



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

Pristina, on 9 July 2020
Ref. no.:AGJ1583/20

This translation is unofficial and serves for information purposes only

JUDGMENT

in

Case No. KO203/19

Applicant

The Ombudsperson

**Constitutional review of specific Articles of Law No. 06/L-114
on Public Officials**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

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

Challenged law

2. The Applicant challenges the constitutionality of specific provisions of Law No. 06/L-114 on Public Officials (hereinafter: the challenged Law), published in the Official Gazette of the Republic of Kosovo (hereinafter: the Official Gazette), on 11 March 2019, and which entered into force six (6) months after its publication in the Official Gazette, namely Articles 2 (paragraph 3), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and 85 of the challenged Law.

Subject matter

3. The subject matter of the Referral is the constitutional review of the aforementioned provisions of the challenged Law, which according to the Applicant's allegations are not in compliance with paragraph 2 of Article 132 [Role and Competencies of the Ombudsperson] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and other constitutional provisions regulating the status of independent constitutional institutions.
4. The Applicant regarding the status of the officials of Kosovo Forensic Agency (hereinafter: the KFA), the personnel of Kosovo Prosecutorial Council (hereinafter: the KPC), and Police of Kosovo (PK), although not specifying the specific articles of the Constitution, raises the issue of compatibility of the provisions of the challenged Law with the constitutional principle of equality before the law and the principle of separation of the state powers.
5. In this respect, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measure for "*immediate suspension of the challenged provisions, namely Articles 2 (paragraph 3), 5 (paragraph 1, subparagraph 1.2, paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 4); 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7) , 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6) , 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68, (paragraph 8); 70 (paragraph 8), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and Article 85 of the [challenged law], or at least suspension of the application of these provisions in relation to the Ombudsperson*".

Legal basis

6. The Referral is based on paragraph 2, sub-paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal

Effect of Decisions] of the Constitution; Articles 22, 27, 29 and 30 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law); and Rules 32, 56, and 57 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 8 November 2019, the Applicant submitted the Referral to the Court.
8. On 12 November 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
9. On 15 November 2019, the Applicant was notified about the registration of the Referral.
10. On the same date, the Referral was communicated to the President of the Republic of Kosovo, the President of the Assembly of the Republic of Kosovo, the Caretaker Prime Minister of the Republic of Kosovo, the Caretaker Minister of Public Administration (hereinafter: the MPA), the President of the Kosovo Prosecutorial Council, the Chief Executive of the Kosovo Forensic Agency and Director the Police of Kosovo, with instructions to submit comments to the Court, if any, by 29 November 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. [*Court's clarification: 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 are incorporated within the Ministry of Internal Affairs*].
11. On 19 November 2019, the Judge Rapporteur recommended to the Court the approval of interim measure. On the same date, the Court unanimously decided to approve the interim measure until 28 February 2020.
12. On 25 November 2019, the Secretariat of the Assembly submitted to the Court the documentation regarding the procedure of review and approval of the challenged Law in the Assembly, as follows:
 1. Draft Law No. 06/L-114 on Public Officials, processed by the Government of the Republic of Kosovo on 7 September 2018;
 2. Minutes of the Functional Committee on Public Administration, Local Government and Media, review in principle of the Draft Law on Public Officials, 8 October 2018;
 3. Report of the Functional Committee on Public Administration, Local Government and Media, review in principle of the Draft Law on Public Officials, 8 October 2018;
 4. Invitation and agenda for the Plenary Session of the Assembly of the Republic of Kosovo, the first review of the Draft Law No. 06/L-114 on Public Officials, of 25 October 2018;

5. Transcript of the Plenary Session, first review of the Draft Law on Public Officials, of 18, 19, 28 October and 2 November 2018;
6. Minutes of the Plenary Session, first review of the Draft Law on Public Officials, of 8, 19, 25 October, 2, 7 November, 21 December 2018;
7. Decision of the Assembly of the Republic of Kosovo on the approval in principle of the Draft Law on Public Officials, No. 06-V -250, of 25 October 2018;
8. Minutes of the Functional Committee on Public Administration, Local Government and Media, review in principle of the Draft Law on Public Officials, of 29 January 2019;
9. The report with amendments to the Draft Law on Public Officials of the Functional Committee on Public Administration, Local Government and Media, proceeded for review in the standing committees;
10. The report of the Committee on the European Integration, the review of the Draft Law on Public Officials with the amendments of the Functional Committee;
11. Minutes of the Committee on the European Integration, review of the Draft Law on Public Officials with the amendments of the Functional Committee, of 30-31 January 2019;
12. The report of the Committee on Budget and Finance, the review of the Draft Law on Public Officials with the amendments of the Functional Committee;
13. Minutes of the Committee on Budget and Finance, review of the Draft Law on Public Officials with the amendments of the of the Functional Committee of 30 January 2019;
14. Report of the Committee on Rights and Interests of Communities and Returns, review of the Draft Law on Public Officials with the amendments of the Functional Committee,
15. Minutes of the Committee on the Rights and Interests of Communities and Returns, review of the Draft Law on Public Officials with the amendments of the Functional Committee, of 30 January 2019;
16. The report of the Committee on Legislation, Mandates, Immunities, the Rules of Procedure of the Assembly and the supervision of the Anti-Corruption Agency, the review of the Draft Law on Public Officials with the amendments of the Functional Committee,
17. Minutes of the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and the Supervision of the Anti-Corruption Agency, review of the Draft Law on Public Officials with the amendments of the Functional Committee, of 30 January 2019;
18. Final report with the amendments proposed in the Draft Law on Public Officials of the Functional Committee on Public Administration, Local Government and Media, proceeded for consideration in the plenary session;
19. Invitation and agenda for the Plenary Session of the Assembly of the Republic of Kosovo, the second review of the Draft Law no. 06/L-114 on Public Officials;
20. Transcript of the Plenary Session of the Assembly of the Republic of Kosovo, second review of the Draft Law on Public Officials;
21. Minutes of the Plenary Session, the second review of the Draft Law on Public Officials;
22. Decision of the Assembly on the approval of Law No. 06/L-114 on Public Officials, No. 06-V-312, of 2 February 2019,

23. Law No. 06/L-114 on Public Officials, and
 24. Letter No. 06/2842/L-114 of 12 February 2019, sent to the President of the Republic of Kosovo, for the promulgation of the Law on Public Officials.
13. On 27 November 2019, the KPC and the KFA submitted to the Court comments regarding the Referral.
 14. On 29 November 2019, the MPA and the Kosovo Police submitted to the Court comments regarding the Referral.
 15. On 6 December 2019, the Court communicated the documents submitted by the Secretariat of the Assembly as well as the comments received by the KPC, KFA, Kosovo Police and the MPA to the parties involved in the case with the instruction to submit their comments to the Court, if any, within seven (7) days.
 16. On 12 December 2019, the MPA notified the Court that *“after reviewing and analyzing the comments submitted by [KFA, KPC] and the Kosovo Police, we consider that we have submitted all our comments regarding these institutions in the response sent to you on 29.11.2019”* submitting once again the comments of 29 November 2019.
 17. On 26 February 2020, the Judge Rapporteur recommended to the Court the extension of the interim measure in relation to the case KO203/19, approved by the Court on 19 November 2019. On the same date, the Court unanimously decided to approve the extension of the interim measure imposed by the Court on 19 November 2019, until 28 April 2020.
 18. On 22 April 2020, the Court approved the recommendation of the Judge Rapporteur to extend the interim measure in respect of case No. KO203/19 until 30 June 2020.
 19. On 30 June 2020, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the admissibility of the Referral.
 20. On the same date, the Court unanimously decided: (i) that the referral is admissible for review on merits; (ii) that Articles 2 (paragraph 3), 4 (paragraphs 3 and 4), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 7), 75, 80 (paragraph 4), 83 (paragraph 18) and 85 of the Law No. 06/L-114 on Public Officials, are not in compliance with Articles 4, 7, 102, 108, 109, 110, 110, 115, 132, 136, 139, 140 and 141 of the Constitution; (iii) the challenged Law does not apply in relation to: Kosovo Judicial Council; Kosovo Prosecutorial Council; the Constitutional Court; the Ombudsperson Institution; Auditor-General of Kosovo; Central Election Commission; the Central Bank of Kosovo and the Independent Media

Commission, while it violates their functional and organizational independence guaranteed by the Constitution; (iv) the challenged Law does not infringe the provisions of the Constitution in relation to the Kosovo Forensic Agency and the Kosovo Police Civil Servants; (v) the Assembly of the Republic of Kosovo must take the necessary actions to supplement and amend the Law No. 06/L-114 on Public Officials in accordance with the findings of this Judgment, as regards the officials of the institutions indicated under point (iii); and (vi) in order to repeal the interim measure.

Summary of facts

21. On 2 February 2019, the Assembly of Kosovo [Decision No. 06-V-312] adopted the challenged Law.
22. On 11 March 2019, the challenged Law was published in the Official Gazette of the Republic of Kosovo.
23. Article 86 [Entry into Force] of the challenged Law stipulates that “*This Law shall enter into force six (6) months after publication in the Official Gazette*”.

Applicant’s allegations

24. The Applicant challenges specific provisions of the challenged Law (Law No. 06/L-114 on Public Officials), namely Articles 2 (paragraph 3), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8)), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and 85.
25. The Applicant alleges that pursuant to Article 1 [Purpose], the purpose of the challenged Law is to establish the legal basis for the employment of public officials in the institutions of the Republic of Kosovo. In this regard, he alleges that the challenged Law “vests” the Government of the Republic of Kosovo (hereinafter: the Government) and the ministry responsible for public administration with powers to administer the employment issue to all state institutions including the independent institutions. This, according to him, violates the constitutional independence of the Ombudsperson Institution guaranteed by Article 132 of the Constitution which stipulates that: “*The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo*”. The Applicant builds this allegation by elaborating the alleged violations, and the role of the Government in administering the Applicant’s officials, referring to the specific provisions of the challenged Law.
26. In this regard, the Applicant first refers to paragraph 3 of Article 2 [Scope of application] of the challenged law defining “civil servants” as public officials

within the civil service which also expressly includes public officials employed in the independent institutions. According to the Applicant, the violation of the Applicant's independence, guaranteed by Article 132 of the Constitution consists in the fact that the challenged Law does not contain any specific provision regarding its personnel, to ensure the independence of the Applicant, unlike Law No. 03/L-149 on the Kosovo Civil Service, repealed by the challenged Law, and which in Article 3, paragraph 7 that expressly provided that *"During the implementation of this law, the constitutional autonomy of the institutions independent from the executive shall be respected"* and Law No. 05/L-019 on the Ombudsperson, namely paragraph 2 of Article 32 [Personnel], which foresees that: *[...] The provisions of the Law on Civil Service shall apply to employees of Ombudsperson Institution, to that extend that there is no infringement of constitutional independence of the Institution."*

27. The Applicant also refers to paragraph 1, subparagraph 1.2 and paragraph 2 of Article 5 [Definitions] of the challenged Law, which defines the meaning of "other state institution" including, in this definition, independent institutions. According to him, the challenged Law and Law No. 06/L-113 on the Organization and Functioning of the State Administration *"aim at marginalizing independent institutions and bringing them under the supervision of the Government, which represents a direct interference with constitutional independence, thereby suffering a setback in terms of the separation of powers and independent institutions and the democratic functioning of the state"*.
28. The Applicant refers to Article 10 [Government] of the challenged Law stating that this Article authorizes the Government to adopt general state policies for the employment of public officials and to adopt sublegal acts based on the challenged Law, but does not specify to what extent the Government can exercise power in relation to independent institutions. He emphasizes that, given that the challenged Law makes no exception for public officials in the independent institutions, it is understood that the Government has the right to issue sublegal acts including the issues relating to the employment of public officials in the independent institutions. In this context, the Applicant states that *"the challenged law, in specific articles, concretizes the powers of the Government and the relevant ministry to issue sublegal acts on a long number of employment-related matters"*. He also links this allegation with the Judgment of the Constitutional Court KO73/16 which held, *inter alia*, 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"*.
29. The Applicant also refers to Article 11 [Department for the Management of Public Officials] of the challenged Law which defines the responsibilities of the Department for the Management of Public Officials (hereinafter: the DMPO), which provides that the DMPO has competence to request and receive from the institutions of Kosovo any information necessary for the fulfillment of its

responsibilities. The Applicant also states that *“this article stipulates that every institution that employs public officials, as well as any public functionary and public official who has managerial and decision-making competences, or who has information in this field, is required to cooperate with the DMPO. According to him, this is in contradiction with Article 32, paragraph 2 of Law no. 05/L-019 on the Ombudsperson, which stipulates that the provisions of the Law on Civil Service shall apply to employees of Ombudsperson Institution, to that extent that there is no infringement of constitutional independence of the Institution”*.

30. The Applicant also refers to paragraph 5 of Article 14 [Human Resource Management Unit (HRMU)] of the challenged Law which stipulates that Human Resources Management Units are required to maintain an annual report on human resources management and send a copy of it to the DMPO. The Applicant considers that this provision may affect his independence by the fact that *“is required to report to the DMPO, without specifying how independent institutions should report. The absence of a provision in the law that determines the application of this law or this provision to independent institutions, calls into question the constitutionality of this provision [...]”*.
31. With regard to other Articles of the challenged Law which the Applicant claims to be in violation of the Constitution, such as Articles 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and 85, the Applicant states that these Articles relate to the staff plan and the human resource management system; civil service employment relationship and job classification; admission to the civil service; transfers within the category and promotion; appointment to senior management positions; evaluation of results at work; discipline in the civil service; transfer to the civil service and related employment and public affairs matters. Bearing in mind the role of the Ombudsperson as an independent institution and the fact that the aforementioned articles of the challenged Law authorize the Government to adopt sublegal acts and Article 85 of the challenged Law on the other hand repeals any norm contrary to the challenged Law, by including the provisions of the Law on the Ombudsperson and its internal acts concerning the internal organization and systematization of jobs issued under the Law on the Ombudsperson, thereby violating the independence of the Applicant.
32. In the light of the foregoing, he refers to and cites parts of the Judgments of the Constitutional Court, such as Judgment KO73/16 of 8 December 2016 and Judgment KO171/18 of 25 April 2019 which decided on the issue of the independence of independent constitutional institutions, noting that despite the fact that the Ombudsperson has requested the Government and the Assembly to consider the abovementioned Judgments of the Constitutional Court when reviewing and adopting the challenged Law and other related laws, with the adoption of the challenged Law, the independence of the independent institutions, namely the independence of the Ombudsperson Institution, is

again questioned, thus completely disregarding the Constitution and Judgment KO 73/16 of 8 December 2016 of the Constitutional Court. The Applicant also refers to the status and legal regulation of the Ombudsperson Institution in Croatia, the principles of the Venice Commission concerning the protection and promotion of the Ombudsperson Institution, and the so-called “Paris Principles”.

