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

Prishtina, on 13 March 2023
Ref. no.:AGJ 2139/23

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JUDGMENT

in

Case no. KI185/21

Applicant

L.L.C. "CO COLINA"

**Constitutional review
of Law no. 06/L-155 on the Prohibition of Games of Chance
and Judgment ARJ. UZVP. no. 83/2021 of the Supreme Court
of 7 September 2021**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by "CO COLINA" Company (hereinafter: the Applicant), represented by Muradif Hasković, Managing Director.

Challenged acts

2. The Applicant challenges Article 1 of Law No. 06/ L-155 on the Prohibition of Games of Chance (hereinafter: the challenged Law), which was adopted by the Assembly of the Republic of Kosovo (hereinafter: the Assembly) and published in the Official Gazette (OG, number 11, 24 April 2019).

3. The Applicant also challenges the Judgment of the Supreme Court [ARJ. UZVP. no. 83/2021] of 7 September 2021, in conjunction with Judgment of the Court of Appeals [AA. no. 242/2021] of 8 June 2021 and the Judgment of the Basic Court in Prishtina [A. no. 1861/21] of 9 February 2021 (hereinafter: Basic Court).

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged acts, which have allegedly violated the Applicant's rights guaranteed by (i) Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 of the European Convention on Human Rights (hereinafter: ECHR); (ii) Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol no. 1 of the ECHR; and (iii) Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 of the ECHR.

5. In addition, the Applicant requests the Court to impose the interim measure by which the challenged Law would be suspended.

Legal basis

6. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 18 October 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 25 October 2021, the President of the Court by Decision KSH. KI. 185/21 appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel, composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Safet Hoxha and Remzije Istrefi-Peci (members).

9. On 2 November 2021, the Court notified the Applicant about the registration of the Referral. On the same date, the Court notified the President of the Assembly of the Republic of Kosovo (hereinafter: the President of the Assembly) about the registration of the referral, who was asked to sent a copy of the referral to all the deputies of the Assembly, the President of the Republic of Kosovo (hereinafter: the President), the Prime Minister of the Republic of Kosovo as well as the Ombudsperson. The Court notified the interested parties mentioned above that their comments, if any, should be submitted to the Court within a period of 15 (fifteen) days, namely until 17 November 2021, to the electronic address of the Court or by personal delivery.

10. On the same date, the Court notified the Supreme Court and the Secretary of the Assembly of the Republic of Kosovo (hereinafter: the Secretary of the Assembly) about the registration of the referral.

11. On 12 May 2022, the Review Panel considered the report of the Judge Rapporteur and decided that the case be postponed for consideration in one of the next sessions, with a request that the latter be completed.

12. On 6 July 2022, the Review Panel considered the report of the Judge Rapporteur and decided that the case be postponed for consideration in one of the next sessions, with a request that the latter be completed.

13. On 7 September 2022, the Review Panel considered the report of the Judge Rapporteur and decided that the case be postponed for consideration in one of the next sessions, with the request that the latter be completed.

14. On 16 December 2022, Judge Enver Peci took the oath in front of the President, whereby his mandate at the Court commenced.

15. On 9 February 2023, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral. On the same date, the Court unanimously declared (i) the Referral admissible; found that (ii) there has been a violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol no. 1 (Protection of property) of the ECHR, as well as Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR; decided (iii) to annul the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court of 7 September 2021, Judgment [AA. no. 242/2021] of the Court of Appeals, of 8 June 2021 and the Judgment [A. no. 1861/21] of the Basic Court in Prishtina, of 9 February 2021; and (iv) to reject the Applicant's request for the imposition of an interim measure.

Summary of the facts

16. Initially, the Court notes that this referral is related to the case KI136/19, with the same applicant, LLC "CO COLINA", which by the Resolution on Inadmissibility, KI136/19, of the Constitutional Court of 17 May 2021, was declared inadmissible by the Court, with the conclusion that the referral was premature.

17. Therefore, the Court will present separately the facts of the case KI136/19, insofar as they are related to the current referral (KI185/21), as well as the summary of facts which the Court will review in case KI185/21.

Summary of facts as they relate to the case KI136/19

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

19. On 6 April 2012, the Assembly adopted the Law [No. 04/L-080] on the Games of Chance.

20. The Applicant was equipped with a business license in conformity with the previous Law on the Games of Chance [No. 04/L-080]. The last valid license with no. 35/2017 was issued to it on 12 October 2017 for a valid period from 8 August 2018 to 7 August

2019. It was also equipped with a work permit no. 35/2017 for exercising the business of games of chance, valid through the same deadline, respectively from 8 August 2018 to 7 August 2019.

21. On 28 March 2019, the Assembly adopted the challenged Law whereby the previous Law on the Games of Chance [No. 04/L-080] was repealed. The challenged Law has a total of (3) three articles, where by Article 1 of the challenged Law, "*all games of chance in the entire territory of the Republic of Kosovo*" were prohibited and closed. By Article 2 of the challenged law *"the Law no. 04/L-080 on Games of Chance and sub-legal acts issued for its implementation shall be abrogated,"* whereas by Article 3 it is provided that the challenged Law *"shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo."*

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

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

> *"Dear Sir, Madam,*
>
> *Tax Administration of Kosovo as a Regulatory Authority of the Games of Chance pursuant to Article 4, paragraph 2 of the Law No. 041L-080 on 4 the Games of Chance, on 12.10.2017, has issued the license with nO.35/2017 to your entity for organizing games of chance.*
>
> *Taking into consideration that starting from 10 May 2019 the Law No. 06/ L-155 on the Prohibition of Games of Chance shall enter into force, through this official letter, we inform you that pursuant to the legal provisions under Article 1 of this Law which requires the prohibition and closure of all games of chance in the Republic of Kosovo, the Tax Administration of Kosovo/ Directorate of Games of Chance REVOKES the license with no. 35/2017 issued on: 12.10.2017 to the entity "CO COLINA" L.L.C with FN. 600241963.*
>
> *This revocation of the license shall enter into force on 10 May 2019, and any exercise of the activity of the games of chance after this date shall be considered illegal activity and the law enforcement agencies will act ex officio as needed. The Tax Administration of Kosovo encourages you to undertake all actions in compliance with the provisions of the new Law No.06/L-155 on the Prohibition of Games of Chance, without needing to become subject to the measures of state institutions that are responsible for the implementation of the law".*

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

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

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

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

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

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

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

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

> *"The respondent [Tax Administration of Kosovo] referred the challenged decision whereby it rejected the claimant's complaint as ungrounded, to the provision of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance, by which it is required to prohibit and close all games of chance in the Republic of Kosovo. In this respect, the Tax Administration of Kosovo - Directorate of Games of Chance has revoked the license no. 35/2017 issued on 12.10.2017 to the entity Co-Colina L.L.C., the herein claimant. This revocation of the license has entered into force on 10.05.2019 [the day of entry into force of the challenged Law] and any exercise of the activity of games of chance after this date shall be considered illegal activity and the law enforcement agencies shall act ex officio as required. The court considers that the respondent [Tax Administration of Kosovo] has acted correctly when by the Notification on License Revocation of 03.05.2019 it informed the claimant that pursuant to the provisions of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance, the license no. 35/2017 issued on 12.10.2017 is revoked. This action of the respondent is considered correct by the court because in this case the respondent has had the obligation to implement the Law in question which entered into force on 10.05.2019. The provision of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance provides: By this Law shall be prohibited and closed all games of chance in the entire territory of the Republic of Kosovo. Based on the interpretation of this legal provision, the court finds that the respondent [Tax Administration of*

Kosovo] has correctly applied the law, and on the other hand the claimant's allegations were not approved by the court, because it considered that they have no bearing as to have established a different factual situation than the one confirmed by the administrative body".

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

"Allegations that the provision of Article 1 of Law No.06/L-155 on the Prohibition of Games of Chance has been applied contrary to the specific norms of the Constitution o fthe Republic of Kosovo, namely Article 46 of the Constitution which guarantees the protection of property and Article 1 6 of Protocol 1 of the European Convention on Fundamental Freedoms and the decisions of the European Court on Fundamental Freedoms [ECtHR]. *In the administrative conflict procedure, the court cannot provide an assessment regarding the allegations that they are in contradiction with the Law No.06/L-155 on the Prohibition of Games of Chance, with the norms of the Constitution of the Republic of Kosovo, and other international acts, therefore in its hearing session the court did not approve the proposal of the claimant's authorized representative to have this Court address the Constitutional Court of the Republic of Kosovo, during the administrative proceeding, seeking review of the compatibility of the Law in question with the Constitution of the Republic of Kosovo".*

33. On 17 May 2021, the Constitutional Court, by the Resolution on Inadmissibility in case KI136/19, declared the Applicant's referral inadmissible, emphasizing, among other things, that:

91." As it can be seen from the facts of the case, the claim for administrative conflict initiated by the Applicant against the Decision [no.238/2019] of the Tax Administration of Kosovo in the Basic Court in Prishtina on 5 August 2019 - is a judicial process which is already under an ongoing a review. The Basic Court in Prishtina has reviewed the claim in question and decided to reject it as ungrounded on 12 February 2021. On the basis of the legal advice in the decision of the Basic Court but also of the provisions of the applicable legislation, the Applicant has had sixty (60) days to file an appeal with the Court of Appeals. The Court has no information whether the Applicant has used this legal remedy or not, by implying the fact that it is entirely up to the Applicant to decide whether he wants to pursue this case further or no.

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

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

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

[...]

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

97. Finally, there must also be clarified the fact that in no way does the Court prejudice neither the constitutionality of the challenged Law nor the constitutionality of the application of that Law in the circumstances of the Applicant's case. In this case, the Court did not deal with such assessments but has limited itself to the level of procedural assessment of the conditions of admissibility".

Summary of facts related to the present case KI185/21

34. On an unspecified date, the Applicant submitted an appeal to the Court of Appeals against the Judgment [A. no. 1861/2019] of the Basic Court, of 12 February 2021, alleging essential violations of procedural provisions and erroneous application of substantive law.

35. First of all, the Applicant claimed that the first instance court has erroneously determined the factual situation and that *"decides only on the basis of the law, because according to the Constitution all courts have the obligation to implement the Constitution before the law and aim to implement the decisions of the European Court. Then, in the present case from the time this judicial process takes place, when it is assessed that the TAK decision has been challenged, it is necessary to assess the constitutional violation initiated by the claimant, and if there is a conflict between the law on the prohibition of games of chance and the Constitution, must* be based on the Constitution and the Convention which is directly applicable in Kosovo, in accordance with Article 22.

36. Then, the Applicant in the appeal claimed "*that the implemented provision of Article 1 of Law no. 06/L-155 on the prohibition of games of chance, is contrary to the special norms of the Constitution of the Republic of Kosovo, namely Article 46 of the Constitution which guarantees the protection of property, and Article 1 of Protocol 1 of the European Convention on fundamental rights, as well as with the decisions of the European Court. [...]* The applicant in the appeal also claimed *"that the first instance court, in addition to not implementing the constitutional provisions, also violated Article 182, paragraph 2, point n) of the LCP, applicable based on the article 63 of the LAC and article 31 of the Constitution of the Republic of Kosovo, the provisions of which require that the court's decision must be reasoned."*

37. By the appeal submitted to the Court of Appeals, the Applicant requested that the appealed judgment be modified, so that the Decision [no. 238/2019] of TAK of 4 July 2019, the "*decision-notification"* of the Directorate for Games of Chance of TAK [with

reference number TAK/DFL07/18-2019], of 3 May 2019 be annulled, and its business license no. 35/2017 issued by TAK on 12, October 2017 remains in force.

38. On 8 June 2021, the Court of Appeals, by the Judgment [AA. no. 242/2021], rejected the Applicant's appeal as ungrounded and upheld the Judgment [A. no. 1861/2019] of the Basic Court. The Court of Appeals in the reasoning of its decision added that the aforementioned Judgment of the Basic Court was fair and based on the law, and did not contain violation of procedural and material provisions.

39. Regarding the Applicant's allegation that the first instance court has erroneously concluded that it decides only on the basis of the law and that it had to be assessed if there is a conflict between the challenged law and the Constitution, the Court of Appeals in reasoning of its Judgment found that the first instance court when reviewing the lawsuit had "*presented sufficient evidence which proves that the claimant's allegations are unfounded, because they are contrary to the factual situation determined by the responding body and contrary to the evidence in the case documents, since the decision of the respondent's administrative body is in accordance with the applicable legal provisions. Since the first instance court has rightly assessed that the respondent acted correctly when, by the Notification for the annulment of the license dated 05.03.2019, it informed the claimant that in accordance with the provisions of Article 1 of Law no. 06/L-155 for the prohibition of games of chance, license no. 35/2017 issued on 12.10.2017 was revoked. This action of the respondent was rightly assessed by the court as regular, because in this case the respondent had the obligation to implement the Law in question, which entered into force on 05.10.2019*"

40. In addition, regarding the Applicant's allegation for the application of Article 1 of the challenged Law in violation of the Constitution, the reasoning of the Court of Appeals stated the following:

> *"While the allegations that the provision of Article 1 of Law No. 06/L-155 on the Prohibition of Games of Chance has been applied, contrary to the specific norms of the Constitution of the Republic of Kosovo, specifically Article 46 of the Constitution that guarantees the protection of property, and Article 1 of Protocol 1 of the European Convention on Fundamental Rights, as well as with the decisions of the European Court on Fundamental Rights, the first instance court in the administrative conflict procedure rightly could not give an assessment in this regard, therefore, the first instance court in the court session rightly did not approve his proposal that this court, during the proceedings in the administrative conflict, turn to the Constitutional Court of the Republic of Kosovo for the assessment of the compatibility of the Law in question with the Constitution of the Republic of Kosovo. Therefore, the panel of this court assesses that the first instance court correctly decided when it was based on the provisions of the LAC, Law No. 06/L-155 on the Prohibition of Games of Chance, as well as Law No. 04/L-102 on amending and Supplementing Law No. 03/L-222 on Tax Administration and Procedures".*

41. Regarding the Applicant's allegation of lack of reasoning of the court decision by the first instance court, the Court of Appeals considered that these appealing allegations are ungrounded, "*respectively unsubstantiated. Because, according to the assessment of the panel of this court, the challenged judgment of the first instance court is clear and understandable, and in its reasoning, sufficient reasons are given in relation to the decisive facts which this court also accepts. Therefore, the panel of this court considers that the substantive law has been applied correctly and that the law has not been violated to the detriment of the claimant*."

42. On an unspecified date, the Applicant submitted a request for an extraordinary review of the judicial decision in the Supreme Court, against the Judgment of the Court of Appeals [AA. no. 242/2021], claiming violation of substantive and procedural law as well as violation of constitutional provisions.

43. First, in the request for extraordinary review of the court decision, the Applicant claimed that *"In accordance with the provision of Article 16 of the Constitution of the Republic of Kosovo, all legal provisions of the Republic of Kosovo must be in accordance with the Constitution and the provision of Article 22 of this Constitution, according to which international agreements are directly applicable in the Republic of Kosovo. It is not difficult to conclude that in this administrative matter, despite the fact that games of chance are prohibited by the above-mentioned law, because this is clearly established according to Article 46 of the Constitution of the Republic of Kosovo and the European Convention on Human Rights with its Protocols, in this administrative case, the claimant claims that the challenged decisions of TAK, even though they were issued in accordance with Article 1 of Law no. 06/L-155 on the prohibition of games of chance, are unconstitutional because they are contrary to Article 46 of the Constitution, and Article 1 of Protocol 1 of the European Convention (found in Article 22 of the Constitution), and also contrary to the decisions of the European Court"*.

44. Then, the Applicant, in his request for an extraordinary review of the court decision, emphasized that the lower instance courts had violated paragraph 2 of article 182 of Law no. 03/L-202 on Administrative Conflicts (OG, number 82, 21 October 2010) as well as Article 31 of the Constitution, provisions which require that a court decision must be justified. Through his request, the Applicant emphasized that (i) the decisions of the courts had not provided REASONING as to whether the challenged decisions were in accordance with the Constitution; and that (ii) despite his constant request, the lower instance courts have not referred the case to the Constitutional Court according to Article 113.8 of the Constitution. Further, the applicant added that even though the CHALLENGED decisions in the Basic Court and the Court of Appeals have a legal basis in Article 1 of Law No. 06/L-155 on Games of Chance, they are contrary to Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, as well as with the case law of the European Court for Human Rights (hereinafter: ECtHR). The Applicant, referring to the case law of the ECtHR, specifically the case *Megadat.com SRL v. Moldova*, emphasized that the standards that the interference with the property has a legitimate purpose, be in the general interest and proportional have not been met with the approval of the challenged law, therefore, the immediate prohibition of economic activity.

