Prishtina, on 1 April 2022
Ref. no.:AGJ 1975/22

JUDGMENT

in

Case No. KI156/20

Applicant

Raiffeisen Bank Kosovo J.S.C.

Constitutional review of
Decision Ac. No. 5514/18 of the Court of Appeals of Kosovo
of 13 May 2019; and
Decision Cml. No. 8/2019 of the Supreme Court of Kosovo,
of 17 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 was submitted by Raiffeisen Bank Kosovo J.S.C., with its seat in Prishtina, represented by Dastid Pallaska, a lawyer in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), and Decision [Cml. No. 8/2019] of 17 June 2020 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

3. The Applicant was served with the challenged Decision of the Supreme Court on 14 July 2020.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, which, according to the Applicant's allegations, have violated its fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

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 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 Court

6. On 9 October 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 12 October 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.

8. On 27 October 2020, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court and NTP Unio Commerce, in the capacity of the interested party.

9. On 24 May 2021, the Court sent to the Basic Court in Ferizaj the request to submit the complete case file.

10. On 15 June 2021, the Court received the complete case file submitted by the Basic Court in Ferizaj.

11. 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 17 May 2021 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.

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 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of 17 May 2021 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.

14. On 24 September 2021, the Court considered the Preliminary Report proposed by the Judge Rapporteur and unanimously decided to adjourn the consideration of the Referral to another session of the Court.

15. On 3 March 2022, 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 (i) unanimously declared the Applicant's Referral admissible and (ii) held by majority that the Decision [CLM. No. 8/2019] of 17 June 2020, of the Supreme Court of Kosovo and Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals of Kosovo are in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights.

16. On 18 March 2022, the Court returned the complete case file to the Basic Court in Ferizaj.

Summary of facts

17. Based on the case file, it results that during the period between September 2005 and July 2012, the Applicant as a banking institution, in the capacity of lender and NTP Unio Commerce, represented by Z.B. in the capacity of borrower (hereinafter: the Debtor) and other co-borrowers had signed several Loan Agreements. In order to ensure the return of the loan, the Applicant and the Debtor have established and registered the mortgage rights in various immovable properties of the Debtor and co-borrowers, registered in the Municipality of Ferizaj and the Municipality of Kaçanik, respectively.

I. Enforcement procedure, initiated on 29 March 2013

18. On 29 March 2013, on the grounds that the Loan Agreements were not complied with by the Debtor, and the calculated debt amounted to 5,006,265.62

Euros, the Applicant submitted two (2) mortgage enforcement proposals, namely (i) the enforcement proposal in the Basic Court in Ferizaj, Branch in Kaçanik and (ii) the enforcement proposal in the Basic Court in Ferizaj. The above-mentioned proposals of the Applicant for enforcement were based on Law no. 03/L-008 on Execution Procedure [published in the Official Gazette on 15 July 2008, and repealed by Law 04/L-139 on Enforcement Procedure, published in the Official Gazette on 31 January 2013; entry into force on], namely in accordance with Article 177 of this Law territorial jurisdiction to decide on enforcement proposals had the court covering the territory in which the mortgaged immovable property was located, which in this case was the object of enforcement.

(i) Proposal for enforcement and request for withdrawal of the proposal for enforcement in the Basic Court in Ferizaj, Branch in Kaçanik

19. The Applicant in his proposal for enforcement of mortgages, submitted to the Basic Court in Ferizaj, Branch in Kaçanik requested that (i) the enforcement be assigned with *"sale, eviction and transfer of ownership and possession of immovable property"* to the Applicant; (ii) for the registered immovable properties, namely the cadastral plots [mentioned in the Applicant's Proposal of 29 March 2013] in the Cadastral Zone Doganaj, in the Municipality of Kaçanik, in the property of the Debtor; (iii*) "to block all accounts in all commercial banks on behalf of all debtors making the payment by transferring funds from the debtors' account to the creditor's account, if the court or creditor learns of the existence of these funds in any account".*

20. On 29 March 2013, the Basic Court in Ferizaj, Branch in Kaçanik by Decision [CP. No. 44/13] allowed the enforcement proposed by the Applicant.

21. On 8 July 2014, the Applicant through a separate submission pursuant to Article 42 [Withdrawal and limitation of proposal] paragraph 1 of the LEP in the Basic Court in Ferizaj, Branch in Kaçanik filed a request for withdrawal of the proposal for enforcement against debtor.

22. On 15 September 2014, the Basic Court in Ferizaj, Branch in Kaçanik, by Decision [C. No. 43/13] considered the enforcement proposal of 29 March 2013 as withdrawn.

23. On 25 November 2014, the Court of Appeals, as a result of the appeal filed by the Debtor, by the Decision [Ac. No. 3617/14] rejected the Debtor's appeal as ungrounded and upheld the Decision [CP. No. 43/13] of 15 September 2014, of the Basic Court in Ferizaj, Branch in Kaçanik. The Court of Appeals reasoned that according to article 42 of the LEP, the Creditor has the right at any stage of the enforcement procedure to withdraw in whole or in part the proposal for enforcement.

(ii) Proposal for enforcement and the request for withdrawal of proposal for enforcement in the Basic Court in Ferizaj

24. The Applicant in his proposal for enforcement of mortgages, submitted to the Basic Court in Ferizaj requested that (i) the enforcement with "*sale, eviction*

and transfer of ownership and possession of immovable property" to the Applicant be assigned; (ii) for the registered immovable properties, namely the cadastral plots [mentioned in the Applicant's Proposal of 29 March 2013] in the Cadastral Zone in Mirosalë, in the Municipality of Ferizaj, owned by the Debtor; (iii*) "to block all accounts in all commercial banks on behalf of all debtors making the payment by transferring funds from the debtors' account to the creditor's account, if the court or creditor learns of the existence of these funds in any account."*

25. On 18 April 2013, the Basic Court in Ferizaj by Decision [CP. No. 354/13] allowed the enforcement proposed by the Applicant.

26. On 2 May 2013, against the Decision [CP. No. 354/13] of the Basic Court in Ferizaj, the Debtor filed an objection, by which he challenged the debt set in the Applicant's proposal for enforcement in entirety, and consequently in the session held on 5 August 2013 in the Basic Court in Ferizaj requested the Court to appoint expertise for calculating the amount of debt.

27. 27. On 5 August 2013, the Basic Court in Ferizaj through Conclusion [CP. No. 354/13] appointed A.F as financial expert for the calculation of the amount of debt as well as the regular legal and punitive interest.

28. On 25 November 2013, expert A.F through his expertise concluded that the total amount of debt was 5,620,909.73 euro. This expertise, expert A.F. presented and reasoned also in the review session held in the Basic Court in Ferizaj, on 26 December 2013.

29. On the same date, namely on 26 December 2013, at the same hearing, held in the Basic Court in Ferizaj, the Debtor proposed the appointment of super expertise.

30. On 11 February 2014, the Basic Court in Ferizaj by Decision [CP. No. 354/13] decided to appoint the Faculty of Economics of the University of Prishtina, branch Banking and Finance, with three (3) experts in the field of finance to conduct super-expertise.

31. On an unspecified date, after the entry into force of Law 04/L-139 on the Enforcement Procedure (entry into force: 1 January 2014), the Applicant requested the transfer of the case to the Private Enforcement Agent.

32. On 28 October 2014, the Basic Court in Ferizaj by Decision [CP. No. 354/13] rejected as ungrounded the Applicant's request for transfer of the case to the private enforcement agent. The Basic Court in Ferizaj, reasoned that taking into account the fact that on 11 February 2014, this court had appointed super expertise for the calculation of debt, and that he expert report had not yet been submitted to the court, and consequently found that it had not yet decided on the Debtor's objection.

33. On 30 October 2015, the Chair of the Expert Group at the Basic Court in Ferizaj submitted "*Super financial expertise report*". According to this report, it was found that the total amount of calculated debt was 485,395.07 euro.

34. Based on the case file submitted to the Court, the Basic Court in Ferizaj also communicated the debt calculation report to the Applicant.

35. On 25 November 2015, the Applicant by a separate submission to the Basic Court in Ferizaj submitted a request for withdrawal of the enforcement proposal to the Debtor.

36. On 17 December 2015, the Basic Court in Ferizaj by Decision [CP. No. 354/13] decided as follows: *"Enforcement procedure is completed according to the case CP. No. 354/13, at the request of the creditor [the Applicant]"*.

II. Enforcement proceedings, initiated on 6 January 2016

37. On 6 January 2016, the Applicant submitted a proposal for enforcement of debt in the amount of 7,080,025. 64 euro, including regular interest and default interest until the final payment of the debt towards the Debtor to Private Enforcement Agent F.H (hereinafter: Private Enforcement Agent).

38. The Applicant in his mortgage enforcement proposal requested that: (i) enforcement be ordered by *"sale, eviction and transfer of ownership and possession of immovable property"* to the Applicant; (ii) for the registered immovable properties, namely the cadastral plots [mentioned in the Enforcement Proposal of 6 January 2016] in the Cadastral Zone in Mirosala, in the Municipality of Ferizaj, owned by the Debtor; and (iii*) "to block all accounts in all commercial banks on behalf of all debtors making the payment by transferring funds from the debtors' account to the creditor's account, if the court or creditor learns of the existence of these funds in any account."* The enforcement proposal contained the enforcement of the same immovable properties as in the Applicant's proposal, initiated on 29 March 2013 in the Basic Court in Ferizaj, Branch in Kaçanik and the Basic Court in Ferizaj.

39. On 6 January 2016, the Private Enforcement Agent by the Order [Pnr. No. 03/2016] allowed enforcement.

40. On 14 January 2014, against the above-mentioned Enforcement Order [Pnr. No. 03/2016] of 6 January 2016, the Debtor filed objection with the Basic Court in Ferizaj on the grounds of essential violation of the provisions of the procedure and incorrect application of substantive law.

41. In his objection, as regards (i) the allegation of essential violation of procedure, the Debtor alleged that he had not been given an opportunity to state his view on the Applicant's request, and that the enforcement proposal was not accompanied by relevant evidence, which refer to the amount of the required value for enforcement. Whereas, regarding (ii) the allegation of erroneous application of the substantive law, the Debtor first stated that in this case the territorial jurisdiction of the Private Enforcement Agent is missing because the latter has been appointed as a private enforcement agent in the territory of Prishtina, while the immovable property and the office of the Debtor are in the territory of the Basic Court in Ferizaj. Secondly, the Debtor referring to Article 43, paragraph 1 of the LEP stated that the enforcement does not contain sufficient and reliable data regarding the amount of debt. Third, the Debtor

asserted that for the same obligation, the Applicant initiated two proposals for enforcment, in the Basic Court in Ferizaj, Branch in Kaçanik [Case CP. No. 44/13] and in the Basic Court in Ferizaj [Case CP. No. 354/13] respectively. In relation to the latter, the Debtor specified that the Applicant abused the procedural rights, as for the same obligation the Applicant had withdrawn his proposal for enforcment, as: *"Creditor [Applicant] abusing procedural rights"* made financial expertise by the Faculty of Economic *"through which it was concluded that the amount of debt is 485.395.07 euro.*

42. On 18 January 2016, the Applicant filed a response to the Debtor's objection. In his response to the objection, the Applicant stated that the Debtor's objection is ungrounded and the latter should be rejected by the Basic Court in Ferizaj. In particular, the Applicant stated that i) the proposal for enforcment contains all the elements from article 38 of the LEP, the enforcement title, the request for enforcement (ii) in relation to the territorial competence of the Private Enforcement Agent stressed that the latter can take actions outside the territory for which was appointed (iii) and that his proposal for enforcement, of 6 January 2016 does not constitute an abuse of procedural rights on the grounds that the Basic Court in Ferizaj had not decided in time and as a result had submitted a request for withdrawal of the proposal for enforcement and that on 20 June 2014 he proposed to transfer the case to the private enforcement agent.

43. On 18 January 2016, the Applicant submitted a proposal to the Private Enforcement Agent for "conducting financial expertise for debt calculation". One of the company's proposed for conducting this expertise was the company *"Deloitte Kosova"*.

44. On 18 January 2016, the Private Enforcement Agent by the Conclusion [P. No. 03/2016] appointed the Company "*Deloitte Kosova"* to conduct financial expertise for the calculation of the remaining debt.

45. On 18 February 2016, the Debtor filed (i) an appeal against the Conclusion [P. Nr. 03/2016] of 18 January 2016 of the Private Enforcement Agent and (ii) submission to *"oblige the claimant to specify the debt, citing the super expertise conducted by the University of Prishtina, Faculty of Economics"*.

46. On 29 March 2016, the Basic Court in Ferizaj, by Decision [PPP. No. 22/2016] dismissed as out of timer the complaint and the submission of the Debtor.

47. On an unspecified date, against the Decision [PPP. No. 22/2016] of 29 March 2016, of the Basic Court in Ferizaj, the Debtor filed an appeal with the Court of Appeals.

48. On 25 April 2017, the Court of Appeals by Decision [CA. No. 1832/2016]: (i) approved the Debtor's appeal; (ii) annulled the Decision of the Basic Court [PPP. No. 22/16] of 29 March 2016, by which the appeal against the Conclusion of the Private Enforcement Agent and the Debtor's submission were dismissed as out of time; and (iii) remanded the case to the first instance court for "retrial."

49. On 11 May 2016, the Basic Court in Ferizaj by Decision [PPP. No. 21/16] approved as partially grounded the Debtor's objection against the Enforcement Order and decided that: (i) the Enforcement Order [P. Nr. 03/16], should be left out of legal force of 6 January 2016 regarding the amount of debt of 6,594,630.57 euro requested by the creditor; and (ii) to uphold the Enforcement Order [P. No. 03/16] of 6 January 2016 for the amount of 485,395.07 euro.

50. The Basic Court in Ferizaj initially found that the Enforcement Order [P. No. 3/16] of 6 January 2016 is partly legal and regular, namely it is legal in terms of the territorial competence of the Private Enforcement Agent but it is not legal and regular in terms of the amount of debt. In the context of the latter, the Basic Court in Ferizaj considered the Debtor's claim regarding the amount of the debt to be grounded. In this regard, the Basic Court in Ferizaj referred to the expertise submitted by three (3) experts of the Faculty of Economics of the University of Prishtina, and consequently assessed that the amount specified in the enforcement proposal is in great discrepancy to the calculated amount of debt based of super expertise, namely the amount of 485,395.07 euro. Consequently, the Basic Court in Ferizaj reasoning that the calculation of the amount of debt is *"carried out by a higher superior institution such as the University of Prishtina, composed of a group of three experts, an expertise conducted according to the Decision of the Basic Court in Ferizaj [CP. No. 354/13, of 11 February 2014] the court gives full trust to this expertise and therefore, I consider that given the amount of debt ascertained and the final assessment of the experts in the expertise provided in writing by the debtor, I find that the order for enforcement P. No. 03/16 of 06.01.2016, challenged by the debtor in the objection must be left out of legal force for the amount of debt of 6,594,630.57 euro"*.

51. The Basic Court in Ferizaj also stated that it also takes into account the fact that for the same enforcement subject, which refers to the same Loan Agreements, in the Basic Court in Ferizaj, on 29 March 2013, the Applicant initiated a proposal for enforcement, in which the enforcement procedure for conducting the super expertise, namely the calculation of the debt amount was assigned to the University of Prishtina, Faculty of Economics with three experts in the field of finance, and after the submission of the report of the latter [on 30 October 2015], the Applicant pursuant to Article 42 of the LEP had withdrawn his proposal for enforcement [on 25 November 2015], which procedure was subsequently concluded by the court as completed.

52. On an unspecified date, the Applicant against the Decision [PPP. No. 21/16] of 11 May 2016, of the Basic Court in Ferizaj filed an appeal with the Court of Appeals.

53. On 6 July 2017, the Court of Appeals by Decision [CA. No. 2177/2016]: (i) approved the Applicant's appeal; (ii) quashed the Decision [PPP. No. 22/2016] of 11 May 2016, of the Basic Court in Ferizaj; and (iii) and remanded the case for retrial and reconsideration in the first instance.

54. The Court of Appeals found that the Basic Court in Ferizaj pursuant to Article 362 of the LCP and Article 17 of the LEP was obliged to invite experts to its review session, in order to enable the parties to submit questions about

expertise. The Court of Appeals justified this finding with the fact that *"[...] in the present case it is a dramatic difference between the two expertise mentioned, where the difference in the amount of money certified by the expertise is greater than 1000% [...]"*.