33. The Applicant also complains about interference through the challenged law with the status of employees of other state institutions such as Kosovo Forensic Agency, staff of Kosovo Prosecutorial Council and the Police of Kosovo, referring to their complaints before the Ombudsperson. It states that the challenged law interferes with the employment relations of the personnel of these institutions in contravention of the specific laws governing the staffing issue of these institutions. In this regard, he invokes the principle of equality before the law and the principle of separation of powers. He claims, *inter alia*, that for some of these institutions had to be provided provisions that exclude the personnel of these institutions from the scope of the challenged Law, as it is the case with the Kosovo Intelligence Agency, Kosovo Customs, Kosovo Security Force, and, judges and prosecutors.
34. Finally, the Applicant with respect to the independent constitutional institutions and other state institutions mentioned above states that “[t]he challenged law clearly shows the tendency to centralize the authority for employment, but also for the dismissal of most public officials. Exceptions to law enforcement are not entirely adequate and logical, even in some cases they constitute unequal treatment. For example, the challenged law excludes civil servants of the administration of the Assembly of the Republic of Kosovo from its scope (see Article 4, paragraph 3), while it does not exclude civil servants in the administration of system of justice institutions and independent institutions (see Article 2, paragraph 3). Such definitions of the challenged law violate the principle of separation of powers, since it is clearly known that both the Assembly and the judiciary are separate powers from the Government, as the independent institutions”.

Regarding the request for interim measure

35. As regards the interim measure, the Applicant requests that on the basis of the abovementioned arguments, the Constitutional Court imposes an interim measure for the immediate suspension of the challenged provisions, namely Articles 2 (paragraph 3), 5 (paragraph 1, subparagraph 1. 2, paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5) , 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and 85, “*or at least suspends the application of these provisions in relation to the Ombudsperson*”. The Applicant refers to Rule 55 of the Rules of Procedure of the Court laying down the conditions to be met for the imposition of an interim measure, stating that all three conditions set out are fulfilled in this case.

36. First, the Applicant considers that the arguments presented above provide a *prima facie* basis for the repeal of the challenged provisions in relation to the Ombudsperson Institution.
37. Second, due to the lack of the approval of the interim measure, the functioning of the Ombudsperson Institution will be severely hampered by the constant interference of other institutions (Government of the Republic of Kosovo, Assembly of the Republic of Kosovo) with this institution. The Ombudsperson considers, with due respect, that it is necessary that this Court immediately suspends the challenged provisions, based on which other institutions may impede the effective work of the Ombudsperson Institution and its employees.
38. Third, the Ombudsperson Institution often serves as the last hope for victims of human rights violations to address these violations and to provide solutions. The inability to function properly and exercise the mandate of the Ombudsperson, as the only national human rights institution, would inevitably impede the protection of the rights and fundamental freedoms of the citizens of the Republic of Kosovo. For these reasons, the Ombudsperson considers that the adoption of an interim measure is necessary in order to ensure the proper and unimpeded function of the Ombudsperson Institution, while respecting its organizational, functional and financial independence with respect to other institutions of the Republic of Kosovo.

Comments of KPC

39. In their comments regarding the referral, the KPC states that *“based on Article 110, paragraph 1 of the Constitution of the Republic of Kosovo, it is stipulated that [the KPC] is a fully independent institution in the performance of its functions in order to ensure an independent, professional and impartial prosecutorial system. The duties and responsibilities of the Council are defined by Law No. 06/L-056 on Kosovo Prosecutorial Council”*. The KPC adds that *“Article 7 of the Law on the Kosovo Prosecutorial Council stipulates that: [the KPC] decides on the organization, management, administration and oversight of the functioning of prosecution officers according to the law (paragraph 1.1); [...] oversees and administers prosecution officers and their staff (paragraph 1.20) and [...] issues a regulations on the internal organization of the state prosecutor (paragraph 1.28). [...] [Hence the KPC] has the authority to organize, manage and supervise the administration of the State Prosecutor”*.
40. Furthermore, referring also to Article 31, paragraph 1, item 1.5 of the Law on KPC, the KPC states that the Secretariat of the Council has been given the power to *“manage all administrative and supportive staff of the KPC and the State Prosecutor, including performance appraisal, ensuring proper disciplining and protecting their employment rights”*.
41. Therefore, according to the KPC, is considered the challenged Law *“contradicts the Law on the Kosovo Prosecutorial Council in the following provisions: staff development plan (Article 15); classification of positions (Article 33); movements within the category (Article 38); promotion (Article 39);*

admission to a senior managerial category position (Article 40); composition of the commission for senior managerial positions (Article 41); performance appraisal (Article 43); performance appraisal for civil servants of senior managerial category (Article 44); competencies and disciplinary proceedings (Article 48); temporary transfer (Article 52); transfer in case of closure or restructuring (Article 54); dismissal from civil service (Article 61); competition procedure (68); performance evaluation (Article 71).” This is because the challenged Law gives the Government the right to determine the above mentioned procedures by sub-legal act.

42. Therefore, they consider the abovementioned provisions of the Law on Public Officials are contrary to Article 110 [Kosovo Prosecutorial Council] paragraph 1 of the Constitution which stipulates that “1. *The Kosovo Prosecutorial Council is a fully independent institution in the performance of its functions in accordance with law*”. According to them, the provisions of the challenged Law are in conflict with the provisions of the Law on [KPC] which based on the constitutional principle of separation of powers has given the KPC a mandate to determine, manage and administer the internal organizational structure”.
43. The KPC also states that the principle of separation of powers also implies the guarantee of the exercise of power independently and without interference, and that the restriction should be based on the balance of powers only to the extent permitted by the Constitution and the competencies of the each power. They add that “*the possibility for the Government to determine the positions of the administration of the prosecutorial system by a sub-legal act means direct interference in the functioning of the constitutional institutions of [KPC] and the State Prosecutor, since in these two institutions the officials with very specific tasks are engaged*”.
44. They further allege that the challenged Law also interferes with the selection procedures and qualifications for the election of senior administrative officials of the prosecutorial system, emphasizing that Article 40, paragraph 12 of the challenged Law sets out the procedure for admission to a category position of senior management, is contrary to Article 32, paragraph 1, item 1.1 of the Law on KPC which defines the manner of selection of the General Director of the Secretariat, namely Article 33, paragraph 1 for the Director of the Prosecution Performance Review Unit.
45. The KPC finally states that during the process of drafting the challenged Law they requested that if any category of administration is given a special status, that status should also belong to the administration of the prosecutorial system, but these remarks were not taken into account by relevant institutions, despite the fact that the challenged Law has given special status to the administration of the Assembly and part of the administration of the Government, not treating equally the administration of the prosecutorial system even though it is part of the third pillar of power.
46. The KPC therefore requests the Court to find that the challenged articles infringe on the equality of powers and the functional independence of the KPC and the State Prosecutor as two constitutional institutions.

Comments of KFA

47. The KFA clarifies that it is an independent executive agency within the Ministry of Internal Affairs, established by Law No. 04/L-064 on the Kosovo Forensic Agency (hereinafter: the Law on KFA). The Law on KFA and administrative instructions regulate, among other things, the issue of ranks, recruitment, transfer, disciplinary procedures, etc., for KFA employees. They also explain that the KFA staff is specific in terms of qualifications, professional qualifications, work experience, training and specializations and the time required for promotion. Also, due to the nature and type of work that KFA has, its employees are constantly exposed to the risks that arise during the performance of forensic examinations in its laboratories, risks caused by the use of different weapons, such as exposure to different rays during the exercise of their profession, infections, risk from various litigants as a result of their expertise. According to them, *“if we make a comparison, we can clearly see the connection and common characteristics between the Kosovo Forensic Agency, the Kosovo Police, the Police Inspectorate, the Intelligence Agency, the Customs, etc”*.
48. The KFA complains that the challenged law did not *“take into account the specifics of this institution but has decided to treat and regulate the employment relationship of its officials with the state as if it were the usual administration of a Ministry, Municipality, etc., [...]”*. According to them, the legislator did not take into account the role of the KFA according to the Code of Criminal Procedure in conducting expertise where most of them are performed *“in KFA laboratories”*. They add that despite the fact that the KFA is an institution that serves justice and security like the Police, Customs and Police Inspectorate, they are not included in Article 3, paragraph 3 of the challenged Law as an institution with special status.
49. The KFA further states that *“It is a fact that within the meaning of [LOFASAIA], the KFA is a state administration, but the employment relationship of its employees cannot be regulated in the same way as the administration of the Assembly, the Prime Ministry, Ministries or Municipalities, due to fundamental differences and the specifics they have with each other, highlighted in paragraphs 1, 2, 3 of this letter.*
50. The KFA also emphasizes that *“[...] in the situation created by Law No. 06/L-114 on Public Officials, almost all issues related to KFA employees-officials will be changed, including salaries which will be reduced by up to 30%, from December 2019, because this law is related to Law No. 06/ l-111 on Salaries in the Public Sector, and this is a setback and jeopardization of the future of this institution.*

Comments of the Kosovo Police

51. Kosovo Police complains that the challenged Law in Article 3 of paragraph 3, sub-paragraph 3.3 has provided for the exemption from the scope of the implementation of this Law to civil staff whose employment relationship is regulated by the Law on Police, while regarding the category of cadets, it has not regulated them at all. The inclusion of the administrative staff of the

Kosovo Police in the challenged Law contradicts the Law on Police which has provided for the different regulation of the employment relationship of the administrative staff, in relation to the rest of the administration. Also, the Law on Police has provided for the possibility of issuing sub-legal acts to regulate the employment relationship as well as disciplinary matters. It is similarly provided by the Law on the Police Inspectorate of Kosovo.

52. Kosovo Police states that *“by Administrative Instruction No. 02/2018 on Employment Relationships it has defined the basic criteria for employment for police personnel, including civil staff. Due to the specifics of the Kosovo Police, the large number of police personnel and complex issues involving the employment relationship in more detail this issue is provided by the provisions of Article 24 paragraph 2 of this AI to be regulated in more detail by the Department of Human Resources with (SOP) Standard Operating Procedures always based on the Law on Police, the Law on PIK and other legal acts.”*
53. Therefore, the Kosovo Police considers that the challenged Law is contrary to the Law on Police and the Law on Police Inspectorate. They consider that since the challenged Law does not specifically invalidate the above-mentioned laws, their request for exemption from the challenged Law is substantiated. As we have laws that regulate the same issue differently, then priority should be given to special laws, citing as well the principle *“lex specialis derogat legi generali”*.
54. In this regard, they also refer to the case law of the Court stating that *“in Judgment No. 04-L-093 of the Constitutional Court in case KO97/12 of 12 April 2012, which deals with the constitutionality of the Law on Banks, Financial Institutions and Non-bank Financial Institutions, where the court expresses a significant position regarding the uniform implementation of laws. According to the Constitutional Court: “A new law cannot overrule the provisions of an existing law without amending the relevant provisions, which constitute the general principles... , because this would put at stake the principles of legal certainty and the rule of law” (see paragraph 128 of Judgment KO 97/12). The Constitutional Court in the same judgment states: “The Court recalls that the authorities have a constitutional obligation to ensure the uniform application of laws; therefore this obligation may be impeded by introducing provisions which completely contradict other existing provisions of the law ... without changing those provisions at the same time (see paragraph 130 of the judgment KO 97/12)”*.
55. The Police states that due to the specifics of the work of the administrative officers of the Kosovo Police, it is unacceptable for the MPA to select the administrative staff of the Kosovo Police as provided by the challenged Law.

Comments of MPA

56. Regarding the Applicant’s allegation of violation of the constitutional independence by the challenged Law, the MPA clarifies that *“unlike Law No. 03/L-149 on Civil Service in the Republic of Kosovo (LCSRK) which in Article 3 paragraph 7 expressly provided that “During the implementation of this law, the constitutional autonomy of the institutions independent of the*

executive shall be respected” [...] The [challenged] Law does much more”. In this respect they emphasize the clear distinction, according to them, that exists “in Article 5 [of the challenged Law] between “the institutions of state administration” (government and its administration) and “other state institutions” [including independent constitutional institutions] with a specific objective to regulate differently these two groups of public bodies with a set of rules for almost all provisions of the civil service relationship [...]”.

