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

Prishtina, 9 July 2020
Ref. no.: AGJ 1584/20

This translation is unofficial and serves for information purposes only

JUDGMENT

in

Case No. KO219/19

Applicant

The Ombudsperson

Constitutional review of Law No. 06/L-111 on Salaries in Public Sector

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by the Ombudsperson Institution of the Republic of Kosovo (hereinafter: the Applicant or the Ombudsperson).

Challenged law

2. The Applicant challenges the constitutionality of Law No. 06/L-111 on Salaries in Public Sector (hereinafter: Law on Salaries or the challenged Law).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Law, which according to the Applicant's allegation is not in compliance with paragraph 2 of Article 3 [Equality Before the Law], Article 4 [Form of Government and Separation of Power], paragraph 1 of Article 7 [Values], Article 10 [Economy], Article 21 [General Principles], paragraph 1 of Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 55 [Limitations on Fundamental Rights and Freedoms], paragraphs 3 and 7 of Article 58 [Responsibilities of the State], paragraph 2 of Article 102 [General Principles of the Judicial System], paragraph 1 of Article 109 [State Prosecutor], Article 119 [General Principles], paragraphs 1 and 2 of Article 142 [Independent Agencies], Article 130 [Civilian Aviation Authority] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 1 of Protocol No. 1 (Protection of property) of the European Convention on Human Rights (hereinafter: the ECHR), and paragraph 2 of Article 23 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

4. In addition to challenging the constitutionality of the Law on Salaries in its entirety, of the Applicant, namely the Ombudsperson, also challenges the constitutionality of the following articles of the Law on Salaries: 4.4; 4.5; 5.5; 6.4; 7.5; 8; 8.3; 9.5; 14.4; 15.4; 17.4; 18.2; 19.4; 20.5; 21.8; 22.5; 23.5; 25.3; 26.2; 29; 33, alleging that the provisions of the Law in question are not in compliance, in particular, with the principle of separation of powers.

5. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure for "*immediate suspension"* of the challenged Law.

Legal basis

6. The Referral is based on sub-paragraph (1) of paragraph 2 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution; Articles 22 [Processing Referrals], 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 Rules 32 [Filing of Referrals and Replies], 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

7. On 5 December 2019, the Applicant submitted the Referral to the Court.

8. On 6 December 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.

9. On 10 December 2019, the Applicant was notified about the registration of the Referral. On the same date, the Referral was communicated to the President of the Republic of Kosovo, and the Caretaker Prime Minister of the Republic of Kosovo, with an invitation to submit eventual comments to the Court, by 24 December 2019. The Referral was also communicated to the Secretary of the Assembly of the Republic of Kosovo, who was requested to submit to the Court all relevant documents regarding the challenged Law. [*Clarification of the Court*: at the time of submitting the Referral to the Court, the Government of Kosovo had a Caretaker Prime Minister].

10. On 12 December 2019, the Judge Rapporteur recommended to the Court the approval of interim measure. On the same date, the Court decided with majority of votes to suspend the implementation of the challenged Law in entirety until 30 March 2020. (See the operative part of the Decision of the Constitutional Court, KO219/19, of 12 December 2019).

11. On 23 December 2019, the Ministry of Public Administration (hereinafter: the MPA) submitted its comments regarding Referral KO219/19 in response to the Applicant's allegations. [*Clarification of the Court*: at the time of submitting the Referral to the Court, the MPA was a separate Ministry of the Government, while with the current structure of the Government, the MPA and its responsibilities have been incorporated within the Ministry of Internal Affairs].

12. On 14 January 2020, the Court sent a request to the Venice Commission to submit an Opinion in capacity of *Amicus Curiae* regarding case KO219/19.

13. On 23 January 2020, the Applicant notified the Court that several requests were submitted to the Ombudsperson for *"revocation of the Decision on Interim Measure of the Constitutional Court KO219/19, of 12 December 2019, on suspension of the Law on Salaries"*. On that occasion, the Applicant notified the Court about that regarding this matter: *"The Ombudsperson has received requests from 17 municipalities, with 266 educational institutions and 7.047 thousand signatures"*. The Applicant submitted all these requests to the Court without explaining or clarifying what is the specific request to the Court in relation to the documents forwarded.

14. On 30 January 2020, the United Trade Union of Education, Science and Culture (hereinafter: SBASHK), the Federation of Health Trade Unions, the Police Trade Union, the Independent Trade Union of Kosovo Customs and the Firefighters' Trade Union, submitted to the Court a *"Request for revocation of the interim measure (suspension) of the Law on Salaries"*. The trade unions in question stated that they submitted the Referral in accordance with Article 32 [Right to Legal Remedies] of the Constitution and paragraph (11) of Rule 57 [Decision on Interim Measures] of the Rules of Procedure.

15. On 3 February 2020, the Venice Commission sent to the Court several documents concerning the salaries of judges and the Ombudsperson, notifying the Court that due to the lack of international standards concerning the principle of "*equal pay for equal work*", this case is more appropriate for the Venice Commission Forum than for an *Amicus Curiae* Opinion. In this regard, the Venice Commission recommended the Court to refer to the Venice Commission Forum, to obtain more detailed comparative information regarding the issue dealt with in case KO219/19.

16. On 6 February 2020, the Court requested the Applicant to clarify the documents submitted on 23 January 2020. In the request of the Court addressed to the Applicant, the Court explained, *inter alia*, that:

> *"[...] the only party in case KO219/19 is the Ombudsperson Institution, as a party that has filed a referral with the Constitutional Court requesting a thorough assessment of the constitutionality of the said Law and its entire suspension. All others, including the aforementioned trade unions, may only have the status of an interested party but not a "party" within the meaning of the aforementioned provisions of the Rules of Procedure.*
> *[...] We note that the documents you have forwarded to the Constitutional Court, have in fact been addressed to you and it is the Ombudsperson Institution, the body that should review the documents addressed to the Ombudsperson and decide what step you want to take in relation to those requests. If the Ombudsperson Institution considers that a request for "revocation of an interim measure" should be filed, then the Institution you run must file a specific and reasoned referral, in accordance with the relevant constitutional and legal provisions, and with the necessary clarifications what concrete action is required to be taken by the Constitutional Court. It follows that, in order to set the Constitutional Court in motion, it is not sufficient to simply forward the requests of other interested parties without the necessary clarification regarding the documents and files submitted to the Court.*

17. On 13 February 2020, the Judge Rapporteur, after consulting other judges of the Court and following the recommendation of the Venice Commission to address the Venice Commission Forum, addressed the latter with the following questions regarding the case KO219/19:

> *"(1) How is the issue of salaries in the public sector regulated in your respective countries, in relation to the principle on "separation of powers" and "checks and balances" among the different government branches? Has your Court dealt with any case in which these two principles were discussed in relation to salaries in public sector?*
>
> *(2) Has your Court dealt with any cases in which issues related to the "organisational, functional and financial independence" of public institutions were discussed and decided upon?*
>
> *(3) According to your Constitution, laws and case-law (if applicable), is the Assembly authorized with the competence to deny budgetary independence and internal job-position categorization to public*

institutions that used to enjoy such independence with previously existing laws?

(4) Do you recall any instances in your country in which the salaries of the judiciary or other public institutions have been lowered and if that happened, what were the circumstances and rationale for such decrease? In this aspect:

a) Do you have any relevant practice which shows how such lowering of salaries impacts the independence of the judiciary and other constitutionally independent institutions?

b) Do you have any relevant practice in which you have analysed the applicability of Article 1 of Protocol no. 1 to the ECHR (protection of property) in relation to already acquired rights and the manner in which such rights may be modified by the Parliament?

c) Do you have any relevant practice which shows that the regulation of salaries and remunerations must follow constitutional specificities of certain public institutions within the meaning of institutional independence?"

18. Between 14 February 2020 and 12 March 2020, the Court received a response from the liaison officers of the Venice Commission, recommending that, in the circumstances of the present case, the following documents and opinions of the Venice Commission should be analyzed and used, as well as the following cases of various international and constitutional courts:

(i) *Amicus curiae* to the Constitutional Court of North Macedonia regarding the amendment and supplementation of certain laws relating to the system of salaries and allowances for elected and appointed officials CDL-AD (2010)038 – the relevant part on the lowering of the salaries of judges;
(ii) Opinion CDL-AD (2002) 008 on Bosnia and Herzegovina regarding Ombudsperson status – the relevant part discussing the salary of the Ombudsperson and judges;
(iii) Opinion CDL-AD (2004) 006 on Bosnia and Herzegovina regarding Ombudsperson status – the relevant part on the issue of the Ombudsperson's independence and his salary;
(iv) Opinion CDL-AD (2019)005, known as "The Principles of Venice" for the Protection and Promotion of the Ombudsperson Institution – the part relevant to the Ombudsperson staff and employment issues of the Ombudsperson staff;
(v) Check-list for principle of the Rule of Law CDL-AD (2016)007 – relevant part speaking about judges;
(vi) The case of the European Court of Justice (hereinafter: the ECJ), with reference no. ECJ-2018-1-003;
(vii) The case of the European Court of Human Rights (hereinafter: the ECtHR), with reference no. ECH-2017-3-006;
(viii) Cases of the Constitutional Court of Portugal, with reference no. POR-2015-3-018, POR-2013-3-018; POR-2013-1-006; POR-2012-2-011;

(ix) The case of the Constitutional Court of Cyprus, with reference no. CYP-2014-2-001;
(x) The case of the Constitutional Court of Andorra, with reference no. AND-2014-2-001;
(xi) Cases of the Czech Constitutional Court, with reference no. CZE-2011-2-007; CZE-2010-1-003;
(xii) The case of the Constitutional Court of Slovenia, with reference no. SLO-2009-3-006;
(xiii) The case of the Constitutional Court of Poland, with reference no. POL-2001-H-001;
(xiv) The case of the Supreme Court of Canada, with reference no. CAN-1997-3-005.

19. Within the aforementioned dates, in addition to the aforementioned documents, opinions and cases proposed by the liaison officers of the Venice Commission, the Court has also received nine (9) direct replies from nine (9) constitutional/supreme members of the Forum of the Venice Commission, namely from: the Federal Constitutional Court of Germany, the Constitutional Court of North Macedonia, the Constitutional Court of Moldova, the Supreme Court of Sweden, the Constitutional Court of Croatia, the Supreme Court of Mexico, the Constitutional Court of Slovakia, the Constitutional Tribunal of Poland, the Constitutional Court of South Africa.

20. On 14 February 2020, the Applicant responded to the Court's request for clarification of 6 February 2020 concerning the submissions forwarded to the Court on 23 January 2020 as well as the documents submitted by several trade unions on 30 January 2020. The Applicant clarified the following: "*In this case, SBASHK, as an interested third party, has requested us to process these requests before the Constitutional Court, and as a result of these claims on 23 January 2020, we have forwarded such requests for notification to the Constitutional Court*". The Applicant neither stated nor requested the revocation of the interim measure but upheld his first request for the imposition of an interim measure and for a complete suspension of the implementation of the challenged Law.

21. On 29 March 2020, the Court notified the abovementioned trade unions that the Court received their letters and that the latter would be considered in the context of the Referral submitted by the Ombudsperson as a party who filed Referral KO219/19.

22. On 30 March 2020, the Court extended the interim measure until 30 June 2020, thus postponing the suspension of the application of the challenged Law until that date.

23. On 10 April 2020, the Court requested the Caretaker Minister of the Ministry of Finance and Transfers, Mr. Besnik Bislimi (hereinafter: the Ministry of Finance and Transfers), to answer some questions of the Court and submit some additional documents. Specifically, the Court asked the Ministry of Finance and Transfers to answer the following questions:

1. For what positions exactly and how much will the salary be reduced? Please tell us exactly, emphasizing that for X position, of X institution, the salary was X euro with the previous laws, while with the challenged Law the salary will be X euro, which consequently results in the salary difference of minus X euro?

2. For what positions exactly and how much will the salary increase? Please tell us exactly, emphasizing that for X position, of X institution, the salary was X euro according to the previous laws, while with the challenged Law, the salary will be X euro, which consequently results in the salary difference of plus X euro?

3. Is there an existing position in the Republic of Kosovo which continues to receive a salary according to the laws in force - and for which the new salary is not defined in the challenged Law? If so, what exactly are those positions, in what institutions are they and how much is their current salary? What will happen to their next salary? How much will their salary be if the challenged Law is applied?

4. What positions will be paid exactly from the state budget of the Republic of Kosovo? What positions and what institutions are exactly excluded from the challenged Law?

5. How is the issue of their salaries regulated by the challenged Law for public enterprises and those which are not financed by the state budget of the Republic of Kosovo or which are not fully financed by the state budget of the Republic of Kosovo. Exactly how they will be paid and by what means their salary will be generated?

6. The challenged law provides for about 18 special competencies for the Government to regulate certain issues through sub-legal acts. In this regard, please explain whether all public sector salaries are regulated solely and exclusively by the challenged Law and Annex no. 1 of it, or are there salaries which will be determined by the sub-legal acts of the Government? If so, what positions are they and for what institutions? If not, tell us how the claim of lack of direct determination for some existing positions in employment is explained and how salaries will be set for such positions?

7. Has the Government approved all the sub-legal acts mentioned in the challenged Law, taking into account that the deadline for their adoption was 9 months after the entry into force of the challenged Law? If yes, please send us a copy of such sub-legal acts.

24. The Court also requested the Ministry of Finance and Transfers to submit to the Court two additional documents, namely:

"[F]inal list of salaries disbursed by the Ministry of Finance and Transfers for March 2020 for all employees at the level of the Republic of Kosovo. This list will help to clarify exactly that by the applicable law, what positions are paid and how exactly is the salary for each position.

[F]inal list of salaries that would be disbursed by the Ministry of Finance and Transfers if the challenged Law were to be implemented. This list will help to clarify exactly what positions are included in the challenged Law and how exactly the salary will be for each position. This will also clarify: (i) where the salary reduction was made; (ii) where the increase of salaries has taken place; (iii) the salary of what position has not yet been determined (if such a claim is correct).”

25. On 17 April 2020, the Ministry of Finance and Transfers requested an extension, reasoning that: *“In the initial review of your letter, we noticed that the questions are very complex and need very serious treatment on our part. On the other hand, given the pandemic situation, the Ministry of Finance and Transfers is working with reduced capacities and the main focus of work at this time is on the implementation of the Fiscal Emergency Package and other budget processes. Therefore, I sincerely request that the deadline set by you for response is extended until 20 May 2020.”*

26. On 21 April 2020, the Court approved the request of the Ministry of Finance and Transfers for extension of the deadline.

27. On 21 May 2020, the Court received the answers requested from the Ministry of Finance and Transfers, stating the following: “*On 10 April 2020, I received from you the letter no. Protocol 330 in the Ministry of Finance and Transfers, where you requested answers to some questions related to Law no. 06-L-111 on Salaries in Public Sector. Upon receipt of the letter, I formed a professional commission composed of senior officials from the Ministry of Finance and Transfers and the Ministry of Internal Affairs and Public Administration, who assisted me with professional advice in drafting answers to questions related to yours”.*

28. On 22 May 2020, the Ministry of Finance and Transfers, has submitted an explanatory letter which states: “*We would like to inform you that due to a technical problem we had on 20.05.2020, we could not send the complete answer to the Constitutional Court of the Republic of Kosovo. In fact, the file was ready and was registered with that date in our Ministry, but we had a problem uploading the documentation to the CD. This has caused the delay. I hope that this is understood by you, and that the comments are taken into account by the Constitutional Court of the Republic of Kosovo”.*

29. On 1 June 2020, the Court sent a copy of the responses received from the Ministry of Finance to all interested parties for their information.

30. On 30 June 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

31. On the same date, on 30 June 2020, the Court: (i) to declare, unanimously the Referral admissible; (ii) to declare, with majority that Law No. 06/L-111 on Salaries in Public Sector, in its entirety, is not in compliance with Articles 4 [Form of Government and Separation of Power]; 7 [Values]; 102 [General

Principles of the Judicial System]; 103 [Organization and Jurisdiction of Courts] paragraph 1; 108 [Kosovo Judicial Council]; 109 [State Prosecutor]; 110 [Kosovo Prosecutorial Council], 115 [Organization of the Constitutional Court]; and Articles 132 [Role and Competencies of the Ombudsperson]; 136 [Auditor-General of Kosovo]; 139 [Central Election Commission]; and 141 [Independent Media Commission] of Chapter XII [Independent Institutions] of the Constitution; (iii) to declare invalid, in its entirety, Law No. 06/L-111 on Salaries in Public Sector; (iv) to repeal the decision on the imposition of the interim measure of 12 December 2019 as well as the decision on the extension of the interim measure of 30 March 2020. The main conclusions of the Court and the Operational Part of Judgment KO219/19 were published on the same day.

32. On 9 July 2020, the Court published full Judgment in case KO219/19.

Summary of facts

33. In 2018, the MPA started drafting the Law on Salaries.

34. On 8 June 2018, the Draft Law on Salaries in Public Sector was published on the electronic platform for public consultation and was open for comments until 28 June 2018.

35. On 23 June 2018, the MPA forwarded to the Office of the Prime Minister for approval of the Draft Law on Salaries. The accompanying letter stated that the Budget Impact Assessment compiled by the Ministry of Finance was missing in this file, while the latter would be sent at the time of completion.

36. On 3 September 2018, the Ministry of Finance forwarded the budget impact assessment for the Draft Law on Salaries. In this assessment it was concluded that the Draft Law on Salaries will have additional costs for the Budget of the Republic of Kosovo and that this cost is not part of the budget projections 2019-2021.

37. On 3 September 2018, the Government of the Republic of Kosovo (hereinafter: the Government), by Decision No. 08/63, approved the Draft Law on Salaries.

38. On 14 August 2018, the Ministry of European Integration (hereinafter: MEI) drafted the Legal Opinion on Compliance with the "*acquis*" of the European Union (hereinafter: the EU) on the Draft Law on Salaries.

39. On 24 August 2018, the MPA sent to the Office of the Prime Minister the final version of the Draft Law on Salaries, with a request that the latter be reviewed and approved at a Government meeting. Along with (i) the Draft Law on Salaries, the following were also sent: (ii) Explanatory Memorandum; (iii) Declaration of conformity; and, (iv) MEI Legal Opinion. It was stated that the budget impact assessment by the Ministry of Finance would be sent as soon as it is received by the MPA.

40. On 27 August 2018, the Secretary General of the Office of the Prime Minister issued a Certificate confirming that the Draft of the challenged Law *"has gone through all the procedural stages provided by the Rules of Procedure."*

41. On 3 September 2018, the Ministry of Finance submitted to the MPA the Opinion regarding the budgetary impact assessment of the Draft Law on Salaries. In the conclusions of this Opinion it was emphasized: "*Ministry of Finance - Budget Department assesses that in terms of budgetary impact the estimated cost of the Draft Law on Salaries for 2019 compared to the budget allocations of 2018 will have additional budgetary costs for the Budget of the Republic of Kosovo in the amount of 90,669,920 €. Whereas, compared to document of MTEF 2019-2021, the additional budget cost for the Budget of the Republic of Kosovo will be in the amount of 205,768,891 € for the period 2019-2021, for the category of wages and salaries, for 2019 the amount of 69,747,219 €, for 2020 the amount of 67,776,873 € and for 2021 the amount of 68,244,799 €.*
Ministry of Finance - Budget Department estimates that the additional budget cost presented above is not part of the budget projections 2019-2021".

42. On 3 September 2018, the Government by Decision No. 08/63 approved the challenged Law and decided to send it to the Assembly of the Republic of Kosovo (hereinafter: the Assembly) for review and approval.

43. On 7 September 2018, the Government, in accordance with its abovementioned Decision, processed the challenged Law to the Assembly *"in order for it to be reviewed and approved in the prescribed procedure."*

44. On 12 September 2018, the President of the Assembly sent the Draft of the challenged Law to the deputies of the Assembly and charged the Committee on Public Administration, Local Government and Media, as a Functional Committee (hereinafter: the Functional Committee), to review the Draft Law in question and submit to the Assembly a Report with recommendations.

45. On 8 October 2018, the abovementioned Functional Committee recommended the approval in principle of the Draft Law on Salaries.

46. On 25 October 2018, the Assembly proceeded with the first reading of the Draft Law on Salaries. On the same date, the Assembly by Decision No. 06-V-248 approved the Draft Law in principle and instructed five parliamentary committees to review the Draft Law in question and submit their reports with recommendations. The Assembly on this occasion charged the Functional Committee for Public Administration, Local Government and Media; Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency; Committee on Budget and Finance; Committee on European Integration; and the Committee on the Rights, Interests of Communities and Returns.

47. On 29 January 2019, the Functional Committee for Public Administration, Local Government and Media, processed the Draft Law in question for review to the standing committees.

48. On 30 January 2019, the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and the Oversight of the Anti-Corruption Agency decided to recommend to the Functional Committee that the Draft Law on Salaries and Proposed Amendments are in compliance with the Constitution and applicable Law. This Committee also introduced some amendments.

49. On 30 January 2019, the Committee on the Rights and Interests of Communities and Returns decided to recommend to the Functional Committee that the Draft Law on Salaries does not infringe on or affect the rights of communities.

50. On 31 January 2019, the Committee on European Integration explained to the Functional Committee that the scope of the Draft Law on Salaries is not specifically regulated by the EU legislation.

51. On 31 January 2019, the Committee on Budget and Finance, decided to submit to the Functional Committee the recommendation that the Draft Law on Salaries contains affordable costs for the Budget of the Republic of Kosovo.

52. On 1 February 2019, the Functional Committee handed over to the deputies of the Assembly a "Report with Recommendations" for the Draft Law in question. In this Report it was explained that in the initial Draft Law of 32 articles in total, a total of 58 amendments were proposed which had received the support of the Functional Committee meanwhile, without the support of the Functional Committee, another 19 amendments were proposed. A total of 77 amendments were submitted to the Assembly for consideration in the plenary session.

53. On 2 February 2019, the Assembly proceeded for the second reading the Draft Law on Salaries. On the same date, the Assembly, by Decision No. 06-V-310, approved the challenged Law.

54. On 12 February 2019, the challenged Law was sent to the President of the Republic of Kosovo for decree and promulgation in the Official Gazette.

55. On 1 March, 2019, the challenged Law was published in the Official Gazette. Article 34 [Entry into force] of the challenged Law stipulates that "*This Law shall enter into force nine (9) months after its publication in the Official Gazette of the Republic of Kosovo".*

56. On 1 December 2019, the challenged Law entered into force.

Applicant's allegations

57. The Applicant challenges the challenged Law (Law No. 06/L-111 on Salaries in Public Sector) in entirety. The Applicant alleges that the challenged Law and Annex one (1) to it have failed to carry the constitutional spirit in terms of: (i) separation of powers, (ii) equality before the law (iii) guaranteeing the property right; and (iv) the rule of law.

Allegations regarding "separation of powers"

58. As to the "separation of powers", the Ombudsperson in a capacity of the Applicant alleges that the challenged Law does not adequately provide for the separation of powers as set out in Article 4 of the Constitution. Therefore, according to him, it is necessary to ensure the principle of separation of powers both hierarchically and operatively in the matter of salaries in the public sector.

59. The Applicant states that the challenged Law giving the right to issue sub-legal acts only to the Government and in certain cases to the Assembly does not take into account the constitutional requirement to respect the principle of separation of powers set out in Article 4 of the Constitution. This determination as such has an impact on (i) organizational, functional and financial independence, and also interferes with (ii) the check and balance mechanism that guarantees the democratic functioning of the state. In this regard, the Applicant claims that the specifics of the constitutional status of the institutions should be respected in their entirety, including the issuance of the sub-legal acts set forth in this Law, and their independence should be preserved and secured. In relation to this allegation, the Applicant specifically challenges the following provisions of the challenged Law: Article 4 paragraph 4, Article 5 paragraph 5, Article 6 paragraph 4, Article 7 paragraph 5, Article 8 paragraph 3, Article 9 paragraph 5, Article 14 paragraph 4, Article 15 paragraph 4, Article 17 paragraph 4, Article 18 paragraph 2, Article 19 paragraph 4, Article 20 paragraph 5, Article 21 paragraph 8, Article 22 paragraph 5, Article 23 paragraph 5, Article 25 paragraph 3 and Article 26 paragraph 2.

60. The Applicant considers that the challenged Law applies the same criteria to authorities, institutions and bodies in the Republic of Kosovo, without regard to the order and separation of powers in accordance with the Constitution and the specificity of the constitutional status of public sector entities.

61. The Applicant states, *inter alia*, that the challenged Law infringes the principle of separation and balancing of powers without regard to the fact that many of these institutions have specific laws, which specifically govern the rights and obligations of the employees of these institutions. According to the Applicant, the challenged Law violates the principle of justice *lex specialis derogat legi generalis*, which stipulates that when a given factual situation falls within the scope of two normative acts, priority is given to the special act over the general act (the challenged Law is general act).

62. The Applicant also states that as regards the independent institutions set out in Chapter XII of the Constitution and the Constitutional Court as established in Chapter VIII of the Constitution, the Constitutional Court's views and case law expressed by Judgment KO73/16 have not been taken into account (see, Applicant the Ombudsperson, *"Constitutional review of the Administrative Circular No. 01/2016, of 21 January 2016, issued by the Ministry of Public Administration of the Republic of Kosovo",* Judgment of 16 November 2016 (hereinafter: Judgment KO73/16), in particular paragraphs 88, 97, 98 and 100 of that Judgment). The Applicant also states that he has repeatedly requested the Government as well as the Assembly to consider the Judgment of the Constitutional Court in the course of the review and adoption of laws

constituting the package of laws on administrative reform, including the challenged Law in case KO73/16, which was not taken into account.

Allegations regarding "rule of law"

63. As to the principle of the "rule of law", the Applicant states that the Constitution, in Article 7 [Values], defines the rule of law as one of the values of the constitutional order in the country. In this respect, the Applicant refers to the principles of rule of law, according to the Report of the Venice Commission on the Rule of Law (see Report of the Venice Commission on the Rule of Law adopted by the Venice Commission at the 86th Plenary Session, 25-26 2011).

64. In this context, the Applicant highlights some of the principles that are considered relevant in the present case, such as: (i) principle of legal certainty - that requires that legal rules be clear and precise, the purpose of which is to ensure that legal situations and relationships are predictable. According to the Applicant, the Assembly is not allowed to ignore the fundamental rights by ambiguous laws, but that through this principle, to provide legal protection to individuals *vis-a-vis* the state, its organs and agents; (ii) respect for human rights - respect for the rule of law and respect for human rights are not necessarily synonymous. However, these two concepts largely overlap and many of the rights enshrined in the ECHR refer directly or indirectly to the rule of law; (iii) prohibition of discrimination and equality before the law - in addition to presenting fundamental human rights, they also present concepts of the rule of law.

65. Consequently, the Applicant alleges that the challenged Law contains provisions which are not sufficiently clear and precise, then the Assembly with its approval has circumvented the right not to discriminate against and the right to property, which along with other constitutional violations urged the Applicant to refer the challenged Law to the Constitutional Court for review.

Allegations regarding "equality before the law"

66. As to the equality before the law, the Ombudsperson in capacity of the Applicant states that the challenged Law, failed to provide "*equal salary for equal work"*, in the entire public sector. The challenged Law has allegedly created a divergent situation for equivalent positions, because in different institutions the same or comparable positions have been assessed with different salary levels. In this respect, the Ombudsperson considers that the challenged Law is incompatible with Articles 3 paragraphs (2), 7 (1); 21, 22 and 24 paragraph (1) of the Constitution – the Articles which establish equality before the law and general principles of fundamental rights and freedoms. The Applicant also alleges that the challenged Law is not in compliance with Article 23 paragraph (2) of the UDHR, which stipulates that: *"Everyone, without any discrimination, has the right to equal pay for equal work*." Accordingly, the Applicant refers to paragraph (1) of Article 22 of the Constitution, which stipulates that the UDHR is applied directly to the Republic of Kosovo and the human rights and freedoms guaranteed by this Declaration take precedence over the provisions in the event of a conflict of laws and other acts of public institutions.

67. The Applicant states that taking into account that human rights and fundamental freedoms are inseparable, inalienable and inviolable and as such are at the core of the legal order of the Republic of Kosovo, consequently any distinction, exception, limitation or preference in any ground, intended or effected to invalidate or impair the recognition, enjoyment or exercise, in the same way as others, of the fundamental rights and freedoms set forth in the Constitution and the laws applicable in the Republic of Kosovo, present discrimination.

Allegations regarding "protection of property"

68. Regarding to the "protection of property", the Ombudsperson in capacity of the Applicant alleges that the challenged Law violates the property rights of individuals or groups of the public sector. The Applicant refers to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution to assess the proportionality of reduction of salaries in the public sector, thus stating: "*In the present case, the Constitu6ional Court should assess whether the reduction of salaries in a number of entities in the public sector has been made in accordance with Article 55 of the Constitution, which provides for the limitation of fundamental rights and freedoms, the essence of the limited right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and the goal to be achieved, as well as the possibility of achieving that goal with less limitation".*

69. The Applicant also alleges that the salary is a "goods" from the point of view of Article 1 of Protocol no. 1 of the ECHR, because the employees have legitimate expectations of "materializing" their salaries. The Applicant adds that the reduction of salaries is the main complaint addressed to him and that, in his view, the challenged Law in many sectors "has reduced salaries". Based on the case law of the ECtHR, the Applicant considers that the challenged Law has not found a fair balance between the public interest and the fundamental rights and freedoms of the individual.

70. In this regard, citing the ECtHR case *Hasani vs. Croatia* (see the ECtHR case *Hasani vs. Croatia,* application no. 20844/09, Decision as to the admissibility of 30 September 2010), the Applicant states that: "*The ECtHR emphasizes the obligation of public authorities to maintain a fair balance necessary for the public interest and for the protection of the fundamental rights of citizens. This balance is not reached when citizens have to bear a large and disproportionate burden, with a direct impact on the reduction of economic rights. In these circumstances, there is a violation of Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR), due to a breach of the rationality and proportionality of the reduction in property rights […] It is clear that budgetary issues impose heavy burdens and disproportionate to employees paid from the budget, without maintaining a fair balance between the public interest and the necessary protection of fundamental human rights. Moreover, in the case of Kjartan Asmundsson v. Iceland, if the amount of benefits has been reduced or stopped, this is a restriction on property rights and this should be justified by the general interest. In essence, the ECtHR considers that a restriction is justified (even where applicants should be in*

possession of assets) in circumstances where the legitimate aim pursued (balancing the state budget in economic crises) is proportionate, considering the wide margin of appreciation of the state in the economic and social policies and the balance struck by the application of such measures".

Individual complaints of institutions and other entities interested in the constitutionality of the challenged Law - submitted to the Ombudsperson and forwarded by the latter to the Constitutional Court as part of the case file KO219/19

71. In addition to the above-mentioned allegations of the Ombudsperson through which the full constitutionality of the Law on Salaries is challenged, the Ombudsperson has forwarded to the Court thirty-five (35) individual complaints that have been submitted to the Ombudsperson by various institutions and entities concerned. [Clarification: these complaints were received by the Court from the Ombudsperson as part of the case file KO219_19 and the same were sent to the Ombudsperson by all 35 interested parties who considered that the challenged Law violates certain constitutional norms or certain rights and freedoms].

72. Regarding the above-mentioned individual requests which have been submitted to the Ombudsperson, the Applicant considers that it is in the interest of the complainants, but also of the public, for the Court to assess whether the challenged Law affects the legitimate interests of these complainants. More specifically, the Applicant, regarding the 35 complaints received by the Ombudsperson considers that the Court should provide an assessment regarding the following issues: (i) *"If the principle of separation of powers and the constitutional guarantee, which has to do with equality before the law, has been reached with the challenged Law and its Annex 1";* (ii) *"Whether the challenged Law should include public enterprises, which exercise public authority in the Republic of Kosovo and if their inclusion in the challenged Law violates the Constitution, respectively the principle of free market economy, expressed in Article 10 and in Article 119 of the Constitution of the Republic of Kosovo, reflected in Law no. 03/L-087 on Publicly Owned Enterprises";* (iii) "*Whether the challenged Law should carefully treat the employees of institutions, bodies and authorities of special importance and the employees in the public sector for whose specialization has been invested."*

73. The Court will next present the substance of all 35 the complaints in question. On the admissibility of the Referral, the Court will be specifically respond for the status of these complaints in the examination of this case (see paragraphs 188-191 of this Judgment).

Complaint by the Central Election Commission (CEC)

74. The CEC alleged before the Ombudsperson, that the challenged Law has inadequately categorized the CEC towards constitutional responsibility of this institution. The complainant states that according to Chapter XII of the Constitution of the Republic of Kosovo, the independent institutions have been established as: the Ombudsperson, the Auditor General, Central Bank of Kosovo, Central Election Commission and Independent Media Commission.

The complainant further alleges that the CEC has never been treated in the same way as other institutions which have the same constitutional basis, although the nature of their responsibilities is not the same as that of the CEC. The CEC, pursuant to Law No. 03/L-073 on General Elections in the Republic of Kosovo; pursuant to Judgment KO73/16 of the Constitutional Court and pursuant to Article 17 of the Rules of Procedure of the Central Election Commission, has issued its internal rules of procedure. As a result, the CEC assigned grades and coefficients to its employees on the basis of job specifics. In this regard, the CEC requests that the Law on Salaries in Public Sector respects the constitutional independence of the CEC, as an independent institution and maintain current salaries and grades according to the CEC internal regulations (Regulation No. 02/2017 on Job Descriptions and Classification of Jobs in the Central Election Commission Secretariat).

Complaint by the Kosovo Judicial Council (KJC)

75. The KJC alleged before the Ombudsperson that the adoption of the challenged Law inevitably renders inapplicable in practice the constitutional principles of the Constitution and consequently of the international agreements that the Republic of Kosovo has concluded with the European Union, more specifically, Stabilization and Association Agreement, which is concluded in the spirit of respecting the criteria for separation of powers. The KJC states that the Law on Salaries is in violation of the Constitution because it violates the principle of equality of powers and consequently violates the rights of KJC employees. According to Article 4 of the Constitution of the Republic of Kosovo, it is stated that the judicial power is unique, independent and exercised by the courts, which results in the judicial power being equal to the legislative and executive power, therefore, under this rule, employees should be treated equally, in particular the salaries of civil servants at all three levels (powers). The KJC also states that, given the fact that the judiciary is independent, the salaries should also be determined in accordance with the role and weight of the judicial system and, consequently, its administration within the constitutional system of the Republic of Kosovo. The KJC further alleges that the challenged Law did not include some of the existing positions of the judiciary, which is due to the fact that the Government and the Assembly did not take into account the comments and proposals submitted by the KJC. The latter also refers to and considers as part of this referral the request from the Independent Trade Union of Judiciary of the Republic of Kosovo. In view of all the above-mentioned circumstances, the KJC requests the Ombudsperson to refer the case to the Constitutional Court for the purpose of assessing the constitutionality of the challenged Law.