Proceedings before the Basic Court [PPP. Nr. 80/17] after remanding for retrial

55. Based on the case file, after remanding the case for retrial and reconsideration by Decision [CA. No. 2177/2016] of 6 July 2017, of the Court of Appeals, in the Basic Court were held public hearings: on 27 November 2017; 16 April 2018; 17 May 2018; 5 June 2018; 6 September 2018; 26 September 2018; and 12 November 2018. In the sessions, of 17 May 2018 and 12 November 2018, the chair of the group of experts appointed by the University of Prishtina, M.A and two other experts of the Faculty of Economics, University of Prishtina, S.A and L.P, respectively, also participated.

56. On 1 December 2017, the Applicant, alleging lack of impartiality, filed a request with the Basic Court in Ferizaj for the recusal of Judge F.A. to decide on this enforcement case. The Applicant also filed a request for recusal of the President of the Basic Court in Ferizaj to decide regarding his request for disqualification of a judge F.A.

57. On 6 December 2017 and 5 February 2018, respectively, the President of the Basic Court sent the request of the Applicant for his disqualification to decide on the disqualification of Judge F.A. and sent his statements to the Court of Appeals for a decision-making.

58. On 8 February 2018, the Court of Appeals, namely the President of the Court of Appeals by Decision [C. No. 131/117] rejected as ungrounded the above-mentioned request of the Applicant for the recusal of the President of the Basic Court in Ferizaj to decide on the dismissal of Judge F.A. Consequently, the latter found that the President of the Basic Court could decide on the Applicant's request for the recusal of Judge F.A. to decide on the case PPP. Nr. 80/17.

59. On 15 February 2018, the Basic Court in Ferizaj, namely the President of this court by the Decision [GJA. No. 100/18] rejected as ungrounded the Applicant's request for recusal of Judge F.A. The President of the Basic Court in Ferizaj assessed that the allegations in the request are not of that nature, which justify the exclusion of a judge to adjudicate in this case, arguing that the procedural actions in this case are also based on the provisions of the LCP. Regarding the allegation of lack of territorial jurisdiction of the Basic Court in Ferizaj, the President of this court stated that "the issue of territorial jurisdiction falls under the jurisdiction of the judge who decides whether there is jurisdiction in the territorial aspect to handle the case under review. If the judge challenges this allegation, the parties have the right to raise this in the appeal procedure of the decision in the Court of Appeals, as a result of which the assessment of territorial jurisdiction is outside the scope of jurisdiction and competencies of the president of the court".

60. On 15 October 2018, the Applicant submitted a written request to the Judge of the Basic Court F.A. for the exclusion of the group of experts of the University of Prishtina from the task of expertise and also requested that their expertise be considered invalid.

61. According to the minutes of the hearings held in the Basic Court in Ferizaj, it results that in the session of 12 November 2018 [last hearing in this court] the Applicant raised the issue of lack of territorial jurisdiction of the Basic Court in Ferizaj to decide on this issue. In this regard, the Applicant, referring to Articles 5 and 67 of the LEP, stated that the competent to decide on the objection is the Basic Court in Ferizaj, Branch in Kaçanik, namely the court where the Debtor's seat is located. In the same session, the Basic Court in Ferizaj was interrogated by the present experts, who stated that they stand by their expertise given on 30 October 2015. Following this, the Applicant's legal representative during the hearing stated that he did not agree to ask questions to this group of experts, and their expertise to be canceled and a new expertise assigned.

62. On 19 November 2018, the Basic Court in Ferizaj by Decision [PPP. No. 80/17]:

I. Approved in part the Debtor's objection against the Enforcement Agent Order [P. No. 03/16] of 6 January 2016, of the Enforcement Agent Order regarding the amount of debt requested by the Applicant from 6,594,630.57 euro;
II. Rejected the Debtor's objection as to the amount of the debt of 485, 395.07 euro; and
III. Decided to uphold the Enforcement Order [P. No. 03/16] of 6 January 2016 of the Private Enforcement Order regarding the amount of debt of 485, 395.07 euro and the costs of the enforcement proceedings.

63. The Basic Court in its Judgment reasoned as follows*: "The court on the occasion of the review of the enforcement procedure pursuant to Article 43, paragraph 4 of the Law on Enforcement Procedure, assessed that the Enforcement Order issued by the private enforcement agent [F.H] with number P. No. 3/16 of 06.01.2016, is partially legal and regular, regarding the claim of the debtor as to the violation of the rules of procedure regarding the territorial jurisdiction and the amount of debt of 485,395.07 euro, while it is not legal and regular in terms of the amount of debt of 6,594,630.57 euro".*

64. Furthermore, the Basic Court in Ferizaj stated that: *"The Court, pursuant to Article 17 of the LEP, in conjunction with Article 8.1 and 8.2 of the Law on Contested Procedure, after conscientiously assessing each piece of evidence separately and with maximum dedication in the conclusion regarding the expertise drafted by the financial expert A.F., of 25.11.2013 did not give trust to this expertise because the expertise, namely the financial expertise performed by the University of Prishtina-Faculty of Economics, drafted by a group of three experts, I consider as more complete, comprehensive, more detailed and more accurate".*

65. Subsequently, the Basic Court also referred to the fact that the Applicant on 29 March 2013 for the same amount of debt initiated a proposal for debt enforcement, in which enforcement proceedings, the Basic Court in Ferizaj by

Decision [CP. No. 364/13] of 11 February 2014 appointed the University of Prishtina to conduct financial expertise related to the calculation of the amount of debt. Further, the Basic Court also stated that after the completion of the expertise, the Applicant based on Article 42, paragraph 1 of the Law on Enforcement Procedure submitted a request to withdraw the enforcement proposal, in which case, the Basic Court in Ferizaj by Decision [CP. No. 354/13], of 17 December 2015 declared the enforcement procedure completed.

66. On 29 November 2018, against the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj, the Applicant filed an appeal with the Court of Appeals, on the grounds of (i) violation of the provisions of the contested procedure; (ii) erroneous application of substantive law; and (iii) erroneous and incomplete determination of factual situation.

67. With regard to the allegation of violation of the contested provisions, the Applicant alleged that the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj contains violation of Article 182, paragraph 2, item n) of the LCP, adding that the Decision does not contain legal reasons regarding the decisive facts. In the context of this allegation, the Applicant specifies that the Basic Court in Ferizaj, based on the enacting clause of its Decision, based on a non-material and non-existent evidence, which according to him is the super expertise of the Faculty of Economics. Secondly, the Applicant also alleged a violation of Article 182, paragraph 2, item d) of the LCP because the Basic Court in Ferizaj had no jurisdiction to decide on the Debtor's objection, filed against the Decision to allow enforcement under Article 67 of the LEP. In this context, the Applicant stated that the Debtor has its registered office in Kaçanik, and consequently the Basic Court in Ferizaj, Branch in Kaçanik had the competence to decide on the objection. Thirdly, the Applicant alleged violation of Article 182, paragraph 1 of the LCP, because according to it, the Basic Court did not take into account his request of 16 October 2018 for the exclusion of experts. Fourth, the Applicant again alleged a violation of Article 182, paragraph 1 of the LCP on the grounds that according to it, the Basic Court did not take into account Judgment [CA. No. 2177/2016] of 6 July 2017 of the Court of Appeals regarding its instructions to invite an expert in reconsideration, in order to justify to the court the statements in the expertise. In this context, the Applicant specified that the Basic Court in Ferizaj did not invite to the hearing the case expert from "Deloitte Kosova" proposed by it.

68. The allegation of erroneous application of the substantive law, the Applicant again relates to the expertise performed by the Faculty of Economics, specifying that this expertise was not issued nor was it administered as material evidence during the examination of the case [P. No. 03/2016] and moreover, this document also in the procedure according to the completed case [CP. No. 354/2013] had never acquired the legal quality of material evidence as it was challenged through his submission of 4 November 2015.

69. On 13 May 2019, the Court of Appeals by Decision [Ac. No. 5514/18] rejected as ungrounded the Applicant's appeal and upheld the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court.

70. The Court of Appeals in its Decision on the allegation of violation of the provisions of the contested procedure reasoned as follows:

71. With regard to the allegation of violation of item n), paragraph 2 of Article 182 of the LCP, the Court of Appeals reasoned that the Basic Court decided correctly basing its decision on *administered evidence, which has resulted in complete and correct determination of he factual situation and correct application of the substantive law.*

72. Following this finding, the Court of Appeals stated that it fully approves the reasoning of the Basic Court in Ferizaj, which was based on the expertise of the group of experts of the University of Prishtina, Faculty of Economics, which according to the Court of Appeals, was also based on articles 356 and 358 of the LCP.

73. Further, with regard to the Applicant's allegation that the expertise does not have the quality of material evidence on the grounds that it was rendered in the completed proceedings. CP No. 354/13, the Court of Appeals reasoned that the expertise was compiled in the procedure which was withdrawn by the Applicant himself, which procedure *had to do with the same amount of debt requested, and for the fact that the same expertise was treated in the resumed procedure and the same expertise was completed in this procedure several times, where the group of experts were invited to the hearing, as well as the expert who made the first expertise (in the procedure which was also withdrawn) and the same were confronted, giving the necessary supplementations and clarifications regarding the case in question, as the first instance court was obliged by Decision Ca. Nr. 2177/16 of the Court of Appeals of 06.07.2107".*

74. Regarding the Applicant's allegation that the Basic Court in Ferizaj did not take into account the expertise compiled by *"Deloitte Kosova"*, the Court of Appeals found that this expertise was rendered in violation of the applicable legal provisions, namely Article 357, paragraph 2 of the LCP, in which case the Debtor was not given the opportunity to declare in relation to the proposed expertise.

75. Finally, regarding the allegation of violation of item d), paragraph 2 of Article 182 of the LCP, namely the allegation of lack of territorial jurisdiction of the Basic Court in Ferizaj, the Court of Appeals reasoned that this allegation is ungrounded for reasons that in the meaning of Article 22, paragraph 1 of the LCP, *"the court may be declared incompetent from a territorial point of view only upon the objection of the respondent filed through the response to the lawsuit"*. Consequently, the Court of Appeals referring to paragraph 2 of Article 22 of the LCP and Article 17 of the LEP that *"the court cannot be declared incompetent from a territorial point of view ex officio, but there must be an objection from the parties, which can be submitted in the first hearing, while [the Applicant] has filed an objection in this case in last hearing held in relation to the objection, despite the fact that many hearings were held on this issue […]".*

76. On 3 June 2019, the Applicant submitted a request to the State Prosecutor's Office of the Republic of Kosovo (hereinafter: the State Prosecutor's Office) to

file a request for Protection of Legality on the grounds of violation of the provisions of the enforcement procedure and incorrect application of substantive law. Regarding the allegation of essential violation of procedural provisions, the Applicant alleged that the Basic Court in Ferizaj did not have territorial jurisdiction to decide on the Debtor's objection. Whereas, in relation to the allegation of erroneous application of the substantive law, the Applicant alleged that the Basic Court in Ferizaj in the case of admission as a final evidence, namely the expertise of three experts of the Faculty of Economics has acted contrary to Article 261, paragraph 5 of LCP- in conjunction with Article 17 of the LEP. Consequently, as a result of the withdrawal of the enforcement proposal [on 25 November 2015], the Applicant states that the expertise compiled in a completed procedure cannot be used as material evidence in the new procedure.

77. On 20 November 2019, the Applicant submitted to the State Prosecutor's Office submitted the Supplementation of the Proposal for filing a request for protection of legality. In the Completion of its Proposal for filing request for protection of legality, the Applicant alleged violation of Article 190, paragraph 3 of the LCP and Article 8 of the Law on Supplementing and Amending the LCP, in conjunction with Article 247, paragraph 1, item a) because the Court of Appeals rendered the Decision without holding a main hearing. The Applicant substantiated this allegation with the fact that the Decision of the first instance court was annulled twice, namely through by the Decision [Ca. No. 1832/2016] of 25 April 2017 and [Ac. No. 5514/2018] of 13 May 2019.

78. On 2 July 2019, the State Prosecutor filed with the Supreme Court a request [KMLC. No. 100/2019] for protection of legality against the Decision of the Basic Court and the Decision of the Court of Appeals on the grounds of (i) essential violations of the contested procedure, namely Article 247, paragraph 1, item a) in conjunction with Article 182, paragraph 2, item f); and Article 247, paragraph 1; and (ii) erroneous application of the substantive law, namely Article 247, paragraph 1, item b) of the LCP. In the context of the latter, the State Prosecutor specified that *"[…] after a comprehensive analysis of all allegations and evidence such as the decision of the first and second instance court, it is confirmed that the Basic Court in Ferizaj have committed essential violation of the provisions of the contested procedure, namely the violation which has to do with territorial jurisdiction, as according to the case in question, the territorial jurisdiction belonged to the Basic Court in Ferizaj, the branch in Kaçanik and not the Basic Court in Ferizaj".*

79. On 17 June 2020, the Supreme Court by Decision [Cml. No. 8/2019] rejected as ungrounded the request of the State Prosecutor for protection of legality, filed against the Decision [PPP. No. 80/17] of 19 November 2018 of the Basic Court in Ferizaj and Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals.

80. The Supreme Court assessed that "*In the present case, the request of the State Prosecutor refers to the objection, and the objection of territorial jurisdiction is a procedural action which can be done at a certain stage of the procedure and for reasons provided by law. Explicitly regarding the procedure relating to the objection to the enforcement order for which the protection of legality is*

requested by the State Prosecutor, the Supreme Court found the Court of Appeals has given the appropriate legal reasoning when the court may be declared incompetent from a territorial point of view, elaborating the reasons that on the objection the court decided at the latest in the preparatory session, while in terms of territorial jurisdiction, the Court may be declared incompetent, ex officio, only when there is exclusive territorial jurisdiction of another court always referring to of the LEP which provides that in "the provisions of the Law on Contested Procedure shall be accordingly are applied in the enforcement procedure, unless this law or any other law provides otherwise".

81. In addition, the Supreme Court considered that "*From the content of the request for protection of legality it is clear that the request for protection of legality was submitted, alleging a substantial violation of the provisions of the contested procedure determined by the provision of Article 182.2 item f) of the LCP. The allegation of the State Prosecutor of the fact that the Basic Court in Ferizaj has decided and not the Branch of this court in Kaçanik, has resulted in essential violation of the provisions of the contested procedure and that violation that has to do with territorial jurisdiction, the Supreme Court reviewed but did not find it based on the provisions mentioned in Article 182. 2. f) because that provision provides that: Basic violation of provisions of contested procedures exists always f the court has decided for the claim for which is subject of the highest court of the kind, a court of different kind. In this case, the Basic Court of Ferizaj has decided on the objection, also because the creditor has submitted a proposal for enforcement also in the Basic Court of Ferizaj and in the Branch of this Court in Kaçanik. On the other hand Article 2.1.3. of Law no. 03/L-199 on Courts, defines that "Branch is the geographical subdivision of a Basic Court, while the explanations given in Article 9.2.6 of the same law, define that the the Basic Court of Ferizaj with its principal seat in Ferizaj is established for the territory of the Municipalities of Ferizaj, Kaçanik, Shtime, Shtërpcë and Hani I Elezit, with a territorial competence for the territory of these municipalities."*

82. Finally, the Supreme Court found that the request for protection of legality, submitted by the State Prosecutor of Kosovo, has no basis in Article 247, paragraph 1, item b) of the LCP, because based on the latter, the conditions set out in this provision have been met and consequently concluded that the territorial jurisdiction has not been violated. Subsequently, the Supreme Court also concluded that the Basic Court of Ferizaj is competent in this matter, and that its division into branches is an administrative matter of internal organization, which is not related to territorial jurisdiction.

Applicant's allegations

83. The Applicant alleges that the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj; Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals; and Decision [CML. No. 8/2019] of 17 June 2020, of the Supreme Court violated its 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.

84. In his Referral, the Applicant specifies that (i) its right to a trial by a court established by law has been violated; (ii) the right to legal certainty and to comply with final court decisions; and (iii) its right to a fair trial.

Regarding the allegation of violation of the right to a court established by law as a result of the lack of territorial jurisdiction of the Basic Court in Ferizaj

85. The Applicant initially alleges that the proposal to initiate a request for protection of legality against the Decision [Ac. No. 5514/18] of the Court of Appeals to the State Prosecutor relies on two legal grounds, namely Article 247, paragraph 1 (a) and 1 (b) in conjunction with Article 182, paragraph 2 (f) of the LCP which apply in enforcement procedure according to article 17 of the LEP. According to the Applicant, the request based on Article 247, paragraph 1 (b) of the LCP in conjunction with Article 182, paragraph 2 (f) of the LCP was merely "supplementary and secondary".

