



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

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**Prishtinë, on 11 June 2018  
Ref. No.: AGJ 1258/18**

## **JUDGMENT**

in

**Case no. KO12/18**

Applicant

**Albulena Haxhiu and 30 other deputies of the Assembly of the Republic  
of Kosovo**

**Constitutional review of the Decision of the Government of the Republic  
of Kosovo, no. 04/20, of 20 December 2017**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

### **Applicants**

1. The Referral is submitted by: Albulena Haxhiu, Glauk Konjufca, Visar Ymeri, Donika Kadaj-Bujupi, Shqipe Pantina, Albin Kurti, Besa Baftiu, Rexhep Selimi, Ismail Kurteshi, Dardan Sejdiu, Faton Topalli, Driton Çausi, Arbërie Nagavci, Fatmire Mulhaxha-Kollçaku, Saranda Bogujevci, Sami Kurteshi, Adem Mikullovc, Dukagjin Gorani, Fitore Pacolli-Dalipi, Sali Zyba, Shemsi Syl, Xhelal Sveqla, Liburn Aliu, Drita Millaku, Sali Salihu, Arbër Rexhaj, Valon Ramadani, Ali Lajqi, Korab Sejdiu, Ilir Deda and Vjosa Osmani-Sadriu (hereinafter: Applicants), all of them Deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

2. The Applicants have authorized Ms. Albulena Haxhiu to represent them before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

### **The challenged act**

3. The Applicants are challenging the constitutionality of the Decision of the Government of the Republic of Kosovo (hereinafter: the Government), No. 04/20, of 20 December 2017.

### **Subject matter**

4. The subject matter of the Referral is constitutional review of Decision No. 04/20 of Government, which according to the Applicants is not in compliance with Articles: 3 [Equality Before the Law], 4 [Form of the Government and Separation of Power], 7 [Values], 65 [Competences of the Assembly], 92 [General Principles] and 93 [Competences of the Government] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. The Applicants also request from the Court to impose the interim measure “*by which Decision No. 04/20, of 20 December 2017 of the Government of the Republic of Kosovo would not be implemented until a decision on the merits of matter is rendered.*”

### **Legal basis**

6. The Referral is based on Articles 113.2 (1) and 116.2 of the Constitution, Articles 27, 29 and 30 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 29, 54 and 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

### **Proceedings before the Court**

7. On 29 January 2018, Ms. Albulena Haxhiu on behalf of Applicants submitted the Referral and the power of attorney to the Court.
8. On 30 January 2018, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
9. On 30 January 2018, the Court notified the Applicants about the registration of the Referral.
10. On 30 January 2018, the Referral was communicated to the Office of Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister), and informed that it can submit its comments regarding this Referral. The Referral was also communicated to the President of the Assembly of the Republic of Kosovo with instruction to give the opportunity to all the deputies of the Assembly to submit their comments.



11. On 31 January 2018, the Applicants submitted their identification card numbers and a copy of the Decision of the Anticorruption Agency on the contested Decision.
12. On 6 February 2018, the Government informed that has rendered a decision on temporary suspension of the contested Decision until the Court renders a final decision on this matter.
13. On 9 February 2018, the Office of the Prime Minister submitted to the Court the comments on allegations raised in the Referral.
14. On 13 February 2018, comments of the Prime Minister were communicated to the Applicants and the President of the Assembly, with instruction that these comments be communicated to all the deputies of the Assembly.
15. On 15 February 2018, Applicants submitted their comments regarding the comments of the Office of the Prime Minister.
16. On 16 February 2018, the Court requested from the Ministry of Finances additional clarification regarding the matter of budgetary implications of the contested decision of the Government, reflecting and reviewing those implications on the budget for 2018 and if there was similar practice in the past.
17. On 27 February 2018, Ministry of Finances submitted its clarifications on questions of the Court from 16 February 2018.
18. On 26 April 2018 the Court sent to the members of the Venice Commission Forum a request with a number of questions for purposes of a comparative analysis regarding the Referral under consideration.
19. On the same date, the clarifications of the Ministry of Finance were communicated to the Applicants. In addition, the comments of the Government on Referral KO12/18; the reply of the Applicants on the comments of the Government and the clarifications of the Ministry of Finance were communicated to the following committees of the Assembly for comments, if they had any: the Committee on Budget and Finances, the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and the Oversight of the Anti-Corruption Agency, and the Committee for the Oversight of Public Finances.
20. The above mentioned Committees have not submitted any comments to the Court within the set deadline.
21. On 3 May 2018 the Applicants submitted their comments on the clarifications of the Ministry of Finance.
22. Between 2 and 23 May 2018, the Court received the answers to the questions raised through the Venice Commission Forum, submitted by the Constitutional Courts of: Czech Republic, Austria, Macedonia, Moldova, Bosnia and

Herzegovina, Sweden, Latvia, Slovakia, Slovenia, Germany, Croatia and Luxemburg.

23. On 29 May 2018, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.
24. On the same day, Judge Almiro Rodrigues and Gresa Caka-Nimani stated that they will submit dissenting opinions in accordance with the Rule 57 (2) of the Rules of Procedures.

