REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 23 January 2023
Ref. no.:AGJ 2111/23

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JUDGMENT

in

Case no. KI143/22

Applicant

Hidroenergji L.L.C.

Constitutional review of Judgment ARJ.UZVP.no.51/2022, of the Supreme Court, of 19 July 2022

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 the company Hidroenergji L.L.C., based in Ferizaj, represented with authorization by Fitim Shabani, advocate in Ferizaj (hereinafter in the text: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment ARJ. UZVP. no. 51/2022, of the Supreme Court of Kosovo, of 19 July 2022 (hereinafter in the text: the Supreme Court) in conjunction with the Decision AA. no. 386/2022, of the Court of Appeals, of 26 May 2022 and the Decision A.no. 3129/2021, of the Basic Court in Prishtina, Department for Administrative Matters, of 12 April 2022 (hereinafter in the text: the Basic Court).

3. The Applicant also requests imposing of the interim measure against the Judgment ARJ. UZVP. no. 51/2022, of the Supreme Court of Kosovo, of 19 July 2022 because: *"The implementation of [this Judgment] will cause irreparable material and non-material damage to [the Applicant], as he will be deprived of the right to exercise lawful activity based on the Water Permit and Environmental Permit granted by the administrative bodies [...]".*

Subject matter

4. The subject matter is the constitutional review of the Judgment of the Supreme Court, whereby it is alleged that the Applicant has been violated the fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter in the text: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter in the text: the ECHR), as well as Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of the Protocol no. 1 of 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, on Articles 22 (Processing Referrals), 27 (Interim Measures) and 47 (Individual Requests) of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter in the text: the Law) and Rules 32 (Filing of Referrals and Replies) and 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter in the text: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 20 September 2022, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter in the text: the Court).

7. On 26 September 2022, the Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 26 September 2022, the President of the Court, by Decision no. GJR. KI143/22 appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel, composed of Judges: Gresa Caka-Nimani (presiding), Bajram Ljatifi and Nexhmi Rexhepi, members.

9. On 3 November 2022, the Court notified the Ministry of Environment, Spatial Planning and Infrastructure and Non-Governmental Organizations "Group for Legal and Political Studies" based in Prishtina and "Gjethi" (Leaf) based in Kaçanik on the registration of the referral.

10. On 15 December 2022, the Review Panel reviewed the preliminary report proposed by Judge Rapporteur and unanimously recommended to the Court the admissibility of the referral. On the same day, the Court decided: (i) to declare the referral admissible; (ii) to hold that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR; (iii) to annul Judgment ARJ. UZVP. no. 51/2022, of the Supreme Court of Kosovo, of 19 July 2022; Decision [AA. no. 386/2022], of the Court of Appeals, of 26 May 2022; and Decision [3129/2021] of the Basic Court, of 12 April 2022; to remand for reconsideration Decision [A. no. 3129/2021] of the Basic Court in Prishtina, Department of Administrative Affairs, of 12 April 2022, pursuant to the Judgment of the Court; and (iii) to reject the Applicant's request for imposing of the interim measure.

11. On 22 December 2022, after the Court ruled regarding the case, the Non-Governmental Organization "Group for Legal and Political Studies" and the Non-Governmental Organization "Gjethi" (Leaf) submitted to the Court comments regarding the referral.

Summary of facts

12. As a result of the signing of the Treaty on the Establishment of the Energy Community (hereinafter in the text: the Energy Treaty) in 2005, Kosovo undertook to produce by 2020 25% of its total energy from renewable sources (Article 4 of the Decision of the Ministerial Council of the Energy Community No. D/2012/04/MC-EnC). Article 15 (Renewable Energy Targets) of Law no. 05/L-081 on Energy it was stipulated that the Government adopt the plan for reaching the target of 25% of renewable energy production. Whereas Article 3 (Mandatory and indicative target for renewable energy sources) of the Administrative Instruction no. 05/2017 on Renewable Energy Source Targets, approved by the Ministry of Economic Development in addition to the mandatory target of 25%, the indicative target of 29.89% of gross energy consumption in Kosovo from renewable sources was also set.
13. On 25 August 2006, the Applicant was registered with the Business Registration Agency of the Ministry of Trade (hereinafter in the text: KBRA) as a limited liability company for the exercise of activity no. 3511 for the production of electricity.

14. On 28 January 2016, the Directorate of Urbanism, Cadastre and Environmental Protection in the Municipality of Kaçanik issued the Decision [V-755_2016] to allow the construction of the Hydropower Plant on the Lepenc river.

15. The Applicant, at the then Ministry of Environment and Spatial Planning, applied for water permits for the use of water from the Lepenc river for a Hydropower Plant with a capacity of 8.5 MW. As a result of these requests, on 23 January 2007, 17 January 2013 and 6 June 2013, respectively, the Ministry of Environment and Spatial Planning by its Decisions, had issued to the Applicant: (i) a Water Permit for the Hydropower Plant "HC Lepenci"; (ii) an Environmental Permit; and (iii) approval of the water consent for the placement of pipelines adjacent to the Lepenc river.

16. On 13 December 2017, the Transmission System and Market Operator (KOSTT) signed an agreement with the Applicant "on the purchase of energy for generation capacities from renewable energy sources supported by the rule for the support scheme [Hydropower Plant HC Lepenci 3]".

17. On 15 May 2019, the Directorate of Urbanism, Cadastre and Environmental Protection in the Municipality of Kaçanik, issued to the Applicant the Certificate of Use for the Hydropower Plant Lepenci 3.

18. On 5 June 2019, the Board of the Energy Regulatory Office (hereinafter in the text: ERO) issued to the Applicant the Interim License [ZRRE/Li_63/18] for the production of electricity from renewable energy sources from Hydropower Plant "Lepenci 3" with a capacity of 9.98 MW for a period of one (1) year.

19. On 5 June 2020, the Secretary General of the Ministry of Infrastructure and Environment based on the recommendation of the Regional Director of River Basins and on Article 71 (Procedures for the issuance of water permit) of Law no. 04/L-147 on Waters of Kosovo issued the Decision [6724-2/19-ZSP/20] on the "water permit in the Lepenc river" for the Applicant for a period of twenty (20) years (hereinafter in the text: the Water Permit Decision of 5 June 2020).

20. On 26 June 2020, the Secretary General of the Ministry of Economy and Environment based on paragraph 2 of Article 31 (Environmental Permit) of Law no. 03/L-025 on Environmental Protection and Administrative Instruction no. 07/2017 on Environmental Permits issued the Decision [1948-4/19] on "provision with environmental permits for Hydropower Plant Lepenci 3" for the Applicant for a period of five (5) years (hereinafter in the text: the Environmental Permit Decision).

21. On 3 July 2021, the Board of ERO issued to the Applicant the License [ZRRE/Li_63/20] for the production of electricity from renewable energy sources from Hydropower Plant "Lepenci 3" with a capacity of 9.98 MW for the period of forty (40) years, i.e. from 3 July 2021 to 2 July 2059 (hereinafter in the text: ERO License for the production of energy).

22. On 30 December 2021, the Non-Governmental Organization "Group for Legal and Political Studies", based in Prishtina and the Non-Governmental Organization "Gjethi" (Leaf), based in Kaçanik (hereinafter in the text: the claimants/proposers), filed in the Basic Court against the Ministry of Economy and Environment:

    (i) Administrative lawsuits for annulment or invalidation of: (a) Decision [6724-19] to issue the Water Permit of 5 June 2020; and (b) Decision [1948-19] to issue the Environmental Permit of 26 June 2020; and
    (ii) Proposal to postpone the execution of these two aforementioned decisions.

23. In their administrative lawsuit for annulment of the two (2) Decisions on Issuing Water and Environmental Permits of 5 June 2020 and 26 June 2020, respectively, filed with the Basic Court, the claimants/proposers, among others, alleged:

    (i) legal violations during the issuance of the aforementioned decisions, i.e., non-implementation of the concession procedure; lack of public discussion; the Environmental Permit of 26 June 2020 was issued in violation of the Law on Environmental Protection; the Water Permit of 5 June 2020 was issued in violation of the Law on Environmental Protection and the Law on Waters of Kosovo; and the construction of the hydropower plant has caused damage to the environment, which has resulted in the denial of drinking water and irrigation; and
    (ii) erroneous determination of the factual situation during the issuance of two decisions.

24. Whereas regarding their proposal to postpone the execution of two (2) Decisions on the Water and Environmental Permit, respectively, the claimants/proposers based on paragraphs 2 and 6 of Article 22 of the Law on Administrative Conflicts (hereinafter in the text: LAC) alleged that: (i) the execution of the two challenged decisions would bring irreparable damage to them and would be contrary to the public interest; and (ii)

the postponement of the execution of the challenged decisions would not bring huge damage to the opposing party or to the interested party.

25. On 6 January 2022, the Applicant filed at the Basic Court a request for intervention in the proceedings and objection to the lawsuit filed by the claimants.

26. On 12 January 2022, the Ministry of Economy and Environment, in the capacity of the respondent, filed at the Basic Court a response to the administrative lawsuit and requested that the request to postpone the execution of the two aforementioned Decisions be rejected.

27. On 13 January 2022, the Basic Court by Decision [A. no. 3129/2021] approved as grounded the Applicant's proposal to be included in the proceedings as a party of legal interest.

28. On the same day, the Basic Court, by (another) Decision [A. no. 3129/2021], decided to:

    (i) **APPROVE** the proposal of the claimants/proposers, "Group for Legal and Political Studies" - Non-Governmental Organization based in Prishtina and the Non-Governmental Organization "Gjethi" (Leaf) based in Kaçanik, as grounded.

    (ii) **POSTPONE** the execution of the Water Permit Decision (for approval and fulfilment of the water conditions provided by the previous water permit) for the Hydropower Plant "HC Lepenci 3" with Protocol no. 6724-2/19 of 5 June 2020 and Decision on Issuance of Environmental Permit for the Hydropower Plant "Lepenci 3" for the company "Hidroenergji" L.L.C. Ferizaj with Protocol no. 1948-4/19 of 26 June 2020, the respondent, the Ministry of Environment, Spatial Planning and Infrastructure, until the court decides by final court decision, regarding the claim of the claimants.

29. The Basic Court in Prishtina, pursuant to paragraph 2 of Article 22 of the LAC, examining the request for postponement of the execution of the challenged decisions, held that: (i) *"the claimants/proposers have provided reliable evidence that proves the fact that the execution of the decision would bring damage that would be difficult to repair, and that such postponement is not contrary to the interests of the public. This assessment of the court was based on the fact that the claimants/proposers have sufficiently argued that, based on the abovementioned provisions, the legal conditions have been met for approving the proposal of the claimants/proposers to postpone the execution of the decision, until the court finally decides on the legality of the challenged decision regarding the claimants' lawsuit in accordance with the legal provisions [paragraphs 5 and 6 of Article 22* of the LAC]"; and (ii) that this decision does not prejudice the final epilogue of this administrative conflict.

30. On an unspecified date, the Applicant and the Ministry of Environment, Spatial Planning and Infrastructure (hereinafter in the text: MESPI) filed an appeal with the Court of Appeals against the aforementioned Decision of the Basic Court, of 13 January 2022.

31. The Applicant, in the capacity of the interested party, in his appeal alleged a violation of the provisions of the Law on Contested Procedure (hereinafter in the text: LCP); erroneous and incomplete determination of the factual situation; erroneous application of the Law on Environmental Protection, the Law on Waters, and International Agreements, with a proposal that the Court of Appeals approve the appeal as grounded and annul the Decision [A. no. 3129/2021] of the Basic Court, of 13 January 2022.

32. On an unspecified date, the claimants/proposers filed a response to the appeal with the proposal that the appeals be rejected as ungrounded and that the Decision of the Basic Court, of 13 January 2022 be confirmed.

