**Prishtina, on 18 February 2022**
**Ref. no. AGJ 1947/22**

***This translation is unofficial and serves for informational purposes only.***

# JUDGMENT

in

**Case No. KI75/21**

Applicant

**"Abrazen LLC", "Energy Development Group Kosova LLC", "Alsi & Co. Kosovë LLC" and "Building Construction LLC"**

**Constitutional review of Judgment ARJ-UZVP. no. 44/2020 of the Supreme Court, of 23 July 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 was submitted by companies "Abrazen LLC", "Energy Development Group Kosova LLC", 'Alsi & Co. Kosovë LLC" and "Building Construction LLC",

represented by lawyers Faton Qirezi and Alban Makolli (hereinafter: the Applicants).

## Challenged decision

2. The Applicants challenge the constitutionality of Judgment [ARJ-UZVP. no. 44/2020] of 23 July 2021, of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Decision [AA. no. 355/2020] of 17 June 2020, of the Court of Appeals, as well as the Decision [A. no. 3090/19] of 6 April 2020, of the Basic Court.

3. The Applicants were served with the challenged Judgment on 24 December 2018.

## 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 Articles 3 [Equality Before the Law], 7 [Values], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

## Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests]of the Law No. 03/L-121 on 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 Court

6. On 21 April 2021, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 22 April 2021, the President of the Court Arta Rama Hajrizi appointed Judge Bajram Ljatifi, as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu -Krasniqi and Gresa Caka-Nimani.

8. On 17 May 2021, based on paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the 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 Court Decision KK-SP 71-2/21, it was determined that Judge Gresa Caka-Nimani will assume the position of President

of the Court after the end of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 26 June 2021.

9. On 21 May 2021, the Court notified the Applicant about the registration of the Referral and requested to submit to the Court all appeals and the request for extraordinary review.

10. On 21 May 2021, the Court requested the Basic Court to notify the Court regarding the date when the Applicant was served with the challenged Judgment of the Supreme Court.

11. On 21 May 2021, the Court notified the Supreme Court about the registration of the Referral and sent to it a copy of the Referral.

12. 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

13. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision [No. K.SH.KI 75/21] appointed judge Nexhmi Rexhepi as a member of the Review Panel instead of judge Bekim Sejdiu.

14. On 27 May 2021, the Basic Court submitted to the Court the acknowledgment of receipt indicating that the Applicant was served with the challenged Judgment on 24 December 2020.

15. On 31 May 2021, the President of the Court, Arta Rama Hajrizi, by Decision [No. KK160/21] decided that Judge Gresa Caka Nimani, the President, is appointed as the Presiding in the Review Panels where she is appointed as a member of the Panel.

16. On 26 June 2021, pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP 2-2/21 of the Court, 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.

17. On 22 September 2021, the Court notified about the registration of the Referral in capacity of an interested party, (i) the claimant and (ii) the ERO and offered the latter a copy of the Referral.

18. On 22 September 2021, the Court requested the complete case file from the Basic Court, while on 29 September 2021, the Basic Court submitted the case file to the Court.

19. On 13 October 2021, the claimant submitted a response to the Applicant's referral.

20. On 10 November 2021, the Review Panel considered the report of the Judge Rapporteur and decided that the referral be considered in an upcoming session, after additional supplementations.

21. On 21 December 2021, the Review Panel considered the report of the Judge Rapporteur and decided that the Referral will be considered in an upcoming session, after additional supplementations.

22. On 19 January 2022, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

23. On the same date, the Court decided, unanimously, that the referral is admissible and: *i)* that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the European Convention on Human Rights; *ii)* declared invalid the Judgment [ARJ-UZVP. no. 44/2020], of 23 July 2020, of the Supreme Court of Kosovo, Decision [AA. No. 355/2020] of 17 June 2020, of the Court of Appeals, as well as Decision [A. no. 3090/19] of 6 April 2020 of the Basic Court; and (iii) remanded the Decision [A. no. 3090/19] of 6 April 2020, of the Basic Court for reconsideration, in accordance with the Judgment of this Court.

**Summary of facts**

24. On 27 November 2019, the Energy Regulatory Office (hereinafter: ERO) by Decision [V_1204_2019] determined feed in tariffs for the production of electricity from solar/photovoltaic panels, only for the additional targets of 20 MW according to the Administrative Instruction No. 05/2017 for the objectives of the electrical energy sources Point III of this decision determined that the ERO will notify the Applicants who are equipped with a preliminary authorization issued by the ERO Board and who are on the waiting list according to the chronological order of the issuance of decisions, to be included in the support scheme for available targets. According to the case file, it results that the Applicants were parties with legal interest regarding the procedures for challenging the aforementioned Decision, as they were waiting to be included in the support scheme for the available targets.

25. On 24 December 2019, the claimant Sami Kurteshi, in the capacity of the interested party (hereinafter: the claimant), with the allegation that he is affected by the said decision of the ERO, filed a lawsuit with the Basic Court in Prishtina, requesting that the Decision [V_1204_2019] of 27 November 2019 of the respondent ERO be annulled. The claimant also proposed the postponement of the execution of the aforementioned decision, until the contested matter is decided on merits, under the allegation that (i) irreparable damage was caused to him; (ii) the postponement is not contrary to the public interest; and (ii) that the postponement would not harm other parties affected by said Decision. The claimant emphasized that he has the procedural legitimacy to file the aforementioned lawsuit since it is a consumer of electricity and that it will "ultimately" be billed.

26. On 27 December 2019, the Basic Court in Prishtina, Department for Administrative Affairs, by the Decision [A. no. 3090/19], approved as grounded the request for postponement of the execution of the decision submitted by the claimant.

27. On 23 January 2020, against the above-mentioned Decision, the respondent - ERO filed a complaint, by which it challenged the legality of the latter, on the grounds of violations of the legal provisions of the Law on Administrative Conflicts, the violation of the legal provisions of the laws of the energy sector and sub-legal acts and erroneous and incomplete determination of the factual situation. ERO proposed that the Court of Appeals approves the appeal as grounded and annul the Decision of the Basic Court.