Complaint by the Kosovo Prosecutorial Council (KPC)

76. The KPC alleged, before the Ombudsperson, that the challenged Law is not in accordance with the Constitution of the Republic of Kosovo and violates the principle of equality of powers and consequently violates the rights of employees in the Kosovo prosecutorial system. The complainant requested the compensation of salaries in accordance with the principle of separation and equality of powers, as provided by the Constitution, namely that the judiciary should be equal to the legislative and the executive in terms of salaries. In this

respect, the complainant requested that the challenged Law be harmonized in Annex 1 so that the position of Chairperson of the Council and of the Chief State Prosecutor could be transferred to the subgroup of A2 positions, with a coefficient 10. The complainant requests that the Deputy State Prosecutor receives 95% of the salary of the Chief State Prosecutor. The complainant further alleges that according to the amendments made to Law No. 05/L-032 on Courts, the prosecutors of the Office of the Chief State Prosecutor, the Special Prosecution Office of Kosovo and the Chief Prosecutor of the Appellate Prosecution Office receive 90% of the salary of the President of the Supreme Court. Prosecutors of the Appellate Prosecution receive 90% of the salary of the Chief Prosecutor of the Appellate Prosecution. Also, 90% of the salary of the Chief Prosecutor of the Appellate Prosecution Office is received by the Chief Prosecutors of Basic Prosecutions. Prosecutors of Serious Crimes Department receive 90% of salary of Chief Prosecutor of Basic Prosecution, while the General Department prosecutors receive 85% of the salary of the Chief Prosecutor of the Basic Prosecution. The salary scheme explained above is considered by the Prosecutorial Council in accordance with the Constitution of the Republic of Kosovo, namely in accordance with Article 21, paragraph 1, item 10 of the Law on State Prosecution. The complainant announced that it would not accept that the salary of the Chairperson of the Council and the Chief State Prosecutor be equal to the executive power and that the salary of basic level prosecutors be in the A9 position group, with a coefficient 5.5, as this violates Article 4 of the Constitution and contradicts the basic laws that regulate the courts and the prosecutorial system.

Complaint by Kosovo Prosecutors Association

77. The Kosovo Prosecutors Association alleged, before the Ombudsperson that the challenged Law is in violation of the Constitution. They state that Article 4, paragraph 1, of the Constitution provides that Kosovo is a democratic republic, based on the principle of separation of powers, control and balance between them. According to them, this means balancing the obligations, but also the rights of the three powers, which must also be balanced in terms of salaries. In accordance with Article 4 of the Constitution, they stated there are five constitutional categories that should be treated equally and they are: the President, the Assembly, the Government, the judiciary and the Constitutional Court. In this regard, the complainant states that in the annex to the challenged Law, the President of the Supreme Court, the Chief State Prosecutor, the Chair of the Judicial Council, and the President of the Prosecutorial Council are listed in Class A4 with coefficient 8, which is two categories lower than the President of the Assembly, than the Prime Minister and then the President of the Constitutional Court, who are listed in Class A2, with coefficient 9. According to them, this difference is contrary to the provisions of Law No. 06/L-054 on Courts (Article 35, paragraph 1, subparagraph 1.1); of Law No. 03/L-225 on the State Prosecutor (Article 21, paragraph 1, subparagraph 1.1) and Law No. 03/L-001 on Benefits to Former High Officials (Article 3, as amended by Law No. 04/L-038, Article 3, paragraph 2), because, under these laws, the President of the Supreme Court and the Chief State Prosecutor are equal to the President of the Assembly and the Prime Minister. The other issue raised by the Kosovo Prosecutors Association is the provision of Article 13, paragraph 3, of the challenged law,

which does not provide for any additional allowances on basic salary for special status functionaries, a category that includes both judges and prosecutors. Whereas, according to Article 12 of the same law, special allowances belong to certain categories of deputies of the Assembly of the Republic of Kosovo. The complainant also considers that the challenged Law not only violates the principle of balancing the three powers, but also discriminates between different positions within the judicial system. They consider that this discrimination lies in the fact that Annex 1 of the challenged Law in Class A5, with a coefficient of 7.75, lists the judges of the Supreme Court of Kosovo, while in a category below, in Class A6, are listed Prosecutors of the Office of the Chief State Prosecutor, with the coefficient 7.5. It is stated that this provision only discriminates against Prosecutors of the Office of the Chief State Prosecutor and Prosecutors of the Special Prosecution Office of the Republic of Kosovo, because judges and prosecutors in other instances of the judicial and prosecutorial system are equal in terms of salaries. The complainant also considers that the Constitutional Court should address the provision of Article 28, paragraph 1, of the challenged Law. This provision provides that for the system of salaries, allowances, bonuses and Annex No. 1 shall not apply to a public functionary with special status: a judge of the Constitutional Court, a judge, a prosecutor, the President of the Judicial Council and the President of the Prosecutorial Council, until 31 December 2022. According to the Kosovo Prosecutors' Association, this provision allows for the reduction of salaries for judges and prosecutors from 1 January 2021, by approximately half, which is contrary to the principle of independence of the judicial power provided for in Article 4, paragraph 5, Article 102, paragraph 2, and Article 109, paragraph 1, of the Constitution.

Complaint by experts on anticorruption from the Special Prosecution Office of the Republic of Kosovo

78. The complainants alleged before the Ombudsperson that the challenged law violates the following constitutional provisions: the values on which the constitutional order of the Republic of Kosovo is based (Article 7), human dignity (Article 23), equality before the law and prohibition of discrimination (Article 24) and the right of property (Art 46). Anticorruption experts from the Special Prosecution Office of the Republic of Kosovo stated that their title under the appointment act is expert, while the current salary under the same act is 1,450.00 euro, including allowances. Whereas, according to Annex 1 of the challenged Law, the position of the expert on anticorruption, belonging to the category of expert in court and prosecution, is foreseen in Class L6, with a basic salary of 836.50 euro. Further, anti-corruption experts pointed out that the challenged Law divides Annex 1 into the ranking of positions, so that for experts in the State Prosecutor is provided number position 92, with coefficient 2.9, also the position number 93, with coefficient 2.65, but also the position 194, which includes experts in the prosecution, with a coefficient 3.5. This division is reflected in the respective salaries. The anti-corruption experts of the Special Prosecution regard this division as discriminatory, but also as confusing, as it is not known precisely in which position they should be categorized. This is due to the fact that 5 expert positions exist throughout the administration of the Kosovo Prosecutorial Council and the State Prosecutor's Office and actually work in the Special Prosecution Office while reporting

directly to the Chief Prosecutor of the Special Prosecution Office. In this regard, the Applicants have emphasized the issue of the prohibition on retroactive effect of the law and emphasize that their case concerns property rights, as provided for in Article 46 of the Constitution, in conjunction with Article 1 of Protocol 1 to the ECHR. Also, anti-corruption experts challenge the disproportionality of the challenged Law, noting that some institutions are excluded from the categorization and have the right to set their own salary levels. In the challenged Law these institutions are listed before the Special Prosecutor's Office, which according to anti-corruption experts, represents discrimination. Furthermore, the Special Prosecutor's Office of the Republic of Kosovo, according to the experts on anticorruption, has been deprived of the right to benefit from risk allowances and other allowances. Further, anti-corruption experts point out that any legislation of the Assembly must take into account the Constitution and the Constitutional Court. In the request of anti-corruption experts from the Special Prosecution is further stated that the Special Prosecution Office of the Republic of Kosovo is a constitutional institution with specific specifications, and this should also be reflected in the reclassification of jobs. According to Annex 1, which presents the job catalog, the principle of equal pay for the same work has been violated because anti-corruption experts are listed together with professional associates and it is not known on what legal basis these experts were reclassified. According to them, the discrimination lies in the fact that the job of Expert in the Special Department for Anticorruption is equivalent to other positions in other institutions, because their job requires broader and specific legal knowledge, and it cannot be compared with the work of experts in other institutions, nor with the work of professional associates. Anticorruption experts request that their position be categorized similar to legal advisors in the Constitutional Court, in category L4, with a coefficient 5.5. They also request to take into consideration the fact that all experts already have eight years of experience in the fight against corruption, organized crime, money laundering and other offenses being investigated by the Special Prosecution Office of the Republic of Kosovo. Anticorruption experts also refer to the case KO73/16 of the Constitutional Court

Complaint by the Police of Kosovo (PK)

79. The PK alleged, before the Ombudsperson, that the challenged Law does not provide that police officers are entitled to the allowance for market conditions (Article 6, paragraph 1). The PK alleges that the challenged Law, namely Article 6 [Allowance for market conditions], Section 13 [Salary of public functionary with special status], Article 14 [Special allowance for the public functionary with special status], are inconsistent with Law No. 04/L-076 on Police, namely Article 47. Concerning these uncertainties, the PK has commented earlier requesting that the police officers also be included and enjoy the right to market conditions allowance and taking of two (2) allowances not be restricted. The comments of the Police of Kosovo were not taken into consideration by the Ministry of Public Administration.

Complaint by Police Inspectorate of Kosovo (PIK)

80. The KPI alleged before the Ombudsperson that its employees are categorized as employees with special status under the Law on Public Officials, while the challenged Law, in Annex No. 1 includes only the position of police inspector, but not other leadership positions according to the PIK hierarchy. PIK proposes to include other leading positions in Annex No.1, as follows:: PIK Chief Executive, head of PIK Department, Head of Operational Division at PIK, and rank them in equivalence with positions in the Police of Kosovo, requesting that the level of salaries for PIK leadership positions be included in the Annex 1. According to the allegations, PIK enjoys the right to risk because of the nature of the work and proposes that Article 14 of the challenged Law, which regulates special allowances for public functionaries with special status, to include PIK operational staff in order for them to receive a special allowance for tasks they perform in the sector or in special operations with life-threatening effects, to treat PIK operating staff alongside Kosovo Police officers.

Complaint by Kosovo Forensic Agency (KFA)

81. The KFA alleged before the Ombudsperson that by the challenged Law, the salaries of the KFA employees are reduced by about 20%. The KFA further claims that this law violates the principle *"same salary for same work",* because this agency has the same system of grades as the Police of Kosovo. This grade system according to the KFA is set out in Article 17 of Law 04/L-064 on the Kosovo Forensic Agency and sub-legal acts. Given the job risks that employees of this agency carry out, as well as the fact that the qualification and promotion of the agency is based on work experience as well as on the various trainings carried out for a time relatively long and in countries such as the US, Switzerland, Turkey etc., the complainant alleges that the agency employees are the holders of professional and competency tests since the KFA have been verified at the secret level. The complainant alleges that their activities pose great risks because they are expert in the areas of ballistics, fingerprinting, narcotics, Serology and DNA, then confronting agency employees through court testimony and to the prosecution for the tests handled by them. Based on the above, the agency claims that they face the same risks and difficulties of work as the Police of Kosovo, such as the Police Inspectorate and the Intelligence Agency, because by Law No. 05/L- 022 on Weapons (Article 2, paragraph 1, sub-paragraph 1.1), by Law no. 05/L-017 on Amending and Supplementing the Law no. 03/L-246 on Weapons, Ammunition and Relevant Security Equipment for Authorized State Security Institutions (Article 1), determine that the Kosovo Forensic Agency is part of the state security institutions as the Police of Kosovo, as the Police Inspectorate, and as the Kosovo Intelligence Agency.

Complaint by Anti-Corruption Agency (ACK)

82. The ACK alleged before the Ombudsperson that it has been discriminated against both at the level of the institution ranking, in determining the coefficients, as well as in terms of the percentage of the benefit of particular allowances. The ACK concerns mainly relate to the benefit of special allowances to civil servants, who in the ACK as a benefit on behalf of special allowances enjoy up to 20% on basic salary, according to Article 8 of Law no.

06/L-111. The ACK states that it is ranked at number 32 by importance level and considers this to be an impairment of its role and importance. Further, the ACK states that the level of salary or the determination of coefficients for its staff has not been made at all according to the duties, responsibilities or functions exercised by ACK officials. The salary of the Director of ACK has been reduced compared to the actual salary, which according to them, underestimates the role and level of responsibility of this position. This agency considers the reduction of the level of salaries of ACK employees as discrimination. For these reasons, the ACK addressed its concerns to the Ombudsperson, requesting that its complaint be examined and all presented facts and circumstances, so that the ACK, based on its role and importance, is listed as it was, in parallel with other law enforcement agencies (police, prosecution, customs, National Audit Office etc) and enjoy special allowances, just like other law enforcement agencies.

Complaint by Energy Regulatory Office (ERO)

83. The ERO alleged before the Ombudsperson that the inclusion of ERO in the challenged Law and Law no. 06/L-113 on the Organization and Functioning of State Administration is in violation of the Constitution, contrary to the relevant provisions of the European Directives (Package III, of the European Union energy legislation) and contrary to Law No. 05/L-084 to the Energy Regulator, in particular to the provisions relating to the financial independence of the Energy Regulator. ERO states that it is financed from own source revenues, namely from taxes collected from energy sector licensed companies and operators and not from the budget of the Republic of Kosovo. ERO claims to have the status of an independent agency under the Constitution of the Republic of Kosovo, Article 142, paragraph 1, and has its own budget, which is administered independently, pursuant to Article 142, paragraph 2, of the Constitution. In addition, Law no. 05/L-084 on the Energy Regulator has established ERO as an independent agency, defining its duties and responsibilities. Further, ERO states that it is financed from own source revenues, while Articles 21 and 22 of Law no. 05/L-084 on the Energy Regulator emphasize ERO right to use its own revenue, thus setting its own budget according to specific needs. ERO also states that it is a contracting party to the Energy Community and is obliged to adopt and implement the Energy Community directives, including the Third Energy Package, which sets out strict requirements for energy regulator's decision-making and financial independence. ERO further notes that Chapter IX of the Internal Market Directive (Directive 2009/72/EC) of the European Parliament and of the Council, in Article 35.5, requires *inter alia* that Member States ensure that the regulatory authority has separate allocation from the budget and autonomy in implementing its own budget. ERO also draws attention to Kosovo progress reports, which emphasize the need for independence of the ERO budget. ERO considers its staff to be one of the most important resources and considers that staff salaries should be in line with the level of regulated industry salaries, in order to avoid staff departures to industry and to enable ERO to maintain and attract qualified and sufficient human resources. Whereas according to the ERO, the challenged Law potentially endangers the departure of ERO staff. ERO announces that they have followed these requirements during the drafting period of these laws, but have not been considered.

Complaint by the Civil Registration Agency (CRA)

84. The CRA alleged before the Ombudsperson that staff in management and sub-management positions in the vehicle registration centers and in the supply documentation centers in the Civil Registration Agency are not satisfied with the coefficients set by the challenged Law, which, according to CRA, are in violation of Law No. 06/L-114 on Public Officials. The CRA stated that the new coefficients were not determined in accordance with the work nor with the responsibilities at the vehicle registration centers or at the supply documentation centers at the Civil Registration Agency, because these duties and responsibilities are much higher than those set by the coefficients and in this respect require that salaries be adjusted based on Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies and Law No. 06/L-114 on Public Officials (provisions for management level) and to be supplemented in Annex No.1 to the challenged Law, for management positions in the Civil Registration Agency. The CRA claims that its staff should be paid the same salary for the same job, pursuant to Article 3, paragraph 1, item 1.3, of the challenged Law, because it considers that they have been discriminated against because they have equal positions, duties and responsibilities the same as officials in ministries and other institutions provided by Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies.

Complaint by the Kosovo Civil Aviation Authority (CAA)

85. The CAA alleged before the Ombudsperson that it is a separate constitutional category, as provided by Article 130 of the Constitution of the Republic of Kosovo. According to the Constitution, the CAA regulates civil aviation activity in the Republic of Kosovo and is a provider of air navigation services. The complainant also states that, under Law No. 03/L-051 on Civil Aviation, the CAA is an independent regulatory agency that governs all aspects of civil aviation security and is responsible for the economic regulation of airports and of the air navigation service providers. Further, the CAA alleges that the salaries of its staff are set out in Article 24, paragraph 2, of Law No. 03/L-051 on Civil Aviation. According to this law, the Minister of Finance has adopted a salary scheme, which is competitive and has enabled the attraction of professional personnel in the field of aviation. In addition, the CAA states that it generates its own revenue for its operation, from security fees, from licensing fees, certification and supervision fees for civil aviation operators. The complainant notes that Annex 19 of the Convention on International Civil Aviation states that States must take the necessary measures, such as: setting remuneration and providing conditions of service to ensure the recruitment and retention of personnel qualified to perform civil aviation security oversight functions. In addition, the CAA states that the International Civil Aviation Organization (ICAO), in its safety oversight manual, stipulates that civil aviation staff must enjoy conditions of employment that are competitive with those provided by the civil aviation industry. The CAA also notes that in the private sector of the civil aviation industry in the Republic of Kosovo, the salaries are significantly higher than the level of pay under the challenged Law. Moreover, according to the CAA, there is a possibility for CAA professionals to

find work in the international labor market. AAC, highlights personnel concerns due to a high reduction in salaries for professional aviation staff and draws attention to the pay difference caused by the different pay grades within the CAA.

Complaint by the Air Navigation Service Agency (ANSA)

86. ANSA alleged before the Ombudsperson that its inclusion in the challenged Law infringes its autonomy in applying the provisions of international agreements that are binding on the Republic of Kosovo. ANSA states that the Agreement on the Establishment of the European Common Aviation Area (ECAA Agreement), in Article 13, and Annex 1, item B, envisages financing and setting fees for the use of air navigation services. This funding is based on the "user pays" principle, which, according to ANSA, was violated by its inclusion in the challenged law. Furthermore, ANSA states that the Stabilization and Association Agreement that the Republic of Kosovo has signed with the European Union, in Article 53, stipulates that the basis for the operation of civil aviation activity is in the ECAA Agreement. Also, ANSA emphasizes its role in the control of the airspace of the Republic of Kosovo, its importance as an agency for the alarm of the unauthorized violation of the airspace of the Republic of Kosovo and efforts to fully acquire airspace management competencies. According to the complainant, its main resource is staff consisting of specialized professionals in the field of air navigation. With the inclusion of ANSA staff in Law no. 06/L-111 on Salaries these professionals risk leaving Kosovo to pursue careers elsewhere. The complainant also states that the allocation of salaries and other expenses of ANSA as a consequence of the signing of the ECAA agreement are based on European Union Regulation No. 1794/2006 transposed through Regulation 3/2016 of the Civil Aviation Authority of Kosovo, which sets the fee for aeronautical service users. The complainant finally considers that the treatment provided by Law no. 06/L-111 on Salaries in Public Sector will also have a direct impact on the trust built with stakeholder, with a particular emphasis on NATO, KFOR and airlines.

Complaint by the Independent Judicial Trade Union of the Republic of Kosovo (IJTURK)

87. The IJTURK alleged before the Ombudsperson that the challenged Law made unfair, discriminatory, degrading treatment, which contradicts the basic principles of the Constitution, conflicts with the contractual relations and the challenged Law itself, due to the inequality of compensation *"same salary for same work"*. The IJTURK bases this allegation on Article 4 of the Constitution, which deals with the separation of powers and clearly states that the judicial power is separate and equal to the legislative and executive power. Further, the Trade Union claims that this law preserves the salaries of prosecutors and judges in relation to their current salaries, but this has not happened with the rest of the judicial and prosecutorial support and management staff in relation to the salaries and coefficients of the management and support staff of the legislative power, thus directly affecting the reduction of basic salaries for almost all management and support positions, and this law also created a very

high difference between the salaries of prosecutors and judges and the salaries of the support staff of both budget organizations.

Complaint from the Kosovo Civil Service Trade Union and the Independent Trade Union of the Administration of Kosovo

88. The Trade Union alleged before the Ombudsperson that the challenged Law is discriminatory, unrealistic, partial and, above all, unconstitutional. According to the complainants, the challenged Law violates the provisions of Article 3, Article 21, paragraph 1, Article 24 and Article 58, paragraph 3 and paragraph 7 of the Constitution of the Republic of Kosovo. The complainants further allege that this law has seriously violated the principle of *"equal salary for the same or similar jobs",* the principle of non-discrimination of workers and the principle of legality. The complainants notify that this law infringes the exercise of the right to special allowances for management positions and for administrative-technical staff at both levels of the public administration of Kosovo. According to the complainants, this is infringed by the provision of Article 12, paragraph 4, of the challenged Law. According to the complainants, this law does not include fair, non-discriminatory, comprehensive, principled, realistic, objective and correct solutions, nor with regard to salary levels, neither in terms of fair and equal treatment of the same categories according to the principle of equal or similar work, same or similar salary. For this reason, according to the complainants, this law creates inequality and dissatisfaction, deepens differences and problems in the civil service and in the state administration of Kosovo.

Complaint by the Kosovo Academy of Sciences and Arts (KASA)

89. The KASA alleged before the Ombudsperson that its inclusion in the challenged Law undermines the status of a member of the academy. The KASA states that it is an institution established by the Assembly of the Republic of Kosovo and has a special law: Law no. 05/L-038 on the Kosovo Academy of Sciences and Arts (Article 2). The KASA maintains that it is an independent institution in the field of science and art, while the activity of the academy is an activity of special public interest in the Republic of Kosovo. Also, the issue of remuneration of the member of KASA is regulated by the Law on the Kosovo Academy of Sciences and Arts (Article 25). According to the KASA announcement, it is understood that its members receive no salary, but receive a remuneration, which is characteristic of all academies of sciences, and the current provisions of the challenged Law contradict this rule. The KASA claims that the challenged Law generally violates the Law on the Kosovo Academy of Sciences and Arts, which was not taken into account at the time of the adoption of the challenged Law.

Complaint from the Institute of Forensic Medicine (IFM)

90. The IFM calls before the Ombudsperson for the suspension of the application of Article 33, paragraph 1.8, of the challenged Law, for the IFM staff, and upholding the allowance on basic salary of 30%, for every hour of work as a hazard provided by Article 13, paragraph 1, of Law no. 05/L-060 on Forensic Medicine, pending the approval of the sub-legal acts provided for in Article 31

of the challenged Law and the meritorious assignment of the allowance for occupational hazard to the IFM staff. The IFM states that during the drafting of the challenged Law, the fact that the IFM is the only and specific body in the Republic of Kosovo was not taken into account, by the nature and specifics of the work carried out in this institute. For this reason, the IFM requires that the grades of its employees be allocated based on merits, taking into account the fact that IFM is the only and specific body in the Republic of Kosovo, and the role it has within the institutions of the Republic of Kosovo. Finally, the IFM requests its supportive staff has the same status at UCCK and other health institutes.

Complaint from University Clinical Center Administration

91. The University Clinical Center Administration alleged before the Ombudsperson that the challenged law reduces the current administrative positions of the administrative staff of the UCCK-HUCSK. The complainants allege that pursuant to Law No. 04/L-125 on Health, Article 3, paragraph 1, subparagraph 1.28, defines the administrative organization within public health institutions defining the administration as a professional service. Also, Article 62, paragraph 6, of this law stipulates that all employees of HUCSK do not belong to the civil service, but are public servants. The complainants allege that the Law on Salaries in Public Sector violated the principle "same salary for same work", that resulted in a violation of the constitutional provision "Equality before the law". Finally, the complainants seek equal treatment in order not to be discriminated against in respect of the responsibility and work they perform in the Institution of the University Clinical Center of Kosovo and the HUCSK.

Complaints from the Chamber of Nurses, Midwives and Other Health Professionals (Chamber)

92. The Chamber alleged before the Ombudsperson that the challenged Law deepens the social gap in the Republic of Kosovo. Further, the Chamber notes that under the challenged Law, nurses, midwives and other health professionals are categorized by coefficient 2.2 without any analysis and without regard to any basic criteria for such categorization. According to Chamber, in this case the basic criterion, that of education, was not taken into account, when it is known that among these employees are those with doctoral degrees, master degrees, bachelor etc. The Chamber further notes that all employees are categorized with the same coefficient. According to Chamber, this law violates the universal values protected by the Constitution, which in Article 7 states that the constitutional order is based on the principle of freedom, peace, democracy, equality (emphasis added), respect for human rights and freedoms and the rule of law, non-discrimination; property rights, social justice. On this basis, this law seriously violates the principle of equality, is discriminatory and does not promote the principles of social justice, but deepens the social gap in our country.

Complaint from the Trade Union of Nurses, Midwives and Other Health Professionals

93. The trade union in question alleged before the Ombudsperson that the challenged law has divided nurses into three groups: the first group with a coefficient of 2.2 for primary care; second group with a coefficient of 2.25 for secondary and tertiary services; and the third group of physiotherapists with coefficient 3.2, although they have the same work, function, position, or grade as nurses, midwives, and other health professionals. The trade union considers that this division is contrary to the principle of equal pay set forth in Article 3, item 1.3, of the challenged Law, which implies that each salary beneficiary receives equal pay for work in the same function, position or grade, or comparable. Also, the trade union considers that the increase of the coefficient to 3.2 for all is important to avoid departure from Kosovo of nurses, given the large number of them who have applied for work visas in the EU countries.

Complaint from the Teacher Initiative Council of Grades 1-5

94. The Council in question alleged before the Ombudsperson that the challenged Law violates the principle *"same salary for same work"*, because teachers of grades 1-5 are not treated the same as teachers of grades 6-9. The Council claims that, according to the Annex to the challenged Law, the teachers of lower secondary schools 6-9 are categorized with a coefficient of 2.45, while teachers of lower secondary schools are categorized with a coefficient of 1-5 are categorized with a coefficient of 2.3. The Council claims that the same criteria were not taken into account in this case and were treated differently from the teachers in grades 6-9. The Council finally expresses dissatisfaction about this treatment, and I also do not know what criteria the Government and the Assembly have taken into account at the time they made this distinction in the regulation in the challenged Law.

Complaint from Radio Television of Kosovo (RTK)

95. The RTK alleged before the Ombudsperson that its inclusion in the challenged Law has violated its institutional, editorial and public broadcasting status to RTK. RTK states that, pursuant to Law No. 04/L-046 on Radio and Television of Kosovo, RTK, in the capacity of a Kosovo public broadcaster, has the status of an independent public institution, which provides services in the field of media activity. RTK claims to have received feedback from the European Broadcasting Union, which states that RTK's inclusion in the challenged Law is in contradiction with the Constitution and Law No. 04/L-046 on Radio Television of Kosovo, encouraging Kosovo authorities to adopt the new RTK law to ensure institutional and editorial autonomy, including the autonomy of human resources. RTK mentions the supremacy of the Constitution over laws and the fact that international agreements ratified by the Republic of Kosovo become part of the domestic legal system. In this regard, RTK refers to the recommendation of the Council of Europe No. R(96)10 regarding the guarantee of the independence of the public service broadcaster. Furthermore, RTK also refers to other international instruments that protect the institutional independence of Public Broadcasters in Europe, such as: Amsterdam Protocol from 1997, Council of Europe Document CoE2012/1, EBU Values and Standards on the Institutional and Editorial Independence of the Public Broadcaster.

Complaint from New Trade Union of Kosovo Energy Corporation

96. The Trade Union in question alleged before the Ombudsperson that the work of KEK workers differs from that of civil servants because KEK workers work in very difficult conditions, which is reflected in their health condition and the fact that a considerable number of workers die without reaching retirement age. According to the KEK New Trade Union, the challenged law infringes on the free market economy and does not comply with the Law on Labor. KEK New Trade Union finally requests that the hazard of KEK activity be taken into account, and since KEK is the most profitable company in the country, it should be removed from the scope of the challenged Law and act independently.

Complaints from System, Transmission and Market Operator - KOSTT j.s.c.

97. KOSTT alleged before the Ombudsperson that Article 27 of the challenged Law is not in accordance with the Constitution, requesting the exclusion of the publicly-owned enterprise System, Transmission and Market Operator -KOSTT KOSTT j.s.c. from the scope of this law. KOSTT also recalls the principle of a free market economy expressed in Article 10 and Article 119 of the Constitution, reflected in Law No. 03/L-048 on Publicly Owned Enterprises. KOSTT also recalls the principles of independence and autonomy of publicly owned enterprises in terms of legal organization, decision-making, implementation of the principle of legality and the supervisory function of the activity of public enterprises by the relevant regulatory authorities, as expressed in Article 119 of the Constitution. KOSTT emphasizes that notions of independence of publicly owned enterprises, in accordance with the Constitution, are expressed in Law No. 03/L-048 on Public Financial Management, which distinguishes between autonomous publicly owned enterprises, such as KOSTT and other publicly owned enterprises and other agencies. KOSTT considers that limiting the salary (coefficient factors) for publicly owned enterprises, pursuant to Article 27 of the challenged law, limits and disables the provision of economic and motivational incentives for publicly owned employees in Kosovo, and as such is contrary to the Constitution. Furthermore, KOSTT claims that Article 27 of the challenged Law directly infringes KOSTT financial independence in determining the salaries of its employees. In this way, KOSTT considers that the availability of its human resources is limited in order to fulfill its legal duties and obligations under Law No. 05/L-081 on Electricity and to implement the obligations of the Republic of Kosovo in accordance with international agreements. KOSTT expresses concern that with the entry into force of the challenged law it will face the departure of its staff, as the salaries of the KOSTT employees will be reduced by 47%, and KOSTT will not be able to provide motivated staff compensation. KOSTT emphasizes that there should be special staff to meet specific technical and operational requirements, and the personnel of this company should be more qualified than other companies in the energy sector. This is because there is a need for continuous interaction with transmission system operators in other countries and with regulators.

Complaint by the Independent Trade Union of KOSTT

98. KOSTT Independent Trade Union alleged before the Ombudsperson to be the only company in Kosovo that deals with the management of high voltage lines, so its work is very specific and with great responsibility. To perform its job in the energy market, KOSTT needs trained and experienced staff. According to the Independent Trade Union of KOSTT, the inclusion of KOSTT in the challenged law infringes KOSTT financial independence and poses a risk of dismissal of KOSTT professional staff. KOSTT Independent Trade Union considers that KOSTT employees are not civil servants, since KOSTT has financial independence.

Complaint from the Independent Trade Union Federation of Post and Telecommunications of Kosovo

99. Independent Trade Union Federation of Post and Telecommunications of Kosovo alleged before the Ombudsperson that Article 27 of the challenged Law will affect the Kosovo Telecom the most, consisting of engineers, lawyers, economists and specialist technicians. The complainant also alleges that Telecom of Kosovo is not financed by the budget of the Republic of Kosovo, but through a business plan that plans on an annual basis based on own source revenues and growth in the telecommunications market.

Complaint from the Information Society Agency within the Ministry of Public Administration (ICT)

100. The complainant alleged before the Ombudsperson that the Government has so far treated separately the positions in the field of ICT, but the challenged Law does not categorize the field of ICT. The complainant further states that this agency within the Ministry of Public Administration is a responsible institution in the field of Information and Communication Technology (ICT), which forms the basis of development for all other areas, e.g. education, health, economics, agriculture.

Complaint from Veton Çoçaj – certifier

101. Mr. Çoçaj alleged before the Ombudsperson, that the challenged Law was not drafted based on principle *"same work, same salary"*. In this regard, he points out that in the Assembly of the Republic of Kosovo the position of a certifier is treated as a separate position and is classified by the coefficient 4.2, while in other institutions, ministries and agencies, the position of certifier does not appear at all, but is categorized as a professional executive framework and classified by the coefficient 2.35. Mr. Çoçaj further alleges that the workloads are greater in the ministry than in the Assembly and, according to this reasoning, he requests that there be equal treatment for all certifiers in the Republic of Kosovo.

Complaint by Pajtim Zogaj, inspector at the Cultural Heritage Inspectorate

102. Mr. Zogaj alleged before the Ombudsperson that the challenged Law violates the principle *"same salary for same work",* and Article 23 of the Universal Declaration of Human Rights has also been violated. Specifically, the

complainant specifies that the challenged Law also regulates the issue of the allowances to the basic salary, which belongs to Kosovo Tax Administration officials, Kosovo Competition Authority investigators, Anti-Corruption Agency officials, but the same allowance is not foreseen for the inspectors of the Cultural Heritage Inspectorate, although the nature of the work is the same with the entities mentioned above. The complainant further alleges that on the basis of this determination the inspectors of the Cultural Heritage Inspectorate were discriminated against and were treated unequally by the provisions of the challenged Law.

Complaint by school psychologists and pedagogues

103. The complainants alleged before the Ombudsperson that the challenged Law treats them in an unequal manner compared to special school teachers and psychologists. The complainants point out that this law does not respect the principle of *"equal salary for the same work"*. They claim that their positioning should be similar to those of upper secondary teachers, with a coefficient of 2.6, or of the teachers of special schools with a coefficient of 2.5. The complainants further state that clinical psychologists at UCCK clinic have the same qualification and are categorized by coefficient 3.5. They emphasize that, even in this case, the law has discriminated against complainants because they also provide the same psychosocial services to people in need. The complainants also allege that teachers of upper secondary education were categorized by coefficient 2.6 (master grade), special educators and teachers of special schools are qualified by a coefficient 2.5 (master grade), teacher at the grade level 6 - 9 are qualified with a coefficient 2.45 (bachelor degree up to 240 credits), grade level teachers 1 - 5 are qualified with a coefficient 2.3 (bachelor degree up to 180 credits), while the school psychologist is qualified with a coefficient 2.3 (master grade). This designation, according to the complainants, clearly demonstrates the unequal treatment of psychologists and pedagogues in schools. Therefore, based on the arguments presented above, the complainants (psychologists and pedagogues) seek equal and non-discriminatory treatment with the challenged Law and respect the principle *"same salary for same work",* a principle that is not currently taken into account by this law.

Complaint from Central Harmonization Unit for Internal Audit at the Ministry of Finance and Internal Auditors from central and local level

104. The Central Harmonization Unit for Internal Audit at the Ministry of Finance and the central and local Internal Auditors alleged before the Ombudsperson that they are not included in the challenged Law, however, the determination of their status and salaries is expected to be done by a sub-legal act, which will be approved by the Government in cooperation with the Ministry of Finance. The complainants express their concern that such an action would jeopardize their legal certainty and the financial viability of internal auditors. The complainants note that the fact that the challenged Law does not regulate the position and salary of internal auditors shows that this law did not respect equality before the law, as it left it open to some positions, such as the position of internal auditors, to be regulated by a sub-legal act, namely an administrative instruction which can be changed in a summary and quick procedure shows that the legal certainty of internal auditors is not the same as

the legal certainty of the positions determined by the challenged Law. The complainants also allege that their positioning in the challenged Law will have a positive impact on determining their status and their salary at the law level. In this regard, the complainants point out that the challenged Law did not take into account the provisions of Law no. 06/L-021 on Public Internal Financial Control, which in Article 23, paragraph 2, clearly states: *"The salary for the staff of the Central Harmonization Unit and the Internal Audit Units shall be treated separately and should be harmonized with the salaries of the National Audit Office auditors."* Therefore, in view of all this, the Applicants allege that it is essential for their functioning that their position be determined by the Law on Salaries in Public Sector, and that their positioning be made in full regard to Article 23, paragraph 2, of the Law no. 06/L-021 on Public Internal Financial Control, according to which the salaries of the staff of the Central Harmonization Unit and of the Internal Audit units are treated separately and should be in line with the salaries of the auditors of the National Audit Office.

Complaints from health professionals/doctors employed in the Ministry of Health (MoH)

105. The complainants stated before the Ombudsperson that among the health professionals there are doctors, dentists employed in the MoH. According to their claims the current provisions in the challenged law put them in the same categorization as civil servants and do not recognize university and specialist education when calculating salary. The complainants consider that they are discriminated against by the right to a dignified pay, according to the professional achievements and services they provide. The complainants further state that in order to be employed in the MoH, certain criteria had to be fulfilled, such as education in the field of medicine, and licensing as health workers and as a consequence, the same positions held by the MoH do not belong to civil servants under Law no. 03/L-149 on Civil Service (Article 4, paragraph 1), but are categorized as medical staff of the health system. The complainants allege that this spirit was not conveyed in the challenged Law because they were categorized as civil servants. The complainants further state that under Law No. 04/L-125 on Health, Article 69, a health professional is considered a doctor of medicine, a doctor of dentistry and a graduate pharmacist. The complainants base their claims on the opinions of the World Health Organization, according to which the health system is made up of organizations, people and actions whose primary purpose is to promote, recover and preserve health, and according to the World Bank, it is found that the health system consists not only of health institutions but also of the Ministry of Health, health funders and other organizations. The complainants eventually allege that the current provision in the challenged Law discriminates them from the right to salary as specialist doctors, with a coefficient 5, because it ranks them as civil servants with a much lower coefficient, not counting university and specialized education.

