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

Prishtina, on 3 August 2020
Ref. no.: AGJ 1595/20

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JUDGMENT

in

Case No. KI56/18

Applicant

Ahmet Frangu

Constitutional review of Judgment ARJ. UZVP. No. 67/2017 of the Supreme Court of Kosovo of 22 December 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Ahmet Frangu from Prishtina (hereinafter: the Applicant).

Challenged law

2. The Applicant challenges the constitutionality of Judgment [ARJ. UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with Judgment [AA. No. 333/2017] of 20 October 2017 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [A. No. 1185/2014] of 5 June 2017 of the Basic Court in Prishtina (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

5. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

6. On 12 April 2018, the Applicant submitted the Referral to the Court.

7. On 18 April 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.

8. On 7 May 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 14 May 2018, the Court requested the Basic Court to submit all the case files.

10. On 15 May 2018, the Basic Court submitted all case files to the Court.

11. On 16 June 2018, the term of office of the Judges: Snezhana Botusharova and Almiro Rodrigues ended. On 26 June 2018, the term of office of the judges: Altay Suroy and Ivan Čukalović ended.

12. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

13. On 20 November 2018, as the mandate of the four judges mentioned above as judges of the Court ended, the President of the Court, pursuant to the Law and the Rules of Procedure, rendered Decision KSH. 56/18, on the appointment of the new Review Panel, composed of Judges: Arta Rama-Hajrizi (Presiding), Safet Hoxha and Remzije Istrefi-Peci.

14. On 21 January 2020, having regard to the paragraph 2 of Rule 42 (Right to Hearing and Waiver) of the Rules of Procedure, the Court decided to hold a hearing taking into account that in the circumstances of the present case it considered necessary the clarification of issues related to evidence and applicable law, it sent the invitations to participate in the public hearing to the Applicant, the Civil Registration Agency of the Ministry of Internal Affairs (hereinafter: the Civil Registration Agency), Directorate of Administration of the Civil Status Sector of the Municipality of Prishtina (hereinafter: the Municipality of Prishtina) and the Ministry of Foreign Affairs of the Republic of Kosovo (hereinafter: the Ministry of Foreign Affairs).

15. On 29 January 2020 and 3 and 7 February 2020, the Applicant, the Civil Registration Agency, the Municipality of Prishtina and the Ministry of Foreign Affairs, represented by the State Advocacy, confirmed their participation in the above-mentioned public hearing.

16. On 10 February 2020, a public hearing was held. The Applicant and representatives of the Civil Registration Agency, the Municipality of Prishtina and the State Advocacy were present at the hearing.

17. On 14 February 2020, the Court requested the Municipality of Prishtina and the State Advocacy to submit additional documentation to clarify some factual aspects related to case No. KI56/18.

18. On 19 and 21 February 2020, the Municipality of Prishtina and the State Advocacy, submitted the requested clarifications to the Court.

19. On 22 April 2020, after having considered the Report of the Judge Rapporteur, the Review Panel, by a majority, recommended to the Court the admissibility of the Referral, while it was decided that the decision on the merits of the case would be taken at one of the next sessions.

20. On 22 July 2020, the Court voted by a majority of votes that the Judgment [ARJ. UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court in conjunction with the Judgment [AA. No. 333/2017] of 20 October 2017 of the Court of Appeals, the Judgment [A. No. 1185/2014] of 5 June 2017 of the Basic Court; Decision [No. 30/2014] of 24 June 2014 of the Civil Registration

Agency; the Decision [No. 86/013] of 18 November 2013 of the Civil Registration Agency and Decision [No. 01-203-194645] of 16 October 2013 of the Municipality of Prishtina, are not in compliance with (i) Article 36 [Right of Privacy] of the Constitution in conjunction with Article 8 (Right to respect for private and family life) of the European Convention on Human Rights (hereinafter: the ECHR); and (ii) Article 54 [Judicial Protection of Rights] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR.

Summary of facts

21. On 30 April 2013, the Applicant's son, namely the deceased I.F. traveled to Sweden for the purpose of recovery from a serious illness. Based on the explanations given by the Applicant at the public hearing, the deceased I.F. traveled to Sweden with his passport. Based on the case file, his Schengen visa was valid from 17 December 2012 until 17 June 2013.

22. On an unspecified date, and during his stay in Sweden, the deceased had applied for asylum, but using another name, namely the name A.H. To the deceased, the Swedish authorities issued the document proving that he is an asylum seeker, namely the LMA-card under the name with which he had applied, namely A.H. The reasons, on the basis of which the deceased did not apply for asylum in Sweden in his personal name, but in that of A.H., remain unclear even after the public hearing. In the latter, the Applicant alleges that his son "*has imagined a name A.H. But in reality A.H is I.F.*"

23. On 7 June 2013, I.F. died at a health institution in Sweden. The medical report regarding his death was issued under the name of A.H.

24. On 8 June 2013, the Embassy of the Republic of Kosovo in Sweden issued a submission [no. 09/13] in which it (i) clarified that the relevant authorities of the Republic of Kosovo were informed about his death; (ii) confirmed that there is no obstacle to the repatriation of the deceased I.F. in the Republic of Kosovo; and (iii) requests the company responsible for funeral services at Linkoping to enable transportation to Kosovo for the deceased I.F.

25. On 16 June 2013, the body of the deceased arrived at Prishtina International Airport and was transported to Prishtina via N.SH.T "Dardania". The funeral ceremony was held on the same day.

26. On 10 October 2013, the Applicant addressed the Municipality of Prishtina, requesting that his deceased son, namely I.F., be registered in the Principal Death Register (hereinafter: PDR) based on Law no. 04/L-003 on Civil Status (hereinafter: the Law on Civil Status).

27. On 16 October 2013, the Municipality of Prishtina by Decision [No. 01-203-194645] rejected the Applicant's request reasoning, *inter alia*, that (i) the request is not complete in accordance with the legal provisions for subsequent death registration in the principal register; and (ii) the case file, namely, the personal data of I.F., the birth certificate, the identity card and the marriage certificate of the Republic of Kosovo do not match the data issued by the authorities of the place where the death happened, namely in Sweden. This

Decision, in its reasoning, specifically stated that in the death documentation issued by the health institution in Sweden appears the name of the deceased A.H., born on 19 September 1979, while in the documents issued by the Republic of Kosovo, appears the name I.F. born on 2 September 1978.

28. On an unspecified date, against the aforementioned Decision of the Municipality of Prishtina, the Applicant filed a complaint with the Civil Registration Agency.

29. On 18 November 2013, the Civil Registration Agency by Decision [No. 86/013] rejected the Applicant's appeal against the Decision of the Municipality of Prishtina. The Civil Registration Agency, among others, reasoned that (i) the documents issued by the Swedish health institutions do not correspond to those issued in the Republic of Kosovo, because the former coincide with the person A.H., while the latter with the person I.F .; and (ii) the party, namely the Applicant, did not substantiate his claim that A.H. is in fact I.F.

30. On 12 February 2014, the Applicant filed a lawsuit against the aforementioned Decision of the Civil Registration Agency in the Department of Administrative Matters of the Basic Court. The Applicant requested to allow the registration of I.F. to PDR and to annul the challenged Decision of the Civil Registration Agency. The Applicant stated that as a consequence of the non-registration of his son, I.F. at the PDR, the civil status of the latter's wife and son had remained unresolved. The Civil Registration Agency, in its capacity of respondent, on 21 March 2014, filed a response to the lawsuit, proposing that it be rejected as ungrounded.

31. On 16 May 2014, the Basic Court, by Judgment [No. 1652/13] approved the Applicant's statement of claim and annulled the Decision of 18 November 2013 of the Civil Registration Agency, remanding the case for retrial. The Basic Court, *inter alia,* stated that the challenged Decision was rendered with essential violation of the provisions of Law No. 02/L-28 on Administrative Procedure (hereinafter: LAP) and specifically Articles 84 and 85 thereof. The Basic Court, moreover, stated that the Civil Registration Agency failed to substantiate all the evidence, including the submission [no. 09/13] of 8 June 2013 issued by the Embassy of the Republic of Kosovo in Sweden. In the context of this submission, the Basic Court specifically stated the following:

> *"The Court notes that the issue has not been fully and fairly assessed in the first instance body, the same thing has been done by the second instance body, which left on force the first instance decision with the decision challenged by the claim, for the fact that it was not taken into consideration at all the submission no. 09/13 of 08.06.2013, issued by the Embassy in Stockholm – consular office Section, which confirms that the Embassy of the Republic of Kosovo in the Kingdom of Sweden, certifies that the deceased I.F. born on 02.09.1978 in Prishtina, Kosovo, with personal number 1001193615, passport number K00488071 was a citizen of the Republic of Kosovo, and by this submission he asked the company responsible for funeral services in Linkoping, to enable the transportation of IF corpse to Kosovo. So, with the same submission are stating that the authorities of the Republic of Kosovo have been informed about the death*

of IF too and the Embassy of Kosovo confirms that there is no obstacle to his repatriation in the Republic of Kosovo (emphasis added).”

32. On 24 June 2014, the Complaints Review Commission in the Department for Registrations and Civil Status of the Civil Registration Agency, by Decision [No. 30/2014], rejected again the Applicant’s application for registration of I.F. in the PDR, upholding the Decision [No. 01-203-194645] of 16 October 2013 of the Municipality of Prishtina. By its Decision, the Civil Registration Agency, among others, reasoned that the registration of I.F. in the PDR would be in violation of Article 15 (Criteria for late registrations of deaths in the register of the dead) of Administrative Instruction no. 02/2012 on the Late Registrations in the Civil Status Records (hereinafter: the Administrative Instruction), because the documents issued by the Swedish health institutions do not match the documents issued in the Republic of Kosovo. The Civil Registration Agency also added that “*the documentation from the Swedish state is in the name of A.H., while the documentation from Kosovo is for I.F.*” and that the party, namely the Applicant, did not “*bring evidence to substantiate his claim that his son I.F. is the same as A.H.*”, Furthermore, the Commission, referring to the Administrative Instruction 05/2012 for the Complaints Review Commission (hereinafter: the Administrative Instruction for the Complaints Commission), stated that the same “*has the power to make decisions based on the facts (evidence) and evidence which the complainant presents to the Commission*”.

33. On 15 July 2014, the Applicant again filed a lawsuit for administrative conflict against the above-mentioned Decision of the Civil Registration Agency with the Basic Court, alleging essential violation of the provisions of the procedure, erroneous and incomplete determination of the factual situation and violation of the substantive law. The Applicant requested that the relevant Decision be annulled and that I.F. be registered in the death register, namely in the PDR. The Applicant specifically stated that the challenged Decision was issued in violation of (i) Articles 46 (Death Certification), 47 (Declaration of death), 48 (Certification of legal fact of death), 49 (Death confirmation) and 50 (Burial permit) of the Law on Civil Status; (ii) by Judgment [A. No. 1652/13] of 16 May 2014 of the Basic Court; and (iii) item 7 of Article 7 [Procedures of the commission] of the Administrative Instruction for the Complaints Commission, because the relevant evidence has not been reviewed. The Applicant stated that any ambiguities regarding the person A.H., have been clarified through the submission [no. 09/2013] of the Embassy of the Republic of Kosovo in Sweden.

34. On 10 September 2014, 7 September 2015, 29 February 2016, and 26 October 2016, respectively, through his representative, the Applicant addressed the Basic Court with a request for resolution of his case with priority, stating that (i) the Basic Court by Judgment [No. 1652/13] of 16 May 2014 approved his statement of claim, but did not oblige the Civil Registration Agency to register the deceased I.F. in the PDR; and (ii) the resolution of his case directly affects the regulation of the status issues of the family of the deceased I.F., namely his wife and son.

35. On an unspecified date, the Ministry of Justice, through the State Advocacy, filed a response to the lawsuit, stating that the late registration of death could not be made at the PDR because in the circumstances of the case, the documentation issued by the Swedish state no longer matched documentation of the Republic of Kosovo, and there is no evidence that the person A.H. is in fact I.F.

36. On 5 June 2017, the Basic Court, by Judgment [A. No. 1185/2014] rejected as ungrounded the statement of claim of the Applicant for annulment of the above mentioned Decision of the Civil Registration Agency. In assessing the claim of the claimant, the Basic Court based on Article 15 of the Administrative Instruction on the criteria for late registration of deaths in the PDR. The Court noted, *inter alia*, that the registration of the person I.F. in the PDR is in contradiction with this Administrative Instruction because the documentation issued by the Swedish health institutions does not correspond to those issued in the Republic of Kosovo. With regard to the Applicant's allegations that in fact the person A.H. is I.F. and consequently it is about the same person, the Court noted as follows:

> "*The court from the evidence which was administered in the main hearing, finds that the reasoning of the respondent as in the challenged act that after the evidence was administered by the respondent it was concluded that the complainant's complaint is ungrounded due to the fact that the documentation attached to the request for death registration for I.F. in the PDR do not match the documentation issued by the Republic of Kosovo. All this due to the fact that the documents on the basis of which the death is required to be registered and which were issued by the Swedish authorities after the administration of the evidence as above are found to be all in the name of A.H. while death registration is required to be done for I.F. This court has also assessed the claims of the claimant that it is about the same person and after the deceased I.F. lived in Sweden and the death occurred there but as such he could not approve these allegations as grounded for the registration of death in the PDR as it found that as such they are contrary to Article 15 of AI 02/2012 of the MIA which clearly sets out the criteria to be met by the Applicant*".