28. On 27 January 2020, *"Alsi&Co- Kosovë" LLC* files submission with the Basic Court to appear as a party with an interest in the administrative conflict, in support of the sued party, namely the ERO. This proposal of the Applicant *"Alsi&Co- Kosovë" LLC* to be considered an interested party in this legal matter, was approved as grounded by the Basic Court by the Decision [A. NO. 3090/19].

29. On 30 January 2020, the claimant submitted a response to the ERO complaint against the Decision [A. no. 3090/19] of the Basic Court of 27 December 2019, proposing to the Court of Appeals to reject the latter as ungrounded and to uphold the aforementioned decision of the Basic Court.

30. On 31 January 2020, the Applicant - *Building Construction LLC* in the capacity of the interested party filed an appeal against the Decision [A. no. 3090/19] challenging the appealed decision on the grounds of violation of the provisions of the administrative and contested procedure and erroneous or incomplete determination of factual situation, with a proposal to approve as grounded the appeal filed by *Building Construction LLC*, to annul the Decision of the Basic Court, as well as to reject the request for postponement of the execution of the ERO decision.

31. On 10 February 2020, the Applicant – *Alsi & CO - Kosovo LLC,* as an interested party filed an appeal against the Decision [A. no. 3090/19] of the Basic Court, on the grounds of violation of the provisions of the administrative and contested procedure and erroneous determination of factual situation. He argued that, according to paragraph 3 of Article 22 and Article 34 of the Law on Administrative Conflict, the Basic Court had to assess what damage is caused to the claimant by the execution of the challenged act; why that damage is irreparable; what evidence has been assessed to establish that the postponement of the execution of the ERO decision is not against the public interest; why the Applicants are not harmed. Also, according to them, the Basic Court did not address the allegation of the lack of active legitimacy of the claimant, according to Article 34 of the LAC.

32. On 20 February 2020, the Court of Appeals by the Decision [AA. no. 155/2020] approved the appeals of ERO, the Applicant *Building Construction LLC*, and the Applicants *Alsi & CO-Kosove LLC*, while it annulled the Decision [A. no. 3090/2019] of the Basic Court of 27 December 2019 and the case is remanded

to the same court for retrial and reconsideration, on the grounds that the appealed decision cannot be examined due to its irregularities, since the enacting clause is contradictory with itself and that the latter is not reasoned.

33. On 25 February 2020, the Applicants *Abrazen LLC* and *Energy Development Group Kosovo LLC* submitted their submission of *"stakeholders"* to the Court of Appeals, for the reason that the latter have been provided with preliminary authorizations from ERO, attaching those decisions, to become part of ERO Support Schemes, which procedure *"has advanced by Decision V_1204_2019 of 27.11. 2019*" unlawfully challenged by the claimant. In this regard, they claimed that the claimant lacks active legitimacy to file a lawsuit against Decision V_1204_2019, which has directly affected the legitimate interests of the Applicants, as well as in the capacity of interested parties, support the respondent - ERO.

34. On 6 April 2020, the Basic Court by the Decision [A. no. 3090/19] approved again as grounded the request for postponement of the execution of the Decision submitted by the claimant, deciding that the execution of the Decision [V_ 1204_2019] of 27 November 2019, of ERO, is postponed until the final court decision according to the lawsuit. In this Decision, the Basic Court reasoned that "*the claimant has provided reliable evidence which proves the fact that the execution of the decision would bring damage to the claimant which damage would be difficult to repair. Also, the [Basic] Court found that postponing the execution of the decision until the case is decided on its merits, is not in contradiction with the public interest, nor that the postponement would bring any great harm to the opposing party, namely the interested person."*

35. On 22 April 2020, the Applicants, as well as several other companies, including the company 'VBS llc", submitted a complaint against the aforementioned Decision of the Basic Court on the grounds of (i) violation of the provisions of the administrative and contested procedure; and (ii) erroneous determination of factual situation. They emphasized that the Decision of the Basic Court lacks reasoning about the decisive facts, therefore, the latter did not justify the damage that can be caused to the claimant and why it cannot be repaired, as required by Article 22, paragraph 2 of the LAC nor did it regard the instructions given by the Court of Appeals, which remanded the case to the Basic Court for reconsideration. The Applicants also raised the specific allegation that the claimant lacks "*procedural legitimacy"*, because the challenged decision of the ERO does not affect its direct interest defined by law, established in Article 34 paragraph 1, subparagraph 1.3 of the LAC.

36. On 10 June 2020, ERO filed a complaint against the above-mentioned Decision of the Basic Court, challenging its legality, due to violations of the legal provisions of the LAC, the violation of the legal provisions of the energy sector laws and sub-legal acts and erroneous and incomplete determination of factual situation, ERO more specifically emphasized that the reasoning of the Basic Court relies only on the description of the legal provisions of Article 22 of the LAC, which defines the conditions that must be met for postponing the execution of a decision, and has not proven whether these legal conditions are based on

relevant facts. Therefore, in the end, ERO proposed that the Court of Appeals approves the appeal as grounded and annul the decision of the Basic Court.

37. On 15 June 2020, the claimant submitted a response to the complaints of the parties to the proceedings, proposing to the court that the complaint of the parties identified as *VBS llc*, with business number 70325365 and *Building Construction*, without an address or identification number, regarding their legitimacy be dismissed as inadmissible, also emphasizing that the latter were not parties to the proceedings at the ERO. While the claimant also requested that the appeal of the interested parties *"Alsi&Co-Kosovë LLC llc"* , with identification number 810875552, *"Vita Energy llc, Abrazen LLC, Energy Development Group Kosova llc and Solar Gate LLC"* be rejected as ungrounded; as well as the Decision [A. no. 3090/19] of 6 April 2020 of the Basic Court be upheld, among other things emphasizing that the Decision of the ERO "*makes electricity more expensive, charging at least 16.46 million euro to the claimant and other consumers [...]"* adding that *"This property damage (and any other accompanying damage) would not be recoverable after the final resolution of the dispute*".

