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

Prishtina, 5 May 2020
Ref. No.: AGJ 1565/20

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JUDGMENT

in

Case No. KO61/20

Applicants

Uran Ismaili and 29 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, on declaration of the Municipality of Prizren "*quarantine zone*"; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *on preventing, fighting and eliminating infectious disease COVID-19 in the territory* of the Municipalities of Prizren, Dragash and Istog

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

Applicants

1. The Referral was submitted by thirty (30) deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly), namely: Uran Ismaili, Kujtim Gashi, Gazmend Bytyqi, Abelard Tahiri, Blerta Deliu-Kodra, Bajrush Xhemaili, Eliza Hoxha, Bekim Haxhiu, Valdete Idrizi, Besa Ismaili, Sejdi Hoxha, Enver Hoxha, Ferat Shala, Ganimete Musliu, Memli Krasniqi, Elmi Reçica, Floretë Zejnullahu, Ariana Musliu Shoshi, Mërgim Lushtaku, Kadri Veseli, Evgjeni Thaçi-Dragusha, Fatmir Xhelili, Albert Kinolli, Bedri Hamza, Veton Berisha, Duda Balje, Hajredin Kuçi, Haxhi Shala, Endrit Shala and Albulena Balaj-Halimaj (hereinafter: the Applicants).

2. The Applicants were represented in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), by deputy Besa Ismaili.

Challenged decisions

3. The Applicants challenge the constitutionality of four (4) Decisions of the caretaker Ministry of Health (hereinafter: the Ministry of Health), issued by the caretaker Minister of Health, Mr. Arben Vitia (hereinafter: the Minister of Health) as follows: (i) Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health on declaring the Municipality of Prizren *"quarantine zone"*; (ii) Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health – *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality of Prizren"*; (iii) Decision [No. 238/IV/2020] of 14 April 2020 of the Ministry of Health – *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality of Dragash"*; and (iv) Decision [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality of Istog"*.

4. Hereinafter, the Court will refer to the above-mentioned decisions as "the challenged Decisions" when their entirety is in question; whereas, when any separate decision is in question, the Court will refer to the specific number of that decision.

Subject matter

5. The subject matter of the Referral is the constitutional review of the four (4) challenged Decisions, which the Applicants allege that are incompatible with Articles 35 [Freedom of Movement] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 2 of Protocol No. 4 of the European Convention on Human Rights (hereinafter: the ECHR).

6. The Applicants also allege that the challenged Decisions are in contradiction with Judgment of the Constitutional Court in case KO54/20 (see, case KO54/20, Applicant, *the President of the Republic of Kosovo*, *"Constitutional review of Decision No. 01/15 of the Government of the Republic of Kosovo"*,

Judgment of 31 March 2020, published on 6 April 2020 –hereinafter referred to as: "Judgment KO54/20").

7. The Applicants also request the Court to "*impose as an interim measure immediate suspension of implementation of the challenged decisions until the completion of the procedure of constitutional control and resolution of the case based on merits.*"

Legal basis

8. The Referral is based on sub-paragraph (1) of paragraph 2 of Article 113 [Jurisdiction an Authorized Parties] and on paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution; Articles 27 (Interim Measures), 29 (Accuracy of the Referral) and 30 (Deadlines) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law); and on Rules 32 (Filing of Referrals and Replies), 33 (Registration of Referrals and Filing Deadlines), 56 (Request for Interim Measures) and 57 (Decision on Interim Measures) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

9. On 17 April 2020, Friday, at 15:50, the Applicants submitted the Referral to the Court.

10. On the same date, on 17 April 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Reporter and the Review Panel composed of judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci.

11. On 18 April 2020, Saturday, the representative of the Applicants submitted to the Court the original Referral also in electronic format to the electronic mail of the Court through her electronic address.

12. On the same date, on 18 April 2020, through electronic communication to the electronic mail chosen by the Applicants' representative, the Court notified the Applicants' representative about the registration of the Referral, informing her that Referral KO61/20, cannot be considered complete because it was not signed by deputy Gazmend Bytyqi, whose name and personal number appear in the list of the deputies as Applicants. Based on the earlier practice, the Court invited the Applicants to submit to the Court the signature of deputy Gazmend Bytyqi in order to confirm his consent to be one of the deputies who submitted Referral KO61/20 to the Court.

13. On the same date, on 18 April 2020, the representative of the Applicants submitted to the Court, through electronic communication, the signature of the deputy in question.

14. On 19 April 2020 the Court notified the representative of the Applicants about receipt of the signature and confirmed that it would henceforth continue to

communicate directly with her in the capacity of representative of the thirty (30) deputies who have submitted Referral KO61/20.

15. Through this letter, the Court also requested the Applicants to clarify to the Court, if in addition to the Decisions specified in their Referral, namely Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health on declaring the municipality of Prizren *"quarantine zone"*; and Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory"* of the municipalities of Prizren, Dragash, and Istog, respectively, whether they also challenge the thirty-five (35) other Decisions of the Ministry of Health of 14 April 2020 *"on preventing, fighting and eliminating infectious disease COVID-19",* as they had referred to the latter in the content and reasoning of the relevant Referral. More precisely, the Court in its letter to the Applicants stated, *inter alia*, as follows:

> *"In your Referral, you have requested the Court to: "Assess the issue of compatibility of Decisions of the Minister of the Ministry of Health of the Government of the Republic of Kosovo: Decision No. 238/IV/2020, dated 14.04.2020; Decision No. 229/IV/2020, dated 14.04.2020; Decision No. 214/IV/2020, dated 12.04.2020; Decision No. 239/IV/2020, dated 14.04.2020 with the Constitution of the Republic of Kosovo. [...]*
> *However, in the reasoning and explanations given in the content of your Referral, you did not refer only to the four (4) above-mentioned decisions issued by the caretaker Minister of Health, Mr. Arben Vitia, but you also referred to other decisions issued by this Ministry of Health, namely all thirty-eight (38) decisions issued by this Ministry".*

16. Within the deadline set by the Court for submission of the above-mentioned clarifications, namely until 10:00 hrs of 20 April 2020, the Applicants did not submit any clarification to the Court despite the fact that they received the letter of the Court, through electronic communication, in a regular manner in the e-mail selected by them.

17. On 20 April 2020, the Court informed, through electronic communication, the Applicants, to the e-mail address of the representative selected by them, that no response had been received from them within the deadline set by the Court. Consequently, the Court notified the Applicants that "*the proceedings for the review of Case KO61/20 will continue on the basis of existing documentation*."

18. On the same date, on 20 April 2020, the Court notified, through electronic communication, about the registration of the Referral: (i) The President of the Republic of Kosovo, His Excellency, Mr. Hashim Thaçi (hereinafter: the President); (ii) The President of the Assembly, Mrs. Vjosa Osmani-Sadriu (hereinafter: the President of the Assembly) with the request to distribute a copy of the Referral to all deputies of the Assembly (iii) The caretaker Prime Minister, Mr. Albin Kurti (hereinafter: the Prime Minister); (iv) The caretaker Minister of Health: and (v) the Ombudsperson, Mr. Hilmi Jashari. The Court also notified all the above mentioned parties that the Applicants did not respond to the request of the Court for additional clarification and sent them a

copy of the original Referral submitted by the Applicants and a copy of all documents submitted up to that moment.

19. In the letter sent to the President of the Assembly, in addition to the invitation to submit her comments, comments of the deputies of the Assembly or those of the Parliamentary Committees regarding Case KO61/20, the Court also sent a specific request as follows: "*Honorable President of the Assembly, lastly, you are kindly asked to notify the Court regarding all steps taken by the Assembly of the Republic of Kosovo following the publication of Judgment KO54/20 of 31 March 2020. Please submit to the Court any relevant information or document in this regard.*"

20. Whereas, in the notification letter sent to the Minister of Health, in addition to the invitation to submit his comments regarding Case KO61/20, the Court also sent a specific request as follows: "*Dear Minister, lastly, you are kindly asked to submit to the Court the recommendations of the NIPHK on the basis of which the challenged decisions have been issued*."

21. By these letters, the Court invited the interested parties, mentioned above, to submit to the Court their comments, if any, regarding the request for imposition of interim measure and for the merits of the Referral. In relation to the possibility of submitting comments regarding the imposition of interim measure, the Court set for all the above mentioned parties the deadline until 16:00 hrs of 21 April 2020. While for the submission of comments regarding the merits of the Referral, the Court set the deadline until 16:00 hrs of 23 April 2020.

22. After the Court notified all interested parties in this case about the registration of the Referral, the representative of the Applicants sent an e-mail to the e-mail address of the Court whereby she stated that, "*Since your request has not been received in my mail and we have not been informed about the existence of the request until now, we kindly ask you to have the understanding and wait for our response until tomorrow at 10:00hrs.*"

23. After receiving this response after the set deadline, the Court once again reaffirmed the fact that the letter was sent to the e-mail address selected by the representative of the Applicants herself and confirmed the fact that the letter in question was sent in a regular manner and finally replied to the representative of the Applicants by notifying her that the deadline for responding to the letter of the Court dated 19 April 2020 has passed, and all interested parties have already been notified about their referral and all the documents of the Court up to that moment, and consequently the extension of the deadline is not possible.

24. On the same date, on 20 April 2020, the representative of the Applicants responded to the electronic communication of the Court, stating, *inter alia*, as follows: "*Anyway, as stated in the Referral that we have submitted, we stand behind four challenged decisions in the Referral and the constitutional review that we have requested for them. And we consider that they sufficiently clarify the purpose of the submitted Referral.*"

25. Within the deadline set for the submission of comments in relation to the interim measure, the Court received comments only from the Prime Minister.

26. Whereas, within the deadline set for submission of comments in relation to merits of the Referral, the Court received comments only from the Parliamentary Group of VETËVENDOSJE! Movement; meanwhile, the Ombudsperson submitted an Opinion regarding Case KO61/20 together with few additional documents for consideration of the Court.

27. Within the set deadline, the Court (i) did not receive the response requested from the President of the Assembly, regarding the steps taken by the Assembly after the publication of Judgment KO54/20; and (ii) did not receive the response requested from the Minister of Health, regarding the submission of the recommendations of the National Institute of the Public Health of Kosovo (hereinafter: the NIPHK), based on which the challenged Decisions have been taken.

28. On 23 April 2020 the Court received from the Prime Minister, on behalf of the Government, a letter addressed to the President of the Court and the Judges of the Court, titled as: "*Submission regarding the non-observance of the legal deadline and the Rules of Procedure of the Constitutional Court by the Constitutional Court in Case No. KO61/20*". The content of this letter is as follows:

> *"The Government of the Republic of Kosovo has once again carefully reviewed the material sent by the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) and through this submission expresses its concerns regarding the violation of legal provisions concerning the deadlines stipulated by the lawmaker, deadlines that cannot be exceeded by the Court. In addition to this violation, after a careful review of the case law of the Constitutional Court relating to the application of Rule 35 (5) of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure), the Government notes that the Court has avoided the procedure which it should have followed in case No. KO61/20.*
> *These two legal violations of essential importance in the constitutional court proceedings are justified as follows:*
> *The practice of the Constitutional Court of the Republic of Kosovo reveals the fact that the refusal*
> *or supplement the referral submitted to the Constitutional Court is considered as a reason to summarily reject the referral, because the party has not fulfilled the procedural criteria for further review.*
> *For this reason, in all cases where the party has not clarified, specified or supplemented the referral, the Court has summarily rejected the referral pursuant to Rule 35 paragraph 5 and has not even notified the authority whose decision is challenged. For us, the refusal to implement the rules established by the Constitutional Court itself in the circumstances of the present case is a serious concern regarding the professionalism and impartiality of the Court.*
>
> *The Court has specified this manner of proceeding in the Rules of Procedure, because no answer can be sought from the other party, when*

the Court has no subject of proceedings at all. We cannot behave in the present case, as the Applicants have built a proper claim.
To confirm our claim, please see the decisions of the Constitutional Court in cases No. KI72/19, No.KI89/18, No.KI121/18, No. 74/18, No. 04/18, No. 89/17, No. KI130/17, No 48/17, No. KI109/16, No. 71/16, No.KI94/15, which the Court has summarily rejected, without notifying any public authority, the referrals which did not specify what act of the public authority is being challenged and subsequently did not respond to the Court to supplement the referral. We are aware that we are speaking about an Individual Referral, but Rule 35.5 does not constitute an exception even in the case of referrals addressed by the constitutional bodies.
Secondly, the lawmaker in Article 22 paragraph 2 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo explicitly stipulates that the opposing party in the procedure has 45 days to submit to the Court the response to the referral.
In your notification No. KK79/20 dated 20 April 2020, contrary to the legal deadline, namely the deadline set by the law which must not and cannot be violated by the Court, you have requested from us to submit our comments regarding the "merits of the referral", at latest on 23 April 2020 at 16:00hrs.
In this regard, the Government notes that we are talking about a violation of the essential provisions regarding the procedure and deadlines to be followed by and in the Constitutional Court. Hence, these clear violations of legal provisions and putting pressure on the Government by unlawful notifications, is unacceptable.
The Government of the Republic of Kosovo with all its capacity is committed to the fight against COVID-19 infection and expects the Court, similar to the institutions equivalent to it in Western countries, to show special care for the life and health of citizens.
Therefore, the Government, through this submission, informs the Court that it will send its comments regarding not only the merits, but also the admissibility of the referral, within the legal deadline. It also requests the Court not to privilege Applicants in relation to other citizens of the Republic of Kosovo whose referrals have been summarily rejected for the same shortcomings as of the Applicants.
The Government will carefully review the legal violations so far and, depending on their legal qualification, will take the necessary actions based on the legislation in force."

29. On 24 April 2020, the Court notified: (i) the Applicants; (ii) the President; (iii) The President of the Assembly, with the request that a copy of the Referral be distributed to all deputies of the Assembly; (iv) The Prime Minister; (v) The Minister of Health; and (vi) The Ombudsperson, about (i) the comments received by the Prime Minister regarding the request for imposition of an interim measure; (ii) the comments received by the Parliamentary Group of the VETËVENDOSJE! Movement regarding the merits of the Referral; (iii) the Opinion received by the Ombudsperson regarding the merits of the Referral and the additional documents submitted by him; (iv) additional comments received from the Applicants regarding the challenged Decisions in case KO61/20; (v) the submission submitted by the Prime Minister addressed to the

President and all judges of the Constitutional Court entitled "*Submission regarding non-observance of the legal deadline and the Rules of Procedure of the Constitutional Court by the Constitutional Court in case no. KO61/20"*; (vi) the fact that the Court did not receive the answers requested from the President of the Assembly, regarding the steps taken by the Assembly after the publication of the Judgment KO54/20; and (vii) the fact that the Court has not received the answers requested from the Minister of Health, regarding the recommendations of the NIPHK on the basis of which the challenged Decisions were issued.

30. The Court, as it did in Judgment KO54/20, taking into account the situation created as a result of the COVID-19 pandemic and the constitutional issue that the case entails, and which, in the Court's assessment, "*requires expedited handling*" only notified the interested parties about the comments/documents received and sent them a copy, for their information. The Court considered that the comments/documents received were sufficient to decide on the admissibility and merits of the Referral in question, and there is no ambiguity which would need to be addressed through additional questions or comments.

31. On 1 May 2020, in the session held via electronic means, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

32. On the same date, the Court voted unanimously, and decided that: (i) Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health *"on preventing, fighting and eliminating infectious disease COVID-19"* in the municipality of Prizren (points I, II, III, IV, VI, VII and VIII); and (ii) Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health*, "on preventing, fighting and eliminating infectious disease COVID-19"* in the municipalities of Dragash and Istog (points I, II, III, V, VI and VII), **are in compliance** with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR.

33. On the same date, the Court by majority of votes, decided that: (i) point V of Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health *"on preventing, fighting and eliminating infectious disease COVID-19"* in the municipality of Prizren; and (ii) point IV of Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health*, "on preventing, fighting and eliminating infectious disease COVID-19"* in the municipalities of Dragash and Istog, where the administrative offences and the relevant sanctions are determined, **are not in compliance** with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR.

34. The Court, also on the same date, by majority of votes, decided that Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, on the declaration of the municipality of Prizren a "*quarantine zone*", **is not in compliance** with Articles 35 and 55 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. Judge Bekim Sejdiu voted against this finding, and his dissenting opinion will be published together with this Judgment.

35. The Court also decided that the request for interim measure remained without subject of review after the case was decided on merits.

Summary of facts

36. On 15 March 2020, the Government issued the Decision [No. 01/11] for declaration of the "*public health emergency*". In point I of this Decision, the request of the Ministry of Health for the Government to declare "*public health emergency*" was approved. In point II, the Institutions of the Government were obliged to act in accordance with the national response plan and to activate the emergency support function 8 (ESF8 public health and medical services). In point III, the Ministry of Health was obliged to manage the declared situation. In point IV, it was emphasized that the Decision in question of the Government, signed by the Prime Minister, shall enter into force immediately, namely on 15 March 2020.

37. On 23 March 2020, the Government issued the Decision [No. 1/15], by which approved the taking the measures of a number of restricting measures for the prevention and control of the spread of COVID-19 pandemics, at the level of the Republic of Kosovo [*Court's Note*: this Decision was dealt with in detail in Judgment KO54/20].

38. On 24 March 2020, the President of the Republic of Kosovo submitted Referral KO54/20 to the Court, whereby he requested constitutional review of the above-mentioned Decision of the Government.

39. On 31 March 2020, the Court by Judgment KO54/20 decided that the above-mentioned Decision of the Government, namely [No. 01/15] of 23 March 2020, was not compatible with Article 55 [Limitations on Fundamental Rights and Freedom] of the Constitution in conjunction with Articles 35 [Freedom of Movement], 36 [Right to Privacy], 43 [Freedom of Gathering] of the Constitution and equivalent articles of the ECHR, namely Articles 8 (Right to respect for private and family life), 11 (Freedom of assembly and association), and 2 (Freedom of movement) of Protocol No. 4 of the ECHR. (See the operative part of Judgment KO54/20, cited above, as well as the conclusions of the Court for that case, paragraphs 310-325 thereof).

40. On 6 April 2020, the Court published Judgment KO54/20 and sent it to all interested parties, while the operative part of the Judgment and the conclusions of the Court had already been published on 31 March 2020.

41. On 8 April 2020, the caretaker Government (hereinafter: the Government), issued the Decision [No. 01/24] whereby the Ministry of Health was authorized to issue the challenged Decisions. Specifically, the Decision of the Government signed by the Prime Minister, states:

> *"1. The Minister of the Ministry of Health is authorized to issue decisions in order to prevent and fight the spread of COVID-19 disease, pursuant to the provisions of the Law No. 02/L-109 for Prevention and Fighting Against Infectious Diseases.*

2. The Minister of the Ministry of Health upon recommendations of the relevant professional units and in consultation with the respective municipalities, will determine the schedule of movement / prohibition of movement of citizens and vehicles, by having the opportunity to make exceptions to the schedules of limitations set forth in point 1.1 of the Decision No. 02/17 dated 27.03.2020 of the Government of the Republic of Kosovo.
3. Institutions of the Government of the Republic of Kosovo shall be obliged to take all necessary actions for the implementation of this Decision.
4. The decision shall enter into force on the day of signature."

Reasoning
In order to rationalize the time in the process of rendering the decisions, in the context of preventing and fighting the spread of the epidemic of disease COVID-19, it was decided as in the enacting clause of this decision".

42. On 12 April 2020, the Ministry of Health issued a Decision [No. 214/IV/2020] whereby the Municipality of Prizren was declared a "*quarantine zone*". More specifically, this Decision provides as follows:

I. The Municipality of Prizren is declared a quarantine zone, as the residents of this Municipality are suspected to have had direct contact with persons infected with corona virus COVID 19;
II. The village Skorobisht in the Municipality of Prizren is declared Hotbed of Transmission of the Infection;
III. Entry into and exit from the Municipality of Prizren is prohibited;
IV. All residents of Prizren are obliged [to] comply with the measures in accordance with the instructions of the National Institute of Public Health of Kosovo (NIPHK);
V. The decision shall enter into force on the day of signing and it is valid until another decision."

43. On 14 April 2020, the Ministry of Health issued thirty eight (38) Decisions *"on preventing, fighting and eliminating infectious disease COVID-19",* three of which, as explained above, are challenged before the Court, Decisions [No. 229/IV/2020], [No. 238/IV/2020] and [No. 239/IV/2020] for the Municipality of Prizren, Dragash and Istog, respectively.

44. The three abovementioned Decisions, [No. 229/IV/2020], [No. 238/IV/2020] and [No. 239/IV/2020], contain the same enacting clause and reasoning. Having said that, the Court clarifies that the Decision [No. 229/IV/2020] for the municipality of Prizren is identical in content with the Decisions [No. 238/IV/2020] and [No. 239/IV/2020] for the municipalities of Dragash and Istog, with the exception of an additional point, namely point II, which is applicable only to Prizren. Consequently, (i) the points I of the three challenged Decisions are identical; (ii) point II of Prizren is applicable only to Prizren; (iii) points II, III, IV, V, VI and VII are identical for the municipalities of Dragash and Istog, and the same correspond to points III, IV, V, VI, VII and VIII of the Decision for the municipality of Prizren.

45. In the following, the Court will present the content of the Decisions [No. 238/IV/2020] and [No. 239/IV/2020] for the municipalities of Dragash and Istog, respectively:

I. From 15 April 2020 at 6:00 hrs., movement of natural persons outside their houses/apartments in the Municipality of Dragash [Istog] is prohibited, except for the following cases:

(a) For natural persons over the age of 16, movement is allowed for supply with necessary goods (food and medicine for people and animals/poultry, as well as hygienic products) and to carry out financial duties and needs (payments, banking works), only for 1 hour and a half per day, according to the weekly schedule set based on the penultimate digit of their personal number. The schedule is attached to this decision (see Annex 1) and will be subject to rotation twice a week. For foreign nationals who do not have a personal number of the Republic of Kosovo, the allowed time of movement is determined based on the penultimate digit of the passport number or identity card of the foreign state.

(b) During the movement of natural persons, no companionship is allowed, except in three cases:
- *(1) disabled persons, who may be accompanied only by a member of the same household, or by a medical/health assistant.*
- *(2) persons under the age of 16, provided that they are accompanied by a member of the same household.*
- *(3) pets, provided that they are kept tied at all times during the allowed time of movement.*

(c) During the 90-minute free movement time based on personal number, natural persons may leave their apartments/houses to perform physical exercises. Except for the exceptions in point (b), no companionship is allowed while performing physical exercises.

(d) Due to the high risk of COVID-19 to the elderly, it is recommended that persons over the age of 65 not leave the house/apartment, except in cases of emergency and when necessary.

(e) With an identification document from TAK EDI and only to carry out the needs of economic operators or relevant institutions, it is allowed:
- *(1) free movement for economic operators and institutions provided in the list attached as Annex 2 and 3 to this decision.*
- *(2) free transportation of goods and services to ensure the operation of the supply chain – as a process involving raw material operations in manufacturing, processing and service up to the transportation of products, distribution and sale to the final consumer – for activities allowed under Annex 2 of this decision.*

(f) Free movement is allowed for institutions under the list attached as Annex 3 of this decision, only to perform official duties.

(g) In urgent health cases, it is allowed to leave the house/apartment to seek medical treatment in a health institution.

(h) Movement is allowed for natural persons in cases where leaving the house/apartment is necessary to take care of one or more sick persons,

or for one or more disabled persons, only if the sick persons or disabled persons are not able to take care of themselves.

(i) Prohibition of movement of natural persons outside their houses/apartments shall not apply in cases of victims of domestic violence. Victims of domestic violence are allowed to leave their houses/apartments to seek shelter in an alternative location.

(j) In cases of death, leaving the house/apartment is allowed to attend the funeral, but only for close family members of the deceased.

(k) It is strictly forbidden to leave houses/apartments for any reason other than the reasons mentioned above, including social gatherings, family visits, etc.

II. From 15 April 2020 at 6:00 hrs., movement of vehicles in the Municipality of [Prizren /Dragash/Istog] is prohibited, except:

(a) With a confirmation document by TAK EDI system and only to carry out the needs of economic operators, it is allowed:
  (1) movement of vehicles for economic operators and institutions provided in the list attached as Annex 2 and 3 of this decision.
  (2) movement of workers, only to go to work and return from work, according to the schedule of the respective economic operator. The worker has the right to use his/her personal vehicle as well.
  (3) free transportation of goods and services to ensure the operation of the supply chain – as a process involving raw material operations in manufacturing, processing and service up to the transportation of products, distribution and sale to the final consumer – for activities allowed under Annex 2 of this decision.