### **Summary of facts**

25. On 20 December 2017, the Government of the Republic of Kosovo rendered Decision No. 04/20 on changing and raising gross salaries of senior state functionaries and their subordinates, as follows: Prime Minister and Deputy Prime Minister, Minister and Deputy Minister, Chief of Staff who is also the Senior Political Advisor of the Prime Minister, Deputy Chief of staff of the Prime Minister who is also a Political Advisor of the Prime Minister, Chief of Cabinet of the Prime Minister who is also the Political Advisor of the Prime Minister, Political Advisor of the Prime Minister, Senior Political Advisor of the Deputy Prime Minister, Senior Political Advisor of the Minister, Advisor of the Minister, Chief of Protocol of the Prime Minister, Chief of the Unit for Security of the Prime Minister, Senior Protocol Official, Senior Assistant of the Prime Minister, Official, Assistant, Security Official, Driver, Bodyguard of the Prime Minister, Senior Official and Senior Assistant of the Deputy Prime Minister, Senior Official and Senior Assistant of the Minister, Official, Assistant, Security Official, Driver, Bodyguard of the Minister, Secretary General in the Office of the Prime Minister, Director of the Legal Office and the Director of the Coordinating Secretariat of the Government, Coordinators and Heads of Divisions in the Legal Office, Coordinating Secretariat of the Government, Office for Public Communication, Coordinator for European Integrations and the Chief of the Office of the Secretary of the Office of the Prime Minister, Senior Officials in the Legal Office, Coordinating Secretariat of the Government, Office for Communication with Public, Officials, Managers, and Executive Officials in the Office of the Secretary General, Legal Office, Coordinating Secretariat of the Government and the Office for Communication with Public.
26. Decision of the Government No. 04/20 entered into force on the day it was signed and it had a retroactive effect, as of 1 December 2017.
27. On 22 December 2017, the Assembly adopted the Law No. 06/L-020 on the Budget of the Republic of Kosovo for 2018 (hereinafter: the Law on Budget for 2018).
28. On 29 January 2018, the Anticorruption Agency issued an Opinion regarding the Decision, assessing whether the challenged decision of the Government is in contradiction with provisions of the Law on Prevention of conflict of interest in discharge of public functions (Nr. 04/L-051).



29. The abovementioned opinion of the Anticorruption Agency in its main part determines:

*“Decision Nr. 04/20 of Government, of 20.12.2017, cannot be considered a conflict of interest for all those who are beneficiaries of this decision. Conflict of interest occurred with senior officials who by their vote have influenced the decision to be in their interest for personal gain.*

*Consequently, the Anti-Corruption Agency did not deal with this case in terms of the competence of the Government of the Republic of Kosovo, the right or not to increase salaries for that sector, but the issue we dealt with was only in terms of the procedure and the manner the Decision was taken, thus, considering as a conflict of interest only the part that voted, adopted and signed [...]”.*

### **Applicants’ allegations**

30. The Applicants allege that the challenged decision violates Articles: 3 [Equality before the Law], 4 [Form of the Government and the Separation of Power], 7 [Values], 65 [Competences of the Assembly], 92 [General Principles] and 93 [Competences of the Government] of the Constitution.
31. The Applicants emphasize that *“Setting of salaries of state functionaries, who are paid by the budget of Kosovo, their reduction or increase in any case, is competence of the Assembly of the Republic of Kosovo, which is prima facie exercised through the approval of the Law on Budget [...]”* alleging that based on Article 65 of the Constitution, *“the approval of the Budget of the Republic of Kosovo is exclusive competence of the Assembly. Such competence of the Assembly cannot be separated, limited or alienated by any Decision of the Government.”*
32. The Applicants claim that *“the Constitution of Kosovo, in chapter XII, numerically defines the independent constitutional institutions, which are guaranteed to have financial independence that includes setting of salaries of officials of the relevant independent institution. The Government is not one of them and it has specific character and function, which is supervised by the Assembly and it does not have constitutional financial independence.”*
33. In connection to the foregoing, the Applicants allege that *“the change of salaries of senior state functionaries is planning, which shall be stipulated in the planning of the Budget of Kosovo for the relevant year, which is compiled by the Government and is sent to the Assembly for approval. The importance of this interpretation position becomes more important in cases when the Government decides upon the salaries of its members [...]. No Government may have the competence for compensating itself in individual terms of salary without passing through the parliamentary decision making.”*
34. The Applicants also claim that this increase of salaries *“directly affects the Budget of Kosovo by surpassing the allocated budget for salaries of functionaries of these institutions, pursuant to the Law on Budget [for 2018],*



and consequently, it violates the competence of the Assembly". Applicants add that "no norm or budget code exists neither in the Law on Budget of the Republic of Kosovo for 2017, nor the one for 2018", that stipulates such increase of salaries of the government cabinet.

35. With regards to the competencies of Government the Applicants allege that "Article 93.5 of the Constitution [...] defines that the Government of Kosovo has competence to propose the budget of the Republic of Kosovo. This means that the Government is competent only for proposing the allocation of the budget of Kosovo and budget allocations from the budget of Kosovo. [...] Therefore, based on Article 65.5 and 93.3 of the Constitution, the Prime Minister Haradinaj, by the challenged decision violated the constitutional provisions by acting outside of competencies provided by the Constitution for this institution."
36. Moreover, the Applicants allege that change in salaries constitutes "conflict of interest as a forbidden standard in functioning of the Government pursuant to the principle of integrity in a democratic society."
37. Referring to the Article 92.4 of the Constitution, the Applicants claim that "within the meaning of its executive function, Article 92.4 repeats the role of the Government as an authority that renders its decisions in accordance with the procedure and substantial obligations defined by the Constitution and relevant laws." Applicants allege that Article 92.4 of the Constitution authorizes the Government to interfere in the legislative process by proposing draft laws to Assembly for adoption, but "the Assembly of Kosovo is not in any way bound by the proposal of Government and it's in discretion of this organ whether a draft law is going to be adopted or not."
38. The Applicants claim that Article 93.4 of the Constitution authorizes the Government to issue by-laws and decisions in order to implement laws adopted by the Assembly. According to the Applicants: "the authorization to issue bylaws, however, is limited to the following conditions: a) the by-law shall regulate a legal area that is regulated by the Law issued by the Assembly; b) the by-law shall not violate any limitation established by the relevant Law; c) the by-law shall follow the purpose and objectives of the Law, and the relevant by-law shall be in absolute compliance with the Constitution; and d) the by-law shall have concretization character of abstract norms of the relevant Law."
39. With regards to the allegation on violation of Article 4 [Form of the Government and Separation of Power] of the Constitution, the Applicants quote case KO98/11 of the Constitutional Court, explaining, inter alia, that "The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the principle of the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantees the democratic functioning of a State. The essence of the independence and effective functioning of these branches is the immunity provided to the persons embodying these powers."
40. In this aspect, the Applicants allege that "based on the fact that the Assembly of Kosovo is a body, which has exclusive competence in approving the budget of