45. Furthermore, the Applicant also requested the Supreme Court to find that the challenged decisions are in violation of the law and the Constitution or, in case of doubt about the constitutionality of Law 06/L-155 on games of chance, the case should be referred to the Constitutional Court of Kosovo, in accordance with article 113, point 8, where it is stated that *"The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue.*

46. In the request for extraordinary review of the court decision, the Applicant proposed to modify the judgment [AA. no. 242/2021] of the Court of Appeals and the judgment [A. no. 1861/2019] of the Basic Court, as well as the annulment of TAK decision no. 238/2019, of 4 July 2019, "*decision-notification*" of the Directorate for Games of

Chance of TAK [with reference number TAK/DLF07/18-2019] of 3 May 2019, as well as the remaining in force of the business license no. 35/2017 issued by TAK on 12 October 2017.

47. On 7 September 2021, the Supreme Court, by the Judgment [ARJ. UZVP. no. 83/2021] rejected as unfounded the request for extraordinary reconsideration of the court decision submitted by the applicant. The Supreme Court, in the review of its Judgment, found that the Second instance court correctly applied the substantive law.

48. The Supreme Court, in its reasoning, concluded that the lower instance courts had acted correctly and in accordance with the law in the case of rejecting the claimant's lawsuit, since the respondent, as a result of the application of Article 1 of the challenged Law, was obliged to notify the claimant regarding the revocation of the license.

49. Regarding the applicant's request for referral to the Constitutional Court, the Supreme Court emphasized:

> *"By Article 15 of the Law on Administrative Conflicts, it is determined that the administrative conflict cannot be conducted against the acts issued in the cases, in which judicial protection outside the administrative conflict is provided, against the acts issued in the cases about which, according to the provision of the law, no administrative conflict may take place against administrative acts, which constitute a general obligation, issued by the administration bodies, except when they infringe the legal rights of the parties. In the present case, the lower instance court, according to the provisions of this law, could not deal with the issue of the constitutionality of the Law on the Prohibition of Games of Chance No. 06/L-155, since this can be a matter for consideration only in the Constitutional Court of Kosovo".*
> *From all that was said, the Supreme Court found that the allegation in the claimant's request for an extraordinary review of the court's decision are unfounded, because they have no impact on determining the factual situation except what the court of second instance found. In the opinion of this court, the contested judgment of the court of second instance is clear and understandable. In the reasoning of the challenged judgment, there are many reasons related to the decisive facts which this court also accepts. The court assesses that the substantive law has been applied correctly and that the law has not been violated to the detriment of the claimant."*

Applicant's allegations

50. The Applicant claims that by the challenged law and the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, its rights protected by Article 31 [Right to a Fair and Impartial Trial] in relation to Article 6 of the ECHR have been violated; Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol no. 1 of the ECHR; as well as Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 of the ECHR.

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

51. Regarding the admissibility of the referral, the Applicant emphasizes that by the Resolution on inadmissibility in the case KI136/19, the Court has recognized the right of the applicant to challenge the law, after having determined that the legal remedies had to be exhausted. The Applicant claims that the referral submitted to the Court in

case KI136/19, after the entry into force of the challenged Law, was submitted within the 4 (four) month period, in accordance with Article 113.7 of the Constitution, in conjunction with Article 49 of the Law, with the conviction that when a law is challenged before the Court, there are no legal remedies that should be exhausted.

52. The Applicant further states that after exhausting legal remedies, he turns to the Constitutional Court for the assessment of the merits of the referral.

53. To further support its allegations, the applicant refers to the decision of the ECtHR in the case of *Tănase v. Moldova* - Judgment of April 27, 2010, paragraph 104, emphasizing that: "*it is open to a person to contend that a Law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or if he is a member of a class of people who risk being directly 7 affected by the legislation*". So, in order to file an application, the Applicant states that individuals are required to prove that they are victims of a violation of their rights under the ECHR.

54. Among other things, the Applicant states that there are cases when not only the laws but also the Constitutions of the member states have been challenged in the ECtHR, even when the complainants were not direct but indirect victims. In relation to this argument, the Applicant refers to the case Sejdic and Finci v. Bosnia and Herzegovina –Judgment of 22 December 2009.

55. The applicant also adds that the Venice Commission has confirmed that in many countries natural and legal persons can contest a law before the Constitutional Court.

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

56. In regard to the merits of the Referral, the Applicant considers that the banning the activity and revoking the license through Article 1 of the contested Law, Notice TAK/DLF 07/43-2019 of the Directorate of Games of Chance of TAK, Decision no. 238/2019 of the Appeals Division of TAK, Judgment [A. no. 1861/21] of the Basic Court in h, Judgment [AA. no. 242/2021] of the Court of Appeal, as well as the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, is in contradiction with Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 to the ECHR, as well as contrary to the case law of the ECtHR.

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

58. In the aforementioned case, *Megadat.com SRL v. Moldova*, the Applicant argues that the "*property-possessions" protected by Protocol 1 to the Convention "was restricted"*

due to the fact that a company providing internet services had been revoked its license by the state authorities." In that case, the ECtHR "had found that although the revocation of the license [...J was based on the law (of Moldova), the restriction or acquisition of the license by this company was not proportionate to the purpose of the legal norm".

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

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

61. Consequently, according to the Applicant, *"the legitimate justification/ purpose of the interference /restriction of this constitutional right in this case does not exist. It is the opposite that is true." At this point, the Applicant refers 9 to the concept paper of the challenged Law where on page 24 of Chapter 4 it is concluded that "it is in the general interest to allow and regulate by law the games of chance as they are in the interest of Kosovo, as they increase the number of businesses in Kosovo, create jobs, increase direct investments, and promote competition in the market".* jobs, increase direct investments, and promote competition in the market." This concept paper, according to the Applicant, provides arguments that the games of chance in Kosovo reduce unemployment and increase the overall well-being.

62. In this regard, he argues that the challenged Law prohibits all games of chance, including *"sports betting shops and lotteries, which do not pose any harm or danger to the state or the citizen but only serve for recreational purposes". According to him, "even if there could exist a general interest in restricting games of chance in any way, the total and immediate restriction (by not sparing sports betting shops and companies that have a valid license for a certain time period) of this business activity does not respects the principle of proportionality, as this principle requires that more lenient measures be taken to achieve the purpose of protection of the general interest".* In this regard, the applicant emphasizes that examples of other appropriate measures could have been *"...limiting working hours, limiting the age to play games of chance, determining the locations where this activity cannot take place, limiting the amount of money with which games of chance can be played, or other measures in accordance with decisions of the European Court".* " According to the Applicant, this argues that the total and immediate termination of economic activity of games of chance amounts to an interference and restriction of the right to protection of property in contradiction with Article 46 of the Constitution and Article 1 of Protocol No .1 to the ECHR.

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

64. 64. Regarding the limitation of rights with the contested Law, the applicant claims that the drafting standards have not been met. To support this claim, the applicant refers to the comments of the People's Advocate in case KI136/19, with the argument that the disputed Law is contrary to legal certainty as a result of the non-transparent procedure, specifically the fact that the Law has passed all procedures in just two days and without asking the interested parties at all. Referring to the comments of the People's Advocate regarding the criteria of legal certainty, the applicant emphasizes that the contested Law does not meet the criteria of foreseeability and legitimate expectation since the subjects have been acting in accordance with the previous law, they have been equipped with work licenses and have invested in their businesses. Further, the applicant states that the contested Law was adopted in an unpredictable manner, not containing provisions for any time limit within which the subjects would have been able to plan their actions. Regarding the predictability of the law, the applicant refers to the judicial practice of the ECtHR, emphasizing: *"The predictability of the law is a decisive criterion also determined by the European Court. We are mentioning the case Beyler v Italy [DHM], (application no. 33202/96) points 109-110, which says that if a law is not foreseeable for the parties, then there is a violation and the other criteria are not looked at all but a violation of the European Convention is found".*

Regarding allegation of violation of Article 31 of the Constitution and Article 6 of the ECHR

65. The Applicant claims that his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution in relation to Article 6 of the ECHR, has been violated by the decisions of the regular courts.

66. The Applicant claims that the regular courts should have declared whether the challenged Law and the relevant TAK Notice were constitutional or, otherwise, they should have referred to the Constitutional Court for interpretation. Consequently, according to the applicant, despite his specific request, the regular courts did not act in accordance with Article 31 of the Constitution to address and justify all the complaints of the parties in the procedure.

67. In support of this claim, the applicant emphasizes that the Supreme Court did not address his claim for violation of the Constitution, specifically Article 46 [Protection of Property] of the Constitution, as a result of the revocation of the license and moreover did not address the Applicant's allegation that the case should be referred to the Constitutional Court, based on Article 113.8 of the Constitution. In this regard, the applicant states as follows:

> *"The Supreme Court, contrary to Article 102 of the Constitution, which states that they act according to the Constitution of the Law, Article 113 point 8, has emphasized, in an unprecedented manner, that "the courts of lower instances have not been able to deal with the constitutionality of the Law on the prohibition of games of chance no. 06/L-155, since this can be a matter for review only by the Constitutional Court of Kosovo" but it was rejected by the Constitutional Court according to Article 113.8 of the Constitution. When we started the court proceedings, we were aware that the Law prohibits games of chance from the day it enters into force, so the decision of TAK was based on the law, we have requested the assessment of the constitutionality of the ban on our activity/license even though we had a valid license. The only allegations before these judicial instances were that the announcement of TAK and the Law on the Prohibition of Games of Chance are contrary to Article 46 of the Constitution, but we have not received an answer to them. So, the Basic Court, the Court of Appeals and the Supreme Court had to either confirm that the TAK Notice and*

the Law are constitutional, or refer to the Constitutional Court for interpretation. They did neither despite the specific request we had, even though according to Article 31 they have the obligation to address and justify all the complaints of the parties in the procedure, referring to the legal and constitutional provisions".

Regarding the claim of violation of Article 54 of the Constitution in relation to Article 13 of the ECHR

68. The applicant alleges that by the refusal of the judicial authorities to examine the allegations of violation of constitutional rights, the right to judicial protection of the rights guaranteed by Article 54 of the Constitution has been violated. In support of this argument, the applicant emphasizes that the interpretation of the regular courts for decision-making only based on the law and for refusing to refer the case to the Constitutional Court in accordance with Article 113.8 of the Constitution, has denied their right to a remedy legal to protect constitutional rights.

69. Finally, the applicant requests the Court to: (i) find that there is a violation of Article 46 of the Constitution in relation to Article 1 of Protocol no. 1 of the ECHR; (ii) repeal Article 1 of the challenged Law [No. 06/L-155]; (iii) find that the Judgment [A. no. 1861/21] of the Basic Court, Judgment [AA. no. 242/2021] of the Court of Appeals, Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, TAK/DLF Notice 07/43-2019 of the Directorate of Games of Chance of TAK, Decision no. 238/2019 of the TAK Complaints Division, violate Articles 31, 46 and 54 of the Constitution and Article 1 of Protocol no. 1 of the ECHR; and (iv) license no. 35/2017, issued by TAK on 12 October 2017, for the applicant.

Request for interim measures

70. The Applicant also requests from the Court the imposition of an interim measure, whereby the effect of the challenged Law and the Notice of TAK would be suspended, since for almost 3 years already the Applicant has suffered extraordinary financial losses.

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. *Use of property is regulated by law in accordance with the public interest.*

3. No one shall be arbitrarily deprived of property. 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.
4. Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent Court.
5. Intellectual property is protected by law.

Article 54
[Judicial Protection of Rights]

1. *Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.*

European Convention on Human Rights

ARTICLE 6
[Right to a fair trial]

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

Article 1 of Protocol no.1
(Protection of property)

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. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

LAW NO. 06/L-155 ON THE PROHIBITION OF GAMES OF CHANCE

Article 1
Purpose

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

Article 2
Abrogation

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

Article 3
Entry into force

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

LAW NO. 03/L-202 ON ADMINISTRATIVE CONFLICTS

Article 15

1. Administrative conflict can not be initiated:
1.1 against issued acts on the issues on which the legal defense out the administrative conflict has been provided;

[…]

RULES OF PROCEDURE OF THE ASSEMBLY OF THE REPUBLIC OF KOSOVO

Article 56
First reading of Draft-Laws

1. First Reading of a Draft-Law shall take place no earlier than two working weeks and no later than four working weeks, from the day of its distribution.
2. Before the first reading of the Draft-Law in plenary session, the functional – lead committee assigned by the Assembly shall review the Draft-Law in principle. The Committee shall present a report to the Assembly with recommendation for its adoption of non-adoption.
3. First reading of the Draft-Law shall mean its discussion and voting in principle.
4. First reading of the Draft-Law shall commence with its presentation by the sponsor, and shall continue with presentations by the rapporteur of the functional committee, representatives of Parliamentary Groups and Members of the Assembly. A voting in principle shall conclude reading.
5. The sponsor may withdraw the Draft-Law during the process of reading in the Assembly before the beginning of voting in the second reading.

Article 57
Review of a Draft-Law by Committees

1. Following the approval of the Draft-Law in the first reading, the Assembly shall assign for further review the following: Functional Committee as lead committee and Committees: for Legislation and Judiciary; Budget and Finance; European Integrations; Human Rights; Gender Equality, Missing Persons and Petitions; and Rights and Interests of Communities and Returns, as main committees.
2. In cases when the Draft-Law regulates issues from the scope of two functional committees, the Assembly shall assign one of them as lead committee.
3. Amendments to the Draft-Law may be introduced by a Member of the Assembly, parliamentary group, parliamentary committee, and the government, within two working weeks from the approval in principle. Amendments shall be addressed to the functional – lead committee.

4. The proposal for amendment shall contain: reference on the provision of the Draft-Law, accurate formulation of the amendment and reasoning for the proposed amendment.
5. Proposals containing amendments with budgetary implications shall be sent to the Budget and Finance Committee who shall give its opinion through a report, within five (5) working days, from the day of its receipt.
6. Functional Committee shall present to the Assembly a report with recommendations on the Draft-Law within two months from the first reading.
7. In special cases, the Committee may request from the Assembly an extension of the deadline for submission of the report of up to one month.
8. Main committees shall present their reports to the functional committee within ten (10) days, from the day of receipt of amendments from the functional – lead committee.
9. Functional – lead committee, once completed the review, shall submit a report with recommendations to the Assembly, as least five (5) working days prior to the second reading in plenary session. The report shall also contain the opinions of main committees, as well as the statement on proposed amendments from the member of the Assembly, Committee, Parliamentary Group or the Government.

Article 84
Departures from the Rules of Procedure

Departures from the Rules of Procedure may be decided upon the decision of two thirds (2/3) of the Members of the Assembly present. Departure may take place when it does not conflict with the provisions of the Constitution of the Republic of Kosovo and with the European standards.

Assessment of the admissibility of the Referral

71. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

72. In this regard, applying paragraph 4 of Article 21 and paragraph 7 of Article 113 of the Constitution, relevant provisions of the Law related to the proceedings in the case provided for in Article 113, paragraph 7 of the Constitution; and rule 39 [Admissibility criteria] and Rule 76 [Referral pursuant to Article 113.7 of the Constitution and Articles 46, 47, 48, 49 and 50 of the Law] of the Rules of Procedure, the Court will consider whether: (i) the Referral has been submitted by an authorized party; (ii) whether decisions of public authorities are being challenged; (iii) whether all legal remedies have been exhausted; (iv) whether the rights and freedoms alleged to have been violated have been specified; (v) whether the deadlines have been complied with; (vi) if the Referral is manifestly ill-founded; and (vii) if there is any additional condition of admissibility, pursuant to Rule 39 (3) of the Rules of Procedure, which has not been met.

Regarding the authorized party

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

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

[...]

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

74. The Court also refer to paragraph 4 of Article 21 [General Principles] of the Constitution, which establishes:

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

75. Finally, the Court refers to point (a) paragraph (1) of Rule 39 [Eligibility criteria] of the Labor Regulations, which provides:

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

(a) the referral is filed by an authorized party".

76. The Court, first, recalls that the Applicant is a legal person who challenges (i) the constitutionality of Article 1 of the challenged Law and (ii) the Judgment of the Supreme Court [ARJ. UZVP no. 83/2021] of 7 September 2021.

77. Regarding the fulfillment of these constitutional criteria, the Court first notes that in this case we are dealing with an Applicant who challenges two types of acts of different public authorities, therefore the Court must establish whether the Applicant is legitimate as an authorized party, based on the relevant provisions which are mentioned above as a precondition to consider this Referral.

78. Therefore, the Court will first examine whether the Applicant is **(i)** an authorized party to challenge the constitutionality of Article 1 of Law no. 06/L-155 on the Prohibition of Games of Chance; and **(ii)** an authorized party to challenge the Judgment of the Supreme Court [ARJ. UZVP no. 83/2021] of 7 September 2021.