Complaints from engineers staff Regulatory Authority of *Electronic and Postal Communications (ARKEP)*

106. The complainants alleged before the Ombudsperson that, according to the challenged Law, ARKEP staff are not treated equally as other institutions. In

this regard, they point out that engineers in some other institutions, such as the Civil Aviation Authority (CAA), the Air Navigation Services Agency (ANSA), are categorized with a much higher coefficient than the ARKEP engineers. According to them, this form of categorization is unequal, because the engineers of these institutions are brought in unequal positions, when added to the fact that CAA and ANSA engineers are authorized by ARKEP to use the resources for electronic communications, which is very vital to the field of civil aviation and air navigation, and also conducts radio-monitoring measurements to identify interference, the occurrence of which may endanger communication security. For this reason they claim that they have to position themselves in the position "Expert 2", with coefficient 5.5 and "Expert 3", with coefficient 4.

Complaint from Water Services Regulation Authority (WSRA)

107. The WSRA, alleged before the Ombudsperson that under the challenged Law, the professional staff and WSRA staff is categorized at the same level as the level of civil servants. They point out that, given the specific nature of the job and job descriptions, it cannot be harmonized with the same positions in the sector of public service. The complainant expresses his concern that with the current definition of the challenged Law, there is a risk that the professional staff may be removed from the WSRA and reflect harmful to the institution. The WSRA further states that currently, the WSRA staff salaries are lower than the salaries of equivalent service provider positions which are regulated and supervised by the WSRA. Therefore, the categorization of WSRA staff, according to the complainant at the level of civil servants, would further deepen this distinction, which in turn impacts the devaluation of the work and authority of the WSRA staff towards service providers. Lastly, the complainant alleges that in all countries, the salaries of the regulators are higher than the institutions they regulate, which is not the case in Kosovo and the difference with this law will be much greater.

Complaint from the Trade Union of the University of Prishtina (UP)

108. The Trade Union of the UP, alleged before the Ombudsperson that the challenged Law is discriminatory and did not include the public promise of a linear increase of € 70 to all UP administration employees. According to the UP Trade Union, the challenged Law reduces the salaries of some key positions in the UP, for which the trade union considers to be unconstitutional and discriminatory as well, because a right acquired cannot be denied in this form. The UP Trade Union on this matter refers to Law No. 03/L-147 on Salaries of Civil Servants, namely Article 28, which states: "*Civil servants whose basic salary on implementation of this Law would be lower than their current basic salary as applicable prior to the entry into force of this Law, shall retain their current salary until their basic salary comes into compliance with the provisions of this Law, the provisions on the general classification of work positions in the Civil Service and the standards and procedures for the classification of each position in its relevant grade*". Further, this trade union alleges that the challenged Law does not set the titles and coefficients for the UP administration and this may lead to discrimination in the event of the promotion of these coefficients and positions by the Government *ad-hoc* Committees. Also, the union states that this law does not specify the percentage

of payment for fee (above the norm), which is specific in the case of universities. The UP trade union further claims that the main principles for adopting this law have been: principle of *"equality",* principle of *"same salary for the same work"* and principle of *"non-discrimination"*. On this issue, the trade union of UP points out that none of these principles in the case of UP has been respected and taken into account. Furthermore, the UP union claims that this law has created inequality between the UP employees and other institutions. For this the later has taken as an example the case of the certifier in the Assembly of the Republic of Kosovo, which is determined by a coefficient 4.2, while in other institutions this position has been certified significantly lower, despite the fact that they have a much higher budget. Further, the UP trade union claims that inequality has arisen in cases such as the driver in the political cabinets is determined by a coefficient 2.2, while the administrative officers at UP (who may have a master or doctor degree), may have the highest coefficient 2.35. Further, the position of administrative assistant and technical assistant in the Assembly of the Republic of Kosovo has a coefficient 2.8, while equivalent to this position or coefficient in the public service administration is the position of a head of division. 2). This trade union, based on the arguments presented above, requested the Ombudsperson to initiate in the Constitutional Court an assessment of compliance of the challenged Law with the Constitution, because this law, according to it, is unequal, it did not achieve the purpose of the same salary for the same job and resulted in discrimination between employees in the institutions of the Republic of Kosovo.

Applicant's final requests addressed to the Court

109. First, the Ombudsperson, in his capacity as Applicant, requested the Court to assess the constitutionality of the challenged Law, finding that the latter, *inter alia*: (i) does not reflect the principle of separation of powers, checks and balances among them, as defined by the Constitution; (ii) does not provide equal pay for equal work for all public sector employees, according to constitutional hierarchy, institutional responsibility and complexity at work; (iii) violates the right to property; (iv) does not reflect the principles set out in the challenged Law itself in all its provisions and Annex 1 thereto..

110. Secondly, the Ombudsperson in his capacity as Applicant requested that the Court, with regard to the 35 individual complaints of various institutions and entities submitted to him and where allegations of unconstitutionality of the Law on Salaries were raised, "*assesses whether the challenged Law affects the legitimate interests of these complainants"*.

Comments submitted by MPA in response to the allegations of the Ombudsperson

111. The MPA, in the capacity of the Ministry that proposed the challenged Law which was subsequently approved by the Government and voted by the Assembly, has submitted comments regarding the issues raised by the Ombudsperson in his referral, namely for the separation of powers; rule of law, equality before the law; property rights and public enterprises. The MPA has also submitted specific comments regarding some of the 35 individual complaints which were submitted to the Ombudsperson by various institutions

and entities interested in the constitutional status of the challenged Law. All MPA comments, including those on individual complaints, will be presented by the Court below.

Comments regarding "separation of powers"

112. Regarding the violation of the separation of powers, check and balance among them, the MPA argues that the main allegation of the Ombudsperson is that the challenged Law should have taken into account this principle in terms of salaries both from a hierarchical and operational point of view. The Applicant in his Referral did not disclose how the issue of salaries should be regulated based on the principle of separation of powers and did not give a single indication of where the violation of the Constitution occurred by the challenged Law for which it is violated the principle of separation of powers. In general, as violations are presented the same regulation for all branches of power and the vesting of the Government with authorizations to regulate with sub-legal acts some procedures regarding salaries and allowances. Regarding this issue, we have given answers in letter no. 3664 of 29 November 2019 on Law No. 06/L-114 on Public Officials.

113. The allegation that the principle of separation of powers, their checks and balance was violated by the Law on Salaries, because the latter did not take into account the special regulations regarding the rights and duties made by the special laws of many institutions, especially of the laws governing Independent Institutions - is too broad and not limited to the right to pay and as such is not true. This is best seen in the specific laws for Independent Institutions themselves, for example: Law No. 05/L-0 19 on Ombudsperson, in Article 34 in a specific way states that *"Salaries of Ombudsperson Institution shall be regulated under the applicable Law on the salaries from the Budget of the Republic of Kosovo"*; Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo"; Law No. 03/L-121 Law in Article 13 on salaries of legal advisors establishes that *"[...] Salaries of legal advisors shall be defined in accordance with applicable legislation*", whereas Article 15 on salaries of judges specifies that *"The remuneration of Constitutional Court judges shall be 1.3 times that of the judges of the Supreme Court of the Republic of Kosovo";* Law No. 04/L-44 on the Independent Media Commission in paragraph 4 of Article 45 establishes that *"Indemnification for the Chairperson and members of the IMC and members of the Appeals Board shall be set in accordance with the Law on salaries of senior officers",* while there is no other provision for the salaries of other staff in IMC; Law No. 05/L-055 on the General Auditor and the National Audit Office of the Republic of Kosovo, in paragraph 7 of Article 4 establishes that *"The salary level of Auditor General is determined by the respective law regulating salaries of senior public officials"* and there is no other provision regulating salaries for other staff in this institution. So all these laws, according to the MPA, not that they do not have any specific provisions as claimed, but rather refer that the issue of salaries should be regulated by a law on salaries and in this case, it is the challenged Law which was approved by the Assembly. The special law as the complainants claim, are not their own laws, because they regulate the establishment, organization and functioning of their institutions as independent institutions. Law on salaries so far as a special law that regulates the salaries of employees

in the institutions of the Republic of Kosovo, except Law no. 03/L-147 on salaries of civil servants - has not existed in the legal system of Kosovo. So, the challenged Law is the only special law that regulates the salaries of all employees in the institutions of the Republic of Kosovo.

114. On the other hand, the challenged Law, just like other horizontal laws, aims to regulate the management of public money (Law on Public Procurement, Law on Public Financial Management, which have never been challenged so far), aims to regulate the payroll system and remunerations for functionaries and public officials who are paid from the Kosovo budget. In terms of reference and similarity to the case KO73/16, the MPA states that this case cannot be taken as the same case with the request for constitutional review of the challenged Law. This is due to the fact that the subject of review in case KO73/16 was the constitutional review of the Administrative Circular no. 01/2016, issued by the MPA and not a law adopted by the Assembly which *"homogeneously aims to establish rules for the management of public money regarding the salaries of the functionaries and public officials"*.

115. With regard to the separation of powers, we recall that the essence of the issue raised before the Court by the Applicant is whether the challenged Law is in accordance with the Constitution. Article 4 of the Constitution defines the form of government, the separation of power between the three governing powers and the check and respective balance among them. In this respect, and insofar as it is relevant to the circumstances of the present case, the Constitution stipulates that the Assembly exercises legislative power (Article 4.2), and consequently issues laws, and in the issue raised has exercised its constitutional mandate by issuing the challenged Law. Otherwise, the law, as a general legal act that regulates certain social relations is limited in space and time. In the legal system of the country there is a need to issue new laws, to amend and supplement existing laws. Therefore, there is no constitutional legal impediment that, for the purpose of prevailing public interest, to regulate the legal environment by new legal legislation for the salaries in the public sector. In accordance with the case law of the ECtHR, it is not within its scope to replace public policies as defined by the legislator. The principle of separation of powers obliges the Court to respect the policy-making by the legislator. The legislature - because of its position and democratic legitimacy - is in a better position than the Court to determine and advance the country's economic and social policies (see, *mutatis mutandis*, case of ECtHR *Dubska and Krejzova v. Czech Republic*, applications no. 28859/11 and 28473/12, Judgment of 15 November 2016, paragraph 175 and references cited therein).

116. Article 4 of the Constitution sanctioned one of the most essential elements of the principle of the rule of law, which is mentioned in the preamble of the Constitution. In a democracy, as a form of government, the important principle of separation and balance of powers mainly aims to eliminate the risk of concentration of power in the hands of a certain body or persons, which practically carries with it the risk of its abuse. For this purpose, despite the fact that the state power in entirety is one and indivisible, within it there is a series of interactions and mutual relations that the Constitution creates between certain segments of it. So, basically, based on this principle, the three central powers should be exercised not only independently but also in a balanced way.

This is achieved through constitutional solutions that guarantee mutual control and sufficient balance between powers, without violating and without interfering with each other's competencies. (See the decision of the Constitutional Court of Albania, Decision no. 19, of 3 May 2007, V-19/07).

117. The MPA further states that the Applicant *inter alia* alleges that the challenged Law applies the same criteria to the authorities, institutions and bodies in the Republic of Kosovo, regardless of the order and separation of powers in accordance with the Constitution and the specifics of the constitutional status of entities of the public sector. In this aspect of the challenging, we consider that the Applicant has not presented which criteria are the same in the challenged Law and consequently if *"the same criteria applied"* we consider that it would be about discrimination or unequal treatment. At this point we consider that the Ombudsperson failed to prove before the Court what criteria he is talking about, bypassing the authority given to him by the Constitution to issue special laws that regulate the salaries of employees in the other two branches of government and of independent constitutional institutions (See, Opinion of the Venice Commission no. 598/2010 - Amicus curiae brief for the Constitutional Court of the "former Yugoslav Republic of Macedonia" on amendments to several laws relating to the system of salaries and remunerations of elected and appointed officials (Adopted by the Venice Commission at its 85th Plenary Session, Venice, 17-18 December 2010). Recommendation (94) 12 of the Committee of Ministers of the Council of Europe states that judges' salaries and remunerations should be guaranteed by law (Principle 1.2b.ii). For more on the Judgment of the Constitutional Court of Croatia, point 9.1, states: The Constitutional Court states that the realization of the principle of the rule of law, as one of the highest values of the constitutional order of the Republic of Croatia and the basis for interpretation of the Constitution is unimaginable without an independent judiciary. The Constitution has given importance to the organization of state power, in accordance with the constitutional principle of separation of powers (legislative, judicial and executive) described in Article 4 of the Constitution, and guarantees the autonomy and independence of the judiciary (Article 115, paragraph 2 of the Constitution).

118. However, according to the MPA, the Constitution does not stipulate how will the salaries be determined for judges (or any other institution), nor the elements that make up the salary. In this context, the Constitutional Court of Croatia in the decision on inadmissibility of the Referral, regarding the Law on Salaries in Public Services No. U-I-1489/2001, U-I-1490/2001, U-I-1570/2001, U-I-1571/2001 of 20 February 2002, underlined in point 13 that the law on salaries is a *lex specialis* and the legislator is authorized to determine the circle of officials to whom the law applies. The Court considered it necessary to emphasize in particular that the Croatian Parliament is authorized to decide independently on the regulation of economic, legal and political relations in the Republic of Croatia, including those related to the regulation of salaries. However, in regulating these relations, the legislator is obliged to respect the requirements set out in the Constitution, especially those derived from the principles of the rule of law and those that protect the constitutional values. When it comes to guarantees of material independence of judges, the legislative is particularly obliged to respect the fundamental constitutional

principle of separation of powers as one of the elements of the rule of law. This is foreseen by the placement of judges at the highest level in Annex no. 1 of the challenged Law, also with regard to the Applicant himself, where his position was taken into account by the legislator (and the Auditor General) and placed at the highest level of the state hierarchy, based on the Opinion of the Venice Commission regarding the position of the Ombudsperson in the state hierarchy (See: Opinion on the Draft Law on Amendments to the Law on Ombudsman for the Human Rights in Bosnia and Herzegovina, adopted by the Venice Commission at its 60th Plenary Session, Venice 8-9 October 2004).

119. Finally, the MPA regarding the Applicant's allegation for separation of powers states that, while the principle of separation of powers determines the independence of the three governing powers, the principle of checks and balances determines their interdependence. The three governing powers cannot act in isolation from each other. Their interdependence, in addition to constitutional provisions, is also defined through the principles of cooperation, coordination, check and balance. The three governing powers relied on each other to provide the total public services needed in a democratic society. This is also emphasized by the main comments received from the Forum of the Venice Commission (paragraphs 62 to 73 of Judgment KO12/18, see, Applicant Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo, *"Constitutional review of the Decision of the Government of the Republic of Kosovo, no. 04/20, of 20 December 2017",* Judgment of 29 May 2018 (hereinafter: Judgment KO12/18), go in the direction of emphasizing that "*the issue of salaries in the public sector is regulated by law"* (paragraph 99 of Judgment KO12/18). Relevant laws mean adopted by Assemblies not by Governments. Further, financial compensation for the judicial power, as an essential aspect of the independence of the judiciary, needs to be regulated by the legislative power through a democratic parliamentary procedure.

120. In this regard, the MPA emphasizes that the Constitutional Court of Croatia in its case law has not challenged the issuance of the law on salaries for the judiciary, reviewing the constitutionality of the Law on Salaries of Judges and Judicial Employees. Among other things, it found that: *"Consequently, a condition arises from the Constitution that all elements of the salaries of the judiciary should be regulated by the legislator in its law adopted in a democratic parliamentary procedure [...]".* The salaries in independent institutions are also regulated by laws approved by the legislative body, such as in Albania, the Law on Salaries, Remuneration and structures of independent constitutional institutions and other institutions established by law (See, Decision no. 19/07 of the Constitutional Court of Albania, of 03 May 2007*).* It is worth noting, according to the MPA, that in case *Centro Europa 7 S.R.L. and Di Stefano vs Italy* (see case of ECtHR *Centro Europa 7 S.R.L. and Di Stefano v. Italy,* application no. 38433/09, Judgment of 7 June 2012), the ECtHR held that the level of precision of the law in each case may not cover all possibilities and depends on the content of that law, the matter it covers and the status to which it refers. It follows that the law should sufficiently regulate those relations - which, according to the MPA, the challenged Law has undoubtedly these elements.

Comments regarding "rule of law"

121. With regard to the rule of law, the MPA argues that the need to amend the challenged Law has been mentioned in many of the Applicant's complaints. Concerning the principles of the rule of law under the Venice Commission (see point 78, p. 19 - Rule of Law Checklist CDL-AD (2016) 007, adopted by the Venice Commission at its 106th plenary session, Venice, 11-12 March 2016, hereinafter: Rule of Law Checklist), the rule of law requires the universal submission of all to the law. It means that the law must be applied equally and continuously. Equality is not merely a formal criterion, but should result in substantially equal treatment. To achieve this goal, differentiations may need to be tolerated and may even be required. For example, affirmative action may be a way of ensuring substantial equality in limited circumstances in order to correct the disadvantage or exclusion of the past. On this point, the MPA considers that the Ombudsperson in his request to the Constitutional Court did not prove that the challenged Law is not in accordance with the principles of the rule of law, which proves that he failed to specify his Referral under Article 29.3 of the Law on the Constitutional Court.

Comments regarding "equality before the law"

122. With regard to the second issue, which is mostly related to equality before the law, the MPA argues that the Applicant alleges that the challenged Law did not provide the same salary for the same work, creating divergent situations because in different institutions the same or comparable positions are assessed with different salary levels. It is true that one of the principles of the challenged Law is the principle "*equal pay for the same work*", which is embodied in finding the equivalence of salary for the functions and positions that are presented in Annex no. 1 of the challenged Law. Legal differences and discrimination is established only in the sense of ensuring the most effective salaries based on the separation of powers.

123. With regard to discrimination, the MPA states that it existed until the adoption of the challenged Law, arguing that the same positions in different institutions, such as certification officers for finance and procurement have earned different salaries, on the grounds that they work in independent institutions or *"in their jargon in specific institutions"*. MPA claims that there may be differences in salaries and this is not discriminatory, this is confirmed by Judgment KO12/18 on the constitutional review of the Decision of the Government of the Republic of Kosovo, no. 04/20, of 20 December 2017, in point 116 that defines: *"In this regard, the Court considers that the difference in salaries in itself does not create unequal treatment for the purposes of Article 3 and 7 of the Constitution. Consequently, the Applicants have not presented any convincing facts that the salaries foreseen by the Challenged Decision treat differently similar positions or situations and whether such difference in treatment does not have an objective and reasonable justification"* while in paragraph 118 "*The Court considers that the constitutional bodies are obliged to respect the competences of one-another during the exercise of their constitutional functions. Unclear situations as regards the exercise of the competences, as is the case under consideration, can be avoided in the future by the adoption of the respective laws on the Government and on the salaries of state functionaries"* has encouraged the Government and the Assembly to regulate

salaries by law to avoid ambiguities in the exercise of powers, which has happened with the adoption of the Law challenged by the Assembly. The Court reiterated that the different treatment must pursue a legitimate aim and must have a reasonable relationship of proportionality, between the means employed and the aim sought to be realised (see the ECtHR case, *Marckx v. Belgium*, Application No. 6833/74, Judgment of 13 June 1979, paragraph 33). In this regard, in terms of equality before the law, respectively unfavorable treatment, it is worth mentioning that the legal doctrine clearly defines what is meant by "discrimination". It occurs in cases where the person is treated unfavorably as a result of comparing a person in a similar situation. A complaint about a "low" salary is not a claim of discrimination unless it is demonstrated that the salary is lower than the salary of someone hired to perform a similar task by the same employer. Consequently, a "comparator" is needed: i.e., a person in materially similar circumstances, with the existence of the main difference between two persons being the "protected cause".

124. According to the MPA, the Applicant has not presented convincing facts that the salaries provided by the challenged Law treat similar positions or situations differently and if this change in treatment does not have any objective and reasonable justification. In light of this, it can be seen that the allegations of the complainants submitted to the Ombudsperson are related to the equality with employees of other profiles, such as teachers of grades 1-5 claim to be equal to teachers of grades 6-9, police inspectors request to be equated with police officers, etc. Consequently, according to the MPA, in the circumstances of this case there is no question of unequal treatment or discrimination. In fact, according to the MPA, the trade unions do not seek the repeal of the Law on Salaries but ask the Court to "amend" the challenged Law and meet their requests for equality with other professions.

Comments regarding the "property right"

125. With regard to the violation of property rights, the MPA argues that the Ombudsperson's allegations focus entirely on the reduction of salaries paid to individuals and groups of individuals through the challenged Law. The MPA argument at this point is that it should be assessed whether the salaries of those individuals or groups of individuals are in line with the principle of equality and non-discrimination and in a fair and reasonable proportion to the same or comparable positions so far. Precedents in ECtHR cases *Kjartan Asmudsson v. Iceland*, application no. 60669/00, Judgment of 12 October 2004 (*Musk v. Ploland*) and *Hasani v. Croatia*, cited above, submitted by the Applicant, cannot be taken into account in the case of the constitutional review of the challenged Law, because the object of the trial in them was mainly in the right to retirement not the salaries which are essentially distinct cases for which the Constitutional Court has also expressed in Judgment KO12/18, namely paragraph 114 which states that: *"[...] Furthermore, the Court considers that the analogy of this decision with Case No. K0119/10 does not hold [Judgment dated 8 December 2011, Constitutional review of Article 14 paragraph 1.6, Article 22, Article 24, Article 25 and Article 27 of the Law on the Rights and Obligations of the Deputy, No. 03/L-11, of 4 June 2010]. This is so because in Case K0119/10 the Court did not assess the salaries of the deputies but their supplementary pensions, for which the Court considered*

that it created discrimination against other members of the society and pensioners in Kosovo, because the deputies would benefit substantial pensions from the state budget without their contribution, which was not the case with other members of the society".

126. In addition, the MPA adds that Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR should only be applied to existing assets of a person. Therefore, future benefit cannot be considered as an asset unless it has so far been obtained or is without any "doubt worthwhile". In addition, the hope of reviving long-extinguished property cannot be regarded as a possession; nor can a conditional claim which has lapsed as a result of the failure to fulfill the condition (see case *Gratzinger and Gratzinger v. Czech Republic* (Decision) [GC], appl. No. 39794/98, paragraph 69). However, in some circumstances, "*legitimate expectation*" of obtaining an "*asset*" may also enjoy the protection provided for in Article 46, and in conjunction with Article 1 of Protocol No. 1. Therefore, where the proprietary interest is in the nature of a claim for the person to whom is given that interest, it may be regarded to have "*legitimate expectation*" only where that interest has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (See *Kopecky v. Slovakia* [GC], Appl. 44912/98, paragraph 52). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts. Based on the foregoing, it follows that the doctrine of legitimate expectation is evoked only when it is evident from the circumstances of the case that the applicant does not have "existing assets" and is then examined as to whether the person has an "asset" against which he can claim that he has a legitimate expectation that he will be able to enjoy it. (See ECtHR judgment *Kopecký v. Slovakia*, of 28 September 2004, application no. 44912/98, paragraphs 40-42).

127. Specifically, this legitimate expectation from the challenged Law has to do with the categories of public officials who are expected to have a salary increase. In this respect, we recall that it can be inferred from the ECtHR case law that the doctrine of legitimate expectation is considered in the context of whether legitimate expectations rely on a legal act of the authorities (the basis of legitimate expectations) is justified in the sense that it can assume that the law or norm will not subsequently be annulled (see *mutatis mutandis* ECtHR *Pine Valley Developments Ltd and Others v Ireland*). In itself, in accordance with ECtHR practice is not guaranteed that the legislator cannot change the law, especially if such a change is proportionate (see *mutatis mutandis* ECtHR *X v. Germany*, application no. 8410/78, Decision on Admissibility, of 13 December 1979).

Comments regarding "public enterprises"

128. 127. In this regard the MPA states that the Ombudsperson's allegation is whether public enterprises should be excluded from the challenged Law. According to the MPA, it is worth recalling the practice of other countries, where the principles regarding salaries and benefits in these entities are defined by law, such as the case of Bosnia and Herzegovina (see Law on Salaries and other material rights of members of the governing bodies of

institutions of the Federation of Bosnia and Herzegovina and majority public enterprises owned by the Federation of Bosnia and Herzegovina, "Official Gazette of the Federation of B&H", no. 12/09); the case of Montenegro with the Law on Profits of Public Employees; the case of Croatia with the Law on Salaries in Public Services, the Law on Salary Bases in Public Services.

MPA comments regarding individual complaints received by the Ombudsperson from other institutions and interested parties

129. The MPA, in the capacity of the Ministry that had proposed the challenged Law which was subsequently approved by the Government and voted by the Assembly, in addition to comments on the allegations of the Ombudsperson, has also submitted specific comments regarding specific complaints which are submitted to the Ombudsperson by various institutions and entities interested in the status of constitutionality of the challenged Law.

130. In this regard, the Court notes that the MPA has not submitted any comments regarding the complaints filed with the Ombudsperson by: Veton Çoçaj - Certifier; Pajtim Zogaj, inspector at the Cultural Heritage Inspectorate; New Trade Union of Kosovo Energy Corporation, System, Transmission and Market Operator of Kosovo-KOSTT, Independent Trade Union of KOSTT, Independent Trade Union Federation of Post and Telecommunications of Kosovo; Independent Judicial Union of the Republic of Kosovo; Initiating council of teachers from grades 1-5; Radio Television of Kosovo.

131. In the following, the Court will present all the specific comments that the MPA has submitted regarding the individual complaints of other institutions and entities submitted to the Ombudsperson.

Central Election Commission (CEC)

132. The MPA considers that it makes no sense to maintain the existing situation created by sub-legal acts without legal basis and without the constitutional or legal authorization that gives the CEC the right to regulate by a sub-legal act of salaries and its components.

Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Prosecutors Association (KJC), (KPC) and (KPA)

133. With regard to the allegations of the KJC, KPC and HQ, the MPA stated that their requests have always been abstract and without any concrete proposal. MPA considers that the main key in determining the salary are the responsibilities and duties for the work/function performed within the principle of separation of powers. The MPA claims that the allegation of the KJC, that in this institution are not included some positions is not correct, because the latter, as in this request, has never shown which are those positions that are not included in the challenged Law. Regarding the ranking and determination of classes in the KPC but also in the KJC, the MPA stressed that there is no comment. Regarding the possibility of a staff increase in the KPC, no single reason has been given as to why this allowance should be provided. The allegation of the PA is not clear, which states that the salaries of

prosecutors will be reduced from 1 January 2021, when according to paragraph 1 of Article 28 of the challenged Law this will be the same, until 31 December 2022. MPA emphasized that all elements were included in the basic salary based on the responsibilities of these positions and there was no need to adjust these positions with allowance.

Anti-Corruption Experts from the Special Prosecution of Kosovo (ACESPK)

134. The MPA claims that they did not provide sufficient arguments as to why these positions should be paid differently from other categories of officials in the Special Prosecution Office. However, the MPA states that the challenged Law has made a difference in this category, placing them in the category of experts because otherwise they had to be classified in the same or similar positions in the Anti-Corruption Agency.

Kosovo Police (KP)

135. According to the MPA, the allowance for market conditions is dedicated to positions or groups of positions for which the private market offers better conditions with at least 50% higher salary and which is reflected in the recruitment and retention of staff. Police officers cannot be given this allowance because they are not civil servants and that there is no police officer who can go into the private market, which would endanger the Kosovo Police by retaining and recruiting police officers.

Police Inspectorate of Kosovo (PIK))

136. The MPA argues that, although some PIK positions are not explicitly included in the challenged Law, they are found within the Annex to the challenged Law as general classes based on the status of the PIK as an executive agency and its structure. PIK enjoys the allowance according to paragraph 1 of Article 14 of the challenged Law, while the details of who are the beneficiaries and the amount of the allowance will be determined by sub-legal act according to paragraph 4 of Article 14 of the challenged Law.

Kosovo Forensic Agency (KFA)

137. The MPA states that KFA is a typical executive agency within the Ministry of Internal Affairs, therefore its staff is the same in terms of employment status as well as in terms of salaries. The grade system in the KFA is incorrect and is not the same as the grade system in the Kosovo Police. The element of danger mentioned is hypothetical because according to the MPA, no argument has been given as to why this category is endangered for life and health.

Anti-Corruption Agency (ACA)

138. The classification of the salary of the Director of ACA according to MPA is done taking into account the functions and responsibilities of this position and comparing it with other heads such as: the case with the Commissioner for Personal Data Protection as this agency has the same status as ACA. While for professional officials in the ACA are reserved two separate classes at the same

professional level as for other independent agencies that are favored with other categories of civil servants. An allowance has also been arranged for ACA employees which is worth up to 20% of the basic salary.

Energy Regulatory Office (ERO)

139. According to the MPA, the ERO has the status of regulatory agency according to Law no. 06/L-113 on the Organization and Functioning of State Administration and Independent Agencies, consequently their staff also has the status of civil servant. There is no reason and argument as to why this agency should be excluded from the challenged Law. The allegation that ERO is not financed from the state budget and that this is confirmed by the Law on Budget Allocations of 2019, where this agency has a budget code specifying wages and salaries is not correct.

Civil Registration Agency (CRA)

140. The MPA claims that salaries in the CRA are the same as in any other executive agency, because according to the MPA, it is not possible to have differences between employees of agencies with the same status.

Civil Aviation Authority (CAA)

141. MPA alleges that for the CAA a differentiation has been made in relation to the salaries of other employees, which is more or less similar to the current salaries. The reduction was made mainly for managerial positions for which it was not possible to find a solution, because their salaries were much higher than the maximum coefficient 10, which is set by the challenged Law, e.g. the Chief Executive Officer of the CAA has a salary of 2860 euro, while according to the challenged Law the highest salary in the public sector is 2390 euro.

Air Navigation Services Agency (ANSA)

142. In relation to this agency, the MPA reasons that the same as in the CAA a differentiation of professionals has been made in ANSA. According to the MPA, there is no sense in the connection between the creation of revenues and the level of salaries and that no argument has been presented as to why the challenged Law violates the autonomy of ANSA. The allegation of dismissal of staff is an assumption unfounded on any evidence (e.g. number of resignations in the last 5 years).

Kosovo Civil Service Trade Union and Independent Trade Union of Kosovo Administration (KCSTU) (ITUKA)

143. With regard to this trade union, the MPA states that there is no specific comment, because the allegations raised are assumptions without any concrete evidence in terms of the alleged unconstitutionality of the challenged Law.

Kosovo Academy of Sciences and Arts (KASA)

144. With regard to KASA, the MPA argues that the challenged Law has dealt only with the amount of salary and not the nature and purpose, because this is regulated by the KASA law itself.

Institute of Forensic Medicine (IFM)

145. The MPA considers that IFM did not correctly and accurately understand the challenged Law. This is due to the fact that, according to the MPA, the functional positions in IFM (mainly doctors) will be paid according to the salary classes of doctors, while the support staff the same as the UCCK staff.

Administration of the University Clinical Center (AUCC)

146. The employees in the UCC administration, according to the MPA, have the status of public service employees, while their salaries are set by comparing the nature of work which is completely the same as civil servants, e.g. work of financial officer in the UCC is the same as in a municipality or ministry.

Chamber and Trade Union of Nurses, Midwives and other health professionals

147. The MPA adds that the Chamber's allegation that the ranking should be made on the basis of education is incorrect, due to the fact that the challenged Law has determined the value of work in a concrete position and not the scientific degree that these categories have benefited. The union has mainly given proposals which after the adoption of the challenged Law are no longer relevant.

Information Society Agency (ISA)

148. The categorization of the ICT positions in the challenged Law, according to the MPA, is done so that for each class the respective coefficient is set.

School Psychologists and Pedagogues

149. According to the MPA, their categorization was made taking into account the nature of their work, and not the level or degree of education, as alleged.

Central Harmonization Unit for Internal Audit in the Ministry of Finance (CHU) and Internal Auditors

150. The MPA argues that the positions of the CHU and Internal Auditors are included in the challenged Law through the regular class system which will be classified according to a regular job classification process. It is not correct to state that the regulation of classification by sub-legal act by the Government, violates the rights of this category because the challenged law has authorized the Government to regulate the classification for all civil servants in the Republic of Kosovo.

Health professionals/doctors employed in the Ministry of Health (MoH)

151. Salaries for this category, according to the MPA, are categorized based on the nature and importance of the work performed by employees in the MoH, and not as claimed by the type of profession and the difficulty of education completed. Employees in the MoH are mainly charged with policy-making and administrative tasks, and not with the provision of services as happens e.g. with surgeons who provide surgical services to citizens, therefore the comparison is inaccurate and impossible.

Engineer staff at ARKEP

152. The MPA states that the allegations of ARKEP staff are more proposals which will be taken into account in the job classification.

Water Services Regulatory Authority (WSRA)

153. The MPA states that there is no doubt that the WSRA employees are not civil servants, therefore, their salaries are determined according to the same classes as all civil servants. The departure of staff is only an assumption and the same is not proven by any evidence.

Administration of the University of Prishtina (UP)

154. With regard to the UP administration, the MPA states that the challenged Law does not aim at the implementation of public promises, but aims to regulate the payroll system. The allegations of pay cuts are more assumptions than evidence-based facts. The referral in Article 28 of Law no. 03/L-147 on Salaries of Civil Servants according to the MPA is not correct, as this article has never been implemented in practice. Payment of fees may be made in accordance with paragraph 4 of Article 16 of the challenged Law.

Responses received from the Ministry of Finance and Transfers, following the specific request of the Court addressed to this Ministry

155. The Court recalls the fact that it requested the Ministry of Finance and Transfers to answer some questions of the Court (see paragraphs 23 and 24 of this Judgment which reflect exactly all the Court's questions to the Ministry of Finance and Transfers). In this regard, the Court received answers which will be reflected in the following.

156. With regard to question (1) of the Court, the Ministry of Finance and Transfers responded: *"In the first question, you raised the issues for what positions and exactly how much the salary will be lowered, in what institutions, how much was the previous salary and how much would be with Law No. 06/L-111 on Salaries in the Public Sector (hereinafter: the Law), as well as the difference between the salary they currently receive and the salary they would receive under the Law. Regarding this question, we have presented table A in Excel format on CD. This table shows all the positions that are currently paid from the Budget of the Republic of Kosovo, institutions, current salary, salary according to the Law and the difference. For clarification, the current salary, the salary based according to the Law and the difference. For clarification, the current salary is the basis salary based on the coefficient, as well as the*

supplement on the basic salary (in cases when it is applied), and does not include any of the other current allowances. Therefore, the comparison is not made for the gross salary (basic salary and all allowances), but only for the basic salary".

157. In relation to question (2) of the Court, the Ministry of Finance and Transfers responded: *"In the second question you presented the issues for what positions and exactly how much the salary will be increased, in which institutions, how much was the previous salary and how much would be with the Law as well as the difference between the salary they currently receive and the salary they will receive with the Law. Regarding this question, we have presented table B in Excel format on CD. This table shows all the positions that are currently paid from the Budget of the Republic of Kosovo, institutions, current salary, salary according to the Law and the difference. For clarification, the current salary is the basic salary based on the coefficient as well as the supplement on the basic salary (in cases when it is applied), and does not include any of the other current supplements. Therefore, the comparison is not made for the gross salary (basic salary and all allowances), but only for the basic salary".*

158. Regarding question (3) of the Court, the Ministry of Finance and Transfers responded: *"In the third question, you raised the issue regarding the positions that receive a salary according to the current system, but which is not defined by the Law on Salaries, etc. Regarding this question, we clarify that the salaries of the judges of the Constitutional Court, Judge, Prosecutor, Chairman of the Judicial Council and Chairman of the Prosecutorial Council, who are appointed by government decision, will remain intact until 31 December 2022 (Article 28 of the Law), thus are not subject to the new legal regulation for at least 2.5 years (depending on the time of implementation of the law). See Table 1."* [*Clarification of the Court:* the tables in question, some of them in Excel, are accessible to the Court but that it is impossible to reflect in this Judgment due to their volume. However, their relevant essence will be explained throughout this Judgment].