57. Regarding the above, MPA emphasizes the differences in treatment according to the challenged Law, as follows:
- the procedure for admitting employees to institutions outside the state administration (including independent institutions) is conducted by the Human Resources unit of the institutions themselves, which is reflected in Article 34, paragraph 13 of the challenged Law. Also, the final appointment is made by the Human Resources Unit and other state institutions in accordance with Article 35, paragraph 2;
 - vacancies for senior management positions are organized by the Human Resources Unit of the “other state institution”, including the Ombudsperson, which differs from the procedure followed for other institutions. This is also reflected in the admissions commissions established by “other state institutions” including appointment; and,
 - the evaluation of the results at work for the senior management positions is done by the head of the institution and the disciplinary commission is established by “another state institution”.
58. Regarding the internal organization of an independent institution in this case the Applicant, the MPA states that, independent constitutional institutions are not included in LOFASAIA as LOFASAIA regulates the organization and functioning only of state administration institutions and independent agencies established under Article 142 of the Constitution. Consequently, the law does not prohibit independent constitutional institutions from determining their own internal organization. Also, the MPA maintains that the challenged Law does not repeal Article 32 of the Law on the Ombudsperson which states that the civil service legislation applies to the Applicant to the extent it does not violate his independence.
59. The MPA further submits that the challenged Law, although allowing the Department for the Management of Public Officials (hereinafter: DMPO) to request the necessary information regarding their responsibilities, does not violate the independence of any institution, and may be interpreted, if necessary, in relation to Article 32 of the Law on the Ombudsperson where the Applicant may invoke Article 32 of the Law on the Ombudsperson to protect his independence. Similar to the staff plans of each institution and budget planning. Invoking the principle of democratic state and rule of law, the MPA states that “*cooperation between different state institutions, makes the state stronger and allows it to achieve its objectives and effectively serve its citizens and businesses*”.
60. Regarding the Human Resources Management Information System (hereinafter: HRMIS), specifically Article 17 of the challenged Law, the MPA

clarifies that *“As the Assembly agreed with the Government on who is responsible for the execution of the state budget, to use the HRMIS for the execution of salaries and bonuses, it is not mentioned that every institution should use HRMIS for all beneficiaries of the state budget. Just like the state budget and its proper execution, it is difficult to imagine in an institution that does not implement the tools (in this case an IT solution) made available to them by the responsible institution”*.

61. The MAP emphasizes that during the drafting of the challenged Law, local and international experts were engaged and assisted by SIGMA/OECD who were also consulted on the Applicant's request regarding the concept of “constitutional independence” of independent institutions. MPA in their comments quotes a part of SIGMA/OSCD opinion on this issue.
62. With regard to the competence under the challenged Law for the Government to issue sub-legal acts, the MPA states that the Constitution, namely Article 93, paragraph 4, expressly provides that the Government has the competence to issue legal acts or regulations necessary for the implementation of laws. This competence of the Government is broken down in Article 10, paragraph 1.2 as well as in the separate articles of the challenged Law. The Constitution does not authorize independent constitutional institutions to issue sub-legal acts.
63. Regarding the KFA, the MPA clarifies that *“The challenged Law does not regulate the organization and functioning and status of state administration institutions (in this case KFA) which consequently does not/cannot change the status of an agency in this case KFA. The LOFASAJA has defined the typology of what types of bodies may exist within the state administration, but the law on KFA itself stipulates that this agency is established within the Ministry of Internal Affairs. Regarding the status of KFA employees, there is no dilemma that they are public officials, while the concrete definition of KFA employees (what kind of public official they belong to) should be done according to the functions they exercise. For this purpose [the challenged Law] in Article 83 provides concrete provisions for declaring the status of public officials”*.
64. As regards the KPC, the MPA claims that the Law on KPC and the Law on State Prosecutor do not regulate the employment relationship of administrative staff. MPA states that the Law on KPC itself refers to the imposition of measures on administrative staff in accordance with the relevant Law on Civil Service.
65. With regard to the Kosovo Police, the MPA clarifies that the Law *“No. 04/L-076 on the police in Article 44 paragraph 2 “determines that the work relation for police personnel is regulated by a sub-legal act” which also includes civil servants and according to article 55 of this Law the right to issue sub-legal acts on labor relations has the general director of the Police. [...] The right to issue sub-legal acts by the general director provided by Article 55 of Law No. 04/L-076 on police, is contrary to Article 93, paragraph 4, of the Constitution of Kosovo, which explicitly states that: “The Government has the following competencies: ... (4) makes decisions and issues legal acts or regulations, necessary for the implementation of laws [...]”*.

Relevant provisions of the challenged Law:

Article 2 Scope of application

[...]

3. Civil servant - public official within the Civil Service who performs the duty in a position starting from professional officer to the position of general secretary in the administration of the President, in the administration of the Assembly, in the Office of Prime Minister, Ministry, executive agency, in Agencies and in one of their local branches, in the administration of justice system institutions, in an independent institution, independent agency, municipal administration and any employee defined directly with a special Law.

[...]

Article 3 Exemptions from the scope of the Law

- 1. This Law shall not apply for:
 - 1.1. public functionaries;*
 - 1.2. public functionaries with special status.**
- 2. Public functionaries as per sub-paragraph 1.1. of this Article are:
 - 2.1. elected officials;*
 - 2.2. members of the Government and their deputies;*
 - 2.3. functionaries appointed by the Assembly or the President of the Republic and dignitaries or members of collegial managing bodies of independent institutions and agencies.**
- 3. Public functionaries with special status, as per sub-paragraph 1.2. of this Article are:
 - 3.1. judges and prosecutors;*
 - 3.2. commanding and military personnel of the Kosovo Security Force or another successive organization;*
 - 3.3. Kosovo police officers and Kosovo police inspectorate;*
 - 3.4. Kosovo customs officers;*
 - 3.5. managerial personnel and employees of the Kosovo Intelligence Agency;*
 - 3.6. director or members of collegial managing body of regulatory agencies.**
- 4. Relationship between the state and public functionary with special status, defined in paragraph 3. of this Article is regulated entirely with a special sectorial Law.*
- 5. This Law does not, also, apply for the personnel of public companies owned by the Government or a municipality, employment relationship of which is regulated with labor legislation.*

Article 4 Civil Servants with Special Status

- 1. Professional employees of diplomatic service and correctional service are civil servants with special status who are regulated with this Law and a special Law.*

2. Regulation with special Law, as per paragraph 1. of this Article, should be done in accordance with principles stipulated in this Law and may regulate otherwise only the following elements of employment relationship:
 - 2.1. special or additional conditions for recruitment;
 - 2.2. specific rights or obligations other than those provided with this Law;
 - 2.3. special rules for career development, according to the grading system;
 - 2.4. professional development and training needs;
 - 2.5. transfer and systematization of employees.
3. Employee of the Administration of the Assembly of Kosovo is a civil servant with special status, whose status shall be regulated with this Law and special act approved by the Presidency of the Assembly of the Republic of Kosovo.
4. The regulation by special act, according to paragraph 4. of this Article, is carried out for:
 - 4.1. organizational structure of functioning, classification of positions;
 - 4.2. special conditions for recruitment;
 - 4.3. working hours, which may exceed the working time limit defined by this Law, annual leave; and
 - 4.4. rights and specific obligations other than those provided by this Law.

Article 5 Definitions

1. Terms or other expressions used in this Law shall have the following meaning:
 - [...]
 - 1.2. Other state institution - administration of the Assembly, administration of the President, administration of a justice system institution, of an independent institution, of an independent agency, or of a municipality;
 - [...]
2. The terminology used in this Law, such as: Office of the Prime Minister, ministry, executive agency, regulatory agency, local branch, administration of public services, independent institution, independent agency, cabinet, have the same meaning as defined or regulated with the Law for Organization and Functioning of State Administration and Independent Agencies.
 - [...]

Article 10 Government

1. Government:
 - 1.1. adopts general state policies for employment of public officials;
 - 1.2. adopts sub-legal acts based on this Law;
 - 1.3. publishes annual report on human resources management for public officials.

2. Government assigns one of its members for general administration of policies on public officials (hereinafter: “Responsible minister for public administration”).

[...]

Article 11

Department for the Management of Public Officials

1. The Department for Management of Public Officials shall be established and operate within the ministry responsible for public administration (hereinafter “DMPO”), which will have the following responsibilities:

- 1.1. prepares and supervises implementation of policies on public officials;
- 1.2. supervises implementation of the Law on public officials in state administration institutions;
- 1.3. prepares and supervises implementation of policies on salaries of public officials and public functionaries;
- 1.4. prepares opinions on any draft act proposed by other institutions, regarding the employment relationship of public officials;
- 1.5. adopts and supervises implementation of training programs for civil servants;
- 1.6. together with the Ministry of Finance, represents Government in negotiations and consultations on general work conditions for public officials with trade unions and with representatives of public officials;
- 1.7. request and receive from institutions of the Republic of Kosovo any necessary information for fulfilling their responsibilities;
- 1.8. inspect any file or document related to a decision making on public official employment relationship, in state administration institutions;
- 1.9. administers and maintains Human Resources Management Information System (HRMIS);
- 1.10. supports and ensures advising of institutions implementing this Law;
- 1.11. prepares general instructions and manuals to guarantee unified implementation of legislation on public officials;
- 1.12. develops policies on the engagement of interns in public administration;
- 1.13. develops the general staff plan;
- 1.14. organizes recruitment procedures in accordance with this Law;
- 1.15. publishes annual report on human resources management;
- 1.16. exercises any competence provided with this Law.

2. Responsibilities defined in sub-paragraphs 1.1. and 1.6. of this Article as far as they relate to administrative and support staff are exercised in cooperation with the responsible ministry for labour issues.

3. Responsibilities foreseen in sub-paragraphs 1.1. and 1.7. of this Article as far as they relate to Public Services employee, are exercised in cooperation with the responsible Ministry for state policies on relevant public service.

4. Every institution that hires public officials and any public functionary and public official that has managerial and decision making competences, or that has information in this field, is required to cooperate with DMPO.

[...]

Article 14
Human Resource Management Unit (HRMU)

- [...]
5. Human Resource Management Unit is required to have an annual report on human resources management for its institution and submit it by 31 December of current year for approval to the chief administrative officer of the institution. A copy of this report, after the approval by the chief administrative officer, by 15 January of the following year, must be sent to DMPO in the ministry responsible for public administration.
- [...]

Article 15
Staff development plan

- [...]
4. Ministry responsible for public administration based on the staff planning of institutions develops and adopts the General Plan.
- [...]
6. Detailed procedures for planning of personnel, adoption of plans, contents of plans and their publication are adopted with a secondary legislation by the minister responsible for public administration.
- [...]

Article 17
Human Resources Management Information System (HRMIS)

- [...]
7. Minister responsible for public administration, with a sub-legal act, adopts rules for maintenance, administration and use of HRMIS.
- [...]

Article 31
Obligation for professional development

- [...]
3. Government, upon proposal of the ministry responsible for public administration, with a sublegal act, adopts mandatory training modules for each category, class and group of positions in Civil Service.
- [...]

Article 32
Employment relationship in civil service

- [...]
4. Exceptionally, a regular job position in the Civil Service may be filled in case there is a need for replacement or in case of temporary absence of a civil servant depending on the case, for a period of not longer than twelve (12) months. In this case, recruitment procedures are conducted by the human resources unit in accordance with the rules defined in this Law on technical/administrative and support staff.
5. Government, upon proposal of ministry responsible for public administration, with a sublegal act, adopts rules on the implementation of paragraph 4 of this Article. [...]

Article 33
Classification of positions in civil service

- [...]
5. Government, upon the proposal of ministry responsible for public administration with a sublegal act, adopts:
- 5.1. applicable classes for each category and titles for each class;
 - 5.2. special administration group;
 - 5.3. general job description for each category, class and group, including general requirements for admission to each category, class and group;
 - 5.4. detailed rules, procedures, standards and methodology for assessment and classification of a position into a certain class or group according to this Article.
- [...]

Article 34
Civil Service admission procedure

- [...]
16. The Government, at the proposal of the ministry responsible for public administration, with a sub-legal act adopts detailed rules on establishment, composition and activities of the Commission and on payment of external expert, and detailed rules on the procedure of competition and evaluation of candidates.
- [...]

Article 35
Selection of position and appointment

- [...]
6. Government, upon proposal of the ministry responsible for public administration, with a sublegal act, adopts detailed procedures for the appointment in the professional category.
- [...]

Article 37
Probation period

- [...]
5. Government, with proposal of the ministry of public administration with a sub-legal act adopts employee's duties for a probation period according to this Article.
- [...]

Article 38
Transfer within category

- [...]
7. Government, upon proposal of the ministry responsible for public administration with a sublegal act adopts requirements that employees should meet for transfer within category and detailed procedure for transfer within category and rules for establishment and composition of the committee stipulated in paragraph 3. of this Article.
- [...]

Article 39
Promotion

[...]

11. Government, upon proposal of the ministry responsible for public administration adopts with a sub- legal act the requirements that employees should meet for promotion and its detailed procedures and mandatory training modules.

[...]

Article 40
Admission to a senior managerial category position

[...]

12. Government of Kosovo, upon proposal of the responsible minister for public administration, adopts with a sub- legal act, detailed rules of procedure for application and evaluation of candidates.

[...]

Article 41
Admission commission for senior managerial category

[...]

6. Government of Kosovo, upon proposal of the responsible minister for public administration by sub-legal act, shall adopt:

6.1. rules on the functioning and decision making of Commissions;

6.2. criteria and procedure for selection of commissions members;

6.3. payment for members of commissions who are not civil servants.

[...]

Article 42
Final selection and appointment to senior managerial positions

[...]

10. Any appointment to a senior managerial category position in contradiction with this Article and Article 40 is invalid.

11. Government of Kosovo, upon proposal of the responsible minister for public administration, adopts with a sub- legal act, detailed rules for implementation of this Article.

[...]

Article 43
Performance appraisal

[...]

13. Government, upon proposal of the ministry responsible for public administration, with a sublegal act adopts detailed methodology and procedures for evaluation of results at work.

[...]

Article 44
Performance appraisal for civil servants of senior managerial category

[...]

4. Government, upon proposal of the ministry responsible for public administration with a sublegal act shall adopt the methodology and detailed procedure for evaluation of work results for senior managerial category employee and the procedure of dispute resolution according to paragraph 3. of this Article.

[...]

Article 48

Competence and disciplinary proceedings

[...]

9. The Government, upon proposal of ministry responsible for public administration with a sublegal act, adopts the detailed disciplinary procedure, in compliance with the Law on General Administrative Procedure.

[...]

Article 49

Establishment and composition of disciplinary committee

[...]