Regarding the authorized party – the right of individuals to challenge a law before the Constitutional Court

79. The Applicant, essentially, claims that he is a direct victim of the challenged Law because despite the valid license and work permit that it had until 7 August 2019, by the challenged Law, in an unprecedented manner, a complete and immediate prohibition of all games of chance was made, without justifying what was the general interest being protected through the restriction.

80. Among other arguments, the Applicant refers to paragraph 104 of the ECtHR case *Tănase v. Moldova (Tănase v. Moldova* [DHM]) – to prove that individuals have the right to challenge a law where "*individuals can claim that a law violates their rights if the law does not provide for enforcement measures, if the individual is required by that law to modify their behavior or if they belong to a group of people who are exposed to risk be directly affected by that Law".*

81. Among others, referring to the Resolution on Inadmissibility in case KI136/19, the Applicant states that "*What is important from the Resolution KI136/19 of the Constitutional Court and what the Constitutional Court must take into account now in this constitutional complaint is that: - The Constitutional Court has recognized our right to challenge the law, as it has concluded that we must exhaust legal remedies…".*

82. To address the allegations of the Applicant regarding the issue of the authorized party, the Court will first present**: (i)** the case law of the Court in relation to the notion of the authorized party, with a focus on challenging laws by individuals; **(ii)** the case law of the ECtHR regarding the issue of the authorized party and requirements of an *actio popularis* nature, with a focus on the right of individuals to challenge a law before the ECtHR.

83. Following this analysis, the Court will **(iii)** apply the general principles derived from the jurisprudence of the Constitutional Court and the ECtHR under the circumstances of the present case as a way to provide a final answer as to where the current Referral lies in relation to the criterion of the authorized party.

(i) Case law of the Constitutional Court in cases where individuals challenge a legal norm directly before the Constitutional Court

84. The case law of the Court shows that there is a significant number of cases that have been filed by individuals who have used the individual constitutional complaint as a means to challenge the constitutionality of any law or bylaw or to request an assessment of the compatibility of a legal norm with any constitutional norm.

85. The largest group of such cases concerns the requests of individuals for constitutional review of a specific legal norm or a Law in its entirety (see Court cases, KI118/10, Applicant *The Insurance Association of Kosovo*, Resolution on inadmissibility, of 23 May 2011; KI03/13 and KO28/13, Applicant *Demë Dashi and others and Ali Lajçi*, Resolution on inadmissibility of 15 May 2013; KI40/11 Applicant *Zef Prenaj*, Resolution on inadmissibility of 23 September 2011; KI92/12, Applicant *Sali Hajdari*, Resolution on inadmissibility of 6 December 2012; KI230/13, Applicant *Tefik Ibrahimi*, Resolution on inadmissibility of 25 March 2014; KI05/17, Applicant *Osman Sylanaj*, Resolution on inadmissibility of July 3, 2017; KI20/17, KI21/17 and KI22/17, Applicants *Bank of Kosovo J.S.C. Belgrade, Jugobanka J.S.C., Beobanka J.S.C., Bogradska banka J.S.C. and Momčilo Nedleljković and 410 other workers of the Kishnica and Novobërda mines*, Resolution on inadmissibility of 3 July 2017; KI102/17, Applicant *Angel Ymeri*, Resolution on inadmissibility of 10 January 2018; KI196/18, Applicant *Dardan Bunjaku*, Resolution on inadmissibility of 3 April 2019; KI202/18, Applicant *Ejup Qerimi*, Resolution on inadmissibility, 27 March 2019; KI17/19, Applicant *Zymer Neziri, Rexhep Doçi, Daut Bislimi, Xheladin Shala, Adem Zejnullahu, Exhlale Dobruna, Mehmet Ahmetaj*, Resolution on inadmissibility of 9 July 2020, paragraphs 30-34; KI122/20, Applicant *Rijad Isufi*, Resolution on inadmissibility of 20 January 2021).

86. The other group of cases is related to referrals from individuals where the Court was asked to make an "*authentic*" interpretation of certain norms of the Constitution or certain laws (see Court cases, KI60/12, Applicant *Liridon Ali*, Resolution on inadmissibility of 20 September 2012; KI113/16, Applicant *Shukri Maxhuni and Gazmend Muqolli*, Resolution on inadmissibility of 16 November 2016; KI21/19, submitter *Peter Boçi*, Resolution on inadmissibility of 17 May 2019; KI113/19, Applicant *Islam Qerimi*, Resolution on inadmissibility of 3 August 2020).

87. The other group of cases also concerns requests of individuals to the Court to assess certain issues in the abstract and to take decisions regarding issues in the interest and benefit of the general interest (see Court cases, KI117/11, Applicant *Ridvan Hoxha*, Resolution on inadmissibility of 11 July 2012; KI157/11, Applicant *Union of Pensioners and Labor Disabled Persons of the Republic of Kosovo*, Resolution on inadmissibility of 17 January 2013).

88. In case KI122/20, which is related to the issue of the individual as an authorized party to challenge legal norms before the Constitutional Court, the latter clarified that:

> *"25. [...] the Court emphasizes its consistent position that natural or legal persons are not authorized parties to seek an abstract assessment of the compatibility of the legislation with the Constitution, or requests of an actio popularis nature. Thus, in its case law, the Court has consistently emphasized that individuals cannot challenge in abstracto normative acts of a general nature.*
>
> *28. [...] The Constitution provides protection for individuals with respect to the actions or failure to act of public authorities, only within the scope provided by Articles 113.1 and 113.7 of the Constitution. These constitutional provisions require Applicants to prove that: (1) they are authorized parties; (2) they are directly affected by a concrete act or failure to act by public authorities; and (3) that they have exhausted all legal remedies provided by law.*
>
> *Therefore, according to the relevant provisions of the Constitution (Article 113.7) and the Law (Articles 47 and 49), the only way natural or legal persons can challenge the constitutionality of a law before the Constitutional Court is if they prove that their referral is not of an "actio popularis" nature - but that they have been directly or indirectly affected by a "law" in the absence of any act, decision or measure implementing that law. In the circumstances of the present case, as it was explained above, this was not the case.*

89. Although according to paragraph 1 and 7 of Article 113 of the Constitution, Articles 47 and 49 of the Law as well as Rules 39 (1) and 76 of the Rules of Procedure, as interpreted in the aforementioned decisions of the Court, individuals are not authorized parties to challenge a law *in abstracto* nor to file referrals of an *actio popularis* character. The Court has emphasized that the only way for individuals to be considered authorized parties to challenge a law is when (i) they manage to prove that they are affected by a "law" directly, in the absence of any act, decision or measure that enforces that law; and (ii) if they have exhausted all legal remedies provided by law, when the same exist in light of the circumstances of a specific case.

(ii) Case law of the ECtHR in cases where individuals challenge a law or legal norm before the ECtHR

90. The ECtHR has continuously held the position that the ECHR does not guarantee the initiation of "*actio popularis"* applications and that it is not its role to assess the relevant law and "*in abstracto"* application of a law; but that the role of the ECtHR is to establish whether the way a law has been applied or the way a law has affected the Applicant has led to a violation of the Convention (see the ECHR case, *Roman Zakharov v. Russia*, no. 47143/06, Judgment of 4 December 2015, paragraph 164).

91. In order for an Applicant to be able to submit an application based on Article 34 of the ECHR, she/he must be able to show that she/he was directly affected from the measure being complained against (see ECtHR cases, *Tănase against Moldova*, no. 7/08, Judgment of 27 April 2010, paragraph 104; *Burden v United Kingdom*, no. 13378/05, Judgment of 29 April 2008, paragraph 33; *Lambert and others v. France*, no. 46043/14, Judgment of 5 June 2015, paragraph 89).

92. More specifically, ECtHR has clarified that the Convention does not provide for the option of filing an application to interpret certain rights or to allow individuals to complain about a legal provision of domestic law only because they consider it may be

contrary to the Convention - without them being directly affected by the measures in question (see the cases of the ECHR, *Aksu v. Turkey*, no. 4149/04 41029/04, Judgment of 15 March 2012, paragraph 50; *Burden v United Kingdom*, cited above, paragraph 33; *Cordella and others v. Italy,* no. 54414/13 54264/15, Judgment of 24 January 2019, paragraph 100).

93. However, despite the aforementioned case law, the ECtHR has clarified that the possibility remains open for an individual to present arguments that a law violates his or her rights, in the absence of an individual measure of implementation, (i) if she or he is required to change his/her behavior; or (ii) otherwise she/he risks being prosecuted; or, (iii) she/he is a member or belongs to a group of people who risk being directly affected by the legislation in question (see ECHR cases, *Tănase against Moldova*, cited above, paragraph 104; *Michaud v. France,* no. 12323/11, Judgment of 6 December 2012, paragraphs 51-52; *Sejdić and Finci v. Bosnia and Herzegovina*, no. 27996/06 34836/06, Judgment of 22 December 2009, paragraph 28).

94. In some of the most important decisions dealing with cases where individuals have challenged laws before the ECHR, the latter clarified important aspects which will be specifically cited below. In this regard, in paragraph 104 of the case *Tănase v. Moldova*, cited above, the ECHR has emphasized that:

> *"104. The Court reiterates that, in order to be able to lodge a petition by virtue of Article 34, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an actio popularis for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. However, it is open to a person to contend that a Law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or risks being prosecuted or if he is a member of a class of people who risk being directly affected by the legislation (see Burden v. the United Kingdom [GC], no. 13378/05, §§ 33 and 34, ECHR 2008; Open Door and Dublin Well Woman v. Ireland, 29 October 1992, § 44, Series A no. 246-A; and Klass and Others, cited above, § 33).".*

95. In case *Tănase v. Moldova*, the ECtHR recognized the Applicant "*The status of the victim*" because the Applicant was directly affected by the effect of law no. 273, since he was forced to initiate a procedure through which he risked losing his Romanian citizenship. In addition, the fact that, if elected, he would be required to take steps to renounce his Romanian citizenship, undoubtedly affected him throughout the pre-election campaign. Besides, he might have lost some votes that way, because voters knew there was a chance he wouldn't get a seat in Parliament if it meant losing his dual-citizenship status. Although Romania had not yet revoked the Applicant's citizenship, it is fully free to initiate such a procedure at any time. In any case, whenever the Applicant wants to run for Parliament, he will face uncertainty because he will not know whether the Constitutional Court will verify his mandate or whether the Romanian government will fully implement his request for Renunciation of Romanian citizenship. For all these reasons, this measure had a harmful effect on the Applicant, the ECtHR concluded.

96. Furthermore, in paragraph 28 of case *Sejdic and Finci*, regarding the claim of being a victim, the ECtHR emphasized that:

28. It is reiterated that in order to be able to lodge a petition by virtue of Article 34 of the Convention, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure. The Convention does not, therefore, envisage the bringing of an actio popularis for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. It is, however, open to applicants to contend that a law violates their rights, in the absence of an individual measure of implementation, if they belong to a class of people who risk being directly affected by the legislation or if they are required either to modify their conduct or risk being prosecuted (see Burden v. the United Kingdom [GC], no. 13378/05, §§ 33-34, ECHR 2008, and the authorities cited therein).

97. Also, in paragraph 164 of case *Roman Zakharov v. Russia*, the ECtHR emphasized that:

164. The Court has consistently held in its case-law that the Convention does not provide for the institution of an actio popularis and that its task is not normally to review the relevant law and practice in abstracto, but to determine whether the manner in which they were applied to, or affected, the Applicant gave rise to a violation of the Convention (see, among other authorities, N.C. v. Italy [GC], no. 24952/94, § 56, ECHR 2002-X; Krone Verlag GmbH & Co. KG v. Austria (no. 4), no. 72331/01, § 26, 9 November 2006; and Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 101, ECHR 2014). Accordingly, in order to be able to lodge an application in accordance with Article 34, an individual must be able to show that he was "directly affected" by the measure complained of. This is indispensable for putting the protection mechanism of the Convention into motion, although this criterion is not to be applied in a rigid, mechanical and inflexible way throughout the proceedings (see Centre for Legal Resources on behalf of Valentin Câmpeanu, cited above, § 96)"..

98. Similarly, in paragraphs 33-35 of case *Burden v United Kingdom*, the ECHR has assessed that:

33. The Court notes that, in order to be able to lodge a petition in pursuance of Article 34, a person, non-governmental organisation or group of individuals must be able to claim "to be the victim of a violation ... of the rights set forth in the Convention ...". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see Ireland v. the United Kingdom, 18 January 1978, §§ 239-40, Series A, no. 25; Eckle, cited above; and Klass and Others v. Germany, 6 September 1978, § 33, Series A no. 28). The Convention does not, therefore, envisage the bringing of an actio popularis for the interpretation of the rights set out therein or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see Norris, cited above, § 31).

34. It is, however, open to a person to contend that a law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or risk being prosecuted (see Norris, cited above, § 31, and Bowman v. the United Kingdom, 19 February 1998, Reports of Judgments and Decisions 1998-I) or if he is a member of a class of people who risk being directly affected by the legislation (see Johnston and Others, cited above, § 42, and Open Door and Dublin Well Woman v. Ireland, 29 October 1992, Series A no. 246-A).

Thus, in the Marckx case, cited above, the applicants, a single mother and her five-year old "illegitimate" daughter, were found to be directly affected by, and thus victims of, legislation which would, inter alia, limit the child's right to inherit property from her mother upon the mother's eventual death, since the law automatically applied to all children born out of wedlock. In contrast, in Willis v. the United Kingdom (no. 36042/97, ECHR 2002-IV), the risk to the 12 BURDEN v. THE UNITED KINGDOM JUDGMENT Applicant of being refused a widow's pension on grounds of sex at a future date was found to be hypothetical, since it was not certain that the Applicant would otherwise fulfil the statutory conditions for the payment of the benefit at the date when a woman in his position would become entitled.

35. In the present case, the Grand Chamber agrees with the Chamber that, given the applicants' age, the wills they have made and the value of the property each owns, the applicants have established that there is a real risk that, in the not too distant future, one of them will be required to pay substantial inheritance tax on the property inherited from her sister. In these circumstances, the applicants are directly affected by the legislation and can claim to be victims of the alleged discriminatory treatment".

(iii) Application of general principles deriving from the case law of the Constitutional Court and the ECtHR in cases where a legal norm is challenged

99. In light of the above, the Court notes that based on its case law, natural or legal persons are not authorized parties to challenge a law *in abstracto* nor to file an *actio popularis*.

100. However, the Court has emphasized that based on Article 113.7 of the Constitution and Articles 47 and 49 of the Law, natural or legal persons may be considered authorized parties to challenge a law if they can prove that they are directly affected by one "*law"*, in the absence of any act, decision or measure implementing that law and that they have exhausted all legal remedies provided by law, when the same exist in light of the circumstances of a specific case (see the case of the Court, KI122/20, Applicant *Rijad Isufi*, Resolution on inadmissibility of 20 January 2021).

101. On the other hand, in its case law, the ECtHR has emphasized that the Convention does not guarantee the file an "*actio popularis"* and that it is not its role to assess the relevant law and application "*in abstracto"* of any law. The ECtHR allows filing such applications, if the Applicant is required to (i) change his/her behavior; or (ii) the Applicant risks being prosecuted; or, (iii) is a member or belongs to a group of people who are at risk of being directly affected by the law in question. (see ECtHR cases, *Tănase v. Moldova*, cited above, paragraph 104; *Michaud v. France,* cited above, paragraphs 51-52; *Sejdić and Finci v. Bosnia and Herzegovina*, cited above, paragraph 28).

102. Consequently, the Court notes that based on the case law of the Court and the ECtHR, in order for the Applicant to be considered an authorized party to challenge a law, he/she must prove that: (i) he/she is directly affected by the law; (ii) that he/she has been asked to change his/her behavior; and (iii) has exhausted legal remedies.

i) Whether the Applicant is directly affected by the law;

103. Initially, the Court notes that the Applicant had been equipped with a valid license and work permit to exercise sports betting based on Law 04/L-080 on Games of Chance (now repealed) until 7 August 2019.

104. Regarding the above-mentioned criteria, the Court recalls that in the case before us, the Applicant claims to have been directly affected by the challenged Law, through which all games of chance were prohibited and closed in the territory of the Republic of Kosovo, since with the entry into force of this law on May 10, 2019 and with the Notice [ATK/DLF/07/18-2019] of the TAK of May 3, 2019 on the revocation of the Applicant's license and work permit, upon the entry into force of the challenged Law, his work activity has been interrupted with immediate effect.

105. In support of its claim, the Applicant has emphasized that taking into account the fact that game of chance was declared illegal, he was forced to stop his activity since if he continued with the activity he would risk the commission of the criminal offense.