(b) Schedule of movement for farmers and farm workers is from 06:00 - 20:00. For farmers, at the time of movement is required: (i) Farmer Registration Certificate, (ii) Annex 1 of the Certificate - Farmer's Notes and (iii) Identification Card.

(c) Farm workers will be provided with a confirmation document from the MAFRD only to carry out the work needs of the respective farm.

(d) With a special permission of movement and only to carry out the needs of state institutions, movement of vehicles for the essential staff of these institutions is allowed.

(e) Movement with vehicles is allowed for persons who have the nearest market / pharmacy / bank / payment point more than 2km away. In these cases, it is not allowed to use the vehicle to travel to any market / pharmacy / bank / payment point other than the nearest one.

(f) Only to carry out official duties, movement of vehicles is allowed for the institutions in the list attached as Annex 3 of this decision.

(g) Movement permits in the cases specified above under Annex 3 are issued by the MIAPA.

(h) Movement of vehicles is allowed for disabled persons when the use of vehicles is necessary.

(i) It is allowed to use the vehicle to travel to a health institution for treatment.

(j) In cases of death, the use of vehicle to attend the funeral is allowed, but only for close family members of the deceased.

(k) Except for the reason specified in point I, no more than two persons are allowed in one vehicle.
(l) Exceptionally, media teams working in the field are allowed to have up to 3 persons in the vehicle provided that passengers bear special FFP2 mask plus gloves.

III. During the allowed movement, according to the exceptions provided in points I and II above, natural persons are obliged to:

(a) keep only the mouth and nose covered, by a mask, scarf, or other covering;
(b) at all times, maintain a distance of two meters from other persons.

IV. Failure to comply with the measures set out in this decision is considered, in accordance with the law, an administrative offense and punishable by a fine of 1,000 Euros to 2,000 Euros for natural persons and from 3,000 Euros to 8,000 Euros for legal persons, while the responsible person of the legal person shall be punished from 500 Euros to 1,500 Euros. In accordance with the law, fines are imposed by the competent Inspectorate.

V. The decision shall enter into force on the day of signing and it is valid until 4 May 2020. Upon the entry into force of this Decision, any previous provision that is inconsistent with the provisions of this Decision shall be repealed.

VI. This decision will be reviewed no later than 30 April 2020, in consultation with the National Institute of Public Health, experts and other ministries of the line, to assess the effectiveness and necessity of the measures prescribed, and to decide whether to continue or not with the respective measures.

VII. In addition to point V and VI, the Minister of Health will re-analyze the epidemiological situation every day and in relation to each of the above points and, after prior consultation, may amend, supplement or repeal the prescribed measures."

46. As explained above, the content of the Decisions [No. 238/IV/2020] and [No. 239/IV/2020] for the municipalities of Dragash and Istog, is identical with points I, III, IV, V, VI, VII and VIII, of the Decision [No. 229/IV/2020] for the municipality of Prizren. Having said that, the latter also contains point II, which contains the following:

II. From 15 April 2020 at 6:00 hrs., the entry-exit from the Municipality of Prizren is prohibited, except in these cases:

(a) With a confirmation document by TAK EDI system and only to carry out the transport of goods and services to ensure the operation of the supply chain - as a process involving raw material in manufacturing, processing and service delivery to the transport of products, distribution and sale to the final consumer - entry and exit are allowed for permitted activities. according to Annex 2 of this decision.

(b) *With a confirmation document by TAK EDI and only to carry out the transport of goods and services, entry and exit are also allowed to workers employed by economic operators, except for areas declared by the Ministry of Health as hotbed of the spread of infection.*
(c) *Entry and exit of farmers and farm workers is allowed, except for areas declared by the Ministry of Health as hotbed of the spread of infection. For farmers, for entry-exit is required: (i) Farmer Registration Certificate, (ii) Annex 1 of the Certificate - Farmer's Notes and (iii) Identification Card.*
(d) *Only to carry out the work needs, entry and exit are allowed for the institutions in the attached list as Annex 3 of this decision.*
(e) *Movement permits in the cases specified above under Annex 3 are issued by the MIAPA.*
(f) *In urgent health cases, entry and exit are allowed to seek medical treatment in a health institution, but only if this treatment is not provided in the municipality where the person for whom treatment is requested is located.*

47. Whereas, all three above-mentioned Decisions [No. 229/IV/2020], [No. 238/IV/2020] and [No. 239/IV/2020], respectively, contain the same reasoning which reads as follows:

"On 11.03.2020, approving the request of the Ministry of Health, the Government of the Republic of Kosovo issued Decision No. 01/07, whereby the first measures were taken to prevent and fight COVID-19 infection. Following the confirmation of the first cases of infected persons, in accordance with the recommendations of the NIPHK, the Ministry has requested from the Government to issue other decisions through which additional measures have been taken to prevent and fight COVID-19 disease.

On 23.03.2020, the Government of the Republic of Kosovo issued Decision no. 01/15 whereby the necessary measures have been taken to protect the life and health of citizens throughout the territory of the Republic of Kosovo.

On 31.03.2020, the Constitutional Court of the Republic has notified the public that after challenging Decision No. 01/15 of the Government by the President of the Republic of Kosovo, the Constitutional Court has granted the request of the President and has declared the challenged decision invalid. However, in the same decision, the Constitutional Court reiterated that the Ministry of Health continues to be authorized to issue decisions aiming at preventing and fighting COVID-19 disease, to the extend it is authorized by Law No. 02/L-109 for Prevention and Fighting Against Infectious Diseases and Law No. 04/L-125 on Health. Based on Article 47.1 of the Law for Prevention and Fighting Against Infectious Diseases, "Ministry of Health is competent for application of this Law and approving the foreseen dispositions in it."

Based on Article 41.2 of Law No. 02/L-109 for Prevention and Fighting Against Infectious Diseases, to prevent entrance and spreading of

infectious diseases throughout the country, the Ministry of Health is authorized for "Prohibition of movement in the infected or directly endangered regions". On 12.04.2020, the NIPHK proposed to the Ministry of Health to take the measures mentioned in the enacting clause of this decision for the Municipality of Prizren / Dragash / Istog because the NIPHK considers that the infection has spread in that municipality or it is considered directly endangered. In order for the Ministry of Health to fulfill its legal obligations for the protection of the life and health of the citizens, it approved the proposals of the NIPHK as in the enacting clause of this decision.

Therefore, in accordance with the factual and legal situation described in this reasoning, the Minister of Health decided as in the enacting clause.

Legal remedy:
The dissatisfied party may file an administrative conflict lawsuit with the Basic Court in Prishtina, Administrative Affairs Department, within 30 days after the publication of this decision."

48. On 17 April 2020, the Applicants challenged before the Constitutional Court the four (4) above-mentioned Decisions of the Ministry of Health, namely Decision [No. 214/IV/2020] of 12 April 2020 and Decisions [No. 229/IV/2020], [No.238/IV/2020] and [No. 239/IV/2020], of 14 April 2020, respectively.

Applicants' allegations

49. The Court recalls that the Applicants challenge the constitutionality of the challenged decisions, namely: (i) Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health – on declaring the municipality of Prizren a "*quarantine zone*"; (ii) Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health "*on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality of Prizren*"; (iii) Decision [No. 238/IV/2020] of 14 April 2020 of the Ministry of Health "*on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality of Dragash*"; and (iv) Decision [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health "*on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality of Istog*". The content of all these Decisions is mentioned above under the heading of this Judgment: "Summary of facts".

50. In the context of the challenged Decisions, the Applicants also stated: "*We respectfully explain to the recipient of this referral, the Constitutional Court, that the decisions on prohibition of the movement of natural persons and vehicles, in each municipality separately, are not listed in the list of decisions challenged by the applicant only for practical purposes, because by legal nature, both in content and form are identical. The decisions specified and challenged in this referral are only dedicated to the municipalities of the Republic of Kosovo, one by one. See the link below: https://msh.rks-gov.net/vendimet-per-komunat-e-rrezikuara-dhe-per-komunat-e-karantinuara/."*

51. In the following, the Court will present the allegations of the Applicants regarding: (i) the admissibility of the Referral; (ii) the content/substance of the challenged Decisions; and (iii) imposition of the interim measure.

(i) As to the admissibility of the Referral

52. The Applicants emphasize that they submitted Referral KO61/20 based on Article 113.2 (1) of the Constitution. This article of the Constitution, the Applicants emphasize, explicitly gives the competence to at least thirty (30) deputies of the Assembly to raise issues in the Constitutional Court *"to assess the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government"*.

53. Regarding the specific competence of the deputies of the Assembly to raise issues of the constitutional review of decisions of a Ministry, the Applicants state that (i) based on Articles 92 [General Principles] and 96 [Ministries and Representation of Communities] of the Constitution, it is provided that "*The Government consists of the Prime Minister, deputy prime minister(s) and ministers"* and that "*Ministries and other executive bodies are established as necessary to perform functions within the powers of the Government*", and consequently, the Ministry is a part of the Government, which acts enter into the scope of "*Government regulations*". For the purposes of the same argument, namely that the Government consists in its entirety of its Ministries, they also refer to Articles 3 (Composition of the Government of the Republic of Kosovo) and 8 (Minister) of Regulation No. 05/2020 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries; and state that (ii) "*The challenged Decisions fall into the category of sub-legal acts of the Government, namely the regulations, and based on the case law of the Court "it should not focus only on the naming of an act but on its content and effects"*. In support of this argument, they refer to the case law of the Court, Judgment in case No. KO73/16, Applicant *The Ombudsperson*, Judgment of 16 November 2016), Constitutional review of the Administrative Circular no. 01/2016, issued by the Ministry of Public Administration of the Republic of Kosovo, on 21 January 2016 (hereinafter: Judgment KO73/16); Judgment in case no. KO12/18, Applicant Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo, Constitutional review of Decision No. 04/20 of the Government of the Republic of Kosovo, of 20 December 2017 (hereinafter: Judgment KO12/18); and Judgment KO54/20, cited above, and which in paragraphs 161-163, *inter alia*, states that: "*The purpose of this constitutional provision* [113.2 (1)] *is to give the constitutional opportunity to all parties to challenge each other's acts in order to guarantee the constitutionality of the respective decision-making of each constitutional institution, namely the Assembly, the President and the Government"*. In this context, they also allege that the referral encompasses issues of constitutional importance, taking into account the connection with the right of movement of citizens which has been restricted, allegedly, unconstitutionally by the challenged decisions.

54. The Applicants also state that *"the constitutional and legal conditions and requirements are met for the submission of this referral and consequently the*

Constitutional Court must interpret the constitutional provisions whenever an issue is addressed before it by the institutions mandated for referral". In the present case, according to them, *"in order to protect the citizens of the Republic of Kosovo from the unfounded and unconstitutional restrictions of the Government, namely of the Ministry of Health, regarding the limitation of freedom of movement (which according to the Constitution can only be made by law), to accept for consideration on merits and within the foreseen deadlines to declare the challenged decisions of the Government incompatible with the Constitution in entirety, in order to avoid flagrant violations from the restriction of this right as soon as possible and to avoid as much as possible, the legal and other consequences of the limitation of fundamental freedoms, the protection of which, as the highest and final authority of the interpretation of the Constitution, the Constitutional Court to do as soon as possible".*

(ii) As to the merits of the Referral

55. Regarding the content of the challenged Decisions, namely the merits of the Referral, the Applicants consider that the challenged Decisions are contrary to (i) Articles 35 and 55 of the Constitution; (ii) Judgment of the Court in case KO54/20; and (iii) Article 2 of Protocol No. 4 of the ECHR.

56. In this regard, the Applicants emphasize the fact that (i) the freedom of movement may be restricted only by law, and that through the challenged Decisions, the Ministry of Health has exceeded the legal powers set out in Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases (hereinafter: Law for Prevention and Fighting against Infectious Diseases), consequently, acting contrary to Article 35 and 55 of the Constitution and the above-mentioned Judgment. In support of this argument, the Applicants refer to paragraph 197 of Judgment KO54/20, which clarified the constitutional test contained in Article 55 of the Constitution, according to which an "*interference*" with fundamental rights and freedoms must be "*prescribed by law*", to pursue a "*legitimate aim*", to be "*proportionate*" and "*necessary in a democratic society*"; and that (ii) contrary to these principles, "*the fundamental rights and freedoms are restricted by sub-legal acts, namely administrative decisions, of an arbitrary nature of a government, namely of its minister*".

57. Also, the Applicants emphasize that despite the Judgment of the Court in case KO54/20, the issuance of decisions in thirty-eight (38) municipalities of Kosovo, restricting the freedom of movement in its entire territory, "*has achieved the same legal effect of the restrictions for all citizens without distinction, and for the entire territory of the Republic of Kosovo, in full non-compliance with Law no. 02/L-109 for Prevention and Fighting against Infectious Diseases and the Judgment of this Court in case no. KO54/20, dated 06 April 2020*".

58. The Applicants also allege that (i) the Law for Prevention and Fighting against Infectious Diseases, which has entered into force before the Constitution, does not reflect the basic principles of the latter; (ii) the same Law, in its Articles 41 and 44, does not stipulate any kind of authorization "*to prohibit movement or*

circulation at the general state or municipal level, without exception and with the same treatment for all municipalities, regardless of their degree of infection; nor do they "*authorize the Ministry to issue decisions that have a general effect on all citizens without distinction, and consequently the relevant decisions have produced the same legal effects, uniform for all citizens of the country*"; and (iii) Law No. 04/L-125 on Health (hereinafter: the Law on Health) has distinguished between "*State of Emergency*" and "*Emergencies*", specifying "*explicitly"* the competencies of the Ministry of Health in case of the former, and limiting the powers of the same within the applicable law.

59. More precisely and regarding the challenged Decisions, the Applicants specify that (i) The challenged Decisions have not dealt with the respective municipalities based on the specific particularities of these municipalities regarding the infected and the suspected or endangered with COVID-19, but have treated all municipalities of the Republic of Kosovo in the same way; (ii) the municipality of Dragash, which is subject to the same restrictions as the rest of the territory of Kosovo, until the moment of issuance of the challenged decision regarding this municipality, did not have any COVID-19 infection; (ii) the municipality of Prizren was subject to the same restrictions through the challenged Decision of 14 April 2020, despite the fact that two days earlier, namely on 12 April 2020, the latter by the Decision [No. 214/IV/2020] was also declared a "*quarantine zone*"; while (iii) the municipality of Istog was subjected to the same measures, by the challenged Decision, despite the fact that in this municipality, until the date of issuance of the challenged Decision, only one case was registered with COVID-19. The Applicants consequently emphasize that these three municipalities with different specifics have been treated, "*completely the same by the decisions of the Ministry, dated 14 April 2020, as 35 other municipalities of the Republic of Kosovo have been treated without any distinction*". The Applicants also state that the challenged Decisions, and those in thirty-five (35) other municipalities, "*contain an incomplete, unprofessional reasoning, not based on the factual circumstances of the case*", while for the placement of the quarantine in Prizren, "*it does not contain the reasoning at all, as an essential constitutive element of the administrative act*", while the lack of elements of the administrative act is the basis for its nullity (invalidity). Regarding the challenged Decision related to the determination of the municipality of Prizren a "*quarantine zone*", the Applicants emphasize the fact that based on the Law for Prevention and Fighting against Infectious Diseases, the quarantine can be imposed only "*on persons for whom it is proven or suspected that they have been in direct contact with sick or suspicious persons with the disease, but not on a city as a whole, as the challenged Decision declares the Municipality of Prizren a quarantine zone*".

(iii) As to the interim measure

60. Referring to paragraph 2 of Article 116 [Legal Effects of Decisions] of the Constitution, Article 27 of the Law and Rule 54 of the Rules of Procedure, the Applicants requested the Court *"to impose as an interim measure the immediate suspension of the implementation of challenged decisions until the*

completion of the constitutional review procedure and the resolution of the case on merits".

61. In this regard, the Applicants firstly emphasize that they have "*shown* a *prima facie* case*",* while secondly that the interim measure is necessary to avoid "*irreparable damage"* because (i) *"its absence could cause irreversible and irreparable damage to the violation of the constitutional guarantees of fundamental rights and the principles of democratic governance"* and (ii) "*the immediate non-suspension of the challenged decisions by the Court would also result in the loss of jobs of private sector employees, who, for reasons unrelated to them as employees, will not be able to obtain the necessary permits for movement, as a result of the impossibility of obtaining the necessary documents from the state institutions".* Thirdly, the Applicants also state that the sought interim measure is *"in the public interest"* because (i) through the implementation or not of the challenged Decisions *"depends the creation, change or termination of the right in the implementation of the exercise and effective realization of fundamental human rights and freedoms in the Republic of Kosovo";* (ii) *this Government, was intentionally abused by the preliminary decision of this Court in case KO54/20, by not implementing the latter, and proving that through these decisions, is created the conviction of the implementation of decision of this court, deliberately avoiding the valid findings and conclusions of this judgment, and erroneously considering that this judgment only requires that by the decisions for each municipality, which can be issued by the ministry, can be made restrictions on rights";* and (iii) such an approach, according to the Applicants *"disregarding correct and efficient implementation of the judgment of this court, seriously affects the great public trust in the work of this Court, and the principles of the rule of law, and moreover the legal effect of the decisions of this Court, which decisions, while also binding under Article 116 of the Constitution, are respected almost in their entirety and by all, therefore, the violation of the institutional standard to respect the decisions of the Constitutional Court should not be allowed, and not to distort their effects, much less to not implement them".*

Comments submitted regarding the request for interim measure

62. As stated in the proceedings before the Court, the latter had given the opportunity to all interested parties to submit their comments regarding the request for imposition of interim measure in case KO61/20 until 16:00 of 21 April 2020. The Court, within the set deadline, received comments only from the Prime Minister, on behalf of the Government. The comments received will be presented below.

Comments submitted by the Prime Minister, on behalf of the Government

63. With respect to the request for an interim measure, the Prime Minister states that the Rules of Procedure provides for three necessary requirements that the Applicants must meet in order for their request for an interim measure to be approved by the Review Panel. Citing paragraphs (a), (b) and (c) of Rule 57 (4)

of the Rules of Procedure, the Government states that none of these three conditions have been met in the circumstances of the present case.

64. With regard to the *prima facie* argumentation of the Referral, the Prime Minister alleges that the Applicants' Referral is inadmissible because (i) under Article 113.2 (1) of the Constitution, the Assembly has the right to challenge *"decrees of the Prime Minister (decisions issued by him contrary to his constitutional powers as an individual body) or Government regulations (regulations approved by the Government as a collegial body)"* and (ii) in accordance with Articles 29 and 30 of the Law on the Constitutional Court and Rule 35 (5) of the Rules of Procedure, the Applicants' Referral "*is to be summarily rejected"*.

65. With regard to "*unrecoverable damage"*, the Government, by specifically citing item (b) of Rule 57 (4) of the Rules of Procedure, states that the Applicants have not raised *"any claim regarding the unrecoverable damage which they - as a party to this proceeding - would have suffered"*. Referring to the case of the Court "*KI56/09, Decision of 15 December 2009*", the Prime Minister emphasizes that it is the obligation of the party to the proceedings not only to raise as an allegation for suffering unrecoverable damage, but also to sufficiently justify suffering of such a damage. Furthermore, in support of clarification of the concept "*unrecoverable damage*", through the same letter were cited also some cases of the European Court of Human Rights (hereinafter: the ECtHR), as follows: (i) *Abdollahi v. Turkey*, Application no. 23980/08; (ii) *F.H. v. Sweden*, Application no. 32621/06; (iii) *Abraham Lunguli v. Sweden*, Application no. 33692/02; (iv) *Soering v. the United Kingdom*, Application no. 14038/88; (v) *Ismoilov and others v. Russia*, Application no. 2947/06; (vi) *Otham (Abu Qatada) v. the United Kingdom*, Application no. 8139/09; *Kotsaftis v. Greece*, Application no. 39780/06; (vii) *Evans v. the United Kingdom*, Application no. 6339/05; (viii) *Ocalan v. Turkey*, Application no. 46221/99; and (ix) *X. v. Croatia*, Application no. 11223/04).

66. With regard to the public interest, the Prime Minister considers that the Applicants *"have not justified the public interest, as a request for the imposition of interim measures with the suspension effect"* of the implementation of the challenged Decisions. Fundamental freedoms and rights, according to the allegation, are not created by the acts of the executive authority but they derive from the Constitution and, according to Article 22 of the Constitution, also the ECHR. Issues of public interest, without limiting to them, according to the letter, are considered public safety; public health; environmental protection; and ensuring the financial stability of the state. In this regard, the Government stated that the Applicants "*have no way of providing any argument as to whether, as a result of the enforcement of the challenged decision, public safety is endangered by internal unrest or external attacks; public health is endangered; the environment is damaged or the financial stability of the Republic of Kosovo is endangered"*.

67. At the end of their comments regarding the interim measure, the Prime Minister emphasized that the Rules of Procedure has clearly stipulated that items (a), (b) and (c) of Rule 57 (4) should be met cumulatively. Consequently,

the Applicants, the Prime Minister emphasizes, must cumulatively build the *prima facie* case; to prove that the execution of the decision causes unrecoverable damage; and, to prove that the interim measure is in the public interest.

Comments submitted regarding the merits of the Referral

68. As stated in the proceedings before the Court, the latter had given the opportunity to all interested parties to submit their comments regarding the merits of the Referral by 23 April 2020 at 16:00 hrs. The Prime Minister, the President, the Minister of Health and the Assembly, did not submit comments to the Court. Comments were submitted only by the Parliamentary Group of VETËVENDOSJE! Movement and the Ombudsperson. The Court will present all the received comments in the following.

Comments submitted by the Parliamentary Group of VETËVENDOSJE! Movement

(i) Regarding the admissibility of the Referral

69. The Parliamentary Group of VETËVENDOSJE! Movement states that the Applicants requested the constitutional review of the four (4) challenged Decisions of the Ministry of Health.

70. In the procedural aspect, the Parliamentary Group of VETËVENDOSJE! Movement states that (i) as the Applicants have not clarified, specified and supplemented the Referral, the Court must summarily reject the Referral based on Rule 35 (5) of the Rules of Procedure; and (ii) the challenged Decisions are not "*the regulations of the Government"* within the meaning of Article 113.2 (1) of the Constitution, and therefore cannot be considered by the Court.

(ii) Regarding the merits of the Referral

71. Regarding the merits of the Referral, and referring to Judgment KO54/20, namely its paragraphs 189-198, in which the Court clarified the structure and test entailed in Article 55 of the Constitution, the Parliamentary Group of VETËVENDOSJE! Movement states that the challenged Decisions (i) are *"prescribed by law",* because they were issued based on Law for the Prevention and Fighting against Infectious Diseases*,* namely on its Articles 41 and 44, by which, the movement may be prohibited *"in certain areas, threatened by COVID-19, based on the reporting of cases of the disease in these municipalities*" and which are determined by the recommendations of the NIPHK; (ii) pursue a "*legitimate aim",* namely "*in order to protect public health threatened by the appearance of COVID-19"* (iii) are necessary and proportionate "*in order to protect public health and prevent the expansive growth of infected cases, which has proven to be a bitter reality from the experience of the countries of the region, western and overseas,"* also emphasizing that *"the measures taken will be reviewed after a period of three (3) weeks, which is also reflected in the decisions of the Ministry of Health*" and that *"such revision does not allow arbitrariness in the action of the relevant institutions and guarantees the abrogation of these measures at the*

moment of giving the first signals of reduce of the number of infected cases"; and finally (iv) stating, *inter alia,* that *"the need of the society for the imposition of such measures is necessary, in order to maintain the health and thus the continuation of the development of the society".*

72. The Parliamentary Group of VETËVENDOSJE! Movement also focuses on (i) the role of the Sanitary Inspectorate of Kosovo in *"imposing fines for sanitary administrative offenses";* and on (ii) linking the restrictions set out in the challenged Decisions regarding the right to life guaranteed by Article 25 [Right to Life] of the Constitution.