6. The Government, upon proposal of the ministry responsible for public administration with a sub-legal act adopts detailed rules for establishment, composition, selection and decision making in National Committee for Evaluation and Discipline in compliance with general rules defined in the Law on General Administrative Procedure.

[...]

Article 52

Temporary transfer

[...]

7. Government, upon proposal of the ministry responsible for public administration, with a sublegal act, adopts detailed rules for temporary transfer according to this Article.

[...]

Article 54

Transfer in case of closure or restructuring

[...]

6. Government, upon proposal of the ministry responsible for public administration with a sub-legal act shall adopt detailed procedures for re-systematization of civil servants, due to termination or restructuring, as well as detailed composition of the commission.

[...]

Article 67

Organization of competition

[...]

11. Classification of managerial staff and professional staff for public services administrations is adopted, with a sub-legal act, by the Government upon proposal of the responsible ministry for public administration and ministry responsible for that field.

[...]

Article 68
Competition procedure

[...]
8. The Government, upon proposal of the ministry responsible for public administration with a sub-legal act shall adopt detailed rules for the creation, composition and activity of standing selection committees, detailed rules on organization and development of competition procedures and for evaluation of candidates.

[...]

Article 70
Probation period

[...]
8. Government, upon proposal of the ministry responsible for public administration with a sublegal act shall adopt detailed rules for probation work.

[...]

Article 71
Performance evaluation

[...]
7. Government, upon proposal of the ministry responsible for public administration, with a sublegal act adopts detailed procedure for evaluation of work results.

[...]

Article 75
Secondary legislation

Sub-legal acts provided for in this section of the Law are adopted by the Government, upon proposal of the minister responsible covering relevant public service and after the consent of responsible ministry for public administration.

[...]

Article 80
Competition

4. Government, upon the proposal of the Ministry responsible for Public Administration and Ministry responsible for Labour Issues, with a sub-legal act, adopts detailed competition procedures.

Article 83
Transitional provisions

[...]
18. Government, upon the proposal of the ministry responsible for public administration with a sub-legal act adopts detailed rules and procedures for implementation of this Article.

[...]

Article 85

With entry into force of this Law, the Law on Civil Service No. 03/L-149 of the Republic of Kosovo and any other provision in contradiction to this Law shall be abrogated.

[...]

Admissibility of the Referral

66. The Court first examines whether the Referral fulfils the admissibility requirements established in the Constitution and further specified in the Law and foreseen in the Rules of Procedure.
67. Initially, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides: *“The Constitutional Court decides only on matters referred to the Court in a legal manner by authorized parties”*.
68. In addition, the Court refers to paragraph 2, subparagraph 1 of Article 113 of the Constitution, which provides that:
 - “2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters:*
 - (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;”*
69. The Court also refers to paragraph 4 of Article 135 [Ombudsperson Reporting], which stipulates: *“The Ombudsperson may refer matters to the Constitutional Court in accordance with the provisions of this Constitution.”*
70. In this regard, the Court notes that the Applicant is an authorized party who raises before the Court the issue of the compliance of the challenged Law, based on Article 113 paragraph 2 of the Constitution.
71. The Court also takes into account Article 30 [Deadlines] of the Law and Rule 67 paragraph 4 of the Rules of Procedure, which provide that a referral must be filed within a period of six (6) months from the day of entry into force of the challenged act. In this regard, the Court notes that the challenged Law entered into force on 12 September 2019, while the Applicant submitted the referral to the Court on 8 November 2019, and consequently, within six (6) months after the entry into force of the challenged act.
72. In addition, the Court takes into account Article 29 [Accuracy of the Referral] of the Law, which establishes that:
 - “1. A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (1/4) of the deputies of the*

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.”

73. The Court also refers to Rule 67 of the Rules of Procedure, which specifies:

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.

74. The Court notes that the Applicant stated the relevant constitutional provisions which have allegedly been violated, and he also cited the provisions of the challenged Law which he considered to be inconsistent with the Constitution and provided evidence to substantiate his allegations.

75. In conclusion, the Court finds that the Applicant is an authorized party, that he has identified the challenged provisions of the challenged Law, stated his constitutional allegations, submitted supporting evidence and filed the referral within the prescribed time limit.

76. Therefore, the Court declares that the Referral is admissible.

Merits of the Referral

77. The Court recalls once again that the Applicant challenges the constitutionality of certain provisions of the challenged Law, namely, Articles 2 (paragraph 3), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4),

48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 8), 75, 80 (paragraph 4), 83 (paragraph 18) and 85 of the challenged Law.

78. With regard to Article 71, paragraph 8 of the challenged Law, which is challenged by the Applicant, the Court notes that this Article has only 7 paragraphs. Based on the circumstances of the case and in relation to the other allegations of the Applicant, the Court finds that in fact the Applicant, in relation to Article 71 of the challenged Law, challenges paragraph 7 of Article 71 of the Challenged Law.
79. With regard to challenged articles, the Applicant essentially alleges that the challenged Law:
- (i) Interferes with the employment relationships of the KPC personnel as part of the justice system defined by Chapter VII [Justice System] of the Constitution, violating the principle of separation of powers, the independence of the KPC and the principle of equality before the law.
 - (ii) Gives the Government and the Ministry responsible for public administration the authority to administer the employment issue and to issue sub-legal acts for all public officials of state institutions, including independent constitutional institutions such as the Applicant, violating their constitutional independence;
 - (iii) Interferes with the employment relations of the staff of KFA employees and Kosovo Police officers, violating the specific laws that regulate the issue of personnel of these institutions and the principle of equality before the law.
80. Therefore, the Court recalls that the Applicant does not challenge the constitutionality of the challenged Articles of the challenged Law in their entirety and in relation to all public officials regulated by the challenged Law. But, he only challenges the constitutionality of the challenged Law in relation to the abovementioned state institutions, raising important issues of separation of state powers, independence of independent constitutional institutions and equality before the law.
81. Consequently, the Court will further assess the constitutionality of the challenged norms of the challenged Law in relation to these institutions, namely the allegations of:
- A) Violation of the principle of separation of powers and independence of the justice system defined by Chapter VII [Justice System] of the Constitution;
 - B) Violation of the independence of independent constitutional institutions specifically established in Chapter VIII [Constitutional Court] and Chapter XII [Independent Institutions]; *and*
 - C) Violations of the principle of equality before the law in relation to officials of the administration of the KFA and the Kosovo Police.

**A) REGARDING THE CONSTITUTIONALITY OF THE
CHALLENGED LAW RELATING TO THE JUSTICE SYSTEM
ESTABLISHED IN CHAPTER VII [JUSTICE SYSTEM] OF THE
CONSTITUTION**

82. The Court notes that the Applicant and the KPC complain that the challenged Law has prevented the KPC from regulating the employment relationship of administrative staff through internal rules based on the Law on KPC authorizing the KPC to regulate, among others, the classification of positions; movement within the category; promotion; admission to a senior management position; commissions for management positions, etc. In this regard, the KPC alleges that the principle of separation of powers defined by the Constitution has been violated, as well as the independence of the KPC guaranteed by Article 110 of the Constitution, by challenging the possibility for the Government to determine the positions of the prosecutorial system by sub-legal act. In this regard, the KPC also raises the issue of the special status of the Assembly administration, emphasizing that the principle of separation of powers, institutional independence and the principle of equal treatment of the KPC administration in relation to the legislative and executive power has been violated.
83. With regard to this allegation, the Court notes that the Applicant and the KPC, in essence, challenge the constitutionality of Article 4 [Civil Servants with Special Status], paragraph 3, of the challenged Law which provides that the employees of the Assembly Administration are civil servants with special status, where it allows the Presidency of the Assembly to issue a special act to regulate the issue of the organizational structure of functioning; classification of positions; special conditions for recruitment; working hours; as well as other specific rights and obligations set out in the challenged Law.
84. Therefore, the Applicant and the KPC allege that the non-inclusion of the KPC administration in Article 4, paragraph 3, has resulted in a violation of the principle of separation of powers, violation of the independence of the KPC and unequal treatment among the state powers, the allegations related not only to the prosecutorial system but to the justice system in general, which includes the judicial and prosecutorial system, and the independence of the justice system.
85. With regard to these allegations of the Applicants, the Court recalls Article 3 [Equality Before the Law] of the Constitution which stipulates that:
- “1. The Republic of Kosovo is a multi-ethnic society, [...] governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.
[...]”*
86. The Court also recalls that according to Article 4 [Form of Government and Separation of Power] of the Constitution, Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances

among them, where the Assembly exercises the legislative power, the Government is responsible for implementation of laws and state policies, while it is specifically defined that the Judicial Power is exercised by the courts.

87. The Court also refers to Article 7 [Values] of the Constitution which stipulates that *“The constitutional order of the Republic of Kosovo is based on the principles of [...] respect for human rights and freedoms and the rule of law, non-discrimination,, [...], separation of state powers [...]”*.
88. The Court further recalls its case law where it found that *“The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the principle of the separation of powers and the checks and balances among them. The separation of powers is one of the bases that guarantees the democratic functioning of a State.”* (See Constitutional Court of the Republic of Kosovo: Case no. KO98/11, Applicant, *Government of the Republic of Kosovo*, Judgment of 20 September 2011, paragraph 44).
89. Further, the Court recalls that the Venice Commission has emphasized that *“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”* (*Rule of Law Checklist, approved by the Venice Commission at the Meeting of 106th Plenary Session of 11-12 March 2016, page 20*).
90. With regard to the separation of powers and the relationship between the legislature, the executive and the judiciary, the Court refers to Judgment No. U-I-4039/2009, U-I-25427/2009, U-I-195/2010, of the Constitutional Court of Croatia, of 18 July 2014, which found as follows: *“The government should be given [...] direct competence to influence the salary setting of the judiciary, meaning a priori that the relationship between the two state powers, the executive, this is the political executive, and the judiciary is based on postulates which are unacceptable in a democratic society based on the principle of separation of powers and the rule of law, all in the light of the need for the judiciary to be independent. Consequently, it is a requirement deriving from the Constitution that all elements of the salaries of the judiciary should be regulated by the legislator through the law issued in a democratic parliamentary procedure in order to respect the essence of guaranteeing the stability of the judiciary, which is appropriate, is qualified and independent administrator of justice, and where all elements of the salary of the judiciary must be in conformity with the dignity of the judge's profession and his/her burden of responsibility”*.
91. Regarding the justice system in Kosovo, the Court refers to Chapter VII [Justice System] of the Constitution which regulates the judicial and prosecutorial system of Kosovo. According to Article 102 [General Principles of the Judicial System], paragraph 1 of the Constitution *“Judicial power in the Republic of Kosovo is exercised by the courts”*.
92. The Court also refers to Article 108 [Kosovo Judicial Council] which stipulates that:

- “1. The Kosovo Judicial Council shall ensure the independence and impartiality of the judicial system.*
- 2. The Kosovo Judicial Council is a fully independent institution in the performance of its functions. [...]*

93. Regarding the prosecutorial system of Kosovo, the Court refers to Article 109 [State Prosecutor] of the Constitution which stipulates that:

*“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.
[...]*”

94. The Court also refers to Article 110 [Kosovo Prosecutorial Council], paragraph 1 of the Constitution which stipulates that:

“The Kosovo Prosecutorial Council is a fully independent institution in the performance of its functions in accordance with law.”

95. Regarding the above, the Court emphasizes that the Constitution of Kosovo stipulates that Kosovo is a democratic society based on the principle of the rule of law which guarantees the separation of powers in legislative, executive and judicial, which ensures independence between the three powers and mutual check, according to the principles set out in the Constitution.

96. The Court emphasizes that the Constitution specifically stipulates that legislative power is exercised by the Assembly, executive power by the Government, and judicial power is exercised by the courts. The Constitution also provides for the establishment of the Kosovo Judicial Council (hereinafter: the KJC) to ensure the independence of the judicial system.

97. The Court recalls that the Constitution of Kosovo does not specifically include the prosecutorial system in the classical separation of powers, namely within the judicial system, as a third power, as the Constitution specifically provides that judicial power is exercised by the courts.

98. In this regard, according to the Venice Commission Report, there are legal systems where the prosecution system is not independent of the executive, and in relation to such systems concentrate on the necessity for guarantees at the level of the individual case that there will be transparency concerning any instructions which may be given. (see Report on *European Standards as regards the Independence of the Judicial System, Part II of the Prosecution Services*, adopted by the Venice Commission at its 85th Plenary Meeting of 17-18 December 2010, paragraph 23; see also, *Compilation of the Venice Commission Opinions and Reports Concerning Prosecutors*, CDL-PI (2018) 001, Strasbourg, 11 November 2017, page 27).

99. However, the Venice Commission emphasizes that only a few of the countries belonging to the Council of Europe have a prosecutor’s office forming part of the executive authority and subordinate to the Ministry of Justice (e.g. Austria,

Denmark, Germany, the Netherlands). The Commission notes that there is a widespread tendency to allow for a more independent prosecutor's office, rather than one subordinated or linked to the executive. see Report on *European Standards as regards the Independence of the Judicial System, Part II of the Prosecution Services*, adopted by the Venice Commission at its 85th Plenary Meeting of 17-18 December 2010, paragraph 23).

