy] of the Constitution.
81. Therefore, the abovementioned allegations of the Applicant in relation to Article 36 of the Constitution, in conjunction with Article 8 of the ECHR, including the allegation in relation to Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Court will review them based on the case law of the ECtHR, in accordance with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
82. Therefore, the Court: (i) will consider the Applicant's substantive allegation under Article 36 of the Constitution and Article 8 of the ECHR; to proceed with (ii) addressing the Applicant's allegation under Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

***I. Regarding violation of Article 36, paragraph 1 of the Constitution in conjunction with Article 8 of the ECHR***

83. In this regard, and with a view to addressing the Applicant's substantive allegations of respect for privacy, the Court will first elaborate on: (i) the general principles of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, in order to assess the applicability of these articles in the circumstances of the Applicant's case, to proceed with the application of these general principles in the circumstances of the present case.

***A. General principles regarding the right to respect for private and family life***



84. The Court first refers to paragraph 1 of Article 36 of the Constitution, which provides that “*Everyone enjoys the right to have her/his private and family life respected, the inviolability of residence, and the confidentiality of correspondence, telecommunication and other communication*”.
85. Paragraph 1 of Article 8 of the ECHR stipulates that “*Everyone has the right to respect for his private and family life, his home and his correspondence*”.
86. The Court initially notes that although the scope of Article 36 of the Constitution and Article 8 of the ECHR is not unlimited, the ECtHR has broadly defined the scope of Article 8 of the ECHR, including cases where a specific right is not specifically highlighted in this article (see in this regard the case of the Court, KI56/18, Applicant *Ahmet Frangu*, Judgment of 22 July 2020, paragraph 83). The primary purpose of this article, according to the ECtHR case law, is to protect individuals from arbitrary “interference” with their (i) private; (ii) family life, (iii) home; or (iv) correspondence. (see, in this context, ECtHR cases: *P. and S. v. Poland*, Judgment of 30 October 2012, paragraph 94; and *Nunez v. Norway*, Judgment of 28 June 2011, paragraph 68, see also the case of the Court KI56/18, Applicant *Ahmet Frangu*, cited above, paragraph 83). Guaranteed rights based on the ECHR system and the relevant case law of the ECtHR are ensured through: (i) negative obligations, namely the obligation of the state not to “interfere” in private and family life (see, in this context cases of ECtHR *Libert v. France*, Judgment of 22 February 2018, paragraphs 40-42; and *Kroon and Others v. the Netherlands*, Judgment of 27 October 1994, paragraph 31); and (ii) positive obligations, namely the obligation of the state to ensure that these rights are effectively exercised (see cases of the ECtHR *Lozovyye v. Russia*, Judgment of 24 April 2018, paragraph 36, and *Evans v. the United Kingdom* [GC], Judgment, of 10 April 2007, paragraph 75).
87. Therefore, the individuals alleging a violation of Article 36 of the Constitution in conjunction with Article 8 of the ECHR must show that their Referral falls into at least one of the four categories of interests protected by these two provisions, namely the right to: (i) privacy; (ii) family life; (iii) residence; and (iv) correspondence (see the case of Court KI56/18, cited above, paragraph 83).
88. Having said that, in dealing with allegations relating to violations of the right to privacy, the ECtHR in its case law first determines whether the Applicant’s Referral falls within the scope of Article 8 of the ECHR, or more precisely, whether this article is applicable in the circumstances of that case. Once the applicability of Article 8 of the ECHR in the circumstances of the present case has been established, the ECtHR proceeds with the further examination of the allegation submitted under Article 8 of the ECHR. This position and finding, established through the case law of the ECtHR is also affirmed in the case law of the Court, namely in the above case KI56/18, Applicant *Ahmet Frangu* paragraphs 90-99 of the Judgment).
89. Second, the ECtHR assesses whether the case should be treated from the point of view of a negative or positive obligation of the state, despite the fact that the difference between these obligations is not always easily and clearly visible. However, according to the ECtHR, in principle it is important to assess whether the state has acted, namely intervened, or the state has failed to act, more

precisely if the respective state has failed to ensure through its legal or administrative system the right to respect private and family life in the circumstances of this case (see ECtHR case *Gaskin v. the United Kingdom*, Judgment of 7 July 1989, para. 41).

90. Therefore, based on the abovementioned principles in relation to Article 8 of the ECHR, the Court reiterates that it will address the Applicant's allegations by applying the relevant case law of the ECtHR on this assessment. The Court will, therefore, first address the issue of the applicability of Article 36 of the Constitution in conjunction with Article 8 of the ECHR with regard to the concrete issues of this case, namely the rejection of the Applicant's request by the public authorities, starting with the Center for Social Work to inform her adult child about the existence of his or her biological mother and her interest in informing him. After determining the applicability of paragraph 1 of Article 36 of the Constitution and paragraph 1 of Article 8 of the ECHR, the Court will further examine and determine whether the Referral should be treated from the point of view of a negative or positive obligation of the Republic of Kosovo. If it is to be treated from the point of view of a negative obligation, it will assess whether there has been an "interference" in the Applicant's rights and whether such "interference"; (i) was "in accordance with the law" or "defined by law"; (ii) has "pursued a legitimate aim"; and (iii) has "been necessary in a democratic society". Whereas, in case the specific issue is to be treated from the point of view of a positive obligation, the Court will examine whether, in the circumstances of the present case, the state had an obligation to take measures which would ensure the effective exercise of the Applicant's right to a private life, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR.

***A. Applicability of Article 36 of the Constitution in conjunction with Article 8 of the ECHR in the circumstances of the present case***

91. In this context, the Court first reiterates that the right to privacy is enshrined in: (i) paragraph 1 of Article 36 of the Constitution, which expressly provides that: "*Everyone enjoys the right to have her/his private and family life respected [...]*"; and, as noted above, (ii) paragraph 1 of Article 8 of the ECHR, and which expressly states that "*Everyone has the right to respect for his private and family life [...]*".
92. Within the framework of this right, the case law of the ECtHR also includes cases related to the relationship between biological parents and children.
93. The Court further notes that the ECtHR has conducted in detail the applicability test of Article 8 through its case law referring to cases of paternity assignment or child applications granted for adoption, seeking information about their biological parents.
94. However, taking into account the factual circumstances of the Applicant's case in the present case, the Court during its analysis and review whether Article 36 of the Constitution and Article 8 of the ECHR are applicable in its case, will specifically 'refer to the case of the ECtHR *I.S. v. Germany* (Judgment of 13

October 2014), in which case the ECtHR determined and found that the biological mother's relationship with her adopted children falls within the scope of Article 8 of the ECHR. The Court, in order to apply its findings with regard to the applicability of Article 8 of the ECHR, in the case *I.S. v. Germany* insofar as they are applicable in the circumstances of the Applicant will briefly summarize the factual circumstances of this case of the ECtHR and the principles applied by the latter in the present case which have resulted in its finding of the applicability of Article 8, paragraph 1 of the ECHR in this case.