*Kosovo and in supervising and controlling the work of the Government, we can conclude that the Government, by increasing the salaries partially and not in sectorial manner, intervened in the work of the Assembly by violating constitutional and legal provisions, which derive from the constitutional principles and standards that are grounds of the democratic Republic of Kosovo. This happens because such decision-making leads to constitutional noncompliance because it allows the members of the Government to make decisions with the only purpose of personal gain."*

41. With regards to the allegations on violation of Article 3 [Equality before the law] and Article 7 [Values] of the Constitution, the Applicants allege that by this challenged Decision of the Government, *"the senior functionaries of the Government and their subordinates have a more favorable salary than any other salary of any citizen in Kosovo, which would not be in compliance with the constitutional principles established by Article 3 and 7 of the Constitution."*
42. The Applicants also refer to Judgment KO119/10, which specified that *"since the proposed pensions to be paid to the deputies are clearly disproportionate with the average pensions in the country and they will be paid from the general budget of [...] Kosovo without a contribution from the Deputies, it appears that the present legislation creates discrimination against the members of the general public and all other pensioners in Kosovo and infringes against the principles of equality and social justice enshrined in the Constitution [...]."*
43. The Applicants emphasize that Article 7 [Values] of the Constitution lists the *"principles of freedom, democracy and equality as the fundamental values on which the constitutional order of the Republic of Kosovo is based."* According to the Applicants, *"In the present case we are dealing with an abuse of freedom by the Government in exercising public authorization, whereby it was intervened in the budget allocations guaranteed by Law on Budget for 2018, which is established and managed by the will of citizens of Kosovo through the representatives elected in the Assembly [...]. Also, the principle of democracy emphasizes the Decision of majority by respecting the rights of the minority. Respecting this principle and giving life to it is done by the approval of the Assembly. Any other intervention in this process or after the conclusion of the process of approval of this Law, which is not done with the will of majority and constitutional means, represents, violation of the principle of democracy, which is a basic principle of the constitutional order of Kosovo."*
44. Regarding the request for interim measure, the Applicants request from the Court to impose the interim measure suspending the implementation of the challenged Decision of the Government until a decision based on the merits of matter is rendered, because, *"if this unconstitutional situation lasts, the budget of the Republic of Kosovo will suffer high unplanned monetary loses."*
45. At the end, the Applicants request from the Court to declare the Referral admissible, to hold that there has been a violation of Article 3 [Equality before the Law], Article 4 [Form of Governance and Power Sharing], Article 7 [Values], Article 65 [Competencies of the Assembly], Article 92 [General Principles] and



Article 93 [Government Competencies] of the Constitution, and to annul the challenged Decision.

### **Comments submitted by the Office of the Prime Minister**

46. The comments of the Office of Prime Minister regarding the allegations raised in the Referral contain responses describing the nature of the challenged Decision of the Government, the budget reasoning of the challenged decision of the Government and the inexistence of conflict of interest of the Government regarding the challenged decision.
47. Regarding the nature of the challenged Decision of the Government, the response of the Office of the Prime Minister can be summarized as follows: (i) Based on Article 93 (4) [Government Competencies] of the Constitution, the Government, among other things, has competencies to make decisions as undisputable constitutional competence, *ex lege*; (ii) Based on Article 92 (2) (3) and (4) [General Principles], Government decisions have executive title because the constitutional nature of Government power is executive; (iii) Kosovo still has no law on the Government, but based on Article 99 [Proceedings] of the Constitution, the Government has adopted the Rules of Procedure of the Government of the Republic of Kosovo no. 09/2011; (iv) The Rules of Procedure of the Government has provided that any issue that relate to the work of the Government and that have not been specifically covered in this Regulation shall be regulated by a decision or other act of the Government; (v) the challenged decision of the Government is a collective legal act, adopted by the vote of the entire cabinet after ascertaining the required quorum; and (vi) if the Government's decisions were to be endlessly challenged, the legal certainty of the government decision-making would be infringed upon.
48. Regarding the budget reasoning of the challenged Decision of the Government, the response of the Office of the Prime Minister can be summarized as follows: (i) The challenged Decision of the Government was rendered two days before the Law on Budget of the Republic of Kosovo and is foreseen in budget planning and may be reviewed, which implies that the challenged decision of the Government falls outside the *ratione materiae* jurisdiction of the Court because it is not a matter of conflict of competencies between the Executive and the Legislature; (ii) in case KO118/13, the Court listed a range of arguments whereby, among other things, held: "...that the Government and they alone may determine the national budget..." (iii) based on the relevant provisions of the Law on Public Financial Management, the budget of the Republic of Kosovo may be revised and that the budget added for budgetary organizations covers salary supplements until its review; iv) The Law on the Budget of the Republic of Kosovo for 2018 specifically provides for increasing the budget for the category of wages and salaries in the affected budgetary organizations (Office of the Prime Minister, Ministries, Kosovo Judicial Council, Kosovo Prosecutorial Council, etc.), which confirms that the challenged decision of the Government is foreseen and covered by the category of wages and salaries.
49. Regarding the inexistence of conflict of interest in rendering the challenged Decision of the Government, the response of the Office of the Prime Minister, in



the relevant part, is the following: “In order to make such decisions, the Government shall have a quorum as determined in Article 15 of the Rules of Procedure No. 09/2011. Furthermore, in absence of Law on wages of top officials, how to determine wages of deputies of the Assembly, the Government, the President and members of independent institutions? By dragging parallel with other institutions, would the conflict of interest situation be avoided if the law on wages, including wages of deputies of the Assembly, was approved by the assembly, since the deputies could have “conflict of interest” as they would vote on their wages? When promulgating the law adopted by the Assembly, which is done by the President, pursuant to its mandate granted by the Constitution, in which would have been determined also the wage of the President would it then present a conflict of interest? Furthermore, are government decisions that have been taken earlier for increase of wages in conflict of interest (see previous government decisions on increase of wages in the public sector and decisions in setting minimum wage in the private sector)? These questions are posed in order to come to a legal conclusion that by no interpretation shall be alleged that the Government, when voting for such a decision, can be in a situation of the conflict of interest due to constitutional and legal reasons.”