100. According to the Venice Commission, as the prosecutor acts on behalf of society as a whole and because of the serious consequences of a criminal conviction, the prosecutor must act fairly, impartially and to a high standard. Even in systems where the prosecutor is not part of the judiciary, the prosecutor is expected to act in a judicial manner. While the Constitution should confer independence on the system as well as on the general prosecutor care will have to be taken to maintain a balance between, on the one hand, the protection of subordinate prosecutors from interference by the Government, Parliament, the police or the public and, on the other hand the authority and responsibility of the general prosecutor for ensuring that they carry out their functions properly (see also, *Compilation of the Venice Commission Opinions and Reports Concerning Prosecutors*, CDL-PI(2018)001, Strasbourg, 11 November 2017, page 28).
101. However, with regard to the Constitution of Kosovo, although the Constitution specifically provides that judicial power is exercised by the courts, the Kosovo prosecutorial system is included in Chapter VII [Justice System] of the Constitution together with the judicial system, where specifically is established that the State Prosecution is an independent institution with the authority and responsibility for criminal prosecution, while the KPC, according to Article 110 of the Constitution, is mandated to ensure, *inter alia*, the independence of the State Prosecutor, similar to the Judicial Council to ensure the independence of the courts.
102. Therefore, the Court considers that the Constitution of Kosovo intended to provide the prosecutorial system with the same independence to exercise its functions as the judicial system. Therefore, the Court, for the purposes of their institutional independence related to the challenged Law, will treat the judicial system and the prosecutorial system, together in relation to the legislative power exercised by the Assembly and the executive power exercised by the Government.
103. The Court notes once again that the Applicant did not make a concrete reference to the independence of the courts or the KJC, but specifically challenged the challenged Law, in particular, the exemptions made by civil servants with the special status set forth in Article 4 [Civil Servants with Special Status] of the challenged Law, alleging a violation of the principle of separation of powers as a result of the non-inclusion of the KPC in these exemptions, by making it impossible to regulate by itself the specifics of work of its employees.
104. However, the Court reiterates that it is master of the characterization to be given in law to the facts of the case *vis-a-vis* constitutional norms, and it does not consider itself bound by the characterization given by an applicant (see

case KO171/18, cited above, paragraph 148; see also, among other authorities, *Guerra and Others v. Italy*, ECtHR, Judgment of 19 February 1998, paragraph 44).

105. In this regard, the Court notes that the challenged Law gives the Government broad powers to manage and supervise civil servants of public administration, including, with some exceptions, civil servants of institutions such as KJC and KPC officials. Furthermore, the challenged Law gives the Government the power to issue a series of sub-legal acts to further regulate important issues related to civil servants such as, issues of recruitment, appointment, promotion, working hours, classification of positions, disciplinary violations, which in essence affect the functioning, classification of positions, but also the systematization and organizational structure of institutions, including the administration of the KJC and KPC.
106. This makes it impossible for the KJC and the KPC, as part of the justice system, to autonomously define specific rules for regulating the employment issues of their employees, thus influencing the determination of their organizational structure and other issues related to civil servants of these institutions, although such a restriction is not provided by LOFASAIA, which determines the rules for the organization and functioning of state administration institutions and independent agencies established by the Assembly of Kosovo (see Article 1 [Purpose and scope] of LOFASAIA).
107. In this regard, the Assembly of Kosovo, as a legislative body, with the approval of the challenged Law, has defined the general criteria for the management of public officials in the Republic of Kosovo, including civil servants employed in public institutions, authorizing the Government to manage and oversee the civil servant system and issue sub-legal acts to regulate certain issues.
108. However, unlike the justice system, in respect of which employees it has not provided for any exceptions, as far as the civil servants of the Assembly of Kosovo is concerned, the legislator has established some exceptions by giving competence to the Presidency of the Assembly, which according to Article 4 [Civil Servants with Special Status], paragraph 3 of the challenged Law to issue a special act to regulate the issue of organizational structure of functioning; classification of positions; special conditions for recruitment; working hours; as well as other specific rights and obligations from those defined by the challenged Law.
109. Consequently, the Assembly of Kosovo has given the Government the competence to manage the civil service system in all institutions, including the justice system, but by determining that the Presidency of the Assembly issues sub-legal acts regarding the civil servants of the Assembly, thus ensuring that the Government will not interfere with the management of Assembly officials, as a legislative power.
110. However, the Assembly has failed to provide the same exception for civil servants of the justice system in order to ensure the separation of powers not only in terms of judges and prosecutors but also in relation to the staff

supporting them, just as it had done for civil servants of the Assembly of Kosovo.

111. This is due to the fact that by applying the same rules regarding the issue of employment, classification of positions, recruitment criteria and other issues related to the employment of civil servants, and more importantly, allowing the Government to issue sub-legal acts which regulate the issue of employment in institutions outside the executive, without taking into account the separation of powers and the independence of institutions such as the KJC and KPC, interferes with determining their organizational structure and other issues related to civil servants of these institutions guaranteed by Articles 102, 108, 109 and 110 of the Constitution.
112. Therefore, the Court considers that by not including the civil servants of the KJC and KPC in the exceptions of Article 4 [Civil Servants with Special Status], paragraphs 3 and 4 of the challenged Law, the challenged Law violates the principle of separation of power guaranteed by Articles 4 and 7 of the Constitution as well as the independence of the judicial system guaranteed by Articles 102 and 108 of the Constitution, as well as the independence of the prosecutorial system guaranteed by Articles 109 and 110 of the Constitution.
113. Consequently, the Court considers that the challenged Law is not in accordance with the Constitution in relation to KJC and KPC officials and does not apply as long as the provisions of this Law contradict their functional and organizational independence guaranteed by the Constitution.
114. However, the Court does not find it necessary to repeal Article 4 of the challenged Law in its entirety, or other provisions of the challenged Law, as in relation to officials of other institutions, their constitutionality has not been challenged before the Court, or for those that have been challenged, the Court has not found a violation (see part of the Judgment on the KFA and Kosovo Police officers).
115. However, given that the Court has just found a violation of the challenged Law in relation to KJC and KPC officials but has not annulled the application of the challenged Law in relation to other institutions regarding which the constitutionality of the challenged Law has not been challenged, the Assembly of Kosovo must take the necessary actions to supplement and amend the challenged Law in accordance with the findings of this Judgment, in order to recognize the right of the KJC and KPC to issue and apply their internal rules, as regards, *inter alia*, the matters of organizational structure of functioning; classification of positions; special conditions for recruitment; working hours; as well as specific rights and obligations defined by the challenged Law, as provided for the employees of the Assembly according to Article 4 [Civil Servants with Special Status], paragraphs 3 and 4, where the Presidency of the Assembly has the right to issue sub-legal acts to regulate certain matters of its civil servants.

B) REGARDING THE ALLEGATION OF VIOLATION OF THE CONSTITUTIONAL INDEPENDENCE OF THE INDEPENDENT CONSTITUTIONAL INSTITUTIONS PROVIDED FOR IN CHAPTER XII [INDEPENDENT INSTITUTIONS] AND CHAPTER VIII [THE CONSTITUTIONAL COURT] OF THE CONSTITUTION

116. With regard to independent constitutional institutions, the Court refers to the independent institutions expressly listed in Chapter XII [Independent Institutions], specifically in Articles 132-135 [Role and Competencies of the Ombudsperson], 136-138 [Auditor General of Kosovo], 139 [Central Election Commission], 140 [Central Bank of Kosovo] and 141 [Independent Media Commission], as well as regarding the Court as defined in Chapter VIII [Constitutional Court] of the Constitution.
117. In this regard, the Court notes that the independent agencies established under Article 142 of the Constitution, although established on the basis of Article 142 of the Constitution, contained in Chapter XII of the Constitution, do not have the same status as the independent constitutional institutions referred to expressively in Chapter XII of the Constitution. This is because the establishment, role and status of independent constitutional institutions is expressly regulated by Chapter XII of the Constitution. Whereas “Independent Agencies” provided by Article 142 of the Constitution “*are institutions established by the Assembly, based on relevant laws, which regulate their establishment, functioning and competencies*”. Therefore, unlike the fact that the Assembly can create and shut down “*by law*” Independent Agencies; the Assembly can never shut down “*by law*” any of the above-mentioned five independent institutions. This is the main difference between the Independent Institutions referred to in Chapter XII of the Constitution.
118. Therefore, the references in this Judgment concerning independent constitutional institutions refer to independent constitutional institutions specifically referred to in Chapters VIII and XII of the Constitution and not to independent agencies established under Article 142 of the Constitution and other similar institutions, and do not create rights for those agencies.
119. With regard to the present case, the Court recalls that with regard to the constitutional independence of independent constitutional institutions, namely the independence of the Ombudsperson, the Applicant essentially alleges that: the challenged Law includes in its scope civil servants of the institutions of constitutional independence, specifically the Ombudsperson, but without defining any specific provision that respects the independence of the Ombudsperson; authorizing the Government and/or the relevant ministry for public administration with competencies also related to the employees of independent institutions; and, by authorizing the Government/ministry responsible for public administration to issue sub-legal acts on a long range of employment issues, including the Ombudsperson, results in a violation of its independence defined by the Constitution. He also links this allegation with the Judgment of the Constitutional Court KO73/16, which, among other things, stated 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”.

120. Consequently, the Applicant essentially challenges the applicability of the challenged Law to independent constitutional institutions, such as the Ombudsperson, as well as the competencies of the Government provided by the challenged Law on supervision, reporting requirements, and the issuance of sub-legal acts embodied in the challenged articles of the challenged Law, which are also binding on independent institutions, regardless of their internal rules issued under the authorizations of the Constitution and special laws. The Applicant alleges that the legislation regarding the public officials cannot be applied to independent constitutional institutions, specifically in this case, the Ombudsperson, as well as to public officials of other institutions, as this violates the independence of independent constitutional institutions guaranteed by the Constitution and special laws.
121. The Court notes, on the other hand, that the MPA maintains that the challenged Law does not infringe the Applicant's independence as the challenged Law does not repeal Article 32 of the Law on the Ombudsperson which stipulates that civil service legislation applies to the Applicant to the extent it does not violate its independence.
122. In relation to the above, the Court initially finds it necessary to determine the scope of the challenged Law in relation to public officials of the public institutions of Kosovo and in relation to other laws governing the employment of public officials in Kosovo.
123. In this regard, as will be explained below, the officials of independent constitutional institutions are also subject to the challenged Law. In this respect, the Court refers to Article 2 [Scope of application] paragraph 3 of the challenged Law which stipulates that a civil servant is any *“public official within the Civil Service who performs the duty in a position starting from professional officer to the position of general secretary in the administration of the President, in the administration of the Assembly, in the Office of Prime Minister, Ministry, executive agency, in Agencies and in one of their local branches, in the administration of justice system institutions, in an independent institution, independent agency, municipal administration and any employee defined directly with a special Law”*. The Court also refers to Article 5 [Definitions] of the challenged Law which emphasizes that *“Other state institution - administration [...] of an independent institution, of an independent agency, or of a municipality”*.
124. The Court also refers to Article 3 [Exemptions from the scope of the Law] of the challenged Law which stipulates that the challenged Law does not apply to:
 - i) public functionaries (elected officials, members of the Government and their deputies, functionaries appointed by the Assembly or the President of the Republic and dignitaries or members of collegial managing bodies of independent institutions and agencies);

- ii) public functionaries with special status (judges and prosecutors, commanding of the Security Force; Kosovo police officers and Kosovo police inspectorate; customs officers; managerial personnel and employees of the KIA; and, director or members of collegial managing body of regulatory agencies).
125. The Court also refers to paragraphs 1 and 2 of Article 4 [Civil Servants with Special Status] of the challenged Law, which provides that professional officers of the diplomatic service and the correctional service are regulated by this Law and special law. Such an exception is Article 4, paragraphs 3 and 4, of the challenged Law which provides for the employees of the Administration of the Assembly that authorizes the Presidency of the Assembly to adopt a special act to regulate the organizational structure of functioning and classification of positions; special recruitment conditions; working hours; as well as specific rights and obligations other than those provided by the challenged Law.
126. The Court notes that, in accordance with the abovementioned provisions, the officials of the administration of independent constitutional institutions are included in the scope of the challenged Law, as they are specifically mentioned in Article 2 of the challenged Law.
127. The Court also notes that the independent constitutional institutions are not included in Articles 3 and 4 of the challenged Law which provides for exceptions to the application of the challenged Law. Therefore, the challenged Law includes and regulates the issue of employment of the employees of independent constitutional institutions, specifically the Applicant.
128. With regard to the relationship between the challenged Law and other special laws governing the issue of employment, the Court also refers to Article 85 of the challenged Law which stipulates that:
- “With entry into force of this Law, the Law on Civil Service No. 03/L-149 of the Republic of Kosovo and any other provision in contradiction to this Law shall be abrogated.”*
129. The Court therefore notes that the challenged Law under Article 85 clearly repeals the Law on Civil Service and any other legal provision that is inconsistent with it, including the special laws of independent institutions such as is the Ombudsperson while those laws or regulations regulate differently the issue of the employees of these institutions.
130. Therefore, as a conclusion regarding the scope of the challenged Law and the relationship of this law with other laws, the Court considers that the challenged Law applies to all institutions of Kosovo that employ civil servants except those defined in Articles 3 and 4 of the challenged Law, clarified above, and where independent constitutional institutions are not included in the list of exceptions to the application of the challenged Law.
131. Therefore, the Court will further assess the Applicant’s allegations that the challenged Law, specifically the challenged articles, provides the same rules for all state institutions, including independent constitutional institutions,

providing for oversight and reporting by the Government on the issue of employment for these institutions, in particular by preventing independent constitutional institutions from issuing internal acts, violates the independence of independent institutions, including the Ombudsperson, guaranteed by the Constitution. The Court will first: a) elaborate general principles regarding the independence of independent constitutional institutions such as the Ombudsperson; and b) assess whether the challenged provisions of the challenged Law violate these principles.

a) General principles regarding the independence of independent constitutional institutions established in Chapter VIII and XII of the Constitution as well as established in the case law of the Court

132. The Court notes that the Applicant challenges the challenged Law mainly in relation to the Ombudsperson and its independence guaranteed by Article 132 of the Constitution. However, the Court reiterates that it is master of the characterization to be given in law to the facts of the case *vis-a-vis* constitutional norms, and it does not consider itself bound by the characterization given by an applicant (see case KO171/18, cited above, paragraph 148; see also, among other authorities, *Guerra and Others v. Italy*, ECtHR, Judgment of 19 February 1998, paragraph 44)
133. Therefore, the Court, taking into account the status, role and constitutional function of independent constitutional institutions defined by the Constitution, will assess the Applicant's allegations in relation to all independent constitutional institutions specifically stated in Chapters VIII and XII of the Constitution.
134. The Court recalls that the independence of independent constitutional institutions has been the subject of review in case KO171/18, Applicant, *the Ombudsperson*, Constitutional review of Articles 2, 3 (paragraph 1, subparagraphs 2, 3 and 4), 4 (paragraph 1), 6, 7 (paragraph 1, subparagraphs 2, 3 and 4), 11 (paragraph 3) 18, 19 (subparagraphs 5, 6, 7 and 8), 20 (paragraph 5) 21, 22, 23, 24 and 25 (paragraphs 2 and 3) of Law No. 06/L-048 on the Independent Oversight Board for Civil Service of Kosovo, Judgment of 25 April 2019 (hereinafter: Judgment KO171/18) and case KO73/16, 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).
135. In the abovementioned judgments, the Court had held that "*the Constitution is based on the principle of separation of powers. The Republic of Kosovo is defined by the Constitution as a democratic Republic based on the principle of separation of powers and the checks and balances among them, The separation of powers is one of the bases that guarantees the democratic functioning of a State. In addition to the three branches of government referred to above, the Constitution guarantees a special status to the Office of the Ombudsperson and to the other independent institutions enumerated in Chapter XII of the Constitution. The Constitution also safeguards a special*

status to the Constitutional Court as the final guarantor and interpreter of the Constitution. 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” (See, Judgment KO171/18, paragraph 119; and Judgment KO73/16, paragraphs 63, 64, 65. See also Judgment in case KO98/11 of 20 September 2011, Applicant the Government of Kosovo, regarding the immunity of deputies of the Assembly of the Republic of Kosovo, President Republic of Kosovo and members of the Government of the Republic of Kosovo, paragraph 44).