95. The circumstances of the case of the ECtHR *I.S. v. Germany* related to that the Applicant had complained that she had not been enabled to have regular contact and receive information about her biological minor children who had been adopted by another couple. She claimed that the decision of the German regular courts regarding contact and information about her biological children violated her rights guaranteed by Article 8 of the ECHR. In her request, she specifically claimed that she had been promised a "*semi-open adoption, giving her the right to have contact with her children, which was not respected*". The ECtHR had initially stated that the claim in the case of *I.S. v. Germany* exclusively concerns the refusal of the domestic courts to grant the Applicant access and information about her biological children. The ECtHR recalled in this connection that the Applicant had not, in fact, challenged the validity of her consent to place her newborn children for adoption (paragraph 67, of the Judgment).
96. Next, the ECtHR considered that the Applicant's relationship with her children fell under the protection of Article 8 of the ECHR, within the notion of "family life", only at the time when her biological children were born. According to the ECtHR "*The relationship between the Applicant and the children may have ceased to fall within the scope of "family life" at the time when the Applicant signed her consent to place the children for adoption*" (paragraph 67, of the Judgment).
97. The ECtHR further referred to its case-law on the grounds that "*the biological family bond between a biological parent and a child, by itself, without any further legal or factual elements indicating the existence of a close personal relationship, may be insufficient to seek the protection of Article 8*" (paragraph 68, of the Judgment, in this connection see the references used by the ECtHR in cases *Schneider v. Germany*, Judgment of 15 September 2011, paragraph 80, and *Hülsmann v. Germany*, Decision on admissibility, 18 March 2008). The ECtHR further stated that although the Court has considered in some cases that even "targeted family life" may fall, in exceptional circumstances, within the limits of Article 8, the ECtHR found that in the case of *I.S. v. Germany*, the existing family relationship was intentionally aggravated by the Applicant (paragraph 69, of the Judgment).
98. The ECtHR, however, continued its assessment by finding that the determination of other existing or newly established rights of the applicant, adoptive parents and biological children, although falling outside the scope of "family life", belong to an important part of the Applicant's identity as a biological mother and her "private life" within the meaning of Article 8 para 1 of the ECHR (paragraph 69 of the Judgment). This finding was supported by the

ECtHR in its previous case law, namely in the cases *Schneider v. Germany* and *Anayo v. Germany*. The Court notes that in these two cases, the ECtHR similarly found that the family relationship intended by the biological parents or children did not fall within the scope of “family life” within the meaning of Article 8 of the ECHR; however, such a targeted relationship belongs to an important part of the Applicant’s identity and his/her private life within the meaning of Article 8, paragraph 1 of the ECHR (see the above-mentioned cases of the ECtHR *Anayo v. Germany*, cited above, paragraph 62, and *Schneider v. Germany*, cited above, paragraph 90).

99. In view of the above, in particular the ECtHR finding as to the applicability of Article 8 in a similar case as that of the Applicant, which relates to the biological mother’s intended relationship with her child, the Court applying the reasoning given in this finding of the ECtHR considers that in the Applicant’s case the protection of Article 36 of the Constitution, in conjunction with Article 8 of the ECHR within the notion of family law has also ceased at the moment when the Applicant had given her consent for the adoption of her child in 1989. The issue of the Applicant’s consent was not in dispute either in her application submitted to the Center for Social Work or in her statement of claim and appeals before the regular courts. Having said that, the Court finds that Article 36 of the Constitution in conjunction with Article 8 of the ECHR within the meaning of the notion of “family right” may not be applicable in her case because the request falls outside the scope of this notion.
100. However, the Court, applying the position and finding of the ECtHR through its case law in the above cases, considers that the Applicant’s request, by which she had expressed her interest in notifying her child given up for adoption in 1989 incorporates elements that belong to an important part of her identity as a biological mother and which affects her right to privacy within the meaning of the notion of “her private life” guaranteed by Article 36 of the Constitution in conjunction with Article 8 of the ECHR. Having said that, based on the factual and legal circumstances of the Applicant’s Referral, the Court finds that her Referral falls within the scope of paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR within the meaning of the notion of “private life”, and consequently, finds that the latter are applicable in the circumstances of the present case.
101. As a result of its finding that Article 36 of the Constitution in conjunction with Article 8 of the ECHR is applicable in the Applicant’s circumstances, the Court will then assess whether the decision of the public authorities, namely the decision of the Center for Social Work and regular court judgments to reject her request for notification of her child given for adoption and the expression of her interest in notifying her child is in accordance with or not in accordance with the rights guaranteed by the aforementioned articles. Having said that, and as explained above, in advance, the Court must assess whether the circumstances of the present case are to be assessed from the point of view of the negative or positive obligation of the Republic of Kosovo.
102. In its view whether the case should be treated from the point of view of the negative obligation of the state, the Court notes that the criteria on the basis of which the state may interfere with the exercise of the abovementioned rights



within the meaning of paragraph 1 of Article 8 of the ECHR are defined in paragraph 2 of the same article which stipulates that: *“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”* Based on this, it results that the restriction or intervention of the state is allowed if it is “in accordance with the law” or “defined by law” and if it is “necessary in a democratic society” in order to protect one of the goals, established in paragraph 2 of Article 8 of the ECHR.