86. Subsequently, the Applicant specifies that the Supreme Court in its Decision "*focuses exclusively on the supplementary and secondary basis for filing a request for protection of legality as a pretext for rejecting the Request [...]*" where the deliberate deviation of the scope of the Request for protection of legality is done despite the fact that page 2 of the Decision of the Supreme Court explicitly identifies the first and main legal basis for filing a request for protection of legality, namely Article 247, paragraph 1 (a) in conjunction with Article 182, paragraph 1 of the LCP. Subsequently, the Applicant specifies that the Decision of the Supreme Court removes the essence of the reasoning on the first and main legal basis and responds in the "*reasoning only on the grounds of the request for protection of legality under Article 247, paragraph 1 (b) in conjunction with Article 182, paragraph 2 (f) relating to the subject matter jurisdiction of the courts"*.

87. In this regard, the Applicant underlines that although the challenged Decision of the Supreme Court silences the legal basis for filing a request for protection of legality in relation to territorial jurisdiction, its reasoning addresses the issue of territorial jurisdiction, although erroneously only within the framework of Article 182, paragraph 2 (f) of the LCP which deals with essential violation of procedural provisions regarding the subject matter jurisdiction of the courts. The Applicant continues with the reasoning that *"The decision of the Supreme Court failed to find that the subject of review of the Request for Protection of Legality was not the Enforcement procedure according to the old execution system, concluded by a final decision according to Article 42 of the Law on Execution Procedure, but the new enforcment procedure started according to the Enforcement Proposal submitted to the Private Enforcement Agent [...] "*. In the following, the Applicant states that the Decision of the Supreme Court *"ignored and/or overturned the Legal Opinion of the Supreme Court, which clearly and explicitly states that territorial jurisdiction to review and decide on objections submitted by legal entities that have the status of debtor, the courts that have territorial jurisdiction in the territory where the seat of the debtor is located."*

88. The Applicant in support of his allegation refers to the case law of the European Court of Human Rights (hereinafter: the ECtHR), namely the principles established by this court regarding the "court established by law", and in this context mentions the cases of *Sokurenko and Strygun v. Ukraine* (Judgment of 20 July 2006); and the case of *Dmd Group v. Slovakia* (Judgment, 5 October 2010).

89. The Applicant regarding the right to a court established by law states that the Basic Court in Ferizaj does not constitute a "court established by law" for reviewing and deciding on objections, within the meaning of Article 31, paragraph 2, of the Constitution and Article 6, paragraph 1, of the ECHR. In the context of this allegation, the Applicant refers to Article 5, paragraph 5 of the LEP, which establishes the territorial jurisdiction of the courts in adjudicating objections, complaints and irregularities in the enforcement procedure. The Applicant further states that this provision was confirmed by the Legal Opinion [regarding the territorial jurisdiction of the courts to decide on "*objection, appeal and irregularities" in the enforcement proceedings against the decision to grant enforcement in cases where a party are legal entities or companies*"] approved by the Supreme Court on 16 October 2014 and based on the latter concludes that competent to adjudicate the objection case is the Basic Court in Ferizaj, branch in Kaçanik, where the Debtor's headquarters are located. Consequently, the Applicant reiterates that any violation of Article 5, paragraph 5 of the LEP results in violation of Article 31, paragraph 2, of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR, in the light of the case law of the ECtHR.

90. The Applicant further specifies that the challenged decisions, in particular the Decision of the Supreme Court, are contain violation of the Law on Courts, specifying that *" [...] Article 10 of the Law on Courts explicitly defines the competence and territorial extent of courts and their branches"*. In this context, the Applicant specifically refers to Article 10, paragraph 9 of the Law on Courts, which stipulates that the main seat of a court and the branch of the same court have separate and independent territorial competences. According to it "*This is because Article 10, paragraph 9, of the Law on Courts clearly and unequivocally stipulates that the seat of a court may exercise territorial jurisdiction within a certain territory municipality only in cases where the respective territory/municipality is not covered by a branch."* Following this, the Applicant reasons that *"[...] the seat of a court under no circumstances may exercise territorial jurisdiction over a territory/municipality covered by a branch."* Based on this reasoning, the Applicant states that *"[...] it is quite clear that the position of the Challenged Decisions, in general, and the Decision of the Supreme Court, in particular, that the Basic Court in Ferizaj had territorial jurisdiction to decide on the Objection, constitutes a serious violation of the constitutional guarantee for a "court established by law," which is one of the main axes of a fair trial, provided for in Article 31, paragraph 2, and Article 6, paragraph 1, of the [ECHR]."*

Regarding the allegation of violation of the "right to legal certainty and observance of final court decisions"

91. The Applicant initially refers to the procedural guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR, namely the right to legal certainty in court proceedings. In support of its allegation, the Applicant refers to the case law of the ECtHR *Rosalia Avram v. Romania* (Application No. 19037/07, Judgment of 5 July 2016*), Esim v. Turkey* (Application No. 59601/09, Judgment, 17 December 2013) and *Cornea v. the Republic of Moldova* (Application No. 22735/07, Judgment of 22 October 2014, In the following, the Applicant also refers to the case law of the Court, namely cases KI35/18 Applicant *Bayerische Versicherungsverbrand* (Judgment, of 11 December 2019), KI89/13 with Applicant *Arbresha Januzi* (Judgment, of 12 March 2014) and in relation to the latter argues that by these Judgments in these cases, the Constitutional Court based on the case law of the ECtHR has reviewed and established the principles regarding legal certainty.

92. The Applicant alleges that the challenged Decision of the Supreme Court *"not only did it seriously violate the explicit legal provisions governing the territorial jurisdiction of the courts in the case of review and adjudication of debtors's objections, having capacity of legal persons, but it also avoids and overturns its good practice established in relation to this issue reflected in Legal Opinion of the Supreme Court. In this regard, it should be noted that the Legal Opinion of the Supreme Court is not a simple source of case law on a similar case, as was the case with the above-mentioned cases of the jurisprudence of the Constitutional Court of the Republic of Kosovo, but represents the well-established case law of the Supreme Court, formalized according to Article 22, paragraph 1.3, of the Law on Courts, in order to ensure the unique implementation of laws by the lower courts. Consequently, it is more than clear that the Decision of the Supreme Court not only fulfills, but also exceeds the test proving the violation of the right to legal certainty imposed by the aforementioned decisions of the Constitutional Court of the Republic of Kosovo and the European Court of Human Rights"*.

93. Second, the Applicant specifies that *"with the use of Unlawful and Non-Substantive Financial Expertise, the Challenged Decisions violated the principle of observance of final decisions, as the enforcement procedure issued by the Unlawful and Non-Subject Matter Financial Expertise had ended with a final court decision. Moreover, the challenged decisions violated the final court decision on remanding the case for reconsideration and retrial of the Debtor's appeal against the Conclusion for Assignment of Financial Substantive Expertise.*" This allegation is substantiated by the Applicant referring to the cases of the ECtHR, namely case *Brumarescu v. Romania* (Application No. 28342/95, Judgment of 28 October 1999); *Agrokompleks v. Ukraine* (Application No. 23465/03, Judgment of 6 October 2011; and *Tregubenko v. Ukraine*, Judgment of 30 March 2005).

94. Based on the above, the Applicant concludes that the challenged decisions have not complied with the final court decisions, and consequently Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, has been violated.

Regarding the allegation of lack of impartiality of the court

95. The Applicant initially states that the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, includes the guarantee that the court during the trial of a case must be impartial as "in the objective sense, as well as in the subjective sense." In this context, the Applicant in his Referral refers to the cases of the ECtHR, namely the case of *Wettstein v. Switzerland* (Application No. 33958/96, Judgment of 21 December 2000), the case of *Micallef v. Malta* (Application No. 17056/06), Judgment, of 15 October 2009); the case of *Sara Lind Eggertsdottir v. Iceland* (Application No. 31930/04, Judgment, of 5 July 2007) and *Letincic v. Croatia* (Application No. 7183/11, Judgment, of 3 August 2016); case *Devinar v. Slovenia* (Application No. 28621/15, Judgment, of 22 August 2018), and the case of the Court, namely case KI 07/18, Applicant *Çeliku Rrollers* (Judgment, of 18 December 2019).

96. Based on the above, the Applicant alleges that on the basis of the facts presented it is established that *"[...] It is undoubtedly that in the present case, not only were there legitimate and objectively justifiable suspicions about the lack of impartiality of the so-called "experts" against the Applicant, but it was also substantiated by evidence that the so-called "experts" had shown open hostility to the Applicant's representative, insulting him on family grounds. In this connection, it should be noted that the aforementioned insult was given in the form of "expertise" and in connection with one of the elements of "expertise". This means that the relevant "expertise" was performed on the same insult."* Subsequently, the Applicant specifies that based on the reasoning of the challenged decisions it can be established that *[...] Unlawful and Non-Substantive Financial Expertise prepared by the so-called "experts" has been decisive for the decisions taken in this enforcement case.*" In the context of this allegation, the Applicant refers to the case of Court KI07/18 with Applicant *Çeliku Rrollers* [Judgment of 18 December 2019].

97. Consequently, the Applicant states that the challenged decisions were rendered in violation of Article 31 of the Constitution and Article 6, paragraph 1, of the ECHR as a result of the fact that the regular courts have relied *"exclusively on so-called "experts" who clearly lack impartiality."*

98. The Applicant further states that *"The importance of the impartiality of the expert appointed by the court is also confirmed in the provisions of the Law on Contested Procedure that embody the constitutional principles and guarantees mentioned above".* In this context, the Applicant refers to Article 360, paragraph 1 of the LCP, which stipulates that *"[T]he expert can be expelled from the court for the same reasons as the judge can. The person that testified earlier as a witness can be summoned as an expert."* In this regard, the Applicant specifies that *"This provision not only confirms the fact that the standard for assessing the impartiality of an expert appointed by the court is the same as that used for judges but also shows how important the impartiality of an expert is in order for a court procedure to be considered fair and impartial, within the meaning of Article 31 of the Constitution and Article 6, paragraph 1, [of the ECHR]."* In the following, the Applicant refers to the Commentary of the LCP [authors Dr. Iset Morina and Selim Nikçi] in which

Commentary was also analyzed and commented on Article 360 of the LCP, and in this regard in his referral, he cites a part of this Commentary as follows *"[E]quating the reasons for the recusal of a judge with the reasons for the recusal of the expert is an expression of the legislator's intention to ensure the full impartiality of the expert as one of the basic conditions for a fair expertise. This will also eliminate any doubt as to the purpose for the legal resolution of the disputed report and at the same time will have an impact on building confidence in the impartiality of the courts"*.

99. Based on the above, the Applicant states that on the basis of the facts presented it can easily be concluded that: *"[...] violations of the legal provisions on the territorial jurisdiction of the Basic Court in Ferizaj for review and decision of the Objection represent only the tip of the iceberg in the report and the essence of the procedural vortex to which the Applicant was subject, which was dominated by extreme impartiality and impartiality both by the individual judge and the so-called experts who prepared Unlawful and Non-Substantive Financial Expertise on which the Contested Decisions were exclusively based"*.

100. The Applicant reiterates that the Basic Court in Ferizaj has failed to review and decide on its request for recusal of experts and to refer to this request in the second Decision approving the objection. According to the Applicant, the Basic Court in Ferizaj disregarded its request for recusal of the experts, which according to him was based on undeniable facts. In this regard, the Applicant adds that the judge based the second Decision approving the objection on the expertise, which according to him is considered as unlawful and non-substantive expertise.

101. The Applicant further alleges that the individual judge in his finding regarding the examination of the allegation of territorial jurisdiction violated legal provisions and case law regarding territorial jurisdiction not as a result of *"ignorance of the law or professional error"* but according to it, *"the individual judge had committed the constitutional violations described above being fully aware and in the interest of a party to the proceedings"*.

102. Finally, the Applicant concludes that it was deprived of the right to an impartial trial as a result of the impartiality and independence of the judge and experts appointed by the Basic Court in Ferizaj and that it was denied access to court as a result of non-consideration of his request for exclusion of experts.

103. Finally, the Applicant requests the Court to: (i) declare its Referral admissible; (ii) find that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR; (iii) declare the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj; Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals; and Decision [CML. No. 8/2019] of 17 June 2020, of the Supreme Court invalid; and (iv) remand the case for "*reconsideration to the Basic Court in Ferizaj, Branch in Kaçanik"*

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 31
[Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.
4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.
5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.

European Convention on Human Rights

Article 6
(Right to a fair trial)

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

[…]

LAW NO. 03/L-008 ON EXECUTIVE PROCEDURE [published in the Official Gazette on 15 July 2008, repealed by Law no. 04/L-139 on Enforcement Procedure, published in the Official Gazette on 31 January 2013]

Article 177
Territorial jurisdiction

To decide on proposal for execution for immovable item and for application of the execution decision, of territorial jurisdiction is the court in territory of which is situated the immovable item.

LAW No. 04/L-139 ON ENFORCEMENT PROCEDURE [published in the Official Gazette on 31 January 2013]

Article 5
Jurisdiction

1. The enforcement is determined and applied by the enforcement authority foreseen by this law, unless if it is foreseen otherwise with other law.

2. Competent Court shall hold the subject matter jurisdiction to order and to carry out enforcement as well as to decide on other matters during the procedure pursuant to the provisions of this Law, unless other courts and enforcement authorities, respectively, have competence to order and carry out enforcement as well as to decide on other matters during the procedure.

3. The private enforcement agent shall render the writ based on proposals for carrying out enforcement, and shall carry out the enforcement for the purpose of fulfillment of the debtor's claim based on an enforcement document, unless expressly provided by law that ordering of the enforcement and carrying out of the enforcement, respectively, shall be within the jurisdiction of the court.

4. Territorial jurisdiction to decide on matters pertaining to enforcement procedure is determined with the provisions of this law, depending from the means and object of enforcement and upon the status of the enforcement body.

5. To decide matters regarding any objection, appeal, irregularities in enforcement procedure under Articles 52 and 67 of this law, or any other procedure against actions of a private enforcement agent, jurisdiction is within the competent court in the territory in which the debtor's residence is located, and if he does not have residence in Kosovo, then in the territory in which he stays, if debtor is a physical person. If debtor is a legal person, territorial jurisdiction rests in the competent court in the territory in which its seat is located. If the debtor does not have a temporary residence or seat in Kosovo, the basic court in the territory in which the movables or immovable items that are the object of enforcement are located will have jurisdiction.

[...].

Article 17
Application of the provisions of other laws

The provisions of the Law on Contested Procedure shall be accordingly are applied in the enforcement procedure, unless this law or any other law provides otherwise.

Article 42

Withdrawal and limitation of proposal

1. *Enforcement proposal may, during the enforcement procedure, without the consent of the debtor, be completely or partially withdrawn by the creditor.*
2. In the case of the withdrawal from the enforcement proposal, the enforcement body concludes the enforcement completely or partially, respectively as may have been withdrawn.
3. Enforcement proposal, withdrawn completely or partially, may be submitted again before the enforcement body.
4. If the creditor states that the claim has been settled in whole or in part, it shall be deemed that the proposal for carrying out enforcement has been withdrawn with respect to such part.

Article 402
Entry into force

1. Articles from 323 through 396 of this Law shall enter into force and shall be applied fifteen (15) days after publication in the Official Gazette.
2. Other provisions of this law shall enter into force on 1 January 2014.
3. On the effective date hereof, the Law on Executive Procedure of 2008 No 03-L-008 and the Law on Executive Procedure "Official Gazette of SFRY", no. 20/1978 shall cease to be valid.

LAW No. 03/L-006 ON CONTESTED PROCEDURE

Article 22

22.1 The lack of territorial jurisdiction of the court may be declared only after the defendant has objected by responding to the claim.

22.2 The court decides on the objection from paragraph 1 of this article in the preliminary hearing at latest or at the first session of the principle process if the preliminary process has not taken place.

22.3 The lack of territorial jurisdiction of the court may be declared only in existence of existence of territorial jurisdiction of a different court but before there is a response to the filed claim.