106. Regarding the fulfillment of the first condition, for the Applicant to be considered an authorized party, namely to prove that he was directly affected by the law and was a direct victim, Court notes that in the circumstances of the specific case, after the adoption of the challenged Law, through the implementing measure, Notification [ATK/DLF/07/18-2019] of the TAK of May 3, 2019, the Applicant was notified of the revocation of the license and work permit , respectively, through this measure, the exercise of economic activity was immediately prohibited and i the work license was revoked.

107. Therefore, it results that the Applicant was notified through the Notice [ATK/DLF/07/18-2019] of the TAK of May 3, 2019, that as of May 10, 2019, his work license would be revoked. Through the Notice of TAK, the Applicant was also informed that with the revocation of the license, any games of chance activity was considered illegal based on the challenged Law.

108. Furthermore, the Court notes that the Decision-announcement of the Directorate of Games of Chance of TAK [with reference no. TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of July 4, 2019, were confirmed by the Judgment [A. no. 1861/2019] of the Basic Court, Judgment [AA. no. 242/2021] of the Court of Appeal, as well as with the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court.

109. Consequently, the Court concludes that through the notification of TAK "*as an enforcement measure"* of the challenged Law and the subsequent judgments of the regular Courts with the removal of the valid work license of the Applicant, he was immediately prohibited from exercising economic activity by closing his business activity.

110. Therefore, in the light of all said above, the Court concludes that the Applicant in the present case was not directly affected by the challenged Law but by the Decision-announcement of the Directorate of Games of Chance of TAK [with reference no. TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of July 4, 2019, as an implementation measure of the challenged Law.

111. As a result of the above, the Court assesses that the Applicant is not considered a direct victim of the challenged Law, since as an implementation measure of the challenged Law he was a direct victim of the TAK Notice, in which case this the last in implementing the challenged Law, had notified the Applicant that his license was revoked.

Regarding the authorized party – the right of the individual (legal person) to challenge Decisions of regular Courts.

112. Regarding the right of the Applicant, namely the legal entity, to challenge the decisions of the regular Courts, the Court recalls that Article 113, paragraph 7 provides that "*Individuals are authorized to raise violations by public authorities of their individual rights and freedoms, guaranteed by the Constitution, but only after exhausting all legal remedies established by law*". Furthermore, the Court notes that, in accordance with paragraph 4 of Article 21 of the Constitution, even a legal person, namely the petitioner, has the right to file a constitutional lawsuit, referring to the constitutional rights that apply to legal persons, for as far as they are applicable (see Court case, KI41/09, Applicant *AAB-RIINVEST University*, Resolution on inadmissibility of 21 January 2010; see also the ECHR case, *Case of Party for a Democratic Society (DTP) and others v. Turkey*, no. 3840/10, Judgment of 12 January 2016).

113. Consequently, the Court considers that the Applicant has fulfilled the criteria to be accepted as a party authorized to challenge the judgment of the Supreme Court [ARJ. UZVP no. 83/2021] of September 7, 2021, in accordance with articles 21.4 and 113.7 of the Constitution, articles 47 and 49 of the Law, as well as paragraph (1) of rule 39 of the Work Regulations, because he has exhausted all legal remedies which had them available.

Regarding the Authorized Party

114. Finally, the Court concludes that the Applicant has fulfilled the criteria to be accepted as a party authorized to challenge (i) the judgment of the Supreme Court [ARJ. UZVP no. 83/2021] of September 7, 2021 in accordance with Articles 21.4 and 113.7 of the Constitution, Articles 47 and 49 of the Law, as well as paragraph (1) of Rule 39 of the Work Regulations.

115. Regarding the possibility of challenging the constitutionality of the challenged Law, the Court, as it has emphasized above, considers that the Applicant is not directly affected by the challenged Law but by the interim decision as an implementation measure of the challenged Law, respectively the Decision-Notification of Directorate of Games of Chance of TAK [with reference no. TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of July 4, 2019, whereby it was announced that the challenged Law which prohibits the games of chance in the entire territory of the Republic of Kosovo, and that from that date the Applicant's work license would be revoked.

116. In light of the above, the Court assesses that the Applicant is not considered a direct victim of the challenged Law, since based on the case law of the ECtHR and the Court, in order for an individual to challenge a law, it is required that the law was applied without implementing measures

Regarding the act of a public authority

117. In this regard, the Court refers to the above mentioned paragraphs 1 and 7 of Article 113 of the Constitution and Article 47 [Individual Requests] of the Law, which establish:

> *"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.*

118. The Court also refers to paragraph (2) of Rule 76 [Referral pursuant to Article 113.7 of the Constitution and Articles 46, 47, 48, 49 and 50 of the Law] of the Rules of Procedure, which, among others, provide:

> *(2) A referral under this Rule must accurately clarify what rights and freedoms claimed to have been violated and what concrete act of public authority is subject to challenge*

119. In this regard, in terms of fulfilling the above criteria, the Court finds that the Applicant has clarified the act of the public authority whose constitutionality it challenges, specifically Article 1 of the challenged Law and the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, of 7 September 2021.

120. The Court recalls that the Applicant before the Court, in addition to the Law, also challenges the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, regarding the Judgment [AA. no. 242/2021] of the Court of Appeal and the Judgment [A. no. 1861/21] of the Basic Court.

121. Consequently, the Court concludes that the Applicant challenges the acts of public bodies as defined in paragraph 7, article 113 of the Constitution and other provisions of the Law and the Work Regulations.

Regarding the exhaustion of legal remedies

122. In this regard, the Court refers to the aforementioned paragraphs 1 and 7 of Article 113 of the Constitution and paragraph 2 of Article 47 (Individual Requests) of the Law and point (b), paragraph (1), of Rule 39 (Admissibility Criteria) of the Rules of Procedure, which establish:

> *Article 47*
> *(Individual Requests)*
>
> *(...)*
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*
>
> *Rule 39*
> *[Admissibility Criteria]*
>
> *(1) The Court may consider a referral as admissible if:*
> *(...)*
> *(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.*

123. The Court notes that paragraph 7, Article 113 of the Constitution foresees the obligation to exhaust "*exhausting all legal remedies established by law*". This constitutional obligation is also provided in article 47 of the Law and in point (b) of paragraph (1) of rule 39 and applies to natural and legal persons, as far as it is applicable.

124. In this regard, the Court must determine whether all legal remedies have been exhausted by the Applicant, in the capacity of an individual, namely a legal entity. The conditions to assess whether this obligation has been fulfilled are well defined in the case law of the Court and in the case law of the ECHR, in accordance with which, according to Article 53 [Interpretation of Human Rights Provisions] of the

Constitution, the Court is forced to interpret the basic human rights and freedoms guaranteed by the Constitution.

125. The Court recalls that on August 28, 2019, the Applicant submitted to the Court a Referral, which was registered with the number KI136/19, constitutional review of the challenged law which entered into force on May 10, 2019, i.e. within the deadline of determined by Article 49 of the Law on the Court.

126. In this regard, the Court, through the Decision on inadmissibility in the case KI136/19, had declared the request of the Applicant as premature since Tax Administration of Kosovo had not issued "*acts, decisions or implementing measures*" which have served to implement the challenged Law, against the latter he had complained in the Courts regular and there was no final decision regarding the case.

127. Based on the principle of subsidiarity and taking into account that the procedure was ongoing in the regular Courts, the Court assessed that the Applicant still had legal remedies available to realize its constitutional rights and therefore instructed to exhaust legal remedies before the regular Courts.

128. The Court further notes that the Applicant has exhausted the available legal remedies, in accordance with the Court Decision in case KI136/19, respectively followed the procedures before the Basic Court, the Court of Appeal and the Supreme Court, which are considered accessible and effective legal remedies. Moreover, the Court notes that the Applicant, during all the procedures before these regular Courts, has raised the issue of assessing the constitutionality of the challenged Law.

129. As a result of exhaustion of available legal remedies, the Court notes that the last decision in this case is the Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, of 7 September 2021.

Regarding accuracy of the Referral and deadline

130. Further, the Court further examines whether the Applicant has met the admissibility requirements, as further specified by the Law and the Rules of Procedure. In this connection, the Court first refers to Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which provide:

Article 48
(Accuracy of the Referral)

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

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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.

131. The Court recalls that the same conditions are further described in points c and d, paragraph 1, of rule 39 [Admissibility criteria] and paragraphs 2 and 4 of rule 76 [Request in accordance with Article 113.7 of the Constitution and Articles 46, 47, 48 and 50 of the Law] of the Work Regulations.

132. Regarding the fulfillment of these conditions, the Court notes that the Applicant has clarified which fundamental rights and freedoms guaranteed by the Constitution are alleged to have been violated and that he has specified the concrete acts of the public authorities which it challenges in accordance with Article 48 of the Law and the relevant provisions of the Work Regulations.

133. As a result of exhausting all available legal remedies, the Court notes that the final decision in this case is the Supreme Court Judgment [ARJ. UZVP. no. 83/2021] of September 7, 2021, while the Applicant's request for constitutionality assessment was submitted on October 18, 2021.

134. Therefore, the Court comes to the conclusion that the requester has submitted the request within the deadline set by Article 49 of the Law and the relevant provisions of the Work Regulations, respectively within the four-month deadline.

Regarding other admissibility criteria

135. Finally, and after examining the Applicant's constitutional complaint, the Court assesses that the request cannot be considered clearly unfounded in the sense of Article 39 (2) of the Work Regulation and that there is no other basis to declare it inadmissible, since none of the conditions set out in rule 39 (3) of the Work Regulations are applicable in this case (see the ECHR case, *Alimuçaj vs. Albania*, Application no. 20134/05, Judgment of 9 July 2012; see also Court case, KO73/16, Applicant *Ombudsperson*, Judgment of 8 December 2016, paragraph 49).

Conclusion regarding the admissibility of the Referral

136. The Court comes to the conclusion that the Applicant (i) is not an authorized party to challenge the challenged Law, since the Court assesses that the Applicant was not directly affected by the challenged Law as an enforcement measure was issued in relation to it, specifically TAK announcement; and as regards the challenged Judgment (ii) is a party authorized to challenge it before the Court; that he has exhausted its legal remedies as detailed above; that he has clarified the rights and freedoms he claims have been violated; that he submitted the request within the deadline; that the request is not clearly unfounded; and that there are no other eligibility criteria that have not been met.

137. As a result, the Court declares the Referral admissible.

Merits of the Referral

Introduction

138. The Court first recalls the essence of the case, which is related to the fact that the Applicant was equipped with business license to exercise the activity of sports betting. On May 10, 2019, with entry into force of the challenged Law, the preliminary Law on Games of Chance was repealed and all games of chance in the territory of the Republic of Kosovo were closed and banned. On May 3, 2019, a few days before the entry into force of the challenged Law, TAK had notified the Applicant of the revocation of its business license from May 10, 2019, the day of the entry into force of the law, thus

issuing an enforcement measure in function of law enforcement. Against this notification, the Applicant submitted a complaint to TAK, which was rejected.

139. Then, the Applicant submitted a lawsuit for administrative conflict to the Basic Court requesting the annulment of TAK's decision and the decision-notification of TAK's Gaming Directorate, as well as for its business license to remain valid . The Applicant also requested that the issue of compatibility of Article 1 of the challenged Law be referred to the Constitutional Court. The Basic Court, through the Judgment [A. no. 1861/19] rejected as unfounded the claim of the Applicant against the Decision of TAK, finding that the latter had correctly applied the law and rejected the proposal of the Applicant to turn to the Constitutional Court regarding the compatibility of The challenged law with constitutional norms.

140. Against the above-mentioned Judgment, the Applicant submitted an appeal to the Court of Appeals claiming substantial violations of the procedural provisions and incorrect application of substantive law. The Court of Appeal, through the Judgment [AA. no. 242/2021], rejected this appeal as unfounded and confirmed the Judgment of the Basic Court. Against the Judgment of the Court of Appeal, the Applicant submitted a request for an extraordinary review of the judicial decision in the Supreme Court due to the violation of the material and procedural right, as well as the violation of the constitutional provisions. In the request for extraordinary reconsideration of the Court decision, the Applicant asked the Supreme Court to raise before the Constitutional Court the issue of compatibility of articles 1 and 2 of the challenged Law with article 46 of the Constitution. The request for extraordinary reconsideration of the Court decision was rejected as unfounded through the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court since, according to its reasoning, the lower level Courts had acted correctly and in accordance with the challenged law in case of rejection of the plaintiff's lawsuit. Further, as regards the request of the Applicant to refer the issue of compatibility of the relevant provisions of the challenged Law with the constitutional norms to the Court, the Supreme Court had rejected it emphasizing that the Courts of the lower instance could not deal with the issue of the constitutionality of the challenged law, since this can be a matter for review only in the Constitutional Court.

The scope of constitutional control

141. Regarding the scope of the constitutional control, the Court recalls that the Applicant challenges the constitutionality of Article 1 of the challenged Law and the decisions of the regular Courts whereby the TAK's decision to revoke the business license and work permit of the Applicant, claiming that the constitutional rights of the Applicant have been violated.

142. The Court after elaborating the criteria to assess whether the Applicant to be considered an authorized party for challenge a law, he/she must prove that: (i) he/she is directly affected by the law; (ii) that he has been asked to change his behavior; and (iii) has exhausted legal remedies, the Court concluded that the Applicant is not a direct victim of the challenged Law, considering that the Applicant, through the TAK Notice, as an enforcement measure of the Law, was notified of the removal of its business license and work permit for the exercise of its business.

143. Therefore, the Court will not be released in the constitutional review of the challenged Law, but the constitutional review will be limited to the assessment of whether the decisions of the regular Courts as well as the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court, its rights protected by (i) Article 46 [Property Protection] of the Constitution and Article 1 of Protocol no. 1 of the ECHR; (ii) Article 31 [Right to a Fair and Impartial Trial] of the Constitution in relation to Article 6 of the ECHR; as well as

(iii) Article 54 [Judicial Protection of Rights] of the Constitution in relation to Article 13 of the ECHR. In the following, the Court will examine these claims of the Applicant separately.

Regarding the allegations for violation of (I) Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

144. Further, the Court first briefly recalls the claims of the Applicant in relation to the violation of Article 46, as regards the challenged Judgment which is the subject of the examination of the merits.

145. The Applicant before the Court claims that the ban on business activity and the revocation of the license through Notification TAK/DLF 07/43-2019 of the Directorate of Games of Chance of TAK, Decision no. 238/2019 of the Division of Appeals of TAK, and the decisions of regular Courts, is contrary to Article 46 of the Constitution in relation to Article 1 of Protocol no. 1 of the ECHR.

146. In support of its allegation for violation of Article 46 of the Constitution in relation to Article 1 of Protocol No. 1 of the ECHR, the Applicant refers to the case law of the ECtHR, namely the case *Megadat.com SRL v. Moldova*, where the ECtHR stated that the cancellation of the business license means a clear interference with the right to enjoy property. In relation to this case, the Applicant also referred to the finding of the ECtHR that, even though the revocation of the license was based on the law of Moldova, the limitation or the taking of the license by this company was not proportional to the purpose of the legal norm.

147. Furthermore, the Applicant before the Court claims that there is no legitimate purpose in case of interference with this constitutional right. In this regard, the Applicant refers to the Concept Document of the challenged Law, dated December 11, 2018, where on page 24 of Chapter 4, he concludes that "*it is of general interest to allow and regulate the games of chance as they are in the interest of Kosovo, as they increase the number of businesses in Kosovo, create jobs, increase direct investments, and promote competition in the market*". This concept paper, according to the Applicant, argues that the games of chance in Kosovo affects the reduction of unemployment and the increase of general well-being.

148. In this regard, the Applicant argues that the prohibition of all games of chance, including sports betting and lottery, which do not present any harm or danger to the state or the citizen but serve only for recreational reasons. According to him, "*even if there could be a general interest in restricting games of chance in some way, the total and immediate restriction within 1 day (not sparing sports betting and companies that have a license valid for a certain period) of this business activity is not respects the principle of proportionality, since this principle requires that milder measures be taken to achieve the goal of protecting the general interest*". In this regard, the Applicant emphasizes that examples of other appropriate measures could have been "*...restriction of working hours, limitation of the age for playing games of chance, determination of locations where this activity cannot be carried out, limitation of the amount of money with which games of chance can be carried out, or measures of others in accordance with the decisions of the European Court*". This, according to the Applicant, argues that the total and immediate stoppage of the economic activity of games of chance constitutes interference and limitation of the right to property protection in violation of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR.

A. Applicability of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

149. The Court recalls that the Applicant started its business of games of chance in 2007, and based on the case documents, it follows that the Applicant's work license was renewed periodically (every year), whereas in 2017, the Applicant of the request was equipped with the last license and work permit, valid from 8 August 2018 to 9 August 2019.

150. Then, with the adoption of the challenged Law in March 2019, namely on May 3, 2019, the Applicant, a few days before the entry into force of the challenged Law, accepted TAK's notification that its work license would be revoked on May 10, 2019 and that its business activity had to be terminated.