73. Regarding the first issue, the Parliamentary Group of the VETËVENDOSJE Movement! states that based on item (m) of Article 31 of Law No. 2003/22 on the Sanitary Inspectorate of Kosovo (hereinafter: Law on the Sanitary Inspectorate of Kosovo) *"not applying, in full or partially, the measures and/or decisions of the Sanitary Inspectorate of Kosovo*" is a sanitary administrative offence and is pronounced based on the decision/s issued by the Sanitary Inspectorate of Kosovo. Whereas, regarding the second issue, they stated that "*the health protection necessarily leads to Article 25 of the Constitution which guarantees the right to life*". According to the allegation, "*the ECtHR Guide to Article 2 of the ECHR explains that the ECtHR "has emphasized in many cases that the right to life is threatened even when the person to whom the violation of this right has been endangered has not died*"; and that consequently, "*the repeal of the measures taken by the decisions of the Ministry of Health, namely their non-respect and the permission of movement or unconditional movement*, *"threatens violation of the right to life*."

Opinion submitted by the Ombudsperson Institution

74. The Ombudsperson Institution submitted an Opinion to the Court in which it emphasized, *inter alia,* that (i) the circumstances created by the COVID-19 pandemic and the danger it poses to the lives and health of citizens*, "require a balance between the right to life, which cannot be limited or derogated from under any circumstances, and other rights for which the Constitution and international human rights instruments allow limitations, under certain circumstances";* and (ii) the COVID-19 pandemic "*falls within the domain of definitions of the threat to the health and life of citizens and that the state is obliged to take measures to protect their lives and health".*

75. The Ombudsperson highlights the fact that *"it is evident that there is a need to take measures to prevent and fight COVID-19";* and such a thing was confirmed by the Court in paragraph 310 of Judgment KO54/20, in which it stated that "*it is not its role to assess whether the measures taken by the Government to prevent and fight the COVID-19 pandemic are adequate and appropriate. Moreover, the Court notes that the need to take measures and their necessity has not been challenged by either party in this case. Defining public health policies does not fall within the competences and authorizations of the Constitutional Court. In matters of public health, the Constitutional Court itself also refers and obeys to relevant health and professional institutions at the state and world level".*

76. In addition, referring to Judgment KO54/20, the Ombudsperson states that the Court (i) "*examined in detail the Law for Prevention and Fighting against Infectious Diseases and the Law on Health, in terms of the competencies of the Ministry of Health and in item 325 of the Judgment, found that the latter continues to be authorized to issue decisions with an aim of preventing and fighting the pandemic, insofar as it is authorized by Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases and Law No. 04/L-125 on Health";* (ii) *"emphasized that until the date of repeal of the challenged Decision, the responsible institutions of the Republic of Kosovo, in the first place the Assembly, must take actions, in accordance with the Constitution and this Judgment, which are considered as appropriate and adequate to continue preventing and fighting pandemics COVID-19;* (iii) *"there is a positive obligation of the state to take preventive measures in circumstances of emergency situations that endanger the health of citizens, as well as to take measures to treat and control epidemics, endemics and other diseases*"; and (iv) referring to "*Syracusa Principles on the Limitation and Derogation Provisions of the International Covenant on Civil and Political Rights",* the Ombudsperson states that *"public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population".*

77. In this regard, the Ombudsperson considers that (i) the challenged Decisions are "*prescribed by law";* however emphasizing that (ii) *"it should only be assessed if the severity of the measures taken is proportionate to the aim to be achieved, always taking into account the recommendations of the institutions authorized by law to assess the sanitary and epidemiological situation in the country".* In this regard, the Ombudsperson refers to Information Document No. SG/Inf(2020)11 published by the Council of Europe on 7 April 2020, on respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis (hereinafter: Information Document of the Council of Europe), in relation to which, *inter alia,* highlights the fact that (i) "*executive authorities must be able to act quickly and efficiently"*; (ii) "*that such a thing may require the adoption of simpler decision-making procedures, as well as the facilitation of certain checks and balances*"; and (iii) "*parliaments, however, must keep the power to control executive action in particular by verifying, at reasonable intervals, whether the emergency powers of the executive are still justified, or by intervening on an ad hoc basis to modify or annul the decisions of the executive".*

78. The Ombudsperson states that Judgment KO54/20 *"has remained unimplemented by the Assembly*", stating among other things that *"The Assembly should act in accordance with its constitutional powers, the Judgment of the Constitutional Court and the positions of the Information Document No. SG/Inf(2020)11 published by the Council of Europe on 7 April 2020 regarding the circumstances caused by COVID-19".* In this regard, the Ombudsperson highlights the recommendations of the aforementioned document, according to which *(i) "taking into account the rapid and unpredictable developments of this crisis, the need for relatively extensive legislative delegations may arise, but they should be formulated as narrowly*

as possible in these circumstances, in order to reduce any potential for abuse"; as well as (ii) "*if the Parliament wants to authorize the government to deviate from special main legislation (or legislation passed under another special procedure), this must be done by a majority required to pass that legislation, or by following the same special procedure*".

79. Finally and also the Ombudsperson has provided, through some additional documents submitted to the Court, an overview of the statements of various organizations, mechanisms and actors in the field of human rights, regarding the limitations of rights and freedoms during the COVID-19 pandemic, including the declaration of (i) the Ombudsperson of Albania; (ii) the Ombudsperson of Bosnia and Herzegovina; (iii) the Ombudsperson of Croatia; (iv) the Danish Law Institute; (v) the German Institute for Human Rights; (vi) Northern Ireland Human Rights Commission; (vii) Ombudsperson of Portugal; (viii) Northern Ireland Human Rights Commission; (ix) Scottish Human Rights Commission; (x) National Center for Human Rights of Slovakia; (xi) Ombudsperson of Spain; (xii) Institution for Human Rights and Equality in Turkey; (xiii) President of the European Commission; (xiv) OSCE addressed to the OSCE Community; (xv) United Nations High Commissioner for Human Rights; (xvi) United Nations Human Rights Experts; (xvii) International Committee of Lawyers at the COVID-19 Symposium; (xvii) "Amnesty International" regarding the emergency situation; (xviii) Human Rights Watch recommendations; (xix) Position of the European Union Non-Governmental Organizations regarding the restriction of rights; (xx) Statement of the Council of Europe Commissioner for Human Rights; and letters (xxi) of the Commission on Equality and Human Rights of Great Britain addressed to the Prime Minister; and (xxii) the Luxembourg Human Rights Consultative Commission addressed to the Prime Minister. All these documents, in essence and among other things, emphasize the importance of prompt treatment and taking measures to prevent COVID-19 pandemic, but at the same time, in the balance between protecting the lives of citizens and health and, on the other hand, the protection of citizens' freedom and individual needs.

Additional comments from the Applicants regarding the challenged Decisions in case KO61/20

80. As stated in the proceedings before the Court, the latter had given the opportunity to all interested parties, including the deputies of the Assembly, to submit their comments regarding the content or the merits of the Referral, by 23 April 2020, at 16:00hrs. The Applicants, in the capacity of deputies, have received the letter sent by the Court to the Assembly and decided to respond to that letter for submitting additional clarifications regarding the challenged Decisions.

81. In the additional comments submitted to the Court, the Applicants have reiterated that (i) they had not received the Court's request for clarifications submitted to them, in the e-mail address of their representative, on 19 April 2020. They emphasize that have never received that letter and that "*there was clearly a failure in the internet traffic*"; (ii) that *"as we have stated in the Referral, but also as I have reiterated in my last email, we the Applicants submitting the referral for constitutional review of compliance of the*

decisions of the Minister of Health (decision no. 238/I 2020, of 14.04.2020, decision no. 229/IV/2020, of 14.04.2020, decision no. 214/IV/2020 of 12.04.2020 and decision no. 239/IV/2020 of 14.04.2020 with the Constitution of the Republic of Kosovo), have never requested the constitutional review by the Constitutional Court of any decision or other act"; (iii) "*the proof of having specified only the four (4) Decisions mentioned on the first page of our Referral is also the clarification of our Referral and claims, when we have quoted in entirety the decisions that constitute the subject of this Referral, decisions whereby same measures were taken in three different municipalities, and with different specifics, such as the Municipality of Dragash, which has not registered any cases affected by the "Covid 19" virus";* and (iv) pursuant to Article 29 of the Law on the Constitutional Court, "*we, the applicants, have specified inter alia, why the four acts mentioned in the referral we claim to be in contradiction with the Constitution, by specifying in the Referral also the objections raised against the constitutionality of the challenged decisions*".

The legal basis on which the challenged Decisions were issued

82. In the following, the Court will present the content of all articles that are relevant for the constitutional review of the challenged Decisions and on the basis of which the challenged Decisions of the Ministry of Health have been issued and, subsequently, in the part concerning the merits will comment on each of them in light of the competencies and authorizations that those articles provide this Ministry to issue the challenged decisions.

Constitution of the Republic of Kosovo

Chapter VI – Government of the Republic of Kosovo

Article 92
[General Principles]

[...]

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:
[...]
(4) makes decisions and issues legal acts or regulations necessary for the implementation of laws;
[...]

Chapter II – Fundamental Rights and Freedoms

Article 55

[Limitation of Fundamental Rights and Freedoms]

1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.
2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfillment of the purpose of the limitation in an open and democratic society.
3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.
4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.
5. *The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right.*

Article 35
[Freedom of Movement]

1. Citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo have the right to move freely throughout the Republic of Kosovo and choose their location of residence.
2. Each person has the right to leave the country. Limitations on this right may be regulated by law if they are necessary for legal proceedings, enforcement of a court decision or the performance of a national defense obligation.
3. Citizens of the Republic of Kosovo shall not be deprived the right of entry into Kosovo.
4. Citizens of the Republic of Kosovo shall not be extradited from Kosovo against their will except for cases when otherwise required by international law and agreements.
5. The right of foreigners to enter the Republic of Kosovo and reside in the country shall be defined by law.

European Convention on Human Rights

Article 2 (Freedom of movement) of Protocol No. 4 of the ECHR

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Law No. 06/L–113 on Organization and Functioning of State Administration and Independent Agencies, Official Gazette No. 7, 1 March 2019

CHAPTER II - STATE ADMINISTRATION
SUB-CHAPTER 1 GENERAL PROVISIONS ON THE STATE ADMINISTRATION

Article 10
[Responsibility for the State Administration]

1 Minister shall be accountable to the Government and Assembly for the activity of the entire ministerial system in the area of state responsibility provided by the relevant legislation.
2. The Minister (hereinafter: "responsible minister") shall lead and control activities of a ministerial system and shall supervise the activity of agencies in the relevant area of state responsibility, in accordance with this Law.
3. Functioning of the system of minister's responsibility for the performance of ministerial system is provided in accordance with legislation on the functioning of the Government.
4. Provisions of paragraphs 1., 2. and 3. of this Article shall also apply to the Prime Minister`s office in relation to executive agencies under its subordination.
5. The area of state responsibility for each ministry shall be defined by Law.

Article 11
[Ministry]

1. The Ministry is responsible for developing public policies, for leading, coordination, control and oversight of the entire ministerial system within the respective area of responsibility.
2. Ministry shall be responsible for all administrative functions in respective area of state responsibility, unless delegated by law to other institutions of state administration.
3. Organization of the ministry includes the ministry and its branches.

Law No. 04/l-125 on Health, Official Gazette No. 13, 7 May 2013

Article 12
[Measures and activities]

1. Healthcare shall be implemented through the following measures and actions:
[…]
1.11 measures for prevention and elimination of health consequences caused by emergency conditions;
[…]

CHAPTER XIX
HEALTHCARE DURING EMERGENCIES

Article 89
[Responsibilities of the Ministry]

1. During the state of emergency, the provision of healthcare is ensured by the Ministry in compliance with the law and other legislation in power.
2. Healthcare activities in case of emergencies from paragraph 1 of this Article include:
2.1. the implementation of legal provisions in force;
2.2. adapting the healthcare system in compliance with the emergent planning;
2.3. implementing changes within referral and management system;
2.4. provision of emergency healthcare for citizens;
2.5. functioning of the provisional healthcare institutions;
2.6. activating supplementary and reserve resources.
3. During emergency situations, the citizens' rights defined by the law shall be guaranteed to an extent that will not endanger the efficiency of efforts undertaken to overcome the emergency situation.
4. The human dignity shall in general be respected, regardless of the limitations from paragraph 3 of this Article.

Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases, Official Gazette no. 40, 15 October 2008

SAFETY MEASURES FOR POPULATION PROTECTION FROM THE INFECTIOUS DISEASES

Chapter II

Article 3
[No title]

3.1 The infectious diseases in the sense of this Law where their prevention and prohibition is in the interest of our country are as follows: [the list of diseases is quoted]

3.2 If the danger appears by infectious diseases which are not in the list from paragraph 1 of this article, and they can endanger the whole country, the Ministry of Health, by the proposal made by the KIPH determines the prophylaxis and anti-epidemic measures prescribed by this Law, other measures for protection the population from the infectious diseases and the measure which are foreseen as obligatory under the international health conventions and other international acts.

Article 4
[No title]

4.1 The protection from the infections diseases endangering the whole country will be carried out by KIPH, Sanitary Inspectorate of Kosovo, Kosovo Health Inspectorate, all public and private health institutions, non health institutions, municipalities and citizens supervised by Ministry of Health.
4.2 The measures for prevention and fighting against the infectious diseases are directly applied by health institutions and health professionals in conformity with this law.

QUARANTINE

Article 33
[No title]

33.1 Persons who are proved or suspected to have been in direct contacts with sick persons or suspect of being sick from plague, variola and viral hemorrhage fever will be put into quarantine.
33.2 Holding duration of persons in quarantine under paragraph 1 of this article depends on the maximum period of infectious disease incubation;
33.3 Persons from paragraph 1 of this article are subject to continual medical controls during all time of quarantine;
33.4 Ministry of Health by KIPH proposal makes a decision for putting persons into quarantine under paragraph 1 of this article;
33.5 Execution of decision for putting persons into quarantine under paragraph 1 of this article ensures the competent authority in the country level.

SAFETY MEASURES FOR POPULATION PROTECTION FROM THE INFECTIOUS DISEASES

Article 41
[No title]

41.1 In order to protect the country from cholera, plague, variola vera, viral hemorrhage, jaundice, SARS, birds flu, and other infectious diseases will be taken the foreseen measures by this Law and international sanitary conventions and other international acts.
41.2 In order to prohibit the entrance and spreading of cholera, plague, variola vera, viral hemorrhage, jaundice, SARS, birds flu, and other infectious diseases in the whole country, Ministry of Health with sub legal act will be determined the special emergency measures for protection from these diseases as following:
a) Prohibition of travel in that country where the epidemic of one of the abovementioned diseases is spread;
b) Prohibition of circulation in the infected regions or directly endangered;
c) Limitation of circulation prohibition for specific types of goods and products;
d) Obligatory participation of health institutions and other institutions and citizens in fighting against the disease and use facilities, equipments and transportation means in order to fight against the infectious disease;

41.3 For participation in measures application under sections a) to d) of this article, the health institutions and other organizations and citizens will receive an adequate compensation by competent authority.

Article 44
[No title]

In order to apply the prohibition control and fighting against the infectious diseases, the SIK competent authorities, apart the stated measures in articles from 41 to 43 of this Law, performs these tasks, too:
a) Persons being sick from a specific infectious diseases and bacillus suckle of these diseases (microbe –bearers) will prohibit exercising their work activities and duties where they can endanger the other persons' health;
b) Prohibit circulation of persons for whom is ascertained or suspected of being sick from specific infections diseases;
c) Prohibit persons meeting in schools, cinema, public premises and other public places to the epidemic danger passes;
d) Orders disinfection, disinsection and deratization with purpose of prohibition and fighting against the infectious diseases;
e) To order persons isolation who are sick from any specific infectious diseases and their treatment;
f) To order taking of other foreseen general or special technical-sanitary and hygienic measures.

Article 47
[No title]

47.1 Ministry of Health is competent for application of this Law and approving the foreseen dispositions in it.
47.2 In accordance with responsibilities from paragraph 1 of this article, Ministry of Health has the right and obligation:
a) To give the mandatory instructions to Kosovo competent administration authorities when this is for the whole country's interest and is necessary to have an uniform dispositions application. b) If the Kosovo competent administration authority does not perform the assigned administrative work based on this Law authorization, whereas failure to perform the assigned work can cause the epidemic emergence or spreading of any infectious diseases and Ministry of Health through report notifies the Government.

Chapter VII - Punishable Dispositions

Article 53
[No title]

For sanitary administrative offences provided by this Law, Kosovo Sanitary Inspectorate imposes the following fines:
53.1 Natural person is fined from 1.000€ to 2.000€, where the juridical person with fine from 3.000€ to 8.000 €:
a) if does not conclude and present disease, death from contagious diseases, epidemics, secretion of causers of the specific diseases, transmitting the hepatitis viruses B and C, transmitting the HIV virus, transmitting the

parasites of malaria, injury from mad animal or by the animal for which there is a doubt that it is mad; according to article 13 of this law.
b) if he/she does not make any immunization, chemoprophylaxis and chemoprophylaxis, in accordance with articles 28 to 32, of this law.
c) if he/she does not take foreseen measures for preventing and fighting the further spread of the infection or other more necessary measures anti-epidemics and hygienic determined by the nature of disease.
d) if it does not set up measures, tasks and responsibilities for protection from contagious disease and it does not implement technical-sanitary respective measures, hygienic and other for protection against contagious disease.
53.2 The responsible person of juridical person is fined from 500€ to 1.500 €, for a violation mentioned in paragraph 1 of this article.

Law No. 05/l-031 on General Administrative Procedure, Official Gazette no. 20/21, 21 June 2016

PART III
ADMINISTRATIVE ACTIONS

CHAPTER I - ADMINISTRATIVE ACT

SECTION I - DEFINITIONS, FORM AND MANDATORY ELEMENTS OF AN ADMINISTRATIVE ACT

Article 44
[Administrative Act]

1. *An administrative act shall be any manifestation of will of a public organ, regulating unilaterally a concrete legal relationship under administrative law, intended to produce legal effects and which:*
   1.1. is addressed to one or several individually defined persons (hereinafter referred to as, respectively, "individual administrative act" and "collective administrative act"), or
   1.2. is directed to a group of persons, defined or definable on the basis of general characteristics (hereinafter referred to as "general administrative act"), or
   1.3. determines the status under administrative law of an object, or its use by the public (hereinafter referred to as "administrative act in rem").

Article 46
[The form of administrative act]

1. Except when provided otherwise by law, an administrative act may be issued in written, oral or in any other appropriate form, including signs or other technical means.
2. The written form shall also be fulfilled by an electronic document in accordance with the law regulating the electronic document.
3. On request, the public organ without delay shall confirm in written the content of the verbal act or the act approved in silence defined under Article 70 of this Law, without prejudice to the rules on the effectiveness of

administrative acts. Paragraph 2. of this Article shall apply mutatis mutandis.
4. The confirmation referred to under paragraph 3. of this Article, although not an administrative act itself, shall consist of the statutory elements as provided by Article 47 of this Law.

Article 47
[Structure and statutory elements of the written administrative act]

1. A written administrative act shall consist of:
1.1. the introductory part, which indicates the name of the issuing public organ, legal basis, the name of the addressee, a brief note on the subject of the proceeding and date of issuance;
1.2. the decisional part (Decision), which indicates what was decided including the term, condition or obligation (if applicable) as well as the costs of the proceedings, if any. The decisional part may be divided into more points. The costs of proceedings are quantified under a separate point of the decisional part;
1.3. reasoning part (rationale);
1.4. the concluding part, indicating when the act enters into force, legal remedies, including the public organ or the court where the legal remedy may be lodged, its form, the deadline for lodging and the way such deadline is calculated(legal advice). In case the lodging of an administrative appeal, according to the law, does not suspend the enforcement of the administrative act, the concluding part shall also contain this information as well as the reference to legal grounds for such exception.
2. If the law does not provide otherwise, the written administrative act, shall also contain the signature or the written name and surname of the responsible official or the chair of the collegial body and the minutes-taker or in case if the latter is unable to sign, by any other member of the collegial organ.
3. The signature requirement regarding electronic documents, under paragraph 2. of this Article shall be considered as fulfilled by an electronic signature in accordance with the special law. The electronic signature shall be based on a qualified certificate in which the identity of the public organ is expressed.
4. The Government of the Republic of Kosovo may define by special decision another safe method that secures the authenticity and the integrity of the sent electronic document, and its particulars. An electronic document secured according to a decision of the Government shall be deemed as signed.

Law No. 03/L-202 on Administrative Conflicts, Official Gazette No. 82, 21 October 2010

Article 27
[No title]

1. The indictment shall be submitted within thirty (30) days, from the day of delivering the final administrative act to the party.
2. This time-limit shall be also applied for the authorized body for submitting the indictment, if the administrative act has been delivered. If the

administrative act has not been delivered, the indictment shall be delivered within sixty (60) days from the date of delivering the administrative act to the party, in favor of which the act has been issued.

Law No. 05/L-087 on Minor Offences

Article 3
Principle of legality

1. No person shall be convicted for a minor offence nor impose a minor offence sanction for an offence which was not defined as an offence by law or acts (municipal regulation) of the Municipal Assembly before the omission, and for which a minor offence sanction was not determined.
2. In minor offence procedure, no one can be punished more than once, for the same offence.
3. The definition of a minor offence should be accurately determined and interpretation by analogy is not allowed. In case of ambiguity, the definition of a minor offence is interpreted in the favour of the person subject to minor offence procedure.

Article 7
Prescription of minor offences

1. Minor offences and sanctions on minor offences can be prescribed by law and acts (municipal regulations) of the Municipal Assembly.
2. The municipal assembly may prescribe minor offences and sanctions on minor offences only on violations of municipal body acts which they issue within the scope of their jurisdiction.
3. The body authorized to prescribe minor offences and sanctions on minor offences may not delegate this authority to other bodies.
4. If not otherwise defined by law, the provisions of minor offences on natural persons are applied to respective persons under a legal entity, and to persons exercising an independent activity.

Article 167
Harmonization of provisions which are not in accordance with this law

Provisions on minor offences, which are not in accordance with this law, shall be brought into compliance within one (1) year from the day when this law enters into force.

Article 170
Cessation of existing applicable legislation validity

With the entry into force of this Law, the applicable law on minor offence shall cease to apply.

Regulation No. 05/2020 on the areas of administrative responsibility of the Office of the Prime Minister and Ministries,

adopted at the 3rd meeting of the Government by Decision no. 01/03 of 19 February 2020

Article 4
[Government]

1. The Government shall exercise its executive power in accordance with Constitution and legislation in force.
2. In order to exercise its competences, the Government shall:
2.1. make decisions on the proposal of members of the Government and other institutions in accordance with the Constitution and the legislation in force;
2.2. issue legal acts or regulations, necessary for the implementation of laws;
2.3. discuss problems and make decisions on other issues that it considers important within its competencies;
2.4. decide on appointments and dismissals within its competencies, and
2.5. perform all duties and responsibilities set forth in the Constitution and legislation in force.

Article 8
[Minister]

1. In accordance with the constitution, the applicable legislation, policies and directives set by the Government or the Prime Minister, the Minister shall:
[…]
1.4. issue decisions and sub-legal acts and establish memorandums of understanding/cooperation within the area of administrative responsibility of the Ministry; and […]

APPENDIX 10
[Ministry of Health]

1. Ministry of Health (hereinafter: MoH) shall have the following responsibilities:

1. Prepares public policies, drafts legal acts, adopts sublegal acts and defines the mandatory standards in the field of health and social welfare, while respecting important international standards;

[…]

Admissibility of the Referral

83. In order to decide regarding the Applicants' Referral, the Court must first assess whether the admissibility requirements established in the Constitution and further specified in the Law and Rules of Procedure have been fulfilled.

84. In this regard, the Court first refers to the relevant constitutional and legal provisions under which the Assembly may appear as Applicant before the Court:

Constitution of the Republic of Kosovo

Article 113
[Jurisdiction and Authorized parties]

[…]

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.
[…]

Law on the Constitutional Court

CHAPTER III
Special Procedures

Procedure for cases defined under Article 113, paragraph 2, items 1 and 2 of the Constitution

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 (¼) 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.

Rules of Procedure of the Constitutional Court

VII. Special Provisions on the Procedures under Article 113 of the Constitution

Rule 67
[Referral pursuant to Article 113.2 (1) and (2) of the Constitution and Article 29 and 30 of the Law]

(1) A referral filed under this Rule must fulfill the criteria established under Article 113.2 (1) and (2) of the Constitution and Articles 29 and 30 of the Law.
(2) When filling a referral pursuant to Article 113. 2 of the Constitution, an authorized party shall indicate, inter alia, whether the full content of the challenged act or which parts of the said act are deemed to be incompatible with the Constitution.
(3) The referral shall specify the objections put forward against the constitutionality of the contested act.
(4) The referral under this Rule must be filed within a period of six (6) months from the day of entry into force of the contested act.