CHAPTER III

EXCLUSION OF THE JUDGE FROM THE CASE

Article 67

A judge may be excluded from the legal matter:

a) if he or she is itself a party, a legal representative or authorized representative or is a co-creditor or codebtor or obliged for repay or if in the same issue he or she has been examined as a witness or as an expert;

b) if he or she is the spouse, the extramarital partner, a relation by blood in a direct line to any degree or in a collateral line to the fourth degree or a relation by marriage to the second degree to the defendant, or his or her legal representative or authorized representative;

c) if he or she is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of the defendant, or his or her legal representative or authorized representative;

d) if in the same case he or she has taken part in rendering a decision of a lower court or any other body or has taken part in mediation procedure;

e) if he or she has taken part in a matter for which was made a judicial settlement, and the claim that has been filed requests annulment of such a settlement;

f) if he or she is a shareholder or a member of the commercial association which is a party in the initiated procedure;

g) if there are other circumstances that challenge his or her impartiality.

Article 182

182.1 Basic violation of provisions of contested procedures exists in case when the court during the procedure didn't apply or wrong application of any of the provisions of this law, while this has or will impact a rightful legal decision.
182.2 Basic violation of provisions of contested procedures exists always:

a) when the court is not made based on provisions or when during the issuance of the verdict was done by the judge who didn't participate in the main hearing;
b) when it is decided on a request which isn't a part of the legal jurisdiction;
c) when the in the issuance of the decision participated the judge who according to the law should be dismissed, respectively the judge was already dismissed by a court decision or in the cases when a person not qualifies as a judge participated in the issuance of the verdict;
d) in cases when the court based on rejection of parties has wrongly decided that it belonged to subject competencies;
[...]
f) if the court has decided for the claim for which is subject of the highest court of the kind, a court of different kind;
[...]
n) if the decision has leaks due to which it' can't be examined, especially if the disposition of the decision is not understandable or contradictory in itself with the reasoning of the verdict, or when the verdict has no reason or which gives no justification for the final facts, or which reasoning are unclear, contradictory, or if in the final facts there are contradictions

between what is said in the verdict, the main document or the procedural records and of the document or the minutes of proceeding;

[...]

Article 247

247.1 The public prosecutor may raise the request for protection of legality:

a) *for basic violence of provisions of contested procedure, if the violence has to do with* ***territorial competencies****, if the court of the first instance has issued a verdict without main proceeding, while it was its duty to held a main proceeding, if decided for the request, on which the contest is continuing, or if is in contradiction with the law, the public is excluded from the main proceeding;*

b) *for wrong application of the material right.*

247.2 2 Public prosecutor can not raise a request for protection of legality because of the claim but not because of a wrong attestation or non complete facts.

Article 251

When the court decides for request of protection of legality, it shall be limited only in examining the violence emphasized by the public prosecutor in its request.

EXPERTS

Article 356

The court can do an expertise if interested parties propose so. This will be done any time if there is a need to specify facts or circumstances that the judge does not have sufficient knowledge for.

Article 357

357.1 The party that proposes an expertise has to state why that expertise is needed for as well as its goal. The person for an expertise should also be proposed.
357.2 The opponent party should be given a chance to say its opinion regarding proposed expertise.
357.3 If the involved parties can not bring a decision regarding the person who will conduct the expertise, or regarding the object or volume, then the court will decide about it.

Article 360

360.1 The expert can be expelled from the court for the same reasons as the judge can. The person that testified earlier as a witness can be summoned as an expert.
360.2 The party can ask for expert's expulsion as soon as the cause for expulsion is known. It can not be done after the evidence is taken by expertise.
360.3 The party has to state all reasons and circumstances in its request for expulsion. 360.4 The court of the matter decides about expulsion.
360.5 There is special appeal against the expulsion order.
360.6 If the party found out about the expulsion reasons after the expertise is done, and for this objects the expertise, then the court decides in the same way as when the request is submitted before the expertise.

Article 369

369.1 If there are more experts involved, they can submit their opinion together if there are no contradictions. If there are contradictions then they submit their opinions separately.
369.2 If their opinions differ substantially, or if they are unclear, if it contradicts with itself or with given circumstances, and those can not be clearer in the experts hearing, then the court will do another expertise with the same experts or with different experts.

Law 03/L-199 on Courts [published in the Official Gazette on 24 August 2010, and entered into force on 1 January 2013, and repealed by Law 06/L-054 on Courts, published on 18 December 2018]

Article 2
Definitions

1. Terms used in this Law shall have the following meanings:

[…]

1.2. Basic Court - the court of first instance comprised of seven geographic areas as established by this Law.
1.3. Branch - a geographical subdivision of a Basic Court.
1.4. Court of Appeals - the court of second instance as established by this Law.
1.5. Department - a subcomponent of a court established by this Law for purposes of assigning cases according to subject matter in order to increase the efficiency of the courts.

Article 9
The Basic Court

1. The Basic Courts shall be the courts of first instance in the Republic of Kosovo.
2. Seven (7) Basic Courts are established as follows:

[…]
2.6. the Basic Court of Ferizaj/Uroševac with its principal seat in Ferizaj is established for the territory of the Municipalities of Ferizaj/Uroševac, Kaçanik/Kačanik, Shtime/Štimlje, Shtërpcë/Štrpce and Hani I Elezit/Đeneral Janković;

Article 10
Branches of the Basic Courts

1. In addition to its principal seat, each Basic Court shall maintain branches of the court as provided in this Law.
[…]
8. The Basic Court of Ferizaj shall have the following branches:
8.1. Kacanik Branch for Kacanik municipality and Hani I Elezit/Đeneral Janković municipality; and
8.2 Shtërpcë/Štrpce Branch for Shtërpcë/Štrpce municipality.

9. Where no Branch has been specified for a municipality, cases from such municipality will fall under the authority of the main seat of the Basic Court.

10. If there is no branch of the Basic Court in the territory of a municipality, that municipality may, by decision of the Municipal Assembly, request that the Kosovo Judicial Council either establish a branch within its territory or include it under the jurisdiction of the territorially closest Basic Court or branch of the court.

Legal opinion of the Supreme Court [GJA. Su.A. 388/2014] of 16 October 2014 regarding the territorial jurisdiction of the courts "*to decide on "objection, appeal and irregularity" in the enforcement procedure against the decision to allow enforcement in cases where the parties are legal entities or companies.*"

Competent to decide regarding the objection, appeal, irregularity in the enforcement procedure, against the decision on allowing the enforcement of the private enforcement agent, where as parties are presented legal entities or companies, is the Basic Court in which territory the debtor's seat is located, within the meaning of Article 5.5 of the Law on Enforcement Procedure and Article 11.1 of the Law on Courts.

Reasoning

The judges of the Basic Court in Prishtina, Department for Commercial Matters, addressed a request to the Supreme Court of Kosovo to give a legal opinion regarding the application of the provisions of the new Law on Enforcement Procedure No. 04/L-139, and the Law on Courts, which deal with the competence to decide by objection, appeal, irregularities in the executive procedure, against the decisions of private enforcement

agents and against the executive actions of private enforcement agents, in cases when both parties in proceedings are companies or legal entities.
With the Law on Enforcement Procedure No. 04/L-139 which entered into force on 01 January 2014, Article 5.5 defines the competence to decide the issues related to any objection, appeal, irregularity in the enforcement procedure. In accordance with Articles 52 and 67 of this law, to decide issues related to any objection, appeal, irregularity in the enforcement procedure or any procedure against actions taken by the private enforcement agents if the debtor is a natural person, the competent court in the territory of which the debtor has his seat or if he has no seat in Kosovo, then in the territory in which he has his residence. If the debtor is a legal entity, the territorial jurisdiction has the competent court where the debtor's seat is located.
The Law on Courts of Kosovo, by Article 13 has defined the competence of the Department for Commercial Matters operating within the Basic Court in Prishtina, but has not defined that this Department has the competence to decide in the enforcement procedure regarding the objection filed against the decisions of enforcement which deal with legal entities or companies.
By Article 11 of the Law on Courts in Kosovo, the Basic Courts are competent to adjudicate in the first instance all cases unless otherwise provided by law, while according to the provision of Article 16.1 of the cited law it is provided that the General Department of the Basic Court adjudicates all cases in the first instance, unless this is within the competence of another Department of the Basic Court.
It follows that within the meaning of Article 5.5 of the Law on Enforcement Procedure, the General Department of the Basic Court in which territory the debtor's seat is located, is competent to decide on the objections of debtors against the decisions of private enforcement agents.

Admissibility of the Referral

104. In this regard, the Court, by applying Article 113 of the Constitution, the relevant provisions of the Law regarding the procedure in the case foreseen in Article 113, paragraph 7 of the Constitution; and Rule 39 [Admissibility Criteria] and Rule 76 [Referral pursuant to Article 113.7 of the Constitution and Articles 46, 47, 48, 49 and 50 of the Law] of the Rules of Procedure shall examine whether: (i) the Referral was filed by authorized parties; (ii) the decisions of public authorities are being challenged; (iii) all legal remedies have been exhausted; (iv) the rights and freedoms which have allegedly been violated are specified; (v) the time limits have been respected; (vi) the Referral is manifestly ill-founded; and (vii) there is an additional admissibility requirement, pursuant to Rule 39 (3) of the Rules of Procedure, which is not met.

Regarding authorized parties

105. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 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".

106. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution which stipulates:

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

107. Finally, the Court also refers to item (a) of paragraph (1) of Rule 39 [Admissibility Criteria], of the Rules of Procedure which establishes:

(1) The Court may consider a referral as admissible if:
(a) the referral is filed by an authorized party.

108. As to the fulfillment of this requirement, the Court notes that the Applicant, in the capacity of a legal person has the right to submit a constitutional complaint, invoking the alleged violations of fundamental rights and freedoms that apply to legal entities, to the extent that they are applicable (see case of the Court KI41/09, Applicant *AAB-RIINVEST University L.L.C.,* Resolution on Inadmissibility of 3 February 2010, paragraph 14).

109. Therefore, the Court finds that the Referral was submitted by an authorized party.

Regarding the act of public authority

110. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, cited above, and Article 47 [Individual Requests] of the Law, which provide that "*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. [...]"*

111. In this regard, the Court notes that the Applicant challenges the acts of the public authorities, namely the Decision [Cml. Nr. 8/2019] of 17 June 2020, of the Supreme Court; Decision [Ac. No. 5514/18, of 13 May 2019, of the Court of Appeals; and Decision [PPP. No. 80] of 19 November 2018 of the Basic Court.

Regarding the exhaustion of legal remedies

112. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, cited above, and paragraph 2 of Article 47 [Individual Requests] of the Law and item (b) paragraph (1) of Rule 39 [Admissibility Criteria] of the Rules of Procedure which foresee:

Article 47
[Individual Requests]

(...)

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

Rule 39
[Admissibility Criteria]

1. The Court may consider a referral as admissible if:

(...)

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.

113. The Court notes that the Applicant submitted its Referral after the issuance of the Decision of the Supreme Court, as a result of the request of the State Prosecutor for filing a request for protection of legality against the Decision of the Court of Appeals and the Decision of the Basic Court in Ferizaj. .

114. Consequently, in view of the above, the Court finds that the Applicant has exhausted all legal remedies to challenge the challenged decisions before the Court.

Regarding the submission of referral within deadline

115. In addition, the Court also examines whether the Applicant submitted his Referral within the time limit established in Article 49 [Deadlines] of the Law and Rule 39 (1) (c) of the Rules of Procedure.

116. With regard to the fulfillment of the criterion for submitting the Referral in accordance with the deadlines set out in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, the Court recalls that the Applicant in its Referral to the Court has specified that challenges the Decision [PPP. No. 80/17] of 19 November 2018 of the Basic Court in Ferizaj, Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals of Kosovo and Decision [Cml. No. 8/2019] of 17 June 2020, of the Supreme Court, alleging that the above three court decision have been rendered by violating its right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

117. The Court finds that the Applicant submitted its Referral within the legal deadline set out in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.

Regarding the accuracy of the Referral

118. In addition, the Court also examines whether the Applicant has met other admissibility criteria, further specified in the Law and the Rules of Procedure. In this regard, the Court first refers to Article 48 [Accuracy of Referral] and Article 49 [Deadlines] of the Law, which provide:

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.

119. The Court recalls that the same requirements are further provided in item (d) of paragraph (1) of Rule 39 [Admissibility Criteria] of the Rules of Procedure.

120. As to the fulfillment of these requirements, the Court notes that the Applicant has clearly specified what fundamental rights and freedoms guaranteed by the Constitution and the ECHR have been violated and has specified the concrete acts of the public authority which he challenges in accordance with Article 48 of the Law and the respective provisions of the Rules of Procedure. Therefore, the Court finds that the Applicant has specified his Referral.

Regarding other admissibility requirements

121. Finally, the Court considers that the Referral cannot be considered manifestly ill-founded within the meaning of Rule 39 (2) of the Rules of Procedure and there is no other ground for declaring it inadmissible, as none of the requirements established in Rule 39 (3) of the Rules of Procedure is applicable in the present case (see, *inter alia*, ECtHR case *Alimuçaj v. Albania*, Application No. 20134/05, Judgment of 9 July 2012, paragraph 144, see also, the case of the Constitutional Court KI48/18, Applicant *Arban Abrashi and the Democratic League of Kosovo*, cited above, paragraph115).

Conclusion regarding the admissibility of the Referral

122. The Court concludes that the Applicant: (i) is an authorized party; (ii) challenges three decisions of public authorities; (iii) has exhausted legal remedies; (iv) has submitted the referral within the deadline (v) has specified the rights and freedoms which it alleges to have been violated; (vi) the referral is not manifestly ill-founded; and that (vi) there is no other admissibility requirement which is not met.

123. Therefore, the Court declares the Referral admissible and will further examine its merits.

Merits of the Referral

124. In this regard, and initially, the Court recalls that the circumstances of the present case relate to two conducted enforcement proceedings related to the

non-payment of debt arising from the Loan Agreements, concluded between the Applicant in the capacity of creditor and the Debtor.

125. The first procedure, which was based on the now already repealed Law No. 03/L-008 on executive procedure, was initiated by the Applicant on 29 March 2013, in which case the Applicant submitted two (2) proposals for enforcement of mortgages, namely (i) the proposal for enforcement in the Basic Court in Ferizaj, Branch in Kaçanik and (ii) the proposal for enforcement in the Basic Court in Ferizaj, namely in the territories where the mortgages were located. On 29 March 2013 and 18 April 2013, respectively, the Basic Court in Ferizaj, Branch in Kaçanik and the Basic Court in Ferizaj allowed the enforcement proposed by the Applicant. The procedure initiated in the Basic Court, Branch in Kaçanik on the proposal of the Applicant had completed by the Decision [Ac. No. 3617/14] of 25 November 2014 of the Court of Appeals. While in the enforcement procedure conducted in the Basic Court in Ferizaj, as a result of the contestation of the expertise provided by the expert A.F. by the Debtor and his request for the appointment of super expertise, on 11 February 2014, this court decided to appoint the Faculty of Economics of the University of Prishtina, branch Banking and Finance for super expertise, with three (3) experts in the field of finance. The expertise report containing the debt calculation in the amount of 485,395.07 euro was submitted to the Basic Court in Ferizaj on 30 October 2015, which report was also communicated to the Applicant. However, on 25 November 2015, the Applicant submitted a request to the Basic Court in Ferizaj to withdraw the enforcement proposal, and consequently on 17 December 2015, the Basic Court in Ferizaj by Decision [CP. No. 354/13] decided to terminate the enforcement procedure at the request of the Applicant.

126. On 6 January 2016, the Applicant initiated a new enforcement procedure, in which case it submitted a proposal for debt enforcement under the above Loan Agreements in the amount of 7,080,025. 64 euro to the Debtor at Private Enforcement Agent F.H. This enforcement procedure, which is the subject matter of assessment of the Applicant's Referral before the Court, is based on Law no. 04/L-139 on Enforcement Procedure. In his proposal for enforcement, the Applicant proposed the enforcement of mortgages for immovable properties registered in the Municipality of Ferizaj, which proposal in its content includes the same requests as those specified in the previous proposal for enforcement, initiated on 29 March 2013 in the Basic Court in Ferizaj and completed by the abovementioned Decision [CP. No. 354/13] of the Basic Court in Ferizaj, of 17 December 2015. On 6 January 2016, the Private Enforcement Agent by the Order [Pnr. No. 03/2016] allowed the enforcement of the debt, against which the Debtor filed an objection with the Basic Court in Ferizaj. As a result of the Applicant's request addressed to the Private Enforcement Agent for the appointment of expertise, the latter on 18 January 2016 by the Conclusion [P. No. 03/2016] appointed the Company *"Deloitte Kosova"* to conduct financial expertise for the calculation of debt, which was also one of the companies proposed by the Applicant. On 18 February 2016, the Debtor filed (i) an appeal against the aforementioned Conclusion of the Private Enforcement Agent regarding the appointment of Deloitte Company for the calculation of the debt and (ii) a submission forcing the Applicant to specify the debt, citing the super expertise conducted on 30 October, 2015 by the University of Prishtina, Faculty

of Economics. On 11 May 2016, the Basic Court in Ferizaj by the Decision [PPP. No. 21/16] approved as partially grounded the Debtor's objection against the Enforcement Order and decided that: (i) the Enforcement Order [P. No. 03/16], of 6 January 2016 regarding the amount of debt requested by the creditor of 6,594,630.57 euro should be left out of legal force; and (ii) to uphold the Enforcement Order [P. No. 03/16] of 6 January 2016 for the amount of 485,395.07 euro. The Basic Court in Ferizaj, by its Decision, approved the submitted expertise of the University of Prishtina, Faculty of Economics for the calculation of the amount of debt, to which it had given trust. As a result of the appeal filed by the Applicant against this Decision of the Basic Court, on 6 July 2017, the Court of Appeals by Decision [CA. No. 2177/2016] approved the Applicant's appeal and remanded the case for retrial and reconsideration in the first instance, finding that the Basic Court in Ferizaj was obliged to invite experts in its review session, in order to enable the parties to ask questions about the expertise. After remanding the case for retrial and reconsideration, in the procedure conducted before the Basic Court in Ferizaj during the period between 27 November 2017 until the issuance of its Decision, on 19 November 2018, eight (8) public hearings were held, some of which were also attended by the group of experts appointed by the University of Prishtina. On 19 November 2018, the Basic Court in Ferizaj by Decision [PPP. No. 80/17] among others decided to leave in legal force the Order for enforcement [P. No. 03/16] of 6 January 2016 of the Private Enforcement Agent regarding the amount of debt of 485, 395.07 euro. On 13 May 2019, as a result of the Applicant's appeal against the above-mentioned Decision of the Basic Court in Ferizaj, the Court of Appeals by Decision [Ac. No. 5514/18] rejected as ungrounded the Applicant's appeal and upheld the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj. On 3 June 2019, the Applicant filed a proposal with the State Prosecutor's Office to file a request for protection of legality on the grounds of violation of the provisions of the enforcement procedure and incorrect application of substantive law. On 2 July 2019, the State Prosecutor in the Supreme Court filed the request [KMLC. No. 100/2019] for protection of legality against the Decision of the Basic Court in Ferizaj and the Decision of the Court of Appeals on the grounds of (i) essential violations of the contested procedure, namely Article 247, paragraph 1, item a) in conjunction with Article 182, paragraph 2, item f); and Article 247, paragraph 1; and (ii) erroneous application of substantive law, namely Article 247, paragraph, item b) of the LCP, which provisions relate to violations of territorial jurisdiction by the Basic Court in Ferizaj, specifying that "*the territorial jurisdiction belonged to the Basic Court in Ferizaj, Branch in Kaçanik and not the Basic Court in Ferizaj*". On 17 June 2020, the Supreme Court by Decision [Cml. No. 8/2019] rejected as ungrounded the request of the State Prosecutor for protection of legality, filed against the Decision of the Basic Court in Ferizaj and the Decision of the Court of Appeals.

127. The Court recalls that the Applicant challenges the findings of the Court of Appeals and the Supreme Court, alleging a violation of his right guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. Within the meaning of a violation of his right to a fair and impartial trial, the Applicant alleges: (i) a violation of the principle of a court established by law; (ii) violation of the "right to legal certainty and observance of final court decisions"; and (iii)

violation of the impartiality of the court, as a result of the impartiality of the experts.

128. The Court will initially proceed with the examination of the Applicant's allegation of a violation of the principle of a court established by law, a guarantee embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which allegation will be elaborated and considered based on the case law of the Court and the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms of the guaranteed by the Constitution.

I. Regarding the allegation of the court established by law

129. The Court recalls that the Applicant in the context of his allegation of a violation of the principle of a court established by law, a guarantee embodied in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, specifies that the Basic Court in Ferizaj had no territorial jurisdiction to decide on the enforcement proceedings, initiated on 6 January 2016. Having said that, the Applicant alleges that the Basic Court in Ferizaj, Branch in Kaçanik, was competent to decide in this case, namely the court where the seat of the Debtor is located.

130. In the context of this allegation, the Applicant states that Article 5, paragraph 5 of the LEP defines the territorial jurisdiction of the courts in adjudicating objections, appeals and irregularities in the enforcement procedure. According to him, the content of this provision was confirmed by Legal Opinion No. 388/2014, of 16 December 2014 of the Supreme Court regarding the "*competence to decide on objections, appeals and irregularities in the enforcement procedure*".

131. Based on the above, and with regard to the challenged Decision of the Supreme Court, the Applicant alleges that the Supreme Court based its decision on rejection of the request for protection of legality by referring to the subject matter jurisdiction of the courts and not the territorial jurisdiction, which according to the Applicant, was the essence of the request for protection of legality, which is based on Article 247 of the LCP. Subsequently, the Applicant states that the Supreme Court rendered its Judgment contrary to the above mentioned Legal Opinion of 16 December 2014.

132. In the context of the above, the Applicant specifies that any violation of Article 5, paragraph 5 of the LEP also constitutes a violation of Article 31, paragraph 2, of the Constitution, in conjunction with Article 6 of the ECHR. In this regard, the Court recalls that the Applicant also referred to the case law of the ECtHR, namely the cases of *Sokurenko and Strygun v. Ukraine* [Judgment of 20 July 2006] and the case of *Dmd Group v. Slovakia* [Judgment, 5 October 2010).

133. The Court, in this regard, will examine the Applicant's allegations regarding the violation of the right of the court established by law, as a result of the lack of territorial jurisdiction of the Basic Court in Ferizaj, initially (i) elaborating on the general principles regarding the court established by law as guaranteed by

the abovementioned articles of the Constitution and the ECHR; and subsequently, based on the case law of the ECtHR; (ii) apply the latter to the circumstances of the case.

(i) *General principles regarding the right to a court established by law*

134. Based on the above and in order to address the Applicant's allegation of violation of the principle of a court established by law, as a result of the lack of territorial jurisdiction of the Basic Court in Ferizaj to decide in its case, the Court initially refers to the case law of the ECHR, which in principle has found that *"A tribunal "is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner*" (see the case of ECtHR *Coëme and Others v. Belgium*, Judgment of 22 June 2000, paragraph 99).

135. The ECtHR has held that under Article 6 paragraph 1 of the ECHR, the court must always be "*established by law*". According to the ECtHR, this expression reflects the principle of the rule of law, which is an integral part of the protection system established by the ECHR and its Protocols (see cases of the ECtHR, *DMD Group, AS v. Slovakia*, Judgment of 5 October 2010, paragraph 58 and *Richert v. Poland*, Judgment of 25 October 2011, paragraph 41). Having said that, the ECtHR has also specified that if a court is not established in accordance with the purpose of the legislature it will inevitably lack the legitimacy required in a democratic society to resolve disputes (see *Lavents v. Latvia*, Judgment of 28 February 2003), paragraph 114).

136. According to the case law of the ECtHR "Law" according to the meaning of Article 6, paragraph 1 of the ECHR, means not only the legislation on the establishment and competencies of judicial bodies, but any provision of domestic legislation, which, if violated, would make the participation of one or more judges in the hearing of the case, irregular. In other words, the phrase "*established by law*" includes not only the legal basis for the very existence of the "*court*" but also the observance by the courts of the special rules under which it is governed (see the case of the ECtHR, *DMD Group, AS v. Slovakia*, Judgment of 5 October 2010, paragraph 59).

137. According to the case law of the ECtHR, the Court notes that the allegation of incompatibility with the right to "a court established by law" has been examined and assessed in different contexts, both in the civil and criminal aspects of Article 6, paragraph 1 of the ECHR including but not limited to the following:

(i) When a court has decided outside its jurisdiction (see the case *Coëme and Others v. Belgium*, cited above, paragraphs 107-109 and *Sokurenko and Strygun v. Ukraine*, cited above, paragraphs 26-28);
(ii) In the case where a case has been assigned or reassigned to a specific judge or tribunal (see *DMD Group AS v. Slovakia*, cited above, paragraphs 62-72; *Richert v. Poland*, cited above, paragraph 41-57*);*
(iii) In the case of the replacement of a judge without providing the relevant reasoning as required by domestic law (see *Kontalexis v. Greece*, Judgment of 28 November 2011, paragraphs 42-44);

(iv) In the case of the tacit renewal of a judge's term for an indefinite period after the expiration of his term and pending his reappointment (see case *Guroy v. Moldova*, Judgment of 11 October 2006, paragraph 37);
(v) In the case of an adjudication by a court whose members were legally disqualified from attending the trial (see *Lavents v. Latvia*, cited above, paragraphs 114- 115);
(vi) In the case of the issuance of a Judgment by a panel of judges which consisted of a smaller number of members than that prescribed by law (see *Momcilovic v. Serbia*, Judgment of 2 April 2019, paragraph 32).

138. The Court recalls that the Applicant in his Referral referred to the cases of the ECtHR *Socurenko and Strygun v. Ukraine* and *DMD Group AS v. Slovakia*. In the following, the Court will briefly summarize these two cases referred by the Applicant to proceed with a brief summary of the case *Coëme and others v. Belgium*, which similarly to the case of *Sokurenko and Strygun v. Ukraine* relates to the case when the courts decided outside their competence or jurisdiction defined by law.

139. In the context of the allegation concerning the decision-making of the courts within their jurisdiction, the Court refers to the case of the ECtHR *Sokurenko and Strygun v. Ukraine*, the circumstances of which were related to what the Applicants claimed that the Supreme Court of Ukraine had no jurisdiction to uphold the decision of the High Commercial Court, since according to the Code of Commercial Procedure, this court after the annulment of the decisions of the High Commercial Court, can remand the case for reconsideration or cancel all proceedings. According to the ECtHR, there was no other provision extending the jurisdiction of the Supreme Court to render such a decision. The ECtHR further noted that in relation to these cases, the Supreme Court had not given any reason for making a decision, exceeding its jurisdiction, which had resulted in a deliberate violation of the Commercial Procedure Code and the establishment of a case law in the Supreme Court of Ukraine. Finally, the ECtHR found that as a result of the fact that the Supreme Court had exceeded the limits of its jurisdiction, clearly defined in the Commercial Procedure Code, this court could not be considered a "court established by law" within the meaning of Article 6, paragraph 1 of the ECHR.

140. Also in the case *Coëme and Others v. Belgium*, the ECtHR found that the fact that the Belgian Court of Cassation had extended its jurisdiction to conduct criminal proceedings and adjudicate other persons who did not hold the post of Minister constituted a violation of the right to a court established by law, as defined in Article 6, paragraph 1 of the ECHR. The circumstances of this case were related to the fact that in 1989 the criminal proceedings were initiated against Mr. Javeau, who was suspected of fraud and corruption during 1981 and 1989, when he ran the "I" association, which activity included conducting market and opinion polls. During the court investigation Mr. Javeau and Mr. Stalport were also heard. In 1994 the Prosecution requested the House of Representatives Mr. Coëme to waive his parliamentary immunity as he was implicated in some of the illegal activities of this association at the time when he was acting minister. Pursuant to Article 103 of the Belgian Constitution concerning judicial proceedings against ministers, the House of Representatives decided that Mr Coëme be tried before the full Court of Cassation, which under

this article was the only court with jurisdiction to try a minister. The other Applicants [Javeau and Stalport] were tried in the same proceedings before the Court of Cassation, on the basis of the principle of "related violations" set out in the Criminal Code, although none of them was a minister. The Court of Cassation of Belgium, on 5 April 1996, rendered its Judgment finding all the Applicants guilty and sentencing them to various sentences. In this case, the ECtHR, considering that the rule of "related violations" was not defined by law, considered that the Court of Cassation was not a court "established by law" within the meaning of Article 6 to try other Applicants (see paragraph 109 of the Judgment).

141. In the case *Dmd Group v. Slovakia* (Judgment of the ECtHR, 5 October 2010), the circumstances of the case were related to the fact that the Applicant had sought enforcement of a financial claim against another company through the proceedings before the District Court. In 1999, the newly appointed president of the court in question decided to re-assign the case to itself, concluding at the same time that the Applicant's claim was inadmissible and consequently deciding to terminate the proceedings in question. The Applicant in this case had no right to appeal. According to the ECtHR, the meaning of the notion of a court established by law was to ensure that the judiciary in a democratic society does not depend on the discretion of the executive, but is regulated by law deriving from Parliament (see paragraph 60 of Judgment). The ECtHR found that it was clear that the president of the district court, in his capacity as a judge, had decided on the applicant's claim on the same date when he was also exercising his administrative function when he decided to reassign this case to itself. According to the ECtHR, as the decision of the President of this court had resulted in the termination of the proceedings and in this case no appeal was allowed, the Applicant was deprived of the opportunity to present his objection to this decision or to raise his claim for bias of the judge. Consequently, the ECtHR found that the issue of re-assignment of the case by the President of the Court was not in accordance with the Applicant's right to be heard by a "court established by law" under Article 6, paragraph 1 of the ECHR (see paragraphs 70-72 of the Judgment).

142. The Court further refers to the case of *Guðmundur Andri Ástráðsson v. Iceland* (Application no. 26374/18, [GC], Judgment of 1 December 2020), in which case the Grand Chamber of the ECtHR upheld the principles set out regarding the right to a court "established by law" previously established by this court, but in this case it had emphasized that the right to a court established by law is also related to the principle of independence and impartiality of the court (see paragraphs 231 - 234 of the Judgment). The ECtHR further considered it necessary to establish a threshold test with three (3) steps or criteria in order to ascertain whether in the circumstances of the present case the right to a court established by law has been violated, as established in Article 6, paragraph 1 of the ECHR.

143. The circumstances of this case related to the Applicant's allegation that the new Icelandic Court of Appeal (*Landsréttur*) which had upheld his conviction for a traffic violation was not "a court established by law" as a result of the irregularities in the appointment of one of the judges, as a judge in the Court of Appeals, who had participated as a judge in his case. Given the potential

implications of finding a violation and the relevant interests in the case, the ECtHR emphasized that the right to a "a court established by law" should not be interpreted too broadly in such a way that any irregularities in an appointment procedure of a judge would risk compromising this right.

144. The test applied by the Grand Chamber of the ECtHR in this case included whether: (i) there was a clear violation of domestic law (see paragraphs 244-245 of the Judgment); (ii) the violation in question must be assessed in the light of the subject and purpose of the criterion of the "a court established by law", in particular to ensure the ability of the judiciary to perform its duties without unlawful interference in order to preserve the rule of law and separation of powers (see paragraphs 246-247 of the Judgment); (iii) if the violation of domestic law has created such consequences that have resulted in a violation of the law of the court established by law as provided for in Article 6, paragraph 1 of the ECHR (see paragraphs 248-252 of the Judgment). Following the application of this test, the ECtHR found that the Applicant's right to a "court established by law" had been violated as a result of the participation of a judge in the proceedings, whose appointment had been marred by serious irregularities which violated the very essence of this right (paragraph 289 of the Judgment).

(ii) Application of the abovementioned principles in the Applicant's case

145. In applying the abovementioned principles to the Applicant's case, the Court first recalls that the Applicant specifically alleges that as a result of the violation of Article 5, paragraph 5 of the LEP, which determines the issue of the territorial jurisdiction of the court to decide on this enforcement procedure, Article 31 of the Constitution in conjunction with Article 6, paragraph 1 of the ECHR has been violated. According to the Applicant, competent to decide in this enforcement procedure, is the Basic Court in Ferizaj, Branch in Kaçanik.

146. In this context, the Court first refers to (i) the legal provisions defining the issue of the territorial jurisdiction of the courts to decide on enforcement proceedings; (ii) the legal opinion of the Supreme Court; and (iii) the relevant provisions of the LCP, namely the provision related to when the court may decide on territorial jurisdiction, *ex officio* or if the issue of territorial jurisdiction has been raised by the respondent's own party, namely the Applicant in the capacity of Creditor in this enforcement case.