33. On 21 February 2021, the Court of Appeals by the Decision [AA.no.120/2022]: (i) approved the Applicant and MESPI's appeals as grounded; (ii) annulled the Decision [A.no. 3129/2021] of the Basic Court of 13 January 2021; and (iii) remanded the case to the Basic Court for retrial and reconsideration.

34. The Court of Appeals held that: (i) the Decision of the Basic Court was rendered in substantial violation of the provisions of the contested procedure from point n), paragraph 2 of Article 182 and Article 183 of the LCP, in conjunction with Article 63 of the LAC for the fact that the enacting clause of the Decision is contrary to its reasons and that there is a contradiction between what is stated in the reasons of the decision and the content of the case files: (ii) paragraph 2 of Article 22 of the LAC defines the fulfilment of the conditions cumulatively for postponing the execution of the decision, and in the current case the Basic Court has not provided sufficient reasoning regarding the fulfilment of these conditions; and (iii) it has not been ascertained whether the lawsuit was filed within the 30-day time limit set by Article 27 of the LAC, because the Applicants' request to postpone the execution of the two decisions is an integral part of their lawsuit.

35. The Court of Appeals found that the Basic Court in the reconsideration proceedings: (i) "must ascertain that the claimants/proposers have adhered to the legal deadline for filing the lawsuit in court, which period is preclusive within the meaning of the legal provision from Article 27 of the LAC"; and after this finding regarding the time limit (ii) be limited to ascertaining the merits of the application for postponement of the execution of two Decisions as defined by paragraph 2 of Article 22 of the LAC.

36. On 12 April 2022, the Basic Court by the Decision [A. no. 3129/21], decided to:

> **I. APPROVE** the proposal of the claimants/proposers "Group for Legal and Political Studies" - a Non-Governmental Organization based in Prishtina and the Non-Governmental Organization "Gjethi" (Leaf) based in Kaçanik, as grounded.
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> **II**. **POSTPONE** the execution of the Water Permit Decision (for approval and fulfilment of the water conditions provided by the previous water permit) for the Hydropower Plant "HC Lepenci 3" with Protocol no. 6724-2/19 of 5 June 2020 and Decision on Issuance of Environmental Permit for the Hydropower Plant "Lepenci 3" for the company "Hidroenergji" L.L.C. Ferizaj with Protocol no. 1948-4/19 of 26 June 2020, the respondent, the Ministry of Environment, Spatial Planning and Infrastructure, until the court decides by final court decision, regarding the claim of the claimants.

37. The Basic Court held that: (i) the claimants' lawsuit was filed within the thirty (30) day time limit set by law; (ii) *"the claimants/proposers have provided reliable evidence that proves the fact that the execution of the decision would bring damage that would be difficult to repair, and that such postponement is not contrary to the interests of the public. This assessment of the court was based on the fact that the claimants/proposers have sufficiently argued that, based on the abovementioned provisions, the legal conditions have been met for approving the proposal of the claimants/proposers to postpone the execution of the decision, until the court finally decides on the legality of the challenged decision regarding the claimants' lawsuit in accordance with the legal provisions [paragraphs 5 and 6 of Article 22* of the LAC]";

and (iii) that this decision does not prejudice the final epilogue of this administrative conflict.

38. On 27 April 2022, the Applicant filed an appeal with the Court of Appeals against the Decision of the Basic Court, of 12 April 2022, due to violations of the provisions of the Law on Contested Procedure (hereinafter in the text: LCP); erroneous and incomplete determination of the factual situation; erroneous application of the Law on Environmental Protection, the Law on Waters, and International Agreements, with a proposal that the Court of Appeals approve the appeal as grounded and annul the Decision [A. no. 3129/2021] of the Basic Court, of 13 January 2022. Against the Decision of the Basic Court, of 12 April 2022, also MESPI filed an appeal before the Court of Appeals.

39. On 26 May 2022, the Court of Appeals by the Decision [AA. no. 386/2022] rejected the appeals of the Applicant and MESPI as ungrounded, and upheld the Decision [A.nr. 3129/2021] of the Basic Court, of 12 April 2022.

40. The Court of Appeals assessed and found that:

(i) *"[...] it fully accepts as right and lawful the position of the court of first instance, because even according to the assessment of the panel of this court, in this current case, the conditions for postponing the execution of the administrative act provided for in Article 22 para. 2 of the Law on Administrative Conflicts have been met.";*
(ii) it assesses that the appeals of MESPI and the Applicant, respectively, are *"ungrounded and unsupported with specific evidence, are insufficient and unconvincing to approve the appeal.";*
(iii) the timeliness of the lawsuit of the claimants/proposers has been proved by the Basic Court;
(iv) the Basic Court has fairly referred to Article 12 of the Law on Environmental Protection, Article 52 of the Constitution and Article 5 paragraph 1, point 1.5 of the Law on Environmental Protection;
(v) The Basic Court *"has fairly decided when it has approved as grounded the proposal to postpone the execution of the challenged decisions, as this avoids the possible consequences that would be caused in the future if the challenged decisions of the respondent at the end of the court process turn out to have been rendered contrary to the law";*
(vi) this decision was issued without prejudice to the epilogue of the merits of the lawsuit;
(vii) the Basic Court has justly established the factual situation and has also applied the material law in a fair manner; and
(viii) the challenged decision of the Basic Court *is "clear and comprehensible, while in its reasoning sufficient reasons were given for the decisive facts that this court also confirms [...]".*

41. On 10 June 2022, the Applicant filed a request with the Supreme Court for an extraordinary review of the court decision, namely challenged the Decision [A. no. 3129/2021] of the Basic Court, of 12 April 2022 and the Decision [AA. no. 386/2022], of the Court of Appeals, of 26 May 2022 on violations of the provisions of the proceedings and the erroneous application of the substantive law, with the proposal that his request be approved, and that the two challenged decisions of the Basic Court and of the Court of Appeals be annulled, respectively.

42. The Applicant, in his request for review of the court decision, regarding the allegation of erroneous application of the substantive law, emphasized that the lower courts have

erroneously applied Article 22 of the LAC. In this regard, the Applicant specified that: *"The court of first instance has not acted fairly when it has made the claimant's request credible, that the execution of the decision, challenged with the lawsuit, will bring damage to the claimants which damage would be difficult to repair, and that such postponement is not contrary to the interests of the public. Then, that the claimants have sufficiently argued the fact that the legal conditions have been met to approve the proposal to postpone the execution of the decisions, until the court finally decides on their legality. This is due to the undeniable fact that the decisive facts have not been proven at all, and no material evidence of the damaged party has been taken, where from the case files, we have been able to prove that we have been provided with the decisions on the Water Permit and the Environmental Permit according to the legal conditions and by fulfilling all the conditions according to the environmental consent and the water conditions, which have been basic documents on the basis of which we have exercised the activity of construction and after finalizing the operation for more than 4 years. [...] Despite the fact that not all legal conditions have been met cumulatively, the court has rejected the appeal of the claimant and the legal interest party [the Applicant], although with the appeal we have managed to prove that such postponement will have consequences for the public interest and the electricity sector as well as the lack of production of clean energy and the fulfilment of legal and material obligations, since postponing the execution of decisions on Water Permit and Environmental Permit will have irreparable consequences and the damage would be with great financial and energy consequences, consequently we will have a lack of legal security and intentional material damage, since with the decision to postpone the consequences will be catastrophic for the supply chain with electricity and major public damages, neither the law on administrative conflicts has provided legal certainty, except for merit issues, and on these grounds, the court has erroneously applied the substantive law".*

43. Regarding the allegation of violation of the provisions of the procedure, the Applicant specified that: *"The legal interest party rightly points out the undeniable fact that the regular courts are obliged to treat all the evidence presented by the litigants with care and conscience. This is, as a basic principle of court proceedings, specifically expressed in par. 2 of Article 8 of the LCP. [...]it would be appropriate and in full compliance with Article 175 of the LCP, to apply the provisions also to decisions, including cases for decision regarding the request for postponement of the execution of the decision in the proceedings according to the administrative conflict. The inadequate handling of facts and evidence by the court of second instance and the court of first instance, using double standards in the procedure, has seriously violated the equality of the parties in the procedure and the objectivity of the court, creating an unfair standard and to the detriment of the party as much as the legal and practical interest that emphasizes the bias of the court, since the courts are relying only on the perception of the dissenting public opinion on everything with particular emphasis on the claimant being called to the extent that they are protecting the rights of the citizens, without anticipating the legal and harmful consequences and in favour of the energy traders that are mainly benefiting to the detriment of the citizens of the country, buying energy in amounts of more than 250 euros per MW/h, and damaging the public interest at lower prices and the welfare of the citizens of the country. [...] Such resolutions of the court of first and second instance are contrary to the practice established by the Supreme Court, according to which the court decisions should be reasoned regarding to all the allegations and requests of the litigants.*

44. Finally, the Applicant argued that: *"From what was evidenced above, apart from the description of the relevant legal provisions set out in Article 22 of the LAC, none of the courts have proved with any evidence or argument in support of meeting the legal criteria for postponing the execution of the decision. Considering the fact that the*

Constitutional Court has emphasized in some cases "the procedural justice requires that the substantive claims raised by the parties in the regular courts should be properly answered, especially if they relate to the decisive claims, which in this current case refers only to the claims of the claimant/proposer, ignoring the crucial facts of the respondent and the legal interest party as an injured party in this process, which is based on the legal principles defined by law, and where the legitimate purpose set by the legal provisions based on the primary legislation and the Constitution has been followed".

45. On 19 July 2022, the Supreme Court by Judgment [ARJ. UZVP. no. 51/2022] rejected as ungrounded the Applicant's request for extraordinary review against the Decision [AA. no. 386/2022] of 26 May 2022.

46. The Supreme Court held as follows:

> "*Given the provisions of the Law on Administrative Conflicts, this court found that the court of second instance acted fairly when rejecting as ungrounded the appeals of the respondent – the Ministry of Environment, Spatial Planning, Infrastructure and the interested party" Hidroenergji" L.L.C. Lepenci 3, filed against the Decision A.U.no. 3129/2021 of the Basic Court in Prishtina - Department for Administrative Matters of 12.04.2022, approving as grounded the proposal of the proposers - claimants the non-governmental organization "Group for Legal and Political Studies" and the non-governmental organization "Gjethi" (Leaf) for postponing the execution of the respondent's decision no. 6724-2/199 of 05.06.2020 and decision no. 1948-4/19 of 26.06.2022 until the issuance of the first instance judgment according to the claimants' lawsuit.*
>
> *Such decisions of the courts of the lower instance have resulted from the evidence in case files, because in the opinion of this court the application of the decisions of the respondent, challenged by the lawsuit, presents a risk of causing damage to the claimants which would be difficult to repair if one considers the cause of environmental damage that could be caused to the same, the potential degradation of nature and its features as well as the general equilibrium of nature.*
> *[...]*
> *In the opinion of this court, the claimants – proponents through the lawsuit and the evidence attached to the lawsuit, have provided convincing evidence proving the facts that the execution of the decisions would bring damage to the citizens who live in their properties and live in the environment where the work of these hydropower plants is foreseen, which would cause irreparable damage to them.*
>
> *In addition, this court found that the execution of the decisions until the issuance of the merited decision would not be contrary to the public interest nor would the postponement bring any greater loss to the opposing party, namely the interested party. In this way, the possible future consequences would be avoided if it were proved that the challenged decisions of the respondent, at the end of the court process, would result in a violation of the law. It should also be noted that in the opinion of this court, the postponement of the execution of the decision of the respondent cannot be prejudiced with nothing, because it is an interim decision, i.e. the same applies until the issuance of the judgment of the court of first instance according to the lawsuit of the claimant.*
>
> *Based on the foregoing, the Supreme Court has found that the court of second instance in this legal -- administrative case has correctly applied the provisions of the administrative procedure and of the administrative dispute, and that the*

allegations in the request of the interested party "Hidroenergji" L.L.C Lepenci for extraordinary review of the court decision are ungrounded, because they are not influential for different confirmation of the factual situation from what the court of second instance has confirmed. According to the court's assessment, the challenged decision of the second instance court is clear and understandable. In the reasoning of the challenged decision, many reasons were given for the decisive facts that this court also accepts. The court considers that the substantive law has been correctly applied and the law has not been violated to the detriment of the interested party "Hidroenergji" L.L.C. Lepenci 3 or the respondent."