37. On 10 July 2017, the Applicant filed an appeal with the Court of Appeals alleging essential violation of the procedural provisions, erroneous and incomplete determination of factual situation and erroneous application of substantive law, proposing that his statement of claim be approved, or that the aforementioned Judgment of the Basic Court be annulled and the case be remanded for retrial. The Applicant in this appeal also highlighted the importance of resolving his case and the effect that the latter has on the civil status of the wife and son of the deceased I.F.

38. On 20 October 2017, the Court of Appeals, by Judgment [AA. No. 333/2017], rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Basic Court. The Court of Appeals, *inter alia*, reasoned that (i) the subsequent registration of the death in the PDR of person I.F. does not meet the criteria of Article 15 of the Administrative Instruction; (ii) the documentation issued by health institutions in Sweden does not match the documentation issued by the

Republic of Kosovo; and (iii) the claimant, namely the Applicant, "*has not brought convincing evidence to substantiate his claims that his son I.F. is of the same name as that of A.H*".

39. On 20 November 2017, the Applicant filed (i) a revision; and (ii) a request for extraordinary review of the judicial decision with the Supreme Court, alleging essential violation of the procedural provisions, erroneous and incomplete determination of factual situation and erroneous application of substantive law, with the proposal to approve the statement of claim and annul the decisions of the lower instance courts, remanding the case for retrial.

40. On 22 December 2017, the Supreme Court by Judgment [ARJ. UZVP. No. 67/2017] rejected as ungrounded the request for extraordinary review of the court decision and consequently upheld the Judgment [AA. No. 333/2017] of 20 October 2017 of the Court of Appeals in conjunction with the Judgment [A. No. 1185/2014] of 5 June 2017 of the Basic Court.

41. The Supreme Court also found that the registration of the death of person I.F. with the PDR is contrary to Article 15 of the Administrative Instruction because the documentation issued by the Swedish health institutions does not match the documentation issued by the Republic of Kosovo. The former are on behalf of the person A.H., while the latter on behalf of the person I.F. The relevant part of the Judgment of the Supreme Court states as follows:

> *"During the evaluation, this court ascertained that the second instance court has correctly established that the documentation attached to the referral for the death registration of IF in PDR does not comply with the documentation issued by the Republic of Kosovo. All this because of the fact that the documents on the basis of which are required to register the deaths which were issued by the Swedish authorities have been found that all are on the name of AH, while the death registration was required to be made on the name of IF. This Court has also assessed the claims of the claimant that this is about the same person since the deceased IF lived in Sweden and death happened there, but as such, these claims for registration of the death in the PDR cannot be approved as grounded, since they are contrary to the Article 15 of Administrative Instruction 02/2012 which clearly sets out the criteria which should be met by the applicant."*

Applicant's allegations

42. The Applicant alleges that the Judgments of the regular courts were rendered in violation of his fundamental rights and freedoms guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution. The Applicant also alleges a violation of his fundamental rights and freedoms guaranteed by the ECHR.

43. The Applicant before the Court refers to the evidence proving the death of his son and claims that the latter have not been taken into account by the regular

courts, and which, in addition to refusing to register his son's death in the PDR, have also affected the civil status of the wife and son of the deceased I.F.

44. The Applicant requests the Court to declare his Referral admissible and declare invalid the Judgments of the regular courts, remanding the case for retrial or to order the Civil Registration Agency to register the death of his son I.F. in the PDR, "*in order to regulate the civil status of the latter's wife and son*".

Clarifications provided by the Applicant and other parties participating in the public hearing

45. At the public hearing on 10 February 2020, the Applicant clarified that (i) the name of A.H. was imagined by I.F. for asylum purposes in Sweden, and that he does not know the reasons that led his son to register with another identity in Sweden; (ii) medical report "*was issued by Sweden on behalf of A.H*"; (iii) regarding the burial permit, he stated that "*I have the bill, I will attach it to you, I have all of it here, I also have the bill of the Islamic religion that I went to, the boards, the imam that I paid, these are all, even the washing of the corpse, and the bill of the Company that transported it, nothing here is a problem only that he appeared by that name*"; (iv) Regarding the civil status of the wife and son of the deceased, the Applicant stated that his son is evidenced as alive in the civil registry and consequently "*his son is in school Joni is in the 5th grade, he is registered in a team for young people in football, we wanted to send him abroad, but he cannot get his passport or any other document. And now without having permit of both parents he cannot go abroad, they are not issuing those documents, even his wife cannot exercise any right of civil status, inheritance and other rights*"; (v) he stated the fact that Judgment [A. No. 1652/13] of the Basic Court in 2014 approved his statement of claim remanding the case for reconsideration to the Civil Registration Agency, but "*in the enacting clause of this judgment, the Ministry of Internal Affairs is not obliged to make the registration in the death register*"; and (vi) stated the importance of the submission [no. 09/13] of 8 June 2013 issued by the Embassy of the Republic of Kosovo in Sweden through which "*The Kosovo authorities were informed that the citizen of Kosovo, Mr. I.F. passed away*",

46. The Municipality of Prishtina and the Civil Registration Agency, in essence, among others, stated that (i) their respective decisions are based on the applicable law, as a result of which a death cannot be registered in the PDR, in the absence of a medical report, while in the circumstances of the present case, "*the documentation of the Republic of Kosovo does not correspond to the documentation issued by the state of Sweden"* and that the *"death documentation, issued by the institution where the death occurred, which is not a death certificate, namely the personal data that appear in them do not match the personal data which appear in the certificate of birth, marriage and ID of the Republic of Kosovo*", and that consequently, the circumstances of the case intertwine "*two identities and with contradictory data*"; and (ii) despite the fact that Judgment [A. No. 1652/13] of the Basic Court approved the statement of claim of the Applicant, remanding the case for reconsideration to the Civil Registration Agency, in "*the enacting clause of this judgment, the Ministry of Internal Affairs is not obliged to make the registration in the*

death register". Following this decision and the rejection of the Civil Registration Agency to register the deceased in the PDR, the Basic Court and the Court of Appeals confirmed the position of the Municipality of Prishtina and the Civil Registration Agency, by Judgments [A. no. 1185/2014] of 5 June 2017 and [AA. No. 333/2017] of 20 October 2017, respectively. The latter were later upheld by the Supreme Court.

47. The public hearing also clarified, *inter alia*, issues related to (i) the burial permit; (ii) the international death certificate; (iii) the civil status of A.H .; and (iv) international legal cooperation.

48. Regarding the first issue, the representative of the Municipality of Prishtina stated that "*There is no permission from the Municipality of Prishtina in the case file, the only evidence I can say for the funeral are the bills of the Islamic community which the party received for the funeral of the deceased and the Municipality of Prishtina does not have any permission given to him for burial".* In the request of the Court addressed to the Municipality of Prishtina on 14 February 2020 regarding the necessary clarifications regarding the burial permit of the deceased, the Municipality, through its response of 19 February 2020, clarified once again *that "it could not provide any documents related to the death/burial of the I.F., as in the civil status system this person is listed as alive".*

49. With regard to the second issue, it was clarified by the State Advocacy that in the circumstances of the case, despite the submission of the Embassy of Kosovo in Sweden, there is no international death certificate. Whereas, regarding the third issue, the Municipality of Prishtina and the State Advocacy, as to the status of A.H. clarified that (i) "*proof of identity of A.H was never requested";* and *(ii)* that the latter was not registered as dead, because *"here we are dealing with two identities and a request which was submitted for registration and there was a discrepancy between these two, two identities and for that reason he was not registered, I have no information if it is registered*". While, at the end and regarding the fourth issue, the Civil Registration Agency, but also the State Advocacy, emphasize the role of the Swedish state, stating, among other things, that through communication with this state it could be required correction of the medical report, on the basis of which correction, the registration in PDR could then be done. According to them (i) through international legal cooperation, the biometric data of the person could be exchanged, even through the comparison of biometric data and fingerprints, it could be accurately identified that the person is not A.H. but I.F., thus resulting in the conclusion of this case; but (ii) also confirmed that the regular courts have never initiated any proceedings concerning international legal cooperation.

Admissibility of the Referral

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

51. In this respect, the Court, by applying paragraph 1 and 7 of Article 113 of the Constitution, the relevant provisions of the Law as to the procedure in the case set out in paragraph 7 of Article 113 of the Constitution; Rule 39 and Rule 76 [Request pursuant to Article 113.7 of the Constitution and Rule 46, 47, 48, 49 and 50 of the Rules of Procedure] initially shall examine whether: (i) the Referral was submitted by the authorized party; (ii) an act of public authority is challenged; and if (iii) all legal remedies prescribed by law have been exhausted; (iv) the rights and freedoms allegedly violated have been clarified; (v) timelines have been met; (vi) the referral is manifestly ill-founded; and (vii) there are any additional admissibility criteria under paragraph (3) of Rule 39 of the Rules of Procedure that have not been met.

(i) Regarding the authorized party and the act of public authority

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

> *"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> *[...]*
>
> *7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.*"

53. The Court also refers to Article 47 [Individual Requests] of the Law, which establishes:

> "*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. [...].*"

54. The Court also refers to item (a) of paragraph (1) of Rule 39 [Admissibility Criteria] of the Rules of Procedure which stipulates:

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

55. The Court also refers to paragraph (2) of Rule 76 of the Rules of Procedure which, *inter alia*, foresees: *"(2) A referral under this Rule must accurately clarify [...] what concrete act of public authority is subject to challenge".*

56. With regard to the fulfillment of these criteria, the Court notes that in the circumstances of the present case two issues must be determined (i) whether the Referral was submitted by an authorized party; and (ii) if an act of public authority is challenged. The second issue, namely the act of the public authority, is not challenged in the circumstances of the present case because the Applicant challenges the Judgment [ARJ. UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court. While, the first issue, which relates to

the authorized party, based on the aforementioned provisions of the Constitution, Law and Rules of Procedure, should be assessed in terms of "*status of the victim*" of the Applicant.

57. More specifically, based on the provisions cited above, an Applicant in order to qualify as an authorized party before the Court must file alleged violations "*of his her individual rights and freedoms"*, namely to have the status of victim. In the circumstances of the present case, the Court recalls that the Applicant addressed the Court regarding the registration of his son's death in the PDR. In this context and before ascertaining whether the Applicant can be considered as an authorized party before the Court, the latter must determine whether in the circumstances of the present case, the father can submit an individual referral for his son, namely if the status of "victim" is recognized to him. To determine whether the latter can have this status before the Court, the Court will further elaborate on the basic principles of the case law of the European Court of Human Rights (hereinafter: the ECHR) regarding the status of the victim, in order to apply them, then, to the circumstances of the present case.

58. In this regard, the Court first notes that based on the case law of the ECtHR, the notion of "*victim*" is interpreted autonomously and notwithstanding domestic provisions such as interest and legal capacity to file a claim (see ECtHR case), *Gorraiz Lizarraga and Others v. Spain*, Judgment of 27 April 2004, paragraph 35), although the relevant courts must take into account whether the Applicant was a party to the proceedings before the regular courts (see, in this context, the cases of ECtHR, *Aksu v. Turkey*, Judgment of 15 March 2012, paragraph 52; and *Micallef v. Malta*, Judgment of 15 October 2009, paragraph 48). The ECtHR also states that the interpretation of the concept of "*victim*" should be done without excessive formalism (see, in this context, and *inter alia*, the case of the ECtHR *Gorraiz Lizarraga and others v. Spain*, cited above, paragraph 38) and that in this assessment, the relevance to the merits of the case may be important (see, in this context and, *inter alia*, the cases of the ECtHR, *Siliadin v. France*, Judgment of 26 July 2005, paragraph 63; and *Hirsi Jamaa and Others v. Italy*, Judgment of 23 February 2012, paragraph 111).