103. The Court further recalls that throughout the course of the proceedings, both the Applicant and the regular courts referred to Article 22 of the Council of Europe Convention on Adoption. In relation to the latter, the Court notes that this international instrument is not applicable in the Republic of Kosovo, because the Republic of Kosovo is not a signatory to this convention. However, the Court notes that the provisions of this Convention are embodied in the relevant legislation of the Republic of Kosovo, which refers to adoption procedures.
104. In this regard, referring to the case law of the ECtHR, the Court notes that Article 22 of the Convention on Adoption was also interpreted and applied through the case law of the ECtHR (in relation to the application of Article 22 of the Convention on Adoption, of 2008, see case *I.S. v. Germany*, cited above, paragraph 76).
105. In this regard, the Court reiterates that according to Article 53 of the Constitution, the courts of the Republic of Kosovo, all without exception, have the obligation to interpret *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*. This means that, in all instances when the Constitutional Court or the regular courts of the Republic of Kosovo interpret the human rights and freedoms guaranteed by the Constitution, the human rights standards set out in the case law of the ECtHR, should apply to these rights and freedoms when applicable. In the event of a conflict between the two, the standards set by the ECtHR in interpreting the ECHR will prevail (see case of the Court KI207/19, cited above, paragraph 109).
106. Therefore, and based on the above, in the following, the Court in assessing the principles established by the ECtHR in similar cases and their application in the circumstances of the present case, will refer to and take into account the case law of the ECtHR, in those cases when Article 22 of the Convention on Adoption has been interpreted.
107. Following this, and as noted above, the Court recalls that the specific Referral of submitted to the Court contains two elements, namely: (i) the request or the claim of the Applicant that the relevant custodian body has the obligation to inform the adopted child about the circumstances of his adoption; and (ii) expressing her interest in informing her biological child. With regard to the former, the Court notes that the Applicant has interpreted the relevant

provisions in force of domestic law, namely paragraph 2 of Article 194 of the Family Law, claiming that the obligation of the relevant custodian authority to notify her biological child that is adopted derives from this provision. Further, referring to the second element of her Referral, namely the expression of her interest in notifying her biological child, the Court considers that the Applicant requesting or claiming that the responsible custodian body is obliged to notify the child about his adoption aims to exercise her right related to the aspect of her private life, namely to know her biological child.

108. The Court first recalls the Applicant's specific allegation, stating that in all cases of the ECtHR "*in all cases of the Court [ECHR], the right of the child, and the right of knowing the origin, in one form or another, takes precedence over the interests of third parties, and where they have previously signed confidentiality clauses. This means that in an own interpretation of these cases with the situation in question, given the fact that the only parties who oppose the provision of information to their adult child in this case are the adoptive parents, it can be concluded that: the adoptive parents have no right to deprive their adopted child from raising awareness of the rights of the child under Article 194 of the Family Law of Kosovo, or under Article 8 of the European Convention on Human Rights*".
109. In this regard, the Applicant supports her abovementioned allegation by referring to and providing a brief summary of the cases of the ECtHR in her Referral, namely: *Odièvre v. France* (Judgment of 13 February 2003); *Anayo v. Germany* (Judgment of 21 December 2010); *Mikulić v. Croatia* [Judgment of 7 February 2002]; and *Phinikaridou v. Cyprus* (Judgment of 20 December 2007). The Court recalls that the Applicant had supported the statement of claim, the appeal and the request for extraordinary review of the court decision, namely before the regular courts, among other things, in the above-mentioned cases of the ECtHR.
110. For the purpose of assessing whether the cases referred to by the Applicant in her Referral relate to similar factual circumstances as in her case and whether the findings and positions of the ECtHR can be applied in the present case, in the following Court will present a summary of the abovementioned cases namely the factual circumstances and the finding of the ECtHR, given in the cases: *Odièvre v. France*; *Anayo v. Germany*; *Mikulić v. Croatia*; and *Phinikaridou v. Cyprus*.
111. The circumstances of the case *Odièvre v. France* were related to the fact that the Applicant had been abandoned by her biological mother after giving birth and left to the Department of Health and Social Security. Her biological mother, according to the legislation in force at the time, had requested that her identity be kept secret even after the adoption procedure. The Applicant, meanwhile, had been adopted on the basis of a full adoption order, and after a certain period had submitted a request for disclosure of the identity of the biological parents, which request was rejected by the French authorities on the grounds that she had been born under a special procedure, which at that time allowed mothers to remain anonymous. In the present case, the ECtHR found that there had been no violation of Article 8 (Right to respect for private life), considering in particular that the Applicant had been given access to non-identifying



information about her biological mother and family enabled her to trace some of its roots, ensuring the protection of the interests of third parties. In addition, the last legislation passed in France in 2002 allowed the waiver of confidentiality and consequently established procedures that facilitated the search for the biological family of adopted children. Consequently, according to the ECtHR, the Applicant based on this amended law was enabled to disclose the identity of her biological mother, provided that she obtained the latter's consent to ensure that the mother's need for protection and legitimate request of the applicant to be compatible with each other in order to ensure a fair balance and sufficient proportion between competing interests.

112. The circumstances of the case *Anayo v. Germany* were related to the refusal of the German courts to allow the Applicant, as the biological father, to meet his twin children with whom he had not previously lived. His biological children lived with her mother and her husband. The ECtHR found that there had been a violation of Article 8 (Right to respect for private and family life) of the ECHR. The ECtHR found that the intervention of the German authorities in the Applicant's right, guaranteed by Article 8 of the ECHR was not "necessary in a democratic society", namely the local authorities had not considered whether a relationship between the Applicant and his biological children would be in the interest of the latter.
113. The circumstances of the case *Mikulić v. Croatia* relate to a child born out of wedlock who, together with her mother, had filed a civil suit to establish paternity. The Applicant complained that Croatian law did not oblige men against whom citizenship lawsuits had been filed to comply with court orders to undergo DNA tests, and that the failure of local courts to decide on her request for paternity recognition had left her unsure as to her personal identity. The ECtHR found a violation of Article 8 of the ECHR. The ECtHR noted in particular that, in establishing a claim for paternity, courts were required to take into account the basic principle of the best interests of the child. In the present case, the ECtHR found that during the followed proceedings a fair balance had not been struck between the Applicant's right to eliminate her uncertainty regarding her personal identity without undue delay and that of her alleged father to not undergo DNA testing. Therefore, the inefficiency of the courts had left the Applicant in a state of prolonged uncertainty regarding her personal identity.
114. As regards the case *Phinikaridou v. Cyprus*, the circumstances of this case relate to the fact that in 1991 the Government of Cyprus had enacted legislation enabling children born out of wedlock to seek judicial recognition of paternity. The limitation period for a request by a child under this law was three years from the date the child has reached the age of majority or, in the case of children who had already reached the age of majority, three years from the date of entry into force of the Law. The Applicant, who had reached the age of majority on the date the law entered into force, had not learned the identity of her biological father until December 1997. In June 1999 she had submitted a request to the family court for judicial recognition of paternity. However, this was rejected on the grounds that the statute of limitations applicable in her case had expired on 1 November 1994, three years after the law had entered into force. The ECtHR considered that it should be determined whether the state

had complied with its positive obligations in handling the Applicant's claim for judicial recognition of paternity. The question, then, was whether the nature of the deadline and/or the manner in which it was applied was in line with the ECHR and whether a fair balance between competing rights and interests had been reached. The ECtHR, assessing that there was no uniform approach to the legislation of the Contracting States, found that in the present case it was clear from the judgment of the Supreme Court of Cyprus that the general interest and the competing rights and interests of the alleged father and his family was given a greater weight than the Applicant's right to know her origin. The ECtHR further assessed that the application of a rigid time-limit for initiating the paternity recognition procedure, notwithstanding the circumstances of the individual case and in particular the Applicant's knowledge of the facts concerning her biological father, had damaged precisely the substance of the Applicant's right to respect for her private life. Consequently, the ECtHR found a violation of Article 8 of the ECHR.