Applicant's allegations

47. The Applicant alleges that through the challenged Judgment of the Supreme Court, he has been violated the 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, as well as Article 46 [Protection of Property] of the Constitution in conjunction with Article 1 (Protection of property) of Protocol no. 1 of the ECHR.

48. The Applicant has raised detailed allegations regarding:

(i) the applicability of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR in the circumstances of the current case;
(ii) the allegation of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR as a result of: (a) the lack of reasoning of the challenged Judgment; and (b) the erroneous application of the law by the Supreme Court;
(iii) the allegation of violation of the right to protection of property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR; and
(iv) request for imposing of the interim measure.

(i) Reasoning regarding the applicability of Article 31 of the Constitution in conjunction with the Article 6 of the ECHR

49. The Applicant considers that his referral meets all the admissibility criteria and that the Court should admit this case for consideration on the basis of the criteria set out in the ECtHR Judgment in the case *Micallef v. Malta* (Referral no. 17056/06, Judgment of 15 October 2009) but also Court cases KI122/17 with the *Applicant Česká Exportní Banka* A.S., Judgment, of 30 April 2018) and KI195/20 with Applicant *Aigars Kesengfelds,* Judgment of 19 April 2021).

50. The Applicant asserts that he is aware that Article 6 of the ECHR, in the civil part, is applied in proceedings that determine civil rights or obligations and also understands that the Judgment of the Supreme Court that he claims to be involved in a violation of human rights does not correspond to the merits of the case, but is related to a preliminary proceeding, namely imposing of an interim measure. In this regard, the Applicant adds that the Constitutional Court in case no. KI122/17 has held that there may be cases where the preliminary proceedings may be decisive for the civil rights and obligations of the Applicant.

51. Referring to the case *Micallef v. Malta, ([GM],* Application no. 17056/06, Judgment of 15 October 2009), the Applicant states: *"The exclusion of provisional measures from the scope of Article 6 has so far been justified by the fact that they do not, in principle, define obligations and civil rights. However, in conditions where many Contracting States have to face a significant accumulation of cases due to the*

overburdening of their justice systems, which leads to lengthy litigation, a judge's decision on a restraining order often happens to be equivalent to a decision on the merits of the case for a considerable time, sometimes and forever. Consequently, many times the proceedings for provisional measures and those related to the main legal action decide on the same "obligations and civil rights" and give the same long-term or even permanent effects.

52. Referring to the case of the Court KI122/17, the Applicant adds: "*The Court in this Judgment sets out two (2) criteria which must be assessed regarding whether the interim measures can be covered by Article 6 of the ECHR." According to this judgment, the first condition is (i) the qualification of the right in question as "civil," and the second condition is (ii) to assess the nature of the interim measure, whether such a measure of such importance is considered to determine effectively the civil right or the obligation in question.*"

53. The Applicant states that in the circumstances of his case: *"Both conditions are cumulatively met [...]. Regarding the first condition (i), we submit that the ZRRE_63/20 License, for the period of forty (40) years for the production of electricity, given by the Energy Regulatory Office by decision [V-1267 -2020 of 3 July 2020] based on the Environmental Ecological Permit [no. 19/19841, of 26 June 2020] and the Water Permit [no. 6724-2/19 of 5 June 2020] issued by MESPI (public authority), with which the Applicant has disposed since 3 July 2020, constitute "civil rights" in the form of an authorization to produce electricity within the existing Hydropower Plant He Lepenci 3 in the municipality of Kaçanik and to sell by Contract through the Agreement on Purchase of Energy to the state-owned enterprise KOSTT, under the guarantee of ERO, according to the international obligations to produce clean energy from Renewable Sources".*

54. The Applicant adds that the approval or non-approval of the postponement of the execution of the decision has a substantial impact on the civil right the Applicant. The Applicant alleges that even if he ultimately wins the case on merit, he will still suffer irreparable damage because the meritorious decision in the administrative department of the Basic Court lasts at least three (3) years. In relation to the latter, the Applicant specifies that: *"such a long suspension of the activity of this enterprise would seriously jeopardize the very existence of this company, the dismissal of workers, and other supply chain damages."*

(ii) The allegation regarding the violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR

55. The Applicant alleges a violation of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR: (a) due to the erroneous application of the law by the regular courts, namely the Supreme Court, the Court of Appeals and the Basic Court; and (b) the lack of reasoning of the challenged court decision.
56. The Applicant asserts that he is aware that the following allegations concern questions of law and fact, but that in his case it is also an arbitrary assessment of the facts and an arbitrary and unreasonable application of the law. To reinforce this allegation, the Applicant refers to the judgment of the Court in case KI195/20 [cited above] emphasizing that: "*The Constitutional Court should sure and take measures when it notes that a court has applied the law in a manifestly erroneous manner in a specific case which may have resulted in "arbitrary conclusions" or "clearly unreasonable".*

(a) Regarding to the allegation of erroneous application of the "procedural right"

57. According to the Applicant: *"The erroneous application of the procedural legal provisions concerns the non-fulfilment of the conditions of Article 22 par. 1 of LAC on imposing of the interim measure, postponement of the execution of the decisions of MESPI (former MEE). These violations have affected in violation of the rights of the Applicant - as it will be elaborated further in this referral."*

58. The Applicant further states that : *"[...] the courts in question despite being obliged to provide sufficient reasoning through the evidence proved by the case files, and the same be included in the reasoning of the Decision, so the legal standard is an obligation expressly defined by par. 4 of Article 160 LCP, which states that: "Justification of the verdict consists of: requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated"*. According to him: *"The inadequate handling of facts and evidence by the Supreme Court has seriously violated the equality of the parties in the procedure and the objectivity of the court, creating an unfair standard and to the detriment of the Applicant, and a practice that emphasizes the bias of the court, since the courts are relying only on the determination of the dissenting public opinion on everything with particular emphasis on the claimants of the Supreme Court who are opposing all existing hydropower plants built according to standards and equipped with final permits, and calling on them to protect the rights of the citizens without proving with any evidence that they are authorized to represent, without anticipating also the legal and harmful consequences and in favour of energy traders who are mainly benefiting to the detriment of the citizens of the country, by buying energy with amounts of over 400 Euro MWh, and generating it at a price of 67.47 Euro MWh determined by ERO for the ten-year unchanged period."*

59. In this regard, the Applicant alleges: "*It is extremely concerning the interpretation that the appealed Judgment refers to the conditions provided for in the Law on Administrative Conflicts. Such substantial misinterpretation and erroneous application of these conditions constitutes a serious professional omission with major consequences for the legal order and security of the country [...] in the event that the decision of the Supreme Court remains in force until the meritorious decision of the main claim, the Applicant shall be subject to great and irreparable material damage from losses in energy production, as well as non-material damage to his reputation. Losses in energy production are calculated based on overall production figures, while non-material damage to reputation as a known investor exceeds material damage figures."*

60. The Applicant alleges that the court has erroneously ruled even when citing the Law on Environmental Protection, since it has only described Article 12 of the latter.

61. Consequently, according to the Applicant: *"The Supreme Court has not correctly assessed the provisions of the Law on Nature Protection by invoking Article 5 par. 1.5 in the principle of public participation, where we consider that this right has been consumed with all stakeholders from the beginning until the end of the realization of the Hydropower Plant Lepenci 3, since without the condition of the public hearings we could not have been provided with an Environmental Consent because the condition was the conduct of public debates before obtaining an Environmental Consent"*.

62. The Applicant in his Referral to the Court alleges that the administrative claim of the claimants/proposers was filed outside the time limit provided by Article 27 of the LAC.

63. The Applicant further states that in order to approve the request for postponement of the execution of the decision within the meaning of Article 22 of the LAC, three (3) conditions must be met: (a) the execution of the decision would cause damage to the claimant that would be difficult to repair; (b) the postponement is not contrary to the public interest; and (c) the postponement would not bring huge damage to the opposing party or the interested person.

64. According to the Applicant, none of these three (3) conditions are met.

65. Regarding the first condition, he specifies that: *"[...] from the Judgment of the Supreme Court regarding the Decision of the Court of Appeals and the Basic Court in Prishtina, it is not clear what is the direct or indirect irreparable damage that would be brought to the claimants and would be contrary to the public interest where hydropower plant Lepenci 3 is being supplied, in case of execution of the decision on Water Permit and Environmental Permit of MESPI (former MEE). None of these three (3) courts referred to any material evidence that would prove the claimants' allegation of irreparable damage to them and that is contrary to the public interest, specifying to what extent irreparable damage is being caused to flora and fauna, access to drinking water for citizens, natural landscape, tourism, mountain and impoverished farmers who live on their land and depend on the natural flow of water for irrigation of the land. The court of first instance failing to act in accordance with Article 306 par. 2 of the LCP, applicable according to Article 36 and Article 38 par. 1 and 2 of the LAC, for the proper confirmation of all three conditions provided for in Article 22 of the LAC, should have set a hearing in which it would have proved right that without the decision to postpone the execution of the challenged decision, irreparable damage would have been caused to the claimant and would be contrary to the public interest. This court of first instance, but also that of second instance, in addition to the description of the provisions of Article 22 of the LAC, should also take into account the fact that the respective permits and licenses for the production of electricity are issued by the competent institutions and bodies obliged and authorized by law to take care of nature protection and public interest in the case of issuing such permits and licenses".*

66. Whereas regarding the second condition, the Applicant continues that: *"[...] the postponement of the execution of the challenged decisions of MESPI, is contrary to the general interest because the Applicant owns the decisions on Water Permit and Environmental (Ecological) Permit and the License from ERO for the production of renewable energy with which it is obliged to comply with the conditions for the protection of the environment, the respect of the biological minimum under the Water Permit and other conditions defined under the legal and regulatory framework in Kosovo. [...] In addition, the postponement of the execution of the Water Permit and the Environmental Permit for green electricity production from the hydropower plant Lepenci 3 negatively affects the development of the energy sector in Kosovo and negatively affects the investment climate for the development of the new generation of generation capacities from renewable energy sources in Kosovo. Further, the Applicant specifies that: "Considering that the permitting and production license process for the contested hydropower plant of the company "Hidroenergji" L.L.C., is executed by the responsible institutions within the legal framework, the investor is free from any liability as a consequence of such intervention of third parties. Consequently, such action is of great risk to the public interest of Kosovo, as the Applicant shall without delay be obliged to use the legal instruments against the Republic of Kosovo to compensate for material damage and lost profit for forty (40) years. This claim for compensation against the Republic of Kosovo may be as high as the total value of the failed investment".*

67. Regarding the third condition, the Applicant submits: *"[...] that neither the third condition for postponing the execution of the challenged MESPI decision on Water Permit and Environmental Permit is met. The company "Hidroenergji" L.L.C. is a serious company in the construction and production of electricity from renewable (clean) energy sources in Kosovo, and its activity is the production of electricity. The company has invested more than 16 million euros in realization and construction of new generating capacities from Hydropower Plant Lepenci 3, meeting all technical, environmental and commercial conditions. It has conducted every possible study and has conducted the Environmental Impact Assessment, where after the Public Debates with citizens by the Ministry of Environment it was provided with the Decision on Environmental Consent i.e. before being provided with a Construction Permit and building the project, which after being commissioned was provided with certificates of use by Water Permit, Environmental Permit (under the Environmental Consent Conditions) and a License for the production of electricity; all these conditions were met according to the legislation in force and were issued by the relevant institutions authorized by law to issue them. Accordingly, he affirms that: "[...] until the meritorious issue of the main claim is decided, the Applicant will suffer great and irreparable material damage from losses in energy production, as well as irreparable damage to his reputation. Since the investor has been invited by the State of Kosovo to invest in renewable resources, the state should also provide legal certainty in investment and operation, because all permits have been issued and it remains for the state to monitor the permits and take legal measures for failure to meet the conditions, and not with such judicial measures to suspend the operation indefinitely. Losses in energy production are also calculated based on the overall production figures, while the non-material damage to the reputation as a credible investor exceeds the material damage figures".*

68. Consequently, the Applicant concludes that the Supreme Court, the Court of Appeals and the Basic Court, by erroneously applying the legal provisions and by erroneously establishing the factual situation, have reached the unjust and unlawful decision, which has resulted in a violation of the right to a fair and impartial trial of the Applicant.