159. Further, follows the response of the Ministry of Finance and Transfers to question (3) of the Court, which states that neither for the Privatization Agency of Kosovo, the provisions of the law on the system of salaries, allowances, remunerations and Annex no. 1 of this Law are not subject to the new legal regulation until December 2022. The current salaries of the PAK are determined by internal acts and are presented in Table 2. Meanwhile, the new salaries in the PAK will be determined through the classification process according to the restrictions of given in Annex 1 of the Law. As the final status of the Privatization Agency of Kosovo is not known, their future salaries will be determined depending on their future status. Also, keep in mind that the salaries of the PAK Board are not included in the salary system, but are paid from the category of salaries and allowances, therefore they are not part of Table 2. [*Court's clarification*: the tables in question, some of them in Excel, are accessible to the Court but that it is impossible to reflect on this Judgment due to their volume. However, their relevant essence will be explained throughout this Judgment].

160. In this context, the Ministry of Finance and Transfers states in its response to question (3) of the Court that it should be clarified that *"despite the fact that the positions/categories are defined in a broad sense in the Law, the difficulty of determining the salary for the positions which are not directly undefined is evident. Such are about 23% of the positions (out of 206 unique positions, 47 positions need classification, of which 27 positions require classification and reorganization, while the other 20 positions can be defined by the reorganization process), or about 42% of employees from the list of current salaries for which a classification is required to determine the salary. Consequently, the second additional document required in your letter (after questions 1-7) cannot be provided at this stage, as such a document with the list of all employees by position could not be compiled for the reasons of above, but the same can be offered only after the completion of the process of classification and reorganization of institutions."*

161. In relation to question (4) of the Court, the Ministry of Finance and Transfers answered: *"In the fourth question you raised the issues what positions exactly will be paid from the Budget of the Republic of Kosovo, what positions and what institutions are exactly excluded by the Law. Regarding this question, we clarify that with the start of the implementation of the Law from the state budget will be paid all the positions that are in table no. 1 of this Law, in addition to position no. 29 (General Director of Public Broadcaster - RTK) ". Further, the answer follows: "the provisions of Article 28 of this Law on the system of salaries, allowances, rewards and Annex no. 1 of the Law do not apply to public officials with special status: Judge of the Constitutional Court, Judge, Prosecutor, Chairman of the Judicial Council and Chairman of the Prosecutorial Council until 31 December 2022 (see Table 1), and the provisions of Article 29 for the Agency Privatization of Kosovo for the system of salaries, allowances, rewards and annex number 1 of this law is not implemented until 31 December 2022 (see Table 2). As to what positions and institutions are excluded from the Law, we clarify that the general provisions of this law, in Article 1, paragraph 1.1, define: the system of salaries and remunerations for public officials and officials who are paid from the state budget, except the Kosovo Security Force - KSF (see salaries in the KSF in Table 3) and Kosovo Intelligence Agency - KIA (see salaries in KIA in Table 4)". [Clarification of the Court:* the tables in question, some of them in Excel, are accessible to the Court but that it is impossible to reflect in this Judgment due to their volume. However, their relevant essence will be explained throughout this Judgment].

162. The Ministry of Finance and Transfers, in its answers to question (4) of the Court, also stated that *"it should be borne in mind that the rewards according to Article 25 of Law no. 05/L-038 on the Academy of Sciences and Arts of Kosovo, members of the Academy, full members and correspondence, within Annex No. 1 of the Law (ordinal numbers 43 and 51), are not salaries (compensation for work), and the same are set directly as wages, and not as rewards through equivalence. However, these rewards are paid through the Treasury payroll system, and this practical/operational adjustment has been over the years."*

163. Regarding question five (5) of the Court, the Ministry of Finance and Transfers answered: *"In the fifth question you raised the issue of salaries for employees of public enterprises. Regarding this question, we clarify that the Law, in Article 27 - Competence for determining salaries in publicly owned enterprises, regulates the issue of competence to set the level of salaries for employees of public enterprises (POEs), whether they are central POEs or local POEs, always when those POEs are over 50% owned by the state or municipality/municipalities. In cases when POEs are central, namely owned by the state, then according to Article 27, paragraph 1 of the Law, the collegial governing bodies of POEs, that is the boards of directors of POEs have the competence to approve the salary levels of their employees within the minimum coefficient and the maximum coefficient 7, according to the value of the coefficient determined by Article 23 paragraph 1 of the Law. Also, according to the same article and paragraph, it is the boards of directors of POEs that are authorized to approve the measure of performance allowance, but not more than one monthly salary per year, after the publication of the positive annual financial result, and after approval by the Inter-Ministerial Committee for publicly owned enterprises. In cases when certain POEs operate with loss or if they are subsidized by the state, then according to Article 27, paragraph 2 of the Law, it is the Government of Kosovo that upon the proposal of the Inter-Ministerial Committee for Public Enterprises, by special acts, adopts the level of salaries of the employees of these POEs, within the frameworks defined by this Law, namely within the minimum coefficient and the maximum coefficient 7. In the case of local public enterprises, according to Article 27 paragraph 3 of the Law, is the Municipal Committee of Shareholders for public enterprises, which determines the salary levels of their employees, within the minimum coefficient and the maximum coefficient 5, according to the value of the coefficient determined by Article 23 paragraph 1 of the Law. The salaries of the employees of all central and local public enterprises are paid from the revenues generated by the business of these POEs. Furthermore, we emphasize that public enterprises are not budget organizations that receive direct budget allocations from the Budget Law of the Republic of Kosovo, and the payment of their salaries is not made by the Treasury payroll system*".

164. With regard to question six (6) of the Court, the Ministry of Finance and Transfers replied: "In question six you have raised the issues of whether all public sector salaries are regulated solely and exclusively by Law and Annex no. 1 of this Law, or there are salaries which will be determined by sub-legal acts of the Government, etc. Regarding this question, we clarify the following: The Law regulates the salaries of public officials and public officials paid from the state budget, except for the categories that are mentioned in point 4 of your request. Who is a public official and public functionary is determined by Law no. 06/L-114 on Public Officials (hereinafter LPO). Thus, salaries for public officials and functionaries are set by law (directly or indirectly) and cannot be set by sub-legal act. But, the sub-legal acts have a wide margin to set specifics and criteria for this indirect definition. Thus, for all positions (about 42%) that are not direct positions, the Law authorizes the Government by sub-legal act to approve the applicable classes, special administration groups and others as described below, which are subject to the classification process and reorganization, which will eventually result in a corresponding salary for each

employee, based on table 1 of this law. The Law also regulates the salaries of employees in public enterprises with capital over 50% of the state (Article 27 of Law No. 06/L-111) in terms of determining the competence (collegial bodies) and the limits of how much their salaries can be but not the concrete classes for each position. More concrete explanations are given in answer no. 5.

165. Further, regarding the allegation of the lack of direct definition for some existing positions that are in employment and how salaries will be set for such positions, we provide the following explanations, the Law on Salaries in Annex no. 1 defines two salary determination systems.

166. The first system is the direct determination of salaries for positions which by nature are separate positions, e.g. president, minister, deputy, doctor, etc. Since these positions are unique and small in volume, it is estimated that they are defined directly by law without the need for a classification process. However, there have been exceptions to this rule, when civil service positions are defined as direct positions, although they are not unique (for example some of positions no. 79, 92, 93 in the Civil Service). The same happens in the Assembly of Kosovo where positions from 109-132 are regulated directly by Law. What are the positions defined directly we have explained in tables A and B in Excel format on CD. (Clarification: these tables are accessible to the Court).

167. The second system is the indirect determination of salaries, which means that the Law determines only the main classes, therefore a classification process is needed. This system applies mainly to the salaries of civil servants where Article 5 paragraph 3 of the Law stipulates *"Classification of a specific position of civil service according to paragraph 2 of this Article is done based on the rules for evaluation and classification of job positions, according to the provisions for classification of positions of civil service in accordance with the legislation on public official. The class to which a certain position belongs is determined explicitly in the regulation on internal organisation of the institution adopted according to the Law on Organisation and Functioning of State Administration and Independent Agencies"*. From this paragraph we can understand that to classify a certain position which is defined according to Annex no. 1 (paragraph 2 of Article 5) certain legal conditions must be met:

> 1. The classification and evaluation of a certain position is made according to the evaluation and classification of the rules defined in the legislation for the public official; and
> 2. The class that belongs to a certain position should be explicitly defined in the regulation for the internal organization of the institution according to the Law on the Organization and Functioning of the State Administration and Independent Agencies.

168. When it comes to the first condition, the LPO in Article 33 regulates the classification of jobs while paragraph 2 defines the main categories in the civil service which are:

1. Senior managerial category, which includes these positions: general secretary, executive director and deputy director of an executive agency and equivalent positions;
2. Mid-level managerial category includes these positions: director of department and positions equivalent to it;
3. Low-level managerial category includes these positions: head of division and positions equivalent to it; and
4. Professional category which includes professional officers.

169. Paragraph 3 of Article 33 of the LPO stipulates that each of the categories may have one or more classes based on the different level of complexity of work and general requirements (knowledge, skills and capacities) necessary for performing such duties. Complexity of work is a combination of relevance, decision making discretion, difficulty and risk in the performance of works in specific position. Any position of civil service is classified as part of a specific class based on the performance process.

170. Paragraph 5 of Article 33 of the Law authorizes the Government that upon the proposal of the responsible ministry of public administration, by a sub-legal act adopts:

1. applicable classes for each category and titles for each class;
2. special administration groups;
3. general job description for each category, class and group, including general requirements for admission to each category, class and group; and
4. detailed rules, procedures, standards and methodology for assessment and classification of a position into a certain class or group according to this Article.

171. This sub-legal act has been prepared by the Ministry responsible for Public Administration and contains all the elements defined in this paragraph including the methodology of evaluation of a certain position, but the same could not be approved by the Government due to the suspension measure. determined by the Constitutional Court against LPO.

172. With regard to the second condition, the class (defined according to the rules of LPO explained above) belonging to a defined position must be explicitly defined by the regulation on the internal organization of the institution at the same time this is a requirement of Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies, in paragraph 1.2 of Article 18 which stipulates *that detailed organizational chart of the institution, including also the class of each job position and group of positions of professional category in accordance with provisions for the classification in the civil service according to the law on public officials.*

173. Regarding the detailed procedures and standards on how the regulation for internal organization of an institution is made, the Government upon the proposal of the Ministry of Public Administration has approved the Regulation (QRK) no. 01/2020 on Standards of Internal Organization, Systematization of Jobs and Cooperation in Institutions of State Administration and Independent

Agencies which with a concrete example reflects in Annex no. 1, how to decide the class of a certain position.

174. As can be understood, the Law is organically related to the LPO and the Law on the Organization and Functioning of the State Administration and Independent Agencies, therefore the classification of jobs should be done according to this logic. The Law can be fully implemented only after the above conditions are met.

175. Regarding question seven (7) of the Court, the Ministry of Finance and Transfers replied: "In question seven you have raised the issue of whether the Government has approved all sub-legal acts mentioned in the challenged Law, etc. Regarding this question we give the explanation as follows:

> 7.1. Sub-legal act regarding the allowances and compensation of the employee of the Administration of the Assembly of the Republic of Kosovo - Article 4 paragraph 4 of the Law states as follows: Allowance and compensation of the employee of the Administration of the Assembly of the Republic of Kosovo shall be regulated by this Law and by special act adopted by the Presidency of the Assembly of the Republic of Kosovo. The Assembly is responsible for this sub-legal act.
> 7.2. Sub-legal act regarding the equivalence of the position with the grade - Article 5 paragraph 4 of the Law states: In the case of civil servants with special status, for whom according to the Law on Public Officials applies the system of personal grades, basic salary of public official is determined by the Salary Class to which the grade belongs, according to Annex No. 1 attached and integral part of this Law, Article 5 paragraph 5 of the Law states: In the case of civil servants with special status according to paragraph 4, article 5, the Government of Kosovo, upon proposal of minister responsible for public administration and minister responsible for category of employees where the personal grades system applies, adopts with a sub-legal act, equivalence of the position with grade. For this sub-legal act is responsible the minister responsible for public administration and the minister responsible for categories of employees where is applicable personal grading system, Draft has not been prepared yet.
> 7.3, Sub-legal act regarding the allowance for market conditions - Article 6 paragraph 3 of the Law states: Types of Positions and relevant professions for which the allowance for market conditions is received, value and procedures for receiving it are approved with a sub-legal act of Government of Kosovo, upon the proposal of responsible ministry for public administration and ministry responsible for finances. The benefit of allowance for market conditions is reviewed on annual basis by the Government, Article 6 paragraph 4 of the Law states: Following the adoption of sub-legal act by the Government according to paragraph 3 of this Article, benefit of allowance for market conditions is approved by the ministry responsible for public administration and ministry responsible for finance, upon justified proposal of respective institution. For this sub-legal act is responsible the ministry responsible for public administration and the ministry responsible for finance, Draft of sub-legal act that regulates this issue (Draft Regulation No. XX / 2019 on Allowance on the Basic Salary of Civil Servants and Cabinet Officers and Remuneration of Officials and

Public Functionaries) was prepared by the working group and went through the stages of public consultation, but failed to proceed for approval by the Government.

7.5, Sub-legal act regarding the special allowance of civil servants - Article 8 paragraph 1 of the Law states: Special allowance over the basic salary shall be received by officials of Tax Administration and investigation inspectors of the Kosovo Competition Authority, guardians at the correction service and fire-fighters in dangerous operations, Article 8 paragraph 3 of the Law states: The list of positions or position group benefiting special allowances, rules for receiving and value of the allowance shall be determined with a sub-legal act of Government, at the proposal of the ministry responsible for public administration and ministry responsible for finances, Article 8 paragraph 4 of the Law states: Civil servants in the Anti-Corruption Agency, who exercise functions of the Agency, shall receive allowance up to twenty percent (20%) on the basic salary. For this sub-legal act is responsible the ministry responsible for public administration and the ministry responsible for finance, Draft of sub-legal act that regulates this issue (Draft Regulation No., XX / 2019 on Allowances over the Basic Salary of Civil Servants and Cabinet Officers and Officials' Remunerations and Public Functionaries) is prepared by the working group and has gone through the stages of public consultation, but has not been processed for approval by the Government.

7.6 Sub-legal act regarding the allowance or compensation for overtime work - Article 9 paragraph 5 of the Law states: Government adopts with a sub-legal act detailed conditions for allowance and compensations for overtime work according to this Article. The Government is responsible for this sub-legal act. The draft of the sub-legal act regulating this issue: (Draft Regulation No. XX/2019 on Allowances over Basic Salary of Civil Servants and Cabinet Officers and Remunerations of Public Officials and Functionaries) has been prepared by the working group and has gone through the stages of public consultation, but failed to proceed for approval by the Government.

7.7. The sub-legal act on the special allowance for public functionaries- Article 12 paragraph 1 of the Law states: Deputies may receive special allowance over the basic salary. Special allowance, from paragraph 1 of this Article, shall be given to the deputy for parliamentary function: President of the Assembly, Vice President of the Assembly, Chairperson of the parliamentary committee, deputy chairperson of the parliamentary committee and head of the parliamentary group. Article 12 paragraph 4 of the Law states: Criteria and procedures for allowances and compensation from paragraphs 1 and 2 of this Article shall, upon the proposal of the relevant parliamentary Committee on budget and finance, defined with a regulation by Presidency of Assembly of the Republic of Kosovo, Article 12 paragraph 6 of the Law states: Allowance and compensation for the political staff of the Assembly of the Republic of Kosovo shall be regulated by a special act adopted by the Presidency of the Assembly of the Republic of Kosovo. The Assembly is responsible for this sub-legal act.

7.8. Sub-legal act on the special allowance for the public functionary with special status - Article 14 paragraph 1 of the Law states: Police officers shall benefit a special allowance for those tasks they perform in the sectors or special operations with a risk for the life, Article 14 paragraph 3 of the Law states: Police inspectorate, customs officers and officials of the Tax

Administration shall benefit an allowance up to twenty percent (20%) of the basic salary, Article 14 paragraph 4 of the law states: . List of positions of police officers, police inspectorate, customs officers and officials of the Tax Administration that benefit a special allowance, rules for the benefit and value of the allowance shall be determined by sub-legal act of the Government, upon the proposal of the Ministry responsible for internal affairs and Ministry responsible for finances. The Government is responsible for this sub-legal act upon the proposal of the ministry responsible for internal affairs and ministry responsible for finance, Government of the Republic of Kosovo by Decision no. 13/115 dated 17.12,2019, has approved the Regulation on Special Allowance to Salary for Risk for Police Officers and Employees of the Police Inspectorate of Kosovo. The decision states that this regulation is implemented with the entry into force of Law No. 06/L-111 on Salaries in the Public Sector. This sub-legal act was approved without the Budget Impact Assessment of the Budget Department in the Ministry of Finance and Transfers, as required by the applicable public finance legislation. Also, the Ministry of Finance was not a member of the working group. Attached to this letter is the decision of the Government and the Regulation in question.

7.9. The sub-legal act on the special allowance for Cabinet employees - Article 15 paragraph 3 of the Law states: In addition to basic salary, cabinet employee, with the exception of political advisor, may benefit a special allowance which cannot exceed twenty percent (20%) of the basic salary, Article 15 paragraph 4 of the Law states: Criteria and procedures for benefiting the allowance according to paragraph 3 of this Article are regulated with a sub-legal act approved by the Government. The Government is responsible for this sub-legal act. The draft of sub-legal act regulating this issue (Draft Regulation No. XX/2019 on Allowances over Basic Salary to Civil Servants and Cabinet Officers and Remunerations of Public Officials and Functionaries) has been prepared by the working group and has gone through the stages of public consultation, but has not been processed for approval by the Government.

7:10. Sub-legal act on the allowance for difficult/harmful working conditions - Article 17 paragraph 1 of the Law states: Allowance for difficult/harmful working conditions is compensation for the work in conditions that are harmful for health, Article 17 paragraph 4 of the Law states: Government of Republic of Kosovo, upon proposal of the minister responsible for public administration, ministry responsible for health and ministry responsible for finances, adopts, with a sub-legal act, groups of positions which benefit allowance for difficult/harmful working conditions, detailed conditions for benefiting and its value. The Government is responsible for this sub-legal act upon the proposal of the Minister responsible for public administration, the ministry responsible for health and the ministry responsible for finance, the draft of sub-legal act that regulates this issue (Draft Regulation No. XX/2019 on Allowance over Basic Salary for Conditions of Harmful Working Condition, Overtime Allowances and Special Allowances for Health System Employees) was prepared by the working group and went through the stages of public consultation, but failed to proceed for approval by the Government.

7.11. Sub-legal act on the performance allowance for the employee of the pre-university education system-Article 18 paragraph 1 of the Law states:

Professional employees of pre-university education system who show special results at work are entitled to receive performance allowance, Article 18 paragraph 2 of the Law states: Government of Republic of Kosovo, upon proposal of the minister responsible for public administration, ministry responsible for education and ministry responsible for finances, adopts, with a sub-legal act, rules for allowance according to paragraph 1 of this Article, detailed conditions for benefiting and its value. The Government is responsible for this sub-legal act upon the proposal of the Minister responsible for public administration, the ministry responsible for education and the ministry responsible for finance. The draft sub-legal act that regulates this issue (Draft Regulation No. XX/2019 on Allowances over the Basic Salary of Public Servants and Administrative and Support Officers in the Pre-University and University Education System) has been prepared by the working group and has gone through public consultation stages, but has not been processed for approval by the Government.

7.12. Sub-legal act on special allowance for employees of university education - Article 19 paragraph 1 of the Law states: University professors performing functions of: Rector, Vice-Rector, Dean and Vice-Dean as well as Head of the Department benefit a special allowance for exercising relevant function, Article 19 paragraph 2 of the Law states: University professors may, for mentoring graduation thesis for all study levels (bachelor, master and PhD), also benefit a special allowance, ten percent (10%) of the basic salary, Article 19 paragraph 4 of the Law states: Government of Republic of Kosovo, upon proposal of the ministry responsible for public administration, ministry responsible for education and ministry responsible for finances, adopts, with a sub-legal act, rules for allowance according to paragraphs 1 and 2 of this Article, detailed conditions for benefiting allowances and their value. The Government is responsible for this sub-legal act upon the proposal of the Minister responsible for public administration, the ministry responsible for education and the ministry responsible for finance, the draft sub-legal act that regulates this issue (Draft Regulation No. XX/2019 on Allowances over the Basic Salary of Public Servants and Administrative and Support Officials in the Pre-University and University Education System) was prepared by the working group and went through the stages of public consultation, but failed to proceed for approval by the Government.

7.13 Sub-legal act for the special allowance for the employees of health system -Article 20 paragraph 1 of the Law states: Health professionals in UHCSK and MFMC that exercise managing functions and that are not part of Annex 1 of this Law shall benefit a special allowance for exercising the relevant function, Article 20 paragraph 3 of the Law states: Professional employees of health system performing their duty in some specialized professions, in rare areas or in remote locations benefit a special allowance, Article 20 paragraph 5 of the Law states: Government of Republic of Kosovo, upon proposal of the minister responsible for public administration, ministry responsible for health and ministry responsible for finances, adopts, with a sub-legal act, group of positions, rules for allowance according to this Article, detailed conditions for benefiting and its value. The Government is responsible for this sub-legal act upon the proposal of the Minister responsible for public administration, the ministry

responsible for health and the ministry responsible for finance. Allowances over the Basic Salary for Difficult and Harmful Working Conditions, Overtime Allowances and Special Allowances for Employees of Health System) was prepared by the working group and went through the stages of public consultation, but failed to be processed for approval by the Government.

7.14 Sub-legal act on payment as salary up to twenty percent (20%) in cases when the public functionary, public functionary with special status, public official and university academic staff, who receive the basic salary according to Annex 1 of the Law on Salaries, are also engaged with work in another public institution. Article 21 paragraph 5 of the Law states: Public functionary, public functionary with special status, public official and university academic staff receiving the basic salary according to Annex 1 of this Law, if they get engaged to work in another public institution, when allowed under the special law, shall receive a payment, as a salary up to twenty percent (20%) for the engagement in that institution. Article 21 paragraph 6 of the Law states: Government of Republic of Kosovo upon proposal of the responsible ministry for public administration and ministry responsible for finance shall, by a sub-legal act, adopt payment terms, amount and procedure for additional engagement according to paragraph 5 of this Article. The Government is responsible for the sub-legal act regarding the conditions, amount and procedure of payment for additional engagement according to paragraph 50 of Article 21 upon the proposal of the Minister responsible for public administration and the ministry responsible for finance. The draft sub-legal act that regulates this issue (Draft Regulation No. XX/2019 on Additional Engagement and Calculation of Salaries and Work Experience) has been prepared by the working group and has gone through the stages of public consultation, but has not managed to proceed for approval by the Government.

7.15 Sub-legal act for calculating work experience - Article 21 paragraph 8 of the Law states: *Government of Republic of Kosovo* upon proposal of the ministry responsible for public administration and ministry responsible for finance shall, by a sub-legal act, adopt rules for calculation of work experience under paragraph 7 of Article 21 for the sub-legal act related to the calculation of work experience, the Government is responsible upon the proposal of the minister responsible for public administration and the ministry responsible for finance. Draft sub-legal act that regulates this issue (Draft Regulation No. XX/2019 for Additional Engagement and Calculation of Salaries and Work Experience) has been prepared by the working group and has gone through the stages of public consultation, but has not been processed for approval by the Government.

7:16. Sub-legal act on calculation of salary and payment of salaries - Article 22 paragraph 5 of the Law states: Government of Republic of Kosovo shall, by a sub-legal act, upon the proposal of the minister responsible for public administration and ministry responsible for finance, adopt detailed rules for implementation of Article 22 regarding the calculation of salary and payment of salaries. The Government is responsible for the rules related to the calculation of salary and payment of salaries upon the proposal of the Minister responsible for public administration and the ministry responsible for finance. The draft of these rules according to the requirements of this

article has not yet been prepared, but there are current rules which are in force.

7.17. Sub-legal act regarding travel reimbursement and representation costs. Article 25 paragraph 1 of the Law states: Public officials and functionaries are entitled to compensations for expenses incurred for official travel and stay abroad. Article 25 paragraph 2 of the Law states: Public officials and functionaries shall, during the exercise of official duty, be entitled to compensation for expenses incurred for representation. Article 25 paragraph 3 of the Law states: Conditions, method, value of compensation and procedure for benefiting the compensation under paragraph 1 and 2 of this Article is adopted by a sub-legal act of the Government of Kosovo, upon proposal of responsible minister for public administration and responsible ministry for finances. For the sub-legal act regarding the compensation for travel and representation costs the Government is responsible upon the proposal of the minister responsible for public administration and the ministry responsible for finance. The draft sub-legal act that regulates this issue (Draft Regulation No. XX/2019 on Allowances to the Basic Salary of Civil Servants and Cabinet Employees and Remunerations of Public Officials and Functionaries) has been prepared by the working group and has gone through the stages of public consultation, but has not been processed for approval by the Government.

7:18. Sub-legal act regarding the compensations for the employees of the diplomatic service who exercise their duty abroad-Article 26 paragraph 1 of the Law states: The staff of diplomatic service performing their duty abroad shall receive the following compensations: compensation for living costs in the country where activity is performed, compensation for children education expenses, compensation for relocation of family belongings and compensation for traveling to home country. Article 26 paragraph 2 of the Law states: Conditions, method and procedure for benefiting the compensation according to paragraph 1 of this Article and relevant amount are adopted by a sub-legal act of the Government, upon proposal of responsible minister for foreign affairs and Ministry of Finance. The Ministry of Foreign Affairs has prepared a draft for the sub-legal act regarding the compensation for the employees of the diplomatic service who exercise their duties abroad.

As can be seen in the explanations given in point 7, most of the sub-legal acts mentioned in the Law have been drafted and have gone through all stages of public consultation, but could not be processed for approval by the Government because in that time Government has been resigned and due to the suspension measure of the Constitutional Court against the Law.

Item 1 (after 7 questions) requires the final list of salaries distributed by the Ministry of Finance and Transfers for March 2020 for all employees at the level of the Republic of Kosovo. As this list is voluminous, with all the details and for all employees (March) it is submitted in Excel format via CD.

In point 2 (after 7 questions), it is required to submit the list of salaries that would be disbursed by the Ministry of Finance and Transfers if the Law were to be implemented. The answer is as follows: In the current situation as explained in the answers to questions (1-7), it turns out that without the regulation for classification and without the reorganization of institutions it is impossible to determine the salary for each employee, namely it is not possible to compile the list of salaries that would be disbursed by law for

over 80 thousand beneficiaries. Consequently, even if the Law were in force, it could not be fully and immediately implemented. Note: The tables and lists requested by the Constitutional Court were sent in Excel format via CO.

8. Based on the last paragraph of your letter, you requested that the Ministry of Finance and Transfers provide you with other important information. We appreciate that the following information and assessments can assist you in your decision making, as follows:

8.1. Based on a preliminary estimate of the cost of the Law (estimate that has changed since the first draft of the Law until approval by the Assembly), with the level of coefficients and the value of the coefficient determined by this law (239), the salary invoice according definition of Law no. 03/L-048 on Public Financial Management and Accountability, supplemented and amended will exceed the allowed limit (fiscal rule of salaries), Article 22/C Restriction of budget increase for salaries and allowances), which would constitute a breach of the fiscal rule, with reflections on the deficit (as ongoing current expenditures) as well as the need for continued deficit financing. There are also a series of allowances that the Law provides, and that would further aggravate the situation regarding the financing of this Law. In this context, it should be borne in mind that Article 81 of the Law on Public Financial Management and Accountability, has provided a provision of its legal superiority over other laws, in matters related to the management of public money and we consider that it should be assessed whether it is in accordance with the principles set out for public money in Article 120 of the Constitution of the Republic of Kosovo.

8.2. In view of the provisions of Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies, we notice horizontal provisions and the same criteria in the organization of the state administration, namely the Office of the Prime Minister, ministerial systems (ministry, executive agency and administration of public services) and regulatory agencies. Specifically, this Law on Ministerial Systems prescribes in the same way the criteria for establishing executive agencies, departments or divisions. On the other hand, the different drafting of salaries for the heads or staff of these structures in some cases according to the provisions of the Law, among others, we consider it should be assessed in accordance with the principles set out in Article 120 of the Constitution of the Republic of Kosovo regarding public money. We also consider that a similar assessment should be made for some categories of financial officials relevant to the financial management and control process (e.g. internal auditors) who do not have special treatment and are not defined as separate positions".

RELEVANT PROVISIONS OF THE CONSTITUTION, INTERNATIONAL CONVENTIONS, LAWS OF THE REPUBLIC OF KOSOVO AND SUB-LEGAL ACTS

Regarding the allegations of violation referred by the Applicant

THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 3
[Equality Before the Law]

[...]
2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.

Article 7
[Values]

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

Article 10
[Economy]

A market economy with free competition is the basis of the economic order of the Republic of Kosovo.

Article 21
[General Principles]

1.Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.
2. The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.
3. Everyone must respect the human rights and fundamental freedoms of others.
4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

Article 22
[Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

(1) Universal Declaration of Human Rights;
(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
(3) International Covenant on Civil and Political Rights and its Protocols;
(4) Council of Europe Framework Convention for the Protection of National Minorities;
(5) Convention on the Elimination of All Forms of Racial Discrimination;
(6) Convention on the Elimination of All Forms of Discrimination Against Women;
(7) Convention on the Rights of the Child;
(8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

Article 23
[Human Dignity]

Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.

Article 24
[Equality Before the Law]

1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination.
2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.
3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

Article 46
[Protection of Property]

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

Article 55
[Limitations on 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 58
[Responsibilities of the State]

1. The Republic of Kosovo ensures appropriate conditions enabling communities, and their members to preserve, protect and develop their identities. The Government shall particularly support cultural initiatives from communities and their members, including through financial assistance.
2. The Republic of Kosovo shall promote a spirit of tolerance, dialogue and support reconciliation among communities and respect the standards set forth in the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.
3. The Republic of Kosovo shall take all necessary measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their national, ethnic, cultural, linguistic or religious identity.
4. The Republic of Kosovo shall adopt adequate measures as may be necessary to promote, in all areas of economic, social, political and cultural life, full and effective equality among members of communities. Such measures shall not be considered to be an act of discrimination.
5. The Republic of Kosovo shall promote the preservation of the cultural and religious heritage of all communities as an integral part of the heritage of Kosovo. The Republic of Kosovo shall have a special duty to ensure an effective protection of the entirety of sites and monuments of cultural and religious significance to the communities.
6. The Republic of Kosovo shall take effective actions against all those undermining the enjoyment of the rights of members of Communities. The Republic of Kosovo shall refrain from policies or practices aimed at assimilation of persons belonging to Communities against their will, and shall protect these persons from any action aimed at such assimilation.
7. The Republic of Kosovo ensures, on a non-discriminatory basis, that all communities and their members may exercise their rights specified in this Constitution.

Article 102
[General Principles of the Judicial System]

1. Judicial power in the Republic of Kosovo is exercised by the courts.
2. The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts.
3. Courts shall adjudicate based on the Constitution and the law.
4. Judges shall be independent and impartial in exercising their functions.
5. The right to appeal a judicial decision is guaranteed unless otherwise provided by law. The right to extraordinary legal remedies is regulated by law. The law may allow the right to refer a case directly to the Supreme Court, in which case there would be no right of appeal.

Article 109
[State Prosecutor]

1. The State Prosecutor is an independent institution with authority and responsibility for the prosecution of persons charged with committing criminal acts and other acts specified by law.
2. The State Prosecutor is an impartial institution and acts in accordance with the Constitution and the law.

3. The organization, competencies and duties of the State Prosecutor shall be defined by law.
4. The State Prosecutor shall reflect the multiethnic composition of the Republic of Kosovo and shall respect the principles of gender equality.
5. The mandate for prosecutors shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.
6. Prosecutors may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties.
7. The Chief State Prosecutor shall be appointed and dismissed by the President of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council. The mandate of the Chief State Prosecutor is seven (7) years, without the possibility of reappointment.

Article 119
[General Principles]

1. The Republic of Kosovo shall ensure a favorable legal environment for a market economy, freedom of economic activity and safeguards for private and public property.
2. The Republic of Kosovo shall ensure equal legal rights for all domestic and foreign investors and enterprises.
3. Actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law.
4. The Republic of Kosovo promotes the welfare of all of its citizens by fostering sustainable economic development.
5. The Republic of Kosovo shall establish independent market regulators where the market alone cannot sufficiently protect the public interest.
6. A foreign investor is guaranteed the right to freely transfer profit and invested capital outside the country in accordance with the law.
7. Consumer protection is guaranteed in accordance with the law.
8. Every person is required to pay taxes and other contributions as provided by law.
9. The Republic of Kosovo shall exercise its ownership function over any enterprise it controls consistently with the public interest, with a view to maximizing the long-term value of the enterprise.
10. Public service obligation may be imposed on such enterprises in accordance with the law, which shall also provide for a fair compensation.

Article 142
[Independent Agencies]

1. Independent agencies of the Republic of Kosovo are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies. Independent agencies exercise their functions independently from any other body or authority in the Republic of Kosovo.
2. Independent agencies have their own budget that shall be administered independently in accordance with the law.
3. Every organ, institution or other entity exercising legal authority in the Republic of Kosovo is bound to cooperate with and respond to the requests

of the independent agencies during the exercise of their legal competencies in a manner provided by law.

Article 130
[Civilian Aviation Authority]

1. The Civilian Aviation Authority of the Republic of Kosovo shall regulate civilian aviation activities in the Republic of Kosovo and shall be a provider of air navigation services as provided by law.
2. The Civilian Aviation Authority shall fully cooperate with relevant international and local authorities as provided by law.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 1
[Protection of property] of Protocol No. 1 to the ECHR

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

Article 14
[Prohibition of discrimination]

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.2000

The Member States Of The Council Of Europe, signatory hereto,
Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;
Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"); Reaffirming that the principle of nondiscrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures:

Article 1
[General prohibition of discrimination]

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

UNIVERSAL DECLARATION ON HUMAN RIGHTS

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

REGARDING THE CONSTITUTIONAL COMPETENCIES OF THE GOVERNMENT AND THE ASSEMBLY FOR LAWMAKING

THE CONSTITUTION OF THE REPUBLIC OF KOSOVO

Article 65
[Competencies of the Assembly]

The Assembly of the Republic of Kosovo:
(1) adopts laws, resolutions and other general acts; [...]

Article 76
[Rules of Procedure]

The Rules of Procedure of the Assembly are adopted by two thirds (2/3) vote of all its deputies and shall determine the internal organization and method of work for the Assembly.

Article 79
[Legislative Initiative]

The initiative to propose laws may be taken by the President of the Republic of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law.

Article 93
[Competencies of the Government]

The Government has the following competencies:
[...]
(3) proposes draft laws and other acts to the Assembly;
[...]

CHALLENGED SPECIFIC PROVISIONS OF THE LAW ON SALARIES

Article 4
[Salary of civil servant]

4. Allowance and compensation of the employee of the Administration of the Assembly of the Republic of Kosovo shall be regulated by this Law and by special act adopted by the Presidency of the Assembly of the Republic of Kosovo.

5. Regulation by special act, according to paragraph 4 of this Article, shall be done based on the nature and specific conditions of the work of the Assembly of the Republic of Kosovo.

Article 5
[Basic salary of civil servant]

5. In the case of civil servants with special status, according to paragraph 4 of this Article, Government of Kosovo, upon proposal of minister responsible for public administration and minister responsible for category of employees where the personal grades system applies, adopts with a sub-legal act, equivalence of the position with grade.