115. Based on the summaries of the aforementioned cases, the Court notes that the circumstances of these cases relate mainly to the children's right to know their biological parents, with the exception of case *Anayo v. Germany*, which was related to the father's right to contact with his biological children, who lived with their mother and her husband. In these cases the ECtHR had applied the relevant tests in terms of whether the obligations of the states constituted a positive obligation for the respective states to take measures or a negative obligation, namely whether the rejection of the Applicants' request constituted an interference with their right to respect for the private and family life guaranteed by Article 8 of the ECHR.
116. The Court emphasizes the fact that the Applicant's case differs from the above-mentioned cases of the ECtHR and the latter can hardly be applied in the circumstances of the present case. This is because the latter are mainly related to the rights of biological children, in the capacity of applicants before the courts of the respective states and before the ECtHR to recognize their origin. More specifically, the Applicant's case relates to her claim, as a biological mother, to oblige public authorities to inform her biological adult child that she is an adopted child, so that she has the opportunity to know him in case this would express interest.
117. As noted above, after assessing the applicability of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, based on the case law of the ECtHR, the Court reiterates that it must determine whether the Applicant's Referral and allegations, should be treated from the perspective of negative or positive obligations of the state. While, as the ECtHR has pointed out, the difference between these two categories of obligations is not always clear, in principle the first category is related to the obligation of the state not to "interfere" with fundamental rights and freedoms, while the second category, is related to the obligation of the state to take measures through which the guarantee of the respective right of the Applicant for private life is ensured. In the sense of the latter, the Court, referring also to the criteria established through the case law of the ECtHR regarding the positive obligations that states must undertake for the effective enjoyment of the Applicant's right to privacy, within the meaning of Article 8 of the ECHR, considers that it must be assessed in terms of a fair

balance to be struck between the competing interests of the individual and the community as a whole (see the cases of the ECHR, *Evans v. The United Kingdom*, cited above, paragraph 75; *Gaskin v. The United Kingdom*, cited above, paragraph 40; and *Odievre v. France*, cited above, paragraph 40).

(i) *If the case involves a positive interference or obligation*

118. In this regard, the ECtHR in its case-law in particular in the above-mentioned case *I.S. v. Germany* stated that “*while the substantial purpose of Article 8 of the ECHR is to protect individuals from arbitrary interference by public authorities, it simply does not oblige the state to abstain from such interference; in addition to this negative interference, there may be positive obligations, which are inherent in the effective respect of private or family life [...]*” (paragraph 70, of the Judgment). Following this, the ECtHR in this case considered that there are elements that may suggest that the decision of the German courts can be considered in the light of positive obligations. Again in this case, the ECtHR emphasized that the boundaries between positive and negative obligations of the state do not allow a precise definition, but considered that the applicable principles are nevertheless similar (paragraph 70, of the Judgment). The ECtHR, in this case, referring to its case law, stated that “*In determining, if such an obligation exists, a fair balance must be taken into account which must be pursued between the general interest and the individual interest*”; and in the sense of both, the State enjoys a margin of appreciation” (see paragraph 70 of Judgment *I.S. v. Germany* and the references used therein in cases *Mikulić v. Croatia*, cited above, paragraph 58; *Evans v. the United Kingdom*, cited above, paragraph 75, *S.H. and others v. Austria* [GC], Judgment of 3 November 2011, paragraph 88).
119. However, taking into account: (i) the Applicant’s specific request; (ii) the relevant legislation in force relating to the matter, in particular the rights of the adoptive family and the adoptee; (iii) the examination of the Applicant’s request by the state authorities, in particular that of the Center for Social Work, in the capacity of the competent authority vested with responsibilities and obligations specified by law and relevant sub=legal acts; (iv) the finding of the regular courts that the competent authorities have no legal basis for notifying their biological child that he is adopted and that the right to know the biological parents is reserved only for the adopted child at the time of reaching adulthood, the Court notes that in the present case, the Applicant’s Referral should be considered within a meaning of a negative obligation, namely whether the decisions of the regular courts had interfered with the observance of the Applicant’s private right, guaranteed by Article 36 of the Constitution and Article 8 of the ECHR.
120. Having said that, in its assessment whether the rejection of the Applicant’s Referral constitutes an interference with her right guaranteed by Article 36 of the Constitution, in conjunction with Article 8 of the ECHR, the Court will apply Article 55 of the Constitution in conjunction with paragraph 2 of Article 8 of the ECHR.
121. With regard to the application of Article 55 [Limitations of Fundamental Rights and Freedoms] of the Constitution in the circumstances of the present case, the

Court further recalls that this article stipulates that the fundamental rights and freedoms guaranteed by this Constitution: (i) “may be limited only by law”; (ii) the interference and limitation of a right or liberty must have and pursue a “legitimate aim”; (iii) human rights and freedoms may be limited only “to the extent necessary” namely if the limitation is proportionate; and (iv) limitations imposed by law must be such as to be deemed necessary in an “open and democratic society”.

122. Whereas the fourth paragraph of Article 55 of the Constitution emphasizes the fact that in cases of limitation of fundamental rights and freedoms, a constitutional responsibility is created for the institutions of public power, and especially for the courts that during the interpretation and decision in cases before them, pay attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the aim to be achieved, and to consider the possibility of achieving the purpose with a lesser limitation. Finally, the fifth paragraph of Article 55 of the Constitution emphasizes that the limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right. What is the essence of a guaranteed right depends on the type of right or freedom in question (see the case of Court KO54/20, Applicant *President of the Republic of Kosovo*, Constitutional Review of Decision no. 01/15 of the Government of the Republic of Kosovo, Judgment of 31 March 2020, paragraphs 194-195).