(b) Allegation on absence of a reasoned decision

69. In the present case, the Applicant points out that since the Supreme Court has rejected the request for extraordinary review of the court decision as ungrounded, and has upheld the Decision of the Court of Appeals upholding the Decision of the Basic Court in Prishtina, it was obliged to justify in detail its decision on imposing the interim measure, clearly specifying the reasons for the decisive facts and the material evidence on which it based its finding. The Applicant points out that the reasoning of the Judgment of the Supreme Court has not at any time justified the statements and arguments of the Applicant presented in his request for review of the court decision before the Supreme Court.

70. Regarding the above, the Applicant notes that: *"In the spirit of these provisions, it is the obligation of the courts to evaluate impartially the claims of all parties - which in the present case did not happen. In the present case, the Supreme Court has not examined at all the issues raised by the Applicant. The Applicant, in all his written submissions, had argued in detail before all the court instances with material facts and evidence about the (excellent) situation on the ground, regarding each allegation of the claimant. Moreover, the Applicant had gone beyond this by arguing and proving that the approval of the request for postponement of the decisions would be contrary to the public interest. Furthermore, the request for extraordinary review of the court decision presented in evidence 18 of this request will also have to be analysed. In this request are addressed all allegations that the decisions of the lower*

courts are unfair and unjustified. Moreover, the Supreme Court does not address the issues raised by the Applicant. 64. With regard to the aforementioned violations of Article 6 of the ECHR, and Article 31 of the Constitution, the Applicant considers that the Judgment of the Supreme Court does not contain the minimum reasoning criteria of a decision - since it did not respect the standard of reasoning of court decisions, and as such contradicts the guarantees set forth in Article 6 of the ECHR, and Article 31 of the Constitution (see mutatis mutandis, case KI138/15, Applicant Sharr Beteiligungs GmbH L.L.C., Judgment of 20 December 2017.)".

71. The Applicant also asserts that the Supreme Court, by not providing sufficient justification for its judgment, acts with a disregard for its arguments. According to the Applicant, the lack of sufficient reasoning of the decision of the Supreme Court has resulted in an essential violation of the provisions of the contested procedure.

72. Finally, the Applicant points out that the Supreme Court has not argued on the decisive facts of the request and has not addressed the arguments and evidence presented by him, and consequently the Judgment of this court according to him has violated his right to a fair and impartial trial.

(iii) Allegations regarding the right to property guaranteed by Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

68. The Applicant alleges that the challenged Judgment of the Supreme Court by which the execution of the decisions on the granting of water and environmental permits serving the performance of its activity for the production of energy from renewable sources was postponed has directly violated his right to property, guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR. The Applicant in regard to his allegation of violation of his right to property refers to the case law of the European Court of Human Rights (hereinafter in the text: ECtHR), namely the cases: *Tre Traktorer AB v. Sweden*; *Pressos Compania Naviera SA et al v. Belgium; Capital Bank AD v. Bulgaria, Lönnroth v. Sweden and Saliba v. Malta.*

73. The Applicant alleges that, in view of all the imperative, fundamental legal acts and norms that they contain regarding the right to property, and in particular "the definition of the Constitution in relation to this right, it is clear that the right to property is a fundamental and inviolable human right", given the fact that this right enters into Chapter II of the Constitution on Fundamental Rights and Freedoms.

74. The Applicant alleges that: "*Given the case law of the ECtHR, by Article 53 of the Constitution, it should be borne in mind that the concept of possession is very broadly interpreted. According to ECtHR jurisprudence this concept not only includes property and the right to it, in a material and classical sense of the word, but includes a wide range of monetary rights, rights deriving from, among other things, licenses as well as rights deriving from the conduct of a business [...]. Going even further, in Pressos Compania Naviera SA et al [v. Belgium], the ECtHR concluded that even a claim for compensation can be considered as an asset, in terms of wealth and enjoys protection according to Article 1, Protocol 1, of the ECHR when it is sufficiently proved by the party that there is a legitimate expectation that such a claim can be realised".*

75. The Applicant further states that based on the case law of the ECtHR, the licensing constitutes a legitimate expectation for him to perform his activity in an unhindered manner because he has fulfilled the legal conditions at the moment when he was granted a license, therefore, the legitimate expectation of the Applicant enjoys protection from Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

76. According to the Applicant: "*The Water Permit and the Environmental Permit granted to the Applicant by MESPI, and the provision of a production License by ERO, are essential for the activity of this company, because at the moment of the implementation of a court decision such as the decision to postpone the execution of the challenged decisions as an interim measure, which completely prohibits the operation on the basis of those permits, the company is obliged to completely cease its activity until the meritorious decision of the case by the court. In this regard, he alleges that: "Taking into account the overloading of the courts in question, and the practices in other cases, a meritorious decision on the matter in question can be taken after more than (3-4) years, even though we believe that the right will prevail in the case of the Applicant, as from the beginning of construction, finalization, technical acceptance, environmental commissioning, and the start of operation all the conditions and obligations given by law and by the responsible institutions are provided with permits and License for production of electricity from renewable sources, and any time and suspension will be in violation of the rights of the Applicant".*

77. In support of the above allegation, the Applicant specifies that: "*In order to prove the damage caused to [him], it is sufficient only to look at the production of electricity from renewable sources for 2019-2021 by the latter. According to KOSTT Reports, the electricity produced and released in the network for consumption by Kosovo consumers (clean energy), by the Applicant for 2019 from June is 5,134,000 kWh of electricity from 191,700,000 kWh produced from renewable sources in Kosovo. In 2020, the Applicant has produced 28,159,000 kWH of clean electricity, while in 2021 he has produced 25,124,000 kWH of clean electricity. These data prove that the Applicant with the impossibility of producing electricity, respecting also the biological flows under the Water Permit, will be caused extremely huge damage, and consequently also non-material damage".*

78. In addition, he notes*: "Except that the damage is great in monetary terms, the same is irreparable. This is because, as it is known in the financing structures and financial instruments for financing such investment capital projects, it is extremely complicated, especially when taken on the basis that a large part of the investment is financed by Commercial banks in Kosovo with mortgage loans, through loan mortgages. In case it does not start with the return of the invested funds for a period from the first month of suspension up to three (3) years, this would result in the financial impossibility to survive for the Company and thereby the repayment of loans will be jeopardized and banks will start with the realization of their claims through enforcement procedures and the assets (houses where we live) under mortgage-Hidroenergji will be seriously threatened in liquidation".*

79. Then, the Applicant also refers to the principle of legitimate expectation, on which he states that: *"[the provisions of Article 1 of Protocol no. 1 of the ECHR] may not weaken the right of the state to make laws deemed necessary to control the use of property in accordance with the general interest or to ensure payment of tax or other contributions and fines".* Accordingly, the Applicant referring to the case *Lonnroth v. Sweden* states that: *"The ECtHR has established three (3) basic principles, which apply as regards the intervention/limitation of the right to property according to Article 1 of Protocol 1 to the ECHR, and they are as follows: (i) the principle of legality;(ii) the principle of the existence of a legitimate aim in the protection of the public interest, and (iii) the principle of a fair balance between the protection of the public interest and the right to property of the designated person (proportionality)".*

80. The Applicant specifies that the interference with the right to property can be justified only *"if it is supported by law [refers to the case of the ECtHR Saliba v. Malta]; it is*

based on a legitimate aim which is in the public or general interest and the limitation of this right should be based on the principle of proportionality, namely - to deprive no one if through other (mitigating) means and measures, the protection of the general interest can be achieved".

81. Referring to the case of the ECtHR, *Capital Bank AD v. Bulgaria*, the Applicant adds: *"The ECtHR in the case of Capital Bank AD v. Bulgaria has found that the criterion of legality, assumes, among other things, that local law should provide a mechanism for protection against arbitrary interference by public authorities. The Court further states that "the concept of legality and the rule of law in a democratic society requires that measures affecting human rights may be subject to review before independent judicial bodies." Therefore, according to the ECHR, "any interference with the peaceful enjoyment of property should be accompanied by procedural guarantees that enable individuals or legal entities to present their case before the responsible authorities in order to seriously challenge the steps by which it has interfered with the rights guaranteed under this provision".*

82. The Applicant also alleges that the Supreme Court has violated Article 119. 4 [General Principles] of the Constitution that oblige the Republic of Kosovo to promote prosperity and sustainable economic development because: "*Taking into account the existing energy capacities of the Republic of Kosovo, and the fact that in addition to the pronounced lack of production capacities, the global energy crisis, and the enormous increase in import prices, the Judgment of the Supreme Court is in direct contradiction with Article 119, paragraph 4, as this Judgment discourages sustainable economic development".*

83. The Applicant alleges that, given the erroneous application of the procedural law and the lack of convincing reasoning of the Supreme Court, there was not sufficient guarantee against the arbitrariness of the Supreme Court resulting in a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR.

(iv) Allegation on setting of the interim measure

84. The Applicant initially states that he has indicated the *prima facie* case for the merits of the Referral.

85. Secondly, the Applicant specifies that*: "The implementation of the Judgment of the Supreme Court in conjunction with the Decision of the Court of Appeals and the Basic Court of Prishtina on Administrative Matters will cause irreparable material and non-material damage to the Applicant, as he will be deprived of the right to exercise his lawful activity based on the Water Permit and the Environmental Permit granted by the administrative bodies, without being offered to him in the matter of administrative conflict a fair procedure guaranteed by the Constitution, questioning the legal security for all citizens and the Applicant himself".*

86. Subsequently, the Applicant alleges: *"The price for electricity generated by hydropower plants according to the Decision of the Energy Regulatory Office V 810/2016 is 67.47 EUR per MWh. The damage caused to the Applicant by the challenged Judgment is irreparable, because the electricity that could be produced in this period of time cannot be replaced by the electricity that will be produced in the future. Simply put, the profit that could be realized from the generation and consequently the sale of electricity by the Applicant for the Kosovo Electricity Transmission, System and Market Operator (KOSTT) cannot be compensated through a larger production that could happen in the future".*

87. The Applicant also alleges that the challenged Judgment of the Supreme Court has "substantial" consequences detrimental to the public interest.