### **Counter-response of the Applicants**

50. In their counter-response of 15 February 2018, the Applicants mainly addressed these issues: (i) the *ratione materiae* jurisdiction of the Court in the present case; (ii) non-compliance with the Law on Budget for 2018 and the Law on Public Financial Management by the Government when rendering the challenged Decision; and (iii) the interpretation of the competences of the Government and the Assembly, as elaborated by the Court in case no. KO118/13.
51. Regarding the *ratione materiae* jurisdiction of the Court, the Applicants maintained that the allegations of the Prime Minister on the inadmissibility of the Referral are unfounded, because they aim to limit the Constitutional Court's control over the actions of the Government and, moreover, are contrary to the ‘principles established’ by the Court in case no.KO73/16, regarding the legal effects produced by the decisions of the Government regardless of their denomination.
52. Regarding the non-compliance with the Law on Budget for 2018 and the Law on Public Financial Management, the Applicants alleged that the Government has not yet submitted to this date a draft-law to the Assembly to reflect the amendments to the Law on Budget for year 2018. The Applicants added that the Government's reference to the Law on Public Financial Management is incorrect, given the fact that the challenged Decision of the Government was not a decision of the Minister of Finance, and it was not taken into consideration the impact of the challenged Decision of the Government, respectively whether that Decision exceeds the limits allowed by the Law on Public Financial Management.
53. Regarding the competences of the Government and the Assembly, as elaborated by the Court in case No. KO118/13, the Applicants maintained that the Court



under no circumstances alleged that the Government and they alone may determine the budget until the final cycle of approval. They added that the phrase 'determination of the national budget' refers to addressing the draft-law on the budget, which is then adopted by the Assembly in an unlimited form and in accordance with the votes of the deputies exercising this exclusive competence.

### **The responses of the Ministry of Finance regarding the questions of the Court**

54. With regard to the question of the Court whether the budgetary implications of the challenged Decision have been reflected on the draft budget for year 2018, submitted by the Government to the Assembly [...] on 10 October 2018, the Ministry of Finances explained that *"The Ministry of Finance acting in accordance with the legal provisions of the Law on Public Financial Management and Accountability has defined the legal time limits for the preparation of the budget for the following year, therefore, pursuant to Article 22 of this law, the government approves the budget and submits it to the Assembly of the Republic of Kosovo no later than on October 31 and on the basis of this legal basis, the government sent it to the Assembly within the legal deadline in late October in accordance with and including the increase of the salary bill as set forth by Article 22c of the Law No. 05 / L-063 on Amending and Supplementing the Law No. 03 / L-048 on Public Financial Management and Accountability amended and supplemented by Laws No. 03 / L-221, No. 04 / L - 11 6 and No. 04 / L.-194."*
55. Regarding the question as to whether the budgetary implications of the challenged decision have been reflected on the Budget for year 2018, adopted by the Assembly on 22 December 2017, the Ministry of Finance clarified: *"During the time when the challenged Decision dated 20 December 2017, was taken, the budget as a part of Law 06 / L-20 has been in the final approval stage at the Assembly of the Republic of Kosovo in the second reading. Therefore, the challenged decision is of implementing nature [...] the challenged Decision will be again incorporated within the budget at later stages."*
56. Regarding the question as to whether the state budget adopted by the Assembly is affected or infringed by the challenged Decision, the Ministry of Finances explained that the challenged decision *"... never infringes the state budget because it is very small compared to the budget possibilities we have with the 2018 Budget. In this part, we emphasize that in the category of wages and salaries, there is a budget increase for 2018 compared to the budget of 2017. There is a sufficient increase of funds also in the macro fiscal framework for the 2018 budget, which is presented in the Assembly of the Republic of Kosovo as part of the draft budget in the textual section in the category of wages and salaries and it has been justified that the increase of expenditures for this category reflects the raise of wages and the coverage of the sub budgetary positions in the previous years."*
57. Regarding the questions as to whether is it necessary to review the state budget in order to cover the expenditures for implementation of the challenged



Decision, and if yes, how will it be done, and how the Decision can be implemented in case of non-approval of the Government's proposal for review of budget by the Assembly, the Ministry of Finances stated that *"[...] the budget will not be reviewed only to cover the expenditures of the the challenged Decision], if the state institutions do not have any other demands, because this amount of expenditures foreseen by the the challenged Decision is coverable as we stated above, [...] If the budget review is not approved, the decision will be applied within the meaning of the legal basis provided by Article 15, paragraph 3 of Law No. 06 / L-20 on State Budget for 2018."*

58. Regarding the question of the Court whether have been similar cases in the past and, if yes, how it was proceeded, the Ministry of Finances stated that: *"since 2004 onwards, there has been increase of salaries by administrative decisions of the Government. In the Republic of Kosovo, we do not have a law on wages and as a consequence, the issue of wages has always been regulated through administrative decisions of the Government [...] the amount of funds envisaged by these decisions were then regulated within the state budget at different stages, by applying the law or by revising the Budget."*

#### **Counter-response of the Applicants on the clarifications of the Ministry of Finance**

59. With respect to the response of the Ministry of Finance to the questions put by the Court, the Applicants emphasize that the matter *"submitted by our part and which ended up in the form of questions at the Ministry of Finance is not a matter of legality. It absolutely concerns the constitutionality of the decision of the Government of Kosovo, as it essentially affects the constitutional powers of the Assembly of the Republic of Kosovo; therefore, ratione materiae leads to Government's powers being ultra vires exerted to the detriment of the Assembly of the Republic".* The Applicants state that *"the response of the Ministry of Finance does not under any circumstance and case provide any figure-based evidence for the compatibility of the decision with the Law on Budget [...]"*
60. According to the Applicants, *"the Ministry naturally accepts that the challenged decision is not reflected in the Law on Budget, and reasons – on these grounds– that "the challenged decision is of an implementation nature". It is exactly this ground that ultimately renders the viewpoint that the Ministry of Finance provided as answers to these questions controversial. How can the challenged decision be, at the same time, "a decision to increase salaries" while these salaries, according to the Ministry, have already been increased by the Law on Budget?"*
61. The Applicants also state that *"we are in support of increase of salaries in the sector of rule of law, but this should be done adhering to the premises of the judiciary independence and essential and decisive role of the Assembly of the Republic of Kosovo, based on an entirely reasoned and performance-based scheme [...]"*