147. First, the Court refers to paragraph 5 of Article 5 of the LEP, which stipulates that: "*To decide matters regarding any objection, appeal, irregularities in enforcement procedure under Articles 52 and 67 of this law, or any other procedure against actions of a private enforcement agent, jurisdiction is within the competent court in the territory in which the debtor's residence is located, and if he does not have residence in Kosovo, then in the territory in which he stays, if debtor is a physical person. If debtor is a legal person, territorial jurisdiction rests in the competent court in the territory in which its seat is located. If the debtor does not have a temporary residence or seat in Kosovo, the basic court in the territory in which the movables or immovable items that are the object of enforcement are located will have jurisdiction*.

148. Secondly, after the entry into force of the new Law 04 /L-139 on Enforcement Procedure, specifically in relation to Article 5, paragraph 5 of this Law, the Supreme Court through its Legal Opinion, adopted on 16 December 2014, confirmed that *"Competent to decide regarding the objection, appeal, irregularity in the enforcement procedure, against the decision on allowing the enforcement of the private enforcement agent, where as parties are presented legal entities or companies, is the Basic Court in which territory the debtor's seat is located, within the meaning of Article 5.5 of the Law on Enforcement Procedure and Article 11.1 of the Law on Courts. "*

149. Thirdly, with regard to when the issue of territorial jurisdiction may be raised before the courts by the parties or by the court itself *ex officio*, the Court refers to Article 22 of the LCP, which provision determines at what stage of the proceedings the court may be declared incompetent. The Court recalls that in the Applicant's case the regular courts, namely the Court of Appeals and the Supreme Court in their decisions responded to the Applicant's allegation by applying Article 22 of the LCP, which stipulates that:

> *22.1 The lack of territorial jurisdiction of the court may be declared only after the defendant has objected by responding to the claim.*
>
> *22.2 The court decides on the objection from paragraph 1 of this article in the preliminary hearing at latest or at the first session of the principle process if the preliminary process has not taken place.*
>
> *22.3 The lack of territorial jurisdiction of the court may be declared only in existence of existence of territorial jurisdiction of a different court but before there is a response to the filed claim.*

150. Based on this provision, it results that the court may be declared incompetent from a territorial point of view in two cases, namely (i) in the case when the respondent raises the issue of territorial jurisdiction by responding to the lawsuit, namely in the present case, by the response to the objection submitted by the Applicant, in the capacity of creditor and (ii) *ex officio* if there is exclusive jurisdiction of any other court. In the first case the court decides in the preparatory session or at the latest in the first session of the main hearing and in the second case, the court decides at the latest at the moment of submitting the reply to the lawsuit, in this case at the moment of submitting the response by the creditor (the Applicant) to the debtor's objection. According to Article 17 [Application of the provisions of other laws] of the LEP: *"the provisions of the Law on Contested Procedure shall be accordingly are applied in the enforcement procedure, unless this law or any other law provides otherwise".*

151. In reviewing the Applicant's allegation, the Court recalls that the enforcement procedure initiated on 6 January 2016, which was based on the new LEP Law was initiated with the Applicant's proposal to the Private Enforcement Agent, who was competent for the territory of Prishtina. As a result of allowing the enforcement by the Order [Pnr. 03/2016] of 6 January 2016, the Debtor submitted an objection to the Basic Court in Ferizaj. The Applicant filed a response to the Debtor's objection. From the files of the case file it results that the Applicant in his response had not raised the issue of jurisdiction of the Basic

Court in territorial terms. As a result of the objection by the debtor, a hearing was held also in the Basic Court in Ferizaj. It does not appear from the case file that the issue of jurisdiction was raised by the Applicant or by the court *ex officio*. The Court further recalls that following the appeal filed by the Applicant against the first Decision [PPP. No. 21/16] of 11 May 2016, of the Basic Court in Ferizaj, by Decision [Ca. No. 2177/2016] of 6 July 2017 of the Court of Appeals the case was remanded for retrial and reconsideration in the Basic Court in Ferizaj. While the procedure in retrial and reconsideration was taking place in the Basic Court in Ferizaj, from the minutes of the hearings it results that the Applicant raised the issue of territorial jurisdiction directly in this Court in the last hearing held on 12 November 2018 in this court.

152. Following this, based on the case file, it does not turn out that the Basic Court responded to this allegation raised by the Applicant during the hearing, of 12 November 2018 or by its Decision of [PPP. No. 80/17] of 19 November 2018.

153. The Court further recalls that the Applicant also raised his allegation of lack of territorial jurisdiction in his appeal against the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj before the Court of Appeals. Applicant in his appeal filed with the Court of Appeals against the Decision [PPP. No. 80/17] of 19 November 2018, of the Basic Court in Ferizaj alleged a violation of Article 182, paragraph 1, item d) of the LCP stating that this court was not competent to decide on the objection of the Debtor on the grounds that the debtor is headquartered in Kaçanik, and consequently the Basic Court in Ferizaj, Branch in Kaçanik had the competence to decide on the objection.

154. In addressing this allegation, the Court of Appeals by Decision [Ac. No. 5514/18] of 13 May 2019 had concluded that within the meaning of Article 22, paragraph 1 of the LCP, *"the court may be declared incompetent from a territorial point of view only upon the objection of the respondent filed by means of the response to the lawsuit."*

155. Consequently, the Court of Appeals, referring to paragraph 2 of Article 22 of the LCP and Article 17 of the LEP, found that *"the court cannot be declared incompetent from a territorial point of view ex officio, but there must be an objection from the parties, which can be filed in the first hearing, while [the Applicant] in this case has filed an objection in the last hearing held regarding the objection, despite the fact that many hearings have been held on this issue [...]"*

156. Subsequently, as a result of the Applicant's proposal to file a request for protection of legality, the State Prosecutor in his proposal to file a request for protection of legality found that the decisions of the Basic Court in Ferizaj and that of the Court of Appeals were rendered in violation of the provisions of the contested procedure, (i) namely the provisions referring to the issue of territorial jurisdiction of the court (Article 247, paragraph 1, item a) in conjunction with Article 182, paragraph 2, item f) of the LCP) and (ii) erroneous application of substantive law under Article 247, paragraph 1 item b) of the LCP. In his request, the State Prosecutor found that in this procedure the territorial jurisdiction belonged to the Basic Court in Ferizaj, Branch in Kaçanik.

157. In this regard, the Court refers to Article 182 of the LCP, which contains the reasons when a Judgment may be challenged as a result of a violation of procedural provisions in the contested procedure, and Article 247 of the LCP, which sets out the criteria when the State Prosecutor may file a request for protection of legality in the Supreme Court. Paragraph 2 of Article 182 specifies that:

> *"182.2 Basic violation of provisions of contested procedures exists always:*
>
> *a) when the court is not made based on provisions or when during the issuance of the verdict was done by the judge who didn't participate in the main hearing;*
> *b) when it is decided on a request which isn't a part of the legal jurisdiction;*
> *c) when the in the issuance of the decision participated the judge who according to the law should be dismissed, respectively the judge was already dismissed by a court decision or in the cases when a person not qualifies as a judge participated in the issuance of the verdict;*
> *d) in cases when the court based on rejection of parties has wrongly decided that it belonged to subject competencies;*
> *[...]*
> *f) if the court has decided for the claim for which is subject of the highest court of the kind, a court of different kind;*

158. Article 247, paragraph 1 of the LCP stipulates that:

> *"1. The public prosecutor may raise the request for protection of legality:*
> *a) for basic violence of provisions of contested procedure, if the violence has to do with territorial competencies, if the court of the first instance has issued a verdict without main proceeding, while it was its duty to held a main proceeding, if decided for the request, on which the contest is continuing, or if is in contradiction with the law, the public is excluded from the main proceeding;*
> *b) for wrong application of the material right."*

159. Based on the request of the State Prosecutor, it results that the State Prosecutor in his request as a legal basis for filing the request for protection of legality has specified Article 247, paragraph 1, item a) in conjunction with Article 182, paragraph 2, f) of the LCP. In this connection, the Court notes that item f), of paragraph 2 of Article 182, refers to the issue of the subject matter jurisdiction of the courts.

160. The Court further recalls that as a result of the above-mentioned proposal to file the request for protection of the legality of the State Prosecutor, the Supreme Court, by Decision [Cml. No. 8/2019] of 17 June 2020 rejected the request for protection of legality as ungrounded.

161. The Supreme Court initially stated that:*" the request for protection of legality is ungrounded, because the provision of Article 247 of the LCP which regulates the reasons for filing a request for protection of legality, defines only a few violations, which can serve as grounds for filing a request for protection of*

legality. According to Article 247, par. 1, item b) of the LCP, the State Prosecutor may file a request for protection of legality on the grounds of essential violations of the contested procedure from article 182, par. 2 item f) if the violation is related to territorial jurisdiction". In this regard, the Supreme Court noted that *"the request of the State Prosecutor refers to the objection and the objection of territorial jurisdiction is a procedural action which can be done at a certain stage of the procedure and for reasons provided by law"*.

162. Following this, the Supreme Court found that: *"Explicitly as to the procedure regarding the objection to the enforcement order for which the protection of legality is requested by the State Prosecutor, the Supreme Court found that the Court of Appeals has given the appropriate legal reasoning when the court may be declared incompetent from a territorial point of view, elaborating on the reasons that the court decides on the objection at the latest in the preparatory session, while in terms of territorial jurisdiction, the Court can be declared incompetent, ex officio, only when there is exclusive territorial jurisdiction of another court always referring to Article 17 of the LEP which provides that in the "the provisions of the Law on Contested Procedure shall be accordingly are applied in the enforcement procedure, unless this law or any other law provides otherwise"*.

163. The Supreme Court further specified in its Judgment that the State Prosecutor filed a request for protection of legality on the grounds of essential violations of the provisions of the contested procedure, claiming that the Basic Court in Ferizaj, Branch in Kaçanik and not the Basic Court in Ferizaj was competent, and his request is based on Article 182, paragraph 2, item f), which stipulates that *"Basic violation of provisions of contested procedures exists always if the court has decided for the claim for which is subject of the highest court of the kind, a court of different kind."* In this regard, the Supreme Court found that his request regarding the territorial jurisdiction of the court is not based on Article 182, paragraph 2, item f) of the LCP.

164. Finally, the Supreme Court concluded that the Basic Court in Ferizaj is competent in this matter, and that its division into branches is an administrative matter of internal organization, which is not related to territorial jurisdiction.

165. The Court, referring to the reasoning given by the Supreme Court, notes that the essence of the reasoning of this court is related to the subject matter of the issue of assessment by the Court, namely the assessment of whether the Applicant's right to a court established by law has been violated as a result of the lack of territorial jurisdiction is that the issue of territorial jurisdiction as defined by Article 22 of the LCP should have been raised at the latest in the first session of the main hearing in the Basic Court. Second, the Court notes that the Supreme Court concluded that the division of courts into branches is an administrative matter of the internal body not related to territorial jurisdiction.

166. The Court in following, and in the context of the principles established by the ECtHR through its case law, and most recently affirmed by it by the Grand Chamber Judgment in the case of *Guðmundur Andri Ástráðsson v. Iceland*, specifically refers to the test applied by it in this case. In this regard, the Court

recalls that the ECtHR determined that in addition to the principles established with regard to the right to a court established by law, as set out in Article 6 of the ECHR, it must also assess whether (i) there was a clear violation of domestic law [in the present case of the ECtHR in appointing a judge]; (ii) the violation in question must be assessed in the light of the subject and purpose of the criterion of the "court established by law", in particular to ensure the ability of the judiciary to perform its duties without unlawful interference in order to preserve the rule of law and separation of powers; (iii) if the violation of domestic law has created such consequences which have resulted in a violation of the right to a court established by law as foreseen in Article 6, paragraph 1 of the ECHR.

167. The Court recalls that the abovementioned case of the ECtHR, in which this court conducted the test with three steps or criteria and applied the same in the circumstances of the present case, specifically refers to the appointment of a judge to the Court of Appeals, the appointment proceedings which were challenged before the relevant public authorities, and the latter had participated in the Applicant's trial in this case. Having said that, the Court, taking into account that this specific case of the ECtHR does not contain factual and legal circumstances identical or similar to the circumstances of the Applicant, which specifically refer to the issue of territorial jurisdiction, nevertheless considers that the affirmed principles of the case law of the ECtHR and further elaborated by this Judgment of the Grand Chamber can be applied analogously in the case of the Applicant. In the context of the latter, the Court considers that this applied test further enables the Court to assess whether the reasoning, and more specifically the interpretation of the applicable law by the regular courts regarding the issue of territorial jurisdiction has violated the Applicant's right to a court established by law or not.

168. In this regard, the Court reiterates the reasoning of the regular courts, more specifically that of the Court of Appeals, which in paragraph 1 of Article 22 of the LCP and Article 17 of the LEP had interpreted that: (i) the court may be declared incompetent from a territorial point of view only in case of objection through the response to the objection by the creditor and (ii) the court may not be declared incompetent from a territorial point of view *ex officio*, but there must be objection by the parties. Consequently, and based on this interpretation, the Court of Appeals found that due to the fact that the Applicant did not raise the issue of territorial jurisdiction through the response to the lawsuit, but in the last hearing held in the Basic Court in Ferizaj, the latter has territorial jurisdiction to decide on this enforcement case.

169. In the following, the Court, referring to paragraph 3 of Article 22 of the LCP, which stipulates that: *"The lack of territorial jurisdiction of the court may be declared only in existence of existence of territorial jurisdiction of a different court but before there is a response to the filed claim,"* notes that the Supreme Court by its Decision found that (i) *"in terms of territorial jurisdiction, the Court may be declared incompetent, ex officio, only when there is exclusive territorial jurisdiction of another court [...]"* and (ii) that the division of courts into branches is an administrative matter of the internal body that is not related to territorial jurisdiction.

170. The Court, in applying the principles and criteria of the ECtHR developed through the above case law in the case of the Applicant, namely in applying the criterion which determines whether the jurisdiction or territorial jurisdiction of the Basic Court in Ferizaj to decide on this enforcement case is clearly in contradiction with the applicable legislation, recalls that the regular courts, namely the Court of Appeals and the Supreme Court have essentially found that based on Article 22 of the LCP, which according to Article 17 of the LCP is also applied in enforcement proceedings, the courts may be declared incompetent from a territorial point of view in two circumstances, namely in this enforcement procedure (i) by the response to the objection, in the present case by the response to the objection submitted by the Applicant, in the capacity of creditor and (ii) *ex officio* if there is exclusive jurisdiction of any other court. Regarding the first circumstance, as is the case in the Applicant's circumstances, the regular courts found that the Applicant did not raise the issue of territorial jurisdiction by the response to the lawsuit, but at the last hearing held at the Basic Court in Ferizaj. Regarding the second circumstance, the Supreme Court concluded that in terms of territorial jurisdiction, the Court can be declared incompetent, *ex officio*, only when there is exclusive territorial jurisdiction of another court and that the division of courts into branches is an administrative matter of the internal body that is not related to territorial jurisdiction.

171. Based on the abovementioned reasons, the regular courts, namely the Court of Appeals and the Supreme Court, found that this allegation of the Applicant is ungrounded, and consequently found that the Basic Court in Ferizaj has territorial jurisdiction to decide on this enforcement case.

172. In this regard, the content of Article 5 paragraph 5 of the LEP is not disputable for the Court, which refers to the territorial jurisdiction of the courts in the enforcement procedure, the content of which has been confirmed by the Legal Opinion of the Supreme Court, adopted on 16 December 2014, however the Court notes that according to the interpretation of the regular courts of Article 22 of the LCP, such a claim by the parties to the proceedings should be raised at a certain stage of the proceedings before the court, namely at the time of objection the respondent party, namely the creditor who in this case is the Applicant. Whereas, in the context of the interpretation of paragraph 2 of Article 22 of the LCP, the Court of Appeals specified that *"the court cannot be declared incompetent from a territorial point of view ex officio, but there must be an objection from the parties, which can be submitted in the first hearing, while [the Applicant] has filed an objection in this case in last hearing held in relation to the objection, despite the fact that many hearings were held on this issue [...]"*. This interpretation and finding of the Court of Appeals was also upheld by the Supreme Court, through its challenged Decision. Finally, in the context of the interpretation of paragraph 3 of Article 22 of the LCP by the Court of Appeals, and in particular the interpretation given by the Supreme Court, the latter had concluded that the court could be declared incompetent, *ex officio*, only when there is exclusive territorial jurisdiction of another court and that the division of the court into branches is not related to territorial jurisdiction.

173. Therefore, based on the reasoning and interpretation given by the Court of Appeals and the Supreme Court which have specifically interpreted the relevant

provisions of raising the issue of jurisdiction of the Basic Court in Ferizaj in territorial terms, the Court finds that the jurisdiction of this court is not contrary to applicable law. Namely, the Applicant had to file the territorial jurisdiction of the court in this enforcement case, as provided by Article 5, paragraph 5 of the LEP, in accordance with the procedure and criteria established by Article 22 of the LCP.

174. Therefore, the Court considers that the Basic Court in Ferizaj is a court established by law in accordance with Article 31 of the Constitution, and Article 6, paragraph 1 of the ECHR.

175. Finally, the Court finds that the Decision [Cml. No. 8/2019] challenged by the Supreme Court of 17 June 2020 regarding the jurisdiction of the Basic Court in territorial terms is in compliance with Article 31 of the Constitution, and paragraph 1 of Article 6 of the ECHR.

176. In the light of this finding, in the following, the Court will continue with the examination of the Applicant's allegation regarding the violation of its right to legal certainty, as a result of the of the principle of final decision, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR. To this end, the Court shall (i) elaborate the general principles deriving from the case law of the Court and the ECtHR in relation to this principle, (ii) and apply the latter to the circumstances of the present case.

II. Regarding the allegation of violation of the "right to legal certainty and observance of final court decisions"

177. The Court recalls that the Applicant alleges that: *"with the use of Unlawful and Non-Substantive Financial Expertise, the Challenged Decisions violated the principle of compliance with final decisions, as the enforcement procedure where the Unlawful and Non-Substantive Financial Expertise was issued, was completed by a final court decision. Moreover, the challenged decisions violated the final court decision for remanding the Debtor's appeal against the Conclusion for Assignment of Financial Expertise to reconsideration and retrial.*"

178. 178. The Applicant supports this allegation by referring to the cases of the ECtHR, namely *Brumarescu v. Romania* (Judgment of 28 October 1999); *Agrokompleks v. Ukraine* (Judgment of 6 October 2011); and *Tregubenko v. Ukraine*, Judgment of 30 March 2005).

179. The Court first recalls that the last decision, which addressed the above-mentioned allegation of the Applicant regarding the use of the superexpertise report, submitted by the experts in the completed enforcement procedure and in the challenged enforcement procedure is the Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals.

180. In addressing this allegation, the Court first states that in relation to the principle of legal certainty which presupposes the observance of the principle *res judicata*, namely, the principle of finality of final decisions, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, it

already has a consolidated case law. This case law is built based on the case law of the ECtHR, including but not limited to the cases, *Brumarescu v. Romania*, cited above; *Ryabykh v. Russia*, Judgment of 24 July 2003; *Pravednaya v. Russia*, Judgment of 18 November 2004; *Tregubenko v. Ukraine*, cited above; *Kehaya and Others v. Bulgaria*, Judgment of 12 January 2006; *Ponomaryov v. Ukraine*, Judgment of 3 April 2008; *Esertas v. Lithuania*, Judgment of 31 May 2012; *Trapeznikov and Others v. Russia*, Judgment of 5 April 2016; and *Vardanyan and Nanushyan v. Armenia*, Judgment of 27 October 2016). Furthermore, the basic principles regarding this principle have also been elaborated in the cases of this Court, including but not limited to cases KI132/15, Applicant *Deçani Monastery*, Judgment of 20 May 2016; KI150/16, Applicant *Mark Frrok Gjokaj*, Judgment of 19 December 2018; KI67/16, Applicant *Lumturije Voca*, Resolution on Inadmissibility of 4 January 2017; KI122/17, Applicant *Česká Exportni Banka A.S*, Judgment of 18 April 2018; and KI25/18, Applicant, *Vasilije Antović*, Judgment, of 20 June 2019*).*

181. Based on the ECtHR case law and of the Court itself, the right to a fair hearing before a tribunal as guaranteed by Article 6 of the ECHR must be interpreted in the light of its Preamble, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question. (See, the ECtHR cases *Brumărescu v. Romania*, cited above, paragraph 61; and *Vardanyan and Nanushyan v. Armenia*, cited above, paragraph 66 and the references therein).

182. Furthermore, based on this case law, legal certainty presupposes respect for the principle of *res judicata*, that is the principle of the finality of court decisions. It means that no party is entitled to seek a review of a final and binding court decision merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination of a case, which has already become final. The review should not be treated as an "*appeal in disguise"*, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances "*of a substantial and compelling character*". (See, *inter alia,* case of the ECtHR *Ryabykh v. Russia*, no. 52854/99, paragraph 52).

183. In addressing and reviewing the Applicant's allegation, the Court once again recalls that the Applicant in his Referral substantively alleges that the regular courts, in particular the Basic Court in Ferizaj, after initiating the enforcement proceedings, by its proposal of 6 January 2016 had used or were based on the financial expertise of three experts of the Public University of Prishtina, which was submitted to the Basic Court on 30 October 2015, while the enforcement proceedings regarding their enforcement proposal, initiated on 29 March 2013 was still ongoing, and which procedure as a result of the request for their withdrawal of the abovementioned proposal was completed by the Decision of the Basic Court [Cp. No. 354/13] of 17 December 2015. According to the Applicant, as a result of the use or giving trust to this expertise by the Basic Court in the framework of the procedure, which was initiated by the Applicant

through the enforcement proposal, of 6 January 2016, the principle of final decisions or *res judicata* has been violated.

184. In the context of the circumstances of the present case, the Court recalls that in the first enforcement proceedings, conducted in the Basic Court in Ferizaj, it was decided that the Faculty of Economics of the University of Prishtina, with three experts in the field of finance, calculate the Debtor's debt to the Applicant. The financial experts in this procedure submitted their expertise to the Basic Court in Ferizaj on 30 October 2015. However, on 25 November 2015, the Applicant filed a request with the Basic Court in Ferizaj pursuant to Article 42 of the LEP to withdraw the enforcement proposal towards the Debtor. Consequently, on 17 December 2015, the Basic Court in Ferizaj by Decision [CP. No. 354/13] decided as follows: "*The enforcment procedure according to case CP. No. 354/13, at the request of the creditor [the Applicant] ends*". The Court further noted that less than a month later, namely on 6 January 2016, the Applicant submitted to the Private Enforcement Agent a proposal for enforcement of debt in the amount of 7,080,025. 64 euro, including regular interest and default interest until the final payment of the debt to the Debtor. In its enforcement proposal of 6 January 2016, it was proposed to order the enforcement by "sale, eviction and transfer of ownership and possession" of the same immovable property, as it had requested in his first proposal initiated on 29 March 2013 before the Court Basic in Ferizaj.

185. The Court also recalls that in the framework of this new enforcement procedure, initiated on 6 January 2016 under the new Law on Enforcement Procedure, and as a result of the contesting the amount of debt by the Debtor, the Basic Court by its Decision [PPP. No. 21/16] of 11 May 2016 decided to take into account the expertise of the experts of the Faculty of Economics, which the latter had submitted during the first enforcement procedure, on 30 October 2015, namely before the Applicant requested the withdrawal of the enforcement proposal. The request to take into account the expertise of three experts of the Faculty of Economics was submitted [the Debtor's appeal, of 18 February 2016 in the Basic Court in Ferizaj] and the Debtor, who challenged the consideration of the expertise submitted by *Deloitte* Company, one of the companies proposed by the Applicant, and appointed by the Private Enforcement Agent by the Conclusion [P. No. 03/2016] of 18 January 2016.

186. The Court further notes that this allegation was also raised by the Applicant in its appeal before the Court of Appeals, which specifically stated that the expertise was drafted in a procedure which was withdrawn by the Applicant himself, which procedure "*had to do with the same amount of debt requested, and for the fact that the same expertise was treated in the resumed procedure and the same expertise was completed in this procedure several times, where the group of experts were invited to the hearing, as well as the expert who made the first expertise (in the procedure which was also withdrawn) and the same were confronted, giving the necessary supplementations and clarifications regarding the case in question, as the court of first instance was obliged by Decision Ca. Nr. 2177/16of the Court of Appeals of 06.07.2107.*"

187. Based on the above, the Court reiterates that the procedure initiated by the Applicant for the enforcement of the Debtor's debt, initiated on 29 March 2013

in the Basic Court in Ferizaj had ended with a specific request of the Applicant. His request for withdrawal of the procedure based on Article 42 of the LEP was approved by the Basic Court in Ferizaj by Decision [Cp. No. 354/13] of 17 December 2015, against which Decision the Debtor did not file an appeal. The Court also recalls that less than one month after the completion of the enforcement proceedings on the basis of its proposal, of 29 March 2013, the Applicant initiated a new enforcement proposal for the same obligation of the Debtor.

188. Therefore, based on the above, the Court finds that the Applicant on his own initiative requested the termination of the enforcement proceedings initiated on 29 March 2013. Also, the Court based on the new procedure initiated by the Applicant itself that had for subject of review the same obligation of the debtor and the same enforcement proposal as the one in the procedure initiated on 29 March 2013, finds that this issue of initiating a new procedure was challenged only by the Debtor by objection. Having said that, the Court considers that the Applicant, despite the completion of the enforcement procedure initiated by itself in the capacity of creditor with the aim of enforcing the debtor's debt, initiated a new procedure, by the Private Enforcement and at this stage the issue of the final decision, namely the Decision [Cp. No. 354/13] of 17 December 2015 of the Basic Court, through which the first enforcement procedure was completed was not challenged. The issue of non-compliance with the final decision was raised by the Applicant at the moment when the Basic Court in Ferizaj, as a result of the objection and appeals of the Debtor for non-acceptance of the proposed amount for enforcement and regarding the appointment of expertise decided to use the expertise of the University of Prishtina, namely three experts of the Faculty of Economics. Furthermore, based on the case file, the Court notes that the issue of expertise or assessment of expertise was also conducted in the retrial and reconsideration procedure in the Basic Court, where in the hearings held in this court in connection with the submitted expertise even the aforementioned experts were questioned.

189. Therefore, the Court cannot assess or consider that the abovementioned principles for the observance of final decisions have been violated in the case of the Applicant, when the first enforcement procedure regarding the same obligation has ended with the Applicant's own proposal and the new enforcement procedure that had as subject of enforcement the same immovable property as in the first completed procedure, was also initiated by the Applicant itself. Based on the above, the Court considers that the Applicant's allegation of violation of the principle of final decisions does not constitute a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. Therefore, the Court finds that the Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals, as the last court decision that addressed and dealt with this allegation is in accordance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

190. The Court further examines the Applicant's allegation of a violation of the impartiality of the Court guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as a result of the impartiality of the experts appointed in the proceedings before the Basic Court.

III. Regarding the allegation of violation of the impartiality of the court, as a result of "the impartiality of the experts"

191. The Applicant alleges that he was deprived of the right to an impartial trial, as a result of non-compliance with the principle of impartiality and independence of the judge and experts appointed by the Basic Court in Ferizaj. In addition, the Applicant also adds that he was denied access to court as a result of not reviewing his request for exclusion of experts.

192. The Court first recalls that the last decision, which addressed the abovementioned allegation of the Applicant regarding the use of the super-expertise report in the challenged enforcement procedure is the Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals.

193. First, with regard to the allegation of impartiality of the judge in the Basic Court in Ferizaj, the Applicant underlines that the individual judge in his finding regarding the examination of the allegation of territorial jurisdiction has violated legal provisions and case law regarding territorial jurisdiction, not as a consequence of *"ignorance of the law or professional error"* but according to it, *"the individual judge had committed the constitutional violations described above being fully aware and in the interest of a party to the proceedings."*

194. Regarding the allegation of lack of impartiality of the appointed judge in the Basic Court in Ferizaj, the Court based on the case file notes that the Applicant on 1 December 2017, submitted a request for the exclusion of this judge to decide on this enforcement case to the Basic Court in Ferizaj, namely the President of this Court with the reasoning for the lack of impartiality of the judge F.A. in the Basic Court in Ferizaj. The Applicant also filed a request for exclusion of the President of the Basic Court in Ferizaj to decide on its request for recusal of Judge F.A.

195. The Court recalls that on 6 December 2017 and 5 February 2018, respectively, the President of the Basic Court sent the request of the Applicant for his exclusion to decide on the recusal of Judge F.A. and his statements to the Court of Appeals for a decision. Consequently, on 8 February 2018, the Court of Appeals, namely the President of the Court of Appeals by Decision [C. No. 131/117] rejected as ungrounded the abovementioned request of the Applicant for the exclusion of the President of the Basic Court in Ferizaj to decide regarding the recusal of Judge F.A. Consequently, the latter found that the President of the Basic Court could decide on the Applicant's request for the recusal of Judge F.A. to decide regarding the case [PPP. No. 80/17]. Consequently, the Basic Court in Ferizaj, namely the President of this court, by the Decision [GJA. No. 100/18] of 15 February 2018, rejected the Applicant's request for the recusal of Judge F.A. as ungrounded. The President of the Basic Court in Ferizaj assessed that the allegations in the request are not of that nature, which justify the exclusion of the judge to adjudicate in this case, arguing that the procedural actions in this case are based on the provisions of the LCP.

196. Based on the facts above, the Court notes that the request for recusal of Judge F.A in the Basic Court in Ferizaj was addressed by the regular court, which provided the relevant reasoning for this case.

197. Taking into account the fact that the essence of the Applicant's allegation is related to the lack of impartiality of the court, as a result of the impartiality of three (3) experts of the Faculty of Economics, University of Prishtina, for calculating the Debtor's debt to the Applicant, the Court will focus on assessing this specific allegation by elaborating and assessing whether this allegation can be addressed within the framework of the principle of impartiality and independence of the court.

198. Having said that, and referring to the case-law of the Court in case KI07/18 and that of the ECtHR, the Court first notes that the question of the appointment, hearing and administration of expertise or evidence provided by experts is in principle dealt with in the course of the proceedings of the administration of evidence and the principle of equality of the parties to the proceedings and not within the criteria set out in relation to the principle of impartiality and independence of the court.

199. The Court further recalls that in relation to the allegation of impartiality of the three (3) experts it refers to the cases of the ECtHR, namely the case *Wettstein v. Switzerland* (Judgment of 21 December 2000), case *Micallef v. Malta* (Judgment of 15 October 2009); case *Sara Lind Eggertsdottir v. Iceland* (Judgment of 5 July 2007); *Letincic v. Croatia* (Judgment of 3 August 2016); and case *Devinar v. Slovenia* (Judgment, of 22 August 2018), and the case of the Court, namely case KI 07/18, Applicant *Çeliku Rrollers* (Judgment, of 18 December) 2019).

(i) General principles of the ECtHR regarding expert reports

200. In this specific context, the Court refers to the case law of the ECtHR which, in relation to the expert appointment procedure, stated that *"a decision to appoint an expert, be it with or without the parties' consent, is a matter that normally falls within the national court's discretion under Article 6 § 1 in assessing the admissibility and relevance of evidence, which has been recognised by the Court in its case-law"* (see in this regard case of the ECtHR *Sara Lind Eggertsdóttir v. Iceland*, Judgment of 5 July 2007, paragraph 44, and all references used in that case). In accordance with this position and finding of the ECtHR, the Court in case KI07/18 in terms of respecting the principle of equality of arms in the proceedings addressed and assessed the Applicant's allegation of lack of impartiality of the expert (see case of the Court KI07/18, Applicant *Çeliku Rrollers*, cited above, paragraphs 53-85).

201. In principle, the ECtHR states that (i) the litigants must be afforded a possibility to challenge the experts' opinions/evidence effectively (see the ECtHR case, *Letinčić v. Croatia*, Judgment of 3 May 2016, paragraph 50); and (ii) where an expert has been appointed by a court, the parties must in all instances be able to attend the interviews held by him or her or to be shown the documents he or she has taken into account during this process. What is essential is that the parties should be able to participate properly in the proceedings. (See the

ECtHR cases *Letinčić v. Croatia*, cited above, paragraph 50; and *Devinar v. Slovenia*, Judgment of 22 May 2018, paragraph 46 and case of the Court KI07/18, cited above, paragraph 53).

202. In addition, the ECtHR case-law is also developed pertaining to the following aspects (i) the neutrality/impartiality of the expert; and (ii) the predominance of the expert opinion (case of the Court KI07/18, cited above, paragraph 54).