Article 6
[Allowance for market conditions]

4. Following the adoption of sub-legal act by the Government according to paragraph 3 of this Article, benefit of allowance for market conditions is approved by the ministry responsible for public administration and ministry responsible for finance, upon justified proposal of respective institution.

Article 7
[Performance allowance]

5. Government of Kosovo, upon proposal of the responsible ministry for public administration and ministry responsible for finances, adopts with a sub-legal act the measure and procedure for receiving performance allowance.

Article 8
[Special allowances of civil servants]

3. The list of positions or position group benefiting special allowances, rules for receiving and value of the allowance shall be determined with a sub-legal act of Government, at the proposal of the ministry responsible for public administration and ministry responsible for finances.

Article 9
[Overtime allowance or compensation for overtime work]

5. Government adopts with a sub-legal act detailed conditions for allowance and compensations for overtime work according to this Article.

Article 14
[Special allowance for the public functionary with special status]

1. Police officers shall benefit a special allowance for those tasks they perform in the sectors or special operations with a risk for the life.
2. Special allowance, according to paragraph 1 of this Article, cannot be higher than forty percent (40%) of the basic salary, according to Annex 1 of this Law.
3. Police inspectorate, customs officers and officials of the Tax Administration shall benefit an allowance up to twenty percent (20%) of the basic salary.
4. List of positions of police officers, police inspectorate, customs officers and officials of the Tax Administration that benefit a special allowance,

rules for the benefit and value of the allowance shall be determined by sub-legal act of the Government, upon the proposal of the Ministry responsible for internal affairs and Ministry responsible for finances.

Article 15
[Salary of the cabinet employee]

4. Criteria and procedures for benefiting the allowance according to paragraph 3 of this Article are regulated with a sub-legal act approved by the Government.

Article 17
[Allowance for difficult/ harmful working conditions]

4. Government of Republic of Kosovo, upon proposal of the minister responsible for public administration, ministry responsible for health and ministry responsible for finances, adopts, with a sub-legal act, groups of positions which benefit allowance for difficult/harmful working conditions, detailed conditions for benefiting and its value.

Article 18
[Performance allowance for employee of pre-university education system]

2. Government of Republic of Kosovo, upon proposal of the minister responsible for public administration, ministry responsible for education and ministry responsible for finances, adopts, with a sub-legal act, rules for allowance according to paragraph 1 of this Article, detailed conditions for benefiting and its value.

Article 19
[Special allowance for employee of university education]

4. Government of Republic of Kosovo, upon proposal of the ministry responsible for public administration, ministry responsible for education and ministry responsible for finances, adopts, with a sub-legal act, rules for allowance according to paragraphs 1 and 2 of this Article, detailed conditions for benefiting allowances and their value.

Article 20
[Special allowance for employee of health system]

5. Government of Republic of Kosovo, upon proposal of the minister responsible for public administration, ministry responsible for health and ministry responsible for finances, adopts, with a sub-legal act, group of positions, rules for allowance according to this Article, detailed conditions for benefiting and its value.

Article 21
[Calculation of basic salary]

8. Government of Republic of Kosovo upon proposal of the ministry responsible for public administration and ministry responsible for finance shall, by a sub-legal act, adopt rules for calculation of work experience under paragraph 7 of this Article.

Article 22

[Calculation and payment]

5. Government of Republic of Kosovo shall, by a sub-legal act, upon the proposal of the minister responsible for public administration and ministry responsible for finance, adopt detailed rules for implementation of this Article.

Article 23
[Setting the coefficient value and the fund for allowance]

5. The Fund according to paragraph 4 of this Article shall be allocated by the responsible ministry of finance to the budget organizations only in accordance with this Law and sub-legal acts adopted based on this Law.

Article 25
[Compensation for travels and representation costs]

3. Conditions, method, value of compensation and procedure for benefiting the compensation under paragraph 1 and 2 of this Article is adopted by a sub-legal act of the Government of Kosovo, upon proposal of responsible minister for public administration and responsible ministry for finances.

Article 26
[Compensation for diplomatic service staff performing their duty abroad]

2. Conditions, method and procedure for benefiting the compensation according to paragraph 1 of this Article and relevant amount are adopted by a sub-legal act of the Government, upon proposal of responsible minister for foreign affairs and Ministry of Finance.

Article 29
[No title]

Provisions of this Law for the system of salaries, allowances, remunerations and Annex 1 of this Law shall not apply to Privatization Agency of Kosovo until 31 December 2022.

Article 33
[Abrogation]

1. Upon entry into force of this Law, there shall be abrogated:
   1.1. Law No.03/L-147 on Salaries of Civil Servant;
   1.2. Law No.03/L-03/L001 on the Benefits to Former High Officials, amended and supplemented by the Law No. 04/L-038;
   1.3. Article 11, paragraph 2 of the Law No.03/L-094 on the President of the Republic of Kosovo;
   1.4. Article 15 of the Law No.03/L-121 on Constitutional Court of the Republic of Kosovo;
   1.5. Article 9 of the Law No.03/L-159 on Anti-Corruption Agency;
   1.6. Article 35, paragraphs 1 and 2 of the Law No.06/L-054 on Courts;
   1.7. Article 21, paragraph 1, sub-paragraph 1.1 to 1.10 of the Law No.03/|L-225 on State Prosecutor;
   1.8. Article 18, paragraph 1 of the Law No.06/L-055 on Kosovo Judicial Council, as well as every legal provision and sub-legal act that regulates the issue of salary, compensations, allowances and remunerations.

SPECIFIC PROVISIONS OF OTHER LAWS REPEALED BY ARTICLE 33 [ABROGATION] OF THE CHALLENGED LAW

Article 11, paragraph 2 of Law No. 03/L-094 for the President of the Republic of Kosovo;

Article 11
Salary of the President of Republic

1. Salary of the President of Republic of Kosovo shall be the highest among the state institutions of Republic of Kosovo.
2. Salary of the President of Republic shall always be at least twenty five percent (25%) higher than the general income of the President of the Assembly of Republic of Kosovo and of the other institutional leaders.

Article 15 of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo;

Article 15
Remuneration of Judges

The remuneration of Constitutional Court judges shall be 1.3 times that of the judges of the Supreme Court of the Republic of Kosovo.

Article 9 of Law No. 03/L-159 on the Anti-Corruption Agency;

Article 9
Salary of Director

Director of the Agency has a salary at the salary level of the President of the Parliamentary Committee of the Assembly of Kosovo.

Article 35 paragraphs 1 and 2 of Law No. 06/L-054 on Courts;

Article 35
Salary and Judicial Compensation

1. During their terms of office, judges shall receive the following salaries:
   1.1. the President of the Supreme Court shall receive a salary not less than that of the Prime Minister of the Republic of Kosovo;
   1.2. judges of the Supreme Court shall receive a salary equivalent to ninety percent (90%) of the salary of the President of the Supreme Court;
   1.3. the President of the Court of Appeals shall receive a salary equivalent to that of a judge of the Supreme Court of Kosovo;
   1.4. all other judges of the Court of Appeals shall receive a salary equivalent to ninety percent (90%) of the salary of the President of the Court of Appeals;
   1.5. the President of a Basic Court shall receive a salary equivalent to the salary of a judge of the Court of Appeals;
   1.6. the Supervising Judge of a Branch of the Basic Court shall receive a salary equivalent to ninety-five percent (95%) of the salary of the President of a Basic Court;
   1.7. all judges of the Basic Court shall receive a salary equivalent to eighty (80%) percent of the President of the Basic Court

2. The salary of a judge shall not be reduced during the term of office to which the judge is appointed, except as a disciplinary sanction imposed under the authority of the Kosovo Judicial Council.
3. Judges are entitled to annual leave in accordance to the Law on Labour.

Article 21, paragraph 1, sub-paragraphs 1.1 until 1.10 of Law No. 03/L-225 on the State Prosecutor;

Article 21
Compensation of State Prosecutors

1. During the period of service, state prosecutors will be entitled to the following basic salaries:

1.1. The Chief State Prosecutor shall receive a salary equivalent to that of the President of the Supreme Court.

1.2. Prosecutors permanently appointed to the Office of the Chief State Prosecutor shall receive a salary equivalent to ninety percent (90%) of the salary of the Chief State Prosecutor.

1.3. The Chief Prosecutor of the Special Prosecution Office shall receive a salary equivalent to ninety-five percent (95%) of the salary of the Chief State Prosecutor.

1.4. Prosecutors permanently appointed to the Special Prosecution Office shall receive a salary equivalent to the salary of the prosecutors in the Office of Chief State Prosecutor.

1.5. The Chief Prosecutor of the Appellate Prosecution Office shall receive a salary equivalent to that of the president of the Court of Appeals. 1.6. Prosecutors permanently appointed to the Appellate Prosecution Office shall receive a salary equivalent to ninety percent (90%) of the salary of the Chief Prosecutor of the Appellate Prosecution Office.

1.7. The Chief Prosecutors of Basic Prosecution Offices shall receive a salary equivalent to the salary of presidents of the Basic Courts.

1.8. Each prosecutor permanently appointed to the Basic Prosecution Office shall receive a base salary of not less than seventy percent (70%) of the salary of the Chief Prosecutor of a Basic Prosecution Office. The Council shall promulgate a schedule for additional compensation that recognizes the unique responsibilities of prosecutors appearing before the Serious Crimes Department of the Basic Court; but in no case shall the sum of the base salary and the additional compensation exceed ninety percent (90%) of the salary of the Chief Prosecutor of a Basic Prosecution Office.

1.9. In addition to their basic remuneration, every prosecutor will be entitled to additional compensation for other services as provided for by law or the rules issued by Kosovo Prosecutorial Council.

1.10. Regardless of any other provision of the law, the salary of prosecutors will not be reduced during their term of service unless it is imposed as sanction by the Council or the Council's Disciplinary Committee upon a determination that the prosecutor has engaged in misconduct or has committed a criminal offence.

1.11. State Prosecutors are entitled to annual leave in an amount equal to civil servants, but in no case fewer than twenty (20) days of paid annual leave per year.

Article 18, paragraph 1 of Law No. 06/L-055 on Kosovo Judicial Council;

Article 18
The salary of the Chair and the Council members

1. During their term of office, the Chair and the members of the Council appointed for full time, shall receive their salaries as follows:
   1.1. The Chair receives a salary equivalent to the salary of the President of the Supreme Court.
   1.2. The Vice-Chair and the full time members shall receive a salary equivalent to the salary of the judge of the Supreme Court.
2. The non-judge members of the Council who are part time members are entitled to compensation for their work as members of the Council. The Council will adopt the compensation scheme.
3. During their term of office, the Chair and judge members as full time members shall only accept the salary provided for by Law, except for reimbursement of reasonable and necessary expenditures related to the exercise of their duties, as defined in paragraph 5. of this Article.
4. Chair and the Vice-Chair, upon expiry of their term, shall receive the compensation of the initial position within the court where they will return.
5. The Chair, the Vice-Chair and the members of the Council shall not be entitled to exercise any other public or professional duty for which they are rewarded with payment, except for teaching in higher education institutions.
6. The Chair, the Vice-Chair and the members of the Council may engage in scientific, cultural, academic and other activities which do not contradict their functions and legislation in force.

Admissibility of the Referral

176. In order to decide regarding the Applicants' Referral, the Court must first examine whether the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure have been met.

177. In this regard, the Court refers to the relevant provisions of the Constitution, the Law and the Rules of Procedure, according to which the Ombudsperson can appear as an Applicant before this 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;
[...]

Article 135
[Ombudsperson Reporting]

[…]

4. *The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution.*

Law on Constitutional Court

CHAPTER III
Special procedures

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".

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
.

178. In the following, the Court will assess: (i) whether the Referral was filed by an authorized party, as set out in 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 act, (iii) the specification of the Referral, as required by paragraphs 2 and 3 of Article 29 of the Law and items (2) and (3) of Rule 67 of the Rules of Procedure; and (iv) if the Referral is filed within a period of six (6) months after the entry into force of the challenged act, as defined in Article 30 of the Law and item (4) of Rule 67 of the Rules of Procedure.

(i) Regarding the Authorized Party and the challenged act

179. The Ombudsperson, pursuant to Article 113.2 (1) of the Constitution is authorized to raise before the Court the issue of compliance with the Constitution of (i) laws; (ii) decrees of the President; (iii) decrees of the Prime Minister; and (iv) Government regulations. Article 29 of the Law specifies that the Ombudsperson is an authorized party before the Court and Rule 67 of the Rules of Procedure refers to the respective articles, cited above, of the Constitution and the Law.

180. In terms of the circumstances of the present case, the Court notes that the Ombudsperson, in his capacity as Applicant, before the Court challenges the constitutionality of Law No. 06/L-111 on Salaries in Public Sector, namely a "law" approved by the Assembly.

181. Therefore, the Court finds that there is a Referral before the Court by the Ombudsperson, who based on the above-mentioned Articles of the Constitution, the Law and the Rules of Procedure, is a party authorized to bring before the Court, *inter alia*, the issue of compatibility of "*laws*" with the Constitution. Therefore, the Ombudsperson is an authorized party and challenges an act which he has a constitutional authority to challenge.

(ii) Regarding the specification of the Referral and specification of the objections

182. The Court recalls that Article 29 of the Law and Rule 67 of the Rules of Procedure stipulate that the Referral raised in the context of Article 113.2 (1) of the Constitution must specify (i) whether the entire of the challenged act or certain parts of the said act are deemed to be incompatible with the Constitution; and (ii) specify the objections raised against the constitutionality of the challenged act.

183. With regard to the first criterion of specification of the Referral, the Court notes that the Ombudsperson challenges the constitutionality of the Law on Salaries in its entirety, alleging that it is not in accordance with paragraph 2 of Article 3 [Equality Before the Law], Article 4 [Form of Government and Separation of Power], paragraph 1 of Article 7 [Values], Article 10 [Economy], Article 21 [General Principles], paragraph 1 of Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 55 [Limitations on Fundamental Rights and Freedoms], paragraphs 3 and 7 of Article 58 [Responsibilities of the State] , paragraph 2 of Article 102 [General

Principles of the Judicial System], paragraph 1 of Article 109 [State Prosecutor], Article 119 [General Principles], paragraphs 1 and 2 of Article 142 [Independent Agencies], Article 130 [Civil Aviation Authority] of the Constitution; Article 1 (Protection of Property) of Protocol no. 1 of the ECHR and paragraph 2 of Article 23 of the UDHR. In addition to challenging the constitutionality of the challenged Law in its entirety, the Ombudsperson also challenges in particular the constitutionality of the following articles of this Law on Salaries: Articles 4.4; 4.5; 5.5; 6.4; 7.5; 8; 8.3; 9.5; 14; 14.4; 15.4; 17.4; 18.2; 19.4; 20.5; 21.8; 22.5; 23.5; 25.3; 26.2; 29; 33, claiming that the latter are incompatible with the constitutional principles of *"separation of powers"*.

184. Therefore, the Court finds that the Ombudsperson has specified that he challenges the act in its entirety and that he has presented his objections regarding the complete unconstitutionality of the challenged act.

185. However, the Court also notes that, in addition to the allegations of the constitutionality of the Law on Salaries in its entirety and in particular aspects regarding the constitutional principle of separation of powers, the Ombudsperson has also forwarded to the Court: (i) thirty five (35) complaints of various institutions and entities interested in the constitutionality of the challenged Law; and, (ii) some files and requests received by the Ombudsperson from several trade unions, municipalities and educational institutions (see paragraph 197 of this Judgment reflecting communications with the Ombudsperson regarding these documents; as well as paragraphs 71-108 and 110 of this Judgment which reflects the essence of the 35 complaints in question).

186. In this regard, the Court first recalls that on 23 January 2020, the Ombudsperson forwarded to the Court several requests addressed to the Ombudsperson Institution - relating to a request by several unions for the revocation of the interim measure decided by the Court regarding the Law on Salaries. The Ombudsperson forwarded those letters to the Court, for the notification of the Court, without specifying and clarifying what he requests from the Court. Consequently, through an official letter (see paragraph 16 of this Judgment), the Court has already notified the Ombudsperson that *"the only party in case KO219/19 is the Ombudsperson Institution, as a party that has filed a referral with the Constitutional Court requesting a thorough assessment of the constitutionality of the said Law and its entire suspension"* and that all other parties *"including the aforementioned trade unions [...]may only have the status of an interested party but not a "party" within the meaning of the aforementioned provisions of the Rules of Procedure* [talking about authorized parties]*."*

187. The Court further clarified to the Ombudsperson that the grounds of all documents, requests or complaints submitted to the Ombudsperson Institution should first be examined by the Ombudsperson Institution itself and the latter should "*decide what step want to take in relation to those requests",* always taking into account the constitutional competencies of this Institution to challenge the acts before this Court. If the Institution of the Ombudsperson considers that any active action should be taken in relation to the requests/ complaints it receives, then the Ombudsperson *"must file a specific and*

reasoned referral, in accordance with the relevant constitutional and legal provisions, and with the necessary clarifications what concrete action is required to be taken by the Constitutional Court." Finally, in the letter addressed to the Ombudsperson, the Court emphasized that: "*to set the Constitutional Court in motion, it is not sufficient to simply forward the requests of other interested parties without the necessary clarification regarding the documents and files submitted to the Court".*

188. The same logic and line of reasoning is applied by the Court for 35 individual complaints submitted to the Ombudsperson (for his assessment) - and then forwarded to the Court by the Ombudsperson as part of the case file KO219/19. Regarding these individual complaints of various institutions and entities, the Ombudsperson requests the Court to *"assess whether the challenged Law affects the legitimate interests of these complainants",* without accurately specifying the objections and his position regarding these complaints.

189. In this respect, the Court clarifies that the Ombudsperson constitutional competence to challenge, *inter alia*, "laws" of the Assembly through Article 113.2 (1) of the Constitution - does not mean that the Ombudsperson can simply forward to the Constitutional Court the complaints submitted for assessment to the Ombudsperson, with the request that the Constitutional Court assess whether or not there is a violation of the Constitution. On the contrary, any complaint or request that the Ombudsperson decides to support in order to challenge a law or other act before the Constitutional Court - must be justified in such a way as to clearly understand the objection, position and request of the Ombudsperson to the Constitutional Court. On the contrary, namely, the mere forwarding of complaints or requests by the Ombudsperson to the Court without relevant reasoning, could mean that the Ombudsperson can simply serve as a mediator who forwards to the Court for assessment the requests of third parties without the obligation to justify and argue the objections of the constitutional level, but to justify and substantiate the same. Such a scenario is clearly not the purpose of the constitutional competence provided for in Article 113.2 (1) of the Constitution for the Ombudsperson. In fact, the purpose of this competence is to enable the Ombudsperson to exercise his constitutional role to *"monitor, defend and protect the rights and freedoms of individuals from unlawful or improper acts or failures to act of public authorities"* (see Article 132.1 of the Constitution) - challenging the constitutionality of a law of the Assembly or other act under the jurisdiction provided by Article 113 of the Constitution.

190. Consequently, in assessing the constitutionality of the challenged Law, the Court will focus only on the specified and substantiated allegations and objections of the Ombudsperson regarding the unconstitutionality of the challenged Law, by not entering an individual assessment of 35 complaints submitted to the Ombudsperson and forwarded to the Court without any supporting arguments about the position of the Ombudsperson on those complaints.

191. Having said that, the Court finds that the Applicant before the Court challenges the Law on Salaries in its entirety, and consequently, the Applicant's Referral (i) specifies the challenged act which it considers to be contrary to the

Constitution; and (ii) specifies the objections raised regarding the constitutionality of the challenged act in terms of separation of powers, legal certainty, equality before the law and protection of property - as established in Article 29 of the Law and Rule 76 of the Rules of Procedure.

(iii) Regarding the deadline

192. The Court recalls that Article 30 [Deadlines] of the Law and Rule 67 (4) of the Rules of Procedure stipulate that the Referral submitted based on Article 113.2 (1) of the Constitution must be filed within a period of 6 (six) months after the entry into force of the challenged act.

193. In this context, the Court notes that the challenged Law entered into force on 1 December 2019, while it was challenged in the Court on 5 December 2019, and consequently, it was submitted to the Court within the time limit set out in the abovementioned provisions.

(iv) Conclusion regarding the admissibility of the Referral

194. The Court finds that the Applicant: (i) is an authorized party before the Court; (ii) challenges an act which he has the right to challenge; (iii) has specified that he challenges the challenged Law in its entirety; (iv) has filed constitutional objections against the challenged act; and, (v) has challenged the act within the prescribed time limit.

195. Therefore, the Court declares the Referral admissible and will further examine its merits.

MERITS OF THE REFERRAL

I. Introduction

196. The Court first recalls that the Applicant, namely the Ombudsperson, challenges the constitutionality of the Law on Salaries, claiming that the latter is not in accordance with paragraph 2 of Article 3 [Equality Before the Law], Article 4 [Form of Government and Separation of Power], paragraph 1 of Article 7 [Values], Article 10 [Economy], Article 21 [General Principles], paragraph 1 of Article 22 [Direct Applicability of International Agreements and Instruments], Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 46 [Protection of Property], Article 55 [Limitations on Fundamental Rights and Freedoms], paragraphs 3 and 7 of Article 58 [Responsibilities of the State], paragraph 2 of Article 102 [General Principles of the Judicial System], paragraph 1 of Article 109 [State Prosecutor], Article 119 [General Principles], paragraphs 1 and 2 of Article 142 [Independent Agencies], Article 130 [Civilian Aviation Authority] of the Constitution, Article 1 Protection of property) of Protocol No. 1 of the ECHR, and paragraph 2 of Article 23 of the UDHR.

197. The Court also recalls that the Applicant, namely the Ombudsperson, in addition to his allegations relating to: (i) the separation of powers; (ii) rule of law and legal certainty; (iii) equality before the law; and, (iv) the protection of

property, has submitted as part of the case file KO219/19 thirty-five (35) individual complaints submitted to the Ombudsperson Institution by various institutions and entities interested in the constitutionality of the challenged Law. Also, the Ombudsperson has forwarded to the Court, for the information of the latter, some requests/files that he has received from various trade unions. Regarding all these, in the part of the admissibility assessment, the Court has already concluded that the Ombudsperson has not clarified his position and that any referral submitted to the Court must be justified on the basis of constitutional objections and specify what specifically requires from the Court. Consequently, the Court has already concluded that the complaints in question, although considered as part of the file, in the absence of a reasoning and position regarding them by the Ombudsperson, ca not enter their assessment, one by one. The complainants in question are not authorized parties before this Court; whereas, the Ombudsperson did not justify nor express his position regarding those complaints submitted to the Court. The latter, for the rest and priority of the Ombudsman's referral - which is mainly related to allegations of violation of the principle of "separation of powers", has already confirmed that the Referral submitted by the Ombudsperson meets all the admissibility requirements for review on merits.

198. Having said that, the Court notes that the scope of this Referral and respectively the constitutional issue contained in this Judgment is the compatibility with the Constitution of the challenged Law, namely the assessment of whether the latter violates the principle of separation of powers guaranteed by Articles 4 and 7. in conjunction with Articles 102, 108.1, 109, 115 of the Constitution, not respecting the constitutional guarantees of one branch of power, namely the judiciary; and, not respecting the constitutional guarantees of the Independent Institutions reflected in the relevant articles of Chapter XII of the Constitution.

199. For the purpose of assessing the constitutionality of the challenged Law in the light of allegations and objections for violation of the principle of "separation of powers", the Court will first present: (i) the substance of the Ombudsperson allegations; (ii) the substance of the MPA objections; (iii) the substance of the responses and comments of the Ministry of Finance and Transfers; (iv) the general principles applicable to the circumstances of the present case derived from the respective articles of the Constitution and the case law of the Constitutional Court in Judgments KO73/16 and KO171/18; answers received from the Venice Commission Forum; Relevant Opinions of the Venice Commission together with other case law suggested by the Venice Commission Liaison Office; and (v) the application of the principles in question in the circumstances of the present case where the "Response of the Court" regarding the constitutionality of the challenged Law will be presented.

200. The Court will also address the issue of (i) other Applicant's allegations of unconstitutionality of the challenged Law; (ii) the interim measure; and, at the very end, present (iv) the "Conclusions of the Court" and (iii) the relevant "enacting clause".

201. Before addressing the abovementioned issues, the Court deems it necessary to emphasize an important fact regarding the referral under review. This has to

do with the fact that the act challenged by the Ombudsperson, in addition to having an effect on about 80,000 (eighty thousand) employees receiving salaries from the state budget, the same has an effect on all judges of the Constitutional Court. In this respect, aware of the effect of the challenged act, the Court recalls the general international principles that in cases where the entire body of the Constitutional Court is affected in the same and equal way by the act which it must assess, it is impossible to exclude all judges as there would be no other alternative authority left that could assess the constitutionality of a particular act. In this regard, it should be noted that the possibility of exclusion of judges should not result in the inability of the Court to reach a decision. It must be ensured that the Constitutional Court, as the guarantor of the Constitution, continues to function as a democratic institution. The Venice Commission has already stated that: "The authorization of the Court derives from the necessity to make sure that no law is exempt from constitutional review, including laws that relate to the position of judges". Consequently, the Court recognizes the fact that it is affected by the challenged Law but that there is no other authority in the Republic of Kosovo that can assess the constitutionality of the challenged Law. (see Opinion no. 524/2009 of the Venice Commission on the Law on the Cleanliness of the Figure of High Functionaries of Public Administration and Elected Persons in Albania, approved by the Venice Commission at the 80th Plenary Session, paragraph 142 (Venice 9-10 October 2009); see *mutatis mutandis,* case no. KI108/16 Applicants, Bojana Ivković, Marija Perić and Miro Jaredić, *Request for constitutional review of the Decision No. 2016-COS-0488, issued by the Acting Head of the European Union Rule of Law Mission in Kosovo, dated 22 July 2016*, Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo, of 16 November 2016, paragraph 34).

II. Compliance of the challenged Law with the principle of "separation of powers" and of "legal certainty", namely Articles 4, 7, 102, 108.1, 109, 115 of the Constitution and the respective Articles of Chapter XII of the Constitution

The substance of the Applicant's allegations

202. The Court recalls that essentially with regard to the separation of powers, the Applicant alleges that the Law on Salaries is unconstitutional for the following reasons:: (i) *"does not properly ensure the separation of powers"*, as defined by Article 4 of the Constitution because even in matters of salaries the principle of separation of powers must be preserved; (ii) does not make a clear distinction between the three powers which are separate and balanced among themselves and between the independent institutions which are expressly established as such by the Constitution; (iii) makes an unconstitutional interference with the principle of separation of powers due to the fact that the challenged Law has given *"the right to issue sub-legal acts only to the Government and in certain cases to the Assembly*", thus ignoring the constitutional requirement to respect the principle of separation of powers; (iv) is unconstitutional because the legal regulation according to which only the Government, and in certain cases the Assembly, can issue sub-legal acts for all other public institutions, which *"in addition to having an impact on organizational, functional and financial independence, it also interferes with*

the control and balancing mechanism, which is the guarantor of the democratic functioning of the state"; (v) *"applies the same criteria"* for all public authorities, institutions and other bodies in the Republic of Kosovo *"regardless of the order and separation of powers in accordance with the Constitution and the specifics of the constitutional status of public sector entities*"; (vi) violates the principle of separation of powers as it *"does not take into account the fact that many institutions, in particular independent institutions, have their own laws that contain specific provisions, which specifically regulate the rights and obligations of the employees of these institutions";* (vii) according to Chapter XII of the Constitution *"The Constitution and relevant laws require guarantees for the adequate treatment of independent branches of power, and, moreover, require guarantees for institutional, organizational and financial independence for the independent institutions defined by Chapter XII of the Constitution, as well as for the Constitutional Court itself"* – the principles, according to the Ombudsperson, have not been respected.

203. Therefore, the Applicant requests the Court to declare the challenged Law unconstitutional in its entirety.

The essence of the MPA objections

204. The Court recalls that the substance of the MPA's objections regarding the separation of powers consists in arguments that the Law on Salaries is not unconstitutional for the following reasons: (i) The Ombudsperson did not disclose how the issue of salaries should be regulated and did not give a single indication of where the violation of the Constitution by the challenged Law was committed; (ii) that this case cannot be taken as the similar with case KO73/16, because in the latter the Court has assessed the constitutionality of an Administrative Circular and not a law adopted by the Assembly which *"homogeneously aims to establish rules for the management of public money regarding the salaries of the functionaries and public officials";* (iii) the Constitution stipulates that the Assembly exercises legislative power so that with the issuance of the challenged Law, the Assembly has exercised its constitutional mandate; (iv) there are no constitutional or legal obstacles for the purpose of public interest to regulate the legal environment for public sector salaries with the new legislation; (v) in accordance with the case law of the ECtHR, it is not within the scope of the Constitutional Court to replace the public policies set by the legislator and that the principle of separation of powers obliges the Court to respect the setting of policies by the legislator; (vi) the legislator, namely the Assembly, due to its position and democratic legitimacy is in a better position than the Court to determine and advance the economic and social policies of the country; (vii) the three central powers must be exercised not only independently but also in a balanced way and that this is achieved through the constitutional solutions that guarantee mutual control and sufficient balance among powers, without violating and interfering with the competencies of one another; (viii) the Constitution does not stipulate how salaries will be determined for judges (or any other institution) nor the elements that make up the salary, but that the Assembly in regulating these relations is obliged to respect the requirements established in the Constitution, especially those deriving from the principles of the rule of law and those that

protect constitutional values; (ix) when it comes to guarantees of the material independence of judges, the legislative is particularly obliged to respect the basic constitutional principle of separation of powers as one of the elements of the rule of law; (x) while the principle of separation of powers determines the independence of the three governing powers, the principle of controls and balances determines their interdependence so that the three governing powers cannot act in isolation from each other; (xi) their interdependence, in addition to constitutional provisions, is also defined through the principles of cooperation, coordination, check and balance.

205. Therefore, the MPA requests the Court to declare the challenged Law constitutional in its entirety.

The essence of the answers and comments of the Ministry of Finance and Transfers

206. The Court recalls that the Ministry of Finance and Transfers answered to 7 questions of the Court, thus submitting some of the documents and comparisons requested by the Court (see paragraphs 23 and 24 of this Judgment for questions of the Court; paragraphs 155-175 of this Judgment for responses received). In essence, in the responses submitted to the Court, the Ministry of Finance and Transfers stated the following: (i) notwithstanding the positions/categories defined in the broadest sense in the challenged Law, *"the difficulty of determining the salary for the positions which are not directly undefined is evident";* (ii) for around **42%** of employees from the current payroll is required prior classification for determination of salary and given that **not for all positions the salary is known**, the second additional document requested by the Court cannot be provided at this stage, as such a document with the list of all employees by position could not be compiled for the above reasons, but the same can only be provided after the realization of the process of classification and reorganization of institutions; (iii) in response to the Court's question as to what positions were exactly excluded from the challenged Law, the Ministry of Finance stated that with the commencement of the implementation of the Law from the state budget all positions will be paid in Annex no. 1 of the challenged Law, except for the exemptions for the judiciary and the PAK (until 2022) and the general provision of Article 1, sub-paragraph 1.1 which stipulates that: "*the system of salaries and remunerations for Public Officials and Functionaries who are paid from the state budget, excluding"* Kosovo Security Force (KSF) and the Kosovo Intelligence Agency (KIA); (iv) salaries for public officials and functionaries are set by Law (directly or indirectly) and cannot be set by sub-legal act - however *"sub-legal acts have a wide margin to set specifics and criteria for this indirect definition*"; (v) for all positions (about 42%) that are not direct positions, the challenged Law *"authorizes the Government by sub-legal act to approve the applicable classes, special administration groups and others as described below, which are subject to the process of classification and reorganization, which will ultimately result in an appropriate salary for each employee*", based on Annex 1 of the challenged Law; (vi) the challenged Law in Annex no. 1 defines two salary determination systems; (vii) The first system, is **direct determination of salaries** for positions which by nature are separate positions, e.g. president, minister, deputy, doctor, etc. and since these positions

are unique and scanty in volume it is estimated that they should be defined directly by law without the need for a classification process. However, there have been exceptions to this rule, when civil service positions are defined as direct positions, although they are not unique (for example some of positions no. 79, 92, 93 in the Civil Service). The same happens in the Assembly of Kosovo where positions from 109-132 are regulated directly by Law. What are the positions defined directly we have explained in tables A and B in Excel format on CD. (Clarification: these tables are accessible to the Court); (viii) The second system, is **indirect determination of salaries** which means that by the challenged Law *"only the main classes are assigned so a classification process is needed"*. This system applies mainly to the salaries of civil servants where Article 5.3 of the challenged Law stipulates that *"Classification of a specific position of civil service according to paragraph 2 of this Article is done based on the rules for evaluation and classification of job positions, according to the provisions for classification of positions of civil service in accordance with the legislation on public official. The class to which a certain position belongs is determined explicitly in the regulation on internal organisation of the institution adopted according to the Law on Organisation and Functioning of State Administration and Independent Agencies"*. From this paragraph we can understand that to classify a certain position which is defined according to Annex no. 1 (paragraph 2 of Article 5) of the challenged Law, certain legal conditions must be met: (1) The classification and evaluation of a certain position is done according to the evaluation and classification of the rules set out in the legislation on the public official; and (2) The class belonging to a certain position should be explicitly defined in the regulation on the internal organization of the institution according to the Law on the Organization and Functioning of the State Administration and Independent Agencies; (ix) Article 33.5 of the Law on Salaries authorizes the Government, upon the proposal of the MPA, by sub-legal act to approve: (1) the classes applicable to each category and the designations in each class; (2) special administration groups; (3) the general job description for each category, class and group, including general admission requirements for each category, class and group; and (4) the detailed rules, procedures, standards, and methodology for evaluating and classifying a particular position in a particular class or group under this Article; (x) the sub-legal act referred to in point above was stated to have been prepared by the MPA and contains all the elements set out in this paragraph including the methodology for the evaluation of a particular position, but the same could not be approved by the Government due to the suspension measure imposed by the Constitutional Court on the Law on Public Officials; (xi) The challenged Law is organically related to the Law on Public Officials and the Law on the Organization and Functioning of State Administration and Independent Agencies, therefore the classification of jobs should be done with this logic; the law can be fully implemented only after the abovementioned conditions are met; (xii) out of a total of eighteen (18) bylaws that would have to be approved by the Assembly and the Government so far only one (1) sub-legal act has been adopted; (xiii) even this single sub-legal act that has been adopted, was in fact approved without assessing the budgetary impact of the budget department in the Ministry of Finance and Transfers, as required by applicable public finance legislation and the Ministry of Finance was not a member of the working group; (xiv) the Assembly is responsible for the preparation of two sub-legal acts of the challenged Law; while eleven (11)

other sub-legal acts were prepared by working groups and went through the stages of public consultation, but did not reach/could not be processed for approval to the Government because at that time the Government resigned and due to the suspension measure of the Constitutional Court against the challenged Law; (xv) The Ministry of Finance and Transfers emphasized that in the current situation it turns out that *"without having the regulation for classification as well as without carrying out the reorganization of the institutions* ***it is impossible to determine the salary for each employee****, thus, it is not possible to compile the list of salaries that would be disbursed by law for over 80 thousand beneficiaries*" [Clarification: The Court had specifically requested the Ministry of Finance and Transfers to submit two documents to the Court - a document showing current salaries and another document showing what salaries would be like if the challenged Law were to be implemented].