59. Furthermore, and relevant to the circumstances of the present case, based on the case law of the ECtHR, the term "*victim*" in the context of individual claims, means persons who have been directly or indirectly affected by the alleged violation. Therefore, the term "*victim*" means not only the direct victim of the alleged violation, but also the indirect victims to whom the violation may cause harm or who would have a personal and valid interest in seeing the alleged violation brought to an end. (See, in this context and *inter alia*, the case of the ECtHR, *Vallianatos and Others v. Greece*, Judgment of 7 November 2013, paragraph 47). More precisely, the Court notes that the case law of the ECtHR consequently recognizes the status of direct, indirect and potential victim. (For more on these three categories, see the Practical Guide on ECtHR Admissibility Criteria of 30 April 2019; 3. Victim Status). While direct victims are all those whose rights have been directly violated by the alleged violation, and consequently the recognition of their victim status before the Court is not a contested issue, the situation is different in the case of indirect or potential victims, because the recognition of their victim status before the Court is

conditional on the fulfillment of certain criteria, and which are determined through the case law of the ECtHR.

60. In this regard, the Court notes that based on the case law of the ECtHR, the status of indirect victim has been recognized only to relatives who have a legal interest in filing an individual claim in the event of death or the disappearance of persons on whose behalf they act. (See ECHR case, *Varnava and Others v. Turkey*, Judgment of 18 September 2009, paragraph 112).

61. However, and moreover, the case law of the ECtHR has linked the recognition of the status of indirect victim with the nature of the alleged violation and the importance of the effective implementation of one of the most fundamental rights of the ECtHR system. (See the case of the ECtHR, *Fairfield v. The United Kingdom*, Judgment of 8 March 2005). More specifically, the ECtHR has determined that "*transferable*" are only the most fundamental rights guaranteed through the ECtHR, and consequently through its case law, it has accepted the status of victim family members only when they alleged violations of (i) Article 2 (Right to Life) of the ECHR, namely when the death was alleged to engage the responsibility of the State (see, in this context, the cases of the ECtHR, *Van Colle v. the United Kingdom*, Judgment of 13 November 2012, paragraph 86; and *Tsalikidis and others v. Greece*, Judgment of 16 November 2017, paragraph 64); (ii) Article 3 (Prohibition of torture) and Article 5 (Right to liberty and security) of the ECHR, provided that the alleged violation is closely linked to Article 2 of the ECHR (see the case of the ECtHR, *Khayrullina v. Russia*, Judgment of 19 December 2017, paragraphs 91-92 and 100-107); and (iii) Article 8 (Right to private life), if the moral interest of the family has been demonstrated that the deceased victim be exonerated of any finding of guilt (see ECtHR cases *Nölkenbockhoff v. Germany*, Judgment of 25 August 1987, paragraph 33 and *Grădinar v. Moldova*, Judgment of 8 April 2008, paragraphs 95 and 97-98) or the need to protect their reputation and that of their family (see ECtHR cases *Brudnicka and others v. Poland*, Judgment of 3 March 2005, paragraphs 27-31; *Armonienė v. Lithuania*, Judgment of 25 November 2008, paragraph 29; and *Polanco Torres and Movilla Polanco v. Spain*, Judgment of 21 September 2010, paragraphs 31-33).

62. On the contrary, in cases where the alleged violation of the ECHR was not closely related to the death or disappearance of the direct victim, the ECtHR applied a much more limited approach to recognizing the status of indirect victim. (See the case of the ECtHR, *Karpylenko v. Ukraine*, Judgment of 11 February 2016, paragraph 104). For example, despite filing claims on behalf of a deceased person, the ECtHR has emphasized that the rights guaranteed by Article 6 of the ECHR are, in principle, "*non-transferable*" rights. (See in this regard, the ECtHR case *Bic and Others v. Turkey*, Judgment of 2 February 2006, paragraphs 17-24). The same court found and consequently refused to accept the victim status of one of the Applicants in the joint cases no. KI149/18, KI150/18, KI151/18, KI152/18, KI153/18 and KI154/18, Applicants *Xhavit Aliu and 5 others*, Resolution on Inadmissibility of 9 August 2019 - regarding the assessment of the victim status, see paragraphs 62 to 75 of this case). However, the ECtHR has exceptionally recognized the victim status to the Applicants who have alleged a violation of Article 6 of the ECHR, if they have managed to

demonstrate a direct effect on their rights. (See, in this context, inter alia, the case of the ECtHR *Nölkenbockhoff v. Germany*, cited above, paragraph 33).

63. Consequently and in principle, beyond the recognition of victim status in cases where claims are filed by the relatives of a deceased, whose death may be attributed to the State in violation of Article 2 of the ECHR, the recognition of victim status to family relatives certain is made only exceptionally, and only if a legal interest can be established and which is directly related to the violated right; an important moral interest is proved; or has been able to demonstrate a direct effect on the rights of the respective Applicants.

64. The Court recalls that in the circumstances of the present case it is the father of the deceased I.F. who submits a claim to the Court. The death of the deceased I.F. is natural death and is not related to the responsibility of the state. The court proceedings were in fact initiated and conducted by the Applicant only after the death of his son and are related to the registration of his death in the PDR, a registration which was rejected by the Civil Registration Agency as well as all regular courts. Furthermore, the Applicant, beyond the allegation of violation of his rights, alleges that those of his nephew and the wife of his son, namely the deceased I.F.

65. Having said that, the Court also cannot fail to emphasize the special specifics of this case and related to a civil dispute which was initiated in relation to the deceased and only after his death, the conclusions of which result in the impossibility of his registration as deceased in the basic death register, resulting in not only the continued suffering of his family but also the unresolved civil status of his wife and son.

66. In the light of the case law of the ECtHR with regard to the flexible and non-excessive interpretation of the concept of "*victim*" and the importance of merit that raises a certain issue, and emphasizing the specifics of this case, the Court recalls that (i) it is the father of the deceased who submits the claim to the Court, and that based on the case law of the ECtHR and the Court, provided that other criteria are met, in principle, he is recognized the status of indirect victim before the Court; (ii) the Applicant has been a party to all public authorities in the dispute in question; (iii) the legal interest, namely the resolution of the civil status of the wife and son of the deceased, has been proved by the Applicant; (iv) the circumstances of the present case, involve interests of great importance for the future of the family of the deceased, namely his wife and son, from the point of view of the resolution of their civil status, and on the other hand, their future would remain hostage to the non-registration of the deceased I.F. in the PDR; and (v) the circumstances of the present case also include issues of privacy related to aspects of the psychological and moral integrity of the Applicant and his family, as guaranteed by Article 36 of the Constitution in conjunction with Article 8 of the ECHR. Consequently and for these reasons, the Court acknowledges the Applicant's status as an indirect victim.

67. Therefore, and finally, the Court concludes that the Applicant (i) is an authorized party; and (ii) challenges an act of a public authority, as established in paragraph 7 of Article 113 of the Constitution; in paragraph 1 of Article 47 of

the Law; item (a) of paragraph (1) of Rule 39 and paragraph (2) of Rule 76 of the Rules of Procedure.

(ii) Regarding the exhaustion of legal remedies

68. With regard to exhaustion of legal remedies , the Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, cited above; paragraph 2 of Article 47 of the Law; and item (b) of paragraph (1) of Rule 39 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."

69. The Court notes that in the circumstances of the present case, the Applicant challenges the Judgment [ARJ. UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court after having exhausted all legal remedies provided by law, and consequently finds that the Applicant has met the admissibility criteria related to the exhaustion of legal remedies set out in paragraph 7 of Article 113 of the Constitution, paragraph 2 of Article 47 of the Law and item (b) of paragraph (1) of Rule 39 of the Rules of Procedure.

(iii) Regarding the specification of referral and deadline

70. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by the Law and the Rules of Procedure. In this regard, the Court first refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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. [...]

71. The Court recalls that the same criteria are further specified in items (c) and (d) of paragraph 1 of Rule 39 and paragraphs (2) and (4) of Rule 76 of the Rules of Procedure.

72. With regard to the fulfillment of these criteria, the Court notes that the Applicant has accurately clarified what fundamental rights and freedoms guaranteed by the Constitution he claims to have been violated and has specified a concrete act of public authority which he challenges in accordance with Article 48 of the Law and the relevant provisions of the Rules of Procedure; and has filed the referral within the time limit of four (4) months foreseen in Article 49 of the Law and the relevant provisions of the Rules of Procedure.

(iv) As to other admissibility requirements

73. At the end and after examining the Applicant's constitutional complaint, the Court considers that the Referral cannot be considered as manifestly ill-founded on constitutional basis as provided for by paragraph (2) of Rule 39 of the Rules of Procedure and there is no other basis to declare it inadmissible, as none of the requirements laid down in paragraph (3) of Rule 39 of the Rules of Procedure are applicable in the present case.

Conclusion regarding the admissibility of the referral

74. The Court concludes that the Applicant (i) is an authorized party, because in the circumstances of the present case, the Court has accepted "*the status of indirect victim*" to the Applicant; (ii) challenges an act of a public authority; (iii) has exhausted legal remedies prescribed by law; (iv) has specified the fundamental rights and freedoms guaranteed by the Constitution which he claims to have been violated; (v) has filed the referral within the time limit; (vi) the referral is not manifestly ill-founded on constitutional basis; and (vii) there is no other admissibility requirement that has not been met.

75. Accordingly, the Court declares the Referral admissible.

Relevant constitutional and legal provisions

CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 36
[Right to Privacy]

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

[…]

Article 54
[Judicial Protection of Rights]

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 8
(Right to respect for private and family life)

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

Article 13
(Right to an effective remedy)

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

LAW No. 04/L –003 ON CIVIL STATUS

CHAPTER VII
DEATH ACT REGISTRATION

Article 46
Death certificate

1. Death certificate legally certifies the death of a person.
2. The act of death is the minutes that are kept for each deceased, signed by the civil status official and the pleader.
3. The act of death contains:
3.1. the civil status office, where is kept the act of death;
3.2. the number and date of keeping the act of death;
3.3. place and time of death;
3.4. cause of death, according to the doctor;
3.5. the identity and number of identity of the dead, or confirmation of the special charge, for the bodies found without identity;
3.6. identification number, personal name of the medical or legal expert, who has issued the report;

3.7. personal identification number, personal name of pleader;
3.8. number on the letter of the prosecutors, who authorized the action on the cases stipulated in this Law;
3.9. personal name, of civil status official.

Article 47
Declaration of death

1. The declaration of death can be made by any adult family member or by persons close to the family and in their absence or for persons without relatives, the special acting official of municipality, the civil status official, where the citizen has a dwelling/ residence or where was found dead.
2. Declarations are valid when accompanied by medical report.
3. The declaration of death is made within thirty (30) days from the occurrence or from the day the corpse is found and within sixty (60) days, when death occurred abroad.
4. Directors of the hospitals, prisons, correctional institutions and other institutions are obliged to notify in written note the closest civil status office, within five (5) days, for deaths occurring in their institutions.
5. When death takes place during the days of vacation and could not secure funeral permission, burial service responsibilities requires documents that prove the death of these documents and makes the declaration of death in the civil status office, the first working day.
6. By the declaration of death, the civil status office provides the burial permit.
7. The Civil Status Office, when it receives the death notice, under paragraph 4 of this Article and for those times when relatives of victims don't appear to make the declaration, requires verification by local representatives. If the death is confirmed, then holding the act of death, this must sign, as appropriate, representatives of local government, or burial service representative, as interested party.
8. Civil Status Service registry, when they have indications that dead people remain registered with the Registry of Civil Status, can raise charges in court against entities that are obliged to make request to confirm the death, after all administrative procedure are used.
9. The Agency is obliged to generate each month from the Civil Status Registry list of citizens who have reached age one hundred (100) years and for each month following the date 5 distributes the list, according to the civil status office.

Article 48
Certification of legal fact of death

1. The citizen shall be verified that he/she has died in fact when proven by the medical report stating the identity, fact, time, place, and cause of his/her death.
2. The citizen is proclaimed dead also when the interested person and body do the factual verification by a judicial method, according to the provisions of the Law on Out Contentious Procedure.
3. When the corpse cannot be identified, when signs are noticed, or there are suspicions for a violent death, the report shall be issued by the

forensics expert. In such cases, regardless of commencement or not of the prosecution, the actions in the civil status shall be done only with the permission of the prosecutor.
4. The decision of the court announcing citizen as dead shall be registered in the Civil Status Register, in the "remarks" column, no death certificate was held.
5. Deaths taking place abroad shall be verified according to the Law of the country where death took place, except when death occurs in the territory of diplomatic representation offices or in the airplane, train, in international areas, where this Law shall be implemented.

Article 49
Death confirmation

Death shall be certified by the competent doctor, where the death took place (doctors, health center, hospital, emergency, etc.). When the corpse undergoes autopsy, death shall be verified by the doctor who has carried out the autopsy. The verification of violent or suspicious deaths, as well as of deaths taking place at detention centers shall be invalid unless verification was not done by the forensic expert and by an order issued from the court.