151. In the case before us, the Applicant claims that the revocation of the work license, through the entry into force of the challenged Law on May 10, 2019, as well as the decisions of regular Courts, are in violation of Article 46 [Property Protection] of the Constitution, as well as Article 1 of Protocol no. 1 of the ECHR.

152. The Court, based on what was said above, will then focus on examining the claims of the Applicant if the decisions of the regular Courts are contrary to Article 46 [Property Protection] of the Constitution, as well as Article 1 of Protocol no. 1 of the ECHR.

153. To address the claims of the Applicant for violation of Article 46 of the Constitution in relation to Article 1 of Protocol no. 1 of the ECHR, the Court will first assess whether the license constitutes "*property*" within the meaning of these provisions, so that the Court can ascertain whether in the specific case Article 46 [Property Protection] of the Constitution and Article 1 of Protocol no. 1 of the ECHR.

154. In this regard, the Court refers to the case law of the ECtHR, through which it is determined that the license to exercise business constitutes property, the cancellation of that license represents an interference with the right guaranteed by Article 1 of Protocol no. 1 of the ECHR (see the cases of the ECtHR, *Megadat.com SRL v. Moldova,* no. 21151/04, Judgment of 8 April 2008, paragraphs 62-63; *Bimer SA v. Moldova*, no. 15084/03, Judgment of July 10, 2007, paragraph 49; *Rosenzweig and Bonded Warehouses Ltd. vs. Poland*, of November 30, 2005, no. 51728/99, paragraph 49; *Capital Bank AD v. Bulgaria*, of February 24, 2006, request no. 49429/99) paragraph 130; *Tre Traktörer Aktiebolag v. Sweden,* no. 10873/84, Judgment of July 7, 1989, paragraph 53; *Vékony v. Hungary*, no. 65681/13, Judgment of June 1, 2015, paragraph 29; *Fredin v Sweden* (No. 1), no. 12033/86, Judgment of February 18, 1991, paragraph 40; *Malik v United Kingdom*, no. 23780/08, Judgment of September 24, 2012, paragraph 90).

155. Initially, the Court notes that the ECHR, throughout its case law, has consistently considered the license as "*property*", within the scope of Article 1 of Protocol no. 1 of the ECHR, even considering that the revocation of a valid license for conducting business activity, in certain cases, constitutes a violation of the right to peaceful enjoyment of property according to Article 1 of Protocol no. 1 of the Convention (see ECHR cases, *Megadat.com SRL v. Moldova*, no. 21151/04, Judgment of April 8, 2008, paragraph 63; *Bimer SA vs. Moldova*, no. 15084/03, Judgment of 10 July 2007, paragraph 49).

156. Furthermore, in the light of the Court's case law, the revocation of valid business licenses constitutes interference with the right to the peaceful enjoyment of property,

guaranteed by Article of Protocol no. 1 of the ECHR. It constitutes a control measure of the use of the property, which is examined according to the second paragraph of Article 1 of Protocol no. 1 (see ECtHR cases, *Tre Traktörer Aktiebolag v. Sweden,* cited above, paragraph 55; *Rosenzweig and Bonded Warehouses Ltd. vs. Poland*, no. 51728/99, cited above paragraph 49).

157. The Court then further notes that the possession of the license was a fundamental condition upon which the Applicant depended for the conduct of its business and that its revocation had the effect of automatically placing it in compulsory liquidation. Therefore, the revocation of the license represented an interference in the property of the Applicant bank and Article 1 of Protocol no. 1 (see the ECHR case, *Capital Bank AD v. Bulgaria*, cited above, paragraph 130).

158. In addition, in case *Vékony v. Hungary*, the ECtHR considered the application where the Applicant's previous license to sell tobacco had been revoked by law, instead of which he was not given another one in the new procedure through the tender. In this case, the ECtHR emphasized that it was difficult for the Court to imagine that this permit, which once guaranteed a significant part of the Applicant's turnover, would not be considered "*property*" in terms of Article 1 of Protocol no. 1. The ECtHR further recalled that the removal of the license to exercise business activity constituted an interference with the right to the peaceful enjoyment of property, as defined in Article 1 of Protocol no. 1. Taking into account the obvious economic interests linking the retail sale of tobacco to the Applicant's business in general, the Court assessed that the legal withdrawal of a long-term tobacco license represented an interference with its rights under Article 1 of Protocol no. 1 and that regardless of the harmful consequences of smoking that are made possible by the retail sale of tobacco. (see the ECHR case, *Vékony v. Hungary*, cited above, paragraph 29).

159. Further, according to the ECtHR, the mere possession of a license for terrestrial television broadcasting throughout the country, without allocating a specific broadcasting frequency, constituted a deprivation of the content of the license itself. *(*see the ECHR case, *Centro Europa 7 SRL and DI Stefano v Italy*, no. 38433/09, Judgment of June 7, 2012, paragraph 177).

160. Similarly, according to the ECtHR, the license for harvesting young mussels, related to the normal activity of the Applicant's aquaculture business, was considered "*property*" and the temporary ban on harvesting young mussels was held to be a restriction of that license (see ECtHR case, *O'Sullivan McCarthy Mussel Development Ltd v Ireland*, no. 44460/16, Judgment of October 8, 2018, paragraph 89).

161. Therefore, based on the above, the Court finds that the business license constitutes "*property*" in terms of Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR.

162. In the present case, the Court finds that the Applicant had a valid license and work permit, valid from August 8, 2018 to August 9, 2019, therefore, the Court concludes that the Applicant's claim falls within the scope of "property" within the meaning of Article 1 of Protocol no. 1 of the ECHR, as well as Article 46 of the Constitution and that both of these articles are applicable in this case.

B. Compatibility of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

163. Considering that the Court found that the Applicant's license with a validity period from August 8, 2018 to August 9, 2019, constitutes "*property*" and as a result, Article

46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, the Court will continue with the assessment of whether in this particular case there is a violation of Article 46 [Property Protection] of the Constitution. Therefore, the Court under (B.1) will recall the content of Article 46 [Property Protection] of the Constitution and Article 1 of Protocol no. 1 of the ECHR, and then under (B.2) to present the general principles based on the case law of the Court and the case law of the ECtHR regarding the right to property and the possibilities when a right can to be limited. After this analysis under (B.3), the Court will apply the general principles derived from the case law of the Court and the ECtHR in the circumstances of the concrete case.

(B.1) Content of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

164. In this regard, the Court first recalls the content of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

> 1. *"The right to own property is guaranteed.*
> 2. *Use of property is regulated by law in accordance with the public interest.*
>
> 3. *No one shall be arbitrarily deprived of property. 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."*
>
> *[...]*
>
> *Article 1 [Protection of Property] of Protocol 1 of the ECHR:*
>
> 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*
>
> 2. *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

(B.2) Basic Principles of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No. 1 of the ECHR.

165. The content of Article 1 of Protocol No. 1 of the ECHR and its application have been interpreted by the ECtHR through its case law, which, as noted above, the Court will refer to in relation to the interpretation of allegations of the Applicant for violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 of the Convention.

166. With regard to the rights guaranteed and protected by Article 46 of the Constitution, the Court first considers that the right to property according to paragraph 1 of Article 46 of the Constitution guarantees the right to possession of property; paragraph 2 of Article 46 of the Constitution defines the manner of use of property by clearly specifying that its use is regulated by law and in accordance with the public interest;

and, in paragraph 3, guarantees that no one may be arbitrarily deprived of property, also setting out the conditions under which property may be expropriated (see the Court's Case KI50/16, Applicant *Veli Berisha and others*, Resolution on Inadmissibility, of 10 March 2017; KI 67/16, Applicant *Lumturije Voca*, Resolution on Inadmissibility, of 6 December 2016).

167. The Court recalls that based on paragraph 2 of Article 46 of the Constitution, the right to property can be limited by law. In this case, the Court assesses that the Assembly, as a legislative body, has the right to regulate by law the use of property, in accordance with the public interest.

168. Whereas, regarding the rights guaranteed and protected by Article 1 of Protocol no. 1 of the ECHR, the Court notes that the ECtHR has found that property rights consist of three different rules. The first rule, which is defined in the first sentence of the first paragraph and which has a general nature, formulates the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, includes deprivation of property and subjects it to certain conditions; The third rule, which is included in the second paragraph of this article, recognizes the states, among others, the right to control the use of property in accordance with the general interest, with the implementation of those laws that they consider necessary for this purpose; (see ECtHR case, *Sporrong and Lonnrot v. Sweden*, nos. 7151/75, 7152/75, Judgment of 23 September 1982, paragraph 61; and Court case, KI86/18, Applicant *Slavica Đordević*, Judgment of 3 February 2021, paragraph 140).

169. The above three rules are not, however, "*different*" in the sense that they are not related. Rules two and three deal with special cases of interference with the right to the peaceful enjoyment of property and must therefore be interpreted in the light of the general principle laid down in the first rule (see ECHR cases, *Bruncrona vs. Finland*, of February 16, 2005, request no. 41673/98 paragraph 65; *Anheuser-Busch Inc. vs. Portugal*, of January 11, 2007 request 73049/01 paragraph 62; *James and others v United Kingdom*, no. 8793/79, Judgment of February 21, 1986, paragraph 37; *Beyeler v. Italy*, no. 33202/96, Judgment of 5 January 2000, paragraph 98; and see Court case, KI129/16, Applicant "*KOSBAU GmbH"*, Decision on inadmissibility of November 13, 2017, paragraph 35).

170. The above provisions, however, shall not in any way diminish the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or contributions. or other fines (see ECtHR cases, *Former King of Greece and others vs. Greece*, no. 25701/94, Judgment of November 23, 2000, paragraph 50).

171. However, the intervention must meet several conditions: (i) it must be in accordance with the principle of legality; and (ii) pursue a legitimate aim in a manner that is (iii) reasonably proportionate to the aim sought to be achieved (see ECHR case, *Beyeler v. Italy*, cited above, paragraphs 108 - 114).

172. This approach represents the structure of the method that the Court uses to examine cases where it finds that Article 46 of the Constitution and Article 1 of Protocol no. 1 are applicable. It consists of a series of successive steps in which the following questions are resolved: Has there been any interference with the Applicant's right to the peaceful enjoyment of "*property"* if so, I must assess whether that intervention constitutes a test of ownership, If not, I must assess whether it is about controlling the use of ownership, while if the measures that affected the rights of the Applicant cannot be considered deprivation either nor control of the use of ownership, the Court

interprets the factual situation of the case in the light of the general rule of respect for the peaceful enjoyment of "*property"*.

(B.3) Application of the above mentioned principles to the circumstances of the present case

173. To examine the claims of the Applicant regarding the violation of Article 46 [Property Protection] of the Constitution and Article 1 of Protocol no. 1 of the ECHR, the Court must first apply a test consisting of 4 (four) steps, namely the Court must determine: (1) whether there have been obstacles or interference in the peaceful enjoyment of property and what type of interference exists in the specific case; (2) if the obstacle or interference with the peaceful enjoyment of the property is defined by law; (3) whether the obstruction or interference with the peaceful enjoyment of the property had a legitimate purpose; and (4) whether the obstruction or interference with the peaceful enjoyment of the property was proportionate.

(1) Have there been barriers or interference with the peaceful enjoyment of the property and what type of interference exists in the present case

174. The Court notes that the Applicant has a valid license and work permit, valid from August 8, 2018 to August 9, 2019.

175. The Court finds that with "*decision-notice"* of the Directorate of Games of Chance of TAK [with reference no. TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of July 4, 2019, the Applicant, namely the entity "CO-COLINA" LLC with NF. 600241963 "*REVOKED license no. 35/2017 issued on 12.10.2017, as well as the business permit*, valid until August 9, 2019".

176. Furthermore, the Court finds that the "Decision-announcement of the Directorate of Games of Chance of TAK [with reference no. TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of July 4, 2019, were confirmed by the Judgment [A. no. 1861/2019] of the Basic Court, Judgment [AA. no. 242/2021] of the Court of Appeal, as well as with the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court.

177. Therefore, the Court concludes that the Applicant's valid business license and work permit were revoked based on the decisions of public authorities and regular Courts.

178. The measures assessed by the Court, under the third rule, as control of the use of property, cover a variety of situations, including, for example, the following: cancellation of licenses or changes in the conditions of licenses that affect business activity (see cases of the ECHR, *Tre Traktörer Aktiebolag v. Sweden, cited a*bove, paragraph 55; *Rosenzweig and Bonded Warehouses Ltd. vs. Poland*, cited above, paragraph 49; *Megadat.com SRL v. Moldova*, cited above, paragraph 65; *Bimer SA vs. Moldova*, cited above, paragraph 49).

179. The Court recalls that in accordance with the case law of the ECtHR, obtaining or removing valid business licenses constitutes interference with the right to peaceful enjoyment of property, guaranteed by Article 1 of Protocol no. 1. It constitutes a control measure of the use of the property, which is examined according to the second paragraph of Article 1 of Protocol no. 1 (see ECtHR cases, *Tre Traktörer Aktiebolag v. Sweden,* cited above, paragraph 55; *Rosenzweig and Bonded Warehouses Ltd. vs. Poland*, cited above, paragraph 49).

180. Consequently, the Court concludes that through the notification of TAK and subsequent judgments of regular Courts with the removal of the Applicant's valid work

license, there was interference with the Applicant's right to property, namely the control of the use of the property of the Applicant, as a result of which he was immediately prohibited from exercising economic activity by closing its business activity.

181. However, the Court recalls that in the case *Megadat.com SRL v. Moldova*, the ECtHR stated that, in order for the measure of property use control to be justified and not to constitute a violation of the right to property, it must be provided for by law, in accordance with the general interest, and that there is a relationship of proportionality between the measure of given and the goal that is desired to be achieved (see the case of the ECHR, *Megadat.com SRL v. Moldova*, cited above, paragraph 66) Given that the Court found that there was interference with the right to property, in the following it will assess the second step defined above, if the interference was determined by law.

(2) was the barrier or interference with the peaceful enjoyment of property prescribed by law

2.1 General principles of the ECtHR presented in the case law regarding the expression "prescribed by law"

182. Any interference with the rights protected by Article 1 of Protocol no. 1 must be in accordance with the presumption of legality (see the cases of the ECHR, *Vistiņš and Perepjolkins v. Latvia*, no. 71243/01, Judgment of October 25, 2012, paragraph 95; *Béláné Nagy v. Hungary*, no. 53080/13, Judgment of December 13, 2016, paragraph 112). The expression "*under the conditions provided by law*" which refers to any interference with the right to the peaceful enjoyment of "*property"* should be interpreted in the same way as the expression "*unprecedented by law"* from Article 8 (Right to privacy) of the ECHR in relation to the rights protected by that provision or term "*prescribed by law"* which refers to interference with the rights protected under Articles 9, 10 and 11 of the ECHR.

183. The principle of legality is the first and most important requirement from Article 1 of Protocol no. 1. The second sentence of the first paragraph allows intervention in "*property"* only "*under the conditions provided by law",* and the second paragraph recognizes the right of states to control the use of property by implementing "*laws"*. In addition, the rule of law, one of the fundamental principles of a democratic society, is part of all articles of the ECHR (see ECHR cases, *Iatridis v. Greece*, Judgment of March 25, 1999, no. 31107/96, paragraph 58; *former king of Greece and others vs. Greece*, cited above, paragraph 79; AND *Broniowski v. Poland,* no. 31443/96, Judgment of June 22, 2004, paragraph 147).

184. The existence of a legal basis in domestic law is not sufficient in itself to satisfy the principle of legality. In addition, the legal basis must have a certain quality, that is, be in accordance with the rule of law and provide guarantees against arbitrariness. In this regard, it should be noted that when talking about "*the law",* Article 1 of Protocol no. 1 alludes to the same concept that the ECHR refers to in other articles when it uses that expression, a concept that includes laws and case law (see ECtHR cases. *Špaček, sro, v. Czech Republic*, no. 26449/95, Judgment of November 9, 1999, paragraph 54; *Vistiņš and Perepjolkins v. Latvia*, cited above, paragraph 96).

185. The principle of legality also means that the applicable provisions of domestic law are sufficiently accessible, precise and predictable in their application (see the cases of the ECHR, *Beyeler v. Italy*, cited above, paragraph 109; *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of*

Macedonia, no. 60642/08, Judgment of July 16, 2016, paragraph 103; *Centro Europa 7 SRL and DI Stefano v Italy*, t, cited above paragraph 187).

186. With respect to availability, the term "*law"* it must be interpreted in its material sense, not in its formal sense. Therefore, the fact that certain rules related to the exercise of rights protected by Article 1 of Protocol no. 1 have not been published in official newspapers in the form provided by the law for the adoption of legislative or regulatory instruments that bind citizens and legal entities in general, does not prevent these regulations from being considered "law", if the Court is convinced that the public is aware for them in a different way (see the ECHR case, *Špaček, sro, v. Czech Republic*, cited above, paragraphs 57 - 60).

187. Furthermore, the Court recalls that when examined based on Article 1 of Protocol no. 1, the laws with retrospective application which were found to represent legislative interventions were nevertheless in accordance with the requirement of legality from Article 1 of Protocol no. 1 (see ECtHR cases, *Maggio and others v. Italy*, no. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, Judgment of August 31, 2011, paragraph 60; *Arras and others v. Italy*, no. 17972/07, Judgment of May 14, 2012, paragraph 81).

188. The use of control measures implemented on the basis of laws issued after the emergence of the facts leading to the intervention, as such, are not illegal (see the ECHR case, *Saliba v. Malta*, no. 4251/02, Judgment of 8 February 2006, paragraphs 39 - 40) if those laws were not specifically enacted to influence the outcome of an individual case. Neither the ECHR nor its protocols prevent legislative intervention in existing contracts with retroactive effect (see ECHR cases, *Mellacher and others v. Austria*, no. 10522/83; 11011/84; 11070/84, Judgment of December 19, 1989, paragraph 50; *Bäck v. Finland*, no. 37598/97, Judgment of October 20, 2004, paragraph 68).

189. However, in certain circumstances, the retrospective application of legislation which has the effect of depriving a person of "*property"* existing which was part of "*ownership"* of it may constitute an interference which may upset the fair balance between requirements of general interest. on the one hand and the protection of the peaceful enjoyment of the right to "*ownership"* on the other hand (see the ECHR case, *Maurice v. France*, no. 11810/03, Judgment of October 6, 2005, paragraphs 90 and 93).

190. The principle of legality also includes the duty of the state or other public authority to comply with Court orders or decisions taken against it (see the ECHR case, *Belvedere Alberghiera Srl v. Italy*, no. 31524/96, Judgment of October 30, 2000, paragraph 56).

191. In the end, in the case *Aliyeva and others v. Azerbaijan,* The ECHR also concluded that when the clearly contradictory decisions, and especially the decisions of the Supreme Court, where judgments were issued that contained contradictory assessments of the same situation in the cases of the applicants and in cases initiated by other persons, represent interference with the right to the peaceful enjoyment of property, if no reasonable explanation is given for the differences, such interferences cannot be considered legal for the purposes of Article 1 of Protocol no. 1 of the Convention because they lead to inconsistencies in their procedures (see the case of the ECHR, *Aliyeva and others vs. Azerbaijan*, no. 66249/16 66271/16 75978/16 77309/16 77691/16 1038/17 52821/17, Judgment of 21 December 2021, paragraphs 130-135).

2.2. Application of the general principles of the criterion of prescribed by law

192. In relation to this criterion, the Court first of all notes that with "*decision--notice"* of the Directorate for Games of Chance of TAK [with no. reference ATK/DLF07/18-2019] of May 3, 2019, the following reasoning was given: *Considering that on May 10, 2019, Law No. 06/L-155 on the prohibition of games of chance, through this official letter we inform you that in implementation of the legal provisions from Article 1 of this law, which requires the prohibition and closure of all games of chance in the Republic of Kosovo, the Administration Kosovo Tax/Directorate for Games of Chance REVOKE license no. 35/2017, issued on 12.10.2017, to the entity "CO-COLINA" LLC with NF. 600241963.*

193. The Court notes that the Directorate of Games of Chance of TAK, in the case of revocation of the license, was invoked in Article 1 of Law no. 06/L-155 on the prohibition of games of chance, which determines that "*With this law, all games of chance are prohibited and closed in the entire territory of the Republic of Kosovo"*. Therefore, the Court assesses that the limitation was foreseen by law.

194. Based on the above, the Court concludes that the interference with the peaceful enjoyment of the Applicant's property has come with "*decision-notice"* of the Directorate of Games of Chance of TAK, and then with the Judgment [A. no. 1861/2019] of the Basic Court, Judgment [AA. no. 242/2021] of the Court of Appeal, as well as with the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court, which confirmed *decision-notification"* of the Directorate of Games of Chance of TAK [with no. reference TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of 4 July 2019.

195. While, the principle of legality also means that the applicable provisions of the internal law are sufficiently accessible, precise and predictable in their implementation, in the specific case we are dealing with a law voted in a public session of the Assembly, which has been published in the official gazette, and which is provided in article 3 that "*enters into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo*". Therefore, the Court concludes that the law was available to the Applicant and that the norms were correct and predictable).

196. Further, the Court notes that the TAK Notice was confirmed through the Judgment [A. no. 1861/2019] of the Basic Court, Judgment [AA. no. 242/2021] of the Court of Appeal and with the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court.

197. The Court also notes that with the Judgment [A. no. 1861/2019] of the Basic Court, it was reasoned that the intervention was made in accordance with the law and that it was foreseen by the law. Further, the Court recalls the reasoning of the Judgment of the Basic Court, where it is emphasized as follows "*The Court considers that the defendant [Kosovo Tax Administration] acted correctly when it issued the license revocation notice, dated 05.03.2019, to inform the plaintiff that, in accordance with the provisions of Article 1 of Law no. 06/L-155 on the prohibition of games of chance,* its *license no. 35/2017, issued on 12.10.2017. The Court considers this action of the defendant to be right, since in this case the defendant was obliged to implement the law in question, which entered into force on 05.10.2019. Provision of Article 1 of Law no. 06/L-155 on the prohibition of games of chance provides: This law prohibits and closes all games of chance in the entire territory of the Republic of Kosovo"*.

198. Furthermore, the same or similar justifications regarding the implementation of the provisions of Article 1 of the challenged Law were also given in the judgments of the

Court of Appeal and the Supreme Court, with the reasoning that the interference with property rights through the cancellation of the Applicant's valid licenses of the request, was foreseen by Article 1 of the challenged Law, approved by the Assembly, as a state institution to which the Constitution has given the right to exercise legislative power, and this fact is not challenged by the Applicant either.

199. The use of control measures implemented on the basis of laws issued after the emergence of the facts leading to the intervention, as such, are not illegal (see the ECHR case, *Saliba v Malta*, no. 4251/02, Judgment of 8 February 2006, paragraphs 39 - 40) if those laws were not specifically enacted to influence the outcome of an individual case. In the present case, the Court notes that the challenged law has a general effect and does not intend to affect the individual case of the Applicant, but acted *erga omnes* and aims to regulate the rules and the field of games of chance.

200. Therefore, the Court finds that the measures to control the use of the property, namely the revocation of the valid business license and work permit, have been approved based on Article 1 of the challenged Law, which has changed the previous law. Also, it is clear that this challenged provision was generally applicable, that it entered into force on May 10, 2019, before the decision to revoke the business license and work permit began to have legal effect and that, given its wording, the applicants could have expected them to be applied to them (see paragraph 61 above) (see the ECHR case, *Vistiņš and Perepjolkins v. Latvia*, cited above, paragraph 95).

201. Due to all that was said above, the Court finds that the limitation was foreseen by law, the provisions of the challenged Law were foreseeable because they were formulated with the necessary clarity and precision. Therefore, the Court comes to the conclusion that the interference with the Applicant's right to the peaceful enjoyment of the property in this case was made on the basis of the law.

(3) Has there been any barrier or interference with the peaceful enjoyment of property, legitimate purpose (general interest)

202. According to the ECtHR, any interference with the rights and freedoms guaranteed by the Convention must have a legitimate purpose. Similarly, in case of inaction of the state. The very principle of “fair balance” as an integral part of Article 1 of Protocol no. 1 presupposes the existence of a general interest of the community. Moreover, it must be reiterated that the various rules contained in Article 1 are not different, in the sense of incoherence, and that the second and third rules refer only to special cases of interference with the right to the peaceful enjoyment of property. One of the effects of this is that the existence of the “public interest” required in the second sentence, or the “general interest” in the second paragraph, are in fact a consequence of the principle defined in the first sentence, so that interference with the exercise of the right to the peaceful enjoyment of property in the sense of the first sentence of Article 1 must also have a purpose in the public interest (see the cases of the ECHR, *Broniowski v. Poland*, cited above, paragraph 148; *Könyv-Tár Kft and others v. Hungary*, no. 21623/13, Judgment of March 16, 2018, paragraph 45, *Beyeler v. Italy*, cited above, paragraph 111).

203. The list of purposes for which intervention would fall within the scope of the concept of public interest is extensive and may include various new purposes that are subject to public policy considerations in different factual contexts. Specifically, the decision to enact a law confiscating property or social security compensation usually involves consideration of political, societal and social issues (see ECtHR cases, *Former King of Greece and others vs. Greece*, cited above, paragraph 87; *Vistiņš and Perepjolkins v. Latvia*, cited above, paragraph 106).

204. Under the system of protection established by the ECHR, it is up to the national authorities to carry out an initial assessment of the existence of a problem of public interest that requires measures of deprivation of property or interference with the peaceful enjoyment of "*property"*. And in this, as in other areas covered by the safeguards of the Convention, national bodies enjoy a wide margin of appreciation. For example, the margin of appreciation enjoyed by the legislature in implementing social and economic rules is wide and the Court will respect the legislature's appreciation of what is "*in the public interest*", unless this assessment is clearly without a reasonable basis (see the ECHR case, *Béláné Nagy v. Hungary*of, cited above, paragraph 113).

205. Furthermore, the concept of "*public interest"* is necessarily broad (see the ECHR case, *Vistiņš and Perepjolkins v. Latvia*, cited above, paragraph 106; *R.Sz. vs. Hungary*, no. 41838/11, Judgment of November 4, 2013, paragraph 44; *Grudić v. Serbia*, no. 31925/08, Judgment of September 24, 2012, paragraph 75.). The Court usually respects states' claims that the intervention it is reviewing was in the public interest, and its review in this regard is of lower intensity. Therefore, the Applicant's claim that a particular measure in reality served a different purpose than that invoked by the respondent state in the context of a particular case before the Court rarely has a serious prospect of success. In any case, it is sufficient for the Court that the intervention is in the public interest, even if this interest is different from the interest expressed expressly by the State in the proceedings before the Court. Even, in some cases, the Court found the intention ex officio (see the cases of the ECHR, *Ambrosia v. Italy*, no. 31227/96, Judgment of January 19, 2001, paragraph 28; *Marija Božić v. Croatia*, no. 50636/09, Judgment of April 24, 2014, paragraph 58).

206. As a result of this respect for the assessment of local authorities, there are rare examples of situations in which the Court has not found that there is a public interest that would justify interference (see ECHR cases, *SA Dangeville v France*, no. 36677/97, Judgment of July 16, 2022, paragraphs 47 and 53 - 58 – non-return of prepaid tax; *Rosenzweig and Bonded Warehouses Ltd. vs. Poland*, cited above, paragraph 56.

207. Turning to the specific case, the Court notes that the Government of the Republic of Kosovo has prepared a Concept Document for the Games, as a result of the problem in the implementation of the Law no. 04/L-080 for Games of Chance. To address this problem, the Concept Document for Gambling provided three options: (i) the option without changes (status quo); (ii) policy change; and (iii) changing the existing implementation approach. The first option did not envisage taking any action, namely the continuation of the implementation of the law that was in force. On the other hand, the second option, that of changing the policy, consisted in drafting a new law that would affect the better control and supervision of games of chance and would positively affect the economic development of the country. Finally, the third option envisaged measures that would influence the change of the enforcement approach through media campaigns to improve public perception of games of chance as well as memorandums of cooperation between the competent authorities.

208. The concept Document for Games of Chance stated the problems characterizing Law No. 04/L-080 on Games of Chance, specifically the growth of the informal economy and tax evasion, which stemmed directly from the lack of fair application of the law in practice.

209. However, in this case, the Court assesses that the control of the market and regulation of games of chance rules represents a legitimate goal of the state in the public interest

in order to reduce the problems that characterized Law no. 04/L-080 on Games of Chance, more specifically the growth of the informal economy and tax evasion, which resulted directly from the lack of proper implementation of the law in practice. The Court recalls that the state authorities enjoy a wide margin of assessment both in terms of the choice of enforcement means, and in terms of ascertaining whether the consequences of enforcement are justified by the general interest to achieve the purpose of the given law (see the case of the ECtHR- of, *Beyeler v. Italy*, cited above, paragraph 112).

210. Finally, the Court concludes that, regardless of the fact that the legitimate purpose of the challenged law was not clearly stated by the Assembly upon the adoption of the challenged law, the Assembly followed a legitimate purpose upon the adoption of the challenged Law.

(4) Was the barrier or interference with the peaceful enjoyment of property proportionate namely in a fair balance

211. To be in accordance with the general rule defined in the first sentence of the first paragraph of Article 1 of Protocol no. 1, interference with the right to the peaceful enjoyment of "property", in addition to being foreseen in the law and in the public interest, must result in a "fair balance" between the requirements of the public interest of the community and the requirements to protect the fundamental rights of the individual *(*see ECtHR cases, *Beyeler v. Italy* cited above, paragraph 107; *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia and the former Yugoslav Republic of Macedonia*, cited above, paragraph 108).

212. In other words, in cases involving alleged violations of Article 1 of Protocol no. 1, the Court must assess whether, due to the action or inaction of the State, the person in question had to bear a disproportionate and excessive burden. When assessing compliance with this request, the Court must make a comprehensive review of the various interests in this matter, bearing in mind that the Convention aims to protect the rights which are "*practical and effective*". In this context, it should be emphasized that uncertainty - whether legislative, administrative or arising from the practices applied by the authorities, is a factor that is taken into account when assessing the behavior of a State (see the case of the ECtHR, *Broniowski v. Poland*, cited above, paragraph 151).

213. The search for this balance is embodied in the entire Convention and is also reflected in the structure of Article 1 of Protocol no. 1 (see ECtHR cases, *Sporrong and Lönnroth v. Sweden*, cited above, paragraph 69; *Brumărescu v. Romania*, no. 28342/95, Judgment of October 28, 1999, paragraph 78; *Saliba v Malta*, cited above, paragraph 36).

214. The issue of whether the right balance has been found becomes relevant only after it has been established that the intervention in question served the public interest, met the requirement of legality and was not arbitrary (see the cases of the ECtHR, *Iatridis v. Greece*, cited above, paragraph 58; *Beyeler v. Italy,* cited above, paragraph 107).

215. This issue is most often decisive for determining whether or not there has been a violation of Article 1 of Protocol No. 1. The Court usually conducts a detailed analysis of the proportionality requirement, as opposed to the slightly more limited examination of whether the interference occurred in the public interest.

216. The purpose of the proportionality test is to establish first how and to what extent the Applicant's exercise of the rights affected by the complained intervention was limited

and what were the negative consequences of the restriction imposed on the exercise of the Applicant's right to request in his/her situation. After that, this impact is compared with the importance of the public interest, due to which the intervention has come about.

217. During this examination, the Court considers many factors. There is no fixed list of factors in question. They vary from case to case, depending on the factual situation of the case and the nature of the intervention in question. The factors and facts that the Court takes into account during the test can be as follows; a) procedural factors, b) selection of measures; c) substantial issues relevant to the fair balance test; d) aspects related to the Applicant; e) compensation for interference in ownership as an element of fair balance.

218. In the present case, the Court notes that the Applicant had a valid license and work permit, valid from 8 August 2018 to 9 August 2019.

219. Further, the Court notes that there was an interference with the peaceful enjoyment of property, namely measures to control the use of the Applicant's property based on "*decision-notification"* of the Directorate of Games of Chance of TAK [with reference number no. ATK/DLF07/18-2019] of May 3, 2019, by which it was ordered that the Applicant, the subject "*CO-COLINA" LLC under NF 600241963, license no. 35/2017, issued on 12.10.2017*", as well as the work permit, valid until August 9, 2019.

220. Furthermore, the Court finds that the "Decision-announcement of the Directorate of Games of Chance of TAK [with reference no. TAK/DLF07/18-2019] of May 3, 2019, as well as TAK decision no. 238/2019, of July 4, 2019, were confirmed by the Judgment [A. no. 1861/2019] the Basic Court, Judgment [AA. no. 242/2021] of the Court of Appeal, as well as with the Judgment [ARJ. UZVP no. 83/2021] of the Supreme Court.

a) Procedural factors

221. Although Article 1 of Protocol no. 1 does not contain express procedural presumptions, the same has been interpreted as implying that the persons affected by the measure which intervenes on "*property"* should be offered reasonable opportunities to present their arguments to the responsible authorities in order to effectively challenge the measures in question, claiming, depending on the case, that they are illegal or that they constitute arbitrary and unreasonable behavior (see cases of the ECtHR, *GIEMSRL and others v. Italy*, no. 1828/06, Judgment of June 28, 2018, paragraph 302; AGOSI v. United Kingdom, no. 9118/80, Judgment of October 24, 1986, paragraph 55 and 58-60).