207. Consequently, in the end the Ministry of Finance and Transfers emphasized that the Court should consider the following four aspects: (i) even if the challenged Law ***"is in force, the latter could not be fully and immediately implemented";*** (ii) "*based on a preliminary estimate of the cost of the Law (estimate that has changed since the first draft of the Law until approval by the Assembly), with the level of coefficients and the value of the coefficient determined by this law (239), the salary invoice according to the definition of Law no. 03/L-048 on Public Financial Management and Accountability, supplemented and amended* ***will exceed the allowed limit*** *(fiscal rule of salaries), Article 22/C Restriction of budget increase for salaries and allowances), which would constitute a breach of the fiscal rule, with reflections on the deficit (as ongoing current expenditures) as well as the need for continued deficit financing. There are also a series of allowances that the Law provides, and that would further aggravate the situation regarding the financing of this Law. In this context, it should be borne in mind that Article 81 of the Law on Public Financial Management and Accountability, has provided a provision of its legal superiority over other laws, in matters related to the management of public money and we consider that it should be assessed whether it is in accordance with the principles set out for public money in Article 120 of the Constitution of the Republic of Kosovo;* (iii) *in view of the provisions of Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies, we notice horizontal provisions and the same criteria in the organization of the state administration, namely the Office of the Prime Minister, ministerial systems (ministry, executive agency and administration of public services) and regulatory agencies. Specifically, this Law on Ministerial Systems prescribes in the same way the criteria for establishing executive agencies, departments or divisions. On the other hand, the different drafting of salaries for the heads or staff of these structures in some cases according to the provisions of the Law, among others, we consider it should be assessed in accordance with the principles set out in Article 120 of the Constitution of the Republic of Kosovo regarding public money;* (iv) *we also consider that a similar assessment should be made for some categories of financial officials relevant to the financial management and control process (e.g. internal auditors) who do not have special treatment and are not defined as separate positions*".

General principles

208. To elaborate in detail the general principles relevant to the circumstances of the present case, the Court will further present: (1) the general principles under the Constitution of the Republic of Kosovo and the case law of the Constitutional Court in matters comparable to the constitutional issue of the circumstances of the present case; (2) responses received from the Venice Commission Forum; (3) Relevant Opinions of the Venice Commission and other decisions of the various courts - on the proposal of the Venice Commission.

Relevant principles according to the Constitution of the Republic of Kosovo and case law of the Constitutional Court

Relevant principles according to the Constitution of the Republic of Kosovo

209. Among the basic values embodied in the Constitution on which the constitutional order of the Republic of Kosovo is based, among others, are also "separation of powers" and "rule of law" (See Article 7 of the Constitution). The functioning of the democratic state in the Republic of Kosovo is based on the constitutional principle of separation of powers and checks and balances (See Article 4 of the Constitution). Based on Article 4 of the Constitution concerning the form of government and the separation of powers: (i) the Assembly exercises legislative power; (ii) the Government is responsible for implementation of laws and state and policies and is subject to parliamentarian control; and (iii) the Judiciary is unique and independent and exercised by courts. These three powers constitute the classic triangle of separation of powers. The relationship between the "three powers" is based on the principle of separation of powers and check and balance among them. Separation of powers as a fundamental principle of the highest constitutional level is embodied in the spirit of the Constitution of the country and as such is non-negotiable (see cases of the Court: KO72/20, Applicant *Rexhep Selimi and 29 other deputies of the Assembly of the Republic of Kosovo, paragraph* 351; KO43/19, Applicant *Albulena Haxhiu, Driton Selmanaj and thirty other deputies of the Assembly of the Republic of Kosovo,* Judgment of 27 June 2019, paragraph 72; KO98/11, Applicant *Government of the Republic of Kosovo,* Judgment of 20 September 2011, paragraph 44).

210. The Constitution has dedicated a separate chapter to each of the three classical branches of the separation of powers. Legislative power is regulated through Chapter IV of the Constitution, entitled: *"Assembly of the Republic of Kosovo"*. Executive power is regulated through Chapter V of the Constitution, entitled: *"Government of the Republic of Kosovo"*. Judicial power is regulated through Chapter VII of the Constitution, entitled: *"Justice System"*. The three above-mentioned chapters of the Constitution set out the general principles as well as the duties and responsibilities of each power. In addition, it provides for mechanisms of check and balance among them that form the core of how these powers should control and balance each other without creating any unconstitutional "interference", "dependence" or "subordination" between them that could potentially affect the independence of one or the other power. For example, the Assembly checks and balances the Government through a

vote of confidence/no-confidence; the justice system holds "responsible" the Government but also the Assembly through the control of the legality and constitutionality of their decision-making, etc. The emphasis here is precisely on the term *"unconstitutional"* when it comes to interference, dependence and subordination between the three powers. This is due to the fact that it is well known that in order to perform their public duties, the powers in question do not operate in a vacuum and without any interaction between them. No doubt their actions affect other powers and that is perfectly normal. However, the logic of the principle of separation of powers is that such influence should in no way create an interfering or dependent or subordination relationship that could result in a loss of independence to act as a free and uninfluenced power. This is the essence of the constitutional balance that the Constitution has established and that is required to be maintained in any interactive instance between independent powers.

211. In addition to the three classical powers, a special place in the system of separation of powers has the Constitutional Court, as an institution responsible for the final guarantee of constitutionality at the national level; and the President, as a representative of the unity of the people and a guarantor of the democratic functioning of the institution (see Judgment KO72 / 20, paragraph 351). To both of these public institutions, the Constitutional Court and the President, has been dedicated by the Constitution a separate chapter, Chapters V and VIII, respectively - which describe their special status and competencies under the Constitution. Neither of these two institutions are part of the chapters of the classical separation of powers, but both are specifically listed in Article 4 of the Constitution which describes the "Form of Government and Separation of Power" at the level of the Republic of Kosovo. This constitutional solution deserves to be noted as a special part of the constitutional system of the Republic of Kosovo.

212. Furthermore, the Constitution has recognized a special and important status and role in the conduct of public state duties also to the Independent Institutions referred to in Chapter XII of the Constitution, which have been singled out as such not without reason. This chapter includes: (i) the Ombudsperson (Articles 132, 133, 134 and 135 of the Constitution); (ii) the Auditor- General of Kosovo (Articles 136, 137 and 138 of the Constitution); (iii) Central Election Commission (Article 139 of the Constitution); (iv) Central Bank of Kosovo (Article 140 of the Constitution); (v) Independent Media Commission (Article 141 of the Constitution); and (vi) Independent Agencies (Article 142 of the Constitution).

213. As an essential premise, it should be noted and clarified that none of these independent institutions referred to in Chapter XII of the Constitution are part of the classical powers defined under Article 4 of the Constitution. Having said that, there is no doubt that these institutions have a special status under the Constitution since the drafters of the latter have considered that a special Chapter with a special constitutional regulation should be dedicated to them. Reading the above provisions for each independent institution referred to in Chapter XII leads to the conclusion that they are not identical with each other in terms of public responsibilities and duties entrusted to them. Each of those institutions has its own specifics, depending on the public task entrusted to it.

However, a common denominator of all the institutions referred to in Chapter XII is that they are independent institutions "in the exercise" of their public duties and that such a constitutional arrangement should be taken into account by all public actors at the level of Republic of Kosovo - in cases when legislative initiatives are created that can create "interference" within their independence at the constitutional level.

214. Unlike the institutions referred to in points (i), (ii), (iii), (iv) and (v) which are institutions established by the Constitution specifically; the Independent Agencies referred to in point (vi) "*are institutions established by the Assembly, based on the respective laws that regulate their establishment, operation and competencies*" (see, *mutatis mutandis*, Judgment KO171/18, paragraph 156). This difference needs to be evidenced as such what it is, for an important reason. This is because the five Independent Institutions referred to in points (i), (ii), (iii), (iv) and (v) were established as such on the occasion of the voting and entry into force of the existing Constitution by the legislator, namely the Assembly; whereas, the Independent Agencies were not established as such in the case of the voting of the existing Constitution by the legislator, namely the Assembly - but are agencies for the creation of which the Constitution gives the Assembly the right to create and extinguish them, by law , depending on the needs that may arise in public and social life. In contrast to the fact that the Assembly may establish and extinguish "*by law*" Independent Agencies; the Assembly can never extinguish "*by law*" any of the five independent institutions mentioned above. Those five independent institutions were created by the Constitution and can be amended, modified, supplemented, only by the Constitution, through the amendment of the latter. This is the main difference between the Independent Institutions referred to in Chapter XII of the Constitution - which should be taken into account as such whenever actions are taken that affect them.

215. In this regard, it is important to emphasize that the word "Independent" referring to these institutions should not be understood as a constitutional competence to act in isolation and vacuum from other powers defined by the Constitution. The word "Independent" should be understood as a constitutional guarantee for the exercise and performance of public duties independently and uninfluenced, in terms of decision-making, by other powers. This does not mean that the Government and the Assembly cannot supplement and change the applicable legal regulations for the activity of these institutions - as long as it is amended in accordance with their guarantees of the constitutional level.

216. The Court recalls at the end, that all powers *"[...] without exception, be they part of the classical triangle of separation of powers, or other important part of the structure of the state, have a constitutional obligation to co-operate with each other for the common good and in the best interest of all citizens of the Republic of Kosovo. All these powers have the obligation to perform their public duties in order to implement the values and principles on which the Republic of Kosovo is built to function"* (see Judgment KO72/20, paragraph 353).

217. These public duties also include the obligation of each power, while performing its constitutional duties, to take care of respecting the independence of the power to which it creates "interference". The latter must be measured, controlled, balanced, and confirmed in advance, in *bona fide* terms, as "constitutional interference" before any action is taken to execute the intended interference - which could potentially be permissible. For example, the Government and the Assembly, although having the competence to propose and vote on laws, respectively, which could also affect the judiciary, as a third power; they [the Government and the Assembly] must ensure that during the drafting of their legal initiatives and until their finalization by a vote of the Assembly, the constitutional independence of the sister power, namely the judiciary, is preserved. The Government and the Assembly must show the same care and sensitivity for the other state actors whom the Constitution has provided with constitutional guarantees of functional, organizational and budgetary independence. Guaranteeing and ensuring the constitutionality of the initiatives of the Government and the Assembly should be an essential part of the activity of these two powers.

218. The principle of legal certainty and that of predictability are inherent features of a law and an integral part of the constitutional principle of the rule of law. Legal certainty is one of the main pillars of the rule of law and requires, among other things, that the rules be clear and precise, and aim to ensure that legal situations and relationships remain predictable. Predictability first of all requires that the legal norm be formulated with sufficient precision and clarity, so as to enable individuals and legal entities to regulate their behavior in accordance with it. Individuals and other legal entities need to know exactly how and to what extent they are affected by a particular legal norm and how a new legal norm changes their previous status or status provided by another legal norm. Public authorities, when drafting laws, should take into account these basic principles of the rule of law - as important parts of the constitutional system of the Republic of Kosovo.

219. In light of the above, the Court will now recall its case-law in which, in fact, several times these general principles of separation of powers have already been emphasized. The case law of the Constitutional Court through which certain articles of the Constitution are interpreted is mandatory for all public institutions and individuals in the Republic of Kosovo. As such, in addition to the Constitution, the case law of the Constitutional Court, cited in this Judgment and in other decisions of the Court, must be embodied in any legal initiative that can be turned into national law.

Case law of the Constitutional Court - Judgments KO73/16 and KO171/18

220. The reasoning of the Court in case KO73/16 (see extensively paragraphs 61-96; while below cited only some of those paragraphs), which is directly relevant, at the level of principles, to the circumstances of the particular case - in terms of separation of powers and respect for the constitutional guarantees of institutional independence, emphasizes:

"61. As provided by Article 4 [Form of Government and Separation of Powers] of the Constitution, Kosovo is a democratic Republic based on the principle of

separation of powers and checks and balances among them. Accordingly the Assembly exercises the legislative power, the Government - the executive power and the judiciary - the judicial power. Outside them are the other state institutions, inter alia the Office of the Ombudsperson and the Constitutional Court.

62. The Court notes that the Office of the Ombudsperson and the Constitutional Court are granted with detailed and extensive constitutional regulation, compared to the other independent institutions according to Chapter XII. This is why the Court will deal more extensively with these two institutions, but underlines that the constitutional independence is as well and as equally applicable to the other independent institutions. The Court also notes that the other independent institutions have different mandate and authority, as stipulated by the Constitution, and the specificity of their constitutional status must be respected accordingly. It is the duty of the Government in its entirety to take into account this reasoning. [...]

65. As noted by the Court, the Applicant and the Constitutional Court are not part of the legislative, executive and the regular judiciary. The same applies for the other independent institutions enumerated in Chapter XII of the Constitution. [...]

87. The Court considers that the MPA approach that there must be put in place classification and categorization of jobs and salaries under the principle "equal pay for equal work" must be interpreted differently and applied in a differentiated manner with respect to the Applicant and the Court in particular. A technical and a unifying approach disregards their constitutionally defined role and authority and thus touches upon their independence accorded to them by the Constitution and further developed by their organic Laws and Rules of Procedure.

88. The personnel working in the Ombudsperson Institution and the Court have different work responsibilities compared to similar positions in other institutions and this explicit differentiation is reflected in their job descriptions and remuneration and is to be preserved.

89. Moreover, the functional and organizational independence of the Applicant [The Ombudsperson] *and the Court is invariably linked with, and entails their financial and budgetary independence according to the Constitution and the respective organic laws. The challenged Administrative Circular does not respect adequately, or to the necessary degree, their three-fold independence organizational, functional and financial and the specificity of the work of their staff.*

[...]

97. The Court considers that the independent institutions envisaged in Chapter XII of the Constitution, and particularly the Applicant and the Court are situated outside of the three branches of the government, and as such, they are not and cannot be involved in the interplay of the division of power and checks and balances that characterizes the three branches of government.

Accordingly they have a specific constitutional status that must be respected by the governing authorities.

98. The Court reiterates that the Applicant and the Court, in particular, assist the three branches of government in ensuring the rule of law, the protection of fundamental human rights and the supremacy of the Constitution, which makes them specialized and uniquely independent institutions.

100. The Court agrees that the Government has a constitutional prerogative and duty to be the policymaker of the State, including the classification and categorization of job positions. But the Court opines that it could not be expected that the staff of the constitutionally independent institutions should conform in an identical manner to the system of recruitment, job classification, categorization and remuneration provided for by a legal act of general nature of the Government, or any act of the executive branch, without first taking into due account the specificities and uniqueness of the institutions in question. Therefore the Court finds that the Administrative Circular in its entirety violates the provisions of the Constitution as stipulated in Chapter VIII [Constitutional Court] and Chapter XII [Independent Institutions]."

221. Reasoning of the Court in case KO171/18 (see extensively paragraphs 117-137; while below cited only some of those paragraphs), which is directly relevant, at the level of principles, to the circumstances of the present case - in terms of separation of powers and respect for the constitutional guarantees of institutional independence, emphasizes:

"144. The Court recalls once again that according to the Constitution and the special laws on the staff of independent constitutional institutions, the rules of civil service apply unless they do not violate their independence. This also means the laws that regulate the oversight of the implementation of these laws such as the challenged Law. However, as it derives from the Constitution and the special laws, the independent institutions, in particular, the Applicant and the Court, are authorized to issue regulations, orders and other legal acts to regulate the specifics regarding the employment relationship of staff which differ from the general norms set by other laws, including the challenged Law, in such a way as to ensure their functional and organizational independence. These special norms should be respected by all institutions including the Board.

145. Therefore, the Court considers that, in the implementation of the challenged law, the functions and the specific authority of the independent constitutional institutions is to be recognized, inter alia, in the issuance and application of their internal rules to protect their independence as established in the Constitution and special laws, to the extent necessary to protect their organizational, functional and budgetary independence, as required by the principles outlined above, including the internal rules of these institutions and the specifics of the work of their staff.

146. The Court therefore concludes that the competencies of the Board envisaged by the challenged Law apply to the independent constitutional institutions, as long as this does not affect their independence guaranteed by

the Constitution, and that this independence is reflected in the issuance of internal acts of these institutions, based on their competences foreseen by the Constitution and special laws, to protect their independence. […]

157. The Court notes that the independent agencies established under Article 142 of the Constitution do not have the same status as that of the independent constitutional institutions expressly mentioned in Chapter XII of the Constitution. This is because the establishment, role and status of the independent constitutional institutions is expressly regulated by Chapter XII of the Constitution, due to the importance and the specifics of the constitutional powers they exercise. However the role, status and competencies of independent agencies are regulated by law approved by Assembly based on the criteria set forth in Article 142 of the Constitution.

158. Chapter XII of the Constitution does not authorize the Assembly of Kosovo to establish by law other independent constitutional institutions with the same status of independent institutions included in Chapter XII, but only independent agencies giving the powers established in Article 142 of the Constitution.

159. Therefore, the Court considers that the Board cannot be categorized as an independent institution under the Chapter XII of the Constitution."

Answers received from the Forum of the Venice Commission

222. As reflected in the proceedings before the Court, the latter addressed some specific questions to the Forum of the Venice Commission. The Court received a total of ten (10) responses, the content of which will be reflected below.

Contribution submitted by the Constitutional Court of Croatia

223. The Constitutional Court of Croatia noted that the regulation of the salary system in Croatia is such that the salaries of public officials are regulated by several laws. In this regard, they emphasized that: (i) The Law on the Rights and Obligations of State Officials regulates the salaries of state officials as follows: the President of the Republic of Croatia, the President and the Deputy President of the Croatian Parliament; Members of the Croatian Parliament; Prime Minister and Members of the Government of the Republic of Croatia (Ministers); President, Vice-President and Judges of the Constitutional Court of the Republic of Croatia; Chairman, Deputy Chairman and Members of the State Election Commission of the Republic of Croatia; state secretaries; General Director of Police; General Director of Tax Administration; General Director of Customs; The Auditor General of the State and his or her deputies; Secretary of the Croatian Parliament; Secretary General of the Republic of Croatia; Director of the Croatian Pension Insurance Institute; Director of the Croatian Institute for Health Insurance; Director of the Croatian Employment Institute; Chairman of the National Council for Minorities; state officials in the Office of the President of the Republic of Croatia, etc. Further, (ii) the Law on Salaries of Judges and Other officials of Judiciary regulates the salaries of judges (including court presidents), as well as prosecutors and deputy prosecutors. Finally, through (iii) the Law on Civil Servants regulates the

salaries of civil servants employed in the central and local bodies of state power; local servants serving in local bodies and districts; public servants employed in public services financed by central bodies; and public servants serving in institutions funded by local state government bodies (nursing schools, libraries, museums, etc.).

Contribution submitted by the Federal Constitutional Court of Germany

224. The Federal Constitutional Court of Germany stated that the issue of salary is of great importance and as such belongs to the democratically elected legislature to decide on manner of regulation. Therefore, the salaries of civil servants and members of the judiciary are regulated by law. So far, in the response is stated, that the principle of separation of powers has not been an issue in the context of law on salaries. The Federal Constitutional Court applies a strict standard of review regarding the laws on the salaries of civil servants and members of the judiciary. The Federal Constitutional Court attaches great importance to the financial and personal independence of the individual member of the judiciary or individual civil servant. In a decision of 2015, the Federal Constitutional Court found that the independence of the judiciary must also be ensured by the salaries of judges. Recently, there do not appear to be any cases where salaries have been reduced for civil servants or members of the judiciary who were already in service. In 2018, the Federal Constitutional Court decided on the initial salary of civil servants and members of the judiciary. In order to consolidate the state budget, the Land of Baden-Württemberg reduced the initial salary of some groups of civil servants and members of the judiciary. The Federal Constitutional Court found that this was unconstitutional as it violated the principle of alimony. In addition to salary, special payments or salary suspension are also subject to review by the Federal Constitutional Court in case of dispute.

Contribution submitted by the Supreme Court of Mexico

225. The Supreme Court of Mexico explained that the "federal law of state workers" stipulates that the Executive, the Legislative and the Judiciary (Powers of Federation) will determine the levels of salaries for their workers. This means that each power, individually, can determine how much to pay their public servants. However, it should be noted that there are some constitutional limitations on the power to set the salaries of public servants. Under the Mexican Constitution, no public servant can receive a salary higher than that assigned to the President of Mexico nor equal to or higher than his superior in the hierarchy. The case law of the Supreme Court of Mexico has established that the principle of separation of powers has imposed three prohibitions: no interference, no dependency, and no subordination. In that way, none of the State powers can take actions that imply interference in the sphere of competencies of the other power, which would cause the dependence of one branch or which would claim the subordination of an autonomous body. The Supreme Court has also explained that the autonomy of public power does not mean exclusion from the legal system. In other words, the Supreme Court has recognized the right of the Legislative to regulate certain aspects of autonomous bodies and other branches if the laws in question do not constitute interference, dependence and subordination.

Contribution submitted by the Constitutional Court of Moldova

226. The Constitutional Court of Moldova regarding the salary system of civil servants, explained, among other things, that the determination of differentiated salary levels for the section "Secretariat of the Constitutional Court", in relation to the sections of legislative and executive power, affects the principles of separation and cooperation of state power and equality defined by the Constitution. Also regarding the salaries of civil servants employed in the courts as well as for judges, the Constitutional Court explained how, in principle, the judiciary in the exercise of their duties benefit from the support of specialized workers, who guarantee the judiciary an institutional activity effective in the interest of the litigating party. Regarding the independence of the Constitutional Court, the Constitutional Court of Moldova explained that the Constitutional Court is a pillar of democracy and the rule of law, which contributes to the proper functioning of public power within the constitutional relationship of separation, balance, cooperation and check of state powers. To ensure the supremacy of the Constitution and the separation of powers, it is necessary for the Constitutional Court to exercise its function independently of any other public authority. One of the guarantees of the independence of the Constitutional Court is the provision of functional and financial independence of the scope of constitutional jurisdiction. Regarding the reduction of salaries in the public sector, it was explained that the reduction of salaries can occur only under conditions of an objectively existing economic and financial crisis, officially recognized, in case of correct reduction of all or most of the salary categories of budget employees, in accordance with the principle of solidarity. In addition, even in these conditions, the legislator is obliged to take into account the features and importance of the judicial system, so as not to affect the principle of independence of judges.

Contribution submitted by the Constitutional Court of Slovakia

227. The Constitutional Court of Slovakia explained that three conditions must be met at the same time in order for the salary reduction to be constitutional: (i) the reduction is sufficiently justified by the country's difficult economic situation, is proportionate to the economic situation and does not jeopardize the standard living of judges; (ii) the reduction is temporary and lasts only as long as necessary; (ii) the legislator has not acted arbitrarily in enforcing the reduction. The Constitutional Court of Slovakia further explained that the salary of judges is not expressly regulated by the Constitution but that the principle that the salaries of judges may be reduced only in exceptional circumstances and only to the extent necessary and the time required can be concluded from the various constitutional principles such as separation of powers, equality of branches of state power, judicial independence and proportionality.

Contribution submitted by the Constitutional Court of Poland

228. The Constitutional Tribunal of Poland explained that in its case law it has been emphasized that the principle of separation and balance between the legislative, executive and judicial branches does not imply the isolation of

powers and the absence of mutual dependence. This derives from the principle of prohibition of interference in the sphere of powers that fall within the specific competence of each of the branches of state power. Therefore, the formation of the salary system of judges by the legislative branch violates the constitutional principle of the three branches and the balance of power, insofar as the system in question would establish a correlation between the salary in question and the exercise of the exclusive power of the courts. The Tribunal further explained that it had outlined the limits that the legislative and executive branches could not exceed in determining the manner of judges' salary, which are: (i) the remuneration of judges should be determined in a manner which excludes any discretion - in terms of this professional group as a whole, by the executive branch, but also in terms of individual judges, whose salary level cannot be based on the individual evaluation of their work; (ii) the amount of a judge's salary - including a judge who has just started his or her service as a district court judge - should significantly exceed the average salary in the public sector; (iii) in the long run, judges' salaries should tend to increase, not to a lesser extent than the average salary in the public sector; (iv) in the event of a difficult financial situation of the State, the salary of judges should be protected against changes with excessive damage to a higher degree than the salary of all officials and other public sector employees; (v) it is unacceptable, from a normative point of view, to reduce the amount of a judge's salary, except in situations of exceeding the national debt limit.

Contribution submitted by the Supreme Court of Sweden

229. The Supreme Court of Sweden explained that like other courts in Sweden, the Supreme Court receives an annual fund from the Swedish State Court Administration (SSCA). SSCA is an independent state authority that reports to the Government and is responsible for the overall coordination of matters relating to the Swedish courts. In other words, SSCA presents the draft budget to the Government for each year, which then submits a proposal to Parliament. The latter makes the final decision regarding the budget. SSCA distributes the allocated funds after the dialogue with the courts. The final word on the individual salaries of judges remains with the president of the respective court. The salaries of high-ranking judges, such as Supreme Court judges, are set by the Director General of the SSCA.

Contribution submitted by the Constitutional Court of Malta

230. The Constitutional Court explained that in Malta the salaries of judges are protected by the Constitution and can in no way be reduced.

Contribution submitted by the Constitutional Court of North Macedonia

231. The Constitutional Court of North Macedonia explained that there is no constitutional provision that explicitly authorizes the Assembly to regulate public sector salaries. However, the Constitution of North Macedonia grants the Assembly the general authority to adopt laws in order to regulate relations in all spheres of social life. In addition, paragraph 5 of Article 32 of the Constitution of North Macedonia stipulates that the exercise of employees' rights and their status are regulated by law and collective agreements. In

February 2014, the Assembly approved the Law on Public Sector Employees, which entered into force in February 2015 where Article 1 states: "This law regulates the general principles, job classification, registrations, types of employment, etc. . general rights, duties and obligations, movement, as well as other general issues related to public sector employees. Article 2 defines the scope of this law: (i) public sector employers (hereinafter: institutions), in accordance with this law, are: bodies of state and local authorities and other state bodies established in accordance with the Constitution and law; and institutions that carry out activities in the field of education, science, health, culture, labor, social protection and child protection, sports, as well as other activities of public interest defined by law, and organized as agencies, funds, public institutions, and public enterprises established by the Republic of North Macedonia or the municipalities, the City of Skopje, as well as the municipalities in the City of Skopje; (ii) public sector employees are persons who are employed by any of the employers referred to in paragraph 1 of this Article; and (iii) officials, respectively, persons who have been mandated to perform a function in the presidential, parliamentary or local elections, persons who have been given the mandate to hold an office in the executive or judicial authority, by election or appointment made by the Assembly of North Macedonia or by local government bodies, as well as other persons who, in accordance with the law, are elected or appointed to perform a task by the holders of legislative, executive or judicial authority, within the meaning of this law , are not considered public sector employees".

Contribution submitted by the Constitutional Court of South Africa

232. The Constitutional Court of South Africa explained that in the "*Van Rooyen*" case it assessed the impact of salaries on judicial independence and separation of powers. The Constitutional Court of South Africa reviewed Article 12 of Law no. 90 of the 1993 Magistrates, which deals with the determination of the salaries of magistrates, and which requires the Minister of Justice to determine the salaries of magistrates in consultation with the Magistrates Commission and with the consent of the Minister of Finance. The High Court found that this provision allowed the salaries of magistrates to be determined by the executive. This, together with the fact that there are no guarantees against reduction of salaries, meant that magistrates could be open to manipulation. Therefore, the High Court found that Article 12 was contrary to the Constitution. However, the Constitutional Court dismissed this decision. It considered that the Magistrates Commission is a diversified body, composed of members of the legislature, the executive, magistrates and persons from the legal profession, and is chaired by a judge. Furthermore, although magistrates do not have the same constitutional protection from salary cuts as judges, in that their salaries may be reduced by Parliament, the Minister of Justice requested to consult with the Magistrates Commission and the Minister of Finance before determining their salaries. This means that, by law, magistrate salaries must be reviewed at regular intervals. Therefore, the Court decided that, if care is taken to protect against possible abuse of power, Article 12 is not contrary to judicial independence. Moreover, in case "*De Lange*", the Constitutional Court noted that judicial independence requires the security of the mandate and a fundamental degree of financial security from arbitrary interference by the executive. However, the Constitutional Court found that "it

was unconvinced" that the criterion of "financial security from arbitrary interference by the executive" was equally valid for public service officials. The independence of certain institutions is determined by the Constitution itself. These include the judiciary, the prosecuting authority, and state institutions that "strengthen constitutional democracy in the Republic" such as the Public Defence, the South African Human Rights Commission, and the Auditor General. The independence of other institutions, such as the Independent Police Investigation Directorate, the Judicial Inspectorate for Correctional Services, and the Priority Crime Investigation Directorate, is guaranteed by legislation, or is considered to be implied by the Constitution. Therefore, any interference with the independence of these institutions (budgetary or otherwise) would be unconstitutional. However, the remuneration and categorization of the job position in other public institutions, whose independence is not explicitly or implicitly guaranteed by the Constitution, can be controlled and limited by Parliament. After all, the Parliament has the right to enact any legislation that is in line with the Constitution, and accordingly is empowered to regulate salaries, budgets and job categorization to the extent permitted by the Constitution.

Conclusion regarding the answers of the Venice Commission Forum

233. In light of the responses received from the Venice Commission Forum, the Court concludes that the common denominator of the practice elaborated above is that: (i) there is no single possible system of salary regulation in the public sector ; (ii) most countries regulate salaries through different laws and at the same time apply different methods by regulating this issue either through specific laws for specific sectors or through some more concentrated legal regulation; (iii) the Assembly, as a legislative body, has the organic competence and right to issue any kind of legislation on the regulation of salaries in the public sector, provided that it is in accordance with the Constitution and constitutional principles of the respective country; (iv) the Assembly, as a legislative body and as a representative of the elected people, is in the best position to adopt laws aimed at regulating relations in all spheres of social life, including the salary sector; (v) judicial independence requires a fundamental degree of financial security from arbitrary interference by the executive or other branches of power; (vi) the principle of separation of powers and balance between the legislative, executive and judicial branches does not imply the isolation of powers and the absence of mutual dependence; however, it means avoiding situations under which unconstitutional "interference", "dependence" or "subordination" can be created between independent powers; (viii) the creation of a conditional correlation between salary and the exercise of the power of the courts is a violation of the constitutional principle of separation of powers; (ix) the reduction of the salaries of the judiciary can occur only under conditions of a pronounced economic and financial crisis and which, moreover, must be officially recognized as such; (x) ensuring functional and financial independence is part of the necessary constitutional guarantees; (xi) the principle of separation of powers means that there should be no interference, dependence or subordination between the powers and that none of the powers can take actions that imply interference in the sphere of competences of the other power, which would potentially cause unconstitutional dependence of one branch to another.

Relevant opinions of the Venice Commission and other decisions of the various courts recommended for consideration by the Court

234. The Court recalls that all the Opinions of the Venice Commission and the decisions of the various European courts, regional and wider, which will be elaborated below are documents recommended by the liaison officers of the Venice Commission at the request of the Court addressed to the latter. (See "Proceedings before the Court" which reflects the communication of the Court with the Venice Commission and the latter's recommendations to the Court, paragraphs 12 and 15-19 of this Judgment). The Court has analyzed all the suggested documentation and in the following will present all the Opinions and decisions relevant to the present case.

Opinion CDL-AD(2010)038, "Amicus curiae brief" for the Constitutional Court of North Macedonia on amendments to several laws relating to the system of salaries and remunerations of elected and appointed officials approved by the Venice Commission at its 85th plenary session, 17-18 December 2010

235. The abovementioned opinion was issued by the Venice Commission on issues related to the salary and remuneration system of elected and appointed officials in Macedonia as well as judicial officials (judges of regular courts, public prosecutors, members of the Judicial Council and the Council of Prosecutors). The Venice Commission was asked to answer two questions, namely: (i) whether the rule or prohibition on reducing the salaries of judges is valid in times of crisis, and (ii) if so, is this prohibition also valid for judges of the Constitutional Court.

236. The first question was answered by the Venice Commission: *"11. Recommendation (94) 12 of the Committee of Ministers of the Council of Europe states that judges' remuneration should be guaranteed by law (Principle I.2b.ii) and be "commensurate with the dignity of their profession and burden of responsibilities" (Principle III.1.b). Likewise, according to the Venice Commission, 'the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference. […] The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria. […] 14. Likewise, the UN Human Rights Committee has indicated that member states should take specific measures guaranteeing the independence of judges and protecting judges from any form of political influence in their decision-making, inter alia, by establishing judges remuneration (International Covenant on Civil and Political Rights, Article 14, General Comment No. 32, para 19). 15. However, as for any guarantee of judicial independence, the mentioned guarantee is not an end in itself: it pursues the aim to ensure proper, qualified and impartial administration of justice, and the implementation of the right to a fair trial".*

237. To the second question, the Venice Commission answered: *"24. According to the Venice Commission, however, it is clear that the principle of the independence of the courts also applies to the Constitutional Court […]Article*

108 of the Constitution provides that "the Constitutional Court of the Republic of Macedonia is a body of the Republic protecting constitutionality and legality". […]As the Constitutional Court of Lithuania has declared: the fact that "the Constitutional Court has the constitutional power to interpret the Constitution and to make decisions which are binding on all law-making and law-applying institutions, leaves no doubt that the Constitutional Court is an institution exercising state power. […]In conclusion: judicial independence is an inherent element of constitutional courts […] 27. Therefore, it is not compatible with the position of the Constitutional Court that it is considered as anything other than a court to which the principle of judicial independence is applicable. The conclusion must be, therefore, that if the legislator was guided by the principle of judicial independence as implying that salaries of judges may not even be reduced in the situation of crises, than that same principle must likewise be applied to the members of the Constitutional Court".

Opinion CDL-AD (2002)008, on the status and rank of the Ombudsman Institution in the Federation of Bosnia and Herzegovina, 17 May 2002

238. The Venice Commission had accepted a request from the Ombudsperson of the Federation of Bosnia and Herzegovina for an opinion, asking among other things: "*Whether the rank and status of the Ombudsman of the Federation of Bosnia and Herzegovina should be equated with the rank and status of senior civil servants or independent judges of ordinary courts?*"

239. After reviewing the legal framework of countries such as Norway, Sweden, Malta, Croatia, the Netherlands, France, Estonia, Belgium and others regarding the status and rank of the Ombudsperson, the Venice Commission in the relevant part of the response determined: *"16. The responses demonstrate that there are a variety of ways of establishing the status of the Ombudsman. Different countries or regional entities equate3 the Ombudsman's status with that of civil servants, judges, ministers or members of parliament, for example. 17. However, irrespective of the status which the Ombudsman is assimilated to, in the countries and regional entities which responded, the Ombudsman institutions are given an appropriately high rank, which is reflected in salary levels. […] 18. The rank and salary level are of crucial importance in order to guarantee the Ombudsman's independence and to enable him or her to properly carry out the functions with which he or she has been entrusted. […] 28. In conclusion, in the light of the analysis of the Constitution of the Federation of Bosnia and Herzegovina and relevant legislation, it is clear that, in the Federation of Bosnia and Herzegovina, a choice has been made in favour of equating the status of the Ombudsmen with that of ordinary judges, the rank with that of the President of the Supreme Court and the salary accordingly. 29. This choice is fully in conformity with European standards and, as shown by the responses received from Ombudsmen in different countries and regional entities, is the position in a number of other European countries. Indeed, it is a choice which unequivocally guarantees the independence of the Ombudsmen. 30. The Commission is therefore of the opinion that in the current legal context of Bosnia and Herzegovina, the Ombudsmen of the Federation of Bosnia and Herzegovina should be equated with judges of ordinary courts".*

Principles of Venice on the Protection and Promotion of the Ombudsman Institution CDL-AD (2019) 005-e, approved by the Venice Commission at its 118th plenary session, Venice, 15-16 March 2019

240. The so-called "Venice Principles" for the protection and promotion of the Ombudsperson Institution were approved by the Venice Commission in 2019. The relevant part, for the circumstances of the present case, of these Principles provides as follows:

> *"21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.*
>
> *22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff".*

Rule of Law Checklist, CDL-AD (2016)007-e, adopted by the Venice Commission at its 106th plenary session, Venice, 11-12 March 2016

241. Rule of Law Checklist approved by the Venice Commission in 2016, in its relevant part in terms of the circumstances of the present case provides as follows:

> *"74. The judiciary should be independent. Independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch. This requirement is an integral part of the fundamental democratic principle of the separation of powers. Judges should not be subject to political influence or manipulation.*
> *75. The European Court of Human Rights highlights four elements of judicial independence: manner of appointment, term of office, the existence of guarantees against outside pressure - including in budgetary matters - and whether the judiciary appears as independent and impartial.*
> *[…]*
> *83. Sufficient resources are essential to ensuring judicial independence from State institutions, and private parties, so that the judiciary can perform its duties with integrity and efficiency, thereby fostering public confidence in justice and the Rule of Law 79 Executive power to reduce the judiciary's budget is one example of how the resources of the judiciary may be placed under undue pressur.*

85. Finally, fair and sufficient salaries are a concrete aspect of financial autonomy of the judiciary. They are a means to prevent corruption, which may endanger the independence of the judiciary not only from other branches of government, but also from individuals".