Article 50
Burial permit

1. A person can be buried only after obtaining the permit from the civil status office.
2. In cases when it cannot be acted according to paragraph 1 of this Article, then a notification should be made in the office of civil status within three (3) working days.
3. The document certifying the death while filing the request for registration in the master register; there are also the witnesses according to paragraph 1 of this Article.
4. A burial permit should not be issued without a doctor's report/official confirmation of death or without court order as determined by Law on Forensics. 5. In cases when the burial is not taking place in the area in which master register of the deceased person is, and the burial permit is given by the subjects determined by this Law from another civil status office, the office that issues the burial permit informs the office of civil status, which keeps the principal civil status register of the deceased citizen.

Article 52
Registration of the death of a Kosovo citizen living abroad

1. The death of a Kosovo citizen taken place abroad shall be done in the Principal Civil Status register at the residence place where he/she used to live in Kosovo.
2. The registration of the death of a Kosovo citizen living abroad shall be done through the civil status service of the Kosovo diplomatic mission in that country, by presenting the following documentation: International

death certificate, or the verified death certificate issued by the civil status office translated into official languages of Kosovo, documentation verifying the Kosovo nationality or place of residence, identity card, or passport.
3. If there are no conditions for registration as set out in paragraph 2 of this Article, the registration shall be done directly in the civil status service.

CHAPTERVIII
SUBSEQUENT REGISTRATION AND RE-REGISTRATION

Article 54
Subsequent registration

1. In cases where birth or death does not occur within thirty (30) days then the registration is done by a decision of the Civil Status Office.
2. Criteria, forms, ways and procedures of subsequent registration will be regulated by Minister's sub legal act.
3. The provisions of this Article shall also apply to persons born in the territory of the Republic of Kosovo who fulfill the requirements to obtain citizenship found in Article 29 of the Law on Citizenship and who were never registered in the civil status registry.

Article 55
Re-registration

1. Every registration of births, deaths and/or marriages previously registered in municipal civil status registry books where the applicant is able to prove the previous registration on the basis of documents issued by the civil status registry and/or the Ministry of Interior and the civil status registry books which contained the original registration have subsequently been lost and/or destroyed.
2. Criteria, forms, ways and procedures of re-registration will be regulated by Minister's sub legal act.
3. The provisions of this Article shall also apply to persons born in the territory of the Republic of Kosovo who fulfill the requirements to obtain citizenship found in Article 29 of the Law on Citizenship and who were previously registered in civil status registry.

CHAPTER IX
CIVIL STATUS SERVICE

Article 56
Nature and Function

The Civil Status Service is a unique state service. This service under this law is exercised as delegated function also by local government bodies. It complements updates and manages the Central Civil Status registry, keeps the civil status acts, issues certificates under definitions of this law and performs other services in accordance with applicable law.

ADMINISTRATIVE INSTRUCTION No. 02/2012 - MIA ON THE LATE REGISTRATIONS IN THE CIVIL STATUS RECORDS

Article 15
Criteria for late registrations of deaths in the register of the dead

1. Upon application for late registration of deaths in the register of the dead, the following criteria must be met:
1.1. death certificate from the health care institution, if the death has occured in a public or private heath care institution;
1.2. birth certificate;
1.3. marriage certificate for those who have been married;
1.4. photocopy of identity document or travel document of the person to whom the certificate is required;
1.5. the testimony of two witnesses that have seen the dead or have identified the body without any doubt whether the death occured outside the health care institution;
1.6. international death certificate, or equivalnt (similar) issued from the state where the death occured;
1.7. payment receipt that proves the paid fine as determined in article 63 of the Law on Civil Status.

Merits of the Referral

76. The Court initially recalls that based on the case file, the Applicant's son, namely I.F., died at a health facility in Sweden on 7 June 2013. Based on the case file, he was transported from Sweden to Kosovo on 16 June 2013 and was buried in Prishtina on the same date. Based on the case file, it also follows that in the documentation issued by Sweden regarding this death, the person A.H. is marked, while in the documentation of the Republic of Kosovo, the person I.F. This discrepancy in the relevant death documentation prevented the Applicant from registering his son with PDR. Initially he addressed the Municipality of Prishtina and the Civil Registration Agency and then the regular courts, and the decisions of all of them resulted in the rejection of the Applicant's request for the registration of his son in the PDR.

77. The Municipality of Prishtina rejected the request of the Applicant for the subsequent registration of death in th PDR, initially by the Decision [No. 01-203-194645] of 16 October 2013. This decision was confirmed by the Civil Registration Agency by the Decision [No. 86/013] of 18 November 2013. The Basic Court by Judgment [No. 1652/13] of 16 May 2014 annulled the latter, remanding the case for retrial, emphasizing, *inter alia,* but specifically, that the submission [No. 09/13] of 8 June 2013, issued by the Embassy of the Republic of Kosovo in Sweden, was not taken into account during the decision-making. The Basic Court did not order the registration of the relevant death in the PDR, but only remanded the case for retrial.

78. The Civil Registration Agency by the Decision [No. 30/2014] of 24 June 2014 again confirmed its preliminary decision and upheld the first decision of the Municipality of Prishtina, namely Decision [No. 01-203-194645] of 16 October 2013, thus finally rejecting to register the subsequent death in the PDR. The

following court proceedings resulted in the confirmation of this decision. The Basic Court, the Court of Appeals and the Supreme Court rejected the claim, the appeal and the request for extraordinary review of the court decision, namely, reasoning that based on the documentation provided by the Applicant, the registration of the subsequent death of the son, namely I.F., in the PDR, was contrary to Article 15 of the Administrative Instruction on the criteria for the subsequent registration of deaths in the PDR.

79. The Applicant alleges that the judgments of the regular courts were rendered in violation of his fundamental rights and freedoms guaranteed by Articles 24, 31, 53 and 54 of the Constitution. He emphasizes that the refusal of the public authorities to register the death of his son in the PDR, has directly affected the civil status of the wife and son of the deceased I.F., requesting the Court to order the latter to register the respective death in the PDR.

80. In the context of the Applicant's allegations, the Court initially notes that Article 53 of the Constitution does not contain in itself fundamental rights and freedoms, but it establishes the obligation of the public authorities to interpret them in accordance with the ECtHR case law. The Court will apply the latter when addressing the Applicant's allegations. Regarding other allegations of violation of the Applicant's rights and freedoms , namely those guaranteed by Articles 24, 31 and 54 of the Constitution, the Court recalls that the refusal of the public authorities to register his son in the PDR has affected the civil status of the wife and son of the deceased, in violation of his constitutional rights guaranteed by the Constitution and the ECHR. In relation to these allegations, the Court considers that the substance of the Applicant's allegations, encompasses aspects of the Applicant's right to (i) private life guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR; and (ii) judicial protection of rights and the effective remedy guaranteed by Article 54 of the Constitution and Article 13 of the ECHR.

81. In terms of dealing with the allegations of the Applicant within the scope of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, the Court, referring to the case law of the ECtHR, emphasizes that it does not consider itself bound by the characterisation of the alleged violations given by the Applicant. By virtue of the *jura novit curia* principle, the Court is the master of the characterisation of the constitutional issues that a case may include, and may consider of its own motion the respective complaints, relying on provisions or paragraphs which the parties have not expressly invoked. Based on the case law of the ECtHR, a complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments expressly relied on by the parties. (See, *mutatis mutandis,* case of the ECtHR *Talpis v. Italy,* Judgment of 18 September 2017, paragraph 77 and the references stated therein). Therefore, and in the following, the Court will address the Applicant's allegations from the point of view of the rights guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR.

82. In this regard and in order to address the essence of the Applicant's allegations, for respect for private life, the Court will first consider: (I) the general principles of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, insofar as they are relevant in the circumstances of the present case, in

order to assess the applicability of these articles; to continue with (II) the general principles of Article 54 of the Constitution and Article 13 of the ECHR, insofar as they are relevant to the circumstances of the present case, in order to assess the applicability of these Articles, and then to proceed with the application of these general principles, in the circumstances of the present case.

I. General principles regarding the right to respect for private and family life and their applicability in the circumstances of the present case

General principles

83. Initially, the Court recalls that although the scope of Article 36 of the Constitution and Article 8 of the ECHR is not unlimited, the ECtHR has broadly defined the scope of Article 8 of the ECHR, including cases where a specific right is not specifically highlighted in this article. (See Guide on Article 8 of the ECHR, Part A. Scope of Article 8, item 2). The primary purpose of Article 8 of the ECHR, according to the ECtHR case law, is to protect individuals from arbitrary "*interference"* with their (i) private; (ii) family life; (iii) home; or (iv) correspondence. (See, in this context, *inter alia,* ECtHR cases*: P. and S. v. Poland*, Judgment of 30 October 2012, paragraph 94; and *Nunez v. Norway*, Judgment of 28 June 2011, paragraph 68). Certain issues can undoubtedly affect more than one of the interests protected by abovementioned articles. (See ECHR Guide on Article 8 of the ECHR, The Right to Respect for Private and Family Life, Part I. Structure of Article 8, paragraph 1). These rights, based on the ECHR system and the relevant case law of the ECtHR, are secured through (i) negative obligations, namely the obligation of the state not to "*interfere*" with private and family life; and (ii) positive obligations , namely the obligation of the state to ensure that these rights are effectively enjoyed.

84. More specifically, whereas the ECtHR states that the primary purpose of Article 8 of the ECHR is to provide protection against arbitrary "*interference*" with the private, family, home and correspondence by a public authority, an obligation of the classical negative type, member states also have positive obligations to ensure that the rights of Article 8 of the ECHR are respected even between private parties. (See, in this context and, *inter alia*, the case of the ECHR, *Bărbulescu v. Romania*, Judgment of 5 September 2017, paragraphs 108-111). These positive obligations may include the adoption of measures necessary to ensure respect for a private life, including the provision of a legal framework that protects the rights of individuals and, where appropriate, the definition and implementation of specific measures, including those related to the effective respect of the physical and psychological integrity of the respective Applicants. (See, for example, the case of the ECHR, *Evans v. The United Kingdom*, Judgment of 10 April 2007, paragraph 75 and the references used therein and the case of *R.R. v. Poland*, Judgment of 26 May 2011, paragraphs 184 and 185 and the references used therein).

85. In each case before the ECtHR and which contains allegations relating to Article 8 of the ECHR, the ECtHR, having assessed and ascertained the

applicability of Article 8 of the ECHR in the circumstances of the present case, assesses whether its view in the consideration of the respective case should be from the aspect of the negative or positive obligation of the state. While the ECtHR itself has emphasized that the distinction between these two aspects is not always clear, the case law of the ECtHR highlights some rules on which the ECtHR is based in determining this point of view. (See Guide to Article 8 of the ECHR, Part I. Structure of Article 8, point B). In principle, it is important to assess whether the state has acted, namely ""*interfered"*, or the state has failed to act, more precisely if the state respectively, has failed to ensure through its legal or administrative system the right to respect for private and family life in the circumstances of this case. (See the ECtHR case *Gaskin v. The United Kingdom*, Judgment of 7 July 1989, paragraph 41).

86. If the ECtHR finds that the present case contains aspects of negative obligations, the ECtHR first assesses whether, in its circumstances, there is an "*interference*" with the rights guaranteed by Article 8 of the ECHR, and in the case of an affirmative assessment, the ECtHR further assesses whether this "*interference*", (i) has been done in accordance with the law, namely whether it is "*prescribed by law*"; (ii) pursues a legitimate aim, namely those aims set out in paragraph 2 of Article 8 of the ECHR; and (iii) it is *is necessary in a democratic society*" (For a detailed explanation regarding these three criteria, see the Guide to Article 8 of the ECHR, Part I. Structure of Article 8, points C, D and E).

87. Whereas, if the ECtHR considers that the present case contains aspects of positive obligations, it should take into account whether the importance of the interest in question requires the imposition of a positive obligation required by the Applicant, e.g. for the state to do or take any action so that the Applicant can enjoy his right guaranteed by Article 8 of the ECHR. In this regard, based on the ECtHR case-law, several factors have been considered, namely those related to the respective applicants and those relating to the role of the respective state. With regard to the former, it is important to assess the importance of the interests of the respective Applicant and whether they relate to "*fundamental values*" or "*essential aspects*" of his/her private life, whereas regarding the second it is important to assess whether the alleged obligation of the state is "*narrow and precise*" or "*broad and indeterminate*" and what is the burden that the obligation would impose to the respective state. (See, Guide to Article 8 of the ECHR, Part I. Structure of Article 8, B. paragraph 5; see also ECHR case *Hämäläinen v. Finland*, Judgment of 14 July 2014, paragraph 66 and the references therein).