85. In the following, the Court will assess: (i) whether the Referral has been submitted by an authorized party as defined under subparagraph (1) of paragraph 2 of Article 113 of the Constitution and paragraph 1 of Article 29 of the Law; (ii) the nature of the challenged acts, namely whether they qualify as *"government regulations",* as defined in the abovementioned paragraph; (iii) the specification of the Referral, as required by paragraphs 2 and 3 of Article 29 of the Law and paragraphs (2) and (3) of Rule 67 of the Rules of Procedure; and (iv) whether the Referral is filed within six (6) months after the entry into force of the challenged act, as defined in Article 30 of the Law and paragraph (4) of Rule 67 of the Rules of Procedure.

(i) As to the Authorized party

86. The Assembly, on the basis of Article 113.2 (1) of the Constitution, is authorized to refer before the Court the question of compatibility with the Constitution of (i) laws; (ii) of decrees of the President; (iii) decrees of the Prime Minister and (iv) regulations of the Government. Article 29 of the Law specifies that the Assembly is an authorized party before the Court, if the respective Referral has been submitted by one fourth (1/4) of the deputies of the Assembly. The same requirement is specified in paragraph 1 of Rule 67 of the Rules of Procedure. In the circumstances of the present case, it is one fourth (1/4) of the deputies of the Assembly, respectively thirty (30) deputies, who challenge the four (4) challenged Decisions of the Ministry of Health before the Court.

87. The Court recalls that, on 19 April 2020, based on its previous case law, it has addressed a request to the representative of the Applicants to clarify the absence of the signature of MP Gazmend Bytyqi, alongside his name and personal number in the documents submitted before it. On 19 April 2020, the Applicants' representative has provided the clarification and submitted to the Court the signature of the respective deputy.

88. Consequently, the Court finds that the Referral before the Court is submitted by one fourth (1/4) of the deputies of the Assembly of the Republic, respectively thirty (30) deputies, who based on the above-mentioned articles of the Constitution, Law and the Rules of Procedure are authorized parties to refer to the Court, among other things, the question of compatibility with the Constitution, in the circumstances of the present case, of the "*Government regulations"*.

(ii) As to the challenged acts

89. The Applicants challenge before the Court the challenged Decisions issued by the Ministry of Health. The Court recalls that they claim before the Court that the challenged Decisions, based on the case law of the Court, qualify as "*regulations of the Government*". Parliamentary Group of VETËVENDOSJE! Movement opposes these claims. Relevant claims and justifications are presented in paragraphs 69-73 of this Judgment.

90. In the following, the Court must assess whether the challenged Decisions can be qualified as "*Government regulations*", as set out in Article 113.2 (1) of the Constitution.

91. In this respect, the Court emphasizes that pursuant to Article 113.2 (1) of the Constitution, the Assembly, namely one fourth (1/4) of its deputies, as explained above, in addition to the "*laws"* of the Assembly, *"decrees of the President" a*nd "*decrees of the Prime Minister"* are also authorized to raise before the Court the question of compatibility of "*Government regulations"* with the Constitution.

92. In this context, the Court recalls that as to the review of the constitutionality of "*decrees of the Prime Minister"* and *"Government regulations",* through its case law, has determined that beyond the terminology referred to in the Constitution it is the "*acts*" of the Prime Minister namely of the Government, which may be subject of review before the Court, in case their compatibility with the Constitution is raised before the Court by an authorized party, as established in the Constitution (See references regarding *"acts"* of the Prime Minister and the Government, in paragraphs 82, 83, 84 of the Judgment of the Court in case KO12/18 and paragraph 46 of the Judgment of the Court in case KO73/16).

93. More specifically, through the Judgments in cases KO73/16 and KO12/18, respectively, the Court has determined that it may conduct a constitutional review of other acts of the Government and the Prime Minister, in addition to "*regulations*" and "*decrees*", (i) if they raise "*important constitutional matters*" (see paragraphs 84 and 88 of Judgment KO12/18); and (ii) taking into account the legal effects produced by the acts of the Prime Minister and the Government, regardless of their formal name (see paragraph 87 of Judgment KO12/18).

94. The Court also recalls that when considering the constitutionality of Government Decision No. 04/20 of 20 December 2017, in the Court's case KO12/18, it had also addressed the Venice Commission Forum, by asking questions, among other things, which acts of governments may be challenged before the constitutional courts in their respective constitutional systems; and (ii) if the acts of the government which may be challenged before the constitutional courts are determined in a specific list, and/or the respective constitutions and laws provide flexibility in relation to the acts of the governments, the constitutionality of which may be challenged before the constitutional courts . (See paragraphs 18 and 22 of Judgment KO12/18). From the responses of the respective constitutional courts participating in the Venice

Commission Forum, and also by taking into account the differences and specifics of the respective constitutions, it results that, in principle, their respective case laws determine that the respective constitutional courts assess the nature of the challenged act and not necessarily only their formal name. (See paragraphs 62-72 of Judgment KO12/18).

95. In this context, the Court recalls that (i) in case KO12/18, it has declared admissible the assessment of the constitutionality of a *"decision"* of the Prime Minister, despite the fact that it has not been named *"decree"*, given that in the Court's assessment the respective decision had raised *"important constitutional matters"* (see paragraphs 88 and 90 of Judgment KO12/18), whereas (ii) in case KO73/16 it has declared admissible the constitutional review of an *"Administrative Circula*r", namely the Administrative Circular No. 01/2016 of 21 January 2016, issued by the Ministry of Public Administration, by taking into account its effect (see paragraphs 46, 56, and 58 of Judgment KO73/16).

96. This case law has been confirmed in the last case of the Court, namely the Judgment in case KO54/20, through which the Court, by declaring admissible the referral for constitutional review of Decision of the Prime Minister No. 01/15 of 23 March 2020, had stated that (i) in determining whether a *"decree"* of the Prime Minister is challenged within the meaning of subparagraph 1 of paragraph 2 of Article 113 of the Constitution, *"focus should not be placed only on the name of an act but on its content and effects"*(see paragraph 161 of the Judgment KO54/20); and (ii) if the Court were to focus solely on the formal name of challenged acts, namely "*decree of the Prime Minister"* or even "*Government regulations"*, Government decision-making would be left out of constitutional control, based solely on the name which they have decided to assign to the relevant act. (See in this context, paragraphs 162-163 of the Judgment KO54/20).

97. The Court also recalls that in addition to the reference to the "*decree of the Prime Minister*" in subparagraph 1 of paragraph 2 of Article 113 of the Constitution, paragraphs 4 of Articles 92 and 93 [Competencies of the Government], respectively, refer to Government decision-making through *"decisions"*, *"legal acts'* and *"regulations"* necessary for the implementation of laws. The issuance of *"decrees"* in the sense of exercising the powers of the Prime Minister is defined only in subparagraph 2.1 of paragraph 2 of Article 6 of Regulation No. 50/2020. In this context, and as explained in Judgment KO54/20, if the Court would be limited to the constitutional review of the *"decrees of the Prime Minister"* and not his/her *"decisions"*, this would mean that the decision-making of a Prime Minister, would be left out of constitutional control and that the Court would not be able to review the constitutionality of any decision of the Prime Minister in any form. The same applies to *"Government regulations"*.

98. Consequently, the assessment of the constitutionality, of the acts of the Prime Minister and the Government, are subject to the constitutional review of the Court insofar as they are raised before the Court in the manner prescribed by the Constitution and Law, and based on the assessment of the Court, according

to its case law relating to their *"effects"* and if they raise *"important constitutional matters"*.

99. In the circumstances of the present case, before the Court are challenged decisions of the Minister of Health. The Court recalls that pursuant to paragraph 1 of Article 92 of the Constitution, the Government is composed of the Prime Minister, the deputy prime minister(s) and ministers. The latter, based on paragraph 2 of the same article, exercise executive power in compliance with the Constitution and the law. In this context, the Court emphasizes that the decisions of the Ministers are subject to the assessment of the constitutionality before the Court insofar as they have been raised before the Court in the manner prescribed by the Constitution and the Law, and based on the Court's assessment relating to their effect and if they raise "*important constitutional matters"*. This case law was initially determined through the case of the Court KO73/16.

100. The Court also points out the fact that the challenged Decisions of the Ministry of Health were issued on the basis of Government Decision No. 01/24 of 8 April 2020, which authorized the Minister of Health, namely it has delegated the decision-making of the Government to this Minister of Health, to issue decisions in order to prevent and combat the spread of COVID-19 disease, in implementation of the provisions of the Law for Prevention and Fighting Against Infectious Diseases, with the sole "*intention of rationalizing the time in the decision-making process, in the function of prevention and fighting against the spread of the COVID-19 epidemic disease*".

101. Accordingly, and based on the clarifications given, including those related to its case law, the Court considers that the challenged Decisions of the Minister of Health fall within the scope of *"Government regulations"* because (i) they are acts which content has a direct effect on the fundamental rights and freedoms of the citizens of the Republic of Kosovo, specifically in respect of their freedom of movement guaranteed by Article 35 of the Constitution; and (ii) raise *"important constitutional matters"* which, as a consequence, are subject to the assessment of the constitutionality by the Court, given that, in the circumstances of the present case, they have been brought before it by an authorized party.

102. Therefore, on the basis of the foregoing, the Court also finds that the challenged Decisions qualify as *"Government regulations"*, and as such, are subject to the constitutional review by the Court.

(iii) As to the accuracy of the Referral and specification of the objections

103. The Court recalls that Article 29 of the Law and Rule 76 of the Rules of Procedure stipulate that (i) the referral filed in the context of Article 113.2 (1) of the Constitution must specify (i) whether the full content or certain parts of this act are considered to be contrary to the Constitution; and (ii) specify the objections put forward against the constitutionality of the challenged act.

104. The Applicants' Referral was submitted on 17 April 2020, it has determined that before the Court they challenge and request the imposition of the interim

measures against the decisions of the Ministry of Health, as follows: (i) No. 238/IV/2020, of 14.04.2020; (ii) no.229/IV/2020, of 14.04.2020; (iii) no. 214 /IV/2020, of 12.04.2020; and (iv) no. 239/IV/2020, of 14.04.2020. However, the content of the Referral submitted by the Applicants has also referred to all other decisions, namely thirty eight (38) of them of the Minister of Health issued on 14 April 2020 (See in this regard, also paragraph 15 of this Judgment).

105. Based on paragraph 4 of Article 22 (Processing Referrals) of the Law and paragraphs (2) and (3) of Rule 33 (Registration of Referrals and Filing Deadlines) of the Rules of Procedure, on 19 April 2020, the Court requested the Applicants to clarify before the Court if they are challenging only (i) the four (4) aforementioned Decisions of the Ministry of Health; or (ii) they challenge all decisions of the Ministry of Health issued to all municipalities of Kosovo on 14 April 2020. The Applicants' representative did not respond to the Court within the time limit set by the latter. Further, on the same date, the Court notified all parties about the registration of the referral, as explained in the proceedings before the Court, it also notified them about the correspondence with the Applicants' representative regarding the request for the abovementioned clarification whether beyond the four (4) challenged Decisions, other decisions of the Ministry of Health issued on 14 April 2020 are being challenged, as well.

106. Taking into consideration the lack of response by the Applicants' representative within the deadline set by the Court, the latter finds that before it, the constitutionality of the four (4) above-mentioned decisions of the Ministry of Health is challenged.

107. In the letter submitted to the Court, following the Court's letter of 19 April 2020, sent to the deputies of the Assembly for their comments regarding the merits of the Referral, the Applicants' representative in the letter of 23 April 2020, stated that the latter are challenging before the Court, and seeking imposition of the interim measure and the assessment of merits only with respect to the four (4) challenged Decisions.

108. Further, and in the context of clarifying the Referral, the Court notes that based on the submission submitted to the Court on 23 April 2020, the Prime Minister, on behalf of the Government, through the letter, and which was presented in entirety in paragraph 28 of this Judgment, *inter alia*, claims that (i) *"the practice of the Constitutional Court of the Republic of Kosovo reveals the fact that the refusal to clarify, specify or supplement the referral filed to the Constitutional Court is considered as a reason to summarily reject the Referral, because the party has not met the procedural criteria for further review ";* (ii) *"for this reason, in all cases where the party has not clarified, specified or supplemented the referral, the Court has summarily rejected the referral pursuant to Rule 35 paragraph 5 and has not even notified the authority, the decision of which is being challenged. For us, the refusal to apply the rules set by the Constitutional Court itself in the circumstances of the concrete case, is a serious concern in respect of the professionalism and impartiality of the Court";* and (iii) *"to confirm our claim, please see the decisions of the Constitutional Court in cases No. KI72/19; No.KI89/18; No.*

KI121/18; No.KI74/18; No.KI04/18; No.KI89/ 19; No.KI130/17; No.KI48/17; No.KI109/16; No. KI71/16, No.KI94/15, in which the Court has summarily rejected, without notifying any public authority, the referrals which did not specify which act of the public authority is being challenged and thereupon did not respond to the Court for the supplementation of the Referral. We are aware that we are speaking about individual referrals, but Rule 35.5 is no exception even in the case of referrals addressed by the constitutional bodies". Also the comments of the Parliamentary Group of the VETEVENDOSJE Movement!, claim before the Court, that the Applicants' referral must be summarily declared inadmissible pursuant to paragraph (5) of Rule 35 of the Rules of Procedure.

109. With regard to the claims of the Prime Minister that the Court is obliged to reject the Applicants' Referral based on Rule 35 (5) of the Rules of Procedure, states as follows: paragraph (5) of Rule 35 of the Rules of Procedure stipulates the possibility of the Court to summarily reject a referral if the referral is incomplete or not clearly stated, and despite requests by the Court to the party to supplement or clarify the referral, the latter did not do such a thing. Based on this rule, the Court summarily rejects all those referrals in which the challenged act of the public authority is not specified, and when this act has not been clarified before the Court, despite the Court's requests; and (ii) that the cases referred to by the Prime Minister in the above-mentioned submission addressed to the Court are all, without exception, cases in which the respective applicants have failed to specify before the Court **any** act of a public authority, and who have not done so, even after a specific requests by the Court. This is except for the case KI89/19, and which is in fact is a joint case, No. KI86/19, KI87/19, KI88/19, KI89/19, KI90/19 and KI91/19, and which, was not summarily rejected as claimed by the relevant submission, but it was declared inadmissible as manifestly ill-founded on constitutional basis by the Resolution on Inadmissibility of 18 February 2020.

110. The Court emphasizes that in the circumstances of the present case, this is not the case and that the cases mentioned by the Prime Minister differ from the circumstances of the present case, because the latter, as explained above, before the Court have not challenged **any** act of a public authority. In contrast, the Applicants' referral filed with the Court on 18 April 2020, has accurately specified that before the Court they challenge the following Decisions (i) No. 238/IV/2020, of 14.04.2020; (ii) No. 229/IV/2020, of 14.04.2020; (iii) No. 214/IV/2020, of 12.04.2020; and (iv) No. 239/IV/2020, of 12.04.2020, and in relation to the latter, the imposition of the interim measure is sought.

111. However, as explained above, taking into account that in the content and reasoning of the Referral, the Applicants have also referred to thirty five (35) other Decisions of the Ministry of Health, of 14 April 2020, the Court has requested the Applicants to clarify whether they challenge before the Court (i) only the four (4) aforementioned Decisions of the Ministry of Health, or (ii) all the decisions issued on 14 April 2020 by the Ministry of Health with aim at preventing and fighting the pandemics. In the absence of an explanation by the Applicants within the time limit set by the Court, the Court found that the Applicants' referral is limited only to the request for constitutional review of four (4) aforementioned Decisions.

112. Having said that, the Court finds that the Applicants challenge before the Court four (4) Decisions of the Minister of Health, and consequently, the referral of Applicants (i) specifies the challenged act which they consider to be in contradiction with the Constitution; and (ii) specifies the objections put forward about the constitutionality of the challenged act, as set out in Article 29 of Law and Rule 76 of the Rules of Procedure.

(iv) As to the deadline

113. The Court recalls that Article 30 of the Law and Rule 76 of the Rules of Procedure stipulate that a referral submitted under Article 113.2 (1) of the Constitution, must be submitted within six (6) months from the day of entry into force of the challenged act.

114. The Court emphasizes that the challenged decisions of the Ministry of Health were issued on 12 and 14 April 2020, respectively, while they were challenged before the Court on 17 April 2020, and consequently, they have been submitted to the Court within the deadlines set forth in the provisions cited above.

(v) Conclusion regarding the admissibility of the Referral

115. The Court finds that the Applicants: (i) are an authorized party, who challenge before the Court; (ii) the acts which they are entitled to challenge; (iii) they have specified what acts they are challenging in their entirety; (iv) have submitted constitutional objections against the challenged acts; and, (v) have challenged the respective acts within the stipulated deadline.

116. Therefore, the Court declares the Referral admissible and in the following shall examine its merits.

Merits of the Referral

I. Introduction

117. The Court initially recalls that the Applicant, respectively one-fourth (1/4) of the Assembly, alleges that the challenged Decisions of the Ministry of Health are inconsistent with Articles 35 [Freedom of Movement] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution and Article 2 of Protocol No. 4 of the ECHR.

118. The Court recalls that before the Court are challenged (i) Decision of the Ministry of Health of 12 April 2020 for the declaration of "*quarantine zone"* for the municipality of Prizren; and (ii) only three (3) of the thirty-eight (38) Decisions of the Ministry of Health issued on 14 April 2020, for all Kosovo Municipalities. Applicants claim that the four (4) challenged Decisions: (i) limit the right of citizens to move in violation of Articles 35 and 55 of the Constitution, beyond the legal authorisations, namely those prescribed in Articles 41 and 44 of the Law on Prevention and Fighting against Infectious Diseases, because the relevant limitations on freedom of movement are not *"prescribed by law"*, do not pursue a *"legitimate aim"*, are not proportional

because they are not limited to the necessary extent; and therefore neither are they *"necessary in a democratic society"*; and (ii) are contrary to the Court's Judgment in case KI54/20. On the other hand, the Parliamentary Group of VETËVENDOSJE! Movement opposes these claims. Whereas, the Ombudsperson, in essence, claims that the Judgment of the Court in the case KO54/20 (i) has been implemented by the Ministry of Health, and that the challenged Decisions are *"prescribed by law"*, but by leaving open the issue of their proportionality; and (ii) has not been implemented by the Assembly.

119. The Court in this regard notes that the constitutional issue included in this Judgment is the compliance with the Constitution of the challenged Decisions of the Ministry of Health, namely whether, upon their issuance, the same have "*interfered"* with, namely, limited the right of movement guaranteed by Article 35 of the Constitution in violation of Article 55 of the Constitution and the Judgment KO54/20. In this context, in assessing the constitutionality of the challenged Decisions, the Court, based on Article 55 of the Constitution, its case law, including the Judgment KO54/20, and that of the ECtHR in the context of Article 2 of Protocol No. 4 of the ECHR, will assess whether *"interferences"*, and which are not disputable in the circumstances of the case, with the freedom of movement of citizens in the affected regions, namely the municipalities of Prizren, Dragash and Istog, respectively, (i) are *"prescribed by law"*, namely the Law on Prevention and Fighting against Infectious Diseases; (ii) pursue a *"legitimate purpose"*; and (iii) are *"necessary in a democratic society"*.

120. Before the assessment mentioned above, the Court recalls that the prior Decision of the Government regarding the limitations on fundamental rights and freedoms prescribed in the Constitution as a result of the COVID-19 pandemic, namely Decision [No. 01/15] of 23 March 2020, was declared contrary to the Constitution, namely Article 55 in conjunction with Articles 35, 36 and 43 in conjunction with Article 2 of Protocol No. 4, and Articles 8 and 11 of the ECHR.

121. In the abovementioned Judgment, the Court, insofar as it is relevant to the circumstances of this case, has clarified (i) the difference between Articles 56 [Fundamental Rights and Freedoms During a State of Emergency] and 55 of the Constitution, respectively *"derogation"* and *"limitation"* of fundamental rights and freedoms guaranteed by the Constitution (see paragraphs 184 to 188 of the Judgment in case KO54/20); (ii) the structure of Article 55 of the Constitution and the constitutional test which the latter includes regarding the assessment of the limitations on fundamental rights and freedoms guaranteed by the Constitution (see paragraphs 189 to 198 of the Judgment in case KO54/20) and the relation of this Article with Article 35 of the Constitution (see paragraph 201 of the Judgment in case KO54/20); (iii) the general principles of the case law of the ECtHR and of the Court regarding the assessment of *"prescribed by law"* of an *"interference"* with fundamental rights and freedoms (see paragraphs 208 to 221 of the Judgment in case KO54/20); and (iv) the content and authorizations that constitute, in particular Articles 41 and 44 of the Law on Prevention and Fighting against Infectious Diseases (see paragraph 227 to 273 of the Judgment in case KO54/20). The Court, throughout the assessment of the constitutionality of the challenged Decisions,

shall refer to the abovementioned clarifications, as far as is necessary for the circumstances of the present case.

122. Having said that, the Court recalls that in the circumstances of the previous case, namely Judgment KO54/20, taking into account the finding of the Court that *"interferences"* with, respectively limitations of the respective rights and freedoms through the challenged Decision, were not *"prescribed by law"*, had stopped the constitutional analysis in the first part of the non-cumulative test included in Article 55 of the Constitution and the relevant case law of the ECtHR. In the circumstances of this case, as far as necessary and depending on the Court's assessments regarding *"prescribed by law"* of relevant *"interferences"*, the Court shall also elaborate the general principles of the ECtHR regarding *"legitimate purpose"* and *"necessity in a democratic society"*, including proportionality, applying the same in the circumstances of the present case.

123. Moreover, since the allegations of the Applicants in the circumstances of the present case are related only to Article 35 of the Constitution, the Court in elaborating, applying and assessing the *"interference"* with the right to freedom of movement through challenged Decisions, shall refer to the consolidated case law of the ECtHR regarding the interpretation of Article 2 of Protocol No. 4 of the ECHR, and which despite the fact that it has not yet been supplemented with cases related to limitations on freedom of movement as a result of COVID-19 pandemic, is sufficient in terms of general principles and the manner of their application regarding *"prescribed by law*", *"legitimate purpose"*, *"proportionality"* and *"necessity in a democratic society*".

124. Also, same as in case KO54/20, the Court emphasizes that in addition to Article 35 of the Constitution that has been raised by the Applicants in circumstances of this case, the possibility that in relation to the challenged Decisions, any other limitation on freedoms and fundamental rights guaranteed by the Constitution and the ECHR is applicable is not excluded, depending on how the challenged Decisions are implemented and depending on the legal consequences that persons (natural and legal) may or may not suffer as a result of their implementation. (See also paragraph 204 of the Judgment in case KO54/20).

125. As a result, and based on the abovementioned clarifications, the Court shall further assess (i) *"prescribed by law"* of *"interference",* through challenged Decisions, with the right of freedom of movement for the citizens of the municipalities of Prizren, Dragash, and Istog, respectively; and in case of an affirmative finding, it shall proceed with the assessment of (ii) *"legitimate aim"* pursued through respective *"interference"*; and also in case of an affirmative finding, shall continue with the assessment of (iii) "*necessity in a democratic society"* of the same *"interference*".

II. Compliance of challenged Decisions with Articles 35 and 55 of the Constitution

126. The Court recalls that four (4) Decisions of the Ministry of Health are challenged before the Court. That of 12 April 2020, namely Decision [No.

214/IV/2020] on the declaration of the municipality of Prizren as a "*quarantine zone"*, and three others, those of 14 April 2020, namely Decisions [No. 229/IV/2020], [No. 238/IV/2020], [No. 239/IV/2020] *"on preventing, fighting and eliminating the COVID-19 infectious disease in the territory of the Municipality"* of Prizren, Dragash and Istog, respectively.

127. Decision of 12 April 2020 for the declaration of the municipality of Prizren as a *"quarantine zone"*, stipulates that (i) the municipality of Prizren is declared a quarantine zone because *"residents of this municipality are suspected of having had direct contact with people infected with coronavirus COVID-19"*; (ii) declares the village of Skorobisht a hotbed of the spread of the Infection; (iii) prohibits entry to and exit from this Municipality; (iv) obliges all residents of Prizren to respect the measures according to the instructions of the NIPHK; and (v) prescribes its entry into force on the same date.