222. It is also relevant that the important arguments presented by the applicants were carefully examined by the authorities (see ECtHR cases, *Megadat.com SRL v. Moldova*, cited above, paragraph 74; *Bistrović v. Croatia*, no. 2577/05, Judgment of August 31, 2007, paragraph 37).

223. As for the procedural factors, the Court notes that the Applicant had the opportunity to challenge the decision, first before the second instance body of TAK, and later in regular Court proceedings in the Basic Court, the Court of Appeal and the Supreme Court , so that the Applicant has had a reasonable opportunity to present its arguments to the competent authorities in order to effectively challenge these measures, claiming, depending on the case, that they are illegal or that they constitute treatment arbitrary and unreasonable (see the ECtHR case, *GIEMSRL and others v. Italy*, cited above, paragraph 302).

224. However, the Court notes that the Applicant's main claim before the regular Courts was that Article 1 of the challenged Law was unconstitutional and that there was a violation of the Applicant's right to property, namely a violation of Article 46 of the Constitution. The Applicant also requested that, in case of doubt, the regular Courts refer the cases to the Constitutional Court for constitutional review.

225. Initially, the Court notes that with regard to the Applicant's request for referral of the case to the Constitutional Court, the Basic Court has reasoned as follows:

> *"The claims that the provision of Article 1 of Law no. 06/L-155 for the Prohibition of Games of Chance in violation of the specific norms of the Constitution of the Republic of Kosovo, specifically Article 46 of the Constitution that guarantees the protection of property and Article 1 of Protocol 1 of the European Convention on Fundamental Freedoms as well as the decisions of European Court of Fundamental Freedoms* [ECtHR]. *The Court in the administrative conflict procedure cannot give an assessment regarding the claims that they are in violation of Law no. 06/L-155 on the Prohibition of Games of Chance, with the norms of the Constitution of the Republic of Kosovo, and other international acts, therefore the Court in the Court session did not approve the proposal of the authorized representative of the plaintiff that this Court during the proceedings in the administrative conflict, t is addressed to the Constitutional Court of the Republic of Kosovo, the assessment of the compatibility of the Law in question with the Constitution of the Republic of Kosovo".*

226. Furthermore, the Court notes that regarding the Applicant's claim for the application of Article 1 of the challenged Law contrary to the Constitution, the following was emphasized in the reasoning of the Court of Appeal:

> *"While the claims that the provision of Article 1 of Law No. 06/L-155 on the Prohibition of Games of Chance has been applied, contrary to the specific norms of the Constitution of the Republic of Kosovo, specifically Article 46 of the Constitution which guarantees the protection of property, and Article 1 of Protocol 1 of the European Convention on Fundamental Freedoms, as well as the decisions of the European Court of Fundamental Freedoms, the Court of first instance in the administrative conflict procedure was rightly unable to give an assessment regarding this, therefore, the Court of the first instance in the judicial session rightly did not approve* its *proposal that this Court, during the proceedings in the administrative conflict, turn to the Constitutional Court of the Republic of Kosovo for the assessment of the compatibility of the Law in question with the Constitution of the Republic of Kosovo. Therefore, the panel of this Court assesses that the Court of first instance correctly decided when it was based on the provisions of the LKA, Law No. 06/L-155 on the Prohibition of Games of Chance, as well as Law No. 04/L-102 on Amendment and Supplement to Law No. 03/L-222 on Tax Administration and Procedures".*

227. Regarding the request of the Applicant to refer the case to the Constitutional Court, the Supreme Court stated:

> *"With Article 15 of the Law on Administrative Conflicts, it is determined that the administrative conflict cannot be developed against the acts issued in the cases, in which judicial protection outside the administrative conflict is provided, against the acts issued in the cases about which, according to the provision of the law no administrative conflict can be developed against administrative acts, which constitute a general obligation, issued by the administration bodies, except when they infringe the legal rights of the parties. In the present case, the lower*

instance Court, according to the provisions of this law, could not deal with the issue of the constitutionality of the Law on the Prohibition of Gambling No. 06/L-155, since this can be a matter for consideration only in The Constitutional Court of Kosovo".
Based on the above, the Supreme Court found that the claims in the claimant's request for an extraordinary review of the Court's decision are unfounded, because they have no impact on proving the factual situation except what the Court of second instance found. In the opinion of this Court, the challenged judgment of the Court of second instance is clear and understandable. In the reasoning of the challenged verdict, there are many reasons related to the decisive facts which this Court also accepts. The Court assesses that the material right has been applied correctly and that the law has not been violated to the detriment of the plaintiff."

228. The Court notes that none of the lower level Courts have accepted the Applicant's request to refer the case to the Constitutional Court. The Court further notes that the Basic Court and the Court of Appeals had concluded that in the administrative conflict procedure they could not give an assessment regarding the constitutionality of the challenged Law with the Constitution, whereas the Supreme Court had emphasized that the lower level courts could not to deal with the constitutional review of the challenged Law since the case could be considered only before the Constitutional Court.

229. In the light of the above, the Court finds that throughout the entire procedure before the regular Courts, the Applicant did not receive adequate and reasoned answers to the two main issues that the Applicant stated throughout the procedure: (i) the Courts of regulars did not consider with sufficient care the main claims of the Applicant that were related to the violation of the right to property; as well as (ii) the Applicant's request that, in case of doubt, the case be referred to the Constitutional Court for constitutional review (see the ECtHR case, *Megadat.com SRL v. Moldova*, cited above, paragraph 74; *Bistrović v. Croatia*, cited above, paragraph 37).

230. Therefore, the Court concludes that in terms of procedural factors, the Applicant had a reasonable opportunity to present its arguments to the competent authorities in order to effectively challenge these measures, claiming, depending on the case, that they are illegal or that constitute arbitrary and unreasonable treatment. However, during the procedure, the regular Courts did not carefully examine the Applicant's main claims regarding the violation of the right to property, as well as the Applicant's request that, in case of doubt, the case be referred to the Constitutional Court for constitutional review.

b) Selection of measures

231. One of the elements of the fair balance test is the question of whether there were other less intrusive measures that the public authorities could reasonably have implemented in pursuit of the public interest. However, the possible existence of such measures as such does not render the challenged legislation unjustifiable. Provided that the legislature remains within its own margin of appreciation, it is not for the Court to assess whether the legislation represented the best solution to deal with the problem or whether the legislature's discretion should have been exercised in a different way (see ECtHR cases, *James and others v United Kingdom*, cited above, paragraph 51; *Koufaki and Adedy v. Greece*, no. 57657, Decision of 7 May 2013, paragraph 48).

232. It may also be relevant whether it was possible to achieve the same goal through less intrusive measures on the Applicant's rights and whether the authorities have

considered the possibility of applying these less intrusive solutions (see ECtHR cases, *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/12, Judgment of March 8, 2012, paragraphs 651-654; *Vaskrsić v. Slovenia*, no. 31371/12, Judgment of July 25, 2017, paragraph 83).

233. In the case before it, the Court assesses that the intervention in the property, namely the measure of controlling the use of the property was immediate, through which the interruption of the Applicant's business activity was required and that there were no other alternative measures, in the case of the Applicant, since after the entry into force of the challenged Law, and as a result of the TAK Notice as an implementing measure, the Applicant was forced to stop its economic activity with immediate effect, thus facing the burden of severe and disproportionate.

234. Furthermore, the Court also refers to the answer sent by the Constitutional Court of Austria through the Forum of the Venice Commission regarding the request KI136/19, where it was emphasized that in 2006 it had decided that in a legal provision that is introduced immediately, without a transitional period, a request for a license for companies that exercise betting business is a non-proportional interference in the right to exercise business and therefore also unconstitutional (see Court case, KI136/19, Applicant *Co Colina*, Decision on inadmissibility of 17 May 2021, paragraph 69).

235. Therefore, the Court concludes that there no were other alternative measures, which are less intrusive, that the public authorities could have reasonably implemented in pursuit of the public interest. The Court concludes that the same goal could have been achieved by a less intrusive measure on the Applicant's rights, and that the authorities did not consider the possibility of implementing those less intrusive solutions.

c) Substantial relevant issues for the test of fair balance

236. In some cases, the fair balance test involves the question of whether the special circumstances of the case have been sufficiently taken into account by the State, including the question of whether the control measures "*property"* or a part of the property affected the value or benefit of the part not covered by the measures belonging to the Applicant (see cases of the ECtHR, *Azas vs. Greece*, no. 50824, Judgment of 21 May 2002, paragraphs 51-53; *Interoliva ABEE v. Greece*, no. 58642/00, Judgment of 10 October 2003, paragraphs 31-33)

237. The Court notes that in the present case, we are dealing with the control measure of "*property*", considering that the applicant's valid license and work permit were revoked, but there was no confiscation of property, such as the premises of the applicants, games of chance machines and other equipment that is necessary for games of chance.

238. Therefore, the Court considers that despite the fact that there was no confiscation of property, but only a control measure "*property*", with the revocation of the valid license and work permit, the Applicant suffered a reduction in the value of the parts of the property that were not included in the measures, because they lost the basic function they had while the license existed.

d) Aspects related to the Applicant

239. One of the most important factors for the balance test according to Article 1 of Protocol no. 1 of the ECHR is to see if the Applicant has tried to exploit any weakness

or loophole in the legal system (see the cases of the ECtHR, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v United Kingdom*, no. 117/1996/736/933-935, Judgment of October 23, 1997, paragraph 109). Similarly, in the case of the ECtHR *G.I.E.M.S.R.L. and others v. Italy,* The Court has emphasized that the degree of culpability or negligence of the Applicant or, at least, the relationship between their behavior and the violation in question, can be taken into account in order to assess whether the revocation was reasonable (see the ECtHR case *G.I.E.M. S.R.L. and others v. Italy,* cited above, paragraph 301).

240. Regarding this factor, the Court has no information either from TAK, nor from the regular Courts, nor from the Assembly of Kosovo that the Applicant has violated any norm, has been punished or has tried to benefit from any deficiency or void in the legal order. (see the ECtHR case, *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and others v. France*, Judgment of October 27, 2004, request no. 42219/98 et 54563/00, paragraphs 69 and 71).

241. Therefore, the Court finds that the Applicant did not try to take advantage of any deficiency or loophole in the legal order, that the Applicant was not found guilty or negligent in the use of the license in an illegal manner, so that the Court could assess that the measure of control of the use of the property was necessary.

e) Compensation for interference as an element of fair balance

242. The conditions of compensation are of material importance for the assessment of the fair balance and, and especially for the assessment of whether the challenged measure imposes an unreasonable burden on the Applicant (see ECtHR cases, no. 13092/87 and 13984/88, *Holy monasteries vs. Greece*, Judgment of 9 December 1994, paragraph 71; *Platakou v. Greece*, no. 38460/97, Judgment of December 5, 2001, paragraph 55). Taking property without payment of a reasonable amount related to its value usually constitutes disproportionate interference and a complete lack of compensation and may be considered justifiable under Article 1 of Protocol no. 1, of the ECHR only in exceptional circumstances.

243. What is reasonable depends on the circumstances of each case, but a wide margin of appreciation is possible when assessing the amount of compensation. The Court's authorization for review is limited to assessing whether the selection of compensation conditions falls outside the State's margin of appreciation in this domain (see the ECtHR case, *James and others v United Kingdom*, cited above, paragraph 54). The Court will respect the judgment of the legislative power regarding compensation for interference with the right to the peaceful enjoyment of "*property"* except in cases where it is clearly without a reasonable basis (see the case of the ECtHR, *Lithgow and others v United Kingdom*, no. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, Judgment of July 8, 1986, paragraph 122).

244. In the present case, the Court notes that the property control measures took place without any compensation for the Applicant. Measures to control property without payment of a reasonable amount in relation to its value will usually constitute unreasonable interference and a complete lack of compensation may be considered justified under Article 1 of Protocol no. 1 of the ECHR only in exceptional circumstances.

245. According to the ECtHR, under the legal systems of the Contracting States, the taking of property in the public interest for the public interest without payment of compensation is treated as justified only in exceptional circumstances that are not relevant to the present purposes. As regards Article 1 (P1-1), the protection of property

rights it provides would be largely illusory and ineffective in the absence of any equivalent principle (see the ECtHR case, *Lithgow and others v United Kingdom*, paragraph 122).

246. Therefore, the Court finds that the interference with the peaceful enjoyment of the Applicant's property occurred without the payment of any compensation to the Applicant and without the possibility to request such compensation based on the challenged law, therefore no "*fair balance"* between the requirements of the general interest of the community and the requirements of the protection of the fundamental rights of the individual has been reached.

Conclusion regarding the fair balance

247. Therefore, regarding the factors taken into account to establish whether there was proportionality in the interference with the right to the peaceful enjoyment of the Applicant's property, the Court concludes:

a) that in terms of procedural factors, that the Applicant had a reasonable opportunity to present its arguments to the competent authorities in order to effectively challenge these measures, claiming, depending on the case, that they are illegal or that constitute arbitrary and unreasonable treatment. However, during the procedure, the regular Courts have not carefully examined the Applicant's main claims regarding the violation of the right to property, as well as the Applicant's request that, in case of doubt, the case be referred to the Constitutional Court for constitutional review.
b) that there were no other alternative measures, which are less intrusive that public authorities could have reasonably implemented in pursuit of the public interest. The Court concludes that the same goal could have been achieved by a less intrusive measure on the Applicant's rights, and that the authorities did not consider the possibility of implementation of those less intrusive solutions,
c) that despite the fact that it has not come to confiscation of the property, but a measure of control "*property*", by revoking the valid licenses and permits to the Applicant, the value of the parts of the property that were not included in the measures was reduced, because they lost their basic function that they had during the existence of the license.
d) that the Applicant has not tried to take advantage of any deficiency or loophole in the legal order, that the Applicant has not been declared guilty or negligent in using the license illegally, so that the Court judges that the use control measure of the property, revocation of the license, was necessary.
e) that the interference with the peaceful enjoyment of the Applicant's property occurred without paying any compensation to the Applicant and without the possibility to request the same based on the challenged law, therefore no "*fair balance"* between requests. of the general interest of the community and of the requirements for the protection of the fundamental rights of the individual.

248. The Court brings attention to the case of the ECtHR, *Megadat.Com SRL v. Moldova*, where the ECtHR assessed that the measure taken by the state authorities against the company that provided Internet services was so severe that the company in question was forced to close the business and sell all its assets within a very short time (see the ECtHR case, *Megadat.com SRL v. Moldova*, cited above, paragraph 69).

249. In the end, the Court notes that the decision to revoke the license was immediate and did not foresee any compensation or transitional period that would enable the Applicant to continue its economic activity.

250. Based on the above, the Court concludes that, in the light of the prevailing circumstances of the case and the evaluations described above, the intervention in the property in the case of the Applicant was not proportionate, because he had a legitimate expectation that during the period for which he had the valid license and work permit, he would be able to exercise its economic activity and peacefully enjoy its property.

251. Therefore, the Court finds that all the decisions of the regular Courts in the case of the Applicant violate right of the Applicant for peaceful enjoyment of the property, guaranteed by Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, namely for the performance of its activity, also for the period from the day of revocation of the license, namely May 10, 2019, for the entire time he had a valid license, i.e. until August 9, 2019.

Regarding the allegation for a violation of (II) Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR

252. The Court first recalls that the Applicant states that the decision of the regular Courts have its right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

253. The Applicant emphasizes that the regular Courts should have declared whether the challenged Law and the corresponding Notice of TAK was constitutional or, otherwise, they should have referred to the Constitutional Court for interpretation. Consequently, according to the Applicant, despite its specific request, the regular Courts did not act in accordance with Article 31 of the Constitution to address and justify all the complaints of the parties in the procedure

254. In support of this claim, the Applicant further emphasizes that the Supreme Court has not addressed its claim for violation of the Constitution, specifically Article 46 [Property Protection] of the Constitution, as a result of the revocation of the license. In this regard, the Applicant declares as follows:

> *"The Supreme Court, contrary to Article 102 of the Constitution, which states that they act according to the Constitution and the Law, Article 113 point 8, has emphasized, in an unprecedented manner, that "the Courts of lower instances have not been able to deal with the constitutionality of the Law on Prohibition of Games of Chance no. 06/L-155, since this can be a matter for review only by the Constitutional Court of Kosovo" but it was rejected by the Constitutional Court according to Article 113.8 of the Constitution. When we started the Court proceedings, we were aware that the Law prohibits games of chance from the day it enters into force, so the decision of TAK was based on the law, we have requested the* constitutional review *of the prohibition on our activity/license even though we had a valid license. The only claims before these judicial instances were that the announcement of TAK and the Law on the Prohibition of Games of Chance are contrary to Article 46 of the Constitution, but we have not received an answer to them. So, the Basic Court, the Court of Appeal and the Supreme Court had to either confirm that the TAK Notice and the Law are constitutional, or refer to the Constitutional Court for interpretation. They didn't do either despite the specific request we had, even though according to Article 31 they have the obligation to address and justify all the complaints of the parties in the procedure, referring to the legal and constitutional provisions".*

255. In order to assess the claims of the Applicant regarding the violation of Article 46 [Protection of Property] of the Constitution, the Court will first under (C.1) recall the content of Article 31 [Right to a Fair and Impartial Trial] of the Constitution in relation to Article 6 of the ECHR, then under (C.2) I will present the general principles based on the case law of the Court and the case law of the ECtHR, which refer to the reasoned judicial decision legally. After this analysis, the Court, under (C.3), will apply the general principles arising from the case law of the Court and the case law of the ECtHR in the circumstances of the concrete case.