88. Applicant, referring to Article 10 of Law no. 04/L-220 on Foreign Investments, regarding the right of investors to address the courts for compensation for damages in case of violation of the law to their detriment, alleges: "*Also with the Contract on Purchase of Energy concluded with the state-owned company KOSTT, there is included a clause that Applicant is guaranteed the right to address to the Arbitration in London. The case in question is being carefully observed by large investors from all over Europe, and such decisions of regular courts through interim measures without fair trial will damage development and will damage the general interest in Kosovo".*

89. Furthermore, the Applicant states that his company: "*...has invested more than 16 million euros, meeting all technical, environmental and commercial conditions. He has conducted every possible study and has also conducted the Environmental Impact Assessment, where after the Public Debates with citizens by the Ministry of Environment, he was provided with the Decision on Environmental Consent i.e. before being provided with a construction Permit and building the project, which after being commissioned was provided with certificates of use as Water Permit, Environmental Permit (under the Environmental Consent Conditions) and a License for the production of electricity; all these conditions were met according to the legislation in force and were issued by the relevant institutions authorized by law to issue them".*

90. Regarding the request for imposing the interim measure, the Applicant requests the Court:

(i) TO PERMIT the interim measure for the duration specified by the Court; and
(ii) TO SUSPEND immediately the implementation of the Judgment [ARJ. UZVP. no. 51/2022] of the Supreme Court of Kosovo of 19 July 2022 and the Decision [AA. no. 386/2022], of the Court of Appeals, of 26 May 2022, and the Decision [A. no. 3129/2020] of the Basic Court, of 12 April 2022.

91. Subsequently, the Applicant requests from the Court:

(i) TO DECLARE the referral admissible;
(ii) TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR;
(iii) TO HOLD that there has been a violation of Article 46 [Protection of Property] of the Constitution and Article 1 [Protection of property] of Protocol 1. of the ECHR;
(iv) TO DECLARE invalid the Judgment UZVP. no. 51/2022 of the Supreme Court of 19 July 2022 and the Decision [AA. no. 386/2022], of the Court of Appeals, of 26 May 2022, and the Decision [A. no. 3129/2020] of the Basic Court, of 12 April 2022;
(v) TO REMAND for reconsideration the Decision [A. no. 3129/2021] of the Basic Court, of 12 April 2022 pursuant to the Judgment of the Court; and
(vi) TO PERMIT the interim measure until such time as the Supreme Court of Kosovo reconsiders the case.

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 31
[Right to Fair and Impartial Trial]

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

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

Article 46
[Protection of property]

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

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.
[...]

Protocol No. 1 to the European Convention on Human Rights
Article 1
(Protection of property)

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

Law No. 03/L-202 on Administrative Conflicts

Article 6
(The principle of verbal review)

"The court shall decide based on verbal review directly and publicly regarding the administrative conflict."

Article 10
(Untitled)

1. Based on the Law, a natural and a legal person has the right to start an administrative conflict, if he/she considers that by the final administrative act in administrative procedure, his/her rights or legal interests has been violated.

2. Administration body, Ombudsperson, associations and other organizations, which protect public interests, may start an administrative conflict.

3. Administration body has the right to initiate the administrative conflict, against the decision taken based on complain in the administrative procedure, if he/she considers that any of his/her rights or interests have been violated.

4. If, by the administrative act the Law has been violated in the favor of a natural or legal entity, the conflict can be initiated by a competent public prosecutor or by other body authorized by the Law. All administration bodies are obliged to inform competent public prosecutor or the body authorized by the Law.

5. An administrative conflict can be initiated also by the competent public attorney or authorized person, if by an administrative act the Law has been violated in the disadvantage of central government bodies and other bodies on their dependence, local government bodies and bodies on their dependence, where the property rights of these bodies have been violated.

Article 22
(Untitled)

1. The indictment does not prohibit the execution of an administrative act, against which the indictment has been submitted, unless otherwise provided for by the law.
2. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.

3. Together with the postponing request, proves that show the indictment has been submitted should be presented.
4. For postponement of execution, the competent body shall issue decision not later than three (3) days from the date of receiving the request for postponement.

5. The body under paragraph 2 of this Article may postpone the execution of contested act also for other reasonable reasons until the final legal decision, if it is not in contradiction with public interest.
6. The plaintiff can claim from the court to postpone the execution of administrative act until the court decision is taken, according to the conditions foreseen by the paragraph 2 of this Article.
7. The court decides within three (3) days upon receiving the claim.

Article 63
(Other procedure provisions)

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

LAW No. 03/L-006 ON CONTESTED PROCEDURE

Article 160
(Untitled)

160.1 A verdict compiled in written should have: summary, disposition, justification and guide on the right to file a complaint against the verdict.
160.2 The summary of the verdict should have: the name of the court, the name of the judge, the names of the parties and their address, the names of their legal representatives, brief narrative of the contesting issue and the amount, the ending day of the main hearing, the narrative of the parties and their legal representatives and with proxy that were present in the session of the kind as well as the day when the verdict was issued.
160.3 The verdict disposition consists of: decision which approves or rejects special requests dealing with issue at stake and accessing requests, decision for existence or non-existence of the proposed requests to compensate it with statement of claim as well as the decision on procedural expenses.

160.4 Justification of the verdict consists of: requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated.
160.5 The court specifically should show which provisions of the material right are applied in the case of deciding upon the requests from the parties. If necessary, the court will pronounce on the standing of the parties regarding the judicial basis for the contests, as well as for their proposals and turndowns, for which the court hasn't justified decisions issued earlier in the process.
160.6 In the contumacy verdict, verdict on the basis of pleading guilty, verdict on the basis of withdrawing the

charges, or the verdict due to the lack of attendance, the justification consists of only the reasons for issuing

the verdict of the kind.

Article 175
(Untitled)

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

Article 194
(Boundaries of the examining a court case in the first instance)

The complaint court examines the court case of the first instances in the part that complaint refers to, and that is done within the boundaries of causes shown in the complaint, considering them in accordance to the official tasks for applying the material right and violation of provisions for contested procedure from the article 182 paragraph 2, point. b), g), j), k) and m) of this law.

LAW No. 05/L-081 ON ENERGY

Article 15
(Renewable Energy Targets)

1. The Government shall establish annual and long-term renewable energy targets for the consumption of electricity, thermal energy generated from renewable energy sources and from cogeneration and energy from renewable sources used in transport. A National Renewable Energy Action Plan to reach twenty-five percent (25%) share of energy from renewable sources in gross final energy consumption for an agreed in 2020 shall be adopted by the Government. After adoption the National Renewable Energy Action Plan shall be submitted to the Energy Community Secretariat.
2. On reaching the objective of twenty-five percent (25%) share of energy from renewable sources in gross final energy consumption in 2020, Kosovo can enter in cooperation mechanisms with other Contracting Parties of the Energy Community or with European Union Member States. The framework for the cooperation mechanisms shall be adopted by the Government by separate sub-legal act.
3. Long-term renewable energy targets shall be developed for a ten (10) year period, according to the methodology as determined by sub-legal acts, approved by the Ministry.
4. The Ministry shall prepare and issue sub-legal act containing adequate measures intended to achieve the renewable energy targets, and any such measures shall take into account:
4.1. principles of a competitive energy market; and
4.2. the characteristics of renewable energy sources and generation technologies.
5. The Ministry drafts and publishes the report on the realization of long-term renewable energy targets annually, as part of the report on the implementation of the National Renewable Energy Action Plan and Strategy Implementation Program specified in paragraph 7 of Article 7 of this Law. The report shall include a progress analysis of the realization of renewable energy targets, particularly taking into account the impact of climatic factors. This analysis shall also indicate the extent of measures undertaken for the realization of renewable energy targets and possible remedies to be on track of reaching the objectives.
6. The Regulator certifies the origin of energy produced from renewable energy sources according to objective, transparent and non-discriminatory criteria, in accordance with the provisions of the Law on Energy Regulator.
7. The institutions involved in promotion of renewable energy shall ensure that the information on support measures is made available to all relevant actors, such as consumers, builders, installer, architects and suppliers of heating, cooling and electricity equipment compatible with the use of energy from renewable sources.
8. Local and regional authorities shall develop suitable information, awareness raising, guidance and training programmes in order to inform the citizen of the benefits and practicalities of developing and using energy from renewable sources.

LAW NO. 04/L-147 ON WATERS OF KOSOVO

Article 70
(Gain and conditions of gaining the water right)

1. Gain of the water legal right, is provided as following:
1.1. with the water permit;
1.2. with the concession.
2. Bearer of water rights shall use the water according to the criteria determined by the act of gaining the water right.
3. Concession, respectively the public and private partnership, is performed in conditions, manner and procedure for the concession of water use determined by this Law and legislation into force.

Article 71
(Procedures for the issuance of water permit)

1. The procedure for gaining water permit is:
1.1. water conditions;
1.2. water compliance;
1.3. the water permit.
1.4. water direction.
2. Procedures for water conditions, water compliance, water permit and water direction shall be regulated by sub-legal act issued by the Ministry.

Article 72
Water Permit

1. Water permit shall be issued for:
1.1. extracting water for general consumption;
1.2. discharge of polluted waters;
1.3. construction, reconstruction or demolition of buildings and equipment that affect the water regime; 1.4. activities of mining and geological works which affect the water regime;
1.5. hydro-geologic research and collecting data;
1.6. exploitation of sand, gravel, stone and argil;
1.7. use of water in order to use electrical and geothermal energy; and
1.8. other activities that may affect the water regime.
2. Water permit is not required for: use of the wells, resources, similar facilities and tankers for supplying with drinking water for housekeeping, fires extinction and undertaking emergency measures and sanitary and other measures, in case of general danger.
3. By water permit there shall be determined the destination, method and conditions of water use, discharge of contaminated waters, the work regime of objects and plants, dumping of solid and liquid waste and also other conditions.
4. Water permit, according to this Law, for the use of inter-boundary waters and the discharge of polluted waters, in inter-boundary waters, is given in accordance with international convention or agreement.
5. The right of use or discharge of contaminated water, obtained under the water permit, cannot be transferred to other persons, without consent of the competent authority.
6. Ministry issues water permits by sub-legal act, the Ministry may delegate powers for which the municipalities and the Authority may issue the water permit.
7. Water permit shall be revised at least every five (5) years.
8. Holder of water right shall be obliged to inform authority of permit issuance, in case of change in action, technology and water use or other cases, when it can have significant impact on water regime.

LAW NO. 03/L-025 ON ENVIRONMENTAL PROTECTION

Article 31
(Environmental Permit)

1. Constructed facilities, installations and machinery that have been subject to Environmental Impact Assessment cannot commence operations without an Environmental Permit from the Ministry.
2. An Environmental Permit for operation shall be issued for a five-year period and during the application procedure and probation period for the technical approval, but not later than six month after starting of operations.
3. The Ministry, by legal act, shall prescribe the activities that are subject to an Environmental Permit, the application form, the content of Environmental Permit, continuing of effectively and the registry of approved permits.

ADMINISTRATIVE INSTRUCTION (MED) No. 05/2017 RENEWABLE ENERGY SOURCE TARGETS [MINISTRY OF ECONOMIC DEVELOPMENT]
(Approved on 23 June 2017)

Article 3
(Mandatory and indicative target for renewable energy sources)

1. Specific terms used in this Administrative Instruction shall have the following meaning:
1.1. Mandatory target of renewable energy sources until 2020 is 25% of the gross final consumption of energy, as defined with article 4 of the Council of Ministers of the Energy Community Decisions No. D/2012/04/MC-EnC;

[…]

1.3. The indicative renewable energy source target for 2020 shall be 29.89% of the gross final consumption of energy;

[…]

ADMINISTRATIVE INSTRUCTION MESP-NO. 03/2018 ON PROCEDURES FOR WATER PERMIT [MINISTRY OF ENVIRONMENT AND SPATIAL PLANNING]
(Approved on 24 August 2018)

II.3 Water Permit

Article 15
(Providing water permit and documentation)

1. The water permit is provided for all facilities and activities for which by the legal provision are determined the issuance of water consent, except for the extraction of material from watercourses and regulation of water - flows and other waters.
[…]

Article 17
(Duration and extension of the water permit)

The duration of the water permit is determined by Article 73 of the Law.
[…]

ADMINISTRATIVE INSTRUCTION MESP-NO. 07/2017 FOR ENVIRONMENTAL PERMIT [MINISTRY OF ENVIRONMENT AND SPATIAL PLANNING]
(Approved on 9 June 2017 and repealed by MESP Administrative Instruction 04/2022 for Environmental Permit of 3 June 2022)

Article 11
No Title

1. On the basis of proposal decision of the commission, the Ministry issues or refuses the application for an Environmental Permit within fifteen (15) days and for the decision made notify in writing the applicant and the Municipality/ Municipalities.
2. If the operator fulfills technical and environmental conditions Environmental Permit is issued.
[…]
4. Environmental Permit is issued for a period of five (5) year.