88. Having said that, in both cases, regard must be paid to the following three issues (i) the fair balance to be struck between the competing interests of the individual and the community as a whole (see the cases of the ECtHR, *Dickson v. The United Kingdom*, Judgment of 4 December 2007, paragraph 70; *Evans v. The United Kingdom*, cited above, paragraph 75; *Gaskin v. The United Kingdom*, cited above, paragraph 40; *Hamalainen v. Finland*, cited above, paragraph 65; and *Odievre v. France*, Judgment of 13 February 2003, paragraph 40 and references used therein). In this regard, the ECtHR has also emphasized that in achieving this balance, in the case of positive obligations of the State, the legitimate aims referred to in the second paragraph of Article 8 of

the ECHR may be of a certain relevance, despite the fact that this paragraph refers only to legitimate aims in the context of "*interference*" with the right protected by the first paragraph of the same article, namely the negative obligations of a state (see, *inter alia*, the case of the ECtHR, *Gaskin v. the United Kingdom*, cited above, paragraph 42); (ii) the purpose of the ECHR to guarantee rights which are not "*theoretical or illusory*" but rights which are "*practical and effective*" (see, *inter alia*, the case of the ECtHR *R.R. v. Poland*, cited above, paragraph 191 and the references used therein); and (iii) a fair decision-making process and which includes the necessary guarantees for the observance of the interests of the individual protected by Article 8 of the ECHR, despite the fact that the latter does not contain clear procedural requirements (see in this regard and among others, the cases of the ECtHR, *Buckley v. the United Kingdom*, Judgment of 29 September 1996, paragraph 76; *Tanda Muzinga v. France*, Judgment of 10 July 2014, paragraph 68; and *M.S. v. Ukraine*, Judgment of 11 July 2017, paragraph 70).

89. Finally, it must be noted that the states enjoy a "*certain margin of appreciation*" for determining the breadth of which a number of factors must be taken into account. Fort example, when an important aspect of an existence and identity of individual is at stake, the allowed margin of appreciation for the state is more limited. (See, for example, ECtHR cases: *X and Y v. the Netherlands*, Judgment of 18 January 1989, paragraphs 24 and 27; *Christine Goodwin v. the United Kingdom*, Judgment of 11 July 2002, paragraph 90; and *Pretty v. the United Kingdom*, Judgment of 29 April 2002, paragraph 71). However, in cases where there is no consensus within the Council of Europe Member States, neither on the importance of the question at stake nor on the best way to safeguard that interest, especially in cases where issues sensitive to morals or ethics are raised, the margin of appreciation will be wider. (See ECtHR cases *X, Y and Z v. the United Kingdom*, Judgment of 22 April 1997, paragraph 44; *Frette v. France*, Judgment of 26 February 2002, paragraph 41; and *Christine Goodwin v. United Kingdom*, cited above, paragraph 85).

Application of the general principles to the circumstances of the present case

90. Based on this constitutional obligation, based on the case-law of the ECtHR, regarding Article 8 of the ECHR, the Court will next address the Applicant's allegations by applying to this assessment the relevant case-law of the ECtHR. The Court will first address, the question of the applicability of Article 36 of the Constitution in conjunction with Article 8 of the ECHR in respect of the concrete issues of this case, namely, the rejection of the Applicant's request to register his deceased son I.F. in the PDR by the public authorities of the Republic of Kosovo. Having determined the applicability of the relevant Articles of the Constitution and the ECHR in the circumstances of the present case, the Court will further, review and determine whether the request should be dealt with in the light of the negative or positive obligation of the Republic of Kosovo. In case it should be dealt from the perspective of the negative obligation, the Court will assess whether there has been an "*interference*" with the Applicant's rights and whether such "*interference*": (i) has been "*in accordance with the law*" or "*prescribed by law*"; (ii) has "*pursued a legitimate aim*"; and (iii) was *"necessary in a democratic society"*; If the specific issue is to be dealt with in the light of the positive obligation, the Court

will examine whether, in the circumstances of the present case, the state had an obligation to take measures to ensure the effective exercise of the Applicant's right to a private life, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction to Article 8 of the ECHR.

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

91. In this respect, the Court notes that the right to private life is included in (i) paragraph 1 of Article 36 of the Constitution, which expressly states that: "*Everyone enjoys the right to have her/his private life respected* [...]"; and, as noted above, (ii) paragraph 1 of Article 8 of the ECHR, which expressly states that "*Everyone has the right to respect for his private life [...]*".

92. The case-law of the ECtHR in interpreting this right encompasses both the physical, pschycological and moral integrity of a person. (See the ECtHR Guide of 31 August 2018 on Article 8 of the ECHR; Part II. Private life; B. Physical, Psychological or Moral Integrity). In the framework of this right, the case law of the ECtHR includes cases related to death, including its manner, but also those related to burial, cases that before the ECtHR have been raised mainly by family members of the deceased. More precisely, the category of private life of Article 8 of the ECHR includes the case law of the ECtHR, both in relation to matters of end of life and those relating to burial. The case law relating to the former consists mainly of cases relating to the right to decide the manner of death of a person. (See the ECtHR cases, *Pretty v. the United Kingdom,* cited above, paragraph 67; *Haas v. Switzerland,* Judgment of 20 January 2011, paragraph 51; *Koch v. Germany,* Judgment of 19 July 2012, paragraph 52; and *Gard and others v. the United Kingdom,* Decision of 13 June 2017, paragraphs 118-124). Whereas, the case law related to the second, namely the issues related to the burial, mainly related to cases regarding the way in which the body of a deceased relative was treated, as well as issues regarding the ability to attend the burial and pay respects at the grave of a relative. (See the ECtHR cases, *Solska* and *Rybicka v. Poland,* cited above, paragraphs 106-108; *Lozovyye v. Russia*, cited above, paragraphs 32-35; and *Hadri-Vionnet v. Switzerland,* Judgment of 14 February 2008, paragraphs 51-52).

93. The Court emphasizes that the case of the Applicant differs from the cases of the ECtHR set in this context because it does not directly include an issue related to the manner of burial of the deceased I.F. The Court recalls that, based on the case file, the deceased I.F. was buried on 16 June 2013 and the Applicant's allegations are not related to the manner of his burial, but to the fact that the state, namely the public authority in the Republic of Kosovo, have refused to register the deceased in the PDR.

94. However, the Court notes that the non-registration of the deceased in the PDR is directly related to the death of the deceased and namely to the psychological and moral integrity of his family, and moreover to the civil status of his wife and son as a result of his death. The Applicant's family was unable to complete the psychological process of his son's death in formal and legal terms because he does not appear to be dead in the civil registry.

95. In this context, the Court must find that the circumstances of the Applicant fall within the scope of the right to a private and family life and, consequently, paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR are applicable in the circumstances of the present case. As a result, the Court will further consider whether the refusal of the Applicant's request by public authorities to register the death of his son I.F in the PDR., first by the Civil Registration Agency, and then by the regular courts, is in accordance or not with the rights guaranteed by the abovementioned Articles. Having said that, and as explained above, preliminarily, the Court must assess whether the circumstances of the present case are to be assessed from the point of view of the negative or positive obligation of the Republic of Kosovo.

(i) The nature of the State's obligation – whether the case encompasses "interference" or a positive obligation

96. As noted above, following the determination regarding the applicability of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, based on the case law of the ECtHR, the Court must determine whether the Referral and the Applicant's allegations must be treated from the perspective of the negative or positive obligations of the state. While, as the ECtHR itself emphasized, the difference between these two categories of obligations is not always strict, in principle the first category relates to the obligation of the state not to interfere with fundamental rights and freedoms, while the second category is related to the examination of shortcomings and flaws, which are mainly related to the state obligation to take measures through which the guarantee of the respective Applicant's right to a private family is secured.

97. The Court recalls that in the circumstances of the present case, the request of the Applicant for the subsequent registration of the death of his son in PDR was rejected by the Municipality of Prishtina, the refusal which was confirmed by the Civil Registration Agency. The latter confirmed the same decision even after the initial Judgment of the Basic Court, namely the Judgment [No. 1652/13] of 16 May 2014. The decision of the Civil Registration Agency was again challenged before the regular courts, which, as mentioned above, upheld the latter, finally refusing the subsequent registration of the deceased in the PDR. Consequently, from the beginning of the respective proceedings, namely the first request of the Applicant for the subsequent registration of his son in the PDR in October 2013 and until the challenged decision of the Supreme Court of 22 December 2017, five (5) years have passed, within which the deceased I.F. was not registered in the PDR, leaving the psychological and moral integrity of his family infringed and the civil status of his wife and son unresolved.

98. In such circumstances, the Court considers that the refusal of the public authorities to register his deceased son in the PDR constitutes an "*interference*" with the enjoyment of the Applicant's right to a private life, but the latter have failed to act. More precisely, the procedures followed of the administrative and judicial system have not resulted in the exercise of the Applicant's right to respect for his private life. (See, for a similar finding despite the difference in factual circumstances, the case of the ECtHR *Gaskin v. the United Kingdom*, cited above, 41). Consequently, the Court considers

that the circumstances of the present case require an assessment from the point of view of the positive obligations of the state, namely whether the state had an obligation to take measures to ensure the effective exercise of the Applicant's right to a private life, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR.

99. To determine whether the public authorities have taken all necessary actions, namely have acted in accordance with their positive obligations to respect the private life of the Applicant, based on the case law of the ECtHR, and as explained above, the Court next must analyze the fair balance between the competing interests of the individual and the community as a whole, namely private and public interests. In determining this balance, account must be taken of (i) the importance of the Applicant's interest, namely the importance of registering his deceased son in the PDR and regulating the civil status of the spouse and son of the deceased, and whether this issue relates to the "*fundamental values*" or "*essential aspects*" of his private life; and (ii) the nature of the public authorities' obligation, namely whether the alleged obligation of the State is "*narrow and precise*" or "*broad and indefinite*" and the burden that the relevant obligation would impose on the state. This assessment should also take into account whether the decision-making process regarding the Applicant's rights to a private life has been fair and has resulted in the exercise of "*practical and effective*" rights for the Applicant and not merely "*theoretical or illusory*", because such a result would not be in accordance with either the Constitution or the ECHR. Therefore, in the following, the Court will consider whether in the circumstances of the present case, the necessary balance has been reached to protect the interests of the Applicant in respect of his right to a private life.

(ii) Balance between competing interests - the Applicant's right to respect for private life and state obligations

100. Based on the abovementioned principles which are relevant to determining the fair balance between the competing interests of the individual and the community as a whole, the Court first emphasizes the importance of the Applicant's interest, namely the importance of registering the his deceased son in the PDR.

101. In this regard, the Court notes that in the circumstances of the present case, it is not disputable that (i) I.F. died in Sweden; (ii) that his death has been confirmed through the submission [No. 09/13] of 8 June 2013 issued by the Embassy of the Republic of Kosovo in Sweden through which "*Kosovo authorities were notified that the citizen of Kosovo, Mr. I.F. died*" and it has been confirmed that "*there are no obstacles to his repatriation to the Republic of Kosovo*"; and (iii) that the latter was buried on 16 June 2013 in Prishtina. His death has not been disputed by any of the public authorities in the Republic of Kosovo. The same authorities, however, have refused to register the citizen I.F. as dead at the PDR, given that there is no medical report on behalf of I.F. and which confirms his death, this request for registration of a deceased in the PDR, determined through the Law on Civil Status and the relevant Administrative Instruction.

102. The Court also notes that it is not disputable that the registration of the death of the deceased I.F. with the PDR is of great importance to the Applicant and his family. The Court has already recognized his victim status, emphasizing the fact that (i) the inability to register his son as dead at the PDR even after seven (7) years from his death, has resulted in the continuous suffering of his family in violation of psychological and moral integrity as one of the protected aspects under the right to privacy, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR; and (ii) the unresolved civil status of the wife and son of the deceased remains hostage to the refusal to register I.F. as dead at PDR. More specifically, in civil registers, I.F. appears to be alive, making it impossible for his wife and his minor son to regulate their civil status. Refusal by public authorities to register the deceased I.F. in the PDR, makes impossible the regulation of this civil status, affecting, among other things, the possibility of movement of the minor son outside the state of Kosovo, only with his mother. Therefore, the circumstances of the case reflect the great importance for the Applicant and his family, for the registration of the death of the deceased I.F. in the PDR. These circumstances undoubtedly contain "*essential aspects*" for the exercise of the right to a private life, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR. (See, in this context, despite the difference in factual circumstances of the case the assessment of the ECtHR in case *Dickson v. the United Kingdom*, cited above, paragraph 72).