203. Pertaining to the first, the ECtHR stated that *"Article 6 paragraph 1 of the Convention does not expressly require an expert heard by a "tribunal" to fulfill the same independence and impartiality requirements as the tribunal itself*" (See the ECtHR cases, *Sara Lind Eggertsdóttir v. Iceland*, Judgment of 5 July 2007, paragraph 47; and *Letinčić v. Croatia*, cited above, paragraph 51). However, the ECtHR maintains that the lack of neutrality on the part of an expert appointed by the court may in some circumstances result in a violation of the principle of equality of arms, a principle inherent in the context of a fair and impartial trial (see *Bönisch v. Austria*, Judgment of 6 May 1985, paragraphs 30-35, case *Sara Lind Eggertsdóttir v. Iceland*, cited above, paragraph 53).

204. Regarding the observance of the principle of equality of arms in the procedure, the ECtHR stated that "*the position occupied by the expert throughout the proceedings, namely the manner in which his or her duties are performed and the way the judges assess his or her opinion are relevant factors to be taken into account in assessing whether the principle of equality of arms has been complied with"* (See the ECtHR case *Devinar v. Slovenia*, cited above, paragraph 47).

205. In addition, the ECtHR also noted that in cases where a party requests a second opinion from an independent expert, he/she is required to provide sufficient evidence and arguments to support his/her claim (paragraphs 56-58 of the Judgment in the case *Devinar v. Slovenia*). The ECtHR in this case further stated that "*if the party does not do so, despite the fact that in the proceedings he had the right to comment on the opinion of the expert and to oppose it in writing and orally or to present a dissenting opinion by a specialist of his or her choice, the ECtHR will not find a violation of Article 6 of the ECHR" (*paragraph 56, of the Judgment in case *Devinar v. Slovenia)*).

206. The Court, referring to its case KI07/18, recalls that the circumstances of this case relate to the expertise of a court expert, an expertise which the Applicant contested throughout the proceedings in the regular courts, including the Constitutional Court. The Applicant in substance alleged that the challenged Judgment of the Supreme Court was rendered in violation of his rights and freedoms guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, because according to him among other things, the principle of equality of arms as a result of expert bias has also been violated. In considering the merits of the case, the Court had initially elaborated on the general principles of the case law of the ECtHR with regard to expert bias and the corresponding effects on the principle of equality of arms. In this regard, the Court, beyond elaborating on the general principles of the ECtHR in this respect, had also examined in detail the relevant case law, including the cases *Letinčić v. Croatia*; *Sara Lind Eggertsdottir v Iceland; Mantovanelli v.*

France; Devinar v. Slovenia; and *Van Kück v. Germany*, to clarify the circumstances in which the ECtHR found a violation of Article 6 of the ECHR with regard to the lack of expert neutrality or even the effective possibility of participating and challenging the findings of the relevant reports. The Court in the context of the present case found that with regard to (i) the impartiality of the expert, the Applicant does not argue legitimate doubts about the impartiality of the expert nor why they can be objectively justifiable in the circumstances of the present case, moreover that, based on the case law of the ECtHR, it cannot be concluded that the relevant expert was not neutral or impartial; (ii) the procedure followed for compiling the expertise's report, the Applicant had the opportunity to effectively participate and challenge its findings and (iii) assign the new expertise, the Applicant did not sufficiently substantiate the flaws and lack of clarity of the challenged report during the hearings and it has not sufficiently substantiated its request to assign a new expertise.

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

207. In applying the above principles to the Applicant's case, in the following, the Court will consider and assess whether the Applicant has sufficiently substantiated that the experts: (i) have shown a lack of impartiality; (ii) during the conducted procedure there was an effective opportunity to participate and challenge the expertise; and (iii) has sufficiently argued the flaws and lack of clarity of the disputed report of the three experts of the Faculty of Economics of the University of Prishtina during the review sessions; and whether (iv) during the proceedings conducted it was given the opportunity to use the expertise of the experts proposed by it.

208. The Court also notes that the procedure for appointing experts is established by the provisions of the LCP, namely Articles 356 to 372 thereof.

209. With regard to the appointment of three (3) experts, whose impartiality or neutrality and expertise is challenged by the Applicant, the Court recalls that the latter were originally appointed at the request of the Debtor to appoint a super-expertise as a result of its disagreement with the amount of debt proposed by the Applicant and its disagreement regarding the amount calculated in the report of the expert A.F. appointed by the court in the first enforcement procedure before the Basic Court in Ferizaj [initiated for enforcement by the Applicant, on 29 March 2013]. After the completion of this procedure at the request of the Applicant, in the new procedure initiated by the enforcement proposal of 6 January 2016 of the Applicant to the Private Enforcement Agent, the Private Enforcement Agent by the Enforcement Order of 6 January 2016 allowed the execution in the amount of 7,080,025 . 64 euro. The debtor filed an objection against this Order, by which, among other things, he did not agree with the amount of the proposed debt.

210. The Court further recalls that the Applicant, following the objection filed by the Debtor against the Enforcement Order to the Private Enforcement Agent, submitted a request for the appointment of an expertise for the calculation of the debt owed to it. As a result, the Private Enforcement Agent by the Conclusion [P. No. 03/2016] of 18 January 2016 approved his claim and

appointed the Deloitte Company for debt calculation, which was also one of the companies, proposed by the Applicant itself. This Conclusion of the Private Enforcement Agent was challenged by the Debtor by his appeal submitted to the Basic Court and subsequently requested to use the submitted expertise of three (3) experts of the Faculty of Economics of the University of Prishtina [submitted on 30 October 2015] in the first completed enforcement procedure. As a result, the Basic Court in Ferizaj by its Decision [PPP. No. 21/16] of 11 May 2016 based on the report of the three (3) aforementioned experts, approving the Debtor's claim for the amount of debt proposed by the Applicant as grounded and deciding that the Enforcement Order of the Private Enforcement Agent [P. No. 03/16] of 6 January 2016 to be left in force only in terms of the amount of 485,395.07 euro. The Basic Court reasoned that it had referred to the expertise submitted by three (3) experts of the Faculty of Economics of the University of Prishtina on the grounds that (i) the amount specified in the enforcement proposal is in large discrepancy with the calculated amount of debt based on super-expertise and (ii) that it gives trust to this super-expertise because the calculation of the amount of debt is *"carried out by a higher superior institution such as the University of Prishtina, composed of a group of three experts, an expertise performed in accordance with the Decision of the Basic Court in Ferizaj [CP. No. 354/13, of 11 February 2014]."*

211. However, the Court of Appeals, as a result of the appeal filed by the Applicant, found that the Basic Court in Ferizaj did not provide opportunities for the parties to the proceedings, namely the Applicant to hear and comment on the report submitted by three (3) experts. As a result of this finding of the Court of Appeals, the case was remanded for retrial and reconsideration to the Basic Court in Ferizaj with a request that the latter in its review sessions invite the above experts and the parties to the proceedings to be offered the opportunity to hear them, commenting and contesting the debt calculation on their part. Following this, the Court, referring to the minutes in the case file, recalls that during the conduct of the enforcement procedure during the period November 2017 and November 2018, eight (8) hearings were held, some of which were attended by the abovementioned experts of the Faculty of Economics of the University of Prishtina.

212. Further, the Court also recalls that the Applicant on 15 October 2018, in the Basic Court in Ferizaj filed a request for exclusion of experts from the task of expertise and requested that their expertise be considered invalid.

213. In the context of this specific request, the Court notes that the Basic Court in Ferizaj did not render any specific Decision regarding the Applicant's request for exclusion of experts. In this regard, the Court based on the case file notes that less than one (1) month after the submission of the request for exclusion of experts, to the Basic Court in Ferizaj, on 12 November 2018 the last hearing was held, where participants, among others, were also the Applicant's representatives and two of the three aforementioned experts. Based on the minutes of this hearing, it results that the Applicant challenged the territorial jurisdiction of the Basic Court in Ferizaj; during the hearing by the Basic Court in Ferizaj the two experts present were questioned, who stated that they stand by their expertise given on 30 October 2015. Also, during this session the legal representative of the Applicant requested that the Deloitte Company's expertise

be taken, and following this session also stated that he refuses to ask questions to this group of experts, and their expertise to be canceled and a new expertise assigned.

214. After the end of the last court session of 12 November 2018, the Basic Court in Ferizaj on 19 November 2018 rendered the Decision [PPP. No. 80/17] in the retrial and reconsideration procedure, the latter reasoned as follows: "*The Court, pursuant to Article 17 of the LEP, in conjunction with Article 8.1 and 8.2 of the Law on Contested Procedure, after conscientiously assessing each piece of evidence separately and with maximum dedication in the conclusion regarding the expertise drafted by the financial expert A.F., of 25.11.2013 did not give trust to this expertise because the expertise, namely the financial expertise performed by the University of Prishtina-Faculty of Economics, drafted by a group of three experts, I consider as more complete, comprehensive, more detailed and more accurate.*"

215. In this regard, the Court recalls that in the Basic Court in Ferizaj in the framework of the reconsideration procedure during the period 27 November 2017 until the issuance of its Decision on 19 November 2018, eight (8) hearings were held where the litigants had opportunity to ask questions regarding the expertise submitted by three (3) experts in this court.

216. The Court further notes that the Applicant in its appeal against the aforementioned Decision of the Basic Court in Ferizaj, filed with the Court of Appeals, specified that the Basic Court in Ferizaj (i) based its decision on a non-substantive and non-existent evidence, which according to it, was the expertise of the Faculty of Economics, adding that "*the so-called super experts of the Faculty of Economics did not have the license of legal auditor required by Law 04/L-014 on Accounting, Financial Reporting and Audit, and that they had never audited during their careers*" and (ii) had not take into account the expertise report performed by the Deloitte Company.

217. In addition, the Court recalls the reasoning given by the Court of Appeals by its Decision [Ac. No. 5514/18] of 13 May 2019, where regarding the Applicant's first allegation that (i) the super-expertise report was non-substantive and non-existent evidence had stated that the proposal *"had to do with the same amount of debt requested, and for the fact that the same expertise was treated in the resumed procedure and the same expertise was completed in this procedure several times, where the group of experts were invited to the hearing, as well as the expert who made the first expertise (in the procedure which was also withdrawn) and the same were confronted, giving the necessary supplementations and clarifications regarding the case in question, as the first instance court was obliged by Decision Ca. Nr. 2177/16 of the Court of Appeals of 06.07.2107."*

218. As to the allegation regarding the expertise of *Deloitte* Company in the appeal, the Court of Appeals reasoned that this expertise was issued in contradiction with the applicable legal provisions, namely Article 357, paragraph 2 of the LCP, in which the Debtor was not given the opportunity to make a statement regarding the proposed expertise.

219. The Court in addressing the Applicant's substantive allegation, in terms of the principle of equality of arms in the proceedings, notes that in the proceedings before the regular courts, namely the Basic Court in Ferizaj, the Applicant had the opportunity during the hearings [in the procedure of retrial and reconsideration before the Basic Court]: (i) to comment on and question the expertise provided; (ii) the Applicant at the initial stage of the enforcement proceedings after the submission of the objection by the Debtor is also given the opportunity to request the expertise proposed by it, which request was initially approved by the private enforcement agent and subsequently after the start of the review of the objection submitted by the Debtor and the appeal during the procedure conducted before the Basic Court in Ferizaj, it was decided to use the expertise of three (3) experts of the Faculty of Economics; (iii) in relation to the expertise report of the Deloitte Company, one of the companies, proposed by the Applicant for the calculation of the amount of debt by the regular courts, it was found that this expertise was issued in violation of the applicable legal provisions, namely Article 357, paragraph 2 of the LCP, in which case the Debtor was not given the opportunity to declare himself in relation to the proposed expertise.

220. Having said that, the Court reiterates that the Basic Court in Ferizaj has sufficiently supported and reasoned its decision to give trust to the report submitted and presented by the abovementioned three (3) experts, based on which, it supported and issued its decision.

221. Therefore, and finally, the Court finds that in the context of the allegation of (i) lack of impartiality of the experts, the Applicant does not sufficiently substantiate the legitimate suspicions of their lack of impartiality nor why can the latter be objectively justifiable in the circumstances of the present case; (ii) during the proceedings before the Basic Court in Ferizaj, in particular in the retrial and reconsideration proceedings, the Applicant had the opportunity to effectively participate and challenge the report prepared by these experts; and (iii) the Applicant has not sufficiently substantiated the flaws and lack of clarity of the challenged report during the review sessions.

222. Therefore, based on the above, the Court, after reviewing and assessing the Applicant's allegation, applying the principles established through the case law of the ECtHR in terms of respect for equality of arms in the procedure, finds that the Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals in conjunction with the Decision [PPP. No. 80/17] of 19 November 2018 of the Basic Court in Ferizaj do not constitute a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

Conclusions

223. The Applicant in his Referral before the Court challenged the Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals in conjunction with the Decision [PPP. No. 80/17] of 19 November 2018 of the Basic Court in Ferizaj, as well as the Decision [Cml. No. 8/2019] of 17 June 2020 of the Supreme Court. With regard to the challenged acts, the Applicant alleges that by these acts its rights guaranteed by Article 31 of the Constitution, in relation to Article 6 of the ECHR have been violated, namely in terms of the latter alleges: (i) violation of

the court established by law by challenging the territorial jurisdiction of the Basic Court in Ferizaj to decide in this enforcement procedure; (ii) violation of its right to legal certainty, as a result of non-compliance with final court decisions; and (iii) lack of impartiality of the court as a result of the appointment of three (3) experts. In this regard, the Court notes that the final decision, which addressed the Applicant's allegations regarding the territorial jurisdiction of the Basic Court in Ferizaj is the Decision [Cml. No. 8/2019] of 17 June 2020, of the Supreme Court. Whereas the last decision, by which were addressed the Applicant's allegations regarding (ii) the observance of the final decision and (iii) the lack of impartiality of the court, as a result of the appointment of experts is the Decision [Ac. No. 5514/18] of 13 May 2019] of the Court of Appeals of Kosovo. After assessing the admissibility criteria of the Applicant's Referral, the Court found that it meets the admissibility criteria of the Referral established in paragraph 7 of Article 113 of the Constitution, Articles 47 and 48 of the Law and Rule 39 of the Rules of Procedure. Consequently, the Court proceeded to examine the merits of the Referral, and in this respect examined and assessed the three aforementioned allegations of the Applicant applying the case law of the Court and that of the ECtHR.

224. First, with regard to the allegation relating to the court established by law, as a result of the lack of territorial jurisdiction of the Basic Court in Ferizaj, the Court after applying the principles established through the case law of the ECtHR and that of the Court in the case of the Applicant, found that the latter is a court established by law as stipulated by Article 31 of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR. Therefore, the Court found that the Decision [Cml. No. 8/2019] of 17 June 2020 of the Supreme Court is in compliance with Article 31 of the Constitution, in conjunction with Article 6, paragraph 1 of the ECHR.

225. Secondly, with regard to the Applicant's allegation related to the violation of the principle of legal certainty, as a result of non-compliance with the final decision, the Court, after elaborating the basic principles and criteria of the ECtHR in this regard, found that the same are not applicable in the circumstances of the present case, and as a result found that the Applicant's allegation does not constitute a violation of this principle. Accordingly, the Court found that the Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals, as the last court decision that addressed and dealt with this allegation is in compliance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

226. Thirdly, with regard to the Applicant's allegation of lack of impartiality of the court, as a result of the appointment of experts in the enforcement procedure, the Court after elaborating the basic principles and criteria established through the case law of the ECtHR and affirmed through the case law of the Court, in particular in terms of respecting the principle of equality of arms in the proceedings, found that its allegation of lack of impartiality of experts does not constitute a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. Therefore, the Court found that the Decision [Ac. No. 5514/18] of 13 May 2019, of the Court of Appeals as the last court decision that has addressed and dealt with this allegation is in compliance with Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 113.7 and 21.4 of the Constitution, Articles 20 and 47 of the Law and Rule 59 (1) of the Rules of Procedure, on 3 March 2022:

DECIDES

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, by majority that Decision [CLM. No. 8/2019] of 17 June 2020 of the Supreme Court of Kosovo and Decision [Ac. No. 5514/18] of 13 May 2019 of the Court of Appeals of Kosovo are in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO NOTIFY this Judgment to the Parties;

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

V. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Safet Hoxha	Gresa Caka-Nimani