Assessment of the admissibility of the referral

92. The Court initially examines whether the Applicant has met the admissibility criteria set out in the Constitution, provided by the Law, and further specified by the Rules of Procedure.

93. In this regard, the Court refers to paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulate:

Article 21

"[…]

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

Article 113

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

[…]

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

94. In addition, the Court also examines whether the Applicant has met the admissibility criteria, as defined by Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
(Individual Requests)

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

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

Article 48
[Accuracy of the Referral]

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

Article 49
[Deadlines]

"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision..."

95. In this regard, the Court notes that the Applicant has the right to submit a constitutional complaint, referring to the alleged violations of fundamental rights and freedoms, which apply to individuals and legal persons (see Court cases no. KI41/09, Applicant *AAB-RIINVEST University L.L.C.*, the Decision on Inadmissibility of 3 February 2010, paragraph 14; and no. KI35/18, Applicant *Bayerische Versicherungsverbrand,* Judgment of 11 December 2019, paragraph 40).

96. In assessing whether the admissibility criteria have been met, as mentioned above, the Court notes that the Applicant has specified that he disputes an act of a public authority, namely the Judgment ARJ.UZVP. no. 51/2022 of the Supreme Court of 19 July 2022, after the exhaustion of all legal remedies defined by law. The Applicant has also clarified the rights and freedoms that he alleges have been violated, in accordance with the criteria of Article 48 of the Law and has submitted the referral in accordance with the deadline set in Article 49 of the Law.

97. The Court will then assess whether, in the circumstances of the present case, Article 31 of the Constitution applies in conjunction with Article 6 of the ECHR, as well as Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR. Namely, the Court will assess whether the Applicant's Referral, which relates to the preliminary judicial procedure for suspending or postponing the execution of the decisions of the Ministry responsible for issuing the water permit and the environmental permit, in the sense of allegations of violation of the right to a fair and impartial trial and his right to property is *ratione materiae* with the Constitution.

Regarding the applicability of Article 31 of the Constitution and Article 6 of the ECHR in preliminary proceedings

98. In the context of the circumstances of the present case, taking into account that the challenged decisions are related to decisions concerning injunction measures, namely "*preliminary proceedings*", the Court, based on its judicial practice and that of the European Court of Human Rights (hereinafter in the text: ECtHR), should assess the applicability of the guarantees of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. In this context, the Court refers to paragraph (3) (b) of Rule 39

of the Rules of Procedure, according to which the Court may consider an application inadmissible if the same is not *ratione materiae* in accordance with the Constitution.

99. Therefore, in the context of the latter, the assessment of this criterion in the circumstances of the case is important because the proceedings conducted before the regular courts fall within the scope of *"preliminary proceedings"*, namely the challenged Judgment of the Supreme Court is related to the Decision of the Basic Court in Prishtina to postpone the execution of the decisions on environmental permits issued by the MEE and licenses for electricity production issued by the ERO, while the lawsuit for annulment of the decisions of the MEE and ERO until the basic court decides by a final decision (review of merits) regarding the lawsuit of the claimants. Consequently, the Court will assess whether Article 31 of the Constitution in conjunction with Article 6 of the ECHR is applicable in the circumstances of the Applicant's case.

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

101. The Court also notes that the criteria for the applicability of Article 31 of the Constitution in conjunction with preliminary proceedings have also been set out in the cases of this Court, including but not limited to the cases KI122/17, Applicant, *Česká Exportní Banka A.S..,* the Judgment of 30 April 2018; KI150/16; Applicant, *Mark Frrok Gjokaj*, the Judgment of 31 December 2018; KI81/19; Applicant, *Skender Podrimqaku,* the Resolution on Inadmissibility of 9 November 2019; KI107/19; Applicant, *Gafurr Bytyqi*, the Resolution on Inadmissibility of 11 March 2020; KI195/20; Applicant, *Aigars* Kesengfelds, the Judgment of 29 March 2021; and KI202/21, with Applicant *Kelkos Energy L.L.C.*, the Judgment, of 29 September 2022. The general principles established through the aforementioned Court decisions are based on the case of the ECtHR, *Micallef v. Malta*, no. 17056/06, the Judgment of 15 October 2009.

102. Consequently, in order to ascertain whether Article 31 of the Constitution and Article 6 of the ECHR apply in the present case, the Court shall refer to the general principles established through the case law of the ECtHR and of the Court as regards the applicability of the procedural guarantees of Article 31 of the Constitution in conjunction with Article 6 of the ECHR and then apply them in the circumstances of the present case.

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

104. According to the criteria set out in the *Micallef v. Malta* case, which this Court has also accepted through judicial practice, firstly, the law in question must be *"civil"* in both the judicial review and the proceedings concerning the injunction measure, within the autonomous meaning of this notion according to Article 6 of the ECHR; and secondly, this procedure must effectively define the relevant civil law (see, in this context, the ECtHR case, *Micallef v. Malta*, cited above, paragraphs 84 and 85 and the references referred to therein, as well as see the Court cases KI122/17, Applicant, Česká Exportní

Banka A.S., cited above, paragraphs 130 and 131; KI81/19, Applicant, *Skender Podrimqaku*, cited above, paragraphs 47 and 48; KI107/19, Applicant, *Gafurr* Bytyqi, cited above, paragraph 53).

105. The Court recalls that in the circumstances of the case, the Applicant refers to the decision of the Ministry of Infrastructure and Environment for water permit of 5 June 2020 and the decision of the Ministry of Economy and Environment for environmental permit of 26 June 2020, respectively (hereinafter in the text: Decisions of the Ministry responsible for the environment). The claimants/proposers had initiated an administrative conflict by filing an administrative lawsuit with the Basic Court on 30 December 2021, and at the same time had filed a request for postponement of the execution of the aforementioned decisions on the grounds that the hydropower plants built in the territory of the municipality of Kaçanik damage the quality of drinking water and irrigation. The postponement of the execution of the challenged decisions as an interim measure based on the provisions of the LAC would mean the suspension of the production of electricity by the Applicant, through the Hydropower Plant Lepenci 3 in the municipality of Kaçanik, until a merit decision regarding the case has been rendered by the Basic Court.

106. Consequently, the request to postpone the execution of administrative decisions, as in the circumstances of the present case, in the administrative conflict procedure is provided for in Article 22 of the LAC. This decision for postponement of execution, based on the applicable law, may be taken until the decision on the merits of the case by the regular courts. The provision of the Applicant with water permit and environmental permit by the respective Ministry is related to: **(i)** the construction and operation of hydropower plants as a renewable source for the production of electricity in the territory of the municipality of Kaçanik; and, **(ii)** the Applicant since June 2019 has started with the generation of electricity through the construction of hydropower plant infrastructure.

107. In the light of the foregoing, the Court holds that the Applicant:

(i) enjoys in an uncontested manner a "civil right" that puts into effect the procedural guarantees of Article 31 of the Constitution in conjunction with Article 6 of the ECHR;
(ii) the Applicant's Referral regarding the allegation of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is *ratione materiae* in accordance with the Constitution; and,
(iii) the procedural guarantees of Article 31 of the Constitution in conjunction with Article 6 of the ECHR are applicable in its case.

Conclusion regarding the admissibility of the referral

108. Finally, and after reviewing the Applicant's Referral, the Court considers that the Referral cannot even be considered as manifestly ill-founded on constitutional grounds, as provided by paragraph (2) of Rule 39 of the Rules of Procedure, and consequently the Referral is declared admissible for review of merits.

Merits of the Referral

109. The Court points out that the substance of the case is related to the right of the Applicant to conduct the activity of producing energy from renewable sources based on the water and environmental permits issued by the respective Ministry of Environment, which have enabled the Applicant to invest through the construction of infrastructure for hydropower plants. Meanwhile, the claimants/proposers had

initiated an administrative conflict by filing a lawsuit against the Ministry responsible for the Environment, whereby they had filed a request for postponement of the execution of the challenged decisions for the issuance of water and environmental permits of this Ministry. The Basic Court had approved as grounded the proposal of the claimants/proposers and decided to postpone the execution of the decisions of the Ministry responsible for Environment, namely the water and environmental permit, until the Basic Court decides by a final decision regarding the lawsuit. The Applicant, being a party of interest in this case, filed an appeal with the Court of Appeals. The Court of Appeals initially decided to approve as grounded the appeal of the Applicant and the Ministry responsible for the environment, remanding the case for reconsideration due to violations of the contentious and administrative procedure. The Basic Court in the reconsideration proceedings again decided to approve as grounded the proposal of the claimants/proposers and to postpone the execution of the decisions for the issuance of the Water Permit of 5 June 2020 and the Environmental Permit of 26 June 2020. The Applicant and the Ministry responsible for the Environment again filed an appeal with the Court of Appeals. The Court of Appeals by the Decision [AA. no. 386/2022] of 26 May 2022 rejected their appeal as ungrounded and upheld the Decision of the Basic Court, of 12 April 2022. As a result, the Applicant submitted a request for extraordinary review of the court decision to the Supreme Court, namely two Decisions of the Basic Court and the Court of Appeals. The Supreme Court by its challenged Judgment of 19 July 2022 rejected the request for extraordinary review of the Applicant as ungrounded.

110. The Court notes that the Applicant has raised allegations: (i) for violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, due to the violation of his right to a reasoned judicial decision and manifestly erroneous application of the law, namely Article 22 of the LAC; and (ii) for violation of his right to property. Finally, the Applicant in his Referral has provided a reasoning regarding his request for imposing an interim measure against the challenged Judgment of the Supreme Court.

111. In assessing the merits of these allegations, the Court shall also apply the standards of the ECtHR's judicial practice, in harmony with which the Court according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution in accordance with the ECtHR's judicial practice.

112. In the following, the Court shall commence with the review of the Applicant's allegations of violation of his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

I. Regarding the allegations of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR

A. Assessment of the allegation on absence of a reasoned decision

(i) General principles regarding the right to a reasoned decision

113. The guarantees embodied in Article 6, par. 1 of the ECHR include the obligation of the courts to provide sufficient reasoning for their decisions. (see ECtHR case, *H. v. Belgium*, no. 8950/80, Judgment of 30 November 1987, paragraph 53). The reasoned court decision shows the parties that their case was indeed examined.

114. Despite the fact that the internal court has a certain freedom of assessment regarding the selection of arguments and the determination of admissibility of evidence, it is obliged to justify its actions by justifying all its decisions (see ECtHR cases: *Suominen*

v. Finland, no. 37801/97, Judgment of 24 July 2003, paragraph 36; as well as the case *Carmel Saliba v. Malta*, no. 24221/13, Judgment of 24 April 2017, paragraph 73).

115. The lower court or state authority, on the other hand, should provide such reasons and justifications which will enable the parties to make effective use of any existing right of appeal (see ECtHR case *Hirvisaari v. Finland*, no. 49684/99, Judgment of 25 December 2001, paragraph 30).