38. On 17 June 2020, the Court of Appeals, by the Decision [AA. no. 355/2020] rejected as ungrounded the appeal of 10 June 2020 of ERO; the appeal of the Applicants of 22 April 2020, while upholding the Decision [A.no. 3090/20] of 6 April 2020, of the Basic Court. In this Decision, the Court of Appeals does not provide any reasoning regarding the essential allegation of the Applicants regarding the lack of *"procedural legitimacy"* of the claimant. The Court of Appeals also emphasized that starting from this state of the matter, it approves the position of the first instance court as fair and legal, since even according to the assessment of the panel of this court, in the pr4esent case the conditions for postponing the execution of the administrative act provided for in Article 22 par.2 of the Law on Administrative Conflicts have been met, but beyond the description of the legal provisions, it did not clarify how the legal criteria for postponing the execution of the decision were met.

39. On 30 June 2020, the Applicants submit a request for an extraordinary review of the decision by which they challenged the legality of the Decision [AA. no. 355/2020] of the Court of Appeals, on the grounds of violation of the provisions of substantive law, with the proposal to approve the request and modify the challenged decision and reject the claimant's proposal to postpone the execution of the ERO decision or annul the decision and remand the case for reconsideration and retrial. The Applicants raised the specific claim that the first and second instance courts , (i) did not give reasons about the crucial facts raised by the Applicants that are related to the conditions that must be met for the postponement of the execution of the decision of the ERO- and the fulfillment of the legal conditions defined in Article 22 of the LAC, which are related to irreparable damage and public interest; and (ii) has not addressed the claim that the claimant lacks "*active legitimacy"* to challenge the disputed act in administrative conflict, and that the lawsuit, with the claim contained in the same, is premature, for which the latter must be rejected, on two grounds, as inadmissible and as premature, as established in Article 34 paragraph 1, sub-paragraphs 1.1 and 1.3 of the LAC.

40. On an unspecified date, the respondent - ERO also submits a request for extraordinary review against the Decision of the Court of Appeals [AA. no. 355/2020] of 17 June 2020, on the grounds of violation of the substantive law and violation of the provisions of the procedures, with a proposal to approve the request and modify the challenged decision and approve the appeal of the respondent. The Applicants claimed that the Basic Court and the Court of Appeals did not give reasoning about the decisive facts, the damage that can be caused to the claimant and why the latter cannot be repaired, as required by Article 22, paragraph 2 of the LAC, nor did they address the claim of the applicants that the claimant lacks "procedural legitimacy", because the challenged decision of the ERO does not affect its direct interest defined by law as established in Article 34 paragraph 1, sub-paragraph 1.3 of the LAC.

41. On 23 July 2020, the Supreme Court of Kosovo (hereinafter: the Supreme Court) by Judgment [ARJ-UZVP. no. 44/2020] rejected as ungrounded the requests for extraordinary review of the respondent ERO and of the Applicants, filed against the Decision [AA. no. 355/2020] of 17 June 2020, of the Court of Appeals. In this Judgment, the Supreme Court does not provide any reasoning regarding the Applicants' allegation of the lack of "procedural legitimacy" of the claimant. In this Judgment, the Supreme Court, regarding other issues raised by the Applicants, emphasized, among other things, that "*this Court assesses that the respondent and the interested parties have not made credible with any single evidence the fact that the postponement of the execution is not against the public interest. According to the assessment of this court, in the present case, the conditions for the postponement of the execution of the administrative act, which would justify the postponement of the execution of the decision, have not been cumulatively met, referring to the legal provisions of Article 22 of the LAC. For these reasons, this Court decided to reject the requests for extraordinary review of the respondent and of the interested parties, filed against Decision A. no. 355/2020 of the Court of Appeals of 17.06.2020.*"

**Applicant's allegations**

42. The Applicants allege that the challenged Judgment was rendered in violation of their fundamental rights and freedoms guaranteed by articles 3 [Equality Before the Law], 7 [Values], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution and Article 6 (Right to a fair trial) of the ECHR.

43. In principle, the Applicants, *in essence* claim that the challenged Decision has violated the above-mentioned articles of the Constitution, as the latter was not compiled in accordance with the legal and constitutional premises regarding a *reasoned court decision*, which must contain the requests of the parties, the facts and evidence presented, the reasoning of which facts have been proven, through what evidence.

44. In the following, the Applicant claims that the Supreme Court, by not addressing the claims of the Applicant, by not applying Article 160 paragraph 4 of the LCP, has violated articles 3, 7 and 24 of the Constitution. Therefore, by not placing the Applicants in an equal position with the interested party-claimant in relation to

the fulfillment of the requirements from Article 22 paragraph 2 in conjunction with paragraph 6 of the LAC, and within the meaning of the definitions of this legal provision, then the reasoning by the regular courts be given.

45. By non-giving of relevant reasons, regarding the allegations filed in the request for extraordinary review of the Decision, by the Supreme Court in its Decision, according to the Applicants, also violates Article 31 of the Constitution. So, the challenged Judgment does not contain the reasoning in accordance with the claims filed that the Judgment of the Court of Appeals was not compiled in accordance with Article 160 in conjunction with Article 175 of the LCP, because no relevant reasons are given as to how the requirements from the Article 22 paragraph 2 of the LAC were met, in order to postpone the execution of the challenged administrative act, not providing data on (i) what is the damage caused to the claimant by the execution of the challenged act and why it is irreparable, (ii) why the postponement is not contrary to public order, (iii) why the third parties as interested parties, namely any damage caused to the Applicants, since they have claimed that damage is caused to them and have argued this claim by evidence. Also, the court decisions do not contain reasoning related to the Applicants' allegations regarding (iv) the lack of active legitimacy of the claiming party.

46. The non-addressing of appealing allegations in the request for extraordinary review of the Decision also violates Article 32 of the Constitution, namely the Right to Legal Remedies. According to the Applicant, this right does not only provide for the submission of the complaint in the procedural sense, but also the material aspect that the allegations filed in the complaint-request, be examined by the body that decides on it, and for the latter, to provide reasoning whether they are or not grounded/ungrounded, and if so, for what reason, and that in the present case the Decision of the Supreme Court does not contain such a thing.

47. Finally, the Applicants request the Court to I. declare, *"with a majority of votes, the referral admissible"*; II. to find that there has been a violation of articles 3; 7; 24; 31 and 32 of the Constitution in conjunction with Article 6 of the ECHR, as a result of the lack of reasoning of the court decision; III. to declare the challenged Judgment invalid; IV. to remand the challenged Judgment for retrial in accordance with the findings of this Judgment of the Constitutional Court; V. to order the Supreme Court to notify the Constitutional Court, as soon as possible, about the measures taken to implement the Court's Judgment, in accordance with Rule 66 (5) of the Rules of Procedure.