128. Three (3) other Decisions, namely those of 14 April 2020, *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality"* of Prizren, Dragash and Istog, respectively, have identical content. This, with one exception, as explained above, of an additional point, namely point II, which is applicable only to Prizren. For simplicity of reading, in the following the Court will analyze the content of the Decisions [No. 238/IV/2020] and [No. 239/IV/2020] "*on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality*", of Dragash and Istog, respectively, and will only specify where there are differences regarding the Decision [No. 229/IV/2020], "*on preventing, fighting and eliminating infectious disease COVID-19 of the Municipality"* of Prizren.

129. These Decisions, from 15 April 2020: (i) prohibit the movement of natural persons outside their houses/dwellings in the respective municipalities, as prescribed in point I; (ii) prohibit the movement of vehicles in the respective Municipalities, as prescribed in point II, namely III for Prizren; (iii) prescribe the conditions to be met for natural persons during permitted movement, as prescribed in point III, namely IV for Prizren; (iv) prescribe the fines imposed in case of non-compliance with the measures prescribed in the relevant Decisions, as prescribed in point IV, namely V for Prizren; (v) prescribe the entry into force of the Decision and its validity until 4 May 2020, as prescribed in point V, namely VI for Prizren; (vi) reflect the possibility of its reconsideration by 30 April 2020, as prescribed in point VI, namely VII for Prizren; and (vii) provide the possibility for the Minister of Health, based on the analysis of the epidemiological situation, to change, supplement or repeal the prescribed measures, as prescribed in point VII, namely VI for Prizren.

130. Regarding the prohibition of movement of natural persons outside their houses/dwellings in the respective municipalities prescribed by point I of the challenged Decisions, the latter allow the movement of the same *"only for 1 and a half hour per day, according to prescribed weekly schedule based on the penultimate digit of their personal number"*, for the reasons prescribed in paragraphs a) and c), prohibiting accompanying during the exercise of this right in the manner prescribed in paragraph b) and prohibiting *"strictly"* leaving their houses/dwellings for any reason other than the above reasons,

"including in this prohibition social gatherings, family visits", as prescribed in paragraph k).

131. The aforementioned prohibitions also prescribe the respective exceptions regarding (i) the possibility of accompanying; (ii) the possibility of movement beyond the deadline of one and a half hour during the day; (iii) cases of domestic violence; (iv) persons over the age of 65; and (v) economic operators and relevant institutions.

132. Regarding the first category, the challenged Decisions prescribe the possibility of accompanying during the permitted schedule, for persons with disabilities, persons under 16 years of age, and pets, according to the conditions prescribed in sub-paragraphs 1, 2, and 3 of paragraph a). Regarding the second category, the challenged Decisions prescribe the possibility of movement (i) for the needs of medical treatment in a health institution, as prescribed in paragraph g); (ii) in cases where leaving the house/dwelling is necessary to care for one or more sick people, as prescribed in paragraph h); and (iii) in cases of death, only for close relatives of the deceased, as prescribed in paragraph j). Regarding the third category, the challenged Decisions prescribe the exception from the prohibition of movement in cases of victims of domestic violence, as prescribed in paragraph j). Regarding the fourth category, the challenged Decisions, although allow the freedom of movement of persons over the age of 65 during the schedule prescribed by the challenged Decisions, nevertheless they recommend that such possibility be used only in urgent cases and when necessary, as prescribed in paragraph d). Finally, regarding the fifth category, the challenged Decisions also allow the movement of persons to perform the needs of economic operators or relevant institutions, in the cases and conditions prescribed by paragraphs e) and f).

133. Regarding the prohibition of vehicle movement in the respective municipalities as prescribed by point II, namely point III for Prizren, of the challenged Decisions, the latter prohibit the movement of all vehicles, however by defining the relevant exceptions regarding (i) economic operators and provided institutions, as prescribed in paragraph a); and (ii) performing of official duties, as prescribed in paragraph d) and f). Also, in terms of prohibition of the movement of vehicles, the challenged Decisions prescribe specific exceptions regarding (i) farmers and farm workers, as prescribed in paragraphs b) and c); and (ii) the media, persons with disabilities, cases in need of medical treatment, performance of essential needs, and attending funerals, as prescribed in paragraphs l), h), e), i), and j), respectively.

134. As noted above, the challenged Decisions prescribe (i) the time schedule for which the abovementioned prohibitions apply, namely until 4 May 2020; (ii) the mechanism for their review, no later than 30 April 2020, in consultation with the NIPHK, experts and other line ministries; and (iii) the possibility of the Ministry of Health that based on the analysis of the epidemiological situation and after prior consultations change, supplement or repeal the prescribed measures.

135. The Court also notes that, unlike the challenged Decisions concerning the municipalities of Dragash and Istog, the Decision [No. 229/IV/2020] on the

Municipality of Prizren, contains an additional point, point II and through which, in the sense of prohibition of movement of vehicles, also from 15 April 2020, entries and exits to the Municipality of Prizren are prohibited, with the exception of (i) transport of goods and services to ensure the operation of the supply chain, as defined in point a); (ii) the relevant workers from the economic operators and who have been allowed to move, except in the areas declared to be the hotbed of the spread of the infection, as established in point b); (iii) the farmers and farm workers under the conditions set out in point c); performing official duties, as defined in point d); cases of movement permits, as defined in point e); and emergency health cases, as defined in point f).

136. The Court also notes that the challenged Decisions contain identical reasoning. This reasoning, beyond the factual description related to the (i) issuance of Government Decision No. 01/07 of 11 March 2020; (ii) issuance of Government Decision No. 01/15 of 23 March 2020; and (iii) the Judgment of the Court in Case KO54/20, justifies the *"interferences"* with the right of movement specified in the challenged Decisions, based on (i) paragraph 2 of Article 41 of the Law on Prevention and Fighting against Infectious Diseases; and (ii) the proposal of the NIPHK of 12 April 2020 which *"considers that the infection has spread to that municipality or the latter is considered directly endangered"*.

137. Based on the above clarifications regarding the content of the challenged Decisions, the Court will further examine whether the *"interference"* with the right to freedom of movement is *"prescribed by law"* initially regarding (i) Decisions, [No. 229/IV/2020], [No. 238/IV/2020], and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality"*, Prizren, Dragash and Istog, respectively, together, taking into account their identical content; and then (ii) Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, for the declaration of the municipality of Prizren *"quarantine zone"*, taking into account its difference with the three aforementioned Decisions.

1. Constitutional review of Decision [No. 229/IV/2020], Decision [No. 238/IV/2020], and Decision [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating COVID-19 infectious disease in the territory of the Municipality"* of Prizren, Dragash and Istog, respectively

(i) *Whether* the *"interference"* with the right to freedom of movement is *"prescribed by law"*

138. The Court first recalls that in Judgment KO54/20, it clarified the general principles deriving from the case law of the ECtHR and the Court, regarding the assessment of whether the *"interference"*, namely the limitation of a right, is *"prescribed by law*" (See paragraphs 208 to 211 of the Judgment in case KO54/20).

139. As clarified in Judgment KO54/20, the common denominator of the criteria necessary for the assessment of *"prescribed by law"*, based on the case law of the ECtHR, results in containing at least the following elements: (i) *"interference"* with a fundamental right and freedom must have a legal basis; (ii) the relevant law must have the appropriate quality, respectively, and in principle, it must be formulated with sufficient precision to enable the citizens to regulate their conduct; the latter should be able, if need be, with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail; (iii) the accuracy and precision of the law are necessary, but may also result in *"excessive rigidity"*, therefore, it should also be able to adapt to changing circumstances, and it is up to the relevant institutions, the courts, respectively, to make its interpretation; and (iv) in matters affecting fundamental rights and freedoms it would be contrary to the rule of law that the legal discretion granted to the executive be expressed in terms of an unfettered power. Consequently, the *"law"* must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise. (See, in this context, ECtHR cases, *Kudrevičius and others v. Lithuania,* application no. 37553/05, Judgment of 15 October 2015, paragraphs 108-110 – and the references cited therein; *Navalnyy v. Russia,* applications no. 29580 and 4 others, Judgment of 15 November 2018, paragraphs 115-119 and references cited therein; *Tommaso v. Italy*, application no. 43395/09, Judgment of 23 February 2017, paragraphs 106-109 and references cited therein; and *Khlyustov v. Russia*, Judgment of 11 October 2013, paragraph 68, 69 and 70 and references used therein).

140. Based on the abovementioned clarifications, and to assess whether the challenged Decisions meet the criterion of "*prescribed by law*", the Court must assess whether in the issuance of challenged Decisions, by which is "*interfered*" with the freedom of movement of the citizens of the affected municipalities, guaranteed by Article 35 of the Constitution, the Government is based on the legal authorizations given by law of the Assembly, namely the Law on Prevention and Fighting against Infectious Diseases.

141. The Court recalls that the challenged Decisions are issued on the following legal basis (see the section "Legal basis on which the challenged Decisions are issued" after paragraph 82 of this Judgment, which states the content of all subsequent articles; see also paragraphs 42-47 where the challenged Decisions and their content are cited by the Ministry of Health): (i) paragraph 2 of Article 145 [Continuity of International Agreements and Applicable Legislation] of the Constitution; (ii) Article 10 (Responsibility for the State Administration) and Article 11 (Ministry) of Law No. 6/L-113 on Organization and Functioning of State Administration and Independent Agencies; (iii) paragraph 1.11 of Article 12 (Measures and Activities) and Article 89 (Responsibilities of the Ministry) of Law on Health; (iv) paragraph 1.4 of Article 8 (Minister) and paragraph 1 of Appendix 10 to Regulation No. 05/2020 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries; (v) Articles 3, 4, 33, 41, 44, 47 and 53 [no titles] of the Law on Prevention and Fighting against Infectious Diseases; (vi) Articles 44 (Administrative Act), 46 (The Form of Administrative Act) and 47 (Structure and Statutory Elements of the Written Administrative Act) of Law No. 05/L-031 on the General Administrative Procedure (hereinafter the Law on General Administrative Procedure); (vii)

Article 27 [no title] of Law no. 03/L-202 on Administrative Conflicts; (viii) Government Decision No. 01/11 dated 15 March 2020; and (ix) Judgment KO54/20.

142. In this context, the Court notes that (i) paragraph 2 of Article 145 of the Constitution stipulates that the legislation applicable on the date of the entry into force of this Constitution shall continue to apply to the extent it is in compliance with it, until repealed, superseded or amended in accordance with this Constitution. The Court notes that the Law on Prevention and Fighting against Infectious Diseases entered into force on 15 May 2008, and consequently prior to the entry into force of the Constitution, however, it is not disputed that this law is in force and applicable in the circumstances of the present case; (ii) Articles 10 and 11 of the Law No. 6/L-113 on the Organization and Functioning of State Administration and Independent Agencies, determine, *inter alia*, issues related to the responsibility of a Minister before the Government and the Assembly, the scope of his activity and responsibility for the entire ministerial system within the field relevant to the responsibility, however, none of these provisions referred to are relevant to assess *"prescribed by law"* of the *"interference"* with the fundamental rights and freedoms guaranteed by the Constitution; (iii) in Judgment KO54/20, the Court has assessed the relevance of paragraph 1.11 of Article 12 and Article 89 of Law on Health, ascertaining that the same do not give the Government, in the circumstances of the present case, nor the Ministry of Health, the authorization for *"interference"* with the fundamental rights and freedoms guaranteed by the Constitution, as it is done by the challenged Decisions (see paragraphs 274-288 of the Judgment in case KO54/20); (iv) similarly, paragraphs 1.4 of Article 8 and paragraph 1 of Annex 10 to Regulation No. 05/2020 on the Administrative Responsibility Areas of the Office of the Prime Minister and the Ministries, prescribe the possibility of the relevant Minister to "*issue decisions and bylaws within the scope of administrative responsibility of the ministry*" and the competence of the Ministry of Health for, among others, preparation of public policies, drafting of legal acts and approval of bylaws, but the same, do not contain the authorization for *"interference"* with fundamental rights and freedoms guaranteed by the Constitution, as it is done by the challenged Decisions; (v) Articles 3, 4, 33, 41, 44, 47 and 53 of the Law on Prevention and Fighting against Infectious Diseases are relevant to the assessment whether *"interferences"* with fundamental rights and freedoms through challenged Decisions of the Ministry of Health, are *"prescribed by law"*. The Court recalls that content of Articles 41, 44 and 47 of the Law on Prevention and Fighting against Infectious Diseases, was clarified in Judgment KO54/20 (see paragraphs 227-273 of the Judgment KO54/20), while Articles 3, 4 and 53 of this law will be analyzed below in the context of the assessment of *"prescribed by law"*, while Article 33 will be reviewed in the context of the constitutionality of the Decision of 12 April 2020 for the declaration of the municipality of Prizren *"quarantine zone"*; (vi) Articles 44, 46 and 47 of the Law on General Administrative Procedure and Article 27 of Law No. 03/L-202 on Administrative Conflicts, prescribe the types of administrative act, the form of its structure and the deadlines for the respective lawsuits, respectively, however, they do not contain the authorization for *"interference"* with fundamental rights and freedoms guaranteed by the Constitution, as it has been done through challenged Decisions. That said, the Court will consider

Article 44 of the Law on General Administrative Procedure in conjunction with Article 45 of the Law for Prevention and Fighting against Infectious Diseases, in assessing *"prescribed by law"* of *"interference"* with fundamental rights and freedoms; while (vii) Decision of the Government no. 01/11 of 15 March 2020, delegates to the Ministry of Health the competence of decision-making regarding the prevention and fighting of pandemics, but is not relevant in assessing whether the Law on Prevention and Fighting against Infectious Diseases prescribes to the Ministry of Health the authorization of *"interference"* with the fundamental rights and freedoms established- in the Constitution. As explained in Judgment KO54/20, such authorization may be transferred to the executive power only through a law adopted by the Assembly.

143. Therefore, the Court considers that relevant to assess *"prescribed by law"* of *"interference"* with the freedom of movement guaranteed by Article 35 of the Constitution, through the challenged Decisions, are Articles 3, 4, 41, 44 and 45 of Law on Prevention and Fighting against Infectious Diseases. In the context of these articles, and Articles 35 and 55 of the Constitution, case law of the ECtHR and that of the Court, with particular emphasis on the Judgment of the Court KO54/20, the following Court will assess whether in the issuance of challenged Decisions, the Ministry of Health, has acted on the basis of authorizations prescribed by Law on Prevention and Fighting against Infectious Diseases.

144. The Court recalls that in Judgment KO54/20, the Court, *inter alia*, and insofar as it relates to the circumstances of the present case, specified: (i) that the Ministry of Health, namely the Government, is authorized to issue decisions with an aim of preventing and fighting the pandemic, insofar as it is authorized by Law on Prevention and Fighting against Infectious Diseases and Law on Health (see paragraph 325 of Judgment KO54/20); (ii) the contents of Articles 41 and 44 of the Law on Prevention and Fighting against Infectious Diseases, respectively their scope and respective limitations, within which the Ministry of Health is authorized to act in accordance with that law (see paragraphs 227-273 of Judgment of KO54/20); and (iii) that Article 45 of the Law on Prevention and Fighting against Infectious Diseases specifies that all measures described in Articles 41 and 44 of this Law towards individuals and institutions, are ordered by a decision with administrative procedure. The Court had stated that this Article was relevant to show what procedures should be followed for the measures described in Articles 41 and 44 for individuals and institutions. (See paragraph 233 of Judgment KO54/20).

145. The Court also recalls that paragraph 2 of Article 41 of the Law on Prevention and Fighting against Infectious Diseases, among other things, stipulates that in order to prevent *"entry"* and *"spreading"* of an infectious disease in *"the whole country"*, the Ministry of Health, may (i) prohibit **travel** in that country where the epidemic of any disease is spread; and (ii) prohibit **circulation** in *"infected or directly endangered regions*", as defined in paragraphs a) and b) of the abovementioned article. The Court clarified the content of this Article in Judgment KO54/20 (see paragraphs 237-253 of the same Judgment). Regarding paragraphs a) and b) of paragraph 2 of Article 41 of the abovementioned law, applicable even in the circumstances of the concrete case,

the Court regarding (i) paragraph a) had clarified and reasoned, *inter alia*, that its purpose cannot be understood that it authorizes the Ministry of Health, namely the Government, to limit travel throughout the Republic of Kosovo and that its purpose is to prohibit travel *"in the place"* where the epidemic has spread, for example, to prohibit going or travelling to a certain village, city, place or geographical location where the epidemic has spread (see paragraphs 242, 243 and 247 of the Judgment KO54/20); while regarding (ii) paragraph b) it had clarified and reasoned, among other things, that its purpose is to prohibit movement in the "*infected regions*" and in the "*directly endangered regions"*, and referring specifically to the regional context, has excluded the possibility of prohibition of movement throughout the territory of the Republic of Kosovo and to all its citizens (see paragraph 251-253 of the Judgment KO54/20).

146. Consequently, through Judgment KO54/20, the Court recognized the fact that items a) and b) of paragraph 2 of Article 41 of the Law on Prevention and Fighting against Infectious Diseases, recognize the possibility of the Ministry of Health to prohibit (i) **travel** and (ii) **circulation** in *"the place where the epidemic is spread*", *"infected regions"* and *"directly endangered regions"*. These measures, based on Article 3 of the Law on Prevention and Fighting against Infectious Diseases, can be taken by the Ministry of Health on the proposal of NIPHK, and which based on Article 4 of the same Law, among other health institutions prescribed in this article, has the competence of *"protection against infectious diseases that endanger the whole country"*. Accordingly, the prescription of *"the place where the epidemic is spread*", *"infected regions"* and *"directly endangered regions"* is in the competence of the respective health institutions with the recommendation of which the Ministry of Health then acts.

147. Therefore, the Court emphasizes that (i) for the purposes of items a) and b) of paragraph 2 of Article 41 of the Law on Prevention and Fighting against Infectious Diseases and in line with the Judgment of the Court KO54/20, the municipalities of Prizren, Dragash and Istog, respectively, can qualify as *"places"* or *"regions"*; (ii) assessment whether the same qualify as *"the places where the epidemic is spread*", *"infected"* and *"directly endangered regions"* is in the competence of the health institutions defined through the Law on Prevention and Fighting against Infectious Diseases, on the basis of their health recommendations, the Ministry of Health acts; and (iii) the act referred to in paragraph 1 of Article 45 of the Law on Prevention and Fighting against Infectious Diseases, which prescribes the mechanism through which the procedure prescribed in paragraphs a) and b) of paragraph 2 of Article 41 of the above Law applies, read together with sub-paragraph 1.2 of paragraph 1 of Article 44 of the Law on General Administrative Procedure, do not make it impossible to take appropriate measures against *"individuals"* and *"institutions"* in the affected regions. More precisely, the use of the plural in relation to *"individuals"* and *"institutions"* in paragraph 1 of Article 45 of the Law on Prevention and Fighting against Infectious Diseases, read together *"places"* and *"regions"* referred to in paragraphs a) and b) of paragraph 2 of Article 41 of the same law, enables the issuance of an act which is directed to a *"group of persons, defined or definable on the basis of general characteristics*"

for the purposes of subparagraph 1.2 of paragraph 1 of Article 44 of the Law on General Administrative Procedure.

148. Recalling that the challenged Decisions of the Ministry of Health were issued with and upon the proposal of the NIPHK of 12 April 2020, which *"considers that the infection has spread to that municipality or the same is considered directly endangered",* and that, as clarified above, the undertaking of the measures prescribed in paragraphs (a) and (b) of paragraph 2 of Article 41 of the Law on Prevention and Fighting against Infectious Diseases is possible in these *"places"* and/or *"regions"*, the Court must find that *"interferences"*, respectively limitations of the freedom of movement of citizens in *"regions"* of Prizren, Dragash, and Istog, respectively, through challenged Decisions, are *"prescribed by law"*.

149. The Court emphasizes that for the purposes of this finding, it is not necessary to analyze Article 44 of the Law on Prevention and Fighting against Infectious Diseases, for which sufficient clarifications are given in the Judgment of the Court in case KO54/20 (See paragraphs 254 to 261 of the Judgment KO54/20). That said, the case is not the same under Article 53 of the Law on Prevention and Fighting against Infectious Diseases, on the basis of which, the administrative offenses applicable in case of non-implementation of the challenged Decisions have been specified. The Court must therefore assess whether point IV for the Municipalities of Dragash and Istog and point V for the Municipality of Prizren of the challenged Decisions are also based on law.

150. In this context, the Court recalls that item V of the enacting clause of the Decision [No. 229/IV/2020] for the municipality of Prizren and item IV of the enacting clause of Decisions [No. 238/IV/2020] and [No. 239/IV/2020], for the municipalities of Dragash and Istog, provide as follows:

> "***IV.*** **[V.]** *Failure to comply with the measures set out in this decision is considered, in accordance with the law, an administrative offense and punishable by a fine of 1,000 Euros to 2,000 Euros for natural persons and from 3,000 Euros to 8,000 Euros for legal persons, while the responsible person of the legal person shall be punished from 500 Euros to 1,500 Euros. In accordance with the law, fines are imposed by the competent Inspectorate*".

151. The Court recalls that the first three items (I, II and III) of the challenged Decisions regarding the municipalities of Dragash and Istog, (i) prohibit "*movement of natural persons outside their houses/apartments*" in the respective municipalities, as provided in item I; (ii) prohibit "*movement of vehicles*" in respective municipalities, as established in item II; (iii) establish "*requirements to be met for natural persons during permitted movement*", as provided in item III. The Court also recalls that the abovementioned items of the challenged Decisions, comply with items I, III and IV of the challenged Decision regarding the municipality of Prizren, and which, differently, in its item II, also determines "*prohibition of entry into and exit from the Municipality of Prizren*". The three challenged Decisions determine the fines to be imposed in case of non-compliance with the measures set out in the

relevant Decisions, referring to Article 53 of the Law for Prevention and Fighting against Infectious Diseases.

152. The Court initially states that this article defines as "*sanitary administrative offences*" the measures defined as such by the Law for Prevention and Fighting against Infectious Diseases, and for which, fines are imposed by the bodies of the Sanitary Inspectorate of Kosovo. These fines, based on this law, amount to 1,000 to 2,000 euro for natural persons, and from 3,000 to 8,000 euro for legal persons. The latter may be pronounced in case of certain requirements set in the same article, namely its items, a), b), c) and d). More specifically, the fine can be imposed for administrative offenses, (i) if does not conclude and present disease, death from contagious diseases, epidemics, secretion of causers of the specific diseases, transmitting the hepatitis viruses B and C, transmitting the HIV virus, transmitting the parasites of malaria, injury from mad animal or by the animal for which there is a doubt that it is mad, as established in item a) of Article 53 of the Law for Prevention and Fighting against Infectious Diseases, but in conjunction with its Article 13. The latter represents the obligation to report the infectious disease, specifically defined in its content in items a) to j); and (ii) if immunization, seroprophylaxis, and chemoprophylaxis are not performed, as defined in item b) of Article 53 of the Law for Prevention and Fighting against Infectious Diseases, but also in conjunction with its Articles 28 to 32. The latter determine the conditions of transport of sick persons or for whom there is the same suspicion, in order to become "*impossible to spread the infection*", and the obligation to protect with drugs for persons who are at risk of becoming infected with the diseases set out in this article.

153. Paragraphs c) and d) of Article 53 of the Law for Prevention and Fighting against Infectious Diseases, also establish "*sanitary administrative offences*" and the corresponding fines, for cases in which (i) no measures are taken to prevent and fight the further spread of the infection or other more necessary anti-epidemic and hygienic measures conditioned by the nature of the disease, as defined in item c) of this Article; and (ii) the measures, duties and responsibilities for protection against infectious diseases are not determined and the relevant technical-sanitary, hygienic and other measures for protection against infectious diseases are not applied, as defined in item d) of the same article.

154. The Court notes that paragraph c) of the abovementioned article, and which is relevant in the circumstances of the present case, and contains greater discretion in relation to the other items above, refers to the "*measures*", namely the measures envisaged to prevent and fight the further spread of the infection or other more necessary anti-epidemic and hygienic measures conditioned by the nature of the disease.

155. That said, these "*measures*" for the prevention and fighting against infectious diseases, are defined (i) in Chapter III; and (ii) Articles 34 to 39 under the heading "*Measures for Prevention and Fighting the Infectious Diseases*" of the Law for Prevention and Fighting against Infectious Diseases. Chapter III, in its Article 8, determines general measures and special measures. The first are listed exactly in paragraph 2, while the second in paragraph 3 of this article. None of these measures is related to the measures defined as administrative

offenses by challenged Decisions. The Court notes, item i) of paragraph 3 of Article 8 of the Law in question, and which, refers to other measures "*foreseen by this Law*". The latter, as noted above, are in fact set out in Articles 34, 35, 36, 37, 38 and 39 of the Law for Prevention and Fighting against Infectious Diseases, and which also accurately determine the measures which qualify as administrative offences, and which also do not contain any of the measures defined as administrative offenses by challenged Decisions.