116. Article 6 par. 1 obliges the courts to give reasons for their decisions, but this does not mean that a detailed answer is required in conjunction with each argument (see ECtHR cases, *Van de Hurk v. Netherlands,* no. 16034/90, Judgment of 19 April 1994, paragraph 61; *Garcia Ruiz v. Spain*, no. 30544/96, Judgment of 29 January 1999, paragraph 26; *Perez v. France*, no. 47287/99, Judgment of 12 February 2004, paragraph 81).

117. The nature of the court's decision depends on whether the Court is obliged to justify it, and this can only be decided in the light of the circumstances of the case in question: it is necessary to take into account, among other things, the different types of submissions that a party may submit to the court, as well as the differences that exist between the legal systems of the countries with regard to legal provisions, customary rules, legal positions and the presentation and drafting of judgments (see ECtHR cases *Ruiz Torija v. Spain*, no. 18390/91, Judgment of 9 December 1994, paragraph 29; *Hiro Balani v. Spain*, no. 18064/91, Judgment of 9 December 1994, paragraph 27).

118. However, if a party's submission is decisive for the outcome of the proceedings, it seeks to respond to it specifically and without delay (see ECtHR cases *Ruiz Torija v. Spain*, cited above, paragraph 30; *Hiro Balani v. Spain*, cited above, paragraph 28).

119. Therefore, the courts are obliged:

(a) to review the main arguments of the parties (see ECtHR cases *Buzescu v. Romania*, no. 61302/00, Judgment of 24 August 2005, paragraph 67; *Donadze v. Georgia,* no. 74644/01, Judgment of 7 June 2006, paragraph 35); and

(b) to review very rigorously and with particular care the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: *Fabris v. France*, 16574/08, Judgment of 7 February 2013, paragraph 72; *Wagner and JMWL v. Luxembourg*, no. 76240/01, Judgment of 28 June 2007, paragraph 96).

120. Article 6, par. 1 does not require the Supreme Court to give a more detailed reasoning when it simply applies a specific legal provision regarding the legal basis for rejecting the appeal because that appeal has no prospect of success (see ECtHR cases, *Burg and others v. France,* no. 34763/02; decision of 28 January 2003; *Gorou v. Greece* (no. 2), no. 12686/03, decision of 20 March 2009, paragraph 41).

121. Similarly, in a case where there is a request to allow the filing of an appeal, which is a prerequisite for the procedure of a higher court, as well as for a possible decision, Article 6, par. 1 cannot be interpreted in such a sense as to order a detailed reasoning of the decision rejecting the request to file an appeal (see ECtHR cases, *Kukkonen v. Finland* (no. 2), no. 47628/06, Judgment of 13 April 2009, par. 24; *Bufferne v. France*, no. 54367/00, Decision of 26 February 2002),

122. In addition, when rejecting an appeal, the court of appeal can, in principle, simply accept the reasoning of the lower court's decision (see ECtHR case *García Ruiz v. Spain*, cited above, paragraph 26; see, contrary to this, *Tatishvili v. Russia*, no.

1509/02, Judgment of 9 July 2007, paragraph 62). However, the concept of fair procedure implies that the domestic court that has provided a close explanation for its decisions, whether by repeating the reasoning previously given by a lower court or in any other way, was in fact dealing with important issues within its jurisdiction, which means that it did not simply and without additional effort accept the conclusions reached by the lower court (see ECtHR case, *Helle v. Finland,* no. (157/1996/776/977), Judgment of 19 December 1997, paragraph 60). This referral is all the more important if the party in dispute has not been able to present its arguments verbally in the proceedings before the domestic court.

123. However, the courts of appeal (in the second instance) which have jurisdiction to dismiss ungrounded appeals and to resolve factual and legal issues in the contested procedure are obliged to justify why they refused to rule on the appeal (see ECtHR case *Hansen v. Norway*, no. 15319/09, Judgment of 2 January 2015, paragraphs 77–83).

124. In addition, the ECtHR did not establish that the right was violated in a case in which a specific explanation was not provided in relation to an assertion referring to an irrelevant aspect of the case, namely the lack of signature and stamp, which is an error of a more formal than material nature, and that error was immediately corrected (see ECtHR case, *Mugoša v. Montenegro*, no. 76522/12, Judgment of 21 September 2016, paragraph 63).

(ii) Application of general principles in the circumstances of the present case

125. Regarding the allegation for a reasoned decision, the Court recalls the legal conditions to be met for postponing the execution of an act until the final court decision under Article 22, paragraph 2 of the LAC which stipulates that: *"By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person"*.

126. The Court notes that according to the relevant provisions mentioned above, in order to postpone the execution of an act, it is necessary to meet the following conditions:

(i) if the execution shall bring damage to the claimants, which would be difficult to repair;
(ii) whereas postponing is not in contradiction with public interest; and
(iii) postponing would not bring any huge damage to the contested party, respectively the interested person.

127. In the following text of this Judgment, the Court shall deal with the allegations raised by the Applicant in the proceedings before the Supreme Court and the latter's reply in relation to the Applicant's allegations.

128. In this regard, the Court again notes the Applicant's allegations raised in his request for extraordinary judicial review, submitted to the Supreme Court, which were as follows: (i) the cumulative conditions set out in Article 22 have not been met in the circumstances of the current case; (ii) the decisive facts have not been substantiated at all, and no material evidence has been taken of him, namely the evidence and evidence related to him that the decisions on the Water Permit and the Environmental Permit have been issued in accordance with the legislation in force; (iii) that such postponement will have consequences for the public interest, namely the energy

supply; and (iv) the courts of the lower degree have relied on the perception of the public opinion, namely of the claimants/proposers, that they are protecting the rights of citizens.

129. The Court refers to the reasoning of the Judgment of the Supreme Court, which states that: *"Given the provisions of the Law on Administrative Conflicts, this court found that the court of second instance acted fairly when rejecting as ungrounded the appeals of the respondent - the Ministry of Environment, Spatial Planning, Infrastructure and the interested party "Hidroenergji" L.L.C. Lepenci 3, filed against the Decision A.U.no. 3129/2021 of the Basic Court in Prishtina - Department of Administrative Matters of 12.04.2022, approving as grounded the proposal of the proposers - claimants the non-governmental organization "Group for Legal and Political Studies" and the non-governmental organization "Gjethi" (Leaf) for postponing the execution of the respondent's decision no. 6724-2/199 of 05.06.2020 and decision no. 1948-4/19 of 26.06.2022 until the issuance of the first instance judgment according to the claimants' lawsuit.*
Such decisions of the courts of the lower instance have resulted from the evidence in case files, because in the opinion of this court the application of the decisions of the respondent, challenged by the lawsuit, presents a risk of causing damage to the claimants which would be difficult to repair if one considers the cause of environmental damage that could be caused to the same, the potential degradation of nature and its features as well as the general equilibrium of nature.
[...]
In the opinion of this court, the claimants – proponents through the lawsuit and the evidence attached to the lawsuit, have provided convincing evidence proving the facts that the execution of the decisions would bring damage to the citizens who live in their properties and live in the environment where the work of these hydropower plants is foreseen, which would cause irreparable damage to them.

In addition, this court found that the execution of the decisions until the issuance of the merited decision would not be contrary to the public interest nor would the postponement bring any greater loss to the opposing party, namely the interested party. In this way, the possible future consequences would be avoided if it were proved that the challenged decisions of the respondent, at the end of the court process, would result in a violation of the law. It should also be noted that in the opinion of this court, the postponement of the execution of the decision of the respondent cannot be prejudiced with nothing, because it is an interim decision, i.e. the same applies until the issuance of the judgment of the court of first instance according to the lawsuit of the claimant.

Based on the foregoing, the Supreme Court has found that the court of second instance in this legal -- administrative case has correctly applied the provisions of the administrative procedure and of the administrative dispute, and that the allegations in the request of the interested party "Hidroenergji" L.L.C Lepenci for extraordinary review of the court decision are ungrounded, because they are not influential for different confirmation of the factual situation from what the court of second instance has confirmed. According to the court's assessment, the challenged decision of the second instance court is clear and understandable. In the reasoning of the challenged decision, many reasons were given for the decisive facts that this court also accepts. The court considers that the substantive law has been correctly applied and the law has not been violated to the detriment of the interested party "Hidroenergji" L.L.C. Lepenci 3 or the respondent."

130. Based on this reasoning of the Supreme Court as above, the Court notes that the latter is based on the allegations of the claimants, as long as it has not addressed the specific

claims of the Applicant or provided any specific argument in relation to the evidence presented by him. While at the same time the Court notes that the Supreme Court, in the sense of interpreting and applying Article 22 of the LAC, has generally found that: "*they have provided convincing evidence proving the facts that the execution of the decisions would bring damage to the citizens who live on their property and live in the environment where the work of these hydropower plants is foreseen, which would cause irreparable damage to them*".

131. In view of the above, the Court considers that the Supreme Court had not provided an explanation of the central allegations in the Applicant's case, as required by the procedural guarantees of Article 31 of the Constitution in conjunction with Article 6.1 of the ECHR, including the clarification of the fulfilment of the criteria set out in Article 22 of the LAC, except as referred to in a general manner.

132. In other words, the Supreme Court did not explain:

(i) the relation between the claimants/proposers and the claimant, i.e. it did not explain the relation between the irreparable damage to the claimant/proposer and the irreparable damage to the claimant;
(ii) why postponing the execution of decisions to issue water and environmental permits is in the protection of the public interest and is not in the protection of the public interest if the decisions of the Ministry responsible for the environment would be allowed to be executed on the basis that hydropower plants produce energy from renewable sources; and
(iii) has not provided any explanation why the interest of the claimants/proposers is also in the public interest and why the same does not apply to the Applicant.

133. Since the Applicant has not received a response to the substantive allegations, the Court considers that the Judgment of the Supreme Court does not provide the guarantees embodied in Article 31 of the Constitution and Article 6 of the ECHR that entail the obligation for the courts to give sufficient reasons for their decisions (see ECtHR case, *H. v. Belgium*, cited above, paragraph 53; as well as Court cases, KI230/19, Applicant *Albert Rakipi*, cited above, paragraph 139 and KI87/18, Applicant *IF Skadiforsikring*, cited above, paragraph 44 and case KI202/21, with the Applicant *Kelkos Energy*, L.L.C, cited above, paragraph 134).

134. The Court recalls that the ECtHR in its consolidated jurisprudence has determined that courts with appellate jurisdiction do not need to provide detailed reasoning in cases where they agree with the reasoning given by the court of first instance, despite the fact that the same should also be sufficiently reasoned (see ECtHR case *Garcia Ruiz v. Spain*, cited above, paragraph 31). However, in the circumstances of the case under review, the Court notes that the Supreme Court has only validated the decisions of the lower courts by approving their position and reasoning in these decisions.

135. Consequently, taking into account that even the Supreme Court did not address the Applicant's allegations, which he had raised before both the Basic Court and the Court of Appeals, the Court considers that the essential criteria of the right to a reasoned decision, in one way or another, stipulate that the Supreme Court had an obligation to address the Applicant's central claims and not to disregard them in their entirety or to address some of them only with a short and generalised reasoning (see, *mutatis mutandis*, case KI202/21, with the Applicant *Kelkos Energy*, L.L.C., cited above, paragraph 135).

136. In the light of the above, the Court reiterates that the Supreme Court had an obligation to address the substantive issues of the Applicant, which in the circumstances of the present case did not happen.

137. The Court recalls that the Supreme Court, regarding the Applicant's request for postponement of the execution of the decisions of the Ministry responsible for the Environment, has approved and upheld the position of the lower courts, stressing that the claimants/proposers have provided "convincing evidence" that proves the fact that the execution of the aforementioned decisions to issue water and environmental permits until the meritorious determination of the case would cause irreparable damage to them without providing justification and elaboration of "convincing evidence" that would prove why those legal conditions were met in the present case.