**Relevant constitutional and legal provisions**

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

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

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

*3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*

*[…]*

**European Convention on Human Rights**

**Article 6**
**(Right to a fair trial)**

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

***Law No. 03/L-202 on Administrative Conflicts***

*Article 22*

*2. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the*

*plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.*
*[…]*

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

*Article 34*

*1. The court shall disprove with a decision, if it ascertains that:*

*1.1. the indictment has been submitted after the timeline or it is premature;1.1. the lawsuit was filed after the deadline or is untimely;*
*[…]*

*1.3. it is clear that the administrative act contested by an indictment does not affect the rights of the claimant or his/her direct interest based on the law.*

***Law No. 03/L-006 on Contested Procedure***

*Article 160*

*160.4 Justification of the verdict consists of: requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated.*

*Article 175*

*Provisions of articles 146, 153, 160 and 169, paragraph 2, of this law is applied accordingly when it is dealt with verdicts.*

**Admissibility of the Referral**

48. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution and further specified in the Law and the Rules of Procedure.

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

*Article 21*

*"[…]*

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

*Article 113*

"(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."*

50. The Court also assesses whether the Applicant has met the admissibility criteria, as specified by Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

*"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

*2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*

Article 48
[Accuracy of 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…".*

51. In this regard, the Court notes that the Applicant is entitled to file a constitutional complaint, invoking alleged violations of fundamental rights and freedoms, which are valid for individuals as well as for legal persons (See case of the Court no. KI41/09, Applicant AAB-RIINVEST University L.L.C., Resolution on Inadmissibility of 3 February 2010, paragraph 14 and KI25/18, Applicant "*Bayerische Versicherungsverbrand",* Judgment of 11 December 2019, paragraph 40)

52. Regarding the fulfillment of other admissibility criteria, the Court finds that the Applicants are authorized parties; have exhausted available legal remedies; have clarified the act of the public authority which constitutionality they challenge**,** specifically the Judgment [ARJ-UZVP. no. 44/2020] of the Supreme Court of Kosovo of 23 July 2020; they have specified the constitutional rights which they claim to have been violated; and submitted the referral within the legal deadline, in compliance with paragraph 7 of Article 113 of the Constitution and Articles 47 and 48 of the Law.

53. However, in the context of the circumstances of the present case, taking into account that the challenged decisions before the Court are related to decisions regarding security measures, namely "*preliminary procedure*", the Court, based on its case law and that of the European Court of Human Rights (hereinafter: ECtHR), must assess the applicability of the guarantees of Article 31 of the

Constitution in conjunction with Article 6 of the ECHR. In this regard, the Court refers to point (b) of paragraph (3) of Rule 39 of the Rules of Procedure, according to which the Court may consider a referral inadmissible if it is not *ratione materiae* compatible with the Constitution.

54. Therefore, in the context of the latter, the assessment of this criterion in the circumstances of the case is important because the proceedings conducted before the regular courts fall within the scope of *"preliminary procedures"*, namely the challenged Decision of the Supreme Court is related to the Decision of the Basic Court in Prishtina for the postponement of the execution of the ERO decision while the claim for annulment of the ERO decision is still pending in the merits review procedure. Therefore, the Court will assess whether Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is applicable in the circumstances of the Applicants' case.

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

56. The Court also points out that the criteria regarding the applicability of Article 31 of the Constitution related to the preliminary proceedings have also been determined in the cases of this Court, including but not limited to the cases KI122/17, Applicant, *Česká Exportní Banka AS.,* Judgment of 30 April 2018; KI150/16, Applicant *Mark Frrok Gjokaj*, Judgment of 31 December 2018; KI81/19, Applicant *Skender Podrimqaku,* Resolution on Inadmissibility of 9 November 2019; KI107/19, Applicant *Gafurr Bytyqi*, Resolution on Inadmissibility, of 11 March 2020; KI195/20 Applicant *Aigars Kesengfelds*, Judgment, of 29 March 2021. The general principles established by these aforementioned decisions of the Court are based on the case of the ECtHR, *Micallef v Malta*, Judgment of 15 October 2009.

57. Accordingly, in order to ascertain whether Article 31 of the Constitution and Article 6 of the ECHR apply in the specific case, the Court will first refer to the general principles established through the ECtHR case law and that of the Court in terms of the applicability of the procedural guarantees of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR and then apply the same in the circumstances of the present case.

58. Based on its case law and that of the ECtHR, the Court notes that not all security measures/interim measures determine civil rights or obligations and in order for Article 6 of the ECHR to be considered applicable, the ECtHR determined the criteria on the basis of which the applicability of Article 6 of the ECHR in the "*preliminary proceedings*" should be assessed (see the ECHR case, *Micallef v Malta*, cited above, paragraphs 83-86).

59. According to the criteria determined in the case *Micallef v. Malta,* which have been accepted also by this Court through case law. Firstly, the right at stake

should be "civil" in both the main trial and in the injunction proceedings, within the autonomous meaning of this notion under Article 6 of the ECHR and; secondly, this procedure must effectively determine the relevant civil law (see, in this context, the case of the ECtHR, *Micallef v Malta*, cited above, paragraphs 84 and 85 and references therein, as well as see Court cases KI122/17, Applicant *Česká Exportní Banka AS.*, cited above, paragraphs 130 and 131; KI81/19, Applicant *Skender Podrimqaku*, cited above, paragraphs 47 and 48; KI107/19, Applicant *Gafurr Bytyqi*, cited above, paragraph 53.)

60. The Court recalls that the circumstances of the Applicants' case refer to the Decision of the ERO on enabling setting the feed in tariffs to produce electricity from solar/photovoltaic panels, only for the additional targets of 20 MW, in which decision the Applicants, as interested parties in the case, had the preliminary authorizations to become part of the support schemes of ERO. The claimant requested the postponement of the execution of the Decision in question claiming that it affects the price of electricity, so as a consumer of electricity "in the end" it will be billed because, among other things, this Decision increases the ceiling amount of the support scheme for photovoltaic energy and sets the feed in tariff *"of 85.5 euro per MW"*.