103. As explained above, based on the case law of the ECtHR, the importance of the issues involved in a case must be balanced with the obligations of the state. In this regard, it is initially very important to assess (i) whether the alleged obligation of the state is "*narrow and precise*" or "*broad and indefinite*"; and (ii) what is the burden that the relevant obligation would impose on the state. The Court in this context reiterates that in the circumstances of the present case, the Applicant's request is the registration of his deceased son in the PDR. This requirement in relation to the obligation of the state in the context of its right to a private life is (i) in fact "*narrow and precise*" and not "*broad and indefinite*"; and (ii) the Applicant's request for action to be taken by the State does not constitute a disproportionate burden on the State. These two findings of the Court are based on the review of similar cases arising from the case law of the state, and in which, among other things, the nature of the allegations and the burden that they impose on the state has been examined. For example, in contrast to the circumstances of the present case, in case *Botta v. Italy*, the ECtHR found that the Applicant's allegations of access to the means necessary for persons with disabilities during his holiday at a resort far from his place of residence were of such a "*broad and indefinite*" nature that they could not result in a direct link between the measures that the state should take to ensure the requirements to a private life of the Applicant concerned. (See *Botta v. Italy*, Judgment of 24 February 1998, and in particular paragraph 35 thereof for the relevant finding of the ECtHR). On the other hand, also in contrast to the circumstances of the present case, in case *Rees v. the United Kingdom*, the ECtHR found that the exercise of the Applicant's request would require very substantial changes in the way of managing birth registers with consequences of administrative nature for the rest of the population, therefore, the Applicant's request would impose disproportionate obligations on the state, and would exceed the necessary balance of the Applicant and the interests of

others, emphasizing that the scope of the guarantees of Article 8 of the ECHR, cannot go that far. (See *Rees v. the United Kingdom*, Judgment of 17 October 1986, and in particular paragraph 43 thereof for the relevant finding of the ECtHR).

104. Therefore, and based on the abovementioned explanations, the Court must find that the aspects involved in the circumstances of the present case are of great importance to the Applicant and that they are "*narrow and precise*" and as such, do not burden the state with disproportionate obligations. Having said that, and in this context, in the following Court must also assess whether the actions taken by the public authority, namely the Civil Registration Agency and the regular courts, are in line with the State's obligations to respect the Applicant's private life; and consequently, whether they have guaranteed a fair balance between the competing interests of the Applicant and the community as a whole.

105. In this regard, and initially the Court recalls that the Municipality of Prishtina, the Civil Registration Agency and the regular courts have refused to register the deceased I.F. in the PDR, on the grounds that the medical report confirming I.F.'s death is missing, and that the report issued by the Swedish health authorities is on behalf of A.H. and not I.F. In this regard, the Court notes that it is not disputed that (i) the report of the health institution, namely the health institution in Sweden, finds the death of the person A.H. and not I.F.; (ii) the documentation of the Republic of Kosovo for the deceased is in the name of I.F., in whose name, any medical report confirming his death does not appear; and (iii) furthermore, it is also correct that the Applicant, both before the regular courts and at the public hearing, failed to clarify the relationship of his son I.F. with the person A.H., and who, according to the Applicant, is an "*imaginary*" name, and may have been made for reasons of asylum procedure.

106. In this respect, the Court emphasizes that the registration of the death certificate is regulated by Chapter VII on the Death Act Registration of the Law on Civil Status. Based on paragraph 3 of Article 47 (Declaration of death) of this law, the declaration of death is made within thirty (30) days from the occurrence or from the day the corpse is found and within sixty (60) days, when death occurred abroad. When deaths are reported after prescribed period, they are qualified in the category of subsequent registration regulated by Article 54 (Subsequent registration) within Chapter VIII on Subsequent Registration and Re-registration of the abovementioned law. Based on paragraph 2 of this Article, criteria, forms, ways and procedures of subsequent registration will be regulated by respective Ministry's sub legal act. This sub-legal act, in the circumstances of the present case is the referred Administrative Instruction, and which in its Article 15 defines the criteria for the subsequent registration of deaths in the register of the dead and which include: (i) death certificate from the health institution, if the death occurred in a public or private health institution; (ii) birth certificate; (iii) marriage certificate for those who have been married; (iv) photocopy of the identification document or travel document of the person for whom the certificate is required; (v) the testimony of two witnesses who saw the deceased with their own eyes or identified the body without any doubt whether the death occurred outside the health institution; (vi) international death certificate, or equivalent document

issued by the state where the death occurred; and (vii) the receipt proving the payment of the fine specified in this Instruction.

107. In the circumstances of the present case, and as defined by the reasoning of the regular courts, the documentation required through points 1.1 and 1.6 of the Administrative Instruction, do not match and are in contradiction with those defined through the points. 1.2, 1.3, 1.4 and 1.5 of the same Instruction. More specifically, the death certificate from the health institution does not match the birth certificate, marriage certificate, identification document of person I.F.

108. The Court recalls that based on the abovementioned explanations, the Civil Registration Agency and the regular courts have substantiated that the registration of the deceased I.F. in the PDR, would be contrary to Article 15 of the Administrative Instruction regarding the subsequent registration of deaths and the relevant provisions of the Law on Civil Status, because the documentation on death issued by the health institution, namely the Swedish health institution, does not match the documentation issued by the Republic of Kosovo.

109. The Court recalls the reasoning of the challenged decision, namely the Judgment [ARJ. UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court, and which in this respect, states as follows:

> *"During the assessment, this Court found that the court of second instance has correctly determined that the documentation attached to the request for registration of the death of I.F in the PDR does not match with the documentation issued by the Republic of Kosovo. All this is due to the fact that the documents on the basis of which death is requested to be registered and which are issued by the Swedish authorities, have been ascertained that all are in the name of AH, whereas the registration of death was required to be done in the name of IF. This Court has also assessed the claimant's allegations that it is about the same person after the deceased IF lived in Sweden and the death occurred there, but as such these allegations cannot be approved as grounded to register death in PDR, as they are contrary to Article 15 of AI 02/2012 which clearly defines the criteria to be met by the applicant."*

110. Having said that, and while it is not disputed that the existence of a medical report for the subsequent registration of death in the PDR is a criterion and requirement of the relevant Administrative Instruction, the Court notes that the extremely formal interpretation and application of applicable law in the circumstances of the present case, notwithstanding the Applicant's special circumstances and the consequences of refusing to register his deceased son in PDR, public authorities, including the regular courts, have not reflected "*due diligence*" in respecting private and family life of the Applicant guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR and the relevant case law of the ECtHR.

111. This finding is primarily because beyond the Constitutional Court, and which based on Article 112 [General Principles] of Chapter VIII [Constitutional Court] of the Constitution is the final authority in the Republic of Kosovo for the

interpretation of the Constitution, is also a constitutional obligation of administrative authorities and regular courts to assess and interpret allegations of violation of fundamental rights and freedoms based on the fundamental rights and freedoms guaranteed by the Constitution. This obligation derives from Article 21 [General Principles] of Chapter II [Fundamental Rights and Freedoms] of the Constitution, according to which, *inter alia*, fundamental human rights and freedoms "*are the basis of the legal order of the Republic of Kosovo*".

112. These fundamental rights and freedoms include those guaranteed by international agreements and instruments, included in Article 22 of the Constitution. The Court recalls that international agreements and instruments guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution include also the ECHR. The Court also recalls that all fundamental rights and freedoms guaranteed by international agreements and instruments (i) are also guaranteed by the Constitution; (ii) apply directly to the Republic of Kosovo; and (iii) have priority, in case of conflict, over the provisions of laws and other acts of public institutions. The Court further states that the interpretation of these fundamental rights and freedoms, all administrative authorities, regular courts and the Constitutional Court, are obliged to comply with the court decisions of the ECtHR. Such an obligation derives from Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo which specifically stipulates that: "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

113. In this context, the Court notes that it is already clear that the relevant case law of the ECtHR requires that in assessing allegations relating to the right to a private life, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, (i) must take into account the circumstances of an Applicant and the relevance of the respective allegations to the effective observance of a private life; and (ii) that the decision-making process regarding the same allegations should be fair in its entirety and result in the exercise of "*practical and effective*" rights for the Applicant, and not merely "*theoretical or illusory*", because such an outcome would be inconsistent with the Constitution and the ECHR.

114. In the circumstances of the present case, and contrary to these principles, the Court notes that beyond the extremely formal interpretation and application of the applicable law, the public authorities have not taken into account either the particular circumstances of the Applicant or the consequences of their decision-making on the Applicant's right to private and family life. This is because, despite the fact that it is not disputed that in the circumstances of the present case there is no medical report on behalf of I.F., it is also not disputed that I.F. died and that his non-registration as such in the PDR, has serious consequences for the wife and minor son of the deceased I.F., leaving the former, with unresolved civil status and also without any opportunity to resolve the latter in the future.

115. Furthermore, despite the obligations contained in paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR and the respective case law of the ECtHR, the public authorities, including the regular courts, in restricting the rights of the Applicant. guaranteed by the articles above, have not undertaken any analysis of the fair balance to be struck between the competing interests of the individual and the community as a whole and, moreover, have not included in their decisions any single reasoning regarding the legitimate aims on the basis of which the guaranteed rights to private and family life may be restricted. The Court recalls that in terms of assessing the exercise of these rights from the point of view of the positive obligations of the state, the legitimate aims on the basis of which the respective rights and freedoms may be restricted, as defined in paragraph 2 of Article 8 of the ECHR, are not determinative because they are in principle related to the assessment of negative obligations of the state, namely those of the obligation of non "*interference*", however the latter, should also be taken into account because based on the case law of the ECtHR, they have a certain relevance also in the context of assessing the positive obligations of the state.

116. In the circumstances of the present case, the public authorities of the Republic of Kosovo, the Civil Registration Agency and the regular courts, despite (i) the direct implementation of the ECHR in the Republic of Kosovo and its priority, in case of conflict, with the provisions of laws and other acts of public institutions, as set out in Article 22 of the Constitution; and (ii) the obligation that the fundamental rights and freedoms guaranteed by the Constitution be interpreted in accordance with the court decisions of the ECtHR, as established in Article 53 of the Constitution, beyond the application of the Law on Civil Status, have neither considered nor reasoned the fair balance needed between the competing interests of the individual and the community nor the legitimate aims on the basis of which the right to a private and family life could be restricted, as required regarding the right to a private life guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR.

117. In addition, the Court notes that while the public authorities rejected to register the deceased I.F. in the PDR, on the grounds that the medical report in his name is missing, they did not take into account (i) the fact that the public authorities of the Republic of Kosovo have confirmed the death and facilitated the return of the deceased I.F. from Sweden to Kosovo; (ii) the possibility of using international legal cooperation in this matter, in order to clarify the circumstances related to the medical report and, consequently, to enable the registration of the deceased in the PDR; and (iii) the possibility that the declaration of the deceased as dead and the relevant registration in the civil registers, be made based on the relevant provisions of the out contentious procedure.

118. More precisely and with regard to the first issue, it is not disputable that I.F. died in Sweden on 7 June 2013. This was confirmed by the submission [no. 09/13] of 8 June 2013 of the Embassy of the Republic of Kosovo in Sweden. The body was transported to Kosovo through the company responsible for funeral services in Linkoping. The deceased was buried in Prishtina on 16 June 2013. Having said that, and despite these facts, in the circumstances of the

present case, there is (i) an international death certificate or death certificate issued by the civil registry of the place of death translated in the official languages of Kosovo; and (ii) there is no official burial permit issued by the Office of Civil Status. Despite the lack of this documentation, the state has facilitated the return of the body from Sweden to the Republic of Kosovo and has allowed the burial of the lattter, while at the same time, has refused its registration in the PDR.

119. More specifically, and with regard to the international death certificate, the Court notes that despite the requirements set out in paragraph 2 of Article 52 (Registration of death of a Kosovo citizen living abroad) of the Law on Civil Status, there is no international certificate of death or death certificate issued by the civil registry of the place of death translated into the official languages of Kosovo for the deceased I.F. However, despite the lack of the above certificate, and the lack of a medical report in the name of the deceased I.F., his death was confirmed by the submission [no. 09/13] of 8 June 2013 issued by the Embassy of the Republic of Kosovo in Sweden, and consequently, the latter was transferred from Sweden to the Republic of Kosovo, through Prishtina International Airport. Regarding the burial permit, the Court notes that despite the fact that paragraph 1 of Article 50 of the Law on Civil Status, stipulates that burial can be done only after obtaining permission from the Office of Civil Status, and that based on paragraph 4 of this article, the burial permit cannot be issued without a certificate from the doctor confirming the death or without a court order, in the circumstances of the deceased I.F., there is no official burial permit. The latter is also confirmed by the Municipality of Prishtina during the discussion in the public hearing, but also through the explanatory letter submitted to the Court on 19 February 2020, through which it is specifically clarified that the Municipality of Prishtina "*cannot provide any document related to the death/burial of I.F., since in the civil status system this person appears as alive*". However, I.F was buried on 16 June 2013 in Prishtina.