156. In addition to Article 53 and on the basis of which items IV and V of the challenged Decisions are issued, the Court will also assess whether other articles of the Law for Prevention and Fighting against Infectious Diseases, namely those established in Chapter VII regarding Punishable Dispositions, foresee the administrative offences set forth through the challenged Decisions. In this regard, the Court notes that Article 54 of the aforementioned Law also prescribes fines for natural persons of 1.000 – 2.000 euro and for legal entities 3,000 to 8,000 euro, if the measures provided for in items a), b), c), d), and e) of its first paragraph are not applied or performed, and which do not reflect any of "*administrative offences*" stipulated by the challenged Decisions. The same applies to Articles 55 and 56 of the relevant Law, which provide for a fine of 250 to 1,000 euro for the natural person, if the circumstances or situations provided in the items a), b), c), d), d), f), e), g) apply, while in the second case, from 500 to 1000 euro, for the natural person, if the circumstances or situations provided in items a) and b) apply. Any of these legal grounds also do not reflect any of the "*administrative offences*" defined by the challenged Decisions.

157. In addition, the Court also recalls that the Parliamentary Group of the VETËVENDOSJE! Movement states that based on item (m) of Article 31 of the Law on Sanitary Inspectorate, "*not applying, in full or partially, the measures and/or decisions of the Sanitary Inspectorate of Kosovo*", is a sanitary administrative offence and is imposed based on the decision/s issued by the Sanitary Inspectorate. However, Article 31 of this Law also accurately specifies the violations which constitute sanitary offenses, and none of "*administrative offences*" foreseen by the challenged Decisions, are part of this list described accurately in the abovementioned article of the Law on the Sanitary Inspectorate. Item m) of Article 31 of the Law on Sanitary Inspectorate refers to the non-implementation of decisions taken by the Sanitary Inspectorate of Kosovo, and which is not the case in the circumstances of the present case.

158. In fact, "*administrative offences*" established in the challenged Decisions, namely those established by (i) items I, II, III of the Decisions [No. 238/IV/2020] and [No. 239/IV/2020] "*on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality*" of Dragash and Istog, namely and interrelated to "*prohibition of movement of natural persons outside their houses/apartments*"; "*movement of vehicles*"; and "*obligations of natural persons during permitted movement*"; and (ii) points I, II, III and IV of the Decision [No. 229/IV/2020] "*on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality*" of Prizren, and interrelated to "*prohibition of movement of natural persons outside their houses/apartments*"; "*prohibition of entry-exits*", "*movement of vehicles*"; and "*obligations of natural persons during*

permitted movement", in fact, derive from the content of paragraph 2 of Article 41 of the Law for Prevention and Fighting against Infectious Diseases, and which in items a) and b), the Ministry of Health is assigned the competence to (i) prohibit travel to the place where the epidemic of any of the infectious diseases has spread; or (ii) prohibit movement in infected or directly endangered regions, these measures which, based on the same article, are determined by the sub-legal acts of the Ministry of Health and are implemented following the procedure determined by Article 45 of the Law for Prevention and Fighting against Infectious Diseases.

159. In this context, the Court initially notes that such a sublegal act is not published in the Official Gazette of the Republic of Kosovo, despite the fact that based on Article 58 of the Law for Prevention and Fighting against Infectious Diseases, the Ministry of Health has been tasked with issuing sub-legal acts regarding measures, obligations and responsibilities for the implementation of protection and fighting infectious diseases, within six (6) months from the date of entry into force of this Law, date which dates back to 2008. Moreover, "*administrative offences*" determined through the challenged Decisions, are determined by the procedure defined in Article 45 of the abovementioned law, namely by an act of the Ministry of Health, and are not defined as administrative offenses in the Law for Prevention and Fighting against Infectious Diseases. More precisely, "*the administrative offences*" foreseen through the challenged Decisions, have been determined through a decision of the Ministry of Health.

160. In the context of the discretion of the Ministry of Health, to determine administrative offences and which are not accurately "*prescribed by law*", the Court initially recalls that the Assembly, in 2016, issued Law No. 05/L-087 on Minor Offences (hereinafter: Law on Minor Offences), and under (i) Article 170 (Cessation of existing applicable legislation validity) which establishes that with its entry into force based on Article 171 (Entry into force), this happened in "*January 2017*", "*the applicable law on minor offence shall cease to apply*"; and (ii) Article 167 (Harmonization of provisions which are not in accordance with this law) foresees that "*Provisions on minor offences, which are not in accordance with this law, shall be brought into compliance within one (1) year from the day when this law enters into force*". In this regard, the Court also states that the Law for Prevention and Fighting against Infectious Diseases, has never been supplemented/amended by the Assembly.

161. That said, there are also two articles in the Law on Minor Offenses, which are relevant in the assessment of being "*prescribed by law*" of items IV for the municipalities of Dragash and Istog, and item V for the municipality of Prizren, regarding "*administrative offences*". These are Articles 3 (Principle of Legality) and 7 (Prescription of minor offences) of the Law on Minor Offences. The former, namely Article 3, insofar as it is relevant to the circumstances of the present case, stipulates that (i) no person shall be convicted for a minor offence nor impose a minor offence sanction for an offence which was not defined as an offence by law or acts (municipal regulation) of the Municipal Assembly before the omission, and for which a minor offence sanction was not determined through its first paragraph; and (ii) the definition of a minor offence should be accurately determined and interpretation by analogy is not

allowed. Emphasizing that in case of ambiguity, the definition of a minor offence is interpreted in the favour of the person subject to minor offence procedure, through its second paragraph. Whereas the second, namely Article 7, as far as it is relevant to the circumstances of the present case, it also determines that (i) minor offences and sanctions on minor offences can be prescribed by law and acts (municipal regulations) of the Municipal Assembly, with the latter with the competence only violations of municipal body acts which they issue within the scope of their jurisdiction, as prescribed in its first and second paragraph; and (ii) the body authorized to prescribe minor offences and sanctions on minor offences, namely the Assembly of the Republic or the Municipal Assembly, may not delegate this authority to other bodies, as prescribed in its third paragraph.

162. In this regard, the Court notes that the "*administrative offences*" foreseen by the challenged Decisions are not prescribed by Articles 8, 34, 35, 36, 37, 38, 39, 53, 54, 55 and 56 of the Law for Prevention and Fighting against Infectious Diseases nor by Article 31 of the Law on the Sanitary Inspectorate. Secondly, it also notes that as long as items a) and b) of paragraph 2 of Article 41 of the Law for Prevention and Fighting against Infectious Diseases, refer to the possibility of taking appropriate and established measures by challenged Decisions, the same article stipulates that the same must first be specified by a sub-legal act and then determined by following the procedure set out in Article 45 of the same law. In this context, the Court emphasizes the following three issues: (i) that based on paragraph 1 of Article 3 of the Law on Minor Offenses, the offences must be accurately defined and interpretation by analogy is not permitted. The Court recalls that the minor offences set out in the challenged Decisions are not precisely defined in either the Law for Prevention and Fighting against Infectious Diseases or the Law on the Sanitary Inspectorate; (ii) that based on paragraph 3 of Article 7 of the Law on Minor Offenses, the authorized body to determine minor offenses and sanctions for minor offenses, which based on this law, is only the Assembly of the Republic and the Municipal Assembly, this authorization cannot be transferred to other bodies, including the Government; and (iii) that minor offenses and sanctions for minor offenses may be determined by law of the Assembly of the Republic and by acts of the Municipal Assembly, as stipulated by paragraph 1 of Article 7 of the Law on Minor Offenses, while also if this is not the case, no one can be punished for minor offence or imposed a sanction for the offense which before it was committed has not been defined as a minor offence by law or by acts of the Municipal Assembly based on, as defined in paragraph 1 of Article 3 of the same law.

163. In this regard, the Court finds that administrative offenses related to non-compliance with "*prohibition of movement of natural persons outside their houses/apartments*; "*prohibition of entry/exits*", "*movement of vehicles*"; and "*obligations of natural persons during permitted movement*", are not "*prescribed by law*", established by the challenged Law for Prevention and Fighting against Infectious Diseases, and furthermore, the latter are foreseen by the decisions of a ministry, namely the Ministry of Health, and not through a law of the Assembly of the Republic or even through an act of the Municipal Assembly.

164. The Court notes, as it did in Judgment KO54/20, that the Law for Prevention and Fighting against Infectious Diseases does not provide adequate authorizations to the Government to fight and prevent COVID-19 pandemic. Precisely for this reason, by Judgment KO54/20, set another date of entry into force of its Judgment, namely 13 April 2020, emphasizing that until this date, the relevant institutions of the Republic of Kosovo, in the first place the Assembly, must take the necessary measures to ensure that the necessary restrictions on fundamental rights and freedoms in order to protect public health are made in compliance with the Constitution and Judgment KO54/20. Such a thing, as explained in part III of this Judgment, did not happen.

165. That said, and despite the necessity that in the circumstances of the current pandemic, the Government (i) "*should be able to act quickly and efficiently*; and (ii) that such a thing, "*may call for adoption of simpler decision-making procedures and easing of some checks and balances*", as the Council of Europe itself states in its Information Document, however always stressing the necessity for oversight of the legislative power and judicial control, the Constitution, in its Articles 92 and 93, accurately stipulates that the Government enforces laws and other acts adopted by the Assembly of Kosovo and takes decisions and issues legal acts or regulations necessary for the application of laws, as also stipulates that the fundamental rights and freedoms may be restricted only by law of the Assembly, in its Article 55.

166. In this context, and based on the authorizations given to the Ministry of Health regarding the determination of administrative offenses through the Law for Prevention and Fighting against Infectious Diseases, the Court must find that in determining non-compliance with the measures provided through the challenged Decisions as "*administrative offences*", the Ministry of Health has exceeded the legal authorizations established in the Law for Prevention and Fighting against Infectious Diseases.

167. As a result, the Court finds that: (i) item V of the Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19"* for the municipality of Prizren; and (ii) item IV of Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19"* in the municipalities of Dragash and Istog, where the *"administrative offences"* and the respective sanctions are determined, are not in compliance with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR.

168. As explained in the Judgment of the Court KO54/20, and in this Judgment, in case of non-fulfillment of the criterion of being "*prescribed by law*", further assessment of other requirements of the non-cumulative test, is not continued, namely "*legitimate aim*" and "*necessity in a democratic society*". Consequently, the Court will no longer proceed with the assessment of these two criteria regarding item IV of the Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health "*on preventing, fighting and eliminating infectious disease COVID-19"* in the municipalities of Dragash and Istog; and item V of Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious*

disease COVID-19" for the municipality of Prizren, while the same analysis will continue with respect to (i) items I, II, III, V, VI and VII of the challenged Decisions for the municipality of Dragash and Istog, and (ii) items I, II, III, IV, VI, VII and VIII of the challenged Decisions for the Municipality of Prizren, because in this regard, the Court has already found as being "*prescribed by law*".

(ii) *Whether the "interference" with the right to freedom of movement pursues a "legitimate aim"*

169. The Court clarified the structure of Article 35 of the Constitution, namely freedom of movement, in Judgment KO54/20, insofar as it is relevant to the circumstances of both cases. The Court clarified that this article guarantees (i) the right to free movement in the Republic of Kosovo and the choice of residence for all citizens of the Republic of Kosovo and foreigners who are legal residents of Kosovo; (ii) the right of each person to leave the country; and (iii) the right of citizens of the Republic of Kosovo not to be deprived the right of entry into the Republic of Kosovo. Paragraph 2 of the same article stipulates that all restrictions regarding these guaranteed rights are, (i) "*prescribed by law*"; (ii) are determined and are necessary for the implementation of a court decision; and (iii) are necessary to fulfill the obligation to protect the state. Paragraphs 4 and 5 of Article 35 of the Constitution are not relevant to the circumstances of the present case and therefore, as in Judgment KO54/20, the Court will not comment them. (See also paragraph 201 of the Judgment KO54/20).

170. This article, based on Articles 22 [Direct Applicability of International Agreements and Instruments] and 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court reads and interprets in relation to the equivalent article of the ECHR, namely Article 2 of Protocol No. 4 thereof. The latter also defines the rights and possibility of respective restrictions. Paragraphs 1 and 2 of it define the right to free movement within a state and the right to free choice of residence, for all those who are legally within the territory of the state concerned, and the right of every person to leave any place, including his own. However, in paragraphs 3 and 4, the same article defines the possibility of the respective restrictions, provided that the latter are "*prescribed by law*" and "*necessary in a democratic society*". The reasons on the basis of which these restrictions may be "*prescribed by law*" and "*necessary in a democratic society*", namely "*legitimate aims*" on the basis of which the relevant restrictions may be imposed, are also defined within the structure of this article, and include (i) national security or public security; (ii) maintaining public order; (iii) prevention of criminal offenses; (iv) protection of health or morals; or (v) protecting the rights and freedoms of others.

171. This structure of the respective articles, which is similar to other articles of the Constitution and the ECHR which, establish the rights and relevant restrictions (see, including but not limited to Articles 8 to 11 of the ECHR, and the respective articles of the Constitution), also coincides with the structure of Article 55 of the Constitution, which is widely explained in Judgment KO54/20 (see paragraphs 189-198) and the case law of the ECtHR regarding the

assessment of the compatibility with the ECHR of limitations or respective rights and freedoms.

172. The case law of the ECtHR is consolidated regarding the assessment of whether an "*interference*", namely the limitation of the right, pursues a "*legitimate aim*". In this regard, the ECtHR focuses on the analysis of "*legitimate aims*" regarding which an "*interference*" may be permitted and which are specifically defined in paragraph 3 of Article 2 of Protocol No. 4 of the ECHR. For example, in a number of cases, the ECtHR considered this point of the test to be passed because the "*interferences*" in question were considered to have pursued a "*legitimate aim*" regarding: (i) the interest of state security (see ECtHR cases *Berkovich and others v. Russia*, applications no. 5871 and 9 others, Judgment of 27 March 2018; and *Berkovich and others v. Russia* applications no. 5871 and 9 others, Judgment of 27 March 2018, paragraphs 84-85); (ii) public interest (see the ECtHR case, *Bessenyeli v. Hungary*, application no. 37509/06, Judgment of 21 October 2009, paragraph 22); (iii) protecting the interests of the child, respectively protecting the interests of others (see ECtHR case *Battista v. Italy*, application no. 43978/09, Judgment of 2 December 2014, paragraph 40); and (iv) protecting the interests and rights of others (see ECtHR case, *Mursaliyev and others v. Azerbaijan*, application no, 66650/13 and 10 others, Judgment of 13 December 2018).

173. In principle, the case law of the ECtHR, the burden of proof regarding the existence of a "*legitimate aim*" determines to the respective state, or more precisely the public authority which takes the "*interference*" in a protection of a "*legitimate aim*". Consequently, in the circumstances of the present case, the burden of proof relates to the existence of a "*legitimate aim*" in conjunction with the respective "*interference*", falls on the Ministry of Health, namely the Government. The Court recalls that neither the Prime Minister on behalf of the Government nor the Minister of Health on behalf of the Ministry of Health have responded to the Court's request for comments on the merits of the case. Therefore, they have not argued the "*legitimate aim*" pursued through "*interference*" with the right to movement through challenged Decisions.

174. Having said that, the case law of the ECtHR also recognizes cases in which, due to the specific circumstances of a case, it acknowledged the existence of a "*legitimate aim*", despite the lack of argumentation of the respective government. In line with this case law of the ECtHR, and taking into account the lack of consolidated case law regarding the limitations of the freedom of movement, as a result of the COVID-19 pandemic, the Court, in the circumstances of the present case, is ready to accept that in the "*interference*" with the fundamental rights and freedoms regarding the freedom of movement, the Ministry of Health pursued a "*legitimate aim",* namely that of protection of "*public health"*, established specifically in paragraph 3 of Article 2 of Protocol No. 4 of the ECHR.

175. Furthermore, and in support of this finding, the Court also refers to the Information Document SG/Inf(2020)11 of 7 April 2020 on Respecting Democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, of the Council of Europe, which, *inter alia*, emphasizes that "*protection of health*" is one of the "*legitimate aims*" which enables the

respective Governments to take restrictive measures in preventing and fighting the relevant pandemic, of course, only if the latter are "*prescribed by law*" and "*necessary in a democratic society*". (See, part 3.3 of the Information Document).

176. Also, despite the fact that the case law of the ECtHR in relation to cases that may result as a consequence of the restrictions taken by the respective states in order to prevent and combat COVID-19 is still missing, and the fact that the case law and the relevant Constitutional Court, at this stage, is few and under construction, a number of constitutional courts have already issued their first decisions regarding the constitutional review of restrictions during the COVID-19 pandemic, and have recognized the existence of a "*legitimate aim*" in terms of public health protection. Of course, this is only after they have ascertained that the measures, namely the restrictions taken, are "*prescribed by law*". (See in this context, the case of the Constitutional Court of Bosnia and Herzegovina, Decision on Admissibility and Merits, AP-1217/20, paragraph 51. Despite the conclusion of existence of a "*legitimate aim*", this Decision found a violation of the rights of the respective applicants regarding freedom of movement, due to the lack of proportionality of the measures taken).

177. Consequently, the Court finds that in the circumstances of this case, the "*interference*", namely the restriction of fundamental rights and freedoms guaranteed by Article 35 of the Constitution, by challenged Decisions, has pursued a "*legitimate aim*" of the "*protection of public health*", as defined in paragraph 3 of Article 2 of Protocol No. 4 of the ECHR. This affirmative statement is followed by the need to analyze the remaining criterion, namely to assess whether the "*interference*" with the right to movement by the challenged Decisions is "*necessary in a democratic society*".

(iii) Whether the "interference" with the right to freedom of movement is "necessary in a democratic society"

178. The Court notes that in assessing whether the "*interference"* is *"necessary in a democratic society*", the ECtHR, initially states that an "*interference*", will be considered as "*necessary in a democratic society*" if it responds to a "*pressing social need*". In this context, the ECtHR balances the interests of the state concerned, in the context of the circumstances of the present case, the protection of public health, against the right of the Applicant, and, in particular, if (i) the "*interference*" is "*proportional*" with the "*legitimate aim*" it pursues; and (ii) reasons produced by state authorities to justify "*interferences*" in questions are "*relevant and sufficient*". (See, among other, the ECTHR cases, *Khyustov v. Russia,* application no. 28975/05, Judgment of 11 July 2013, paragraph 84 and the references therein; *Nikiforenko v. Ukraine*, application no. 14613/03, Judgment of 18 February 2010, paragraph 56; and, *Kyprianou v. Cyprus*, application no. 73797/01, Judgment of 2005, paragraph 170-171).

179. In terms of assessing proportionality, the ECtHR found a violation of Article 2 of Protocol No. 4 of the ECHR, and found that the "*interferences"* with freedom of movement were not proportional to the "*legitimate aim*" pursued, when the latter, *inter alia*, were not subject to continuous review by the relevant public

authority. For example, in case *A.E. v. Poland*, finding a violation of the right of the respective applicant regarding the freedom of movement guaranteed by Article 2 of Protocol No. 4 of the ECHR, the ECtHR, regarding the proportionality of the measures taken, among other things, emphasized that the state authorities are not allowed to take restrictive measures on the right to freedom of movement of persons *"without periodic review of the reasonableness of those measures.*" (See, case of the ECtHR, *A.E. v. Poland*, No. 14480/04, Judgment of 31 March 2009, paragraphs 49 and 50 and the references used therein). Such a lack of periodic review of the restricting measures was considered by the ECtHR, to be against the obligation of states to apply the necessary care for the purpose of security that the applied "*interferences*" are reasonable throughout the time of application of the relevant restriction. Similarly, in case *Battista v. Italy*, the ECtHR stated that the measures of automatic nature, without limitations regarding their scope and duration, and which are not subject to periodic review, are inconsistent with the guarantees embodied in Article 2 of Protocol No. 4 of the ECHR. (See, the case of the ECtHR, *Battista v. Italy*, cited above, paragraph 47; see also some other cases, in which after passing the test regarding "*prescribed by law*" and "*legitimate aim*", it was concluded that the "*interferences*" were not "*necessary in a democratic society*" due to lack of proportionality of the "*interferences*" in question: *Milen Kostov v. Bulgaria,* application no. 40026/07, Judgment of 3 September 2013*; Mursaliyev and others v. Azerbaijan,* applications no. 66650/13 and 10 others, Judgment of 13 December 2018*; Sarkizov and others v. Bulgaria,* application no. 37981 and 3 others, Judgment of 17 April 2012*; Stamose v. Bulgaria,* application no. 19713/05, Judgment of 27 November 2012*;* and *Vlasov and Benyash v. Russia,* applications no. 51279/09; and 32098/13, Judgment of 20 September 2016).

180. Based on the explanations above, the Court further should assess whether, in the circumstances of the present case (i) the "*interference*" with fundamental rights and freedoms regarding freedom of movement is proportional in relation to "*legitimate aim*" pursued, including whether they are of an automatic nature, without restrictions on their scope and duration, and if they are subject to periodic review; and (ii) in the "*interference*" with fundamental rights and freedoms regarding freedom of movement, the relevant public authorities, namely the Ministry of Health, presented "*relevant and sufficient*" reasons.

181. In this context, the Court initially states that the prevention and fighting of COVID-19 pandemics is necessarily a "*pressing social need*" in terms of assessing the "*need in a democratic society*". All states are facing the challenge of preventing and combating COVID-19 pandemics. Until 29 March 2020, 22 member states of the Council of Europe have declared a state of emergency at the national level, based on the relevant constitutional proceedings. As noted above, with the purpose of effectively addressing these challenges but also to preserve the system of protection of fundamental rights and freedoms, the Council of Europe has published the Information Document, in order to provide the relevant governments with a toolkit "*for dealing with the present unprecedented and massive scale sanitary crisis in a way that respects the fundamental values of democracy, rule of law and human rights*". This Information Document, among other things, and insofar as it is relevant to the circumstances of the present case, states that in the light of the threat from

COVID-19, "*the regular functioning of society cannot be maintained, particularly in the light of the main protective measure required to combat the virus, namely confinement*", and that these measures "*will inevitably encroach on rights and freedoms which are an integral and necessary part of a democratic society governed by the rule of law*".

182. Furthermore, the Information Document of the Council of Europe also states that "*the major social, political and legal challenge facing our member states will be their ability to respond to this crisis effectively, whilst ensuring that the measures they take do not undermine our genuine long-term interest in safeguarding Europe's founding values of democracy, rule of law and human rights*". The need for prompt and effective action is recognized especially in the sense of the executive authorities, emphasizing, *inter alia*, that the latter (i) "*must be able to act quickly and efficiently*; and (ii) that such a thing, "*may require the adoption of simpler decision-making procedures, as well as the facilitation of certain checks and balances*", however, always emphasizing the importance of controlling the executive power by the legislative power. In this context, the Venice Commission has consistently reiterated that even in cases of declaration of emergency, the rule of law must prevail. (See the Report of the Venice Commission for the Protection of Human Rights in Emergency Situations, adopted by the Venice Commission at 66th plenary session, on 17-18 March 2006; and also the Venice Commission Rule of Law Checklist (CDL-AD(2016)007), paragraph 51).

183. Although not regarding the challenges arising from the COVID-19 pandemic, but in the context of defining and clarifying the mechanisms regarding the protection of fundamental rights and freedoms at "*emergency times*", the case law of the ECtHR, but also the Venice Commission, emphasize that the ECHR should be interpreted as a "*living instrument*", implying that the criteria on the basis of which the balance between the interest of the state and individual right is assessed, and the weight attributed to these respective assessment criteria, may differ depending on the context. Consequently, the proportionality assessment should also be made based on the circumstances of the respective cases and the imposition of more severe restrictive measures in certain cases may be acceptable, however without ever limiting the essence of the guaranteed rights. (See, among others, the Opinion of the Venice Commission for the Protection of Human Rights in Emergency Situations, CDL-AD(2006)015), paragraph 8 and references used therein).