61. Consequently, the request for the postponement of the execution of the administrative decision, as in the circumstances of the present case, of the decision of the ERO, in the administrative conflict procedure is foreseen in Article 22 of the LAC. This decision to postpone the execution, based on the applicable law, can be taken until the merits of the case are decided, respectively until the court decision is rendered. In this dispute, since the Applicants, as it results from the case file, have been provided with preliminary authorizations, who were on the waiting list in chronological order for the issuance of decisions to be included in the support scheme for the objectives available, the postponement of the execution of the Decision [V_1204_2019] has affected their "*civil"* right both in the judicial review and in the proceedings related to the security measure, which is related to the right to be included in the support scheme for the available targets determined by the aforementioned Decision. Therefore, based on the above, the Court finds that the first criterion for the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the relevant preliminary procedures, is fulfilled.

62. In the following, the Court further notes that in the circumstances of the Applicants, the postponement of the execution of the ERO Decision was decisive for the possibility of benefiting from feed-in tariffs for production of electricity from solar/photovoltaic panels, for the additional targets of 20 MW, in which decision the Applicants, as interested parties in the case, received preliminary authorizations to become part of the ERO support schemes. Therefore, the Court finds that the second criterion for the applicability of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, in the relevant preliminary proceedings, is fulfilled.

63. Therefore, the Court finds that in the circumstances of the Applicant, based on its case law and that of the ECtHR, the criteria for the applicability of the procedural guarantees established in Article 31 of the Constitution in

conjunction with Article 6 of the ECHR have been met. Accordingly, the Court finds that the Applicant's claim regarding the allegation of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR is *ratione materiae* in compliance with the Constitution.

64. At the end and after examining the constitutional complaint of the Applicants, the Court considers that the referral cannot be considered as manifestly ill-founded on constitutional basis, as provided by paragraph (2) of rule 39 of the Rules of Procedure, and consequently, the referral is declared admissible for review on the merits. (see also the ECtHR case: *Alimuçaj v. Albania*, application no. 20134/05, Judgment, of 9 July 2012, paragraph 144, and see similarly Court case KI27/20, Applicant *The VETËVENDOSJE! Movement* Judgment, of 22 July 2020, paragraph 43).

**Merits of the Referral**

65. The Applicants allege that the challenged Judgment was rendered in violation of their fundamental rights and freedoms guaranteed by articles 3 [Equality Before the Law], 7 [Values], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 32 [Right to Legal Remedies] of the Constitution and Article 6 (Right to a fair trial) of the ECHR.

66. Before the Court deals with the Applicants' allegations of constitutional violations, the Court emphasizes that the essence of the case that this referral entails is related to a Decision of the ERO on setting feed-in tariffs for the production of electricity from solar/photovoltaic panels, only for additional targets of 20 MW. The Applicants, as interested parties in the case, had received the preliminary authorizations to become part of the support schemes of ERO, and were on the waiting list for this purpose. The interested party, namely the claimant, filed a lawsuit with the Basic Court in Prishtina, by which requested that the decision of the ERO be annulled, as well as to postpone the execution of the above-mentioned decision, until the contested case is decided on its merits, claiming that irreparable damage was caused to it, as a consumer of electricity, stressing that in this case, and as a result of the administrative decision, electricity would become more expensive. The Basic Court approved the claimant's request for postponement of the execution of the ERO decision. Acting according to the relevant appeals of ERO and the Applicants, the Court of Appeals approves their appeals as grounded and remand the case for retrial and reconsideration to the Basic Court. In the following, the Basic Court in retrial, approves again as grounded the request for postponement of the execution of the decision, submitted by the claimant, until the final court decision is taken. ERO and the Applicants filed appeal against the Decision, in which they emphasized that the Judgment of the Basic Court lacked reasoning on the decisive facts and legal requirements for allowing the postponement of the execution of the ERO decision, as well as it lacked the reasoning regarding *the lack of procedural legitimacy* of the claimant.

67. The Court of Appeals rejected these appeals as ungrounded, and upheld the Decision of the Basic Court, but beyond going through the criteria established in the legal provision, namely Article 22 of the LAC, it did not clarify how these

criteria were met, nor did it address the issue of the claimant's procedural legitimacy, as required by Article 35 of the LAC. Regarding the Decision of the Court of Appeals, ERO submitted a request for an extraordinary review; and the Applicants, who had raised the specific claim that the first and second instance courts did not provide reasoning about the decisive facts, the damage that can be caused to the claimant and why the latter cannot be repaired, as required by Article 22, paragraph 2 of the LAC, nor did they address the claim of the applicants that the claimant lacks "procedural legitimacy", because the challenged decision of the ERO does not affect his direct interest provided by law as defined by Article 34 paragraph 1, sub-paragraph 1.3 of the LAC. This request was rejected as ungrounded by the Supreme Court which also did not give any reasoning regarding the essential allegations of the Applicants, which is related to the fulfillment of the legal requirements established in Article 22, of the LAC, on the postponement of the execution of the decisions, as well as regarding *lack of procedural legitimacy* of the claimant as established in Article 34 of the LAC. The Applicants challenge the findings of the Supreme Court before the Court, claiming, in essence, a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a consequence of the unreasoned court decision, as a result of (i) not reasoning on the decisive facts and legal requirements, for allowing the postponement of the execution of the decision of the ERO, these criteria defined in Article 22 of the LAC; and (ii) not providing a specific answer to the decisive claim of *lack of procedural legitimacy* of the claimant, this criterion defined in Article 34 of the LAC.

68. When assessing the admissibility of these allegations, the Court will also apply the standards of ECtHR case law, in accordance with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged to interpret fundamental rights and freedoms guaranteed by the Constitution.