## Main comments received from the Venice Commission Forum

62. The Court notes that the answers received from the Venice Commission Forum show that among the states that responded there are different constitutional practices on the issue of the acts of the Government that may be submitted for review to the Constitutional Court and the authorized parties to initiate such review. The Court also notes that the salaries of the civil servants in those states are regulated by laws, namely by special normative acts.
63. In this regard, the Constitutional Court of Austria stated that in Austria administrative regulations are subject of review by the Constitutional Court and *“the constitutional term “administrative regulations” (Verordnungen) also extends to acts of Government that are normative and general in nature. The acts of Government that may be challenged [before the Constitutional Court] are not specifically enumerated; consequently, where an act of Government is challenged before the Constitutional Court, the Court has to examine as a preliminary issue whether the act in question is an administrative regulation within the meaning of Article 139 of the Federal Constitutional Act”*. As to the parties that may challenge acts of the Government, they include: *ex officio* if the Constitutional Court has to apply a regulation in a concrete case; at the request of another court if it has to apply the regulation in a pending case; individuals when they are directly affected by the regulation; at the request of the Federal Government (in case of a regulation issued by a Land authority). With respect to the salaries of the public servants, in Austria they are regulated by a law adopted by the Parliament (namely the Federal Act on the Salaries of the Federal Officials).
64. The Constitutional Court of the Czech Republic stated that it has jurisdiction to annul statutes or individual provisions thereof if they are in conflict with the Constitution. According to them *“The Constitutional Court of Czech Republic interpreted this provision in a way that provides for a review of legal acts which fulfill material conditions for being “legal enactments”, not necessarily formal ones (i. e. being labelled “legal acts”)*. As regards the authorized parties to challenge the acts of the Government, they include among others, a group of at least 25 Deputies or a group of at least 10 Senators. Salaries of public servants in Czech Republic are governed by different laws, special laws, which include the Labour Act or the Civil Service Act, Act on Salaries of State Officials, Act on Salaries of Prosecutors.
65. The Constitutional Court of Macedonia stated that their Constitution does not provide an exhaustive list of the acts of the Government that can be submitted for constitutional assessment before the Constitutional Court. The Constitution uses the term *“other regulations”* which has been interpreted by the Constitutional Court as comprising the by-law adopted by the Government or the ministries. As regards the authorized parties to challenge the acts of the Government, any natural or legal person may request from the Constitutional Court to review laws or bylaws, without having the obligation to prove his/her legal interest in the proceedings. Salaries of public servants in Macedonia as well are regulated by special laws including the Law on the Salaries of Elected or



Appointed Officials, the Law on the Salaries of Judges, the Law on Administrative Servants which regulates the salaries of the civil servants.

66. The Constitutional Court of Bosnia and Herzegovina clarified that their Constitution, in addition to the acts that are specifically enumerated in the Constitution, when the constitutionality of other general acts is challenged, including the decisions of the Government, it assesses each case individually whether such acts raised constitutional issues or conflict among constitutional institutions, and depending on that, the Court assesses their constitutionality. As to the authorized parties to refer a conflict among institutions and entities, before the Constitutional Court, they include: members of the Presidency, the Chair of the Council of Ministers, the Chair or a Deputy Chair of either chamber of the Parliamentary Assembly, or by one-fourth of the members of either chamber of the Parliamentary Assembly.
67. Constitutional Court of Croatia explained that the local or central government acts that may be challenged before the Constitutional Court of Croatia are determined on each case individually and that Constitution of Croatia and the Law on the Constitutional Court of Croatia does not provide for an exhaustive list of the government acts that may be challenged. Salaries of civil servants, judges, prosecutors and other officials are regulated by the relevant laws for the respective categories.
68. The Constitutional Court of Slovenia explained that it has the power to review all acts of government that are of a general nature, i.e. they produce legal effects for an indefinite number of individuals. There is no exhaustive list, but it is understandable that the regulations and other general acts issued for the purpose of exercising public authority may be challenged. Whereas, salaries of public officials are regulated by relevant laws.
69. The Federal Constitutional Court of Germany explained that, in principle, all acts of the Federal Government may be subject to constitutional control. There is no exhaustive list that explicitly defines which acts of the Federal Government may be subject to constitutional control. Salaries of state officials at federal level and individual "lands" are regulated by the relevant laws. The Federal Government and the "lands" governments have the competence to issue regulations regarding the details of the payroll system.
70. The Constitutional Court of Slovakia explained that there are several laws regulating salaries of state officials and civil servants. Those laws regulate the salaries of the deputies of the Assembly, the members of the Government, the judges of the Constitutional Court, the President of the Judicial Council, the chairman and deputy chairman of the Office of the Auditor General, the General Prosecutor and regular court judges. In general, salaries of state officials and civil servants are regulated by the relevant laws issued by the Parliament. Within the framework of these laws, the relevant authorities may issue their own regulations or may conclude collective labor agreements.
71. The Latvian Constitutional Court explained that the Law on the Constitutional Court establishes the distinction between acts of general application and

administrative acts. The latter apply to an individual situation. In principle, all government acts may be challenged, but there is no exhaustive list that explicitly defines which government acts may be challenged. Salaries of state officials are regulated by relevant laws such as the Law on Remuneration of Officials and Employees of State and Local Government Authorities, the Law on Judicial Power the Office of the Prosecutor Law, the Constitutional Court Law.

72. The Supreme Administrative Court of Sweden, explained that salaries of parliamentarians and ministers are regulated by the relevant laws and are determined by two separate authorities under the Parliament. For judges, prosecutors and civil servants individualized setting of salary applies. Therefore, the remuneration for these categories is negotiated with the employer.
73. The Constitutional Court of Moldova explained that the decisions, orders and decrees of the Government may be challenged before the Constitutional Court of Moldova. Salaries of state officials, civil servants, judges and prosecutors are regulated by the relevant laws for those categories.