123. For the purposes of interpreting these notions and concepts, the Court recalls that the ECtHR, when examining cases before it to determine whether in a particular case there was a restriction and violation of human rights and freedoms guaranteed by the ECHR, applies the same concepts, namely if the limitation or interference: (i) has been “in accordance with the law” or “prescribed by law”; (ii) has “pursued a legitimate aim”; and (iii) has been “necessary in a democratic society.” In the present case, with regard to the right to respect for private life guaranteed by Article 8 of the ECHR, the Court recalls that paragraph 2 of this Article provides the same obligation respectively “2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*”.

(ii) *Assessment pursuant to Article 55 of the Constitution and paragraph 2 of Article 8 of the ECHR*

124. Therefore, based on the above, the Court within the meaning of Article 55 of the Constitution, in conjunction with paragraph 2 of Article 8 of the ECHR, will assess whether the challenged decisions of the regular courts were (i) in accordance with the law; (ii) have “pursued a legitimate aim”; and (iii) has been “necessary in a democratic society”. In assessing these, the Court will refer to the case law of the ECtHR, insofar as it is applicable in the circumstances of the present case. Having said that, the Court will hereby refer to the analysis and review of the requirements set out in paragraph 2 of Article 8 of the ECHR,



referring also to the above-mentioned case of the ECHR *I.S. v. Germany*. With regard to the latter, the Court recalls that the factual circumstances of this case are not identical to that in the Applicant's case for the following reasons: in the case *I.S. v. Germany*, the Applicant requested access to information and a meeting with her adopted biological children and at that time they were minors. Whereas in the case of the Applicant, the latter submitted her request to the Center for Social Work, by which she requested that this center notify her biological child that he is adopted and as a result, she expresses her interest in meeting her biological child. In relation to the latter, the Applicant's request also refers to an additional element, namely the obligation of the Family Center to inform her biological child about the circumstances of the adoption, more specifically the fact that he is adopted, to which obligation the Applicant claims that it derives from paragraph 2 of Article 194 of the Family Law. However, the Court considers that it may refer to the principles or findings of the ECtHR with regard to the assessment of the requirements set out in paragraph 2 of Article 8 of the ECHR, in so far as they may be applicable in the circumstances of the present case.

*(a) in accordance with law*

125. The ECtHR repeatedly stated that any interference by public authority with the individual's right to respect for private life and correspondence must be in accordance with the law (see the case of the ECHR, *Klaus Muller v. Germany*, Judgment of 19 November 2020, paragraphs 48-51). The ECtHR further noted that "in accordance with the law" also refers to the quality of the law, which is required to be in accordance with the rule of law (see *Halford v. The United Kingdom*, Judgment of 25 June 1997, paragraph 49).
126. The Court notes that neither Article 194 of the Family Law nor Articles 17 and 18 of the MLSW Administrative Instruction give the Applicant the right to have access to information about her biological child. According to these provisions, the right of access to information is reserved only to the adopted child, who expresses the desire to know his/her biological parents may request this after reaching the age of majority. Having said that, the Court recalls that to the extent that it has been notified through the case file, such an opportunity the biological child of the Applicant and given for adoption up to this stage has not exercised this right defined by law. In this regard, the Court also recalls that at the time of the request submitted by the Applicant to the Center for Social Work, her biological child was an adult.
127. The Court further notes that according to the applicable legal provisions, the termination of the Applicant's legal right as a parent is a consequence of giving her consent for adoption. Having said that, by giving her consent for adoption, the ECtHR had also assessed that her rights to contact her child had also ended. The Court recalls that based on the case file, it does not appear that the issue of granting the Applicant's consent was challenged in proceedings before the regular courts, including the court proceedings, which is the subject of this Referral (see regarding the assessment of the ECtHR in paragraphs 72 and 73, of the Judgment in the above case *I.S. v. Germany*).



128. However, referring to the Applicant's request, namely the first element of this request, through which the Applicant requested the Center for Social Work to notify her biological child, the Court notes that she supports this by interpreting that this obligation derives from paragraph 2 of Article 194 of the Family Law. In this regard, the Court refers to paragraph 2 of Article 194 of the Family Law, which stipulates that: *"At full age the adoptee has the right of access to all information concerning his adoption and shall on request be provided with personal information about his biological parents"*. This right of the adoptee is defined in paragraph 2 of Article 18 of the Administrative Instruction of MLSW.
129. Based on the abovementioned provisions of the Law on Family and the Administrative Instruction of MLSW, as well as other provisions of the same law and the above instruction, respectively, the Court notes that such an obligation of the Center for Social Work or MLSW to notify the biological child that he is adopted is not defined by any provision of these two above mentioned acts. Subsequently, the Court refers to paragraph 3 of Article 17 [After the establishment of adoption] of the MLSW Administrative Instruction, which stipulates that: *"CSW responsible for the child is obliged to maintain the confidentiality and privacy of the child during the entire process of adoption and post-adoption and under no circumstances shall provide documentation or information from the child dossier, except for the competent officials in the CSW, DSFW, MLSW and the Court."* With regard to this provision, the Court places emphasis on the wording *"CSW responsible for the child is obliged to maintain the confidentiality and privacy of the child during the entire process of adoption and post-adoption"*.
130. Therefore, based on the above and also taking into account the fact that the Applicant's request expressly did not contain the request that she have direct access to the data of the adoption procedure and the adoptive family, finds that: (i) the refusal of the courts to approve the Applicant's request; and (ii) the reasoning given by the regular courts regarding the rejection of her request is based on law.

*(b) legitimate aim*

131. Paragraph 2 of Article 8 enumerates legitimate aims which justify the limitation of the rights protected by Article 8 of the ECHR: *"in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"*. The ECtHR has, however, assessed that this assessment is for local authorities to support that the intervention pursued a legitimate aim (see ECtHR case *Mozer v. Republic of Moldova and Russia* [GC], Judgment of 23 February 2016, paragraph 194).
132. The Court, first referring to the case law of the ECtHR, and specifically to the above case *I.S. v. Germany* emphasized that *"[German] legal provisions regarding the adoption of children do not define the biological parents' right to have contact with their adopted children but are intended to protect the child's right to privacy and family life"*. The ECtHR further noted that the relevant legal provisions of Germany are intended to protect the rights of children to develop within their adoptive family (see paragraph 76 of the Judgment).