*General principles regarding the reasoning of the court decisions*

69. As to the right to a reasoned court decision guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court first notes that it already has a consolidated case-law. This case-law was built based on the case law of the ECtHR, including but not limited to the cases of *Hadjianastassiou v. Greece*, Judgment of 16 December 1992; *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994; *Hiro Balani v. Spain*, Judgment of 9 December 1994; *Higgins and others v. France*, Judgment of 19 February 1998; *Garcia Ruiz v. Spain*, Judgment of 21 January 1999; *Hirvisaari v. Finland*, Judgment of 27 September 2001; *Suominen v. Finland,* Judgment of 1 July 2003; *Buzescu v. Romania,* Judgment of 24 May 2005; *Pronina v. Ukraine*, Judgment of 18 July 2006; and *Tatishvili v. Russia*, Judgment of 22 February 2007. Moreover, the fundamental principles concerning the right to a reasoned court decision have also been elaborated in the cases of this Court, including but not limited to KI22/16, Applicant *Naser Husaj*, Judgment of 9 June 2017; KI97/16, Applicant *"IKK Classic",* Judgment of 9 January 2018; KI143/16, Applicant *Muharrem Blaku and others,* Resolution on Inadmissibility of 13 June 2018; KI87/18, Applicant *IF Skadiforsikring*, Judgment, of 27 February 2019, and KI24/17, Applicant *Bedri Salihu*, Judgment, of 27 May 2019; KI35/18, Applicant

*"Bayerische Versicherungsverbrand"*, Judgment of 11 December 2019; and case of the Court KI230/19, Applicant *Albert Rakipi,* Judgment of 9 December 2020, paragraph 135).

70. In principle, the Court notes that the guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR include the obligation of courts to provide sufficient reasons for their decisions (see, the ECHR case, *H. v. Belgium*, Judgment of 30 November 1987, paragraph 53; as well as see Court case KI230/19, Applicant *Albert Rakipi,* cited above, paragraph 139 and case KI87/18, Applicant *IF Skadiforsikring,* paragraph 44). A reasoned decision shows the parties that their case has really been heard, and therefore contributes to a greater admissibility of decisions. (See the ECtHR case *Magnin v. France*, Decision of 10 May 2012, paragraph 29).

71. The Court refers to its case law where it finds that the reasoning of the decision should emphasize the relationship between the findings of merits and reflections when considering the proposed evidence on the one hand, and the court's legal conclusions on the other. The Court's judgment will violate the constitutional principle of prohibition of arbitrariness in decision-making, if the reasoning given does not contain proven facts, the relevant legal provisions, and the logical relationship between them (Constitutional Court, cases: no. KI72/12, *Veton Berisha and Ilfete Haziri*, Judgment of 17 December 2012, paragraph 61; and no. KI135/14, *IKK Classic*, Judgment of 9 February 2016, paragraph 58).

72. The case law also determines that even though a court has a certain margin of appreciation regarding the selection of arguments and evidence, it is obliged to justify its activities and decision-making by giving the relevant reasons. (See ECHR cases: *Suominen v. Finland*, cited above, paragraph 36; *Carmel Saliba v Malta*, Judgment of 24 April 2017, paragraph 73; see also the case of the Court, KI227/19, Applicant NT "*Spahia Petrol",* Judgment of 20 December 2020, paragraph 46). Furthermore, the decisions must be reasoned in such a way as to enable the parties to make effective use of any existing right of appeal. (See the ECHR case, *Hirvisaari v Finland*, cited above, paragraph 30).

73. The Court also emphasizes that based on its case law when assessing the principle which refers to the proper administration of justice, the decisions of the courts must contain the reasoning on which they are based. The extent to which the obligation to give reasons applies may vary depending on the nature of the decision and must be determined considering the circumstances of the specific case. It is the essential arguments of the applicants that must be addressed and the reasons given must be based on the applicable law (see similarly the cases of the ECtHR, *Garcia Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, paragraph 29; *Hiro Balani v. Spain*, Judgment of 9 December 1994, paragraph 27; and *Higgins and others v. France*, paragraph 42, see also case of the Court KI97/16, Applicant *IKK Classic*, cited above, paragraph 48; and case KI87/18 *IF Skadeforsikring*, cited above, paragraph 48).

74. 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 *Moreira Ferreira v Portugal*, Judgment, of 5 July 2011 paragraph 84 and all references used therein; as well as Court case KI230/19, applicant *Albert Rakipi* Judgment of 9 December 2020, paragraph 137).

75. An appellate court may, in principle, reject an appeal by approving the reasons for the decision of the lower court, but even such a decision must contain sufficient reasoning to show that the relevant court did not approve the findings reached by a lower court without sufficient consideration. (See, among others, case of the ECtHR, *Tatishvili v. Russia*, cited above, paragraph 62; see also the case of the Court, KI227/19, Applicant *NT "Spahia Petrol",* cited above, paragraph 47).

76. Therefore, based on the case law of the ECtHR and that of the Court, the courts are required to examine and give specific and clear answers regarding: *(i)* the main claims and arguments of the party (see, cases of the ECtHR, *Buzescu v. Romania*, cited above, paragraph 67; and *Donadze v. Georgia*, Judgment of 3 March 2006, paragraph 35); *(ii)* claims and arguments that are decisive for the outcome of the procedure (see, cases of the ECHR: *Ruiz Torija v Spain*, cited above, paragraph 30; and *Hiro Balani v. Spain*, cited above, paragraph 28); or *(iii)* claims regarding the rights and freedoms guaranteed by the Constitution and the ECHR (see the case of the ECtHR, *Wagner and JMWL v Luxembourg*, Judgment of 28 June 2007, paragraph 96 and references therein; and also see the Court's case, KI227/19, Applicant *N.T. "Spahia Petrol",* cited above, paragraph 48).

***(ii) Application of the above-mentioned principles to the circumstances of the present case***

77. The Court recalls once again that the essence of the case that this referral entails is related to a Decision of the ERO on setting feed-in tariffs to produce electricity from solar/photovoltaic panels, only for additional targets of 20 MW. The Applicants, as interested parties in the case, had received the preliminary authorizations to become part of the support schemes of ERO, and were on the waiting list for this purpose. The claimant, filed a lawsuit with the Basic Court in Prishtina, by which requested that the decision of the ERO be annulled, as well as to postpone the execution of the above-mentioned decision, until the contested case is decided on its merits, claiming that irreparable damage was caused to it, as a consumer of electricity, alleging that in this case, and as a result of the administrative decision, electricity would become more expensive. The Basic Court in retrial approved the request for postponement of the execution of the ERO decision filed by the claimant, until the final court decision is rendered. ERO and the Applicants filed appeal against the Decision, in which they emphasized that the Judgment of the Basic Court lacked reasoning on the decisive facts and legal requirements for allowing the postponement of the execution of the ERO decision, as well as it lacked the reasoning regarding *the lack of procedural legitimacy* of the claimant. The Court of Appeals rejected these appeals as ungrounded, and upheld the Decision of the Basic Court, Against the Decision of the Court of Appeals, submitted a request for an

extraordinary review ERO and the Applicants, who had raised the specific claim that (i) the first and second instance courts did not deal with the allegation that in the present case the requirements, as provided by Article 22, paragraph 2 of the LAC, were not met on the postponement of the execution of the ERO decision; as well as (ii) the allegation that the claimant lacks *procedural legitimacy*, to challenge the ERO decision in the administrative conflict as defined by Article 34 of the LAC. This request was rejected as ungrounded by the Supreme Court.