184. In this context, and in assessing the proportionality of the restrictions set out by the challenged Decisions in relation to the "*legitimate aim pursued*", the Court recalls that the latter prohibits the movement of people and movement of vehicles in the municipality of Prizren, Dragash and Istog, with the exception of a period of one and a half hour within a day, provided that one is not accompanied by anyone. Having said that, for the purpose of the assessment of the proportionality of the measures taken, the Court must analyze, with the exception of the general rule of restriction of freedom of movement, through three of the four challenged Decisions.

185. The Court recalls that by the challenged Decisions, freedom of movement and circulation has been made possible by the respective conditionings, regarding

(i) cases of health emergencies; (ii) cases of performing essential needs beyond certain distances; (iii) cases of participation in burials; (iv) persons with disabilities; (v) victims of domestic violence, in accordance with the recommendations of the Information Document of the Council of Europe; (vi) circulation of necessary goods and services; (vii) the movement of relevant workers; (viii) farmers and farm workers; (ix) movements for needs of state institutions; and (x) media.

186. The challenged Decisions have also specifically addressed persons over the age of 65 and those under the age of 16. By the challenged Decisions, in fact, the Ministry of Health has not prohibited the movement of persons over the age of 65 during the allowed time, but has recommended that such a right not be exercised unless necessary. Whereas, regarding the persons under the age of 16, it has conditioned their movement on the condition of being accompanied by a member of the respective family community within the allowed time of the movement.

187. In the context of the abovementioned exceptions, the Court considers that (i) sufficient exceptions have been made in terms of restricting freedom of movement, thus preserving the essence of this right; and (ii) the relevant restrictions and exceptions reflect sufficient balance between the interest of the state on the one hand and the individual rights to freedom of movement of affected citizens by the challenged decisions on the other, in light of the unprecedented circumstances created by the COVID-19 pandemic, and as a result, (iii) the "*interference*" namely, the restriction of the right to freedom of movement of the citizens of the affected municipalities is proportional in relation to the pursuit of the "*legitimate aim*" of the protection of public health.

188. This finding also applies to persons under the age of 16, whose freedom of movement during the time allowed by the challenged Decisions, is conditioned by the escort of a member of the respective family. That is because, Article 50 [Rights of Children] of the Constitution, insofar as it is relevant in the circumstances of the present case, stipulates that all actions relating to children, taken either by public authorities or by private institutions, must be in the best interests of children, in its fourth paragraph. Taking this into account, and in particular, in the circumstances created by the COVID-19 pandemic, the Court, in principle, does not consider the obligation to accompany persons under the age of 16 to be disproportionate. Such an attitude is also in line with the Convention on the Rights of the Child, which under Article 22 of the Constitution applies directly to the Republic of Kosovo, and which, although it does not specifically define the right to freedom of movement, nevertheless, with regard to possible restrictions on children's rights, also defines the protection of public health as one of "*legitimate aim*" on the basis of which it may be "*interfered*" with their rights.

189. In support of the proportionality assessment of "*interferences*" with the freedom of movement by the challenged Decisions, the Court also emphasizes the fact that the latter, (i) determine the specified time limit regarding the measures taken, namely until 4 May 2020; (ii) set deadlines within which they should be reconsidered, namely by 30 April 2020; and (iii) determine the possibility of continuous review, based on the analysis of the epidemiological

situation. Therefore, the Court emphasizes that the challenged Decisions also contain the component of (i) "*periodic review of the reasonableness of those measures*", therefore (ii) are not measures of an automatic nature, without restrictions regarding their scope and duration, these criteria which, based on the case law of the ECtHR, in assessing an "*interference*" in its entirety, could result in a lack of proportionality.

190. The Court recalls that when assessing whether the "*interference*" with fundamental rights and freedoms is "*necessary in a democratic society*", it must also assess whether the reasons contained in the relevant decisions of the state authorities are "*relevant and sufficient*".

191. In this context, the Court recalls that the challenged Decisions, beyond the factual description relating to (i) the issuance of Government Decision No. 01/07 dated 11 March 2020; (ii) issuance of Government Decision No. 01/15 of 23 March 2020; and (iii) Judgment of the Constitutional Court in case KO54/20, justify the limitations specified in the challenged Decisions, on the basis of (i) Article 41.2 of the Law for Prevention and Fighting Against Infectious Diseases; and (ii) the proposal of the NIPHK dated 12 April 2020 which "*considers that the infection has spread to that municipality or that that municipality is considered directly endangered*".

192. In this context, the Court recalls (i) the Applicants' allegations that the Ministry of Health has treated three municipalities with different characteristics in the same manner, and has imposed the same measures in Dragash, Istog and Prizren, with no case, one case, and with more cases, respectively infected with COVID-19; and (ii) the fact that despite the request of the Court addressed to the Minister of Health, for comments in relation to the merits of the Referral and to submit to the Court the recommendations of the NIPHK which are not published on its official website, the Ministry of Health has failed to do so.

193. However, the Court emphasizes that, under the Law for Prevention and Fighting Against Infectious Diseases, it is not disputable that the NIPHK and other health institutions defined by this law have the competence and expertise to assess the situation with respect to infectious diseases, and to recommend that measures be taken in the *"place where the epidemic has spread"* and "*infected or directly endangered regions"* within the meaning of paragraph 2 of Article 41 of the Law for Prevention and Fighting Against Infectious Diseases. Moreover, despite the differences in cases infected in these municipalities, the Court cannot assess whether a region, although it may not be "*infected*", is also not "*directly endangered*" for the purposes of Article 41 of the Law for Prevention and Fighting Against Infectious Diseases. As stated in Judgment KO54/20, on the matters of public health, the Constitutional Court itself refers to and complies with the relevant health experts in the country or at the world level (see paragraphs 177 and 310 of Judgment KO54/20).

194. Therefore, and on the basis of the explanations above, the Court considers that the reasoning contained in the challenged decisions, namely the reference to the proposal of the NIPHK dated 12 April 2020 which "*considers that the*

infection has spread in that municipality or that that municipality is considered directly endangered", is *"sufficient and relevant"* in the circumstances of prevention and fighting against COVID-19 pandemic. In this context, the Court also points out the fact recognized by the Information Document of the Council of Europe that the need for prompt and effective action to prevent and fight against pandemic is specifically recognized to the executive authorities, by emphasizing that they *"should be able to act quickly and efficiently"* in this context.

195. Consequently, the Court considers that the *"interference"* with the freedom of movement through challenged Decisions is *"necessary in a democratic society"*, thus resulting in the fulfillment of the last condition set out in Article 55 of the Constitution and the case law of ECHR. This is because (i) it is not disputable that in the circumstances of the COVID-19 pandemic there is a *"pressing social need"*; (ii) the relevant *"interference"* is proportionate to the *"legitimate aim"* pursued, including the balance between the state's interest in protecting public health and the citizens' right of movement affected by challenged Decisions; and (iii) the reasons produced by the state authorities to justify the "*interference*" with the freedom of movement, in the circumstances of the fight against COVID-19 pandemics, are *"relevant and sufficient."*

196. Finally, the Court, in reviewing the constitutionality of the Decisions [No. 229/IV/2020], [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*"on preventing, fighting and eliminating infectious disease COVID-19*" in the municipalities of Prizren, Dragash and Istog, respectively, finds that they are in compliance with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. This finding, as clarified above, applies with exception of item V of the Decision [No. 229/IV/2020] for the municipality of Prizren and item IV of the Decisions [No.238/IV/2020] and [No. 239/IV/2020] for the municipalities of Dragash and Istog, respectively, regarding "*administrative offences*", and which, according to the assessment and clarifications given by the Court, are not "*prescribed by law*", and consequently are contrary to Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR.

197. Having said that, in the following, the Court will proceed with the constitutional review of the Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health for the declaration of the municipality of Prizren as a "*quarantine zone*", starting from the assessment of whether in its issuance, the Ministry of Health is based on the authorizations defined in the Law for Prevention and Fighting against Infectious Diseases, namely "*prescribed by law*".

2. Constitutional review of Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health for the declaration of the Municipality of Prizren a *"quarantine zone"*

(i) Whether the "interference" with the right to freedom of movement is "prescribed by law"

198. As in the case of assessment of Decisions [No. 229/IV/2020], [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality"* of Prizren, Dragash and Istog, so that in the assessment of Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, for the declaration of the Municipality of Prizren "*quarantine zone*", the Court must first assess whether the latter meets the criterion of being "*prescribed by law*", namely, if in its issuance, through which it is has been "*interfered*" with the freedom of movement of the citizens of the municipality of Prizren guaranteed by Article 35 of the Constitution, the Ministry of Health was based on the legal authorizations defined by a law of the Assembly, namely the Law for Prevention and Fighting against Infectious Diseases.

199. The Court recalls that the challenged Decision holds that (i) the Municipality of Prizren is declared a quarantine zone because "*the residents of this Municipality are suspected to have had direct contact with persons infected with corona virus COVID 19*"; (ii) declares the village Skorobisht hotbed of transmission of the infection; (iii) entry and exit in this Municipality is prohibited; (iv) obliges all residents of Prizren to comply with the measures in accordance with the instructions of the NIPHK; and (v) establishes the entry into force on the same date.

200. The Court also recalls that (i) the general principles of the case law of the Court and of the ECtHR regarding the principle of being "*prescribed by law*" have been clarified in Judgment KO54/20 (see 208-216 paragraphs thereof) and in paragraphs 138-139 of this Judgment; while (ii) all the provisions, namely the legal basis on which this Decision is based, have already been analyzed in paragraphs 141-142 of this Judgment.

201. The Court, however, notes that unlike the three Decisions of the Ministry of Health that were already assessed by the Court, and which were also based on Articles 44, 46 and 47 of the Law on General Administrative Procedure, the Decision on the declaration of the Municipality of Prizren "*quarantine zone*" was not referred on them. Whereas, as explained above, the only additional basis mentioned in this Decision is Article 33 of the Law for Prevention and Fighting against Infectious Diseases and as a result, the Court will focus precisely on this article, to conclude whether the quarantine of all citizens of the municipality of Prizren was "*prescribed by law"*.

202. In this regard, the Court states that the quarantine was referred to four articles of the Law for Prevention and Fighting against Infectious Diseases, namely (i) Article 2, which defines the quarantine as "*the free movement limitation for healthy people who are exposed to dangerous causers of the infectious diseases*"; (ii) item c) of paragraph 3 of Article 8, defining quarantine as one of "*specific measures*" for the prevention of infectious diseases; (iii) its Article 33 , in which the conditions for placing natural persons in quarantine are determined; and (iv) item c of Article 49 thereof, and which determines the obligation of the Government to provide material means, to cover the costs of quarantine and sanitary control of persons in quarantine.

203. The Court emphasizes that in the circumstances of the present case, it is not disputed that there is an "*interference*" with the right to freedom of movement of the citizens of Prizren, and this finding is based on the very definition of quarantine, as defined in Article 2 of the Law for Prevention and Fighting against Infectious Diseases. While in assessing whether this "*interference*", namely limitation of the right of movement of the citizens of Prizren by the challenged decision is "*prescribed by law*", the Court must assess the content of Article 33 of the Law for Prevention and Fighting against Infectious Diseases.

204. The Court in this regard, emphasizes that Article 33 has a total of five paragraphs, and stipulates that (i) persons who are proved or suspected to have been in direct contacts with sick persons or suspects of being sick from plague, variola and viral hemorrhage fever will be put into quarantine; (ii) holding duration of persons in quarantine under paragraph 1 of this article depends on the maximum period of infectious disease incubation; (iii) persons from paragraph 1 of this article are subject to continual medical controls during all time of quarantine; (iv) Ministry of Health upon the NIPHK proposal makes a decision for putting persons into quarantine under paragraph 1 of this article; and (v) execution of decision for putting persons into quarantine under paragraph 1 of this article is ensured by the competent authority at the country level.

205. The Court notes that Article 33 of the Law for Prevention and Fighting against Infectious Diseases refers precisely to only "*persons*". This article is an integral part of Chapter III Measures for Prevention and Fighting the Infectious Diseases, and which in its entirety, also refers only to "*persons*", and never to, "*regions*" or "*places*". This is in contrast to Chapter IV regarding Safety Measures for Population Protection from the Infectious Diseases, and which in its Article 41, foresees the measure of "*prohibition of travel*" and "*prohibition of movement*" regarding the "*place where the epidemic is spread*", "*infected regions*" or/and "*directly endangered regions*".

206. In this regard, the Court notes that the Law for Prevention and Fighting against Infectious Diseases, exactly distinguishes between the use of the word "*person*" and "*place*" or "*region*" in terms of measures to prevent and combat infectious diseases, while prohibition of "*travel*" and "*movement*", uses precisely in the sense of "*place*" or "*region*" "*infected*" or "*endangered*". In this sense, in order to determine safety measures in the context of infectious diseases, for "*places*" and "*regions*", such as the whole Municipality of Prizren, has determined the measures specified in items a) and b) of paragraph 2 of Article 41 of the Law for Prevention and Fighting against Infectious Diseases, these measures which in the municipality of Prizren, have been imposed by the Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19"* and which, with the exception of item V, the Court has already declared compatible with the Constitution.

207. The Court also states that the use of the word "*person*" in the context of quarantine, reflects the legislator's intention to authorize the restriction of

fundamental rights and freedoms for individually defined natural persons, whose rights may consequently be restricted by an individual administrative act, and not for "*regions*" and "*places*" infected and endangered, the citizens' rights, which could be restricted through a general administrative act, because when the legislator had such a purpose, it has accurately established it, as is the case with paragraph 2 of Article 41 of the Law for Prevention and Fighting against Infectious Diseases.

208. Therefore, it is not disputable that Article 33 of the Law for Prevention and Fighting against Infectious Diseases refers to individually identifiable natural persons. That said, this law sets out other conditions on the basis of which the latter can be placed into quarantine. More precisely and based on paragraph 1 of Article 33 of the Law for Prevention and Fighting against Infectious Diseases, only two categories of natural persons may be subject to quarantine: (i) persons who are **confirmed** to have been in direct contact with sick or suspected persons with the disease; and (ii) persons **suspected** of having been in direct contact with sick or suspected persons with the disease.

209. Therefore, to place persons into quarantine, (i) "*the contact must be established*"; or (ii) "*suspicions of contact*" with sick persons or suspects of infectious disease should exist, as defined in paragraph 1 of Article 33 of the aforementioned law, and namely, it must be suspected that the same may also be carriers of the infectious disease. Consequently, the same persons are subject to quarantine, as long as there is a maximum incubation period of the respective disease, as defined in paragraph 2 of the same article. Furthermore, pursuant to paragraph 2 of Article 14 of the Law for Prevention and Fighting against Infectious Diseases, not only "*disease",* but also "*suspect of disease existence*" is ascertained by "*a doctor or another health employee, out of his/her duty performance in health institution, and is obliged to notify about this immediately the nearest health institution*".

210. In this regard, the conditioning of the "*confirmation*" or "*suspicion*" of contacts with sick or suspected persons for infectious diseases, for the quarantine of persons who are also consequently considered suspects as long as the incubation period of the respective disease lasts, reflect the purpose of the lawmaker that the cases of quarantine, as one of the special measures for the prevention of infectious diseases which is applied to "*healthy people*" and limits the freedom of movement, are applied exclusively, and in no way as a general measure which is imposed on all citizens of an entire "*region*". In fact, unlike special measures, the general and security measures are precisely defined in paragraph 2 of Article 8 and Chapter IV of the Law for Prevention and Fighting against Infectious Diseases, which includes Article 41 of the Law in question, of which quarantine is not an integral part.

211. Furthermore, paragraph 3 of Article 33 of the abovementioned law, explicitly stipulates that the persons for whom quarantine has been ordered will be "*subject to continual medical controls during all time of quarantine."* More precisely, Article 33 of the Law for Prevention and Fighting against Infectious Diseases, conditions the quarantine of persons by subjecting them to continuous medical examinations throughout the quarantine period. This condition also clearly reflects the legislator's intention to determine the special

measure of quarantine, only for natural persons for whom it is "*confirmed*" or "*suspected*" that they have been in direct contact with sick or suspected persons of the disease, consequently to individually defined persons, and not to the citizens of an entire region. Moreover, the conditioning of continuous medical treatment and examination throughout the Law for Prevention and Fighting against Infectious Diseases, is determined only exceptionally, and that, only with respect to the persons for whom it is "*proved*" that they are sick or it is "*proved to be suspects*" for disease.

212. The quarantine of all citizens of Prizren does not meet any of these legal requirements because (i) does not apply to individually determined natural persons, but to all citizens of the municipality of Prizren; (ii) all of the latter, for the purposes of Article 33 of the Law for Prevention and Fighting against Infectious Diseases, it has not been "*confirmed*" nor can it be "*suspected*" that they have been in direct contact with sick or suspected persons with the disease; (iii) The relevant Decision does not set any time limit within which the duration of the quarantine will be reconsidered, contrary to paragraph 2 of Article 33 of the law in question, because it clearly specifies the time limit within which the quarantine is allowed and this is related to the maximum period of incubation of the respective disease; and (iv) the quarantined citizens of the municipality of Prizren have not been subjected to continuous medical examination which is an essential condition in case of quarantine, as stipulated in paragraph 3 of the abovementioned article.

213. Furthermore, and precisely for the purposes of continuous medical examination, in item c) of Article 49 of the Law for Prevention and Fighting against Infectious Diseases it is expressly provided that in the context of protecting the population from infectious diseases that endanger the whole country, the Government provides additional means and materials: "*For cost recovery relating to quarantine and sanitary control of persons who were in contact with the sick persons or persons for whom is suspected to suffer from any of the infectious diseases."* This provision, read together with Article 33 of the law in question, leads to the conclusion that the quarantine may be imposed by a decision of the Ministry of Health, following the recommendation of the NIPHK, only to individually determined natural persons, and not to all persons of a municipality or region or to a geographical area, a measure that is always conditioned on the application of the second and third paragraphs of this article, which are related to the duration of compulsory quarantine and medical examination.

214. The Court also notes that the challenged Decision, in addition to referring to the NIPHK recommendation, contains no single justification for placing citizens in an entire municipality in quarantine. It does not contain any justification, nor in terms of (i) confirmation or suspicion that these citizens in their entirety have been in direct contact with sick or suspicious persons of infectious diseases; (ii) the duration of their quarantine; (iii) the obligation to be subject continuous medical examinations throughout the quarantine period for the latter; nor (iv) coverage of quarantine costs for these persons and the respective sanitary control, as required through by 33 in conjunction with item c) of Article 49 of the Law for Prevention and Fighting against Infectious Diseases.

215. Furthermore, the Court also emphasizes that, pursuant to paragraph 5 of Article 33 of the Law for Prevention and Fighting against Infectious Diseases, the quarantine procedure, beyond the recommendation of the NIPHK, is conditional on the implementation of a decision. The reference in the latter should be read together with paragraph 1 of Article 45 of the Law for Prevention and Fighting against Infectious Diseases, and, which, is the only article in this law that refers to the procedure regarding the issuance of acts related to preventive measure and fighting infectious diseases. In this context, the Court notes that Article 33 of the Law for Prevention and Fighting against Infectious Diseases read together with Article 44 of the Law on General Administrative Procedure, enables the Ministry of Health to issue an individual administrative act, addressed to one or several individually determined persons, and not a general administrative act, as is the case in the circumstances of the present case. Having said that, the Court also notes that a structure and mandatory elements of the written act are set out in Article 47 of the Law on General Administrative Procedure, and which also includes the reasoning part of an act, the absence of which, based on Article 52 of the same law, also results in its unlawfulness.

216. Finally, it is also important to clarify that the challenged Decision regarding the declaration of the municipality of Prizren "*quarantine zone*", beyond the declaration of the village Skorobisht as a hotbed of the transmission of infection, has no other effect on the citizens of Prizren. This is because the latter does not specify any other obligation for them, except that it prohibits "*entries and exits*" in this municipality. The prohibition of "*entries and exits*" in the municipality of Prizren, includes issues related to circulation and movement, as defined in paragraph 2 of Article 41 of the Law for Prevention and Fighting against Infectious Diseases, while for the municipality of Prizren, the same measures are also determined by item II of the Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, *"on preventing, fighting and eliminating infectious disease COVID-19 in the territory of the Municipality*" of Prizren, and which the Court has already declared compatible with the Constitution, by leaving it in force.

217. Therefore, based on the abovementioned clarifications, the Court finds that in the issuance of the Decision on the declaration of the municipality of Prizren a "*quarantine zone*", and consequently, the quarantine of all citizens of a municipality, the Ministry of Health, has exceeded the authorizations established by the Law for Prevention and Fighting against Infectious Diseases, and consequently, "*the interference*" with the right to freedom of movement of citizens of the municipality of Prizren, is not "*prescribed by law*".

218. Taking into account that the "*interferences*" with the fundamental rights and freedoms of the respective citizens, are not "*prescribed by law*", based on the explanations given in Judgment KO54/20 and in this Judgment, the Court does not further assess whether the "*interferences*" provided by this challenged Decision, have also pursued a "*legitimate aim*" or whether they are "*necessary in a democratic society*".

219. Therefore, Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health does not meet the criteria of being "*prescribed by law*" and, as such, was rendered contrary to Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR.

(iv) Conclusion regarding the compatibility of the challenged Decisions with Articles 35 and 55 of the Constitution

220. The Court has assessed the compatibility of the challenged Decisions with Articles 35 and 55 of the Constitution, on the basis of the case law of the ECtHR relating to the freedom of movement defined by Article 2 of Protocol No. 4 of the ECHR, and found that:

(i) Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating infectious disease COVID-19*" in the Municipality of Prizren (points I, II, III, IV, VI, VII and VIII); and Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating infectious disease COVID-19*" in the Municipalities of Dragash and Istog (points I, II, III, V, VI and VII), respectively, **are in compliance** with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. Consequently, all the specified points of the three abovementioned Decisions were declared constitutional by the Court.

(ii) The Court held, that in issuing the abovementioned Decisions, the Ministry of Health has acted in compliance with the authorizations prescribed by the Law for Prevention and Fighting against Infectious Diseases, and consequently the "*interferences*" with the right of freedom of movement of the citizens of the municipalities of Prizren, Dragash and Istog, through the abovementioned Decisions, were "*prescribed by law*". The Court also found that the latter, pursue a "le*gitimate aim*", namely the one of the protection of "*public health*", as foreseen in paragraph 3 of Article 2 of Protocol No. 4 of the ECHR; are proportional in relation to "*legitimate aim*" pursued; and are "*necessary in a democratic society*".

(iii) Item V of Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating infectious disease COVID-19*" for the municipality of Prizren; and item IV of Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating infectious disease COVID-19*" for the municipalities of Dragash and Istog, respectively, through which the administrative minor offences and the respective sanctions are determined, **are not in compliance** with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. The Court reasoned that in determining the non-compliance with the measures provided for by the abovementioned Decisions as "*administrative minor offences*", the Ministry of Health exceeded the authorizations provided by Law for Prevention and Fighting against Infectious

Diseases. The Court stated that based on Law on Minor Offences, the minor offenses and the respective sanctions must be determined only by law of the Assembly of the Republic or through acts of the Municipal Assemblies, and that this authorization may not be delegated to other bodies. Consequently, the administrative minor offenses determined through these three challenged Decisions, are not "*prescribed by law*" and consequently, were declared unconstitutional

(iv) Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, declaring the municipality of Prizren "*quarantine zone*", **is not in compliance** with Articles 35 and 55 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. The Court held, that in issuing this Decision, the Ministry of Health has exceeded the authorizations provided by Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases, and consequently the "*interferences*" with the right of freedom of movement of the citizens, through the quarantine of all the citizens of the municipality of Prizren, are not "*prescribed by law*". The Court clarified that the "*quarantine*" according to Law for Prevention and Fighting against Infectious Diseases, may be ordered by the Ministry of Health, following the recommendation of the NIPHK, only for natural persons which are confirmed or suspected to have been in direct contact with the sick persons or suspected of infectious disease, always provided that also other requirements set forth through Article 33 and item c) of Article 49 of the Law in question are met.

221. The Court reiterates the findings of the Judgment KO54/20, that the Government pursuant to Articles 92 and 93 of the Constitution exercises executive power in compliance with the Constitution and the law. It implements the laws and other acts adopted by the Assembly, and takes decisions in accordance with the Constitution necessary for the implementation of the laws of the Assembly. In this context, the Government, as well as other law enforcement bodies or authorities, may take, apply and impose limitations measures only insofar as determined and allowed by the law of the Assembly. This interpretation is in full compliance with the system of checks and balances in terms of the separation of powers where the legislative power to create laws in the country belongs only to the Assembly; while the executive power to implement Assembly laws, belongs to the Government. The judiciary in this triangle of power has its role to control, among other things, the constitutionality of the laws issued by the Assembly but also the constitutionality of the decisions of the Government whereby the Assembly laws are implemented. (See also paragraphs 293-295 of the Judgment KO54/20).