136. In this respect, the Court recalls Article 132.2 of the Constitution, which provides that *“The Ombudsperson independently exercises her/his duty and does not accept any instructions or intrusions from the organs, institutions or other authorities exercising state authority in the Republic of Kosovo”* and Article 133 [Office of Ombudsperson], which establishes that *“The Office of the Ombudsperson shall be an independent office and shall propose and administer its budget in a manner provided by law”*. (see Judgment KO171/18, paragraph 120).
137. The Court also refers to Law No. OS/L-019 on the Ombudsperson, namely Article 3 [Basic Principles of the Ombudsperson’s Activity], paragraph 2, which states that *“The institution of the Ombudsperson enjoys organizational, administrative and financial independence in the implementation of tasks set forth by the Constitution of the Republic of Kosovo and the Law”*, as well as Article 32 [Personnel], paragraph 2, which establishes that: *“The provisions of the Law on Civil Service shall apply to employees of Ombudsperson Institution, to that extent that there is no infringement of constitutional independence of the Institution”*. (see Judgment KO171/18, paragraph 121).
138. The Court also recalls that under Article 37 [Regulations of the Institution] of the Law on Ombudsperson, *“The Ombudsperson issues the Rules of Procedure, Regulation for internal organization and systematization of job positions, decision making processes and other organizational issues in accordance with the Law”*.
139. The Court in Judgment KO73/16 and Judgment KO171/18, noted that *“The Court notes that the Office of Ombudsperson is an independent institution which was created to ensure accountability from the public authorities vis-a-vis the rights and freedoms of individuals. In fulfilling this role, the Institution independently exercises its mandate without accepting any instructions or intrusions from any other state authority. Additionally, the Constitution places an obligation on the organs of state through legislative and other means to ensure the independence, impartiality, dignity and effectiveness of the Office of the Ombudsperson and the other independent institutions”* (See Judgment KO73/16, paragraphs 68 and 69; and Judgment KO171/18, paragraph 123).
140. In addition, the Court emphasized that all institutions are obliged by the Constitution to respect the independence of the Office of Ombudsperson. The Court also emphasized that the Ombudsperson is obliged to ensure its independence by issuing regulations, orders or other legal acts in such a

manner that they do not curtail its functional, organizational and financial independence. (See, *mutatis mutandis*, Judgment KO73/16, paragraph 69 and Judgment KO171/18, paragraph 124).

141. In this respect the Court also recalls the role and status that the Constitution guarantees to other independent constitutional institutions specifically included in its Chapter XII. Regarding the Auditor General of Kosovo, its role and constitutional status, the Court recalls that according to Article 136 [Auditor-General of Kosovo], paragraph 1 which stipulates that “*The Auditor-General of the Republic of Kosovo is the highest institution of economic and financial control*” and paragraph 2 which stipulates that “*Organization, operation and competencies of the Auditor-General of the Republic of Kosovo shall be determined by the Constitution and law.*”
142. With regard to the Central Election Commission and its role and status as an independent constitutional institution, the Court refers to Article 139, paragraph 1 of the Constitution, which stipulates that: “*The Central Election Commission is a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results*”. Therefore, as the Court clarified in its case KO58/19, the CEC is a permanent body mandated to administer elections and referendums in Kosovo, which carries out its functions in a professional and impartial manner, regardless of any political interest. Accordingly, the Constitution attributes to the CEC the nature of a permanent state body and recognizes it as the sole and independent authority to control and certify the mandate of representative institutions. (see the case of Court KO58/19, Judgment of 29 July 2019, paragraphs 99 and 100).
143. The Court also recalls Article 140 [Central Bank of Kosovo] which expressly regulates the status of this independent constitutional institution, specifically paragraph 1 of Article 140 which stipulates that “*The Central Bank of the Republic of Kosovo is an independent institution which reports to the Assembly of Kosovo*”, and paragraph 2 that stipulates that “*The Central Bank of the Republic of Kosovo exercises its competencies and powers exclusively in accordance with this Constitution and other applicable legislative instruments.*”
144. The Court also refers to the specific status of the Independent Media Commission, which according to Article 141 [Independent Media Commission] “*is an independent body, which regulates the Range of Broadcasting Frequencies in the Republic of Kosovo, issues licenses to public and private broadcasters, establishes and implements broadcasting policies and exercises other competencies as set forth by law*”.
145. Similarly to the Applicant, as regards the Constitutional Court, in its Judgment KO73/16, and Judgment KO171/18, the Court found that the mandate to issue its own rules of procedure was established within the exclusive competence of the Court, reasoning also the purpose of this the definition as follows: “*[evidently the authors of the 27 Constitution aimed at securing the independence and efficiency of the Constitutional Court by enabling the Court itself to create its own rules of procedure and thereby prevent any*

interference with the exercise of its assigned responsibilities. This also shows and confirms that the Court has a special position and authority according to the Constitution and within the system of the state institutions. Accordingly the independence of the Court requires it to be governed by specific rules, moreover, of constitutional values, and obliges the Government and its branches to respect them” (See Judgment KO73/16, paragraph 79 and 80; and Judgment KO171/18, paragraph 128).

146. The Court also emphasized that it should be able to decide for itself on its internal organization and to achieve efficient functioning. It is up to the Assembly to determine and approve the budget of the institutions of the Republic of Kosovo, but in accordance with the Constitution. The Constitution obliges the lawmaker and the executive to not violate the independence of the Court (See, for example, *Decision on the admissibility and merits of the Constitutional Court of Bosnia and Herzegovina* in case No. U. 6/06 of 29 March 2008; see also Judgment KO171/18, paragraph 129).
147. This special status of the Applicant and of the independent constitutional institutions set forth in Chapter VIII and XII of the Constitution is further reflected in Law No. 03/L-149 on Civil Service of the Republic of Kosovo, namely, paragraph 4 of Article 1 [Purpose and Scope] that stipulates that “*The institutions of the public administration that regulated by special law shall be subject to the provisions of this law [Law on Civil Service], except in cases where the special law contains provisions that are different from this law”* and Article 3 [The Civil Service of the Republic of Kosovo] which establishes that “[*During the implementation of this law, the constitutional autonomy of the institutions independent from the executive shall be respected”*]. (see Judgment KO171/18, paragraph 130).
148. The Court also notes that in its Judgment KO73/16, where it assessed the Government Circular on the classification of positions in the civil service, it stated that “*the implementation of laws and state policies is one of the constitutional duties of the Government. However, the Government is to take into account the special status of the Ombudsperson, the Court and the other independent institutions in accordance with the constitutional guarantee of their independence as outlined above. Accordingly the preparation, the content and the applicability of any norms related to their functioning and internal job descriptions and remuneration has to be adequately and appropriately developed and determined. The Government cannot suffice by applying identical criteria to those applied to the governmental agencies to be applied in the same manner to the independent institutions defined in the Constitution”* (See, *mutatis mutandis*, Judgment KO73/16, paragraph 69).
149. The Court in case KO73/16 and KO171/18 as to the independence of the constitutional institutions, the Constitutional Court of Albania in Decision (V-19-07) in Case. No. 43/13 of 3 May 2007 reasoned:

“The notion of independence does not and cannot have the same substance or meaning in reference to all constitutional organs and institutions, That notion varies depending on the nature of the organ and its constitutional duties and junction, However’, generally speaking, it must be emphasized

that their' independence as guaranteed by the Constitution and the respective organic laws, has as its component or inherent element organizational, functional and financial independence, Beside questions of election, appointment or dismissal o manager's and other high officials of constitutional organs and institutions, among other's, the organizational independence is also valid with regard to their' entitlement to draft and appoint, in compliance with certain criteria, their structure and organogram, including the right to appoint directors and advisors, the quantity and the set up of officials of supporting cabinets, appointment of officials of lower positions, recruitment of personnel of different levels, etc, The functional independence of the constitutional organs and institutions is closely knit with the substance of the work that they discharge, which is directly regulated for and has its foundations in the respective constitutional provisions [...] no other organ or' institution, whether it a part of one of the three branches of the government, cannot interfere in treatment and solving of questions, as the case may be, would make up the central object of the work of other constitutional organs and institutions ... while, on the other hand, the constitutional provisions and organic laws patently establish that management of the budget in accordance with the law should be left at the hand of these organs themselves. Surely, they know and assess their requests and problems, needs for investment, objectives that they want to reach, etc better than anyone else” (see Decision (V-19-07) in case no. 43/13, of 3 May 2007, of the Constitutional Court of Albania).

150. Therefore, as regards the status of the personnel of the independent constitutional institutions, as it derives from the Constitution and the special laws, and principles explained above, the Court in Judgment KO171/18, reiterated that:

- a) the provisions of relevant legislation, including civil service legislation which was in force before the adoption of the challenged Law, do not specifically refer to the staff of independent constitutional institutions as civil servants, but foresee the application of the civil service legislation;
- b) civil service legislation, including the challenged Law, applies to the staff of these independent constitutional institutions only to the extent that they do not violate their independence;
- c) the Constitution and the special laws authorize and oblige the independent institutions, in particular the Applicant and the Court, to issue regulations, orders and other legal acts to regulate the specifics related to the employment relationship of their 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, but only to the extent necessary to ensure their independence as provided for by the Constitution and special laws.
- d) the regulations and other legal acts of the independent constitutional institutions that regulate the specifics related to the employment

relationships of the staff of independent institutions deriving from the Constitution and the special laws must be respected by all institutions including the executive and other institutions, such as the Board, and have priority over other laws. (see Judgment KO171/18, paragraph 133).

151. On the other hand, the Court emphasized that the independent institutions, including the Applicant, cannot act in vacuum in relation to the legal framework. The Court considers that the independence of the Applicant and the Court is also subject to some limitations and control. These are included in Article 14.3 of the Law on the Constitutional Court that provides: “*The Constitutional Court shall manage its budget independently and shall be subject to internal audit as well as external audit by the General Auditor of Republic of Kosovo*”. In a similar way, Article 35-4 of the Law on Ombudsperson Institution provides: “*The Ombudsperson Institution independently manages with its own budget and is subject to internal and external audit by the Auditor General of the Republic Kosovo*” (see Judgment KO73/16, paragraph 90; and Judgment KO171/18, paragraph 134).
152. In addition, the Court notes that according to Article 137 of the Constitution [Competencies of the Auditor-General of Kosovo], the Auditor General of the Republic of Kosovo is the only authority established by the Constitution that can audit the economic activity of the Applicant and the Court, as well as of all other public institutions in the Republic of Kosovo (see Judgment KO73/16, paragraph 91; and Judgment KO171/18, paragraph 135).

b) Application of these principles regarding the challenged Law

153. The Court recalls that under Article 2 [Scope of application] of the challenged Law, it is provided that the challenged Law applies to all public institutions, including independent constitutional institutions, such as the Applicant, but not to those specified in Article 3 [Exemptions from the scope of the Law] and 4 [Civil Servants with Special Status] of the challenged Law which includes public officials, public officials with special status (to whom the challenged Law does not apply) and public servants with special status (officials of the diplomatic service and officials of the Assembly of Kosovo, to whom this Law and their special acts apply).
154. The Court notes that the challenged Law does not provide for an exception within the scope of the challenged Law in Article 2 [Scope of application] or in the exceptions set out in Article 3 [Exemptions from the scope of the Law] and Article 4 [Civil Servants with Special Status] as regards the independent constitutional institutions included in Chapters VIII and XII of the Constitution, as made by the Constitution, special laws and the Law on Civil Service foreseen to be repealed by the challenged Law. Namely, the challenged Law does not provide for the possibility that during the implementation of the Law, the special laws of independent institutions and their internal rules will be taken into account to ensure their independence, because, as explained above, in: Article 85 repeals any provision that is inconsistent with this Law, including the special laws governing these institutions.