78. The Applicants, before the Court, essentially allege a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a consequence of the unreasoned court decision as a result of (i) lack of reasoning on decisive facts and legal requirements established in Article 22, paragraph 2 of the LAC for allowing the postponement of the execution of the ERO decision ; and (ii) not providing a specific answer to the decisive allegation of *lack of procedural legitimacy* of the claimant in accordance with Article 34 of the LAC.

79. Regarding these allegations, the Court initially recalls the legal requirements that must be met for the postponement of the execution of an act until the final decision according to Article 22, paragraph 2 of the LAC which states: "*By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the claimant, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person".*

80. The Court notes that according to the relevant provisions mentioned above, for the postponement of the execution of an act, it is necessary to meet the following requirements:

*i)* if the execution would bring damage to the claimant, which would be difficult to repair, whereas
*ii)* postponement is not contrary to the public interest; and
*iii)* nor would the postponement bring any great harm to the opposing party, namely the interested person.

81. Whereas, regarding the procedural legitimacy of the claimant, Article 34, paragraph 3 of the LCA stipulates that the Court dismisses the lawsuit, if it finds that *"the administrative act contested by an indictment does not affect the rights of the claimant or his/her direct interest based on the law."*

82. Regarding the fulfillment of these legal requirements for the postponement of the execution in question, as well as regarding the procedural legitimacy of the claimant, the Court notes that the Basic Court, by the Decision [A. no. 3090/10] had emphasized that *"the claimant has provided reliable evidence which proves the fact that the execution of the decision would bring damage to the claimant which damage would be difficult to repair. Also, the Court found that postponing the execution of the decision until the case is decided on its merits, is not in contradiction with the public interest, nor that the postponement would bring any great harm to the opposing party, namely the interested*

*person."* As for the legitimacy of the claimant, the Basic Court did not provide any reasoning at all.

83. The Court also recalls the reasoning of the Court of Appeals in Decision [AA. no. 355/2020], where it is emphasized as follows:

> *"The first instance court, by the appealed Decision, approved the request of the claimant -proposer to postpone the execution of the Decision [V_1204_2019] of 27 November 2019, on the grounds that the claimant, from the evidence found in the case files, has made his request credible, that the execution of the decision challenged by the lawsuit will bring him damage, which damage would be difficult to repair, and that the postponement of the execution of the decision is not against the public interest, nor will the postponement bring any great harm to the opposing party. In this regard, the court assesses that the conditions from Article 22.2, of the Law on Administrative Conflicts, for postponing the execution of the challenged decision, have been met. The court bases this assessment on the fact that the claimant has provided reliable evidence that proves the fact that the execution of the decision would bring damage to the claimant, which damage would be difficult to repair. Also, the court found that postponing the execution of the decision until the case is decided on its merits, is not against the public interest, nor that the postponement would bring any great harm to the opposing party, namely the interested person.*
>
> *The panel of the Court of Appeals, setting from this state of the case, accepts in entirety the position of the first instance court as fair and lawful, as even according to the assessment of the panel of this court, in the present case the conditions for postponing the execution of the administrative act provided for in Article 22 par.2 of the Law on Administrative Conflicts have been met."*

84. On the other hand, in the context of the allegations of the Applicants, the Court recalls the reasoning of the Supreme Court in Judgment [ARJ-UZVP. no. 44/2020], where it is emphasized as follows:

> *"The Supreme Court of Kosovo, taking into account the aforementioned provisions (Articles 22.2 and 22.6 of the LAC, emphasis added) finds that the second instance court has made the right application, rejecting the complaints of the respondent and interested parties, and upholding the decision A.U.no.3090/2019 of the of first instance court of 06.04.2019, which approved the claimant's proposal to postpone the execution of the respondent's decision no. V_1204_2019 of 27.11.2019, until judgment of the first instance is rendered according to the claimant's lawsuit, which rejected the claimant's proposal.*
>
> *Therefore, in this case, this Court assesses that the respondent and the interested parties have not made credible by any single evidence the fact that the postponement of the execution is not against the public interest. According to the assessment of this court, in the present case, the requirements for the postponement of the execution of the administrative*

*act, which would justify the postponement of the execution of the decision, have not been cumulatively met, referring to the legal provisions of Article 22 of the LAC. For these reasons, this Court decided to reject the requests of the respondent and the interested parties, for extraordinary review filed against the decision AA. no. 355/2020 of the Court of Appeals of 17.06.2020."*

85. The Court, based on the relevant provisions of the LAC determined by Article 22, paragraph 2, of the LAC, as well as assessing the reasoning given by the Basic Court, upheld by the Court of Appeals and the Supreme Court in response to the allegations of the Applicants submitted by the appeal, respectively the request for extraordinary review, were based only on the description of the legal criteria for the postponement of the execution of an administrative act as stipulated in Article 22 of the LAC and related to that if: (i) execution would cause harm to the claimant, which would be difficult to repair; whereas ; (ii) the postponement is not contrary to the public interest; and (iii) nor would the postponement bring any great harm to the opposing party or the person concerned. In fact, the Court of Appeals and the Supreme Court mainly focused on confirming the findings of the decision of the Basic Court, namely of the Court of Appeals, upholding the latter and emphasizing that the legal requirements for postponing the execution of the ERO Decision have been met.