(B.1) Content of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 of the ECHR;

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."

[...]

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.

Basic principles of reasoned judicial decision

256. The guarantees defined in Article 6 paragraph 1 also include the obligation for the Courts to give sufficient reasons for their decisions (see the case of the ECtHR, *H. v. Belgium*, no. 8950/80, Judgment of November 30, 1987, paragraph 53). A reasoned decision shows the parties that their case has really been heard.

257. Despite the fact that the domestic court has a certain freedom of assessment regarding the selection of arguments and the decision on the admissibility of evidence, it is obliged to justify its actions by giving reasons for all its decisions (see the cases of the ECtHR, *Suominen v. Finland*, no. 37801/97, Judgment of July 24, 2003, paragraph 36; as well as the verdict *Carmel Saliba v Malta*, no. 24221/13, Judgment of April 24, 2017, paragraph 73).

258. The lower Court or state authority, on the other hand, must give such reasons and justifications as will enable the parties to effectively use any existing right of appeal (see the ECtHR case, *Hirvisaari v Finland*, no. 49684/99, Judgment of December 25, 2001, paragraph 30).

259. Article 6 paragraph 1 obliges the Courts to give reasons for their decisions, but this does not mean that a detailed answer is required for each argument. (see the ECtHR case, *Van de Hurk v. The Netherlands*, no. 16034/90, Judgment of April 19, 1994, paragraph 61; *García Ruiz v. Spain*, no. 0544/96, Judgment of January 29, 1990, paragraph 26; *Perez v. France*, no. 47287/99, Judgment of February 12, 2004, paragraph 81).

260. Whether the Court is obliged to give reasons depends on the nature of the decision taken by the Court, 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 can submit to the Court, as well as the differences that exist between the legal systems of the countries in relation to legal provisions, customary rules, legal positions and the submission and drafting of judgments (see the cases of the ECtHR, *Ruiz Toria v. Spain*, no. 18390/91, Judgment of December 9, 1994, paragraph 29; *Hiro Balani vs. Spain*, no. 18064/91, Judgment of December 9, 1994, paragraph 27).

261. However, if a party's submission is decisive for the outcome of the proceedings, it requires that it be answered specifically and without delay (see ECtHR cases, *Ruiz Toria v. Spain*, cited above, paragraph 30; *Hiro Balani vs. Spain*, cited above, paragraph 28).

262. Therefore, the Courts are obliged to:

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

(b) to examine with great rigor and special care the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: *Fabris v. France*, t, cited above, paragraph 72; *Wagner and JMWL v Luxembourg*, no. 76240/01, Judgment of June 28, 2007, paragraph 96).

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

264. Similarly, in a case involving a request for leave to appeal, which is a prerequisite for proceedings in a higher Court, as well as for a possible decision, Article 6, paragraph 1, cannot to be interpreted in the sense that it orders a detailed justification of the decision for rejecting the request for the submission of the appeal (see the cases of the ECtHR, *Kukkonen vs. Finland* (no. 2), no. 47628/06, Judgment of April 13, 2009,) paragraph 24; *Bufferne v France*, no. 54367/00 Decision of February 26, 2002,).

265. In addition, when rejecting an appeal, the appellate Court can, in principle, simply accept the reasoning of the decision given by the lower Court (see the ECtHR case,

García Ruiz v. Spain, cited above, paragraph 26; see, contrary to this, *Tatishvili vs. Russia*, no. 1509/02, Judgment of July 9, 2007, paragraph 62). However, the concept of due process implies that a domestic Court that has given a narrow explanation for its decisions, either by repeating the reasoning previously given by a lower Court or otherwise, 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 the ECtHR case, *Helle vs. Finland*, no. (157/1996/776/977), Judgment of December 19, 1997, paragraph 60). This requirement is all the more important if the party in dispute has not had the opportunity to present its arguments orally in the proceedings before the local Court.

266. However, the appellate Courts (in the second instance) which have jurisdiction to reject unfounded appeals and to resolve factual and legal issues in the contentious procedure, are obliged to justify why they refused to decide on the appeal (see the case of ECtHR *Hansen v. Norway*, no. 15319/09, Judgment of 2 January 2015, paragraphs 77–83).

267. In addition, the ECtHR did not determine that the right was violated in a case in which a specific clarification was not provided regarding a statement that referred to an irrelevant aspect of the case, namely the absence of a signature and seal, which is an error of a more formal than material nature and that error was immediately corrected (see the ECtHR case, *Mugoša v. Montenegro*, no. 76522/12, Judgment of September 21, 2016, paragraph 63).

(B.3) Application of the above mentioned principles to the present case

268. Based on the aforementioned principles, the Court assesses that according to the case law of the ECtHR, regular Courts are obliged to examine with special care the claims related to the rights and freedoms guaranteed by the Constitution (see ECtHR cases, Fabris *v. France*, cited above, paragraph 72; *Wagner and JMWL v Luxembourg*, cited above, paragraph 96).

269. Furthermore, the Court also refers to its case law, namely the case KI207/19, where it was established that the regular Courts can refer the case to the Constitutional Court or can decide to interpret itself whether the legal norm is in accordance with the Constitution (see Court case, KI207/19, Applicant *Social Democratic Initiative, New Kosovo Alliance and Justice Party*, Judgment of December 10, 2020, paragraph 137). In this regard, the Court had emphasized as follows:

> *"Consequently, the Court clarifies that, regarding the compatibility of legal norms with constitutional norms, if a constitutional issue is raised in cases before the regular Courts, according to Article 113.8 of the Constitution, and when the regular Courts are not sure about the constitutionality of the legal norm, so they have "doubts" about their constitutionality, they can refer the case to the Constitutional Court according to Article 113.8 of the Constitution - but they have no constitutional obligation to do so. On the other hand, the Court can decide not to refer a case to the Constitutional Court when, in the specific case, it can interpret that norm in harmony with the Constitution or directly apply the constitutional norm. In this case, the regular Court that has the case before it, with sufficient and adequate reasoning, can directly apply the norm of the constitutional rank and set aside the norm of the legal rank for the specific case before it."*

270. In the present case, the Court notes that the Applicant's main claim before the regular Courts was that Article 1 of the challenged Law is unconstitutional and that there was

a violation of the Applicant's right to property, respectively, there was a violation of Article 46 of Constitution, the Applicant also requested that, in case of a dilemma, the regular Courts refer the case to the Constitutional Court for constitutional review.

271. First, the Court notes that, regarding the Applicant's request to refer the case to the Constitutional Court, the Basic Court reasoned as follows:

> *"The claims that the provision of Article 1 of Law No. 06/L-155 on the Prohibition of Games of Chance has been applied contrary to the specific norms of the Constitution of the Republic of Kosovo, specifically Article 46 of the Constitution which guarantees the protection of property and Article 1 of Protocol 1 of the European Convention on Fundamental Freedoms as well as the decisions of the European Court of Fundamental Freedoms [ECtHR]. The Court in the administrative conflict procedure cannot give an assessment regarding the claims that Law no. 06/L-155 on the Prohibition of Games of Chance, with the norms of the Constitution of the Republic of Kosovo, and other international acts are in conflict, therefore the Court in the Court session, it did not approve the proposal of the authorized representative of the plaintiff that this Court, during the proceedings in the administrative conflict, should refer to the Constitutional Court of the Republic of Kosovo, the assessment of the compatibility of the Law in question with the Constitution of the Republic of Kosovo. "*

272. Furthermore, the Court notes that, regarding the claim of the Applicant for the implementation of Article 1 of the challenged Law contrary to the Constitution, in the reasoning of the Court of Appeal it was stated as follows:

> *"While the claims that the provision of Article 1 of Law No. 06/L-155 on the Prohibition of Games of Chance has been applied, contrary to the specific norms of the Constitution of the Republic of Kosovo, specifically Article 46 of the Constitution which guarantees the protection of property, and Article 1 of Protocol 1 of the European Convention on Fundamental Freedoms, as well as the decisions of the European Court of Fundamental Freedoms, the Court of first instance in the administrative conflict procedure was rightly unable to give an assessment regarding this, therefore, the Court of the first instance in the judicial session rightly did not approve* its *proposal that this Court, during the proceedings in the administrative conflict, turn to the Constitutional Court of the Republic of Kosovo for the assessment of the compatibility of the Law in question with the Constitution of the Republic of Kosovo. Therefore, the panel of this Court assesses that the Court of first instance correctly decided when it was based on the provisions of the LKA, Law No. 06/L-155 on the Prohibition of Games of Chance, as well as Law No. 04/L-102 on Amendment and Supplement to Law No. 03/L-222 on Tax Administration and Procedures".*

273. In the end, regarding the petitioner's request to turn to the Constitutional Court, the Supreme Court emphasized:

> *"With Article 15 of the Law on Administrative Conflicts, it is determined that the administrative conflict cannot be developed against the acts issued in the cases, in which judicial protection outside the administrative conflict is provided, against the acts issued in the cases about which, according to the provision of the law no administrative conflict can be developed against administrative acts, which constitute a general obligation, issued by the administration bodies, except when they infringe the legal rights of the parties. In the present case, the lower instance Court, according to the provisions of this law, could not deal with the issue of the constitutionality of the Law on the Prohibition of Gambling No. 06/L-*

155, since this can be a matter for consideration only in The Constitutional Court of Kosovo".
Based on the above, the Supreme Court found that the claims in the claimant's request for an extraordinary review of the Court's decision are unfounded, because they have no impact on proving the factual situation except what the Court of second instance found. In the opinion of this Court, the challenged judgment of the Court of second instance is clear and understandable. In the reasoning of the challenged verdict, there are many reasons related to the decisive facts which this Court also accepts. The Court assesses that the material right has been applied correctly and that the law has not been violated to the detriment of the plaintiff."

274. The Court notes that none of the lower level Courts accepted the Applicant's request to refer the case to the Constitutional Court. The Court further notes that the Basic Court and the Court of Appeal found that in the administrative conflict procedure they had not been able to give an assessment of the constitutionality of the challenged law with the Constitution, while the Supreme Court emphasized that the lower level Courts were not able to deal with assessment of the constitutionality of the challenged Law, because this matter could be the subject of consideration only before the Constitutional Court.

275. Based on the above, the Court concludes that during the entire procedure before the regular Courts, the Applicant did not receive adequate and reasoned answers in the two main issues that the Applicant emphasized during the entire procedure, the regular Courts did not carefully examine sufficiently the Applicant's main claims related to the violation of the right to property, as well as in the Applicant's request that, in case of doubt, the case be referred to the Constitutional Court for constitutional review (see the ECtHR case, *Megadat.com SRL v. Moldova*, cited above, paragraph 74.; *Bistrović v. Croatia*, cited above, paragraph 37).

276. In the case before us, the Court finds that the regular Courts did not even accept the proposal of the Applicant that, in case of doubt, the case be referred to the Constitutional Court for constitutional review, this request was decisive for the outcome of the procedure, it is required that to have concrete answers and without delay (see ECtHR cases *Ruiz Torija v Spain*, cited above, paragraph 30; *Hiro Balani vs. Spain*, cited above, paragraph 28), did not carefully consider the Applicant's main claims related to the violation of the right to property, which was the most important argument of the parties (see ECtHR cases *Buzescu v. Romania*, no. 61302/00, judgment of August 24, 2005, paragraph 67; *Donadze vs. Georgia*, no. 74644/01, judgment of June 7, 2006, paragraph 35). Consequently, the Court finds that there is a violation of Article 31 of the Constitution in relation to Article 6 of the ECHR.

277. As a result, the Court finds that the challenged judgments [ARJ. UZVP. no. 83/2021] of the Supreme Court regarding the Judgment [AA. no. 242/2021] of the Court of Appeals and the Judgment [A. no. 1861/21] of the Basic Court, violate the Applicant's right to a fair and impartial trial guaranteed by Article 31 of the Constitution in relation to Article 6 of the ECHR.

Regarding the allegations for violation of (III) Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 of the ECHR

278. In addition, the Court recalls that the Applicant, in addition to alleging a violation of Article 46 and 31, also alleges a violation of Article 54 of the Constitution in relation to Article 13 of the ECHR. However, the Court notes that this claim coincides and is

related to the claims that the Applicant has filed for violation of Article 31 of the Constitution in relation to Article 6 of the ECHR.

279. The Court, taking into account that it has already concluded that the revocation of the Applicant's valid license based on the challenged Law as well as all the decisions of the regular Courts in the case of the Applicant violate the Applicant's right to the peaceful enjoyment of property, guaranteed by Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, as well as the right to a fair and impartial trial, according to Article 31 of the Constitution and Article 6 of the ECHR, the Court considers that it is not necessary to examine the claims of the Applicant for the violation of Article 54 of Constitution and Article 13 of the ECHR.

Legal effect of the judgment

280. Regarding the effect of this Judgment, the Court emphasizes that for objective reasons and in the interest of legal certainty, this Judgment produces legal effect only between the parties to the proceedings and cannot produce a retroactive legal effect in relation to other natural and legal persons who have exercised the activity of games of chance.

281. Whereas, in relation to the Applicant, the Court clarifies that it has found violation of Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol no. 1 (Protection of property) of the ECHR and Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR only in relation to Court decisions pertaining the revocation of the Applicant's license before it expired on 9 August 2019.

282. However, the Court does not have legal authorizations to determine any type or method of compensation for cases where it finds a violation of the respective constitutional provisions, as in the present case (see in this context the cases of the Court, KI10/18, Applicant *Fahri Deçani*, Judgment of 8 October 2019, paragraph 119; KI108/18, Applicant *Blerta Morina*, cited above, paragraph 196; as well as case, KI113/21 Applicant *Beauty Haxhimurati*, Judgment of 20 December 2021, paragraph 148).

283. However, this does not mean that this Judgment is merely declarative and without any effect, as the Applicant may seek in proceedings before regular Courts a fair compensation for the violation of the constitutional rights established through this Judgment, including in terms of possible compensation for the duration that the Applicant had a valid license, namely from 10 May 2019, when the effect of revocation of the license began, until 9 August 2019, when the Applicant's license to exercise its activity expired.

Request for interim measure

284. The Court recalls that the Applicant also requests the Court to issue a decision on imposing interim measures to suspend the effects of the challenged Law and the Notice of TAK.

285. The Court concluded above that the decisions of regular Courts in the case of the Applicant violate the Applicant's right to peaceful enjoyment of property, guaranteed by Article 46 of the Constitution and Article 1 of Protocol no. 1 of the ECHR, as well as the right to a fair and impartial trial from Article 31 of the Constitution and Article 6 of the ECHR.

286. Therefore, in accordance with the above and in accordance with Article 27.1 [Interim Measures] of the Law and Rule 57 [Decision on Interim Measures] of the Rules of Procedure, the request for interim measure is without subject of review and, as such, is rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 21.4 and 113.7 of the Constitution, Articles 20, 27 and 47 of the Law, and in accordance with Rule 59 (1) of the Rules of Procedure, on 8 February 2023, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, of 7 September 2021 in conjunction with Judgment [AA. no. 242/2021] of the Court of Appeals, of 8 June 2021 and the Judgment [A. no. 1861/21] of the Basic Court in Prishtina, of 9 February 2021 are not in compliance with Article 46 [Protection of Property] of the Constitution, in conjunction with Article 1 of Protocol no. 1 (Protection of property) of the ECHR.

III. TO HOLD that Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, of 7 September 2021 in conjunction with Judgment [AA. no. 242/2021] of the Court of Appeals, of 8 June 2021 and Judgment [A. no. 1861/21] of the Basic Court in Prishtina, of 9 February 2021 are not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of ECHR.

IV. TO REPEAL Judgment [ARJ. UZVP. no. 83/2021] of the Supreme Court, of 7 September 2021 and Judgment [AA. no. 242/2021] of the Court of Appeals, of 8 June 2021 and Judgment [A. no. 1861/21] of the Basic Court in Prishtina, of 9 February 2021;

V. TO REJECT the request for interim measure.

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

VII. TO DECLARE that 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.