155. In this regard, the Court also refers to Article 10 of the challenged Law which stipulates that “*Government, among other, adopts general state policies for employment of public officials and adopts sub- legal acts based on this Law*”. Also, other challenged provisions of the challenged Law give the Government the competence to, *inter alia*, issue rules concerning personnel plans and the human resource management system; employment relationship in the civil service and job classification; admission to the civil service; movement within the category and promotion; appointment to senior management positions; evaluation of results at work; discipline in the civil service; transfer to the civil service and similar matters relating to the employment and employment matters of public officials.
156. Therefore, the Court considers that the challenged Law provides for the same approach to all public institutions, including independent constitutional institutions, with some exceptions set out in specific provisions of the challenged Law, which the MPA states in its response, which exceptions are reflected in the fact that the procedure of vacancy announcement of employees for institutions outside the state administration (including independent institutions) is conducted by the Human Resources Unit of the institutions themselves (see paragraph 3 of Article 34 [Civil Service admission procedure] of the challenged Law). Also, the Admissions Commission is appointed by the head of the institution (paragraph 13 of Article 34); vacancies for senior management positions are organized by the Human Resources Unit of the “other state institution” (see paragraph 5 of Article 41 [Admission Commission for senior managerial category] of the challenged Law; the latter is appointed by the Human Resources Unit of another state institution (see paragraph 4 of Article 42 [Final selection and appointment to senior managerial positions] which differs from the procedure followed for the institutions of the Government.
157. However, the Court notes that all these actions and exceptions are foreseen to be performed either on the basis of the provisions of the challenged Law, or on sub-legal acts issued by the Government and, in essence, the challenged Law does not take into account the independence of independent constitutional institutions, their specific laws and their internal rules deriving from the Constitution and special laws.
158. In this regard, the Court recalls once again that according to the Constitution and special laws as well as the case law of this Court, elaborated in detail in this Judgment: the rules of civil service are applied to the staff of independent constitutional institutions to the extent they do not violate their independence. In this regard, the Court is aware that not all of the challenged articles and the powers conferred on the Government in relation to the challenged Law directly affect the independence of independent institutions.
159. However, as required by the Constitution and special laws, the independent institutions, the Applicant, are authorized to issue internal acts, to regulate the specifics regarding the employment relationship of their staff, which differ from general norms laid down by other laws, including the challenged Law, in such a way that they ensure their functional and organizational independence

and only insofar as this is necessary to protect their independence and in relation to those matters for which such a thing is necessary.

160. These special norms must be respected by all institutions including the Government and the institutions that oversee the implementation of these provisions.
161. Therefore, the Court considers that by authorizing the Government to issue sub-legal acts governing the employment issue, including the classification of positions, recruitment criteria and other matters in independent constitutional institutions, without regard to the independence of independent institutions, the challenged Law taken in its entirety, violates the essence of the independence of independent constitutional institutions guaranteed by Chapters VIII [Constitutional Court] and XII [Independent Institutions] of the Constitution, as state authorities separate from the legislative, the executive, regular judiciary and other institutions.
162. However, as noted above, with regard to the institutions of the justice system, the Court does not consider it necessary to annul these provisions in their entirety as these provisions also apply to officials of independent constitutional institutions to the extent they do not infringe their independence and also applied in relation to the officials of other institutions, their constitutionality has not been challenged before the Court specifically.
163. The Court finds that Articles 2 (paragraph 3), 4 (paragraphs 3 and 4), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 7), 75, 80 (paragraph 4), 83 (paragraph 18) and 85 of the challenged Law violate the independence of independent constitutional institutions, set out in Chapter VIII [Constitutional Court] and Chapter XII [Independent Institutions]. Consequently, the challenged Law is not in accordance with the Constitution in relation to these institutions, and does not apply to these institutions, as long as this Law does not respect their institutional and organizational independence guaranteed by the Constitution.
164. Considering that the Court has found a violation of the challenged Law in relation to the independent constitutional institutions but has not annulled the application of the challenged Law in relation to other institutions in relation to which the constitutionality of the challenged Law has not been challenged, and the fact that the challenged Law applies to independent constitutional institutions as long as it does not violate the independence of these institutions, the Assembly of Kosovo must, as soon as possible, take the necessary actions to supplement and amend the challenged Law in accordance with the findings of this Judgment, in order to recognize the functions and specific authority of independent constitutional institutions reflected in the issuance and application of their internal rules to protect their independence

established in the Constitution and special laws, as regards, *inter alia*, the issue of organizational structure of functioning; classification of positions; special conditions for recruitment; as well as specific rights and obligations other than those defined by the challenged Law, according to the specifics of the work of their personnel.

C) REGARDING ALLEGATIONS OF CONSTITUTIONAL VIOLATIONS IN RELATION TO THE KFA AND KOSOVO POLICE OFFICERS

165. The Court refers to the Applicant's allegations but also to the comments of the KFA and the Kosovo Police submitted to the Court. The Court notes that the main allegation of the KFA before the Court is that the challenged Law does not take into account the specifics of the KFA set out in Law No. 04/L-64 on the KFA, Law No. 05/L-022 on Weapons, Law 05/L-017 on Weapons, Ammunition and Related Security Equipment for Authorized State Security Institutions (with its amendments) as well as the Code of Criminal Procedure despite the fact "*that KFA is an institution that serves justice and security like the Police, Customs and Police Inspectorate*". Therefore, they claim that despite these specifics and the nature of their work, in contrast to Kosovo Police officers and of the Police Inspectorate; as well as customs officers, the KFA is not included in Article 3 [Exemptions from the scope of the Law], paragraph 3 of the challenged Law which defines officials with special status, to whom the special law is applied and not the challenged Law.
166. Therefore, the Applicant and the KFA challenge the fact that the KFA has been treated by the challenged Law, as the executive agency whose legal relationship is regulated by the challenged Law according to the definition of Article 2 [Scope of application], paragraph 3 which contains the definition of civil servant of the challenged Law.
167. Therefore, the KFA essentially alleges that the challenged Law discriminates against the KFA officials in relation to police officers and the Kosovo Police Inspectorate and customs officials.
168. With regard to Kosovo Police officers, the Kosovo Police also challenges non-inclusion in the exemptions of Article 3 [Exemptions from the scope of the Law], paragraph 3 of the challenged Law on Kosovo Police civil servants as they did exception for police officers and this is contrary to the Law on Police and sub-legal acts of the Kosovo Police. In this regard, they complain that the challenged Law does not take into account the specifics of the employment relationship of the Kosovo Police officers.
169. The Court, before addressing the issue of equality before the law regarding the employees of the KFA and the Kosovo Police, wishes to recall once again what it has determined in case KO171/18, mentioned above, 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, while "Independent

Agencies” provided by Article 142 of the Constitution “*are institutions established by the Assembly, based on relevant laws, which regulate their establishment, functioning and competencies.*” So, unlike the fact that the Assembly can create and shut down “*by law*” Independent Agencies; The Assembly can never “shut down” any of the above-mentioned five independent institutions “*by law*”. This is the main difference between the Independent Institutions referred to in Chapter XII of the Constitution.

170. In this regard, also in relation to the abovementioned allegations of the KFA and the Kosovo Police related to their status, initially of the Kosovo Police as an institution defined by Article 128 of the Constitution included in Chapter XI [Security Sector] of the Constitution as well as the KFA as the Executive Agency, the Court reiterates that these institutions do not enjoy the same status as the independent constitutional institutions explicitly defined in Article XII of the Constitution.
171. Therefore, in view of the above, the Court will further assess whether Article 2 [Scope of application], paragraph 3, which defines civil servants in a way that includes both the KFA staff as an executive agency, and Kosovo Police officers to whom the challenged Law applies, and by not excluding them from the application of the challenged Law such as police officers, of the police inspectorate, KIA officers and customs officers, the right to equality before the law has been violated, under Article 24 of the Constitution and Article 14 of the ECHR.

General principles regarding equality before the law

172. The Court reiterates that Article 24 of the Constitution as well as Article 14 of the European Convention on Human Rights (hereinafter: the ECHR) stipulates that all are equal before the law and that all enjoy the right to equal protection before the law.
173. The Court refers to the case law of the Court and of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which the Court pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution. In this regard, the Court notes that only differences in treatment based on an identifiable characteristic *or status*, may represent unequal treatment within the meaning of Article 24 of the Constitution and Article 14 of the ECHR. In addition, in order for an issue to be raised under Article 24, there must be a difference in the treatment of persons in analogous situations or similar situations (See, case KO157/18, Applicant: *the Supreme Court of the Republic of Kosovo*, Constitutional review of Article 14, paragraph 1.7 of Law No. 03/L-179 on the Red Cross of the Republic of Kosovo, Judgment of 13 March 2019 (hereinafter: Judgment KO157/18), paragraph 77, see also *mutatis mutandis*, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Applications No. 5095/71, 5920/72 and 5926/72, 7 December 1976, par. 56, *Carson and Others v. United Kingdom*, Application No. 42184/05, 16 March 2010, paragraph 61).

174. The Court considers that, for the purposes of interpreting Article 24 of the Constitution and Article 14 of the ECHR, a difference of treatment, in similar of analogous circumstances, is unequal and arbitrary if: 1) it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim, and 2) if there is not a reasonable relationship (namely proportionality) between the means employed and the aim sought to be realised (see, Judgment KI157/18, cited above, paragraph 78; see also, *mutatis mutandis*, *Abdulaziz, Cabales and Balkandali v. United Kingdom*, Application no. 9214/80; 9473/81 and 9474/81, 24 April 1985, paragraph 72).
175. The Court emphasizes that the Government and the Assembly enjoy a margin of appreciation, respectively a discretionary space, in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin varies according to the circumstances, according to the subject matter and the history of the case. A wide margin is usually allowed when it comes to general measures of the economic or social strategy, unless they are clearly without any reasonable grounds (see, Judgment KI157/18, cited above, paragraph 78; see also, *mutatis mutandis*, *Burden v. United Kingdom*, Application No. 13378/05, 29 April 2008, paragraph 60; *Khamtokh and Aksenchik v. Russia*, cited above, paragraph 64).

Whether there has been unequal treatment in analogous or similar situations

176. The Court first determines whether there is a difference in treatment in an analogous situation or in a similarly relevant situation. If such a condition is met, then the Court will assess whether such treatment: 1) has an objective and reasonable justification, in other words, if it pursues a legitimate aim, or 2) has a reasonable proportionality relationship (respectively proportionality) between the means used and the aim intended to be achieved.
177. With regard to the KFA, the Court notes that, according to paragraph 2, item 2.3 and 3 of Article 2 [Scope of application] of the challenged Law, the officials of the executive agencies are public officials whose employment is regulated by the challenged Law. The Court also notes that civil staff of the Kosovo Police also fall into the category of civil servants to whom the challenged Law applies.
178. The Court reiterates that under Article 3 [Exemptions from the scope of the Law] paragraph 3, subparagraphs 3.3, 3.4 and 3.5 respectively, the police officers and the police inspectorate officers; customs officers; and KIA officials are excluded from the application of the challenged Law and in relation to the employment relationship to which the special Law applies. Therefore, the Court emphasizes that Kosovo Police and Kosovo Customs officers are not included in the exemptions of Article 3 of the challenged Law.
179. Considering that the KFA officers and Kosovo Police officers are treated differently by the challenged Law in relation to police and inspectorate officers, customs officials and KIA officers, the Court should first address whether the KFA officers and Kosovo Police civil staff are in the same or analogous position in relation to officials with whom they make comparison.

180. In this respect, regarding the KFA, the Court refers to Article 4 [Establishment of the Kosovo Agency of Forensic] of Law No. 04/L-064 on the KFA which stipulates that: the KFA is “*is established as an independent and executive Agency in the framework of Ministry of Internal Affairs*”. According to Article 2 [Scope], the KFA is the responsible institution in impartial provision of forensic scientific objective analysis. However, the KFA for administration and management responds to the Minister responsible for internal affairs as Article 11 [Minister] of the KFA Law stipulates that “*Chief Executive of KAF shall report and respond directly to the Minister for the administration and management of KAF*”.
181. With regard to the Kosovo Police, the Court refers to Law No. 04/L-076 on Police which in Article 3 [Definitions], paragraph 1.2 specifies that “*Civilian Staff – police staff members who are employed to perform administrative or support services, but who do not have police authorizations*”.
182. On the other hand, the Court recalls Article 128 [Kosovo Police] of the Constitution which stipulates that the Kosovo Police is responsible for maintaining order and public safety throughout the territory of Kosovo.
183. Whereas, regarding KIA, the Court recalls that Article 129 [Kosovo Intelligence Agency] provides that KIA identifies, investigates and monitors threats to security in the Republic of Kosovo.
184. With regard to customs officials, the Court notes that pursuant to Article 4, paragraph 3 of Customs and Excise Code of Kosovo No. 03/L-109, “*Customs’ means Customs of Kosovo, designated as responsible amongst others for applying customs legislation*”.
185. In connection with the above, the Court notes that the police officers and the police inspectorate; and those of the KIA have specific responsibilities under the Constitution to maintain public order and security, namely the detection, investigation and surveillance of security in Kosovo, and while customs officials are responsible for enforcing customs legislation.
186. While the KFA employees provide objective scientific analysis and assistance to some institutions in support of these institutions. Also, the KFA officials are part of the executive who report directly to the minister responsible for internal affairs. Therefore, the nature of work, the specifics of work and the legal status of the KFA employees, differ from the nature of work of other institutions with which they are compared.
187. The Court also considers that the specifics of Kosovo Police civil servants are not similar to the specifics of the work of police officers, customs officials and KIA officials, as they are not responsible for maintaining order and security, as police officers, or for the implementation of customs legislation such as customs officials, but only provide administrative support to the Kosovo Police. In fact, given the specifics of their work, the Court considers that they have more in common with the functions of civil servants employed in other institutions, such as ministries and executive agencies, than with police officers, customs officials and those of the KIA.

188. Consequently, the Court considers that neither the KFA officials nor the civil servants of the Kosovo Police are in an equivalent position to KIA officials; the police and police inspectorate officers; and Kosovo customs officials, and consequently it is not necessary to be treated in the same way as police officers, inspectorate officials, customs officials and KIA officials.
189. Therefore, in view of the above, the principle of unequal treatment is expressed only in cases where such treatment is made for the same or analogous situations, in the present case there can be no question of unequal treatment, because the KFA officials are not in the same or similar position or analogous to the officials in relation to whom they are compared.
190. The Court concludes that KFA officials are not in a similar or analogous position to police, customs and inspectorate officials, making it unnecessary to analyze whether different treatment has an objective purpose and whether there is a proportionality relationship between the measure taken and the aim to be achieved.
191. Consequently, the Court notes that the challenged Law, including the KFA officials and the Kosovo Police civil servants in the field of application of the challenged Law, does not violate the principle of equality guaranteed by Article 24 of the Constitution and Article 14 of the ECHR.
192. The Applicant and the Kosovo Police also complain that contrary to the Judgment of the Court KO97/12 “*paragraphs 128 and 130 of Judgment KO97/12 of the Constitutional Court, the challenged Law does not specifically repeal the Police Law and consequently violates the principle of legal certainty*”.
193. In this regard, the Court has clarified above that the challenged Law under Article 85 clearly repeals the Law on Civil Service as well as any other legal provision that is inconsistent with it, including special laws such as the provisions of the Law on Police regarding Kosovo Police officers with the exception of police officers and the Police Inspectorate to be excluded from the application of the challenged Law under Article 3 [Exemptions from the scope of the Law], paragraph 4.
194. Regarding the allegation of the Kosovo Police that the challenged Law violates the principle of legal certainty as it does not specifically repeal the Law of the Kosovo Police regarding the provisions governing the employment relationship of administrative staff, the Court refers to the case of the Court KO97/12 , Applicant: *The Ombudsperson*, Judgment of 13 March 2013, where it found that the principle of legal certainty and rule of law requires that a new law cannot repeal the provisions of an existing law without changing the relevant provisions (see case KO97/12, paragraph 128).
195. The Court in this case had concluded that Law No. 04 L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions had provisions that were not in accordance with the Law on Freedom of Association in NGOs,

but this Law in Article 117 [Effect on Previous Statutory Provisions] stipulated that this Law only repeals UNMIK Regulation No. 1999/21.

196. The Court considers that the circumstances of this case differ from the circumstances of the challenged Law, as the challenged Law in Article 85 clearly repeals the Law on Civil Service and any other provision that is contrary to it by regulating the employment relationship for all public officials except those specified in Articles 3 and 4 of the challenged Law.
197. Therefore, the Court finds that the allegation of the Kosovo Police regarding the violation of the principle of legal certainty contrary to the Judgment of the Court in case KO97/12, is not grounded.
198. In conclusion, the allegations of constitutional violations regarding the KFA officials and Kosovo Police officers are not grounded.

Request for interim measure

199. On 8 November 2019, the Applicant submitted the Referral to the Court where, *inter alia*, requested the imposition of an interim measure in relation to the challenged Law.
200. On 19 November 2019, the Court, in its Decision on interim measure in case KO203/19, upheld the request for interim measure as grounded and suspended the application of the challenged Law until 28 February 2020. On 26 February 2020, the Court decided to approve the extension of the interim measure imposed by the Court on 19 November 2019, until 28 April 2020. While on 22 April 2020, the Court decided to extend the interim measure regarding case No. KO203/19 until 30 June 2020.
201. Given that the Court has already declared the Referral admissible and decided on its merits, it is no longer necessary to keep the interim measure in force.

Conclusions

202. In assessing the constitutionality of the Law no. 06/L-114 on Public Officials the Court, unanimously decides: (i) that the referral is admissible for review on merits; (ii) that Articles 2 (paragraph 3), 4 (paragraphs 3 and 4), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 7), 75, 80 (paragraph 4), 83 (paragraph 18) and 85 of the Law no. 06 / L-114 on Public Officials, are not in compliance with Articles 4, 7, 102, 108, 109, 110, 110, 115, 132, 136, 139, 140 and 141 of the Constitution; (iii) The challenged law does not apply in relation to: Kosovo Judicial Council; Kosovo Prosecutorial Council; the Constitutional Court; the Ombudsperson Institution; Auditor -General of Kosovo; Central Election Commission; the Central Bank of Kosovo and the

Independent Media Commission, while it violates their functional and organizational independence guaranteed by the Constitution; (iv) the challenged law does not infringe the provisions of the Constitution in relation to the Kosovo Forensic Agency and the Kosovo Police Civil Servants; (v) the Assembly of the Republic of Kosovo must take the necessary actions to supplement and amend the Law No. 06/L-114 on Public Officials in accordance with the findings of this Judgment, as regards the officials of the institutions indicated under point (iii); and (vi) in order to repeal the interim measure.

203. The constitutional matter involved in the said referral is the compliance with the Constitution of the challenged Law voted by the Assembly, respectively the assessment whether it is in accordance with the principle of “separation of powers”, “independence of independent constitutional institutions” and the principle of equality before the law, guaranteed by the above-mentioned articles of the Constitution. The Court examined the constitutionality of the challenged law only in relation to the above-mentioned state institutions as the Applicant did not challenge the constitutionality of the challenged law in its entirety and in relation to all public officials regulated by the challenged Law.
204. With regard to the institutions of the justice system set out in Chapter VII [Justice System] of the Constitution, the Court found that the challenged law gives the Government broad powers to manage and supervise civil servants of public administration, including civil servants of the institutions of the Judicial power, such as officials of the Kosovo Judicial Council and Kosovo Prosecutorial Council. Moreover, the challenged law gives the Government the power to issue a range of sub-legal to further regulate important matters concerning civil servants such as recruitment, appointment, promotion, working hours, and classification of positions, disciplinary violations, which in essence also affect the functioning, classification of positions but also the systematization and organizational structure of the relevant institutions of the Judiciary and Independent Institutions. The Assembly, although through the challenged Law has given the Government the power to manage the civil service system in all institutions, including the Justice System, it has determined that the Presidency of the Assembly is entitled to issue sub-legal acts regarding the Assembly servants.
205. By this legislative solution it is ensured that the Government, respectively the Executive authority will not have “interference” competencies in the management of the employees of the Assembly, respectively the Legislature; whereas for the Judicial power and Independent Institutions no guarantee is foreseen to prevent “interferences” in the management of their employees. The Court has ascertained that the Assembly has failed to determine the same exception also for the employees of the Justice System so as to ensure the separation of powers not only in terms of judges and prosecutors but also in relation to their support staff, just as it had done for the servants of the Assembly and the Government.
206. Therefore, the Court assessed that, by not including civil servants of the institutions set out in Chapter VII [Justice System] in the exceptions of Article 4 [Civil Servants with Special Status], paragraphs 3 and 4 of the challenged Law, the challenged law violates the principle of the separation of powers

guaranteed by Articles 4 and 7 of the Constitution as well as the independence of the institutions of the justice system set out in Chapter VII [Justice System] of the Constitution, namely the Kosovo Judicial Council and the Kosovo Prosecutorial Council. Consequently, the Court found that the challenged law is not in compliance with the Constitution in relation to these institutions and does not apply to these institutions while it violates their institutional and organizational independence guaranteed by the Constitution.

207. As regards the Applicant's allegations regarding the violation of the independence of independent constitutional institutions set out in Chapter VIII [Constitutional Court] and XII [Independent Institutions] of the Constitution, the Court refers to Independent Institutions expressly listed in Chapter XII [Independent Institutions], specifically in Articles 132-135 [Role and Competencies of the Ombudsperson], 136-138 [Auditor-General of Kosovo], 139 [Central Election Commission], 140 [Central Bank of Kosovo] and 141 [Independent Media Commission], as well as with respect to the Court as set out in Chapter VIII [Constitutional Court] of the Constitution. In this respect, the Independent Constitutional Institutions based on the Constitution are authorized to decide on their internal organization, including the regulation of certain specifics related to their personnel, in order to ensure their functional and organizational independence. Therefore, the Court emphasized that according to the Constitution and relevant laws, as well as the case law of this Court, elaborated in details in the Judgment, the personnel of independent constitutional institutions are subject to the rules of civil service as long as they do not violate their independence. The regulations which create direct "interference" in their functional and organizational independence are incompatible with the Constitution and the principles and values proclaimed therein.
208. In this respect, the Court assessed that the Assembly, authorizing the Government through the challenged Law to issue sub-legal acts which regulate the issue of employment, including the classification of positions, criteria for recruitment and other issues in the Independent Constitutional Institutions, without taking into account their independence – violates the essence of the independence of the Independent Constitutional Institutions guaranteed by Article 115 of Chapter VIII of the Constitution and Articles 132, 136, 139, 140, 141 of Chapter XII of the Constitution, as State public authorities separated from the Legislature, the Executive authority, and the regular Judiciary. Therefore, the Court finds that the above-mentioned violations make the disputed Law inconsistent with the Constitution in relation to the Judiciary and Independent Institutions and that it cannot be applied to them as long as it does not respect their institutional and organizational independence.
209. As to the other institutions in respect of which the Applicant lodged a claim with the Court, namely KFA officers and Kosovo Police Civil Servants, the Court stated that the Independent Agencies established under Article 142 of the Constitution do not have the same status with that of the Independent Constitutional Institutions explicitly mentioned in Chapter XII of the Constitution. This is because unlike other institutions referred to in Chapter XII of the Constitution, "Independent Agencies" provided by Article 142 of the Constitution *"are institutions established by the Assembly, based on the*

respective laws, which regulate their establishment, operation and competencies.” So, unlike the fact that the Assembly can create and shut down “*by law*” Independent Agencies; The Assembly can never “*shut down*” by law any of the five independent institutions mentioned above. This constitutes the main difference between the Independent Institutions referred to in Chapter XII of the Constitution.

210. In this respect, the Court found that both the employees of the Kosovo Forensic Agency and the civil servants of the Kosovo Police are not in an equivalent position with the KIA officials; police officers and the officers of the police inspectorate; and Kosovo customs officials, and consequently it is not necessary to treat them in the same way. This is due to the fact that the principle of unequal treatment is expressed only in cases where such treatment is done for the same or analogous situations. In this case, we cannot talk about an unequal treatment because the KFA officials and the civil servants of the Kosovo Police are not in the same or similar position or analogous to the officials in relation to whom they are (self) compared. Consequently, the Court considers that the challenged law, including KFA employees and Kosovo Police civil servants in the field of application of the challenged Law, does not violate the principle of equality guaranteed by Article 24 of the Constitution in relation to Article 14 of the ECHR.

211. In the end, the Court concluded that it is not necessary for the challenged Law to be repealed in its entirety. In the circumstances of the present case, the analysis led to a conclusion that the non-implementation of the Contested Law in relation to the institutions mentioned above, does not make the Law unenforceable in practice. Consequently, the Court found that the Assembly is obliged to take the necessary actions to supplement and amend the Law No. 06/L-114 on Public Officials in accordance with the findings of the present Judgment, in relation to the employees of the institutions specifically defined in the Enacting Clause of the Judgment. Until the supplementation and amendment of the Law No. 06/L-114 on Public Officials by the Assembly, the provisions of this Law shall apply only insofar as it does not infringe the functional and organizational independence of the Independent Institutions specifically referred to in the Enacting Clause of this Judgment. While in relation to all other institutions, Law No. 06/L-114 on Public Officials shall apply from the entry into force of the present Judgment.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.2 of the Constitution, Articles 20 and 27 of the Law and Rules 56, 57 and 59 of the Rules of Procedure, on 30 June 2020, unanimously

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that Articles 2 (paragraph 3), 4 (paragraphs 3 and 4), 5 (paragraph 1, subparagraph 1. 2 and paragraph 2), 10 (paragraphs 1 and 2), 11, 14 (paragraph 5), 15 (paragraphs 4 and 6), 17 (paragraph 7), 31 (paragraph 3), 32 (paragraph 5), 33 (paragraph 5), 34 (paragraph 16), 35 (paragraph 6), 37 (paragraph 5), 38 (paragraph 7), 39 (paragraph 11), 40 (paragraph 12), 41 (paragraph 6), 42 (paragraphs 10 and 11), 43 (paragraph 13), 44 (paragraph 4), 48 (paragraph 9), 49 (paragraph 6), 52 (paragraph 7), 54 (paragraph 6), 67 (paragraph 11), 68 (paragraph 8), 70 (paragraph 8), 71 (paragraph 7), 75, 80 (paragraph 4), 83 (paragraph 18) and 85 of the Law No. 06 / L-114 on Public Officials, are not in compliance with: Articles 4 [Form of Government and Separation of Power]; 7 [Values]; 102 [General Principles of the Judicial System]; 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]; 140 [Central Bank of Kosovo] and 141 [Independent Media Commission] of Chapter XII [Independent Institutions] of the Constitution;
- III. TO HOLD that the Law No. 06/L-114 on Public Officials does not apply in relation to: the Kosovo Judicial Council; Kosovo Prosecutorial Council; the Constitutional Court; Ombudsperson Institution; Auditor-General; Central Election Commission; the Central Bank of Kosovo and the Independent Media Commission, as long as it violates their functional and organizational independence guaranteed by the Constitution;
- IV. TO HOLD that the Law No.06/L-114 on Public Officials does not violate the provisions of the Constitution in relation to the Kosovo Forensic Agency and the civil servants of the Kosovo Police;
- V. TO HOLD that the Assembly of the Republic of Kosovo must take the necessary actions to supplement and amend the Law No. 06/L-114 on Public Officials in accordance with the findings of this Judgment, with regard to the employees of the institutions defined in point III of this enacting clause;
- VI. TO REQUEST from the Assembly of the Republic of Kosovo, in accordance with Rule 66 (4) of the Rules of Procedure, to notify the

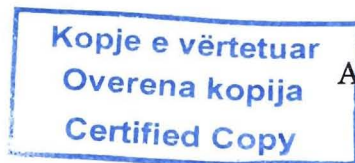
Constitutional Court of the Republic of Kosovo, regarding the measures taken to implement this Judgment;

- VII. TO REPEAL the decision on imposition of the interim measure of 19 November 2019 and the decisions extending the interim measure of 26 February 2020 and 22 April 2020;
- VIII. TO NOTIFY this Judgment to the Parties;
- IX. TO PUBLISH this Judgment in the Official Gazette in accordance with Article 20.4 of the Law; and
- X. This Judgment is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha



Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only