86. Therefore, the Court notes that beyond the description of the relevant legal provisions for postponing the execution of an act as foreseen in Article 22 of the LAC, none of the three court instances elaborated any evidence or argument in support of meeting the legal criteria for postponing the execution of the decision. Moreover, despite the continuous allegations of the Applicants raised in all court instances, none of them addressed the issue of the legitimacy of the claimant as established in Article 34 of the LAC.

87. The Court recalls that based on the case law of the ECtHR, elaborated above, the courts are obliged to provide the reasoning related to their decisions based on evidence and relevant provisions. Such a thing in the present case does not result from the Decision of the Basic Court. Meanwhile, the Court of Appeals rejected the Applicant's appeal, approving the position and reasoning of the Basic Court. The Supreme Court acted similarly in relation to the Decision of the Court of Appeals. Having said that, based on the same case law, even such decisions must contain sufficient reasoning to show that the relevant court, in this case the Court of Appeals and the Supreme Court, did not approve the findings reached by a lower court, namely the Basic Court, without sufficient consideration. (See the case of the Court, KI227/19, Applicant *N.T. "Spahia Petrol",* cited above, paragraph 54 and references therein). The Court notes, that in the circumstances of the present case, this is not the case.

88. Therefore, the Basic Court itself, regarding the interested party's request for postponement of the execution of the ERO Decision, had only cited and described the relevant provisions regarding the requirements for postponing the execution of the Decision in accordance with Article 22 of the LAC , emphasizing that the claimant has provided reliable evidence that proves the fact that the execution of the decision would bring damage to the claimant, which damage

would be difficult to repair, and that postponing the execution of the decision until the case is decided on its merits, is not in conflict with the public interest, nor that the postponement would bring any great harm to the opposing party, namely the interested person, without giving any reasoning and without elaborating any of these "*reliable evidence*" that would prove why those legal conditions were met in the present case.

89. The Court considers that the regular courts, beyond the description and elaboration of the legal provisions, and the unexplained finding that these requirements have been met, have not explained: (i) what is the damage caused to the claimant by the execution of the challenged act and why is that damage irreparable; (ii) what evidence has been assessed to establish that the postponement of the execution of the ERO decision is not against the public interest; (iii) why the Applicants were not harmed, since they have claimed that they are harmed and have argued this claim by evidence. Also, the court decisions do not contain any reasoning regarding the Applicants' allegations as to (iv) *lack of active legitimacy* of the claiming party.

90. Therefore, the Court finds that the decisions of the regular courts have not fully and clearly addressed (i) the decisive facts and legal requirements related to allowing the postponement of the execution of the ERO Decision; and (ii) neither has a specific answer been given to the claim of the Applicants regarding the lack of procedural legitimacy of the claimant. Both aspects reflect essential and defining claims of the Applicants, and which, based on the case law of the Court and the ECtHR, must necessarily be addressed and reasoned by the courts, in order to respect the procedural guarantees established in Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

91. The Court reiterates that procedural justice requires that the essential claims raised by the parties before the regular courts must be answered in the appropriate way - in particular if they relate to decisive claims that in the present case refer to (i) decisive facts and legal requirements related to allowing the postponement of the execution of the ERO Decision; and (ii) not providing a specific answer to the decisive claim regarding the lack of *procedural legitimacy* of the claimant.

92. In accordance with the issues stated above, the Court finds that the decisions of the regular courts related to the postponement of the execution of the ERO Decision of 27 November 2019, did not meet the criteria of a *"fair trial"* in accordance with Article 31 of the Constitution in conjunction with Article 6, paragraph 1 of the ECHR, due to the lack of a reasoned court decision.

93. Moreover, since the established constitutional violation is a consequence of the lack of reasoning, initially of the Decision [A. no. 3090/19] of 6 April 2020, of the Basic Court, and then of the Decision [AA. no. 355/2020] of 17 June 2020, of the Court of Appeals and Judgment [ARJ-UZVP. No. 44/2020] of the Basic Court. Therefore, based on the case law of this Court and that of the ECtHR, it is necessary that all the above-mentioned decisions be declared invalid (see in this regard, cases of the Court KI45/20 and KI46/20, Applicant *Tinka Kurti and*

*Drita Millaku*, Judgment, of 26 March 2021; and KI84/21, Applicant *Kosovo Telecom S.A*. Judgment, of 24 November 2021).

94. The Court finally emphasizes that this conclusion is exclusively related to the reasoning of the regular courts that is related to the essential and defining claims of the Applicant, and in no way prejudges the outcome of the merits of the case. In this context, the Court emphasizes that its finding that the decisions of the regular courts were rendered in violation of the Applicant's right to a reasoned court decision, specifically refers only to the allegations raised by the Applicants in their referral to the Court.

95. Considering that the Court has found a violation of the right to a fair trial guaranteed by Article 31 of the Constitution and in conjunction with Article 6 of the ECHR, as a result of the unreasoned court decision, the latter does not see necessary to examine separately the allegations of violation of Articles 3, 7, 24 and 32 of the Constitution.

**FOR THESE REASONS**

The Constitutional Court, in accordance with Articles 21.4, 113.1 and 113.7 of the Constitution, Article 20 of the Law, and Rule 59 (1) of the Rules of Procedure, in the session held on 19 January 2022, unanimously:

**DECIDES**

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of 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;

III. TO DECLARE Judgment [ARJ-UZVP. no. 44/2020] of 23 July 2020, of the Supreme Court of Kosovo, Decision [AA. no. 355/2020] of 17 June 2020, of the Court of Appeals, as well as Decision [A. no. 3090/19] of 6 April 2020, of the Basic Court. invalid.

IV. TO REMAND for reconsideration Decision [A. no. 3090/19] of the Basic Court of 6 April 2020, in accordance with the Judgment of this Court;

V. TO ORDER the Supreme Court to notify the Court by 29 April 2022, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken in order to implement the Judgment of the Court;

VI. TO REMAIN seized of the matter pending compliance with the order;

VII. TO NOTIFY this Judgment to the Parties and in accordance with Article 20.4 of the Law, be published in the Official Gazette;

VIII. This Judgment is effective immediately.

| **Judge Rapporteur** | **President of the Constitutional Court** |
|---|---|
| Bajram Ljatifi | Gresa Caka-Nimani |

***This translation is unofficial and serves for informational purposes only.***