120. Consequently, despite the fact that the public authorities of the Republic of Kosovo, namely the Embassy of Kosovo in Sweden, recognize the fact that I.F. died; that the latter is allowed to return to the Republic of Kosovo and in this respect, no obstacles are presented, and despite the fact that there is no dispute regarding whether I.F. died and that he was buried in Prishtina seven (7) years ago, the relevant public authorities of the Republic of Kosovo, refused to register his death in the PDR, on the grounds that there is no medical report confirming his death despite the fact that the lack of this report, and moreover, the lack of an international death certificate, did not prevent the confirmation of death and the return of the body from Sweden to Kosovo and his burial in Prishtina on 16 June 2013. Such uncoordinated actions and separated from each other by the public authorities of the Republic of Kosovo, have resulted in the violation of the rights of the Applicant for his private life guaranteed by the Constitution and the ECHR.

121. On the other hand, and with regard to the second issue identified above, the Court also notes the fact that, beyond the suggestions of the Civil Registration Agency and the State Advocacy, in the public hearing regarding the possibility of international legal cooperation in the circumstances of the present case, the

regular courts, from the beginning of the court proceedings in 2014 until the issuance of the challenged decision in 2017, did not approach this opportunity to attempt to clarify the connection between the late I.F. and that A.H. or even lack of medical report on behalf of I.F. from the Swedish health institution.

122. In this regard, the Court notes that (i) the only Law governing international legal cooperation in the Republic of Kosovo is that relating to criminal matters, namely Law No. 04/L-213 on International Legal Cooperation in Criminal Matters, which is not applicable in the circumstances of the present case; (ii) in the Official Gazette of the Republic of Kosovo, no International Agreement has been published with the Swedish state regarding international legal cooperation; but nevertheless it states that (iii) The Ministry of Justice, on 30 September 2009, issued Administrative Instruction no. 2009/1-09 on the Procedure for the Provision of International Legal Aid in Criminal and Civil Matters which aims to address requests for international legal assistance in civil and criminal matters, and which, despite the fact that it is of a general nature, could have served as a basis for initiating proceedings for international legal cooperation in the circumstances of the present case. The courts have not approached this possibility, nor have they justified the lack of such an initiative.

123. Similarly, and with regard to the third issue, the public authorities have acted regarding the possibility of declaring the death of the deceased I.F., through paragraph 2 of Article 48 of the Law on Civil Status in conjunction with Articles 73 and 74 of Law no. 03/ L-007 on Out-Contentious Procedure (hereinafter: LCP). Part c) of the latter, namely "The procedure of proving a person's death", in its articles 73 and 74, defines the possibility of ascertaining the death of a person through a ruling, if the actual death of a person cannot be proved by means of the document provided by the law on civil registers. Based on the same law, namely Article 4 thereof, this procedure, in addition to the proposal of the natural or legal person, can be initiated through the proposal of the state body. The courts have not approached this possibility, nor have they justified the lack of such an initiative.

124. Consequently, the public authorities, including regular courts, beyond the extremely formal approach of application and mechanical interpretation of the law, have not taken into account all the circumstances of the case and the serious consequences for the Applicant, contrary to the case law of the ECtHR with regard to the interpretation of Article 8 of the ECHR, thus resulting in a situation in which the constitutional rights and those guaranteed by the ECHR to the Applicant are merely "*theoretical and illusory*" rights and not "*practical and effective*" *rights,* as required by the Constitution, the ECHR and the case law of the ECtHR, but also that of this Court. (See, in this context, the cases of the ECtHR, *Nada v. Switzerland*, Judgment of 12 September 2012, paragraph 182; *Emonet and Others v. Switzerland*, Judgment of 13 December 2007, paragraph 86; and *Artico v. Italy*, Judgment of 13 May 1980, paragraph 33).

125. Consequently, the Court considers that the extremely formal approach of the Civil Registration Agency and the regular courts, in the interpretation and application of the relevant provisions of the Law on Civil Status and Administrative Instruction, in the complex and specific circumstances of the

present case, without regard to the legal effects that would produce their decisions regarding the civil status of the spouse and son of the deceased I.F., has prevented the "*practical and effective*" exercise of the Applicant's fundamental rights and freedoms guaranteed by the Constitution. Such an approach runs counter to the obligation of public authorities under Article 8 of the ECHR to have "*due diligence*" that the rights relating to a private life must be respected both through the negative obligations or self-restraint of public authorities, as well as through positive obligations. In both cases, the action must be justified and be proportionate to the individual circumstances of the case. (See ECtHR case, *Płoski v. Poland*, Judgment of 12 November 2002, paragraphs 35-39; and *Nada v. Switzerland*, cited above, paragraph 182).

126. Therefore and based on the explanations above, the Court notes that in the circumstances of the present case, the rejection of the Applicant's application for registration of the deceased son in the PDR, does not reflect the fair balance between the competing interests of the individual and the community in whole. Despite the fact that public authorities have not "*interfered*" with the rights of the Applicant for a private life, the latter, from the point of view of positive obligations, have failed to take the necessary actions to ensure effective respect for the rights of the Applicant for a private life. More precisely, the procedures followed by the administrative and judicial system did not result in the exercise of the Applicant's right to respect for his private life, as guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR. On the contrary, they have resulted in mere "*theoretical and illusory*" rights for the Applicant, despite the fact that in the circumstances of the case (i) the Applicant's allegations are of a very serious nature and relate to the "*essential aspects*" of private life; whereas (ii) the Applicant's request is of a "*narrow and precise*" nature and the burden, namely the obligation of the State to fulfill this request, is not disproportionate.

127. Therefore and finally, the Court finds that the refusal of the public authorities to register the deceased I.F. in the PDR, in the circumstances of the present case, does not strike a fair balance between private and public interest, thus resulting in a violation of the Applicant's rights guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR. (See, despite the difference in factual circumstances of the case, the similar finding of the ECtHR in case *Dickson v. the United Kingdom*, cited above, paragraph 85; and *Gaskin v. the United Kingdom*, cited above, paragraph 49). Consequently, the Court also concludes that the public authorities, including the regular courts, failed to fulfill their positive obligations to provide the Applicant with the rights to his private life, thus resulting in a violation of Article 8 of the ECHR. (See, despite the difference in the factual circumstances of the case, the similar assessment of the ECtHR in case R. *R. v. Poland*, cited above, paragraph 214).

128. Based on the aforementioned clarification, the Court must find that the Judgment [ARJ. UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court in conjunction with the Judgment [AA. No. 333 2017] of 20 October 2017 of the Court of Appeals, Judgment [A. No. 1185/2014] of 5 June 2017 of the Basic Court and Decision [No. 30/2014] of 24 June 2014 and [No. 86/013] of 18 November 2013 of the Civil Registration Agency and that of the

Municipality of Prishtina [No. 01-203-194645] of 16 October 2013, have been rendered in violation of the fundamental rights and freedoms of the Applicant guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR.

129. In the light of this finding, the Court will in the following also examine the compatibility ECHR of the challenged decisions with Article 54 of the Constitution and Article 13 of the ECHR. To this end, the Court will elaborate on the general principles deriving from the case law of the Court and the ECtHR with regard to the abovementioned articles and will apply them in the circumstances of the present case.

II. General principles regarding the rights to judicial protection of rights and the right to an effective remedy and their application in the circumstances of the present case

General Principles

130. As far as it is relevant to the circumstances of the present case, the Court notes that Article 54 of the Constitution consists of two rules, but which must be read together and interdependently. The first rule is general and states that "*everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied*". This rule in principle implies that judicial protection is a right guaranteed to each individual, natural or legal, to whom an existing right guaranteed by the Constitution or by law may have been "*violated*" or the right to acquire or enjoy any rights guaranteed by the Constitution or by law has been "*denied*". The second rule of this article speaks and guarantees the right to "*effective legal remedies*" in cases when it is found that a right protected by the Constitution or by law has been violated. (See, *inter alia*, the case of the Court, KI48/18, Applicant *Arban Abrashi and the Democratic League of Kosovo*, Judgment of 23 January 2019, paragraph 195).

131. Article 54 of the Constitution is also supplemented and should be closely read in conjunction with Article 32 [Right to Legal Remedies] of the Constitution and Article 13 (Right to an effective remedy) of the ECHR and with the relevant case-law of the Court and the ECtHR. Article 13 of the ECHR guarantees the right to an "*effective remedy*" in the event of a violation of the rights guaranteed by ECHR, before a public authority. (See, *inter alia*, the case of the Court, KI48/18, Applicant *Arban Abrashi and the Democratic League of Kosovo*, Judgment of 23 January 2019, paragraph 197).

132. Therefore, in principle and in its entirety, Article 54 of the Constitution on the judicial protection of rights, and Article 13 of the ECHR for an effective remedy guarantee: (i) the right to judicial protection in case of violation or denial of a right guaranteed by the Constitution or by law; (ii) the right to use a legal remedy when it is found that a right has been violated; and (iii) the right to an effective legal remedy at national level if a right guaranteed by the ECHR has been violated. (See, *inter alia*, the case of the Court, KI48/18, Applicant *Arban Abrashi and the Democratic League of Kosovo*, Judgment of 23 January 2019, paragraph 198).

133. Based on the case law of the ECtHR, in principle, the purpose of Article 13 of the ECHR is to provide a legal remedy through which the individuals can reach an effective remedy for violations of their rights guaranteed by the ECHR at the domestic level, before the grievance machinery is set in motion before the ECHR. (See, *inter alia*, the case of the ECHR, *Kudła v. Poland*, Judgment of 26 October 2000, paragraph 152). On the contrary, the absence of relevant legal remedies would weaken and make illusory the guarantees of Article 13 of the ECHR, while the latter, as already stated, does not aim to guarantee "*theoretical or illusory*", but rights that are "*practical and effective*". (See, *inter alia*, the case of the ECtHR, *Scordino v. Italy* (no. 1), Judgment of 29 March 2006, paragraph 192).

134. Furthermore, and insofar as it is relevant to the circumstances of the present case, this case-law on the interpretation of Article 13 of the ECHR states that when an individual has a "*substantiated*" claim that he is the victim of a violation of the rights provided by the ECHR, he/she must have a legal remedy before a "*national authority"*, which enables the respective claim to be decided on the substance and, if appropriate, enables him/her to make the appropriate correction.

135. The Court notes that with regard to the notion of "*arguability*", the ECtHR has not formulated a precise definition. However, it emphasized that "*where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress*". (See, *inter alia*, ECtHR, *Leander v. Sweden*, Judgment of 26 March 1987, paragraph 77). It also added that if the claim is "*arguable*", it should be determined in the light of specific facts and the nature of the legal issue or issues raised in each particular case. (See, *inter alia*, ECtHR cases *Boyle and Rice v. the United Kingdom*, Judgment of 27 April 1988, paragraph 55; and the *Platform "Arzte für das Leben" v. Austria*, Judgment of 21 June 1988, paragraph 27) . In principle, when the "*arguability*" of a complaint on merits is out of the question, the ECtHR finds Article 13 applicable in the circumstances of that case. (See ECtHR, *Vilvarajah and Others v. the United Kingdom*, Judgment of 30 October 1991, paragraph 121; and *Chahal v. the United Kingdom*, judgment of 15 November 1996, paragraph 147). The ECtHR has emphasized, however, that Article 13 of the ECHR cannot reasonably be interpreted so as to require a remedy in domestic law in respect of any supposed grievance that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the ECHR. (See, *inter alia*, ECtHR cases *Boyle and Rice v. the United Kingdom*, cited above, paragraph 52; and *Maurice v. France*, judgment of 6 October 2005, paragraph 106).

136. The Court also notes that based on the case law of the ECtHR, Article 13 of the ECHR does not exist independently; it merely complements the other essential provisions of the ECHR and its protocols. (See, in this context, the case of the ECtHR, *Zavoloka v. Latvia*, Judgment of 7 July 2009, paragraph 35 (a)). This article may be applied only in combination with, or in the light of, one or more other articles of the ECHR or relevant protocols for which a violation has been alleged. However, Article 13 of the ECHR can be highlighted without violating

another provision of the ECHR. (See, *inter alia*, case of the ECtHR, *Klass and Others v. Germany*, Judgment of 6 September 1978, paragraph 64). Consequently, the fact that another right has been violated cannot be a precondition for the application of Article 13 of the ECHR. Thus, even if the ECtHR has not found a violation of a provision, the complaint may remain "*arguable*" for the purposes of Article 13 of the ECHR. (See cases of the ECtHR, *Valsamis v. Greece*, Judgment of 18 December 1996, paragraph 47; and *Ratushna v. Ukraine*, Judgment of 2 December 2010, paragraph 85).

137. With regard to the connection between Article 13 and Article 8 of the ECHR, which is relevant to the circumstances of the present case, the Court notes that the ECtHR has found a violation or not of Article 13 in conjunction with or in the light of Article 8 of the ECHR in different cases. In all these cases it was emphasized that an effective legal remedy in the context of cases involving claims in relation to Article 8 of the ECHR, implies that the relevant authorities must examine the balance between the interests of the individual and the obligations of the State. (See, *inter alia*, case of the ECtHR, *Gorlov and Others v. Russia*, Judgment of 2 July 2019, paragraph 108).

138. For example, the Court notes that the ECtHR found violations of Articles 8 and 13 of the ECHR, *inter alia*, in all of the following cases: *Gorlov and Others v. Russia*, cited above; *B.A.C v. Greece*, Judgment of 13 October 2016; *Keegan v. United Kingdom*, Judgment of 18 July 2006; *Reiner v. Bulgaria*, Judgment of 23 May 2006; and *T.P and K.M v. the United Kingdom*, Judgment of 10 May 2001. Violation of Article 8 of the ECHR, in some cases was found from the point of view of negative state obligations, while in others from the point of view of positive state obligations. Taking into account the violation of Article 8 of the ECHR in these cases, the ECHR also found a violation of Article 13 of the ECHR. The latter, in all these cases, was reasoned through the following arguments: (i) taking into account the finding of a violation under Article 8 of the ECHR, the ECtHR found that the Applicants concerned had an "*arguable*" claim before it with respect to Article 13 of the ECHR; (ii) the reasoning of the relevant Judgments stated that the right to an effective remedy guaranteed by Article 13 of the ECHR requires that the Applicants' allegations be examined on the merits and taking into account that the respective cases had not considered the balance between the interest of the respective Applicants and the obligations of the State, found that the legal remedies at the domestic level were not effective, and consequently Article 13 of the ECHR has been violated; and (iii) in certain cases, it also emphasized the extremely formal and limited analysis of local courts and the disregard of the specifics of the case, finding consequently that the criteria of Article 13 of the ECHR have not been met.

Application of general principles in the circumstances of the present case

139. Based on the aforementioned general principles, the Court must further assess whether, in the circumstances of the present case, the Applicant has an "*arguable*" claim before the Court with respect to Article 54 of the Constitution in conjunction with Article 13 of the ECHR; and if this is the case, the Court must assess whether the Applicant had available legal remedies which enabled him to "*implement the substance of the rights of the Convention …*". (See case

of the ECtHR *Keegan v. the United Kingdom*, cited above, paragraph 41, and references used therein).

140. In this context and initially, the Court notes that in view of the finding of a violation of paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR in the circumstances of the present case, the Applicant's allegations of a violation of Article 54 of the Constitution in conjunction with Article 13 of the ECHR, are clearly "*arguable*". (See ECtHR cases *Gorlov and Others v. Russia*, cited above, paragraph 104; and *Keegan v. the United Kingdom*, cited above, paragraph 41; see also case No. KI193/18, Applicant *Agron Vula*, Judgment of 22 April 2020, paragraph 130). Therefore, in the following, it must be assessed whether the legal remedies available to the Applicant, have enabled him to examine the substance of the content of his allegations and claims.

141. In this regard, the Court recalls that it has already found that the rejection of the Applicant's request for registration of his deceased son in the PDR by the public authorities, was in violation of his right to a private life, guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR. Also, the Court has already found that public authorities, including regular courts, in addressing the Applicant's allegations had an extremely formal approach to interpreting and applying the law, and have not addressed the substance of the Applicant's allegations and the specifics of his case, thus resulting in the impossibility of carrying out the necessary correction for respect of his rights to a private life, and that the outcome of the proceedings before the same public authorities, in their entirety, has resulted in only "*theoretical* or illusory", not "*practical and effective*" rights for the Applicant, contrary to the Constitution and the ECHR.

142. Furthermore, and contrary to the requirements of Articles 8 and 13 of the ECHR, the Civil Registration Agency and the regular courts, in addition to not addressing the substance of the Applicant's allegations, did not even consider the proper balance between competing interests, nor issues related to the specifics of the present case and the reasonableness and proportionality of the rejection of the Applicant's request for registration of his deceased son in the PDR.

143. The Court reiterates in this regard that the extremely formal approach to the interpretation and application of the law and the limited consideration of the Applicants' respective claims, bypassing the substance and content of the Applicant's allegations, in the absence of any attempt to find fair balance between the competing interests, beyond violation of Article 8 of the ECHR, disabling the proper redress also results in a violation of Article 13 of the ECHR based on the case law of the ECtHR. (See, notwithstanding differences in factual circumstances of the case, the same finding and reasoning of the ECtHR, *inter alia*, in case *Reiner v. Bulgaria*, cited above, paragraphs 141, 142 and 143)

144. In such circumstances, based on the case law of the ECtHR, the Court must find that the Applicant did not have effective legal remedies available to redress the violations of his right to a private life guaranteed by paragraph 1 of Article

36 of the Constitution in conjunction with Article 8 of the ECHR. Therefore, for the reasons explained in this Judgment, the Court must also find that in the circumstances of the present case, there has also been a violation of Article 54 of the Constitution in conjunction with Article 13 of the ECHR. (See, notwithstanding the differences in the factual circumstances of the case, the ECtHR same finding and reasoning, *inter alia*, in case *Keegan and Others v. the United Kingdom*, cited above, paragraphs 42 and 43).

Conclusion

145. The Court found that Judgment [ARJ.UZVP. No. 67/2017] of 22 December 2017 of the Supreme Court in conjunction with the Judgment [AA. No. 333/2017] of 20 October 2017 of the Court of Appeals, Judgment [A. No. 1185/2014] of 5 June 2017 of the Basic Court and the Decision [No.30/2014] of 24 June 2014 and Decision [No. 86/013] of 18 November 2013 of the Civil Registration Agency and that of the Municipality of Prishtina [No. 01-203-194645] of 16 October 2013, are rendered in violation of paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR and Article 54 of the Constitution in conjunction with Article 13 of the ECHR.

146. In order to reach the finding above, the Court first clarified that the circumstances of the present case, namely the refusal of the public authorities to register the death of the Applicant's deceased son, involve issues related to the right to a private life of the Applicant and his right to judicial protection of rights and effective legal remedies, as guaranteed by Articles 36 and 54 of the Constitution and 8 and 13 of the ECHR, respectively. In this context and during the examination of this case, the Court has elaborated the general principles deriving from the case law of the Court and the ECtHR regarding the abovementioned articles and has subsequently applied the latter in the circumstances of the present case.

147. With regard to the issues relating to the right to a private life, the Court, applying the case law of the ECtHR insofar as it is relevant to the circumstances of the case, has clarified, *inter alia*: (i) the State's obligations to protect the private life as guaranteed by the Constitution and the ECHR; (ii) the distinction between the negative and positive obligations of the State with regard to the protection of this right; (iii) the fact that in the circumstances of the present case, the State did not necessarily "*interfere*" with the rights of the Applicant, but failed to act to protect them, resulting in an assessment of the circumstances of this case from the point of view of positive obligations of the state; (iv) that the positive obligations of the state require, *inter alia*, that public authorities consider the specifics of a case and take measures to ensure the effective protection of the right to a private life, or by providing a legal framework that protects individuals or by determining the application of special measures appropriate to the circumstances of a case; and (v) that in such cases, public authorities are obliged to consider the balance between the interests of the individual, including the nature of the claims and whether they relate to "*essential aspects*" of private life, and the obligations of the state, including whether they relate to "*narrow and precise*" or "*broad and indefinite*" obligations and the potential burden they impose on the state.

148. With regard to the issues related to the right to judicial protection of rights and effective remedy, the Court, applying the case law of the ECtHR insofar as it is relevant to the circumstances of the case, has clarified, *inter alia* (i) that these rights imply the existence of a legal remedy which examines the essence of the content of the dispute, namely the allegations of an Applicant and enables the appropriate redress; (ii) the notion of "*arguable*" claim for the purposes of Article 54 of the Constitution and Article 13 of the ECHR; and (iii) the fact that in the context of claims for the protection of a private right, the legal remedy must enable consideration of the substance of the respective allegations, and an assessment of the balance between competing interests. In both cases, the purpose of the Constitution and the ECHR is important, to guarantee "*practical and effective*" rights and not "*theoretical or illusory*" rights..

149. In applying these principles in the circumstances of the present case, with regard to Article 36 of the Constitution in conjunction with Article 8 of the ECHR, the Court emphasized that public authorities, including regular courts, go beyond finding that in relation to the death of the son of the Applicant lacks the medical report confirming his death, a finding that has resulted in the refusal to register the Applicant's son in the PDR, with the serious consequence of leaving the civil status of the wife and minor son of the deceased unresolved, have not taken into account the fact that (i) it is not disputed that the Applicant's son died; and (ii) such a fact was confirmed by the public authorities of the Republic of Kosovo, namely the Embassy of Kosovo in Sweden, where the death occurred. Furthermore, the public authorities, rejecting the Applicant's request for registration of his son's death in the PDR, despite the fact that the same death was not contested, (i) not only had they formally applied the applicable law, by not taking into account either the possibility of international legal cooperation with the Swedish state or the possibilities provided through the provisions of the out contentious procedure, but (ii) contrary to the constitutional requirements and those of the ECHR, had not considered the balance between competing interests, namely the essence and specifics of the Applicant's allegations and the obligations of the state to protect the right to a private life.

150. The Court has clarified that the examination of such a balance would result in the finding that the Applicant's allegations and request are "*narrow and clear*" and do not result in disproportionate obligations to the State. Moreover, through such a refusal in the absence of a medical report, without taking into account any of the circumstances and specifics of the case, the decisions of public authorities resulted in only "*theoretical and illusory"* constitutional rights for the Applicant and not "*practical and effective*" constitutional rights, as required by the Constitution and the ECHR. Consequently, the Court found that the proceedings followed by the administrative and judicial system, contrary to the positive obligations of the state, did not result in the exercise of the Applicant's right to respect for his private life, contrary to paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR.

151. With regard to Article 54 of the Constitution in conjunction with Article 13 of the ECHR, the Court stated that taking into account the abovementioned finding, the Applicant's allegations of a violation of Article 54 of the Constitution in conjunction with Article 13 of the ECHR, are clearly

"*arguable*", as established in the case law of the Court and the ECtHR. Further, the Court notes that contrary to the requirements of the abovementioned articles and relevant case law, the legal remedies in the circumstances of the present case, did not result in the review of the substance of the Applicant's allegations, nor did they enable proper redress. The Court reiterates that the limited and extremely formal review of the Applicant's allegations, in isolation from the specifics of the case and the relevant consequences, had also resulted in a lack of practical and effective protection of judicial rights and that of the Applicant's effective remedy, contrary to Article 54 of the Constitution in conjunction with Article 13 of the ECHR.

152. Therefore, the Court found that the abovementioned Judgments of the regular courts and the abovementioned decisions of the Civil Registration Agency and the Municipality of Prishtina, are not in compliance with the fundamental rights and freedoms of the Applicant guaranteed by paragraph 1 of Article 36 of the Constitution in conjunction with Article 8 of the ECHR, and Article 54 of the Constitution in conjunction with Article 13 of the ECHR, and consequently the latter must be declared invalid. The Court also, through this Judgment, orders the Civil Registration Agency to register by 30 October 2020 the death of I.F., namely the son of the Applicant, in the Principal Death Register.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 113.7 and 116.1 of the Constitution, Articles 47 and 48 of the Law and Rules 59 (1), 64 (2) and 66 of the Rules of Procedure, on 22 July 2020, with majority of votes

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a violation of Article 36 [Right to Privacy] of the Constitution, in conjunction with Article 8 [Right to respect for private and family life] of the European Convention on Human Rights;

III. TO HOLD that there has been a violation of Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the European Convention on Human Rights;

IV. TO DECLARE invalid the decisions, as follows:

a) Judgment [ARJ. UZVP. No. 67/2017] of the Supreme Court of 22 December 2017;
b) Judgment [AA. No. 333/2017] of the Court of Appeals of 20 October 2017;
c) Judgment [A. No. 1185/2014] of the Basic Court of 5 June 2017;
ç) Decisions [No. 30/2014] of 24 June 2014 and [No. 86/013] of 18 November 2013 of the Civil Registration Agency; and

d) Decision [No. 01-203-194645] of the Sector of Civil Status of the Municipality of Prishtina of 16 October 2013;

V. TO ORDER the Civil Registration Agency of the Ministry of Internal Affairs and the Sector of Civil Status of the Municipality of Prishtina that by 30 October 2020, register the death of I.F. in the Principal Death Register;

VI. TO ORDER the Civil Registration Agency of the Ministry of Internal Affairs and the Sector of Civil Status of the Municipality of Prishtina to submit information to the Court, in accordance with Rule 66 (4) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court;

VII. TO REMAIN seized of the matter, pending compliance with that order;

VIII. TO NOTIFY this Judgment to the Parties;

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

X. TO DECLARE that this Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Gresa Caka-Nimani Arta Rama-Hajrizi

Kopje e vërtetuar
Overena kopija
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