222. In the end, the Court also concludes that despite the fact that not only the Republic of Kosovo, but the entire world is facing the fight against COVID-19 pandemic, which inevitably prevents the *"normal functioning of society"*, as emphasized by the Council of Europe in the Information Document, the rule of law must prevail, and in this context, all institutions of the Republic are obliged to act in full compliance with the relevant constitutional and legal powers.

223. That being said and in the following, the Court will also address three remaining issues. The first concerns the (i) the implementation of the Court's Judgment in case KO54/20. The second is related to (ii) the submission of the Prime Minister addressed to the judges of the Court on 23 April 2020. Whereas, the third concerns (iii) the Applicants' request for an interim measure in respect of the challenged Decisions. Finally, the Court will present its conclusions and the operative part of this Judgment.

III. As to the implementation of the Court's Judgment in case KO54/20

224. In Judgment KO54/20, the Court reviewed the constitutionality of the Decision [No. 01/15] of the Government, of 23 March 2020, following the referral submitted by the President on 24 March 2020.

225. On 31 March 2020 the Court decided on case KO54/20 and found that the above-mentioned Decision of the Government was incompatible with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution in conjunction with Articles 35 [Freedom of Movement], 36 [Right to Privacy], 43 [Freedom of Association] of the Constitution and equivalent articles of the ECHR, respectively Articles 8 (Right to respect for private and family life), 11 (Freedom of assembly and association), and 2 (Freedom of movement) of Protocol No. 4 of the ECHR.

226. The Court also found that, under Article 55 of the Constitution, the limitation on fundamental rights and freedoms can be done *"only by law"* of the Assembly; and that Article 56 of the Constitution was not applicable in the circumstances of the case KO54/20. The full Judgment of the Court was published on 6 April 2020; whereas on 31 March 2020, the Court had already published the operative part of the Judgment and the conclusions of the Court.

227. The Court decided that the Judgment in case KO54/20 would enter into force on 13 April 2020. (See the operative part of the Judgment in question, cited above, as well as the Court's conclusions in that case, paragraphs 310-325). In the part where the rationale for the entry into force of the Judgment of the Court was elaborated on a date other than that of the announcement of the Judgment, the Court, among other things, also revealed the role and institutional responsibility of the Assembly in light of the need to deal with COVID-19 pandemic in the Republic of Kosovo, by emphasizing as follows: *"[...] The Court finds that until the date of the repeal of the challenged Decision, the responsible institutions of the Republic of Kosovo,* ***in the first place the Assembly, must take actions****, in accordance with the Constitution and this Judgment, which are considered as appropriate and adequate to continue preventing and fighting pandemics COVID-19 - which in itself constitutes a high interest of public health for all citizens and persons living in the Republic of Kosovo."*

228. Between 12 and 14 April 2020, the Ministry of Health issued a number of Decisions. On 17 April 2020, the case KO61/20 was submitted to the Court by the Applicants who challenged four (4) Decisions of the Minister of Health, issued in the course of the fight against the COVID-19 pandemic, the

constitutional review of which was conducted through this Judgment. Among the key allegations of the Applicants was the fact that the Court's Judgment KO54/ 20 was not implemented and respected. Also the Ombudsperson held the same position.

229. As to what has happened since the entry into force of the Judgment of the Court and until now, at the level of the Assembly, the Court is uninformed. This is due to the fact that despite the specific request of the Court addressed to the Assembly on 20 April 2020 to notify the Court about the steps *"taken by the Assembly of the Republic of Kosovo following the publication of Judgment KO54/20 of 31 March 2020"*, the Court did not receive any response, document or information. Consequently, for the Court, the treatment by the Assembly of the Judgment KO54/20 since the moment of its publication remains unclear. What is publicly known on the basis of the updated information of the Official Gazette, is that the Assembly has not adopted any supplementation-amendments to existing laws addressing infectious diseases, nor has it adopted any new laws that could take into account the findings of the Court in the Judgment KO54/20.

230. The Court, with respect to the non-submission of reply requested from the Assembly concerning the enforcement of the Judgment in case KO54/20, emphasizes that, under Article 26 [Cooperation with other Public Authorities] of the Law on the Constitutional Court, *"All courts and public authorities of the Republic of Kosovo are obliged to support the work of the Constitutional Court and to fully cooperate with the Constitutional Court upon request of the Constitutional Court."* Moreover, Rule 66 [Enforcement of decisions] of the Rules of Procedure provides that "*The decisions of the Court are binding [...] on the institutions of the Republic of Kosovo"* and that all natural and legal persons *"are obligated to respect and comply with the decisions of the Court."*

231. Moreover and finally, with respect to the enforcement of the Judgment KO54/20, the Court in particular emphasizes Article 116 [Legal Effect of Decisions] of the Constitution, on the basis of which, *"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*

IV. In relation to the Prime Minister's submission addressed to the judges of the Court

232. In the proceedings before the Court, the latter has informed the public that during the review proceedings in the case KO61/20, it had received a submission from the Prime Minister, on behalf of the Government, addressed to the judges of the Court named as: "*Submission regarding the non-observance of the legal deadline and the Rules of Procedure of the Constitutional Court by the Constitutional Court in Case No. KO61/20"*.

233. About this submission and its content, as in the case of all other submissions, were notified all the judges of the Court as well as all interested parties in this case, namely: the Applicants; the President and the deputies of the Assembly; the President; the Ombudsperson; and the Minister of Health. The sender of this submission, namely the Prime Minister, was notified by the Court about its

receipt and was informed that the Court will respond to the submission in accordance with the provisions of the Constitution, the Law and the Rules of Procedure.

234. The Court has published the content of the submission sent by the Prime Minister in paragraph 28 of this Judgment. It has also already given its answer regarding the "*concern*" of the Government about "*violation of an essential importance in a constitutional judicial procedure*" in relation to Rule 35 (5) of the Rules of Procedure, in paragraphs 108-112 of the Judgment. In the following, the Court will also address the same "*concerns*" regarding Article 22.2 of the Law on the Constitutional Court.

235. The Court in the context of Article 22 of the Law on the Constitutional Court, initially states that it is correct that the provision mentioned by the Prime Minister, namely, paragraph 2 of Article 22 provides that: "*The Secretariat shall send copies of the referral to the opposing party and other party (ies) or participants in the procedure. The opposing party or participant has forty-five (45) days from the reception of the referral to submit to the Secretariat its reply to the referral together with justification and necessary supporting information and documents".*

236. However, the Court emphasizes and clarifies that the time limit set at forty-five (45) days from the abovementioned provision is only one of the applicable deadlines through which the Court exercises its function. The latter is the general deadline set out in paragraph 2 of Article 22 of part I of Chapter II of the Law on the Constitutional Court regarding the General procedural provisions. The same Law, in Chapter III, also defines Special Procedures. In the latter, it also sets deadlines of twenty-four (24) hours and up to sixty (60) days within which the Court is obliged to decide on a relevant referral. Precisely in order for the Court to adapt its decision-making to the nature, specifics and urgency of a case before it, including requests for interim measures, Rule 33 of the Rules of Procedure, and more precisely its paragraph 3, among other things, determines the competence of the Court, to order a shorter deadline in relation to the submission of the relevant documents in a given case, if in the assessment of the Court, a referral "*requires expedited handling*". This rule specifically defines the following: "*The Court may order a shorter deadline when a referral requires expedited handling*".

237. In this context, the Court notes that the general rule of the forty-five (45) day deadline referred to in Article 22 of the Law, is subject to the exceptions set out in this Law and the Rules of Procedure, and that based on the specifics of the case before it, and assessing whether "*a referral requires expedited handling*", the Court sets other deadlines and appropriate to the circumstances of the case before it

238. The Court considers that the requirements for assessing the compatibility of acts, in the circumstances of the present case, the decisions of the Ministry of Health, with the fundamental rights and freedoms of its citizens and guaranteed by Chapter II of the Constitution, in the circumstances of COVID-19 pandemic, present "*a referral* which *requires expedited handling*", and that the necessity for such an approach is not disputed. The Court has acted in the

same way in the previous case, namely the constitutional review of Decision No. 01/15 of the Government of the Republic of Kosovo, of 23 March 2020, and which resulted in Judgment KO54/20 published on 6 April 2020, within 13 days of its registration. The Constitutional Courts of the region and beyond have acted with the same urgency. Such an approach is also required by the Council of Europe, in its Information Document published on 7 April 2020, on respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, which among other things, emphasizes the importance of quick decision-making by the courts, and especially the constitutional courts, in assessing the compatibility of the limitations of fundamental rights and freedoms with the relevant Constitutions. In fact, in the submission submitted to the Court, the Prime Minister himself states that "*expects the Court, similar to the institutions equivalent to it in Western countries, to show special care for the life and health of citizens"* despite the fact that the determination of "*expectations*" from the Court is not within the competence of the executive branch.

239. The Court also recalls that three (3) of the four (4) challenged Decisions before the Court are in force only until 4 May 2020. The Referral before the Court includes issues of the constitutional review of the restriction of fundamental rights and freedoms guaranteed by the Constitution in the circumstances of the COVID-19 pandemic. According to the Prime Minister, the Court should allow the latter and other parties to submit their comments within a period of forty-five (45) days, until 1 June 2020, namely twenty-eight (28) days after the expiration of the challenged Decisions.

240. In this respect, the Court emphasizes that neither party to the proceedings, nor the Government, has the authorisation to self-determine the legal time limits within which it must respond to the Court. It is only the latter that can set deadlines for the parties based on the Constitution, the Law and the Rules of Procedure. Moreover, as explained above, giving the parties forty-five (45) days to submit their documents, in the circumstances of the case before the Court, would result in the Court's complete negligence, by not treating a case of such constitutional importance with "*expedited handling*". This would be completely contrary to its constitutional mandate to interpret the Constitution in protection of fundamental human rights and freedoms and the values of the Republic.

241. In the end, and regarding the approach that the Prime Minister's submission addressed to the Court, on behalf of the Government, and which, among other things, expresses (i) "*its concerns about violations of essential provisions regarding the procedure and deadlines to be followed";* (ii) "*its concerns regarding the violation of legal provisions concerning the deadlines stipulated by the lawmaker*"; (iii) "*a serious concern regarding the professionalism and impartiality of the Court",* states that (iv) "*the Court has avoided the procedure which it should have followed in case no. KO61/20"*; (v) "*two legal violations of essential importance in the constitutional court proceedings"*; states that (vi) "*putting pressure on the Government by unlawful notifications is unacceptable"*; and finally announces that (vii) "*the Government will carefully review the legal violations so far and, depending on their legal qualification, will take the necessary actions based on the*

legislation in force". The Court chooses only to strongly emphasize that the Government's approach to the Court reflected in this submission, is unacceptable and contrary to the fundamental values of the Constitution of the Republic.

242. In this context, the Court reiterates that it is an independent body in protection of the Constitution and is the final interpreter of the Constitution. The Court also recalls that the Constitution attributes to it full independence in the performance of its responsibilities. Moreover, it is a constitutional obligation of the Government and all institutions of the Republic to respect and not interfere with this independence. The Court also reminds the Government that the Constitution does not attribute to it any competence regarding the decision-making of the judiciary. Respecting the fundamental constitutional values, regarding the separation of powers, independence of the judiciary, independence and authority of the Constitutional Court and protection of the rule of law, is a constitutional obligation of all branches of government of the Republic of Kosovo.

V. In relation to the request for interim measures

243. The Court recalls that through the Referral submitted on 17 April 2020, the Applicants requested the imposition of interim measure whereby the implementation of the challenged Decisions of the Minister of Health would be suspended pending the decision of the case on merits by the Court.

244. On 20 April 2020, the Court had given the opportunity to the Government, the Assembly, with request that the same opportunity be provided to all deputies, the President and the Ombudsperson, who, by 21 April 2020, at 16:00hrs were to provide their comments on the Applicants' request for an interim measure. The Court received comments within the said deadline only from the Government. The latter objected the Applicants' request for imposition of interim measure, claiming that none of the requirements for imposition of the interim measures provided by the Law and the Rules of Procedure have been met. (See paragraphs 60-67 of this Judgment which reflect the Applicants' request for interim measure; and the comments submitted to the Court by the Government in respect of the request for interim measure).

245. Given that the Court, by this Judgment, has already decided on the merits of the case in its entirety, the request for an interim measure remains without subject of review.

VI. Conclusions

246. On 31 March 2020, the Court decided on case KO54/20, rendering a Judgment whereby it declared Decision No. 01/15 of the Government invalid, holding that the latter was in contradiction with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution in conjunction with articles 35 [Freedom of Movement], 36 [Right to Privacy], 43 [Freedom of Gathering] of the Constitution and the equivalent articles of the ECHR, namely articles 8 (Right to respect for private and family life), 11 (Freedom of assembly and association), and 2 (Freedom of movement) of Protocol No. 4 of the ECHR.

247. In the abovementioned Judgment, the Court emphasized that (i) the Government may only implement a law of the Assembly that limits a fundamental right and freedom, and only to the extent that the Assembly has authorized it through the respective law; and that (ii) the Ministry of Health, namely the Government, is authorized to issue decisions aimed at preventing and fighting the pandemics, only to the extent it is authorized through the Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases and Law No. 04/L-125 on Health. The Court also stated that these two laws do not authorize the Ministry of Health, namely the Government, to limit the rights and freedoms guaranteed by the Constitution at the level of the entire Republic of Kosovo and for all the citizens of the Republic of Kosovo without exception.

248. Following Judgment KO54/20, on 14 April 2020, through thirty-eight (38) decisions on "*preventing, fighting and eliminating the infectious disease COVID-19*", the Ministry of Health imposed limitations in all municipalities of Kosovo and for all citizens of the Republic of Kosovo. The Court in the present case, namely KO61/20, is not conducting a constitutional review of all thirty-eight (38) abovementioned Decisions, because the Applicants have not challenged all of them.

249. Only three (3) of them have been challenged before the Court, Decisions [No. 229/IV/2020]; [No. 238/IV/2020]; and [No. 239/IV/2020] of 14 April 2020, for the municipalities of Prizren, Dragash and Istog, respectively. The Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health declaring the Municipality of Prizren "*quarantine zone*", has also been challenged before the Court.

250. Therefore, the constitutional question entailed in this Judgment, KO61/20, is the compatibility with articles 35 and 55 of the Constitution of the four (4) challenged Decisions of the Ministry of Health. The Court, in assessing their constitutionality, based on article 55 of the Constitution, the case-law of the Court, including the Judgment of the Court KO54/20, and the case-law of the ECtHR pertaining to Article 2 of Protocol No. 4 of the ECHR, has reviewed whether the "*interferences*", namely the limitations on the freedom of movement of the citizens in the municipalities of Prizren, Dragash and Istog, respectively (i) are "*prescribed by law*", namely by Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases; (ii) pursue a "*legitimate aim*"; and (iii) are "*necessary in a democratic society*".

251. Based on the examinations and assessments of the documents submitted to the Court and its case-law, the Court, unanimously, decided to declare Referral KO61/20 admissible for review on the merits, taking into account that all admissibility criteria established in the Constitution, the Law on the Constitutional Court and the Rules of Procedure, have been met.

252. The Court decided that the Decisions "*on preventing, fighting and eliminating the infectious disease COVID-19*" in the municipalities of Prizren, Dragash and Istog, respectively, are in compliance with the Constitution, with the exception of the respective points of the enacting clauses which determine "*the*

administrative minor offences", whereas it declared unconstitutional the Decision declaring the Prizren municipality a "*quarantine zone*".

253. More precisely, the Court, unanimously, decided that: (i) Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating the infectious disease COVID-19*" in the municipality of Prizren (points I, II, III, IV, VI, VII and VIII); and (ii) Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating the infectious disease COVID-19*" in the municipalities of Dragash and Istog (points I, II, III, V, VI and VII), respectively, **are in compliance** with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. Consequently, all the specified points of the three abovementioned Decisions, were declared constitutional by the Court.

254. The Court held, that in issuing the abovementioned Decisions, the Ministry of Health, has acted in compliance with the authorizations prescribed by the Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases, and consequently the "*interferences*" with the right of freedom of movement of the citizens of the municipalities of Prizren, Dragash and Istog, through the abovementioned Decisions, were "*prescribed by law*". The Court also found that the latter, pursue a "le*gitimate aim*", namely the one of the protection of "*public health*", as foreseen in paragraph 3 of Article 2 of Protocol No. 4 of the ECHR; are proportional in relation to "*legitimate aim*" pursued; and are "*necessary in a democratic society*".

255. However, the Court, by majority, decided that: (i) item V of Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating the infectious disease COVID-19*" for the municipality of Prizren; and (ii) item IV of Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating the infectious disease COVID-19*" for the municipalities of Dragash and Istog, respectively, through which "*the administrative minor offences"* and the respective sanctions are determined, **are not in compliance** with Article 55 of the Constitution in conjunction with Article 35 of the Constitution and Article 2 of Protocol No. 4 of the ECHR. The Court reasoned that in determining the non-compliance with the measures provided for by the abovementioned Decisions as "*administrative minor offences*", the Ministry of Health exceeded the authorizations provided by Law No. 02/L-109 or Prevention and Fighting against Infectious Diseases. The Court stated that based on Law No. 05/L-087 on Minor Offences, the minor offenses and the respective sanctions must be determined only by law of the Assembly of the Republic or through acts of a municipal assembly, and that this authorization may not be delegated to other bodies. Consequently, the administrative minor offenses determined through these three challenged Decisions, are not "*prescribed by law*" and consequently, are declared unconstitutional.

256. The Court, on the other hand, decided, by majority, that Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health, declaring the Municipality of Prizren "*quarantine zone*", **is not in compliance** with

Articles 35 and 55 of the Constitution and Article 2 of Protocol no. 4 of the ECHR. The Court held by issuing this Decision, the Ministry of Health has exceeded the authorizations provided by Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases, and consequently the "*interferences*" with the right of freedom of movement of the citizens, through the quarantine of the all citizens of the municipality of Prizren, are not "*prescribed by law*". The Court clarified that the "*quarantine*" according to Law No. 02/L-109 for Prevention and Fighting against Infectious Diseases, may be ordered by the Ministry of Health, following the recommendation by the NIPHK, only for natural persons which are confirmed or suspected to have been in direct contact with the sick persons or suspected of infectious disease. Therefore, the Decision declaring entire municipality of Prizren a "*quarantine zone*", was declared unconstitutional.

257. Pertaining to the request for interim measure, the Court held that following the decision of the judges to decide the merits of the case in their entirety, and to render this Judgment, the latter remained without a subject of review.

258. The Court also recalled that by Judgment KO54/20, it had set another date for the entry into force of its Judgment, namely 13 April 2020, emphasizing that until that date, the relevant institutions of the Republic of Kosovo, in the first place, the Assembly, must take appropriate measures to ensure that the necessary limitations on fundamental rights and freedoms in order to preserve the public health, are made in accordance with the Constitution and Judgment KO54/20.

259. In addition, the Court emphasizes that despite the specific request addressed to the Assembly requesting information "*regarding all the steps taken by the Assembly of the Republic of Kosovo after the publication of Judgment KO54/20 of 31 March 2020*", the Court did not receive a response from the Assembly. In this regard, the Court initially emphasized the fact that it is a legal obligation of all public authorities "*to support the work of the Constitutional Court and to cooperate with the Constitutional Court upon request of the Constitutional Court*". Furthermore, the Court emphasized that based on Judgment KO54/20, the Assembly was obliged, either through supplementing and amending existing applicable legislation or through the adoption of a new law, to determine the most appropriate mechanisms and the corresponding authorizations, for the competent authorities, including the Ministry of Health, namely the Government, to take the appropriate and necessary measures designed to fight and prevent COVID-19 pandemics, in compliance with the Constitution and Judgment KO54/20. In this regard, the Court also emphasized Article 116 [Legal Effect of Decisions] of the Constitution, based on which, the decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

260. In Judgment KO61/20, the Court also addressed the submission of 23 April 2020 of the Prime Minister, submitted to the Court on behalf of the Government, entitled "*submission regarding non-compliance with the legal deadlines and the Rules of Procedure of the Constitutional Court by the Constitutional Court in case No. KO61/20*", through which the Government expressed its "*concerns*" pertaining to "*violation of essential provisions*

regarding the procedure and deadlines to be followed" by the Court, while also emphasizing that the "*Government will carefully review the legal violations so far and, depending on their legal qualifications, will take the necessary actions based on the legislation in force*".

261. The Court has shared this submission, same as other submissions, with all the interested parties in this case. The submission has also been published in its entirety together with Judgment KO61/20, which also contains the necessary clarifications pertaining to this submission. Nevertheless, the Court strongly emphasizes that the Government's approach towards the Constitutional Court reflected through this submission, is unacceptable and contrary to the fundamental values of the Constitution of the Republic.

262. The Court reiterates that it is an independent body established to protect the Constitution and it is the final interpreter of the Constitution. The Court recalls that the Constitution attributes to it full independence in the performance of its responsibilities. Furthermore, it is a constitutional obligation of the Government and all institutions of the Republic, not to interfere with this independence. The Court also reminds the Government that the Constitution does not attribute to it any competence regarding the decision-making of the judicial power. Respecting the basic constitutional values, pertaining to the separation of powers, the independence of the justice system, the independence and authority of the Constitutional Court and the protection of the rule of law, is a constitutional obligation of all branches of government of the Republic of Kosovo.

263. Finally, the Court emphasizes the fact that regardless of the situation created with pandemic COVID-19, and which has affected the entire world, the rule of law, must prevail. This is also emphasized by the Council of Europe in the Information Document SG/Inf(2020)11 of 7 April 2020 on Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis, but also in the Opinions of the Venice Commission, including the one on Protection of Human Rights in Emergency Situations and the Rule of Law Checklist. All institutions of the Republic are obliged to act in full compliance with the respective constitutional and legal competences and in compliance with the Judgments of the Court.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Articles 113.2 (1) and 116 of the Constitution, Article 20 of the Law on the Constitutional Court and Rule 59 (2) of the Rules of Procedure, on 1 May 2020,

DECIDES

I. TO DECLARE, unanimously, the Referral admissible;

II. TO HOLD, unanimously, that Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health "*on preventing, fighting and eliminating the infectious disease COVID-19*" in the territory of the municipality of Prizren (points I, II, III, IV, VI, VII and VIII), **is in compliance** with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution in conjunction with Article 35 [Freedom of Movement] of the Constitution and Article 2 (Freedom of movement) of Protocol No. 4 of the ECHR;

III. TO HOLD, unanimously, that Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating infectious disease COVID-19*" in the municipalities of Dragash and Istog (points I, II, III, V, VI and VII), respectively, **are in compliance** with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution in conjunction with Article 35 [Freedom of Movement] of the Constitution and Article 2 (Freedom of movement) of Protocol No. 4 of the ECHR;

IV. TO HOLD, by majority, that point V of Decision [No. 229/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating the infectious disease COVID-19*" in the municipality of Prizren and point IV of Decisions [No. 238/IV/2020] and [No. 239/IV/2020] of 14 April 2020 of the Ministry of Health, "*on preventing, fighting and eliminating infectious disease COVID-19*", in the Municipalities of Dragash and Istog, pertaining to the administrative minor offences, **are not in compliance** with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution in conjunction with Article 35 [Freedom of Movement] of the Constitution and Article 2 (Freedom of movement) of Protocol No. 4 of the ECHR;

V. TO HOLD, by majority, that Decision [No. 214/IV/2020] of 12 April 2020 of the Ministry of Health declaring the Municipality of Prizren a "*quarantine zone*", **is not in compliance** with Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution in conjunction with Article 35 [Freedom of Movement] of the Constitution and Article 2 (Freedom of movement) of Protocol No. 4 of the ECHR;

VI. TO DECLARE, invalid, in accordance with Article 116.3 of the Constitution, point V of Decision [No. 229/IV/2020] and point IV of Decisions [No. 238/IV/2020] and [No. 239/IV/2020], referred to in

item IV of this enacting clause, from the date of entry into force of this Judgment;

VII. TO DECLARE, invalid, in accordance with Article 116.3 of the Constitution, Decision [No. 214/IV/2020] referred to in item V of this enacting clause, from the date of entry into force of this Judgment;

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; and

X. This Judgment is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Gresa Caka-Nimani	Arta Rama-Hajrizi

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