### **Relevant constitutional provisions**

#### *Article 3 [Equality Before the Law]*

1. *The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.*
2. *The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.*

#### *Article 4 [Form of Government and Separation of Power]*

1. *Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.*
2. *The Assembly of the Republic of Kosovo exercises the legislative power.*  
[...]
3. *The Government of the Republic of Kosovo is responsible for implementation of laws and state policies and is subject to parliamentary control.*
4. *The judicial power is unique and independent and is exercised by courts.*  
[...]

#### *Article 7 [Values]*



1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy.  
[...]

#### *Article 65 [Competencies of the Assembly]*

*Assembly of the Republic of Kosovo:*

- (1) adopts laws, resolutions and other general acts;  
[...]
- (5) approves the budget of the Republic of Kosovo;  
[...]
- (8) elects the Government and expresses no confidence in it;
- (9) oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law;  
[...]

#### *Article 92 [General Principles]*

- 1. The Government consists of the Prime Minister, deputy prime minister(s) and ministers.
- 2. The Government of Kosovo exercises the executive power in compliance with the Constitution and the law.
- 3. The Government implements laws and other acts adopted by the Assembly of Kosovo and exercises other activities within the scope of responsibilities set forth by the Constitution and the law.
- 4. The Government makes decisions in accordance with this Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it.

#### *Article 93 [Competencies of the Government]*

*The Government has the following competencies:*

- [...]
- (3) proposes draft laws and other acts to the Assembly;
- (4) makes decisions and issues legal acts or regulations necessary for the implementation of laws;
- (5) proposes the budget of the Republic of Kosovo;  
[...]
- (11) exercises other executive functions not assigned to other central or local level bodies.

## Admissibility of Referral

74. The Court first examines whether the Referral meets the admissibility requirements, as laid down in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
75. The Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which provides: *"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."*
76. Further, the Court refers to paragraphs 2 (1), 3 (1), and 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which provide as follows:

*"2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:*

*(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;*

*3. The Assembly of Kosovo, the President of the Republic of Kosovo and the Government are authorized to refer the following matters to the Constitutional Court:*

*(1) conflict among constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo;  
[...]*

*5. Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed."*

77. In this respect, the Court refers to Articles 29 [Accuracy of the Referral] and 30 [Deadlines] of the Law which provide:

### *Article 29*

#### *Accuracy of the Referral*

*1. A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (1/4) of the deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo, the Government or the Ombudsperson.*

*2. A referral that a contested act by virtue of Article 113, Paragraph 2 of the Constitution shall indicate, inter alia, whether the full content of the*



*challenged act or certain parts of the said act are deemed to be incompatible with the Constitution.*

*3. A referral shall specify the objections put forward against the constitutionality of the contested act.*

*Article 30  
Deadlines*

*A referral made pursuant to Article 29 of this Law shall be filed within a period of six (6) months from the day upon which the contested act enters into force.*

78. Furthermore, the Court refers to paragraph (1) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure which specify:

(1) *The Court may consider a referral if:*  
[...]

(d) *the referral is prima facie justified or not manifestly ill-founded.*

79. In connection with the foregoing, paragraph 2 (1) of Article 113 is the main point of reference in assessing what acts of the Government may be challenged before the Constitutional Court by the deputies, in that it expressly mentions: decrees of the Prime Minister and regulations of the Government.

80. Paragraph 3 (1), of Article 113, enables constitutional review of other acts of the Government, if they are related to allegations pertaining to the conflict of competences between the Government and the Assembly.

81. Outside the context of the conflict of constitutional competences of the Assembly of Kosovo, the President of the Republic of Kosovo and Government of Kosovo, the Constitution provides the possibility of filing with the Constitutional Court only of referrals concerning the compatibility with the Constitution: of laws, decrees of the President and the Prime Minister, and of regulations of the Government.

82. The Court emphasizes that, unlike this restriction that is self-determined by the Constitution as to the possibility of contesting with the Constitutional Court of acts of the President and of the Government, paragraph 5, of Article 113, provides that 10 or more deputies can contest the constitutionality of any law or decision adopted by the Assembly.

83. Thus, the Constitution distinguishes between the possibility to contest with the Constitutional Court the constitutionality of acts of the President and the Government, on the one hand, and acts of the Assembly, on the other hand.

84. However, the Court recalls its case-law when it found that, exceptionally, the Constitutional Court may conduct a constitutional review of other acts of the

Government and the Prime Minister, in addition to regulations and decrees, only if they raise important constitutional matters.

85. Thus, the Court refers to Case No. KO73/16 (Applicant *The Ombudsperson*, Judgment of 8 December 2016, paragraph 52). In that case, the Court held that *"In assessing the merits of this Referral the Court will not take a stand on the disputed legal nature of the challenged Administrative Circular. The gist of the Referral is whether the challenged Administrative Circular allegedly violated the respective provisions of the Constitution [...]. The mandate of the Court is to assess the constitutionality of the requests related to the Administrative Circular and not to assess its legality or whether it is supported by good public policy."*
86. Further, the Court found that *"the Administrative Circular [no. 01/2016] issued by the Ministry of Public Administration of Kosovo, regardless of its name, is of a mandatory nature and indeed touches upon the constitutional status of the independent institutions"* (See, the Constitutional Court of the Republic of Kosovo: Case No. KO73/16, Applicant *The Ombudsperson*, Judgment of 8 December 2016, paragraph 58).
87. The Court reiterates that the Applicants in their Referral refer to *"the principles established by the Constitutional Court in Case KO73/16 regarding the legal effects produced by the decisions of the Government, regardless of their name."*
88. Therefore, the Court underlines that the decisions of the Government may be admitted for constitutional review by the Constitutional Court, only when it is substantiated that they raise important constitutional matters.
89. In the present case, the Court notes that the essential issue, over which the Applicants and the Government submit opposing allegations, concerns the relationship between the decision of the Government to raise the salaries and the Law on Budget for 2018. In other words, whether the Government, by the decision in question, has violated the constitutional competence of the Assembly to adopt the state budget and to control its spending, and whether the Government have exceeded their constitutional competences.
90. In this regard, the Court considers that the decision concerned raises important constitutional matters that deal with the exercise of the constitutional competences by the Assembly and the Government.
91. Therefore, the Court finds that the issues raised in the Referral are of such complexity, so their determination should depend on the review of the merits of the Referral. Therefore, the Referral cannot be considered as manifestly ill-founded within the meaning of Rule 36 (1) (d) of the Rules, and no other basis has been established to declare it inadmissible (see, for example, Case A and B v. Norway [DHM], Appeals No. 24130/11 and 29758/11, Judgment of 25 November 2016, paragraph 55 and also see, *mutatis mutandis*, the Constitutional Court of the Republic of Kosovo: Case No. KO73 / 16, Applicant Ombudsman, judgment of 8 December 2016, paragraph 49). Accordingly, the Court declares the Referral is admissible to review on the merits.