138. In this regard, the Court considers that the Supreme Court beyond the description of the legal provisions and the finding that the aforementioned conditions are met has not explained that: (i) what is the damage caused to the claimants/proposers by the execution of the challenged decisions and why that damage is irreparable; (ii) what evidence has been assessed and found that the postponement of the decisions of the Ministry on the granting of water and environmental permits is not contrary to the public interest; (iii) why the Applicant is not caused any damage, since he has claimed that damage is caused to him and has argued through the evidence this claim; and (iv) the decision of the Supreme Court contains no reasoning at all regarding the central allegations raised by the Applicant.

139. Finally, the Court reiterates that procedural justice requires that substantive claims raised by the parties in the regular courts should be properly answered, especially if they relate to decisive allegations that in the present case refer to decisive facts and legal conditions regarding the postponement of the execution of the decisions of the Ministry (see Court case, KI202/21, *Kelkos Energy*, L.L.C., cited above, paragraph 140).

140. Consequently, the Court finds that the challenged Judgment of the Supreme Court does not meet the criteria of a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR due to the absence of a reasoned decision.

B. Review of the allegation for erroneous interpretation of the law

141. The Court initially recalls the Applicant's allegation that, within the meaning of the criteria set out in Article 22 of the LAC for postponement of the execution of the decision, three (3) conditions must be met, namely: (a) upon the execution of the decision, the claimant would suffer damage that would be difficult to repair; (b) the postponement is not contrary to the public interest; and (c) the postponement would not bring huge damage to the opposing party or the interested person.

142. According to the Applicant, none of these three (3) conditions are met, and regarding the latter, he alleges that in the present case the challenged Judgment of the Supreme Court is involved with the erroneous interpretation and application of the law.

143. The Court first notes that in support of his allegation of erroneous interpretation and application of the provisions of the LAC, the Applicant raises inter alia issues related to the lack of reasoning of the decision or the lack of provision of reasoning by the Supreme Court regarding the fulfilment of each criterion set out in Article 22 of the LAC. Regarding the allegation of lack of reasoning of the court decision, the Court has already held that the challenged Judgment of the Supreme Court did not respect the

standard of a reasoned court decision as determined through the ECtHR case law, a practice affirmed also through the Court's own case law.

144. Therefore, taking into account the circumstances of the present case, namely the allegations raised by the Applicant in his submissions before the regular courts and before the Court itself, his allegation for manifestly erroneous interpretation and application of the law will be examined in the light of the findings of the Court regarding the reasoning of the Supreme Court and related to the fulfilment of the criteria set out in Article 22 of the LAC. That said, the Court shall review and assess whether the erroneous interpretation and application of Article 22 of the LAC has resulted in arbitrary conclusions for the Applicant.

145. During the elaboration of the aforementioned allegation related to the violation of the right to a fair and impartial trial of the Applicant as a result of "manifestly erroneous interpretation and application of the law", the Court shall refer to its judicial practice and that of the ECtHR.

(i) General principles

146. In relation to the allegations in the present case, the Court initially points out that as a general rule, the allegations of erroneous interpretation of the law alleged to have been made by the regular courts concern the area of legality and as such, are not within the jurisdiction of the Court, and therefore, in principle, the Court cannot review them (see Court cases: KI06/17, Applicant *L.G. and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 36; KI122/16, Applicant *Riza Dembogaj,* Judgment of 30 May 2018, paragraph 56; KI75/17, Applicant *X*, Resolution on Inadmissibility, of 6 December 2017; KI154/17 and KI05/18, Applicant*, Basri Deva, Afërdita Deva and Limited Liability Company "*Barbas", Resolution on Inadmissibility, of 28 August 2019, paragraph 60; KI119/19, Applicant: *Privatization Agency of Kosovo (PAK)*, Resolution on Inadmissibility, of 2 September 2020, paragraph 58).

147. However, the Court stresses that the ECtHR case law and that of the Court also set out the circumstances under which exceptions from this position should be made. The ECtHR has emphasized that while the local authorities, respectively and in the present circumstances the courts, have the primary duty to resolve the problems around the interpretation of the legislation; the role of the Court is to ensure or verify that the effects of this interpretation are in compliance with the ECHR (see ECtHR case, Miragall Escolano *and others v. Spain*, Application no. 38366/97 and 9 others, Judgment of 25 May 2000, paragraphs 33-39; and see Court case KI119/19, Applicant: *Privatisation Agency of Kosovo (PAK),* Resolution on Inadmissibility, of 2 September 2020, paragraph 61). Consequently, the Court has emphasized that it is mainly the role of the regular courts to deal with the issue of the interpretation of the law, while the role of the Constitutional Court is to verify whether the consequences of such an interpretation are in accordance with the Constitution (see case cited above KI75/17, Applicant *X*, paragraph 58).

148. In this sense, the Court, in accordance with the ECtHR case law, has emphasized that although the role of the Court is limited in terms of assessing the interpretation of the law, it should be ensured and take measures when it finds that a court has applied the law in a manifestly erroneous manner in a specific case which may have resulted in "arbitrary conclusions" or "clearly unreasonable" for the respective Applicant (see ECtHR cases, *Anheuser-Busch Inc.*, application no. 73049/01, Judgment of 11 January 2007, paragraph 83, *Kuznetsov and others v. Russia*, application no. 184/02 Judgment of 11 January 2007, paragraphs 70-74 and 84; *Păduraru v. Romania*, no. 63252/00, Judgment, of 1 December 2005, paragraph 98; *Sovtransavto Holding v. Ukraine*,

application no. 48553/99, Judgment, of 25 July 2007, paragraphs 79, 97 and 98; *Beyeler v. Italy* [GC], cited above, paragraph 108; see also, case cited above KI122/16, Applicant *Riza* Dembogaj, paragraph 57; cases KI154/17 and 05/18, Applicant *Basri Deva, Afërdita Deva and Limited Liability Company "BARBAS"*, paragraphs 60 to 65; as well as case KI121/19, Applicant *Ipko* Telecomunications, Resolution on Inadmissibility, of 29 July 2020, paragraph 58, and references used therein).

(ii) Application of the above principles in the circumstances of the present case

149. The Court has already held that the Applicant has been violated the right to a fair and impartial trial, as a result of the lack of reasoning of the Judgment of the Supreme Court. The Court shall in the following review whether the Applicant has been violated the right to a fair and impartial trial as a result of a manifestly erroneous interpretation of the law. In applying the general principles in the circumstances of the present case, the Court shall also take into account whether the lack of reasoning of the court decision has affected the erroneous interpretation and application of the law, which may consequently have resulted in arbitrary conclusions.

150. Further on, the Court reiterates that the specific legal basis in the preliminary procedure conducted in the framework of the administrative procedure initiated at the request of the claimants/proposers is Article 22, paragraphs 2 and 6 of the LAC, which set out the criteria to be met in order for the court to allow the postponement of the execution of an administrative decision, as is the case with the Decisions of the respective Ministry of Environment on the issuance of the water permit of 5 June 2020 and the Decision on the issuance of the Environmental Permit of 26 June 2020.

151. In the following and in the context of this, paragraphs 2 and 6 of Article 22 of the LAC, stipulate that:

> *[…]*
> *2. By the plaintiff request, the body whose act is being executed, respectively the competent body for execution can postpone the execution until the final legal decision, if the execution shall damage the plaintiff, whereas postponing is not in contradiction with public interest and postponing would not bring any huge damage to the contested party, respectively the interested person.*
> *[…]*
>
> *6. The plaintiff can claim from the court to postpone the execution of administrative act until the court decision is taken, according to the conditions foreseen by the paragraph 2 of this Article.*

152. Regarding the interpretation and application of Article 22 of the LAC, the Court considers that the Supreme Court has generally held that: "the *claimants – proposers through the lawsuit and the evidence attached to the lawsuit, have provided convincing evidence proving the facts that the execution of the decisions would damage the citizens who live in their properties and live in the environment where the work of these hydropower plants is foreseen, thereby causing irreparable damage to them".*

153. Based on the reasoning given in the Judgment of the Supreme Court, the Court notes that the latter has not examined and given reasoning for fulfilling each criterion set out in Article 22 of the LAC, so that the latter is able to conclude that all the criteria set by this provision are cumulatively met.

154. Therefore, the Court considers that the lack of reasoning of the decision, which is directly related to the interpretation and application of the law, respectively the criteria set out in paragraph 2 of Article 22 of the LAC, has resulted in arbitrary conclusions for the Applicant.

155. Finally, based on the above elaboration and applying the principles of practice of the Court and of the ECtHR regarding the manifestly erroneous interpretation and application of the law, the Court considers that the interpretation and application of Article 22 *of the LAC is "manifestly erroneous*", and has consequently resulted in "*arbitrary conclusions*" or "*clearly unreasonable"* for the Applicant.

156. Consequently, the Court finds that Judgment ARJ-UZVP.no. 51/2022, of the Supreme Court, of 19 July 2022, in conjunction to the Decision AA. no. 386/2022, of the Court of Appeals, of 26 May 2022 and the Decision A.no. 3129/2021 of the Basic Court, of 12 April 2022 in the sense of interpretation and application of the law is not in compliance with the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

II. Regarding the allegation of violation of Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR.

157. The Court, as above, held that the Judgment ARJ-UZVP.no. 51/2022, of the Supreme Court of 19 July 2022, in conjunction to the Decision AA. no. 386/2022, of the Court of Appeals, of 26 May 2022 and the Decision A.no. 3129/2021 of the Basic Court, of 12 April 2022 is in incompliance with the right of the Applicant to a fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR and consequently does not deem necessary to examine separately his allegations of violation of the right to property, guaranteed by Article 46 of the Constitution, in conjunction with Article 1 of Protocol no. 1 of the ECHR.

158. Finally, the Court notes that this Judgment relates only to the procedure for suspending the challenged decisions to issue the water permit and the environmental permit by the respective Ministry of Environment before the regular courts, until the latter decide on the merits of the lawsuit. The question of the legality of the challenged decisions of the respective Ministry of Environment is under review before the regular courts and the Judgment of the Court in this case in no way prejudices their decision regarding the lawsuit against the challenged decisions of this Ministry.

Request for an interim measure

159. The Court recalls that the Applicant submitted the request for imposing of an interim measure on the grounds that: *"The implementation of [this Judgment] will cause irreparable material and non-material damage to [the Applicant], as he will be deprived of the right to exercise lawful activity based on the Water Permit and Environmental Permit granted by the administrative bodies [...]".*

160. The Court has already ruled on the merits of the referral and has held a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and consequently finds that imposing the interim measure is unnecessary.

161. For these reasons, the request for an interim measure shall be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 21.4, 113.1 and 113.7 and 116.2 of the Constitution, Articles 20, 27 and 47 of the Law and Rules 57 (5) and 59 (1) of the Rules of Procedure, at the session held on 15 December 2022, unanimously:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, and Article 6 (Right to a fair trial) of the European Convention on Human Rights;

III. TO DECLARE invalid Judgment [ARJ. UZVP. no. 51/2022] of the Supreme Court of 19 July 2022; the Decision [AA. no. 386/2022], of the Court of Appeals, of 26 May 2022; and the Decision [A. no. 3129/2021] of the Basic Court in Prishtina of 12 April 2022;

IV. TO REMAND for reconsideration the Decision [A. no. 3129/2021] of the Basic Court in Prishtina, Department of Administrative Matters of 12 April 2022, in accordance with the Judgment of the Court;

V. TO ORDER the Basic Court to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, by 10 April 2023, of the measures taken to implement this Court Judgment;

VI. TO REJECT the request for imposing of an interim measure;

VII. TO REMAIN seized of this matter in accordance with this order;

VIII. TO NOTIFY this Judgment to the parties and, in accordance with Article 20.4 of the Law, to publish it in the Official Gazette;

IX. This Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Radomir Laban Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.