Judgment of the European Court of Justice (ECJ) in the case with reference number ECJ-2018-1-003

242. In this case of the ECJ, the Portuguese legislator had issued a law on "management of salaries" in the public sector in which case the salary of judges of the Court of Financial Control (*Tribunal de Contas/Court of Auditors*) was reduced. In view of these circumstances, the referring court had raised the issue before the ECJ as to whether the domestic legislation of Portugal complied with the principle of judicial independence, which, in its view, derives from the second subparagraph of Article 19.1 of the Treaty on European Union hereinafter: TEU) and Article 47 of the EU Charter of Fundamental Rights and ECtHR case law. The latter responded by reasoning that: *"The European Court of Justice noted that the guarantee of independence, which is inherent in the task of adjudication, is a criterion not only at EU level as regards the Judges of the Union and the Advocates-General of the Court of Justice [...] but also at the level of the Member States as regards national courts. [...] The concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that is independent of outside interference or pressure that may impair the independent judgment of its members and influence their decisions".*

Judgment of the Constitutional Court of Portugal in case with reference number POR-2015-3-018

243. In this case, the Constitutional Court of Portugal dealt with the constitutionality of the norms of a law setting out the normal working hours of public sector workers at eight (8) hours per day and forty (40) hours per week, in which case the rate in force was changed, according to which a working day may not exceed seven (7) hours and a working week thirty-five (35) hours. The Applicants requested a constitutional review alleging that this increase in normal working hours was unconstitutional. The Constitutional Court of Portugal reasoned: *"[...] The Constitution does not contain any rule that creates guarantees that wages cannot be reduced per se. The Court stated that it is aware that increasing the normal number of working hours may create additional costs for workers (transport, care for the elderly and minors, etc.), but the greatest damage they suffer as a result of the norms has to do with the time they have available to themselves, their families as well as the exercise of a range of other fundamental rights [...].The court considered that the actual loss of salary was limited to the salary earned working overtime. The court appreciated this fact, given the effective pay cuts that the public sector workers sector has suffered in recent years. However, the Court held that overtime pay was not included in the qualitative concept of pay, and thus the constitutional guarantee that wages could not be reduced was not valid. From the above, the Court found that the reduction in the amounts of*

money that are effectively accepted as payment for overtime work was not a decisive element that would make a norm unconstitutional". In this case, the Constitutional Court of Portugal did not find a violation on the basis of the abovementioned reasons.

Judgment of the Constitutional Court of Portugal in case with reference number POR- 2013-1-006

244. In this case, the Constitutional Court of Portugal dealt with the constitutionality of the various norms contained in the Law on the State Budget for 2013. The claim was that a different treatment for public sector staff could not continue to be justified by the idea that the reduction measures of salaries are more effective than other possible cost-sharing alternatives. The Constitutional Court of Portugal reasoned: *"This is the third year in a row in which this reduction of remuneration paid in the field of public employment legal relationship has been in force, and in this regard the Budget Law of 2013 simply maintained the norms and reductions set in its predecessors. The court recalled its previous jurisdiction, in which it said that the rule under which wages cannot be reduced is not an absolute rule, but rather an infra-constitutional rule. The only absolute prohibition is that neither a public employer nor a private employer can arbitrarily reduce the salary, unless a legal norm allows it. Further, in the reasoning it was stated that*: "*The Court* [Constitutional of Portugal] *supported its previous position (Decision no. 396/2011) for arguing that pay reductions for public sector employees are contrary to the principle of equality, because they only target people who work for the state and the other public - legal entities and do not apply to workers who are paid to provide subordinate work in the private sector or collaborators, self-employed or anyone else earning income from other sources. It concluded that there are legitimate grounds for this differentiation, both because no evidence was presented to dismiss the position that only wage cuts are able to guarantee a safe and immediate reduction in the share of public spending, and because where it is about this objective, people who are paid from public funds are not in the same position as other citizens. For these reasons, the Court considered that the additional sacrifice required from this category of persons for a transitional period does not constitute an unjustifiably unequal treatment".* In this case, the Constitutional Court of Portugal did not find a violation on the basis of the abovementioned reasons.

Judgment of the Constitutional Court of Portugal in the case with reference number POR-2012-2-011

245. In this case, the Portuguese legislator had provided a measure to suspend payments for the month of Christmas (13th salary) and the month of holidays (14th salary) in the years 2012-2014, as for persons receiving salaries from public entities, as well as for those who receive a pension through the public social security system. The allegation against this measure was based on the fact that there should be limits to the difference between the amount of sacrifice made by persons affected by this measure and the sacrifice of those who were not affected by this measure and that the inequality caused by the change in situation should have been the subject of a degree of proportionality.

The very difficult economic situation and the need to adopt measures to deal with it did not mean that the legislator was no longer subject to the obligation to respect the fundamental rights and the main structural principles of the rule of law, or the principle of proportional equality.

246. The Constitutional Court of Portugal reasoned that: *"[...] the nature of these and any other equivalent payments of the 13th and 14th months was no different from that of the forms of wages which had been reduced in 2011* [year] - *reductions which the Court had refused to declare unconstitutional (Decision no. 396/11 of 21 September 2011). The law states that the nature of Christmas and holiday remunerations is that of payment for work done and that they are part of the employee's annual remuneration, regardless of whether they are paid under private law or public law regime".* Further, it was pointed out that: "*The Court recalled that the principle of equality in relation to the fair distribution of public costs, as a specific manifestation of the principle of equality, is a necessary legislative parameter which the legislator must take into account when deciding to reduce the public deficit in order to protect itself from the solvency of the state. The sustainability of public finances is of interest to all; everyone should, to the extent that they are able to do so, contribute to the burden of adjustments that need to be made to maintain that sustainability. The fact that the measures contained in the norms before the Court were not universal means that the sacrifices were not distributed equally among all citizens, in proportion to their individual financial ability. Additional efforts were required exclusively from certain categories of citizens. Legal equality is always a proportional equality; any inequality justified by a change in situations cannot be immune from the judgment of proportionality. The Court stated that the change in treatment in this case was so substantial and significant that the reasons relating to the advanced efficiency of the measure were not valid enough to justify it, especially since alternative solutions could have been decided".* In this case, the Constitutional Court of Portugal found a violation on the basis of the abovementioned reasons.

Judgment of the Supreme Court of Cyprus in case with reference number CYP-2014-2-001

247. The origin of the above case was the Law that decided to reduce the salaries of judges, as part of the country's austerity measures. The complainants, judges in the Republic of Cyprus, requested the Supreme Court of Cyprus to review the provisions of the relevant laws as administrative actions reducing the salaries of judges were invalid. The complainants claimed that compensation for judges could only be reduced by a general tax law that affects all taxpayers in the country without discrimination. The Supreme Court of Cyprus reasoned: *"[...] the legislative power that passed the challenged Law did not invoke such a necessity in order to justify its promulgation. Nevertheless, in order to successfully invoke the Doctrine of Necessity, in accordance with well-established case-law, there must be an absolute necessity to safeguard the continuation of the effective functioning of the State. The Supreme Court disagreed with the attorney general's argument such need existed, that is to include a relatively small number of persons (the Judges) to share the burden caused by the country's adverse financial situation. This need is not more*

important than the need to safeguard the independence and impartiality of the Judiciary, which is the obvious purpose of the provisions of Article 158.3 of the Constitution, and a matter of supreme importance in terms of public interest. […] Therefore, it [the challenged Law] amounts *to an impermissible, adverse reduction of the judges' compensation (remuneration), and in contravention to the clear provisions of Article 158.3 of the Constitution"*. In this case, the Supreme Court of Cyprus found violations on the basis of the abovementioned reasons.

Judgment of the Constitutional Court of Slovenia in the case with reference number SLO-2009-3-006

248. The subject of review before the Constitutional Court of Slovenia were several regulations governing the salary position of judges. The essential question in this case was that of the constitutional position of the judiciary and judges, and within these frameworks the question of determining the guarantees which are provided by the Constitution in relation to the other two branches of power. The Constitutional Court of Slovenia reasoned that: "*Protection against the reduction of the salary of the individual judge, as such is intended to ensure its stability and consequently the independence of a judge, should be understood as protection against any interference that may cause a reduction of the judge's salary, which the judge expects in reasonably with the taking over the duty. Thus, not only the basic salaries of judges are those that are protected from reduction, but also all the payments to which judges are entitled due to the performance of judicial duties. Consideration of the consistency of regulations providing for additional payment of judges for performance at work, with the principle of independence of judges set out in Article 125 of the Constitution cannot be carried out because the challenged provisions are insufficiently defined and legally unclear"*. Therefore, the Constitutional Court of Slovenia found a violation by finding that the challenged legal regulation was in violation of Article 2 of the Slovenian Constitution.

Judgment of the Constitutional Tribunal of Poland in case with reference number POL-2001-H-001

249. A certain law set limits on the salaries of the managers of some state units as well as of the entities of local self-government. The law in question also limited the number of supervisory boards to state-owned or local government companies. The Confederation of Polish Employers challenged the constitutionality of the above-mentioned restrictions before the Constitutional Tribunal. The latter, in the reasoning of its decision emphasized: *"The principle of minimum wage for work […] is of a more general character. […] Article 65.4 of the Constitution, stipulates that it is the duty of the legislator to determine in the statute the minimum remuneration for meeting the primary needs of life. Not only does the legislator have the right to fulfill the tasks set out in it with constitutional provisions, but the legislator may also adopt, with due regard for the law, rules governing other areas of social life, including the level of remuneration for work. However, the discretion of the legislator is limited by Article 2 of the Constitution which defines the principle of social justice, which requires that the salary be adequate and meet the reasonable*

needs of an individual. According to Article 2 of the Constitution, the new provisions may not surprise the persons affected. The provisions in question entered into force "on the first day of the month following one month from the date of publication". Furthermore, an additional three months were provided for the adjustment of those whose wages were reduced. As a result, such persons were not surprised by the changes and the principle of citizens' trust in the state and its laws was not violated". In this case, the Constitutional Court of Poland did not find a violation on the grounds set out above.

Judgment of the Supreme Court of Canada in case with reference number - CAN-1997-3-005

250. Some Canadian provinces have enacted legislation to reduce the salaries of their court judges and public sector employees - a reduction that was challenged under Article 11.d of the Canadian Charter of Rights and Freedoms.

251. The Supreme Court of Canada stated that: *"[…] wage cuts were unconstitutional. Financial security, one of the essential characteristics of judicial independence, has an individual and institutional dimension. The institutional dimension of financial security has three components. First, as a general principle, Article 11.d of the Charter allows the salaries of provincial court judges to be reduced, increased or froze, or as part of a general economic measure affecting the salaries of all or some of the persons awarded from public funds, or as part of a measure which is directed at provincial court judges as a class. However, to avoid the possibility or emergence of political interference through economic manipulation, a body, such as a commission, should be involved in the judiciary and other branches of government. The constitutional function of this body would be to depoliticize the process of determining changes or freezes in judicial remuneration. This objective will be achieved by assigning this body the specific task of issuing a report on the salaries and benefits of judges to the executive and the legislature. Therefore, the provinces are under a constitutional obligation to establish bodies that are independent, effective and objective. […] Comprehensive measures that substantially affect any person paid from the public purse are prima facie rational, while a measure directed only at judges may require a more complete explanation. Second, under no circumstances is the judiciary allowed - not only collectively through representative organizations, but also as individuals - to engage in salary negotiations with the executive or representatives of the legislature. Such negotiation would be in fundamental conflict with judicial independence. Third, any reduction of the judicial remuneration cannot receive those salaries below the basic minimum level of remuneration required for the office of judge. Public confidence in the independence of the judiciary would be undermined if judges were paid at such a low rate that they could be assessed as sensitive to political pressure through economic manipulation. To protect against the possibility of government inaction being used as a tool for economic manipulation, allowing judges' salaries to fall due to inflation, and in order to protect themselves from the possibility of judicial salaries falling below the appropriate minimum required by judicial independence, the body must meet if a certain period of time has elapsed since its last report, in order to take into account the adequacy of judges in light of the cost of living and other*

important factors. Components of the institutional dimension of energy evaluation should not be observed in cases of emergency of their service and be added by unusual circumstances. Here, wage cuts were unconstitutional because they were made by governments of [Provinces] *without reliance on an independent, objective and effective process for determining judicial remuneration and because the government of* [another Province] *failed to respect the independent, effective and objective process of awarding judicial compensation which was already operating in that province"*. In this case, the Supreme Court of Canada found a violation on the basis of the abovementioned reasoning.

Conclusion on the Opinions of the Venice Commission and the decisions of other courts

252. In the light of the Opinions and decisions suggested by the Liaison Office of the Venice Commission, the Court concludes that the common denominator of the research documentation proposed consists in that: (i) the independence of the judiciary, as one of the branches of the state power, means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, especially by the executive branch - this criterion is considered to be an integral part of the fundamental democratic principle of separation of powers; (ii) sufficient resources are essential to guarantee judicial independence from other state institutions and from private parties - so that the judiciary can perform its duties with integrity and effectiveness, thus ensuring public trust in justice and rule of law; (iii) budget cuts by the executive are an example of how the resources of the judiciary can be put under excessive and unwanted pressure; (iv) the concept of independence presupposes, in particular, that the body in question exercises its judicial functions completely in an autonomous manner, without being subject to any hierarchical restriction or subordination to any other body and without accepting orders or instructions from any source; (v) the remuneration of judges should be guaranteed by law and be proportionate with the dignity of their profession and the burden of responsibility and that the judge's salary may not be reduced during the term (except in exceptional situations of economic hardship); (vi) the level of remuneration should be determined in the light of the social conditions in the country and compared with the level of remuneration of senior civil servants; (vii) the Ombudsperson should rightly be given a high rank which is also reflected in the respective remuneration; (viii) the state must provide sufficient and independent budgetary resources for the Institution of the Ombudsperson and the latter must be sufficient against the need to ensure the full, independent and effective performance of its responsibilities and functions; (ix) the Ombudsperson Institution must have sufficient staff and appropriate structural flexibility and must be able to recruit his or her staff; (x) there is no rule that provides an absolute guarantee that public sector salaries cannot be reduced *per se* - but that the salary reduction must be justified; (xi) there is a single absolute prohibition in terms of salary reduction according to which neither a public employer nor a private employer can arbitrarily reduce salaries, unless a legal norm allows it; (xii) reductions of the salaries of public sector employees are contrary to the principle of equality when they target only certain persons; (xiii) the principle of equality in relation to the fair distribution of public costs, as a specific manifestation of the

principle of equality, is a necessary legislative parameter which the legislator must take into account when deciding to reduce the public deficit in order to protect itself from the solvency of the state; (xiv) the sustainability of public finances is in the interest of all and consequently everyone should, to the extent that they are able to do so, contribute to the burden of adjustments that need to be made to maintain that sustainability in times of crisis; (xv) sacrifices in times of crisis resulting in reductions of salaries which are not universal and are not evenly distributed among all citizens, in proportion to their individual financial ability - are not considered to be compatible with the concepts of distribution of burden between salary beneficiaries in a state; (xvi) protection from the reduction of a judge's salary, as such, is intended to ensure the stability and consequently independence of the judge and should be understood as protection against any interference that may cause a reduction in the judge's salary that the judge expects reasonably with the assignment; (xiii) the Assembly as legislator is called upon to regulate various social spheres, including the level of remuneration for work; however the legislator's discretion is limited to the salary being adequate and meeting the reasonable needs of an individual; (xvii) the new provisions issued by the legislator may not surprise the persons affected, and in cases where they know exactly what awaits them under the new legislation - certain courts have found no violations; (xviii) financial security is one of the essential characteristics of judicial independence; (xix) comprehensive measures that substantially affect any person paid from the public budget are *prima facie* rational, while a measure aimed only at judges [or only for a certain group] may require a more complete explanation.

RESPONSE OF THE COURT – *regarding the compliance of the challenged Law with the principle of separation of powers, namely Articles 4 and 7 in conjunction with Articles 102, 108.1, 109, 110, 115 of the Constitution and the respective Articles of Chapter XII of the Constitution*

253. The Court recalls the fact that the Ombudsperson challenged the constitutionality of the Law on Salaries, in its entirety, under the substantive allegations that it violates the principle of "separation of power" and the principle of "legal certainty", part of the rule of law principle. The MPA, in the capacity of the proposing Ministry within the Government, opposed the allegations of the Ombudsperson; whereas the Ministry of Finance and Transfers as a Ministry that would execute the challenged Law has responded extensively to the Court's questions highlighting some potential shortcomings to be assessed by the Court and some important aspects of the difficulty and impossibility of immediate implementation of the Law in question in practice (see, substance of the Applicant's allegations; comments of the MPA and the Ministry of Finance and Transfers).

254. As defined above, the constitutional question to which the Court must answer is whether the challenged Law (i) violates the principle of separation of powers guaranteed by the Constitution in relation to the judiciary; and whether the challenged Law (ii) violates "institutional, organizational and functional" independence of Independent Institutions referred to in Chapters VIII and XII of the Constitution.

255. Basic principles deriving from the Constitution, domestic and international case law, as well as the Opinions of the Venice Commission regarding the "separation of powers" and the significance of this principle for the power of the judiciary, have already been extensively elaborated above. The Court invokes all those principles in the spirit of which it will assess the challenged Law in terms of constitutionality.

256. Therefore, pursuant to the abovementioned principles and in order to assess allegations of violations of the principle of separation of powers to the detriment of the Judiciary and Independent Institutions, in the following the Court will: (i) analyze specific and relevant provisions of the challenged Law; (ii) specify the exceptions made for the other two branches of power, namely the Legislative and the Executive - thus analyzing the specific competencies given only to the Government and the Assembly; (iii) points out other exceptions made by the challenged Law, including the non-involvement of some institutions in the legal regulation of the challenged Law; and (iv) examine whether the principles on which the challenged Law is supposed to have been drafted have been complied with. Finally, the Court will present its conclusion.

257. Prior to this assessment, two important preliminary parentheses. One for the Assembly; the other for the Constitutional Court.

258. First, the Court highlights the key constitutional competence of the Assembly for legislation at the national level. The Assembly, as a legislative power, *"in addition to the Constitution and the obligation to exercise legislative power in accordance with the Constitution, [...]is not subject to any other authority"* (see Judgment of the Court KO72/20, paragraph 352). In the context of the circumstances of the present case, it is consequently indisputable the authorization of the Assembly to exercise its competence to "adopt laws" (see Article 65.1 of the Constitution) to regulate salaries in the public sector according to a certain policy chosen by the Assembly itself. The latter has full authority to choose the best and most appropriate modality that considers that in terms of public policy fits the payroll system for the Republic of Kosovo. The only limitation that the Assembly has in legislation is to respect the legislative procedures and to vote laws that are in accordance with the Constitution and the values and principles proclaimed therein.

259. Second, the Court emphasizes the fact that in all cases where an Assembly Law is challenged before the Constitutional Court by authorized parties, the focus of the assessment is always respect for constitutional norms and human rights and freedoms - and never the assessment of public policy selection, which has led to the adoption of a particular Law. The Court has already emphasized in its case law that in reviewing the constitutionality of a Law, it never assesses whether it is a law based on good public policy or not (see Court cases: Judgment KO73 / 16, paragraph 52; Judgment KO72 / 20, cited above, paragraph 357; KO12/18, applicant *Albulena Haxhiu and 30 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 11 June 2018, paragraph 117). Such an assessment is not within the competence of the Constitutional Court and consequently the analysis of the constitutionality of a Law always focuses only on the constitutional aspect of the particular Law. The competence

of the Court in the present case is to assess, *in abstracto*, whether the challenged Law is constitutional or not and depending on the answer - to seal its constitutionality or to repeal it, or a part of it, as unconstitutional. It is clear that the Constitutional Court does not act ex officio in reviewing the constitutionality of laws. The constitutionality of all laws in force in the Republic of Kosovo is presumed as such as long as it is not challenged before the Constitutional Court by authorized parties. The Assembly is considered to have issued a constitutional law by the time such a law or part of the law is not deemed unconstitutional by the Court.

260. Having said that, the Court returns to the assessment of the specific provisions of the challenged Law.

261. The challenged law contains a total of 10 chapters, with a total of 34 articles and two annexes named as "Annex no. 1" and "Annex no. 2". In the following, the Court will elaborate on some of the articles that are relevant to the overall assessment of the constitutionality of the challenged Law - not entering the articles that do not relate to the Court's key analysis. For each of these articles, the Court will present its arguments and observations of the constitutional aspect.

262. Article 1 of the Law on Salaries defines the purpose and scope of the challenged Law. According to this article, the Law on Salaries has three purposes. The first goal is to determine: *"the system of salaries and remunerations for Public Officials and Functionaries who are paid from the state budget, excluding KIA* [Kosovo Intelligence Agency] *and KSF* [Kosovo Security Force]". The second purpose of the challenged Law is to determine *"rules for determining salaries for employees of publicly owned enterprises in Kosovo"*. The third purpose is to determine the *"criteria for transitional salary and other benefits after the end of the function of public functionary and public functionary with special status, as well as for former high official that is realizing the rights according to the relevant Law"*.

263. In this regard, the Court notes that in the same article where the legislator as the primary purpose of the Law has provided for the harmonization of the system of salaries and remunerations for all those paid from the state budget - an exception has been made for KIA and KSF. Recall that these exceptions were not proposed by the Government as proposers of the Law but were added as amendments to the Assembly. In fact, the Government, even in the preparatory documents of the challenged Law, had repeatedly emphasized the purpose of a comprehensive "*homogenization*" of all salaries paid from the state budget. Meanwhile, with this amendment of the proposed Draft Law, the legislator has determined that although KIA and KSF are paid from the state budget, their salaries will not be determined by the Law on Salaries but through other legislation applicable to them. Reason for this exception - does not appear to have been given. The amendment in question was proposed by the Functional Committee of the Assembly, but the Court failed to find any legitimate reason on the basis of which this kind of differentiation or this complete exclusion was explained for these two institutions that are financed directly from the state budget. For some other exceptions the legislator has considered that the rationale should be specifically mentioned in the Law -

such as e.g. the stated reasonableness of the exceptions made for officials of the Assembly and for deputies.

264. Moreover, these two institutions are not the only exceptions that the challenged Law has made contrary to the very purpose of the Law. The Ombudsperson states, for example, that the Central Bank of Kosovo as one of the Independent Institutions listed in Chapter XII of the Constitution does not appear anywhere in the challenged Law. The reasons for this are not known. It is not excluded that there may be others excluded, either in institutional terms or in terms of specific positions. It is unclear to the Court how these exemptions granted by this Law, expressly or implicitly, have contributed to the primary purpose of the Law to regulate the system of salaries and remunerations for all public officials and functionaries, paid from the budget of state. This is not to say that the Assembly is not allowed to make exceptions - but the Assembly cannot make arbitrary and unreasonable exceptions that could cause confusion, dissatisfaction and inequality of treatment among those paid from the state budget.

265. Furthermore, the Court has also noted that the purpose of the Law is to harmonize salaries at the public sector level on the basis of the so-called principle **"same pay for same work"**. Regarding this "principle", the Court first refers to the response received by the Venice Commission to the Court's request, stating that "*due to the lack of applicable international standards"* in relation to the principle *"same pay for same work",* in the area covered by the Law in question, there is no way to provide an *Amicus Curiae* (see paragraph 15 of this Judgment).

266. The Court notes that at the general level, the lack of a clear definition of the principle of "equal pay for equal work" and "work of equal value", including a clear indication of the evaluation criteria for comparing different jobs in different institutions, is an obvious shortcoming that has produced a lot of dissatisfaction, confusion and complaints. To assess whether a particular employee of a particular public institution is performing work of equal value, a number of factors must be taken into account including the nature of the work, the institution in which the task is performed, the relevant education and training required, and other working conditions. Consequently, in defining and implementing the principle of "equal pay for equal work" and "work of equal value" in the local context, the legislator must take into account the features of the constitutional system of the Republic of Kosovo and take care to ensure and guarantee their incorporation in the context of the functional, organizational and budgetary independence of the classical powers as well as the Independent Institutions defined in the Constitution.

267. Consequently, the Court finds that the challenged Law openly contradicts the very purpose for which it is claimed to have been issued. Therefore, the exceptions made go against the very purpose of the Law and create unreasonable, unproven and arbitrary differentiations.

268. Article 3 of the Law on Salaries cites a total of six principles according to which it is stated that salaries determined by the challenged Law are based. The first principle is that of *"lawfulness"* where it is emphasized that: "salaries of

recipients are determined only in accordance with this Law and sub-legal acts authorized and issued for its implementation*"*. The second principle is that of *"fairness"* where it is stated that: *"the salary level should be a fair reward for the complexity of work and contribution of individual in the performance of the organisation"*. The third principle is that of *"equal pay"*, where it is stated that: *"every salary recipient shall receive equal pay for the work in the same or comparable function, position or grade"*. The fourth principle is that of *"transparency"*, where it is emphasized that: *"the procedure for determined the salary, its level, and administration of salary system should be transparent and open to public, while not falling in contradiction with the protection of personal data according to applicable legislation"*. The fifth principle is that of *"non-discrimination"*, where it is stated that *"no salary recipient shall be discriminated in salary, as defined in the law on the protection from discrimination"*. The sixth principle is that of *"predictability"*, where it is stated that *"salary level determined under this law cannot be lowered, unless in an extraordinary situation of financial difficulties and only according to the law."*

269. The Court notes in particular that the legislator considered the principle of **"predictability"** regulating that the level of salary determined by the Law on Salaries "*cannot be reduced, except in an emergency situation of financial difficulties and only by law.*" More specifically in application of this principle, in Article 24 [Lowering of salary level] of the Law on Salaries, the legislator has provided that the salary level determined according to the challenged Law *"can be lowered"* only *"by Law"* and in *"extraordinary situations of financial difficulties*." However, the legislator does not seem to have considered this principle important for those persons who already receive salaries from the state budget, according to the existing "*law*". In fact, the Court notes that the Draft Law proposed by the Government had a special article in the transitional provisions which aimed precisely at protecting the rights of persons who have already acquired a right to receive a certain salary or compensation from the state budget. Article 27 of the Transitional Provisions of the challenged Draft Law proposed by the Government provided that: *"1. If an individual, official or public functionary, received before the entry into force of this law, a full salary (basic salary with all kinds of regular allowances), which is higher than the full salary provided by this law, he will receive the new salary according to the provisions of this law and a special transitional allowance equal to the difference between the old salary and the new salary"*.

270. However, the Assembly considered that such a draft-article was not necessary and removed it from the final draft of the Law on Salaries during the legislative process in the Assembly. From the preparatory documents, the Court has not noticed any discussion or reasoning as to why this was done. Non-compliance with the existing rights of individuals receiving a salary or compensation set by the state budget has raised a significant number of complaints which have also been addressed to the Ombudsperson. What should be emphasized in this regard is that the Assembly has considered that the principle of "predictability" is a very important principle - but only for the future, not for the present and for persons already negatively affected by the Law on Salaries. According to the new legal regulation of the Assembly, it turns out that for the future, the legislator considers that salaries can be reduced only in exceptional situations

and financial difficulties; while none of the cuts of salaries in public sector through the challenged Law were justified on the basis of any "extraordinary situation" or "financial difficulty". They have simply been reduced in the name of the tendency for comprehensive "homogenization" and "harmonization" which turns out not to have been achieved. In fact, it results that the reduction of salaries for a significant number of salary recipients from the state budget, as evidenced by the data received from the Ministry of Finance and Transfers, was done arbitrarily and without any justification. For some, it is not even known how much and how their salary will be reduced, as confirmed by the response of the Ministry of Finance and Transfers. Such a selective approach to the principle of predictability which is an integral part of the principle of the rule of law and legal certainty - is unacceptable and should be avoided in any future legislation of the Assembly.

271. The reason why the focus of the analysis in terms of predictability is more on the "reduction" of salaries than on the "increase" of salaries made by the challenged Law is precisely the fact that the legislator during the exercise of constitutional competence for legislation had to take care for the rights of persons whose salary is reduced. The legislator has the right after this Judgment to take any kind of step immediately to increase salaries in the public sector in order to meet any public policy goal of increasing salaries in certain sectors. There are many modalities on how such a thing can be done, but this remains entirely at the discretion of the Assembly and the Government, after the respective analyzes they make. Immediately after this Judgment, the legislator has also the right to take any kind of step to reduce salaries in the public sector because there is no absolute prohibition on not reducing salaries in the public sector. However, although at the discretion of the Government and the Assembly, it should be borne in mind that any pay cut, for each existing position, must be strongly reasoned and not arbitrary. Also, any pay cut should be such as not to place the burden of salary cuts only on certain persons or certain sectors of the public sector. The reasons for salary cuts should be many times more stable than the reasons for salary increase. For the salaries of the Judiciary, it has already been elaborated above. They can never be reduced during the term of a judge unless the salary reduction is justified by an exceptional situation of proven financial difficulty (see the cases of various European and world Courts as well as the relevant Opinions of the Venice Commission which speak about the salaries of Judiciary, cited above).

272. Further, regarding the principle of "transparency" as one of the principles on which the regulation of the challenged Law is said to have been guided, it should be *"the procedure for determined the salary, its level, and administration of salary system should be transparent and open to public"*. It is not clear to the Court how this principle has been applied when about 42% of the positions currently receiving salaries from the state budget still cannot decipher how much they will receive with the new Law on Salaries. Moreover, for most of them the last word on where they will be classified and what salary they will have - will have the Government, namely the MPA and that only after the sub-legal acts that should be approved were approved by 1 December 2019. Both for the Judiciary as a third power and for the Independent Institutions - it is the Government, namely the MPA that would decide on the final salary of one of their employees. This leads to the conclusion that the principle of

transparency - although appropriate and right as a principle, has not been applied through the challenged Law.

273. Consequently, the Court finds that the challenged Law has not followed and respected at least two of the basic principles on which the challenged Law is said to have been guided, that of predictability and transparency. The Court will not enter the consideration of other principles.

274. Article 4 of the Law on Salaries speaks about the salary of "civil servant" where it is stated that the same consists of *"basic salary and allowances, as the case may be"*. In the same article, paragraph 4 provides for an exception for employees of the Assembly Administration in terms of allowances and compensations. While paragraph 3 states that: *"Salary of the employee of the Administration of the Assembly of the Republic of Kosovo shall be regulated by this Law, according to Annex 1 of this Law"*, immediately in the next paragraph follows the exception according to which: *"Allowance and compensation of the employee of the Administration of the Assembly of the Republic of Kosovo shall be regulated by this Law and by special act adopted by the Presidency of the Assembly of the Republic of Kosovo"*. Further, paragraph 5 of Article 4 of the Law on Salaries states that: *"Regulation by special act, according to paragraph 4 of this Article, shall be done based on the nature and specific conditions of the work of the Assembly of the Republic of Kosovo"*.

275. In addition, Article 12 [Special allowances for public functionaries] speaks about the special allowances of the deputies on the basic salary; special allowances for the parliamentary function of the President of the Assembly, Vice President of the Assembly, Chairperson of the parliamentary committee, deputy chairperson of the parliamentary committee and head of the parliamentary group; the right to compensation for participation in the parliamentary session, in the meetings of the parliamentary committee and for the monthly expenses. According to paragraph 4 of this article, all competencies to determine the criteria and procedures for allowances and compensation for deputies are left to the Presidency of the Assembly to self-determine them by internal regulations. Further, Article 12 of the Law on Salaries stipulates that allowances and compensation for the political staff of the Assembly *"shall be regulated by a special act adopted by the Presidency of the Assembly"*.

276. Exceptions provided in Article 4 of the challenged Law, only for the Administration of the Assembly; and the exceptions provided for in Article 12 of the challenged Law, only for the deputies and the political staff of the Assembly - represent one of the most serious constitutional problems of the Law in question. Through this article, the legislator, respectively the Assembly as one of the three classic powers of government of the Republic of Kosovo has provided that all issues related to allowances and compensations of its employees, civil and political staff, and its deputies to be regulated by "special acts" approved by the Presidency of the Assembly and that such an exception, according to the legislator "*shall be done based on the nature and specific conditions of the work of the Assembly of the Republic of Kosovo*."

277. Such exceptions as well as the reasoning given in the challenged Law might have been all right if the legislator had paid equal attention to other powers as well as to Independent Constitutional Institutions. If it treated all powers equally and in accordance with their constitutional specifics - it could result in regulation in accordance with the Constitution. However, the exclusion of only one power and non-compliance with the constitutional guarantees of other powers, completely ignoring the Judiciary and Independent Institutions is a legislative solution that does not comply with the values and principles of the Constitution, especially the principle of separation of powers. Add to this the fact that, apart from the Assembly, namely the legislative, the only other power authorized to regulate certain issues by sub-legal acts is the Government, namely the executive. The only power that is completely ignored by any specific and adapted regulation that would consider "*the nature and specific conditions*" of its work and independence - is the power of the Judiciary. The same can be said for the Independent Institutions referred to in Chapters VIII and XII of the Constitution.

278. Furthermore, the Court also notes that Articles 5, 6, 7, 8 and 9 of the challenged Law regulate issues related to the basic salary, allowances for market conditions, annual allowances based on the results of the evaluation of work, special allowances on basic salary and overtime allowances. For all these issues, the legislator has given the Government the authority to issue sub-legal acts for all institutions (except in specific cases where exceptions are provided - both for the Assembly and for the KSF, KIA and others that are implicitly completely excluded from the Law).

279. In this regard, the Court notes that the challenged Law gives sixteen (16) special competences to the Government to regulate certain issues through sub-legal acts and after consultation with the relevant ministry (see Articles 5.4; 5.5; 6.3; 6.4; 7.5; 8.3; 9.5; 14.4; 15.4; 17.4; 18.2; 19.4; 20.5; 21.6; 21.8; 22.5; 25.3; 26.2; 27.2 of the challenged Law - where in all these articles the Government is authorized to issue a sub-legal act; see also the two (2) specific competencies of the Assembly for sub-legal acts, elaborated above).

280. This means that all regulatory competencies through sub-legal acts are left in the hands of the Executive and the Legislative - as two of the powers that actually drafted, namely approved this legal initiative through a vote in the Assembly. The judiciary as a third power has neither the constitutional competencies to propose laws nor to adopt them. But, this does not mean that the other two sister powers should ignore it completely just due to the fact that it has not been an active participant in lawmaking. On the contrary, precisely because the third power has not been an active participant in lawmaking, special attention should have been paid to any legal regulation that could potentially create unconstitutional "interference" in institutional, functional, organizational independence. This would be achieved taking into account the "*specific nature and conditions*" of the work and independence of the Judiciary.