## Merits of the Referral

92. The Court reiterates that the essence of the Applicants' Referral concerns the allegation that through the challenged decision to raise the salaries, the Government have exceeded their constitutional authorizations, thereby infringing upon the constitutional competences of the Assembly regarding the adoption of the state budget and control of its spending.
93. The Applicants claim that the Decision "*directly affects the Budget of Kosovo by surpassing the allocated budget means for salaries of public functionaries of these institutions, pursuant to the Law on Budget [for year 2018], and consequently, it violates the competence of the Assembly*". The Applicants in addition state that "*no norm or budget code exists neither in the Law on Budget of the Republic of Kosovo for 2017, nor the one for 2018*", which provides for such a salary raise for the Governing Cabinet. Considering that "*Article 93.5 of the Constitution defines that the Government of Kosovo has competence to propose the budget of the Republic of Kosovo. This means that the Government is competent only for proposing the allocation of the budget of Kosovo and budget allocations from the budget of Kosovo*." Consequently, according to the Applicants, through the challenged decision, the Government surpassed their constitutional authorizations by infringing upon the exclusive competence of the Assembly to approve the budget and to oversee and control the Government.
94. The Government, in their comments, argue that "*the challenged decision of the Government was issued two days before the Law on the Budget of the Republic of Kosovo and is foreseen in the budgetary planning and it can be reviewed [...]*". In this line of argument, the Government submit that "*Law No. 06/L-020 on Budget of the Republic of Kosovo for 2018 specifically provides for a budget increase in the category of wages and allowances for the affected Budgetary Organizations (The Office of the Prime Minister, Ministries, Kosovo Judicial Council, Kosovo Prosecutorial Council, etc.) which confirms that the challenged Decision of the Government was foreseen and is covered by the category wages and allowances*." The Government also argues that "*based on the relevant provisions of the Law on Public Finances Management, the budget of the Republic of Kosovo may be reviewed and that the added budget for the budgetary organizations covers the additions to the salaries until the review*."
95. The Court also refers to the replies of the Ministry of Finance which argues that, in accordance with the Law on Public Finances Management and Accountability, "*The Government approves the Budget and submits it to the Assembly [...] not later on 31 October and, on this legal basis, the Government have sent it to the Assembly within the legal time limit [at the end of October 2017], including the increase of the bill of salaries [...]*". Further, the Ministry of Finance underlines that "*the challenged decision is of implementing nature [...] and it is still incorporated within the budget at later stages*." Furthermore, the Ministry of Finance emphasizes that the challenged decision "*never infringes upon the state budget [...]*" and that "*from year 2004 and onwards there have been salary raises through administrative decisions of the Government. In the Republic of Kosovo we do not have a law on salaries and as a consequence salaries were always determined and regulated through administrative decisions of the*



*Government [...] the sum of funds foreseen by these decisions were subsequently regulated within the state budget at different stages, by applying the Law or by reviewing the Budget."*

96. The Court notes that the opposing arguments of the parties, in essence, relate to procedural aspects of the adoption and the implementation of the state budget in relation to the competence and procedure for increasing the salaries in the public sector.
97. With respect to the competences of the Government and the Assembly, the Court initially emphasizes that neither party questions the constitutionally guaranteed competence of the Assembly to adopt the state budget and to exercise its oversight function over the Government.
98. Further, the Court underlines the essential fact that the Republic of Kosovo does not have yet a law or other special act regulating comprehensively the issue of the salaries in the public sector.
99. The Court draws its attention to the responses received from member countries of the Venice Commission Forum, where it is made clear that in those countries the issue of salaries in the public sector is regulated by law, namely by special normative acts.
100. The Court notes that, as clarified in the responses of the Ministry of Finance, as a result of the legal vacuum due to the absence of a law on salaries, the practice established in the Republic of Kosovo since 2004 is to increase salaries by administrative decisions of the Government; these decisions having been included in the budget, by decision of the Assembly, at different stages.
101. The Court wishes to emphasize that in order to avoid such situations whereby the Government makes decisions in a legal vacuum, it is necessary that the issue of salaries in the public sector be regulated comprehensively through an act, namely a special law (as is the practice in the countries of Venice Commission Forum).
102. Furthermore, the Court considers that in accordance with the executive nature of the Government's competences, the functioning of the Government is closely related to the process of the adoption and implementation of the state budget.
103. In that regard, the Court notes that one of the main constitutional functions of the Government, as provided in Article 92.3, is the implementation of laws and other acts adopted by the Assembly of Kosovo.
104. The Court clarifies that the state institutions shall exercise their authorizations based on the Constitution and the Law. The Assembly is the institution that has the responsibility to exercise the legislative power, whereas the Government exercise the executive power based on the Constitution and the laws adopted by the Assembly (See, the Constitutional Court of the Republic of Kosovo: Case No. KO73/16, Applicant *The Ombudsperson*, Judgment of 8 December 2016, paragraph 61).