According to the ECtHR, the relevant legal provision of Germany was also in accordance with Article 22 of the Council of Europe Convention on Adoption. In the context of the latter, that *“pursuing this aim, the German legal provisions were in accordance with Article 20 of the European Convention on Adoption of 1967, as well as Article 22 of the amended Convention of 2008”*, recalling the fact that Germany was not a signatory and ratifier of the latter. Having said that, the ECHR, referring to the above-mentioned provisions of these two Conventions, stressed that their purpose, according to the preparatory reports of these Conventions, is to avoid the difficulties which may arise from the knowledge of the biological parents regarding the identity of the adopter. The ECtHR also noted that: *“notes in this context that the most current [2008] Convention allows for less stringent rules regarding adoption, however it does not favor such an approach”*.

133. Similarly in the present case, namely based on the content of the relevant legal provisions in force in the Republic of Kosovo, namely Article 194 of the Law on Family and Articles 17 and 18 of the Administrative Instruction of MLSW, the Court also notes that the purpose and the aim of the legislator in this case is to maintain the confidentiality of data, which are aimed at protecting the right of the child and his adopter to family life, in particular the unimpeded development of their family relationship. Such a right, namely for having knowledge or access to information regarding the biological parents, the legislator gives only to the biological child, who based on his/her choice and after reaching the age of majority can request information about his/her biological parents.
134. Also in the comparative context, namely the legislation of other states regarding adoption, and in particular the rules relating to the rights of biological parents, adoptive families and adoptees, the Court notes that access to information is reserved only for the adopted child, who wishes to disclose the origin or identity of the biological parents (see in this context, the relevant provisions of the relevant laws of Belgium, Germany, Croatia, Montenegro, Albania and Serbia cited in the section entitled *“Relevant legal provisions of other countries”* of this Judgment).
135. The Court, returning to the Applicant’s Referral, notes that the interpretation by the regular courts, including the Supreme Court, is in accordance with the will of the legislator.
136. The Court in this case refers to the reasoning given by the Basic Court referring to Article 194 of the Family Law, paragraph 3 of Article 17 and paragraphs 1 and 2 of Article 18 of the MLSW Administrative Instruction, Article 8 of the ECHR- Article 7 of the Convention on the Rights of the Child and Article 22 of the European Convention on the Adoption of the Child, stating that *“[...]the data of the adoptee must be stored throughout and after the adoption process, and the CSW [Center for Social Work], has the duty to disclose them only in the case before and as required by law, and in case the applicant is the adult adoptee , which means that the right of access to them, which cannot be denied by anyone, has the adult adoptee”*.

137. Secondly, the Court also refers to the reasoning given by the Court of Appeals, which by its Judgment upheld the position given by the Basic Court, concluding as follows: [...] *the data of the adoption and its circumstances should not be disclosed or investigated without the consent of the adopter and the child unless specifically required by reasons of public interest. In the present case we have no special circumstances of public interest and that such a request is acceptable only to the adoptee and not to his biological parents*". The Court of Appeals, in relation to the Applicant's allegation of erroneous interpretation of Article 194 of the Family Law, reasoned that, according to this provision, the right to file a request to know biological parents belongs only to the adult adoptee.
138. And thirdly, the Court also refers to the reasoning of the Supreme Court, which in addressing the allegations raised by the Applicant in her request for extraordinary review of the Judgment of the Court of Appeals found that "[...] *it is the position of this court that the data of the adoption and its circumstances should not be disclosed or investigated without the consent of the adopter and the child unless specifically required by reasons of public interest. In the present case we have no interest of public benefit and that such a request is approved only if it submitted by the adoptee and not by his biological parents*". In the context of this reasoning of the Supreme Court, the Court notes that the latter in its reasoning in particular put emphasis on: (i) paragraphs 1 and 2 of Article 194 of the Family Law; (ii) paragraphs 1 and 2 of Article 17, and paragraphs 1 and 2 of Article 18 of the MLSW Administrative Instruction, reasoning that the Center for Social Work is obliged to maintain the confidentiality and privacy of the child throughout the adoption process; and after it.
139. In the light of the above, the Court notes that the regular courts, and specifically the Supreme Court, have pursued the legitimate aim of protecting the rights and freedoms of the third parties, in particular the rights of the adopted child and his adoptive family.

*(c) Necessary in a democratic society*

140. The Court first notes that the ECtHR through its case law specified that the notion of "necessary in a democratic society" for the purposes of Article 8 of the ECHR *"implies that the conclusion [regarding this criterion] must correspond to a pressing social need and, in particular, must remain proportionate to the legitimate aim pursued."* According to the ECtHR when determining whether an interference was "necessary", it will take into account margin of appreciation which the state authorities have at their discretion, but it is the obligation of the state authority to demonstrate the existence of an urgent social need behind the interference or restriction of this right (see case of ECtHR, *Piechowicz v. Poland*, Judgment of 17 April 2012, paragraph 212).
141. The issue to be addressed below is whether the decisions of the regular courts regarding the request of the Applicant were necessary to pursue the abovementioned purpose by law and have enabled a fair balance between the rights of the adopted child, the adoptive family and of the Applicant's private

law as a biological mother (see similarly paragraph 79 of the Judgment in *I.S. v. Germany*).

142. The Court, applying this criterion in the Applicant's circumstances, considers that the proceedings before the regular courts related to the Applicant's request, initiated at the Center for Social Work, were fair in their entirety.
143. The Court reiterates that the Applicant's legal rights in relation to her biological child ceased as a result of the consent given for adoption and the latter was fully informed about the legal and factual consequences.
144. In the following, the Court considers that the decisions of the regular courts to give priority to the confidentiality of her biological child, already adult and the adoptive family, were proportionate. Furthermore, the Court finds that the regular courts in their finding had correctly applied the law, when they concluded that such an obligation to notify the adopted child is not provided for by applicable law.
145. The Court therefore considers that the decisions of the regular courts rejecting the Applicant's specific request were necessary because they were: (i) provided by law; (ii) had pursued a legitimate aim; and (iii) had also pursued a fair balance between the interests of the adopted child, already of adult age, and respect for his private and family rights within his adoptive family. Therefore, the Court finds that the findings of the regular courts, including the Supreme Court, were proportionate.
146. Based on the explanation above, the Court finds that Judgment [ARJ-UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court in conjunction with Judgment [AA. no. 178/2019] of 15 May 2020, of the Court of Appeals and Judgment [A. no. 651/16] of 25 January 2019, of the Basic Court does not contain violation of the Applicant's right to respect for her private life, guaranteed by Article 36 of the Constitution, in conjunction with Article 8 of the ECHR.
147. In the light of the subject matter of the Referral, the Court notes and clarifies that the Applicant's Referral regarding her allegation of a violation of Article 8 of the ECHR has been dealt with and considered in the light of her request submitted to public authorities and regular courts, and that the subject matter of the Referral is not to review and elaborate on the rights of the adopted child to seek information about biological parents, and which are established by applicable law, international conventions and the case law of the ECtHR.

## ***II. Regarding the allegation of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR***

148. Following the above mentioned findings, in the following the Court will also examine the Applicant's allegations regarding the violation of her right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in respect of her specific allegation of lack of a reasoned court decision. To this end, the Court will elaborate on the general principles deriving from the case law of the Court and the ECtHR in relation to



Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, and will apply them in the circumstances of present case.

### **A. General principles**

149. Regarding the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court initially notes that it has already consolidated case law. This case law was built based on the ECtHR case law (including, but not limited to cases *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. In addition, the fundamental principles regarding the right to a reasoned court decision have also been elaborated in the cases of this Court, including but not limited to cases KI22/16, *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 Versicherungsverband*, Judgment, of 11 December 2019; and case of the Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 135).
150. In principle, the Court notes that the guarantees enshrined in Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, include the obligation for courts to give sufficient reasons for their decisions (see case of the Court KI230/19, Applicant *Albert Rakipi*, cited above, paragraph 139).
151. The Court also notes that based on its case law in assessing the principle which refers to the proper administration of justice, the court decisions must contain the reasoning on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. It is the substantive arguments of the Applicants that need to be addressed and the reasons given need to be based on the applicable law (see ECtHR cases *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 seeking a detailed response to each complaint raised by the Applicant, this obligation implies that the parties to the proceedings may expect to receive a specific and explicit response to their claims that are crucial to the outcome of the proceedings (see case *Morerira Ferreira v. Portugal*, Judgment of 5 July 2011, paragraph 84, and all references used therein; and case of the Court KI230/19, Applicant *Albert Rakipi*, Judgment of 9 December 2020, paragraph 137).



152. In addition, the concept of “*sufficiency of reasoning*” is a concept developed and also used by the ECtHR itself even where desirable could be a wider and more detailed reasoning (See case *Merabishvili v. Georgia*, No. 72508/13, Judgment of the Grand Chamber of 28 November 2017, paragraph 227. Although the circumstances of the case are not the same with the case referred to by the ECtHR, the concept of “*sufficiency of reasoning*” this case of the Grand Chamber of the ECtHR implies that the reasoning of the relevant decisions of the regular courts, in certain circumstances, although undesirable, may be sufficient. In this respect, in the above-mentioned Judgment of the ECtHR, the latter stated the following: “*Whilst more detailed reasoning would have been desirable, the Court [ECtHR] is satisfied that this [reasoning] was enough in the circumstances*” (see also case no. KI48/18, Applicants, *Arban Abrashi and the Democratic League of Kosovo*, Judgment of 4 February 2019, paragraph 186).

***B. Application of these principles in the circumstances of the present case***

153. The Court first recalls succinctly that the Applicant in her request for extraordinary review of the court decision, filed with the Supreme Court, claimed the following: (i) with respect to her allegation of erroneous application of the substantive law, the Applicant stated that “*It is the duty of the custodian body, in addition to the advice, to inform and instruct the adoptive parents as well as the children of this age that, as soon as the child reaches the age of 18, he acquires the legal right to see the adoption data, including the data for the biological parents. According to her: “[...] then it is only the exclusive right of the adoptee whether he wants to know and contact his biological parents*”; (ii) also specified that the Judgment of the Court of Appeals lacked the reasoning for the court decision; and (iii) that she did not request that she personally have access to the adoption documentation of her biological child, but requested that her biological child be notified about the fact of his adoption, so that he is entitled decide if he wants to know his biological mother.
154. Whereas in her Referral to the Court with regard to her allegation of non-substantiation of the court decision, the Applicant alleges that her request raised before the court instances was misunderstood because she did not request that she personally have access to the adoption documentation of her biological child, but requested that her child be informed about the fact of his adoption, so that he has the right to decide “*whether or not he wants to know his biological mother or not*”. In the following, the Applicant specifies that this basic request filed in her lawsuit before the Basic Court has not been addressed by the regular courts. In the context of this allegation, the Applicant also states that the regular courts have never given reasons why the provisions of the Law on Social and Family Services are not applicable.
155. In the context of the latter, the Court recalls the Applicant’s request submitted to the Center for Social Work, in which she requested that her biological child, an adult, whom she had given in adoption in 1989, be notified: (i) about the existence of his biological mother and (ii) of her interest in notifying him. The Court also recalls that the Applicant based this request on Article 194,

paragraph 2 of the Law on the Family of Kosovo, Article 8 of the ECHR and Article 22 of the European Convention on the Adoption of Children.

156. In response to the Applicant's request, the MLSW Complaints Commission, referring to the aforementioned provisions of the Family Law, namely Article 194 and Articles 17 and 18 of the MLSW Administrative Instruction, reasoned that *"has no legal support and legal obligation to inform the adopted child about the biological family as long as the biological child does not submit a written request for recognition of the biological parents. The exclusive right to search for the biological parent (s) belongs to the child"*.
157. The Court further recalls that as a result of the Applicant's statement of claim in the Basic Court, the latter supported the abovementioned finding of the MLSW Commission by interpreting Article 194 of the Law on Family and Articles 17 and 18 of the Administrative Instruction of MLSW. Following this, the Court of Appeals also found that *"the data of the adoption and its circumstances should not be disclosed or investigated without the consent of the adopter and the child unless specifically required by reasons of public interest. In this regard, the Court of Appeals found that in the present case there are no special circumstances of public interest and that such a request is acceptable only to the adoptee and not to his biological parents"*.
158. Whereas the Supreme Court in addressing the allegations raised by the Applicant in her request for extraordinary review of the Judgment of the Court of Appeals stated that *"Pursuant to Article 194 paragraphs 1 and 2 of the Family Law the facts which could reveal the existence and circumstances of the adoption of the child may not be discovered or investigated without the consent of the adopter and the child, unless this is required for special reasons and is in the public interest. Upon reaching the age of majority, the adoptee acquires the right of access to all information related to his adoption and at his request personal information about his biological parents will be provided. In accordance with Article 17, paragraphs 1 and 2 of the MLSW Administrative Instruction Nr. 09-2014 on the regulation of adoption procedures of children without parental care is determined that, the competent CSW is obliged to maintain the confidentiality and privacy of the child throughout the adoption process, and in no circumstance should provide the documentation from the file of the child, except for competent officials from the CSW, DSWF (MLSW) and the court. In accordance with Article 18 paragraph 1 of the MLSW Administrative Instruction, responsible for data protection and privacy of information collected during the adoption process, are responsible: the Basic Court where the adoption was made and the Custodian Body competent for protection of the child. While in paragraph 2 of the same article it is determined that the adoptee in adulthood has the right to all information related to his adoption and at his request, he will be provided personal information about his biological parents"*.
159. The Court, referring also to the Applicant's allegation in the request submitted to the Supreme Court, and in that to the Court places the following emphasis on the reasoning of the Supreme Court as follows: *"In view of the abovementioned articles of the Law and the Instruction and in the opinion of this, the court, the respondent [the Applicant], namely the biological mother of the adopted child*

*has no legal basis to inform the adopted child about his biological mother until the adopted child does not submit a written request to know his biological parents, as this right belongs only to the child. In fact, the position of this court is that the data and circumstances of the adoption should not be disclosed or investigated without the consent of the adopter and the child, unless this is required for special reasons and in the public interest. In the present case there are no public benefit interests and such a request is approved only if submitted by the adoptee and not by his biological parents”.*

160. The Court recalls: (i) the Applicant’s specific allegation that the regular courts did not deal with her specific request filed with the Center for Social Work and her statement of claim in the Basic Court, namely that she by the latter had expressly requested to ask the Center for Social Work to notify her adult biological child about his adoption; and (ii) the abovementioned reasoning of the regular courts, considers that the latter have responded to and addressed her request, emphasizing the fact that no legal basis stipulates that the Center for Social Work or MLSW are obliged to inform her biological child about the fact of his adoption.
161. Similarly and in the same line of reasoning, provided by the regular courts, in particular by the Supreme Court, the Court also recalls that cases where a court of third instance, as in the Applicant’s case the Supreme Court, which confirms the decisions taken by the lower courts – its obligation to reason decision-making differs from cases where a court changes the decision-making of lower courts (see, similarly, 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 *F.M.*, Resolution on Inadmissibility, of 9 July 2020, paragraph 100). In the present case, the Supreme Court did not change the decision of the Court of Appeals or that of the Basic Court, by which the Applicant’s request submitted to the Center for Social Work was rejected, but only confirmed its finding and legality. In this regard, the Supreme Court found that the Judgment of the Court of Appeals was clear and comprehensible and that it contained sufficient reasoning regarding the decisive facts.
162. In view of the above, the Court considers that in the present case, the Applicant has been given procedural opportunities to address her allegations and that, in substance, she has received a response to her substantive allegations raised in the request for extraordinary review of the decision of the Supreme Court. Therefore, the Court considers that the challenged Judgment meets the criteria and standard established through the case law of the Court and that of the ECtHR for a reasoned court decision, as guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
163. Therefore, based on the above, the Court finds that Judgment [ARJ-UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court is in compliance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

## **Conclusions**

164. The Court, in assessing the fulfillment of the admissibility criteria, with respect to the Applicant’s allegation regarding Article 7 of the Convention on the Rights

of the Child, found that this provision does not apply in her case, and as such this allegation is inadmissible. With regard to the Applicant's allegations that the challenged Judgment of the Supreme Court was rendered in violation of Article 8 of the ECHR and Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, the Court found that the Referral has met all admissibility criteria, established in the Constitution, Law and Rules of Procedure, and consequently proceeded with the examination of the referral on merits.

165. After assessing the merits of the Applicant's Referral, the Court found that: (i) Judgment [ARJ.UZVP. no. 37/2020] of 11 June 2020 of the Supreme Court in conjunction with Judgment [AA. no. 178/2019] of 15 May 2020, of the Court of Appeals and Judgment [A. no. 651/16] of 25 January 2019, of the Basic Court is in compliance with paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR; and (ii) Judgment [ARJ.UZVP. no. 37/2020] of 11 June 2020 of the Supreme Court is in compliance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
166. First, in order to reach the abovementioned finding, the Court first clarified that the circumstances of the present case, namely the refusal by the public authorities of the Applicant's request to notify her adult biological child about her existence and interest to notify him entail issues relating to the right to privacy, within the notion of the Applicant's private right as guaranteed by paragraph 1 of Article 8 of the ECHR. Accordingly, the Court found that Article 36, paragraph 1 of the Constitution and Article 8, paragraph 1 of the ECHR are applicable in the Applicant's case. In this context and throughout the examination of this case, the Court has elaborated on the general principles deriving from the case law of the ECtHR with regard to paragraph 2 of Article 8 of the ECHR to determine whether the decisions of public authorities to reject the Applicant's request constitute an interference with her right guaranteed by Article 36, paragraph 1 of the Constitution, in conjunction with paragraph 1 of Article 8 of the ECHR, and then applied the latter in the circumstances of the present case. In this regard, and in terms of the subject matter of the Referral, the Court also clarified that the Applicant's Referral has been dealt with and reviewed in terms of her request submitted to the public authorities and regular courts, and that the subject matter of the Referral is not to review and elaborate on the rights of the adopted child to seek information about biological parents, and which are established by applicable law, international conventions and the case law of the ECtHR.
167. Second, with regard to the allegation of a violation of the right to fair and impartial trial, as a result of the lack of a reasoned court decision, the Court, applying the general principles established through the case law of the Court and of the ECtHR, in the circumstances of the present case found that the challenged Judgment of the Supreme Court meets the criteria and standard for a reasoned court decision, as guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.



168. Therefore, and finally the Court found that Judgment [ARJ.UZVP. no. 37/2020] of 11 June 2020 of the Supreme Court is in compliance with the fundamental rights and freedoms of the Applicant guaranteed by: (i) paragraph 1 of Article 36 of the Constitution in conjunction with paragraph 1 of Article 8 of the ECHR; and (ii) Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, in its session held on 7 October 2021, unanimously:

### **DECIDES**

- I. TO DECLARE, the Referral admissible;
- II. TO HOLD that Judgment [ARJ.UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court is in compliance with Article 36 [Right to Privacy] of the Constitution in conjunction with Article 8 (Right to respect for private and family life) of the European Convention on Human Rights;
- III. TO HOLD that Judgment [ARJ.UZVP. no. 37/2020] of 11 June 2020, of the Supreme Court is in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- IV. TO NOTIFY this Judgment to the Parties and, in accordance with Article 20.4 of the Law, to publish the latter in the Official Gazette;
- V. This Judgment is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Radomir Laban

Gresa Caka-Nimani

**Kopje e vërtetuar**  
**Overena kopija**  
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