281. It is clear that the challenged Law, apart from the competencies given to the Government and the Assembly, does not give any competence to the Judiciary and Independent Constitutional Institutions to regulate certain issues. For all

matters, the legislator has left the Government and its respective Ministries as crucial decision-making bodies. Such legal regulation, with the complete exception of the self-regulatory competencies of the Judiciary, has undoubtedly created an imbalance in the separation of powers which the spirit and letter of the Constitution by no means aspires to. Such a legal regulation, if confirmed as constitutional, would have the potential to create "interference" of the Executive with the Judiciary and "dependence" and "subordination" of the Judiciary towards the Executive because the former would have to depend by the will of the latter in terms of internal arrangements for staff and functional, organizational, budgetary and structural aspects of work. Such a legal regulation is in open violation of the Constitution.

282. Consequently, the Court finds that the challenged Law through exceptions made only to the Assembly and the Government has violated the constitutional guarantees of the independence of the Judiciary and Independent Institutions - creating an imbalance in the separation of powers.

283. Article 31 [Sub-legal acts] provides that all sub-legal acts provided by this law should *"be adopted **within nine (9) months** after the publication in the Official Gazette"*, whereas Article 34 [Entry in to Force] establishes that the challenged Law *"shall enter into force nine (9) months after its publication in the Official Gazette"*.

284. In this regard, the Court notes that the challenged Law was adopted by the Assembly on 2 February 2019; was published in the Official Gazette on 1 March 2019 and entered into force nine (9) months after publication, namely on 1 December 2019. In a clear manner, Article 31 of the challenged Law has provided the preparatory measure for the implementation of the Law in question, requesting that all sub-legal acts provided by the Law be approved "***within***" 9 months after publication in the Official Gazette, namely until 1 December 2019. The Court notes that the response of the Ministry of Finance and Transfers very clearly clarified that only one (1) out of a total of eighteen (18) sub-legal acts to be adopted – has been adopted. Among other things, for this reason, the Ministry of Finance and Transfers stressed that the Law on Salaries, even if it enters into force today, it could not be fully implemented in practice until all the sub-legal acts are adopted (seventeen (17) remaining). The fact that the challenged Law has been suspended by a decision on an interim measure by the Court and that this is one of the reasons why the sub-legal acts have not been adopted is not grounded. This is due to the fact that the sub-legal acts had to be adopted exactly within the 9-month *vacatio legis* period left by the challenged Law. The non-adoption of sub-legal acts has made it impossible for the Court to understand exactly for which positions the salary increases and for which positions exactly the salary decreases. In the answers submitted to the Court, the Ministry of Finance and Transfers admitted and clarified that it cannot give that answer for about 42% of the positions paid from the state budget because without the approval of sub-legal acts it is not known how much will be paid a series of positions that are currently paid from the state budget. All this careless legislative process, without a doubt, leads to an unacceptable situation of legal uncertainty that can in no way be compatible with the Constitution and its values and principles.

285. Consequently, the Court finds that the fact that the challenged Law, even if it enters into force, could not be immediately implemented in its entirety, is against the principle of predictability and legal certainty.

286. Article 32 [Prohibition and determining of equivalence] provides that upon the entry into force of the challenged Law, any change in the salary structure, components or levels coefficients is prohibited. Paragraph 2 of this Article provides that in the case of the creation of new functions, positions or job titles, the institution in which the position is created "***shall request***" the ministry responsible for public administration and the ministry responsible for finance to determine the salary class applicable to that function, position, or job title, on the basis of equivalence. Paragraph 3 of this Article provides that the ministry responsible for public administration and the ministry responsible for finance, at the moment they receive a request from the designated Institution, "***assess the equivalent function, position or title***" with the basic equivalence to the principles of the challenged Law and will make the proposal "***for approval to the Government***" for the salary class that will be applied for that function, position or title.

287. This article also presents a serious conceptual and practical problem, especially for the Judiciary and Independent Institutions. If this provision were to be declared constitutional, it would mean that whenever the Judiciary, the Constitutional Court, the Ombudsperson and other Independent Institutions need to create a new position within their organization chart or change the internal organizational structure, depending on the need that may arise in the future - they should turn to the Government to seek permission and approval for the creation of a new position and to seek permission and approval to change the internal organizational structure. The challenged Law in this regard states that it is the MPA which "*will evaluate the function, position or title*" and will make the "*proposal for approval in the Government for the salary class that will be applied for that function, position or title*". Meanwhile, in the decisive and final decision-making chain is the Government which must "***approve***" every proposal of the Judiciary. In other practical terms this means that every new position, every new naming, every new function deemed necessary by the Judiciary - must be approved by the executive, namely the Government.

288. The Court finds that this legal regulation is in a flagrant way contrary to the notion of "institutional, functional and organizational" independence of the Judiciary and Independent Institutions. As such it is unacceptable and contrary to the Constitution and the key principle of separation of powers as a constitutional model of governance in the Republic of Kosovo.

289. Article 33 [Abrogation] expressly states that the challenged Law repeals the following laws or provisions:

> *"1.1. Law No.03/L-147 on Salaries of Civil Servant;*
> *1.2. Law No.03/L-03/L001 on the Benefits to Former High Officials, amended and supplemented by the Law No. 04/L-038;*
> *1.3. Article 11, paragraph 2 of the Law No.03/L-094 on the President of the Republic of Kosovo;*

1.4. Article 15 of the Law No.03/L-121 on Constitutional Court of the Republic of Kosovo;
1.5. Article 9 of the Law No.03/L-159 on Anti-Corruption Agency;
1.6. Article 35, paragraphs 1 and 2 of the Law No.06/L-054 on Courts;
1.7. Article 21, paragraph 1, sub-paragraph 1.1 to 1.10 of the Law No.03/|L-225 on State Prosecutor;
1.8. Article 18, paragraph 1 of the Law No.06/L-055 on Kosovo Judicial Council, as well as every legal provision and sub-legal act that regulates the issue of salary, compensations, allowances and remunerations."

290. Through Article 33 of the challenged Law, *inter alia*, some of the specific articles of the organic laws of the Judiciary that previously regulated the issue of salaries of the Judiciary in general, of the Constitutional Court and of the chairmen of both Councils, the Judiciary and the Prosecutor, have been explicitly repealed. However, by Article 28 [Transitional provisions] of the challenged Law it is foreseen that the system of salaries, allowances and remunerations provided in Annex no. 1 of the challenged Law do not apply to public officials with special status, namely, the judge of the Constitutional Court, the judge, the prosecutor, the chairman of the Judicial Council and the chairman of the Prosecutorial Council until 31 December 2022. Meanwhile, for the Privatization Agency of Kosovo, the legislator has provided the same exception until 31 December 2022 in Article 29 of the Law - but has not repealed existing laws regulating the salary of the Privatization Agency of Kosovo. This difference matters.

291. The Court notes two obvious and basic problems in this regard. The first concerns the legal vacuum and contradiction created by the challenged Law. This is due to the fact that at the legal moment when the challenged Law would enter into force, Article 33 of the challenged Law would repeal all the respective norms which currently regulate the salaries of the Judiciary, the Constitutional Court, the Chairs of the Judicial and Prosecutorial Councils (see points 1.4; 1.6; 1.7; 1.8 of Article 33 cited above). This means that with the entry into force of the challenged Law and if the latter were in force and not suspended, these legal provisions would no longer be in force because they would have been repealed by the challenged Law.

292. On the other hand, the Court notes that on the voting day in the Assembly a new article was added, according to which it is stated that: *"Provisions of this Law for the system of salaries, allowances and remunerations and Annex No.1 of this Law shall not be applied for the public functionaries with special status: judge of the Constitutional Court, judge, prosecutor, chair of the Judicial Council and chair of the Prosecutorial Council until 31 December 2022"* (see Article 28 of the challenged Law). The question arises whether with the entry into force of the challenged Law certain articles of the organic laws mentioned in the points 1.4; 1.6; 1.7; 1.8 of Article 33 cited above have been repealed – according to which Law that these special functionaries would receive a salary. What salary would be preserved to them when the provisions governing their salary were repealed. With this negligent legal regulation, in fact, if the challenged Law came into force, it turns out that the legislator would have left without any legal regulation the above-mentioned special functionaries by repealing exactly the norms on which their salary is regulated.

It is unclear how their old salary could have been implemented when the specific articles on which their old salary was based would have been repealed. The Assembly, if it wanted to do this, had to emphasize that Article 33 of the Law, namely points 1.4; 1.6; 1.7; 1.8 of it will not enter into force until 31 December 2022. Not that this would be a constitutionally acceptable solution - but at least technically it would not leave a legal vacuum as the regulation made by the Law on Salaries would leave, if it entered into force.

293. Another major problem with the way of regulating the salaries of the Judiciary is the approach of postponing the salary reduction for the power of the Judiciary for about 2 years and several months, respectively until the end of 2022. After 2022, namely on 1 January 2023, all incumbent judges would suffer drastic reductions of their salaries. As explicitly stated in all the Opinions of the Venice Commission and in many European and world level court practices, the salary of the individual judge can be reduced only as a result of an evidenced economic crisis that would constitute extraordinary circumstances for the state that such a measure should definitely be taken. Also, the burden of reducing salaries, if it is already considered necessary due to the economic crisis, should be proportionate and include everyone equally so that no particular sector bears the main burden. The challenged Law did not take into account any of these principles.

294. Consequently, the concept of maintaining the salaries of the Judiciary only until 2022, and then halving the salaries after that date cannot contribute to guaranteeing an independent Judiciary. Such a thing would in fact put an undesirable pressure on the Judiciary against the Legislative and Executive powers. Meanwhile, through the non-harmonized legal regulation regarding the legal effects of Article 28 of the challenged Law in conjunction with Article 33 of the challenged Law - the challenged Law, if its implementation was allowed, would cause a legal vacuum according to which the Judiciary and all public officials with special status referred to in Article 28 will be left without an applicable "law" that determines their salaries (old or new) until 31 December 2022.

CONCLUSION - *regarding the compliance of the challenged Law with the principle of separation of powers, namely Articles 4 and 7 in conjunction with Articles 102, 103.1, 108, 109, 110, 115 of the Constitution and Article 132, 136, 139, 141 of Chapter XII of the Constitution*

295. In light of the above, the Court finds that the challenged Law is not in accordance with Articles 4 and 7 in conjunction with Articles 102, 103.1, 108, 109, 110, 115 of the Constitution and Articles 132, 136, 139, 141 of Chapter XII of the Constitution.

296. In case of new legislation in this field, the Government in the capacity of proposer of laws and the Assembly in the capacity of approving laws, are obliged to take into account the principles set out in this Judgment and the case law of the Constitutional Court in interpreting the respective articles of the Constitution. The "institutional, functional, organizational and budgetary" independence of the Judiciary and Independent Institutions must be recognized and any legal initiative must respect this independence.

297. Finding the above-mentioned violations makes the challenged Law in its entirety unconstitutional.

298. The Court has very carefully analyzed the possibility of partial repeal of the challenged Law. However, in the circumstances of the present case such a solution, unlike the circumstances of the Law on Public Officials which was partially repealed, was not possible for three reasons. First, because the constitutional violations identified in the challenged Law are of such serious weight that they affect the basis of the functioning of the government in the Republic of Kosovo - causing an imbalance in the separation of powers to the detriment of the Judiciary and Independent Institutions. Second, because the challenged Law does not offer an opportunity to repeal only some provisions and only some points of Annexes no. 1 and 2, because any kind of repeal would make the Law unenforceable in practice. And, in cases when the analysis leads to the conclusion that the Law with partial repeal becomes inapplicable with the remaining articles in force as constitutional, the Court is obliged to repeal the Law in its entirety.

III. Other allegations of violation of the Constitution raised by the Ombudsperson

299. The Court recalls that in addition to the alleged violation of the principle of "separation of powers" and "rule of law/legal certainty", the Applicant requested the Court to find that the challenged Law is also contrary to "equality before the law"; "protection of property" and some other articles of the Constitution, the ECHR and the UDHR.

300. Given that the Court has already found violations of articles 4, 7, 102, 103.1; 108; 109; 110, 115; chapter VIII and chapter XII of the Constitution, in terms of "separation of power" and finding these violations is sufficient for declaring the challenged Law in its entirety unconstitutional, does not deem it necessary to proceed further dealing with other allegations alleged by the Applicant, respectively Articles 3.2, 10, 21, 22.1, 23, 24, 46, 55, 58.3, 58.7, 119.1, 119.2, 130 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR and Article 23.2 of the UDHR (see, *mutatis mutandis*, cases of the Court in which on the occasion of finding a certain violation it was found that it is not necessary to address other allegations: KO01/17, Applicant Aida Dërguti and 23 other deputies of the Assembly of the Republic of Kosovo, *"Constitutional review of the Law on Amending and Supplementing the Law No. 04/L-261 on the War Veterans of the Kosovo Liberation Army"*, Judgment of 27 March 2017, paragraphs 101-103; KI65/15, Applicants *Tatjana Davila, Ljubiša Marić, Zorica Kršenković Zlatoj Jevtić*, Judgment of 14 September 2016, paragraph 137; KI193/18, Applicant *Agron Vula*, Judgment of 22 April 2020, paragraph 145).

301. Having said that, the Court nevertheless deems it necessary to emphasize two important aspects with regard to the Applicant's additional allegations.

302. The first concerns the obligation of the Government, as the proposer of laws, and the Assembly, as the legislator that finally approves the laws proposed by

the Government, during the drafting of legislation related to salaries in the public sector, either through a general law. or through some special laws or even the amendment of existing laws, to take into account the principles of equality before the law and equal treatment of all persons whose rights are affected by any kind of legal amendment or change. The Government and the Assembly must ensure that the constitutional values of equality before the law and non-discrimination are respected in all circumstances and that any legal regulation is in accordance with Articles 3 and 24 of the Constitution in conjunction with Article 14 of the ECHR and in accordance with the case law of the Constitutional Court and that of the European Court of Human Rights.

303. The second concerns the obligation of the Government, as the proposer of laws, and the Assembly, as the legislator that finally approves the laws proposed by the Government, during the drafting of legislation related to salaries in the public sector, either through a general law or through some specific laws or even the amendment of existing laws, to take into account the relevant aspects of the property rights and expectations of all persons whose rights are affected by any kind of legal amendment, supplement or modification. Any possible reduction of existing salaries, although possible and at the final discretion of the executive and the legislative, must be justified and respect human rights and freedoms and be in accordance with the principles of predictability, legal certainty and rule of law. The Government and the Assembly must ensure that the right to property is respected in all circumstances and that any legal regulation is in accordance with Article 46 of the Constitution in conjunction with Article 1 of Protocol no. 1 of the ECHR, as well as in accordance with the case law of the Constitutional Court and that of the European Court of Human Rights.

IV. Request for interim measure

304. The Applicant submitted the Referral to the Court where, *inter alia*, requested the imposition of an interim measure for suspension of the challenged Law in its entirety.

305. On 12 December 2019, the Court approved the request for interim measure as grounded and suspended the application of the challenged Law, *"without prejudice to the admissibility or merits of the referral."* The interim measure was decided until 30 mars 2020. (See the Decision on interim measure in case KO219/19, of 12 December 2019, in item I of the enacting clause).

306. On 30 March 2020, the Court decided to extend the interim measure, namely to suspend the implementation of the challenged Law until 30 June 2020. (See Decision on extension of the interim measure in case KO219/19, of 30 March 2020, in item I of the enacting clause).

307. On 30 June 2020, the Court declared the Referral admissible and decided on its merits. On the same date, the Court also decided to repeal the interim measure.

V. CONCLUSIONS

308. In assessing the constitutionality of Law No. 06/L-111 on Salaries in Public Sector, the Court decided: (i) unanimously that the Referral is admissible for review of merits; (ii) with majority that the challenged Law, in its entirety, is not in compliance with Articles 4, 7, 102, 103, 108, 109, 110 of Chapter VII, Article 115 of Chapter VIII of the Constitution; as well as Articles 132, 136, 139 and 141 of Chapter XII of the Constitution; (iii) to hold that, it is not necessary to consider other Applicant's allegations after the declaration of the challenged Law in its entirety as unconstitutional in terms of violation of the principles of "separation of powers" and "legal certainty"; (iv) to repeal the interim measure.

309. The constitutional issue that the Judgment in question contained was the compliance with the Constitution of the challenged Law voted by the Assembly, namely the assessment whether the latter is in compliance with the principle of "separation of powers" and that of the "legal certainty" guaranteed by the abovementioned Articles of the Constitution.

310. The Court concluded that the challenged Law contained a number of serious problems at the constitutional level that could be summarized as follows: (i) the challenged Law itself contradicts its purpose to "harmonize" salaries at the level of the entire public sector – by making arbitrary and unreasonable exceptions for some institutions, among others the Kosovo Security Force, the Kosovo Intelligence Agency, the Privatization Agency of Kosovo, the Central Bank of Kosovo, and the Assembly itself; (ii) the challenged Law completely excludes the independence of the Judicial power, by not leaving any self-regulatory competence for issues related to the implementation of "functional, organizational and budgetary" independence; (iii) the challenged Law, although emphasizing that the salaries are regulated by this Law, has reduced the legal regulation for many issues at the level of sub-legal acts, giving the possibility of sub-legal regulation only to the Executive and the Legislative; (iv) out of a total of eighteen (18) competencies to issue sub-legal acts, sixteen (16) are for the Government and two (2) for the Assembly, while no self-regulatory competence for the Judiciary or Independent Institutions; (v) the Judiciary and Independent Institutions have not been given any self-regulatory competence through which they could enjoy their "*institutional, organizational, structural and budgetary*" independence in relation to internal organization and their staff; (vi) only one (1) of the eighteen (18) sub-legal acts that had to be approved within the ninth (9) monthly period of vacatio legis has been approved, namely by 1 December 2019; (vii) as confirmed by the data of the Ministry of Finance and Transfers, for about 42% of the positions it is not possible to decipher the salary because the latter will finally be determined through the relevant classifications with sub-legal acts of the Government; (viii) as confirmed by the data of the Ministry of Finance and Transfers the "additional budget cost" of the challenged Law "*is not part of the budget projections 2019-2021*"; (ix) as confirmed by the data of the Ministry of Finance and Transfers, even if the challenged Law entered into force today, it could not be fully implemented in the absence of the sub-legal acts.

311. Regarding Article 1 of the challenged Law, which provided for the purpose of comprehensive harmonization of salaries of the entire public sector, the Court noted that the legislator, without any justification and in an arbitrary manner had excluded from this Law, among others, the KIA (Kosovo Intelligence Agency) and the KSF (Kosovo Security Force), CBK and PAK. In other parts of the Law, the legislator had granted other exceptions, direct or completely unstressed, for the employees of the Assembly, the political staff of the Assembly and the deputies of the Assembly. The Court concluded that the exceptions granted by the challenged Law clearly contradict the very purpose of comprehensive "harmonization" for which, it is said, to have been issued. Consequently, the exceptions made were considered to be against the very purpose of the Law and create unreasonable, unproven and arbitrary differentiations.

312. With regard to Article 3 (in conjunction with Article 24) of the challenged Law, the Court found that at least two (2) of the six (6) fundamental principles on which the challenged Law is said to have been guided were not followed and respected, namely the one of "predictability" and "transparency". The first provided that the salary "cannot be reduced, except in an extraordinary situation of financial difficulties and only on the basis of law"; while the second provided that "the procedure for determining the salary, [will] be transparent to the public". Specifically, regarding the principle of predictability, the Court emphasized that the approach of the legislator to consider as important the principle of "predictability" only for the future, not for the present, has resulted in neglect of the rights of persons who have been negatively affected by the Law on Salaries. This is because according to the new legal regulation of the Assembly, it turns out that for the future, the legislator considers that salaries can be reduced **only** in extraordinary situations and financial difficulties; while none of the reduced salaries in the public sector by the challenged Law have been justified on the basis of any "extraordinary situation" or "financial difficulty". The Government, in the Draft Law has foreseen such a guarantee for non-reduction of salaries (Article 27 of the initial Draft Law), but the Assembly had eliminated that guarantee with the amendment. Further, the Court does not consider that the principle of "transparency" was applied when about 42% of positions currently receiving salaries from the state budget, still cannot decipher where they are positioned and how much their salary would be with a new Law on Salaries.

313. Regarding Articles 4, 5 and 12 of the challenged Law, the Court noted that the Assembly, as one of the three classical powers of the government of the Republic of Kosovo, has provided that all matters relating to the allowances and remunerations of its employees, regular and political staff, and the deputies themselves are to be regulated by "special acts" approved by the Presidency of the Assembly and that such an exception, according to the legislator, "*is made based on the nature and specific working conditions of the Assembly of the Republic of Kosovo*". The Court considered that such exceptions provided for only one power – represent one of the most serious constitutional problems of the Law in question. The very selective exclusion of only one power and non-respect of the constitutional guarantees of other powers, completely ignoring the Judiciary and Independent Institutions is a

legislative solution that does not coincide with the values and principles of the Constitution, especially the principle of separation and balance of powers.

314. The Court also noted the fact that the challenged Law gives sixteen (16) special competencies to the Government to regulate certain matters through sub-legal acts and after consultation with the relevant ministries, including issues affecting the Judiciary and Independent Institutions in terms of their functional, organizational, structural and budgetary independence (See Articles 5.4; 5.5; 6.3; 6.4; 7.5; 8.3; 9.5; 14.4; 15.4; 17.4; 18.2; 19.4; 20.5; 21.6; 21.8; 22.5; 25.3; 26.2; 27.2 of the challenged Law). In this regard, the Court noted that in addition to the Assembly, namely the Legislative, the only other power authorized to regulate certain matters by sub-legal acts is the Government, namely the Executive. The only power, to which the independence has been completely ignored by any kind of specific regulation that would take into account the "nature and specific conditions" of its work and independence – is the power of the Judiciary. The same can be said also for the Independent Institutions referred to in Chapters VIII and XII of the Constitution. This meant that all regulatory competencies through sub-legal acts remained in the hands of the Executive and the Legislative – as two of the powers that have in fact drafted, namely adopted this legal initiative through the vote in the Assembly.

315. The Court held that the legal regulation, with the complete exception of the self-regulatory competencies of the Judiciary, has undoubtedly created an imbalance in the separation of powers, which the spirit and letter of the Constitution does not aspire to. Such a legal regulation, if confirmed as constitutional, would have the potential to create "interference", of the Executive power towards the power of Judiciary and "dependence" and "subordination" of the power of Judiciary towards the Executive, because the former would have to depend on the will of the second in terms of internal regulations for staff and functional, organizational, budgetary and structural aspects of work. Such a legal regulation is in open conflict with the Constitution.

316. Regarding Article 31 (in conjunction with Article 34) of the challenged Law which provided that all sub-legal acts provided by this Law must be "*approved within 9 months after publication in the Official Gazette*" and that the challenged Law "enters into force 9 months after publication in the Official Gazette", the Court noted that only one (1) of the eighteen (18) sub-legal acts that should have been approved by 1 December 2019, namely within the period that the legislator left as vacatio legis for preparation for the implementation of the challenged Law. In the answers submitted to the Court, the Ministry of Finance and Transfers has acknowledged that the challenged Law, even if it entered into force today, it could not be implemented in entirety due to the absence of sub-legal acts. The lack of the latter, according to the explanation of the Ministry of Finance and Transfers, has made it impossible for it to respond to about 42% of the positions paid from the state budget because without the approval of sub-legal acts it is not known how much would be the salaries for a number of positions that are currently paid from the state budget. All this careless legislative process, without any doubt, leads to an unacceptable situation of legal uncertainty that can in no way be compatible with the

Constitution and its values and principles of predictability, legal certainty and the rule of law.

317. Regarding Article 32 of the challenged Law, which provides that in case of entry into force of the challenged Law any change in the structure, components or levels of salary coefficients is prohibited, the Court noted some serious conceptual and practical problems to the detriment of the Judiciary and Independent Institutions. This is due to the fact that, if this provision were declared constitutional, it would mean that whenever the Judiciary and other Independent Institutions need to create a new position within their organizational chart, or change the internal organizational structure depending on the need that may arise in the future – they should address the Government to ask for permission and approval to create a new position and to seek permission and approval to change the internal organizational structure. The challenged Law in the final decision-making chain, left the Government as a power that must "*approve*" any proposal of the Judiciary. The Court found that this legal regulation, without any doubt, in a flagrant way goes contrary to the notion of "institutional, functional and organizational" independence of the Judiciary and Independent Institutions. As such, it is unacceptable and contrary to the Constitution and the key principle of separation of powers as a selected constitutional model for the governance of the Republic of the country.

318. Regarding Article 33 of the challenged Law, the Court noted that *inter alia*, some of the specific articles of the organic laws of the Judiciary that previously regulated the issue of salaries of the judiciary in general, of the Constitutional Court and of the presidents of both Councils, the Judicial and the Prosecutorial, have been expressly repealed. However, Article 28 of the challenged Law provides that the latter shall not be applied for the functionaries until 31 December 2022. The Court noted two evident and fundamental problems in this regard.

319. The first concerned the vacuum and legal contradiction created by the challenged Law. That is for fact that at the legal moment that the challenged Law would enter into force, Article 33 of this Law would repeal all relevant norms which currently regulate the salaries of the Judiciary, of the Constitutional Court, the chairpersons of the Judicial and Prosecutorial Councils (*see points 1.4; 1.6; 1.7; 1.8 of Article 33 of the challenged Law*) and for whose salaries at the same time the Law states that they will be saved for the respective period. The question arises as to whether the articles of the organic laws governing the current salaries would be repealed upon the entry into force of the challenged Law – on the basis of which Law these special functionaries would receive a salary. What salary would be preserved for them when the provisions governing their old salary – which was supposed to be maintained – would be repealed. By this careless legal regulation, it turns out that the legislator would have left the functionaries in question without any legal regulation. The second had to do with the concept of saving the salaries of the Judiciary only until the end of 2022, and then the drastic reduction of salaries after that date. Such a scenario is not considered to contribute to a guarantee of an independent Judiciary. On the contrary, such a legislative

solution would place undesirable pressure on the Judiciary versus Legislative and Executive power.

320. To reach these conclusions, the Court took into account the following aspects.

321. Regarding the Assembly, the Court emphasized that the legislative power has the main constitutional competence for legislation at the national level. In terms of the circumstances of the present case, it was therefore indisputable the authorization of the Assembly, that in exercising its competence for "adoption of laws", it regulates salaries in the public sector according to a certain public policy voted by the Assembly itself. The latter has full authority to choose the best and most appropriate modality, which it considers that in terms of public policy fits the salary system for the Republic of Kosovo. The only limitation that the Assembly has in the legislation is to respect the procedures of lawmaking and to vote laws that are in accordance with the Constitution and the values and principles proclaimed there.

322. During the analysis of the challenged Law, the Court deliberately focused on arbitrary salary "reductions" and not on the "increase" of salaries, due to the fact that the Assembly during the drafting of laws should have taken care of the rights of persons whose salaries are reduced. Reasons for salary reductions should be many times more sustainable than the reasons for salary increases because, the former reduces an existing right while the latter add to an existing right. Having said that, the Court emphasizes that the Legislator has the right, after this Judgment, to take any kind of step to increase salaries in the public sector, so as to meet any public policy goal for salary increases in certain sectors. It is not the duty of the Court to state where and how salary increases should be made. The possible modalities for this issue remain entirely at the discretion of the Assembly and the Government.

323. Regarding the role of the Constitutional Court in the abstract assessment of the constitutionality of the challenged Law, it was clarified that in all cases where a Law of the Assembly is challenged before the Constitutional Court by the authorized parties, the focus of assessment is always on the respect of the constitutional norms and human rights and freedoms – and never on the assessment of the selection of public policy that has led to the adoption of a particular law. The competence of the Court in this case was to assess, in abstracto, whether the challenged Law is constitutional or not, and depending on the answer – to seal its constitutionality or repeal it as unconstitutional. The second was necessary in this case.

324. At the level of principles set by the Constitution, the Court emphasized that among the fundamental values embodied in the Constitution on which the constitutional order of the Republic of Kosovo is based, among others, are the "separation of powers" and the "rule of law". The functioning of the democratic state of the Republic of Kosovo is based on the constitutional principle of separation of powers and checks and balance among them. Based on Article 4 of the Constitution regarding the form of government and separation of power: (i) The Assembly exercises legislative power; (ii) The Government is responsible for implementation of laws and state policies; and (iii) The judicial power is unique and independent and is exercised by courts. These three

powers constitute the classic triangle of separation of powers. The relationship between the "three powers" is based on the principle of separation of powers and checks and balance among them. The separation of power as a fundamental principle of the highest constitutional level is embodied in the spirit of the Constitution of the country and as such is non-negotiable.

325. To each of the three classical branches of separation of powers, the Constitution has dedicated a separate chapter. In all three of these chapters [on Legislative; Executive and Judicial power], the general principles as well as the duties and responsibilities of each power are foreseen. In addition, it provides for the mechanisms of checks and balance among them that form the core of how these powers should check and balance each other without creating any unconstitutional "interference", "dependence" or "subordination" among them that potentially could affect the independence of one or the other power. The logic of the principle of separation of powers is that an influence of a power on the other during the process of their institutional interaction should by no means create an interfering or dependence or subordination relationship that could result in the loss of independence to act as a free and unaffected power. This is the essence of the constitutional balance that the Constitution has established and which is required to be maintained in every interactive instance between independent powers.

326. In addition, the Court emphasized that the Constitution has recognized a special and important status and role in the conduct of public state duties also to the Independent Institutions referred to in Chapter XII of the Constitution, which have been singled out as such, not without reason. This chapter includes: (i) The Ombudsperson; (ii) the Auditor-General of Kosovo; (iii) Central Election Commission; (iv) Central Bank of Kosovo; (v) Independent Media Commission; and (vi) Independent Agencies.

327. Unlike other institutions referred to in Chapter XII of the Constitution, "Independent Agencies" provided for in Article 142 of the Constitution "*are institutions established by the Assembly based on the respective laws that regulate their establishment, operation and competencies*". This distinction needs to be identified as such, for the reason that the five Independent Institutions referred to in items (i), (ii), (iii), (iv) and (v) have been established as such in the case of voting and entry into force of the existing Constitution by the legislator, namely the Assembly; whereas, the Independent Agencies are not created as such in the case of voting of the existing Constitution – but are agencies for the creation of which the Constitution gives the Assembly the right to create and extinguish them, by law, depending on the needs that may arise in public and social life. Unlike the fact that the Assembly can create and extinguish "by law" Independent Agencies; the Assembly can never extinguish "by law" any of the five independent institutions mentioned above. This is the main difference between Independent Institutions referred to in Chapter XII of the Constitution – which should be considered as such whenever actions affecting the Independent Agencies are taken – which differ from other Independent Institutions.

328. The key conclusions reached by the Court after analyzing the answers of the Forum of the Venice Commission and the Opinions of the Venice Commission

and the case law of the various constitutional and supreme courts, were as follows: (i) there is no single possible system for regulating salaries in the public sector and that there is no internationally recognized principle governing the regulation of "equal pay for equal work"; (ii) most countries regulate salaries through different laws and at the same time apply different methods by regulating this issue either through special laws for specific sectors or through some more concentrated legal regulation; (iii) the Assembly, as a legislative body, has the competence and organic right to issue any kind of legislation on the regulation of salaries in the public sector provided that it complies with the Constitution; (iv) the principle of separation of power and the balance between Legislative, Executive and Judicial power does not imply the isolation of powers and the absence of mutual dependence; however, the latter also means avoiding situations in which unconstitutional "interference", "dependence" or "subordination" can be created between independent powers; (v) the independence of the judiciary, as one of the branches of power, implies that the judiciary is free from external pressure, and is not subject to influence by the executive branch; (vi) sufficient resources are essential to guarantee judicial independence from other state institutions and private parties – so that the judiciary can perform its duties with integrity and effectiveness; (vii) the reduction of the budget by the executive is an example of how the resources of the judiciary can be put under excessive and undesirable pressure; (viii) there is no rule that creates absolute guarantee that the salaries in the public sector cannot be reduced per se – but that reduction of salaries must be justified; (ix) the reduction of the salary of the judiciary may occur only under conditions of a pronounced economic and financial crisis and which, moreover, must be officially recognized as such; (x) sacrifices in times of crisis [since the emphasis on reduction is always when there are crises] resulting in reduction of salaries that are not universal and are not evenly distributed among all citizens, in proportion to their individual financial ability – are not considered to be compatible with the concepts of distribution of burden among beneficiaries of salaries in a state.

329. Finally, the Court also noted several important issues.

330. In case of new legislation in this field, the Government as the proposer of laws and the Assembly as the voter of the laws are obliged to take into account the principles emphasized in this Judgment and other Judgments from the case law of the Constitutional Court in interpreting the respective articles of the Constitution. The "institutional, functional, organizational and budgetary independence" of the Judiciary and Independent Institutions must be recognized, and any legal initiative must respect this independence (See Judgments KO73/16 and KO171/18).

331. Finding the aforementioned violations made the challenged Law in its entirety unconstitutional. The Court analyzed very carefully the possibility of partial repeal of the challenged Law. However, in the circumstances of the present case such a solution, in contrast to the circumstances of the Law No. 06/L-114 on Public Officials which was partially repealed, was not possible for two reasons. First, because the constitutional violations evidenced in the challenged Law are of such serious gravity that the latter affect the core of the functioning of government in the Republic of Kosovo – causing an imbalance

in the separation of power to the detriment of the Judiciary and Independent Institutions. Second, because the challenged Law does not provide an opportunity to repeal only a few provisions and only a few items of Annexes 1 and 2 because any kind of repeal would make the Law inapplicable in practice. And, in cases where the analysis leads to the conclusion that the Law with partial repeal becomes inapplicable with the remaining articles in force as constitutional, the Court is obliged to repeal the Law in its entirety.

332. The Court also emphasized that all powers without exception, have a constitutional obligation to cooperate with each other and perform public duties for the common public good and in the best interest of all citizens of the Republic of Kosovo. These public duties also include the obligation of each power to take care during the performance of its constitutional duties for respect of the independence of the power to which it is creating an "interference". For example, the Government and the Assembly, despite having the competence to propose and vote on laws, which could also affect the sphere of the Judiciary, as a third power; they [the Government and the Assembly] must ensure that during the drafting of their proposals and until their finalization by the vote of the Assembly, the constitutional independence of the sister power, namely the Judiciary, is preserved. The Government and the Assembly must show the same care and sensitivity to other state actors, which the Constitution has provided with constitutional guarantees of functional, organizational, structural and budgetary independence. Guaranteeing and prior ensuring of the constitutionality of the initiatives of the Government and the Assembly should be the permanent and inseparable aspect of the legal creativity of these two powers.

FOR THESE REASONS

The Constitutional Court, in accordance with Articles 113.1 and 2 and 116.2 of the Constitution, Articles 22, 27, 29 and 30 of the Law and in accordance with Rule 59 (1) of the Rules of Procedure, on 30 June 2020,

DECIDES

I. TO DECLARE, unanimously, the Referral admissible;

II. TO DECLARE by majority that Law No. 06/L-111 on Salaries in Public Sector, in its entirety, is **not in compliance** with: Articles 4 [Form of Government and Separation of Power]; 7 [Values]; 102 [General Principles of the Judicial System]; 103 [Organization and Jurisdiction of Courts] paragraph 1; 108 [Kosovo Judicial Council]; 109 [State Prosecutor]; 110 [Kosovo Prosecutorial Council], 115 [Organization of the Constitutional Court] and Articles 132 [Role and Competencies of the Ombudsperson]; 136 [Auditor-General of Kosovo]; 139 [Central Election Commission]; and 141 [Independent Media Commission] of the Chapter XII [Independent Institutions] of the Constitution;

III. TO DECLARE invalid, in its entirety, Law No. 06/L-111 on Salaries in Public Sector;

IV. TO REPEAL the decision on the imposition of interim measure of 12 December 2019 as well as the decision on the extension of the interim measure of 30 March 2020;

V. TO NOTIFY this Judgment to the Parties;

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

VII. This Judgment is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Remzije Istrefi-Peci Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only