105. As to the main allegation of the Applicants that the Government through the challenged decision infringed upon the competences of the Assembly, the Court recalls that on 22 December 2017 the Assembly adopted the Law on Budget for Year 2018 thereby exercising its constitutional function as regards the adoption of the state budget.
106. In addition, the Court notes the argument of the Ministry of Finance that, within the frame of their competences, the Government was the proposer of the draft-budget for year 2018, which was approved by the Assembly.
107. The Court also notes that the respective committees of the Assembly, namely the Committee on Budget and Finances, the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and the Oversight of the Anti-Corruption Agency, and the Committee for the Oversight of Public Finances did not submit to the Court any comment regarding various allegations and arguments raised in this Referral.
108. In this respect, the Court notes that it is not its role to make hypothetical assessments regarding the way how the state budget is implemented by the Government, including the implementation of the challenged decision.
109. The Court also wishes to emphasize that, in accordance with its previous position (see case KO73/16), the allegations submitted to the Court on the incompliance of different acts of the Government with relevant laws should be argued at the constitutional level.
110. The Court considers that the Applicants did not prove how the Government has violated Constitutional competencies of the Assembly regarding the approval of the state budget, or any other constitutional competence. Consequently, in the concrete case, the Court is not convinced that the decision to raise the salaries constitutes a matter of the constitutional level.
111. In the light of the allegations and arguments presented above, the Court considers that the Assembly was not infringed upon or prevented from exercising its constitutional competences regarding the approval and implementation of the state budget.
112. However the Court also notes that the sublegal acts of Government should be in compliance with the Constitution and the laws. Moreover, the Court emphasizes that, in compliance with the executive nature of its constitutional powers, the Government is obliged to implement the state budget approved by the Assembly. Therefore, it is the obligation of the Government to support the implementation of the challenged decision in the budget allocations determined in the Budget for 2018 and in the relevant laws.
113. As regards the Applicants' allegation about the conflict of interest, the Court notes that, in analogy with its decision in Case no. KO73/16, it is not the task of the Constitutional Court to assess the legality aspects of the Government acts, or whether they are supported by good public policy. Thus, the Court underlines that it is not within its function to assess the allegations of the incompliance of



the challenged decision with the Law on Prevention of Conflict of Interest in Discharge of Public Functions (about which the Anti-corruption Agency has given its assessment).

114. With regard to the allegations on violation of Article 3 [Equality before the Law] and Article 7 [Values] of the Constitution, because by the challenged Decision of the Government, "*the senior functionaries of the Government and their subordinates have a more favorable salary than any other salary of any citizen in Kosovo*", the Court considers that this allegation is not supported by convincing arguments. Furthermore, the Court considers that the analogy of this decision with Case No. KO119/10 does not hold [Judgment dated 8 December 2011, Constitutional review of Article 14 paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on the Rights and Obligations of the Deputy, No. 03/L111, of 4 June 2010]. This is so because in Case KO119/10 the Court did not assess the salaries of the deputies but their supplementary pensions, for which the Court considered that it created discrimination against other members of the society and pensioners in Kosovo, because the deputies would benefit substantial pensions from the state budget without their contribution, which was not the case with other members of the society.
115. In this connection, the Court recalls that a treatment is discriminatory if an individual is treated differently than others in similar position or situations and if such difference in treatments has no objective or reasonable justification. The Court reiterates that a different treatment must pursue a legitimate aim in order for it to be justified and it must have a reasonable relationship of proportionality between the means employed and the aim sought to be realized. (See ECtHR Case *Marckx v. Belgium*, Application no. 6833/74, Judgment of 13 June 1979, paragraph 33).
116. In this regard, the Court considers that the difference in salaries in itself does not create unequal treatment for the purposes of Article 3 and 7 of the Constitution. Consequently, the Applicants have not presented any convincing facts that the salaries foreseen by the Challenged Decision treat differently similar positions or situations and whether such difference in treatment does not have an objective and reasonable justification.

## Conclusion

117. The Court wishes to emphasize that it is not within its scope to assess or substitute for the public policies set by the legislative or executive body. The principle of the separation of powers requires from the Court to respect the setting of the policies by the respective constitutional bodies. Key decisions in policy-making for the governance of a country must be made by the constitutional bodies who have democratic legitimation, namely by the Assembly and the Government. Such bodies - due to their nature and the democratic legitimation - have the duty to set and advance budgetary, economic and social policies of the country (see, ECtHR *mutatis mutandis*, *Dubska and Krejzova v. Czech Republic* [GC], § 175).



118. The Court considers that the constitutional bodies are obliged to respect the competences of one-another during the exercise of their constitutional functions. Unclear situations as regards the exercise of the competences, as is the case under consideration, can be avoided in the future by the adoption of the respective laws on the Government and on the salaries of state functionaries.
119. In conclusion, the Court considers that the Applicants have not presented convincing evidence to substantiate their allegations that the challenged decision has produced constitutional effects in terms of infringing upon the constitutional competences of the Assembly or violating any constitutional provision.

### **The request for an interim measure**

120. The Court recalls that the Applicants also request the Court to issue a decision imposing an interim measure, namely prohibiting the execution of the challenged decision until the Court decides the case, because *“if this unconstitutional situation lasts, the budget of the Republic of Kosovo will suffer high unplanned monetary loses.”*
121. The Court recalls that, on 6 February 2018, the Government informed that they issued a decision on temporary suspension of the challenged decision of the Government until the Court makes a final decision on the matter.
122. Considering that the challenged Decision was suspended by the Government, the Court considers that is not necessary to review the request for interim measure.
123. Therefore, in accordance with Article 27 (1) of the Law and Rule 55 (4) of the Rules of Procedure, the Applicants’ request for an interim measure is rejected as ungrounded.

## FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.2 (1) and 116.2 of the Constitution, Articles 27 (1), 29 and 30 of the Law and in accordance with Rules 29, 54, 55 and 56 (1) of the Rules of Procedure, on 29 May 2018

## DECIDES

- I. TO DECLARE unanimously the Referral admissible for review on the merits;
- II. TO HOLD by majority that the Decision of the Government of the Republic of Kosovo no.20/14, of 20 December 2017, is not in contradiction with Articles 3 [Equality Before the Law], 4 [Form of the Government and Separation of Power], 7 [Values], 65 [Competences of the Assembly], 92 [General Principles] and 93 [Competences of the Government] of the Constitution;
- III. TO REJECT the request for the interim measure;
- IV. TO NOTIFY this Judgment to the parties;
- V. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20.4 of the Law;
- VI. TO DECLARE this Judgment effective immediately.


**Judge Rapporteur**



Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi