THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Newsletter

January — June 2021

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Constitution of Kosovo - Chapter VIII

Constitutional Court

Article 112

[General Principles]

1. The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.

2. The Constitutional Court is fully independent in the performance of its responsibilities.

Composition of the Constitutional Court

The Constitutional Court of the Republic of Kosovo is composed of 9 (nine) Judges.

The Judges of the Constitutional Court of the Republic of Kosovo are appointed in accordance with Article 114 [*Composition and Mandate of the Constitutional Court*] of the Constitution and Articles 6 and 7 of the Law on the Constitutional Court of the Republic of Kosovo.

Following the establishment of the Constitutional Court in 2009 and in accordance with the former Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution, 6 (six) out of 9 (nine) judges were appointed by the President of the Republic of Kosovo on the proposal of the Assembly.

Of the 6 (six) national judges 2 (two) judges served for a non-renewable term of 3 (three) years, 2 (two) judges served for a non-renewable term of 6 (six) years and 2 (two) judges served for a non-renewable term of 9 (nine) years.

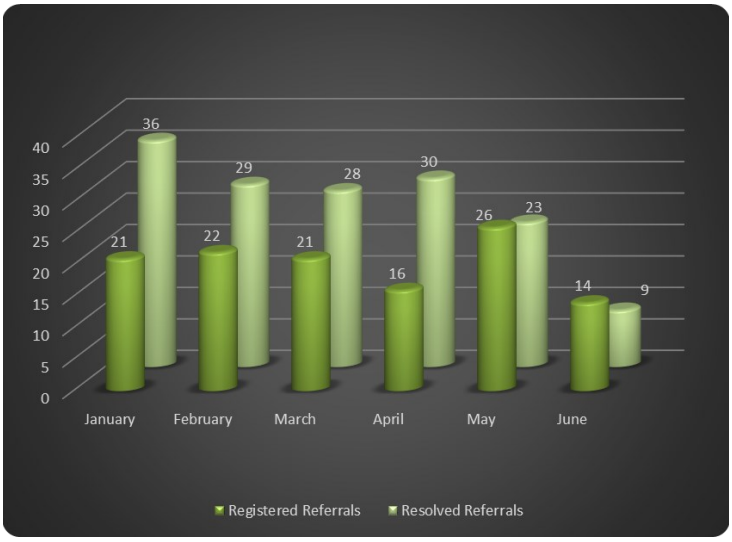
Pursuant to the abovementioned Article 152 [*Temporary Composition of the Constitutional Court*] of the Constitution 3 (three) international judges were appointed by the International Civilian Representative, upon consultation with the President of the European Court of Human Rights.

** Following the end of the term of the President of the Constitutional Court and the resignation of a judge in June, the Court is currently composed of 7 (seven) judges.*

Status of cases

During the six-month period: 1 January – 30 June 2021, the Court has received 120 Referrals and has processed a total of 306 Referrals/Cases. A total of 155 Referrals were decided or 50.65% of all available cases. During this period, 130 decisions were published on the Court's webpage.

The dynamics of received referrals by month (1 January - 30 June 2021)



The following are 20 judgments that the Court rendered during the six month period, 1 January - 30 June 2021:

- Judgment in Case KI 207/19, submitted by: The Social Democratic Initiative, New Kosovo Alliance and the Justice Party. The filed referral requested the constitutional review of Judgments [A.A.U.ZH. No. 20/2019] of 30 October 2019 and [A.A.U.ZH. No. 21/2019] of 5 November 2019 of the Supreme Court of the Republic of Kosovo.
- Judgment in Case KO 95/20, submitted by: Liburn Aliu and 16 other deputies of the Assembly of the Republic of Kosovo. The filed referral requested the constitutional review of Decision No. 07/V-014 of the Assembly of the Republic of Kosovo, of 3 June 2020, on the Election of the Government of the Republic of Kosovo.
- Judgment in Case KI 230/19, submitted by: Albert Rakipi. The filed referral requested the constitutional review of Judgment [Pml. No. 253/2019] of the Supreme Court of Kosovo, of 30 September 2019.
- Judgment in Case KI 160/19, KI 161/19, KI 162/19, KI 164/19, KI 165/19, KI 166/19, KI 167/19, KI 168/19, KI 169/19, KI 170/19, KI 171/19, KI 172/19, KI 173/19 and KI 178/19, submitted by: Muhamet Këndusi and others. The filed referral requested the constitutional review of Judgment [AC-I-13-0181-A0008] of the Appellate panel of the Special Chamber of the Supreme Court of Kosovo, of 29 August 2019.
- Judgment in Case KI 181/19, KI 182/19 and KI 183/19, submitted by: Fllanza Naka, Fatmire Lima and Leman Masar Zhubi. The filed referral requested the constitutional review of Judgment [AC-I-13-0181-A0008] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo, of 29 August 2019.
- Judgment in Case KI 24/20, submitted by: "Pamex" L.L.C. The filed referral requested the constitutional review of Judgment [Ae.nr.179/2017] of the Court of Appeals of Kosovo, of 11 November 2019.
- Judgment in Case KI 86/18, submitted by: Slavica Đordević. The filed referral requested the constitutional review of Decision [CA. No. 2093/2017] of the Court of Appeals, of 29 January 2018.
- Judgment in Case KI 45/20 and KI 46/20, submitted by: Tinka Kurti and Drita Millaku. The filed referral requested the constitutional review of the Decisions of the Supreme Court of Kosovo, [AA.nr. 4/2020] of 19 February 2020 and [AA.nr.3 / 2020] of 19 February 2020.
- Judgment in Case KI 220/19, KI 221/19, KI 223/19 dhe KI 234/19, submitted by: Sadete Koca Lila and others. The filed referral requested the constitutional review of Judgment [AC-I-13-0181-A0008] of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 29 August 2019.
- Judgment in Case KI 177/19, submitted by: NNT "Sokoli". The filed referral requested the constitutional review of Decision [Ac. No. 2386/2018] of the Court of Appeals of Kosovo, of 17 May 2019.
- Judgment in Case KI 195/20, submitted by: Aigars Kesengfelds, owner of the non-bank financial institution "Monego". The filed referral requested the constitutional review of Judgment [ARJ-UZVP. No.42/2020] of the Supreme Court of 25 June 2020.

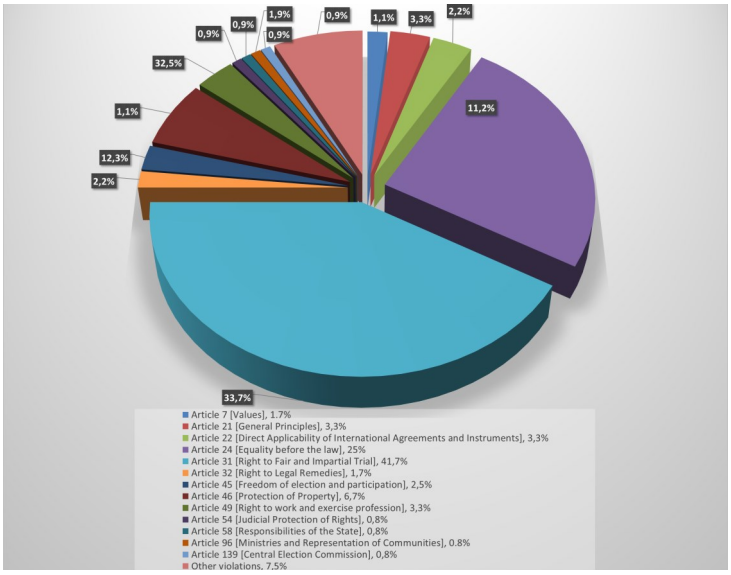
- Judgment in Case KI 20/21, submitted by: Violeta Todorović. The filed referral requested the constitutional review of the Decision [No. AC-I-16-0122] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters, of 1 October 2020.
- Judgment in Case KI 113/20, submitted by: IF Skadeforsikring from Norway. The filed referral requested the constitutional review of the Judgment [E. Rev. No. 62/2020] of the Supreme Court, of 6 April 2020.
- Judgment in Case KI 186/19, KI 187/19, KI 200/19 dhe KI 208/19, submitted by: Belkize Vula - Shala and others. The filed referral requested the constitutional review of the Judgment [AC-I-13-0181-A0008] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, of 29 August 2019.
- Judgment in Case KI 195/19, submitted by: Banka për Biznes. The filed referral requested the constitutional review of the Decision [Ae. No. 287/18] of the Court of Appeals of 27 May 2019 and Decision [I.EK. No. 330/2019] of the Basic Court in Prishtina, Department for Commercial Matters, of 1 August 2019.
- Judgment in Case KI 51/19, submitted by: Qamil Lupçi. The filed referral requested the constitutional review of non-execution of the Decision of the Independent Oversight Board for the Civil Service of Kosovo [A/02/68/2016], of 12 April 2016.
- Judgment in Case KI 188/20, submitted by: Insurance Company "SUVA Rechstabteillung". The filed referral requested the constitutional review of the Judgment [Ae.nr.63 / 2019] of the Court of Appeals of Kosovo, of 15 October 2020.
- Judgment in Case KI 111/19, submitted by: Insurance Company "SUVA Rechstabteillung". The filed referral requested the constitutional review of the Judgment [E. Rev. no.1/2019] of the Supreme Court, of 27 February 2019.
- Judgment in Case KI 235/19, submitted by: Insurance Company "Allianz Suisse Versicherungs-Gesellschaft AG". The filed referral requested the constitutional review of the Judgment [E. Rev. No. 32/2019] of the Supreme Court, of 31 July 2019.
- Judgment in Case KI 74/19, submitted by: Insurance Company "SUVA Rechstabteillung". The filed referral requested the constitutional review of the Judgment [E. Rev. nr. 39/2018] of the Supreme Court, of 8 January 2019.

Types of alleged violations

The types of alleged violations in the 89 referrals received during the six-month period, 1 January - 30 June 2021, are the following:

- Article 7 [Values], 2 cases or 1,7%;
- Article 21 [General Principles], 4 cases or 3,3%;
- Article 22 [Direct Applicability of International Agreements and Instruments], 4 cases or 3,3%;
- Article 24 [Equality Before the Law], 30 cases or 25%;
- Article 31 [Right to Fair and Impartial Trial], 50 cases or 41,7 %;
- Article 32 [Right to Legal Remedies], 2 cases or 1,7%;
- Article 45 [Freedom of election and participation], 3 cases or 2,5%;
- Article 46 [Protection of Property], 8 cases or 6,7%;
- Article 49 [Right to work and exercise profession], 4 cases or 3,3%;
- Article 54 [Judicial Protection of Rights], 1 case or 0,8%;
- Article 58 [Responsibilities of the State], 1 case or 0,8%;
- Article 96 [Ministries and Representation of Communities], 1 case or 0,8%;
- Article 139 [Central Election Commission], 1 case or 0,8%;

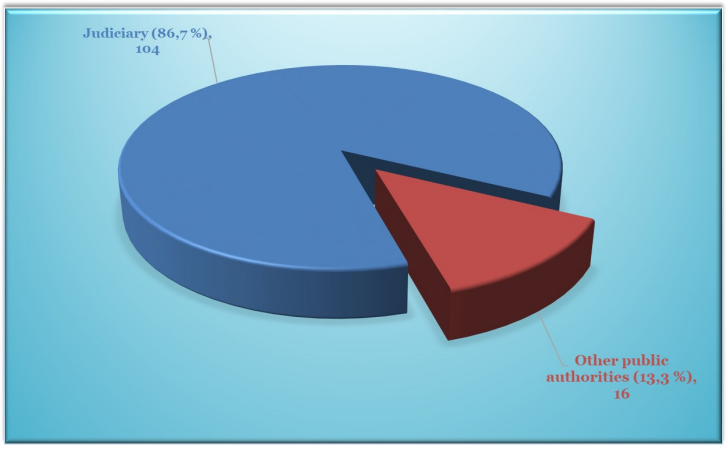
Alleged violations by type
(1 January - 30 June 2021)



Alleged violators of rights

- 104 Referrals or 86,7 % of Referrals refers to violations allegedly committed by court's decisions;
- 16 Referrals or 13,3 % of Referrals refers to decisions of other public authorities;

Alleged violators of rights
(1 January - 30 June 2021)



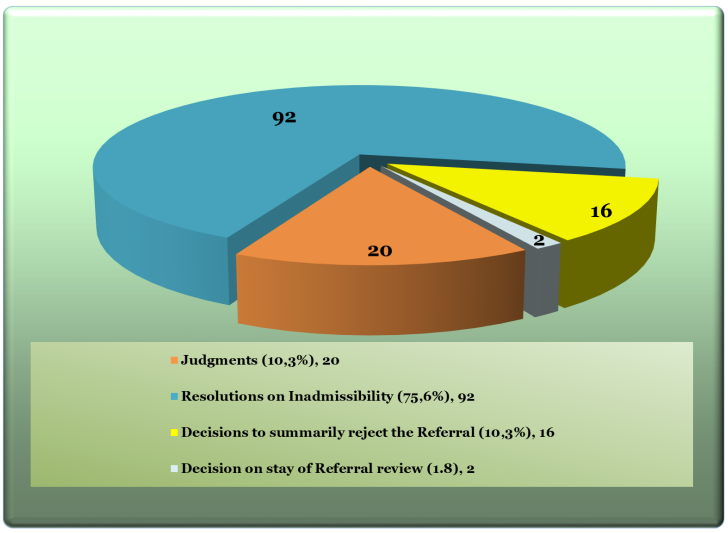
Sessions and Review Panels

During the six-month period: 1 January - 30 June 2021, the Constitutional Court held 16 plenary sessions and 138 Review Panels, in which the cases were resolved by decisions, resolutions and judgments. During this period, the Constitutional Court has published 130 decisions.

The structure of the published decisions is the following:

- 20 Judgments (10,3%);
- 92 Resolutions on Inadmissibility (75,6%);
- 16 Decisions to summarily reject the Referral (10,3%);
- 2 Decisions on stay of Referral review (1,5%);

Structure of decisions
(1 January - 30 June 2021)

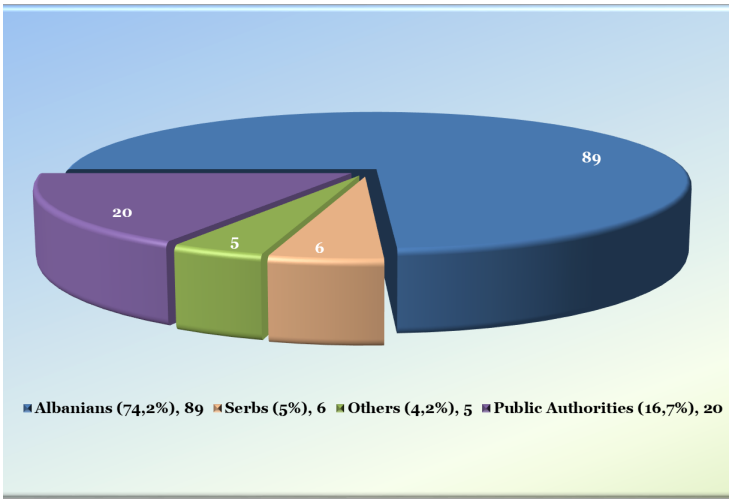


Access to the Court

The access of individuals to the Court is the following:

- 89 Referrals were filed by Albanians, or 74,2%;
- 6 Referrals were filed by Serbs, or 5%;
- 5 Referrals were filed by other communities, or 4,2%;
- 20 Referrals were filed by other public authorities, or 16,7%;

Ethnic structure of the Applicants
(1 January - 30 June 2021)



4 February 2021

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the Ambassador of the United Kingdom to Kosovo, Mr. Nicholas Abbott.

During the conversation, President Rama-Hajrizi informed Ambassador Abbott about the work of the Court so far, the challenges faced in the work of this institution in the pandemic situation, as well as the commitment of judges and other officials to review the referrals submitted within the optimal deadlines.

President Rama-Hajrizi expressed her gratitude for the continuous support that the Government of the United Kingdom has provided over the years to the Constitutional Court, but also to other state institutions of the Republic of Kosovo, with the primary focus on respect for human rights, strengthening of rule of law and economic development in the country.

Ambassador Abbott confirmed the readiness of the Government of the United Kingdom to further strengthen the partnership between the two countries in the areas of mutual interest.

29 April 2021

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in an introduction meeting the Ambassador of the Kingdom of the Netherlands in Kosovo, Ms. Carin Lobbezoo.

The Court's work in pandemic conditions, challenges in decision-making and commitment to resolving the court cases, were just some of the topics discussed at the joint meeting.

Following the conversation both sides exchanged their views on the latest developments in the field of the constitutional justice as well as on the ongoing efforts being made by the institutions of the country to consolidate the rule of law, strengthen the independence of the judiciary and increase the transparency in the justice system. President Rama - Hajrizi expressed her gratitude for the assistance provided over the years by the Dutch government in financing various projects for building the professional capacities of the Constitutional Court. Ambassador Lobbezoo pledged that the Netherlands will continue to support Kosovo in the future and stressed the importance of deepening cooperation between the two countries, especially in the field of law and order.

25 May 2021

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Arta Rama-Hajrizi, received in a meeting the Head of the EU Office in Kosovo, Mr. Thomas Szunyog, following the farewell meetings with local and international institutional leaders on the eve of the end of her mandate as Judge and President of the Court.

During the conversation, President Rama-Hajrizi notified Mr. Szunyog about the work of the Court so far, the challenges faced by the judges in reviewing cases in a pandemic situation and remote decision-making, as well as with the ongoing efforts that have been made to increase the quality of decisions in line with international constitutional justice practices. Following the meeting, President Rama-Hajrizi expressed her gratitude for the

assistance provided over the years by the European institutions in building the professional capacity of the Constitutional Court and expressed confidence that this assistance will not be lacking in the future.

After thanking her for the hospitality, Mr. Szunyog congratulated President Rama-Hajrizi on the achievements of the Constitutional Court of Kosovo so far, on the consolidation of its case law and on the advancement of the constitutional judiciary in the country in line with the European standards.

Mr. Szunyog confirmed the readiness of the EU Office to continue its support for the Constitutional Court of Kosovo, as well as for other institutions in the country, in the service of strengthening the rule of law.

28 May 2021

A delegation of judges of the Constitutional Court of the Republic of Albania, led by the President of this Court, Mrs. Vitore Tusha, paid an official visit to the Constitutional Court of the Republic of Kosovo.

The delegation from Albania was received in a meeting by the President of the Constitutional Court of Kosovo, Mrs. Arta Rama – Hajrizi and other judges of the Court, where the central topic of discussion was the functioning of both courts in pandemic situation, practice and working methods in processing cases, distance decision making, and consolidating the the jurisprudence of both courts in line with the international standards of constitutional justice.

Following the meeting, the judges of both parties discussed the experience and challenges so far in dealing with various constitutional issues, incidental and abstract control, as well as the level of implementation of judgments at the national level. President Rama-Hajrizi and President Tusha at the end expressed their commitment and readiness to intensify the relations of cooperation between the two constitutional courts through the organization of regular annual meetings and the organization of joint activities in order to exchange experience.

25 June 2021

In an official ceremony held at the Constitutional Court of the Republic of Kosovo, today took place the solemn handover of the Office of the President of the Constitutional Court of Kosovo between the outgoing President, Mrs. Arta Rama-Hajrizi, and the incoming President, Mrs. Gresa Caka-Nimani.

In her farewell speech, Mrs. Rama spoke about the challenges faced and the achievements of the Constitutional Court during the two terms as head of this institution, on which occasion in addition to the Judges, she thanked the entire staff of the Court for their cooperation and tireless work, stating that “only through joint dedication and work did the Court succeed in overcoming all challenges, starting with the transition from a mixed international and national composition, significant improvement of the quality of written decisions and reasoning, increase of the integrity and respect of the public towards the Court and, most importantly, the consolidation of the original role of the Court, which is the protection of the spirit of the Constitution, the constitutional system and the rights and freedoms of every citizen of the Republic of Kosovo”.

She further recalled that, “through the decisions we have taken, we have been considered as one of the best courts in the region, and as a result, we have managed to strengthen cooperation with other courts,

partnership with the Venice Commission, cooperation with the Council of Europe and recently also the European Court of Human Rights as well".

Finally, Mrs. Rama-Hajrizi expressed her conviction that under the leadership of President Caka-Nimani, the Constitutional Court of Kosovo will mark new successes in the future and will further consolidate its case-law in line with the European standards of constitutional justice.

After the ceremonial acceptance of the office, President Caka-Nimani underlined the importance of the independence of the Constitutional Court and its determining role in maintaining the constitutional order and constitutional values, balancing and separation of powers, advancing the rule of law and democratic order, and protection of the rights and fundamental freedoms of all citizens of the Republic of Kosovo. She also emphasized her honor and responsibility to contribute, in cooperation with all the Judges of the Court and the support staff, to the further consolidation and advancement of constitutional justice in the Republic of Kosovo. Speaking on behalf of all Judges and officials of the Court, President Caka-Nimani thanked Mrs. Rama-Hajrizi for the dedication and tireless work during her term as a Judge and President of the Constitutional Court.

30 June 2021

The President of the Constitutional Court of the Republic of Kosovo, Mrs. Gresa Caka – Nimani, after taking over the duty of the President of the Court, met

with the President of the Republic of Kosovo, Mrs. Vjosa Osmani – Sadriu. The role and function of the Constitutional Court as the final authority in the Republic of Kosovo for the interpretation of the Constitution and its importance in protecting the constitutional order and values, strengthening the rule of law and deepening inter-institutional cooperation to ensure respect for constitutionality throughout the territory of the Republic of Kosovo, were some of the topics discussed at the joint meeting held at the Office of the President.

Following the conversation, both sides exchanged views on the need to preserve and strengthen the independence of the judiciary, as well as the advancement of mechanisms for the effective protection of fundamental rights and freedoms for all citizens of Kosovo in accordance with international standards.

Judgment

KO 95/20

Applicant

Liburn Aliu and 16 other deputies of the Assembly of the Republic of Kosovo

Request for constitutional review of Decision No. 07/V-014 of the Assembly of the Republic of Kosovo, of 3 June 2020, on the Election of the Government of the Republic of Kosovo

The Referral was based on paragraph 5 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 42 [Accuracy of the Referral] and 43 [Deadline] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, as well as Rule 74 [Referral pursuant to Article 113.5 of the Constitution and Articles 42 and 43 of the Law] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo. The subject matter of the Referral was the constitutional review of Decision No. 07/V-014 of the Assembly of the Republic of Kosovo, of 3 June 2020, on the Election of the Government of the Republic of Kosovo, which according to the Applicant's allegation, was not in compliance with paragraph 3 of Article 95 [Election of the Government], in conjunction with subparagraph 6 of paragraph 3 of Article 70 [Mandate of the Deputies] of the Constitution.

Conclusions

On 28 March and 20 August 2019, Etem Arifi was sentenced by a final Judgment of the Court of Appeals to one year and three months of imprisonment. On 6 October 2019, the early elections were held for the Assembly of the Republic of Kosovo. Etem Arifi ran and was elected a deputy of the Assembly of the Republic of Kosovo. On 27 November 2019, the CEC certified the election results and Etem Arifi was also on the list of certified deputies. On 26 December 2019, the constitutive meeting of the Assembly was held where the mandate of Etem Arifi was confirmed. Since then, Etem Arifi continued to exercise the function of a deputy, even though he was sentenced by a final court sentence, for a criminal offense, to one year and three months of imprisonment.

In this constitutional referral, 17 deputies of the Assembly of the Republic of Kosovo challenged the constitutionality of Decision No. 07/V-014 of the Assembly of the Republic of Kosovo, on the election of the Government, issued on 3 June 2020. The Applicants allege that the Decision in question is contrary to the Constitution, namely paragraph 3 of Article 95 [Election of the Government], in conjunction with sub-paragraph 6 of paragraph 3 of Article 70 [Mandate of the Deputies] of the Constitution. This is because, according to the Applicants, Etem Arifi also participated in the voting procedure of the challenged Decision, whose vote was invalid due to his sentence of one year and three months imprisonment, by a final court decision.

The Court noted that the basic question contained in this Referral is whether Etem Arifi had a valid mandate at the time the challenged Decision was adopted in the Assembly on the election of the Government (in the voting of which he had participated).

In this respect, the Court took into account: the responses submitted by the member states of the Venice Commission Forum, the views of the Venice Commission; as well as the previous practice of the Assembly of the Republic of Kosovo, for similar situations.

With regard to the constitutional and legal provisions in the Republic of Kosovo, which provide answers to the issues raised by this Referral, the Court found that:

Article 71.1 of the Constitution, in conjunction with Article 29.1 (q) of the Law on General Elections, stipulates that no person can be a candidate for deputy for elections to the Assembly, if he was convicted of a criminal offense by a final court decision in the past three years;

Article 70.3 (6) of the Constitution stipulates that the mandate of a deputy ends or becomes invalid if he/she is sentenced by a final court decision to one or more years of imprisonment. This constitutional definition is reinforced by Article 8.1.6 of the Law on the Rights and Responsibilities of the Deputy, Article 112.1.a of the Law on General Elections, as well as Article 25.1.d of the Rules of Procedure of the Assembly;

The Court considered that, as regards the right to run in the parliamentary elections, Articles 45, 55 and 71.1 of the Constitution should be read in conjunction. Thus, Article 45 of the Constitution generally deals

with electoral rights, stipulating in a general way that they can be limited by court decisions, while Article 55 establishes the cumulative conditions under which the human rights guaranteed by the Constitution may be limited. While Article 71 of the Constitution – which deals exclusively with the "qualifications" to run for a deputy of the Assembly – stipulates that every citizen of the Republic of Kosovo who is eighteen (18) years or older and meets the legal criteria is eligible to become a candidate for the deputy. These "legal criteria", referred to in Article 71 of the Constitution, are defined by the Law on General Elections, which in Article 29.1 (q) clearly and explicitly states that no person can be a candidate for deputy for elections to the Assembly, if he/she has been convicted for a criminal offense by a final court decision in the past three years. This constitutional and legal definition is in line with the practice followed by many democratic countries, as noted by the relevant documents of the Venice Commission, as well as the responses of the member states of the Venice Commission Forum.

The Court emphasized that the abovementioned constitutional and legal norms, which have to do with the impossibility (ineligibility) to run for deputy in the general elections, as well as with the termination or invalidity of the mandate of the deputy, as a consequence of the sentence with imprisonment for the commission of criminal offenses, should not be seen as an end in itself. In essence, these norms do not have the primary purpose of punishing certain individuals by preventing them from exercising the function of deputy, but have as their basic purpose the protection of constitutional integrity and civic credibility in the legislature, as a pillar of parliamentary democracy.

The Court considered that the civic credibility in the Assembly of the Republic of Kosovo is violated if – despite the prohibitions imposed by Article 71 of the Constitution in conjunction with Article 29.1 (q) of the Law on General Elections – it is allowed that the mandate of a deputy is won and exercised by a person convicted of a criminal offense by a final court decision valid in the Republic of Kosovo. In this respect, the Court has drawn attention to the Report of the Venice Commission, which states that "legality is the first element of the Rule of Law and implies that the law must be followed, by individuals and by the authorities. The exercise of political power by people who seriously infringed the law puts at risk the implementation of this principle [rule of law], which is on its turn a prerequisite of democracy, and may therefore endanger the democratic nature of the state". (*See Report of the Venice Commission on the Exclusion of Offenders from Parliament, CDL-AD (2015) 036, of 23 November 2018, paragraph 168*).

In this spirit, the Court noted that it is a clear constitutional requirement embodied in Article 71.1 in conjunction with Article 70.3 (6) of the Constitution, that it is incompatible with the Constitution for a person to win and hold the mandate of deputy if convicted for a criminal offense, by a final court decision, as defined by these provisions. This requirement is reinforced by Articles 29 and 112 of the Law on General Elections, as well as Article 8.1.6 of the Law on the Rights and Responsibilities of the Deputy.

The Court further emphasized that the fact that Article 70.3 (6) of the Constitution, Article 8.1.6 of the Law on the Rights and Responsibilities of the Deputy and Article 112.1 (a) of the Law on General Elections refer to the conviction of a deputy (i.e. the conviction after he has won the mandate), is a reflection of the presumption that Article 29.1 (q) of the Law on General Elections, which is based on Article 71.1 of the Constitution, does not allow a person sentenced to imprisonment during the last three years before elections to run for deputy and win the mandate of deputy.

Therefore, based on the clear language of Article 71.1 of the Constitution in conjunction with Article 29.1 (q) of the Law on General Elections, as well as sub-paragraph 6 of paragraph 3 of Article 70 of the Constitution, the Court considered that no person can win and hold a valid mandate of a deputy if he/she is convicted of a criminal offense as provided by these provisions, by a final court decision, if against him/her there is a sentencing decision that is in force in the Republic of Kosovo.

The Court noted the explanation of the CEC that according to Judgment AA.-Uzh. No. 16/2017, of 19 September 2017 of the Supreme Court, "no one can be denied the right to run in the elections, if such a right has not been taken away by a court decision, which means that the candidate must be found guilty by a final decision, and the court, has imposed the accessory punishment "deprivation of the right to be elected". However, the Court considered that the Law on General Elections does not require that persons convicted of criminal offenses necessarily be sentenced to an accessory punishment "deprivation of the right to be elected", so that they are not allowed to run in parliamentary elections. This is because, according to Article 29.1 of the Law on General Elections, among others, the following two grounds are provided: (i) deprivation of the right to be a candidate in elections by decision of the ECAP and the court; and (ii) the

impossibility of being a candidate due to being found guilty of a criminal offense by a final court decision in the past three years. These are different/separate grounds that cause inability/ineligibility to be a candidate. The Court was of the opinion that this interpretation is also consistent with the related reading of Articles 45, 55 and 71 of the Constitution.

The Court considered it important to note that the candidacy of Etem Arifi in the parliamentary elections, his election as a deputy and the exercise of his mandate as a deputy – all this after he was sentenced to one year and three months imprisonment by a final court decision – reveals the existence of normative ambiguity and serious shortcomings in the institutional mechanisms of the Republic of Kosovo, which are competent to guarantee the legality and constitutional integrity of electoral processes and parliamentary activity. This ambiguity is also evident in the answers given by the relevant bodies of the Assembly and the CEC.

In this regard, the Court emphasized the need for the Assembly of the Republic of Kosovo with its committees, in cooperation with relevant institutions, including the KJC and the CEC, to clarify and consolidate inter-institutional cooperation and normative aspects that relate to the candidacy in parliamentary elections and the exercise of the mandate of deputy, by persons convicted of criminal offenses. This is necessary to avoid paradoxical situations, from the constitutional point of view, where a person, after being convicted by a final court decision as provided by the relevant articles of the Constitution and laws, is allowed to run in parliamentary elections, to be elected a deputy, to have his mandate verified, as well as to continue to exercise the function of deputy in the Assembly of the Republic of Kosovo, even while serving an imprisonment sentence. Meanwhile, the Constitution and the relevant laws set clear normative barriers to prevent persons sentenced to imprisonment for committing criminal offenses, to be elected deputies and to exercise the mandate of deputies.

With regard to the election of the Government, the Court noted that in order for the Government to be elected, in accordance with paragraph 3 of Article 95 of the Constitution, at least sixty-one (61) deputies of the Assembly must vote “for” the Government. In this case, according to official documents of the Assembly, the Court noted that on 3 June 2020, sixty one (61) deputies voted “for” the Government, namely for the challenged Decision. Etem Arifi also voted for the adoption of the challenged Decision. As the Court found that the mandate of Etem Arifi was invalid prior to the vote of the challenged Decision, that Decision had received only sixty (60) valid votes. Consequently, the procedure for electing the Government was not conducted in accordance with paragraph 3 of Article 95 [Election of the Government] of the Constitution, because the Government did not receive a majority of votes of all deputies of the Assembly of the Republic of Kosovo. The Court noted that Article 95 of the Constitution, as interpreted through its case law, provides for two attempts to elect the Government by the Assembly. In both cases, the Government to be considered elected must have a majority of votes of all deputies of the Assembly, namely sixty-one (61) votes. If the Government is not elected even after the second attempt, Article 95.4 of the Constitution provides for the announcement of elections by the President of the Republic of Kosovo.

The Court recalled that the Government voted by Decision No. 07/V-014 of the Assembly of 3 June 2020 is based on the Decree No. 24/2020 of the President, of 30 April 2020, issued based on paragraph 4 of Article 95 of the Constitution, namely the second attempt to elect the Government. In this regard, the Court recalls the interpretation given in Judgment KO72/20 where it stated that “the elections will be inevitable in case of failure of the election of the Government in the second attempt, [...] in which case, based on paragraph 4 of Article 95 of the Constitution, the President announces the elections, which must be held no later than forty (40) days from the day of their announcement”. In light of this, the Court noted that in the present case paragraph 4 of Article 95 of the Constitution is set in motion, according to which the President of the Republic of Kosovo announces the elections, which must be held no later than forty (40) days from the day of their announcement.

The Court considered it important to emphasize that it is aware that Etem Arifi has participated in other voting procedures in the Assembly, even though he did not have a valid mandate. However, based on the principle non ultra petita (“not beyond the request”), the Court is limited to the constitutional review of the challenged act by the referral submitted before it, namely Decision No. 07/V-014, of the Assembly of the Republic of Kosovo, regarding the Election of the Government of the Republic of Kosovo. The Court considered it necessary to clarify also that, based on the principle of legal certainty, as well as the fact that this Judgment cannot have retroactive effect, the decisions of the current Government remain in force,

and the Government remains in office until the election of the new Government.

Judgment

KI 45/20 and KI 46/20

Applicant

Tinka Kurti and Drita Millaku

Request for constitutional review of Law the Decisions of the Supreme Court of Kosovo [AA.no. 4/2020] of 19 February 2020 and [AA.no.3/2020] of 19 February 2020

The subject matter of the Referral was the constitutional review of the Decisions of the Supreme Court of Kosovo [AA.no. 4/2020] of 19 February 2020 and [AA.no.3/2020] of 19 February 2020. The Applicants alleged that the challenged decisions violated their fundamental rights and freedoms guaranteed by Articles: 7 [Values], 24 [Equality Before the Law], 45 [Freedom of Election and Participation], 53 [Interpretation of Human Rights Provisions] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo, in conjunction with Article 14 (Prohibition of discrimination) and Article 3 (Right to free elections) of the Protocol no. 1 of the European Convention on Human Rights.

The Referral was based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court, as well as Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court.

Conclusions

The joined cases KI45/20 and KI46/20 are two cases concerning the disputes over the elections of 6 October 2019. The Referrals were submitted by two candidates (Tinka Kurti and Drita Millaku) for deputy coming from the Political Entity of VETËVENDOSJE (SELF-DETERMINATION) Movement! (hereinafter: the LVV) - who alleged that the CEC, ECAP and the Supreme Court had applied the manner of replacement of deputies defined by Article 112.2 a) of the Law on General Elections in an unconstitutional manner.

The Court recalled that some deputies of the Political Entity LVV, who were elected to Government/ municipal positions, vacated some positions of deputies which had to be replaced by legitimate candidates in the queue for deputies. Thus, from the deputies who vacated their seats, the following replacements were made: the candidate Enver Haliti with 7,777 votes replaced the deputy Albin Kurti; the candidate Alban Hyseni with 7,767 votes replaced the deputy Glauk Konjufca; the candidate Arta Bajralia with 7,674 votes replaced the deputy Albulena Haxhiu; the candidate Fitim Haziri with 7,542 votes replaced the deputy Arben Vitia; the candidate Eman Rrahmani with 7,044 votes replaced the deputy Haki Abazi. Later, the candidate Taulant Kryeziu with 6968 votes replaced the deputy Shpejtim Bulliqi.

The necessity of replacing the deputies automatically activated the legal provisions defined by article 112.2 a) of the Law on General Elections - an article that specifies the manner of replacing the deputies, with the following text: “112.2 A member of the Kosovo Assembly the term of which ceases pursuant to article 112.1 shall be replaced as follows: a) by the next eligible candidate of the same gender who won the greatest number of votes of the reordered candidate list of the Political Entity on whose behalf the member contested the last election; [...]”

The Court noted that, according to the interpretation of this article made by the CEC, ECAP, and the Supreme Court, all replacements were made based on the criterion of “gender” and irrespective of the result achieved by the candidates for deputy after the achievement of the legally required quota of 30% of underrepresented gender or minority gender. This manner of replacement provided by law, according to the Supreme Court, could not be avoided by either the CEC, the ECAP or the Supreme Court because there is an assumption that the laws are compatible with the Constitution and that they should be applied as they are “until the Court Constitutional would find that a law or any of its legal provisions is contrary to the Constitution”. Having disagreed with this interpretation, the Applicants submitted their Referrals to the Constitutional Court, under the key allegation that the CEC, ECAP and the Supreme Court

have applied the manner of replacing the deputies provided by Article 112.2 a) of the Law on General Elections, in an unconstitutional manner. In essence, they alleged that despite reaching and exceeding of the quota of 30% by women candidates for deputy from LVV - replacements for deputies were not made based on the election result but based on gender. According to them, this has caused inequality in treatment and violation of their right to be elected.

The Court recalled that on the basis of the replacement manner by the CEC, ECAP and the Supreme Court, men deputies were replaced by men candidates for deputy and women deputies were replaced by women candidates for deputy - despite the fact that the Applicants received more votes that some of the male candidates who managed to get elected to the Assembly. The first Applicant, Tinka Kurti had collected 7655 votes while the second Applicant, Drita Millaku had collected 7063 votes.

The Court clarified that it is not assessing in abstracto whether Article 112.2.a of the Law on General Elections is or is not incompatible with the Constitution. This is due to the fact that, neither before this Court nor before the preliminary public institutions that have addressed this issue, the Applicants have never claimed that the article in question is unconstitutional. On the contrary, the Applicants have only alleged that this article was applied in unconstitutional manner by the CEC, ECAP and the Supreme Court. Taking into consideration the above facts and the allegations raised in this case, the Court in this individual constitutional complaint treated the fact: Whether the Article 112.2.a of the Law on General Elections has been implemented by the CEC, the ECAP and the Supreme Court, in accordance with the guarantees, values and principles proclaimed by Articles 24 and 45 of the Constitution in conjunction with Article 14 of the ECHR and Article 3 of Protocol no. 1 of the ECHR?

The Constitutional Court found that the interpretation of this Article by the CEC, the ECAP and the Supreme Court is not an accurate and constitutional interpretation for some of the following reasons - which are extensively elaborated in the Judgment.

First, the Court found that the CEC, the ECAP, and the Supreme Court have interpreted Article 112.2 a) of the Law on General Elections in a rigid and textual manner and separated from all other legal norms set forth by the Law on General Elections and the Law on Gender Equality as well as the principles, values, and the spirit of the letter of the Constitution. This type of interpretation has abstracted the context, purpose, and reason for setting the quota of 30% as a special measure to help achieve equal representation between the two genders in the Assembly of the Republic. Secondly, the Court noted that the ratio legis of the Law on General Elections in the context of gender representation in the Assembly consists in providing - in any case - representation of at least 30% of the underrepresented or minority gender (whatever it may be). However, obviously, 30% represents only the minimum limit of gender representation of the minority gender, but not the highest limit of representation of one gender. Consequently, the Court considered that, once a minimum representation of 30% is ensured for the underrepresented gender, all future replacements must be made on the basis of the ranking of candidates for deputy, which is determined by the election result. On this basis, the gender quota is applied only until the purpose for which it has been set is achieved, namely to ensure the mandatory minimum representation of the minority gender in the quota of 30%, although the constitutional ideal and spirit of the Constitution reflected in Article 7 aim to achieve factual equality of 50% to 50% between the two genders.

Thirdly, the Court pointed out that the interpretation of Article 112.2 a) of the Law on General Elections pursuant to the way of interpretation by the CEC, ECAP and the Supreme Court would make sense only in the situation when non-replacements gender-for-gender (woman-for-woman or man-for-man) could risk non-compliance with the legal quota of 30% of representation for the underrepresented gender. However, the interpretation of this article in the way as it was done, knowing that in the elections of 6 October 2019, women candidates of the political entity LVV had managed to get meritorious votes beyond the legal quota percentage of 30%, is an erroneous interpretation of this norm and inconsistent with the very purpose of the legal quotas stipulated in Article 27 of the Law on General Elections.

Fourthly, the Court emphasized that the purpose of setting quotas relates to the need to advance gender equality within society until when the factual equality is reached and quotas become unnecessary. Article 112.2 a) of the Law on General Elections exists for a single reason: to introduce the manner of the replacement of deputies – by always preserving the purpose of mandatory legal representation of at least 30% of the minority (underrepresented) gender. If, after meeting the 30% threshold, minority candidates manage to become members of parliament on their own, by achieving better results than members of the

majority, they should not be denied the right to be elected deputy of the Assembly.

The Court found that the Applicant Tinka Kurti was discriminated against based on gender in relation to her right to be elected, at the moment when despite the minimum quota of 30% being reached within the political entity LVV through the election result, at the moment when the opportunity for the replacement of deputies emerged, even though she had more votes than the men candidates for deputies Fitim Haziri and Eman Rrahmani, she was not enabled to become a deputy. Further, the Court also found that the Applicant Drita Millaku was discriminated against based on gender in relation to her right to be elected, at the moment when despite the minimum quota of 30% being reached within the political entity LVV through the election result, at the moment when was created the possibility for future replacements of deputies, namely when deputy Shpejtim Bulliqi resigned, in his stead, based on the determination for replacement within the same gender, on 18 December 2020, the mandate of the deputy was taken by the candidate Taulant Kryeziu with 6968 votes.

Consequently, the Court found that: Decision [AA. no. 4/2020] of the Supreme Court, of 19 February 2020; Decision [AA. no. 3/2020] of the Supreme Court, of 19 February 2020; ECAP Decision, [Anr.35/2020] of 13 February 2020; ECAP Decision, [Anr.36/2020] of 13 February 2020; as well as point 5 of the CEC Decision, [no. 102/A-2020] of 7 February 2020, are in contradiction with Article 24 [Equality before the Law] and 45 [Freedom of Election and Participation] of the Constitution in conjunction with Article 14 (Prohibition of Discrimination) and Article 3 (Right to free elections) of Protocol no. 1 of the ECHR.

The effect of the Judgment

The Court noted that, for objective reasons and in the interest of legal certainty, this Judgment cannot produce retroactive legal effect in respect to the mandate of the deputies. In this regard, the Court clarified that this Judgment does not have a retroactive effect and based on the principle of legal certainty it does not affect rights acquired by third parties based on the decisions annulled by this Judgment. However, this does not mean that this Judgment is merely declaratory and without any effect. The first effect of this Judgment is the repealing of the challenged decisions of the Supreme Court, the ECAP and the CEC, as being incompatible with the Constitution and the ECHR in terms of interpretation of Article 112.2 a) of the Law on General Elections. Through the repealing of these decisions, this Judgment clarifies for the future that, based on an accurate and contextual reading of Article 112.2.a of the Law on General Elections, the replacement of candidates for deputies should be done in such a way that: firstly, to ensure a minimum representation of 30% of the underrepresented gender (minority gender), which cannot be put into question at any time; and secondly, in cases where the gender quota of 30% has been met based on the election result (as in the concrete case), then the replacement of candidates for deputy should be done based on the election result, without being limited in terms of replacement based on the same gender, as long as the minimum representation of the underrepresented gender is not endangered.

The second effect that this Judgment produces concerns the right that emerges for the Applicants or other parties that may be affected by this Judgment, from the moment of its entry into force. There emerged the right of these parties have to use other legal remedies available for the further realization of their rights in accordance with the findings of this Judgment and the case law of the ECHR cited in the this Judgment.

ECtHR – Important decisions (1 January – 30 June 2021)

* Damages awarded against a journalist for posting several articles on his blog criticising another journalist: breach of freedom of expression (12/01/2021)

In its Chamber judgment in the case of **Gheorghe-Florin Popescu v. Romania** (*application no. 79671/13*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.
The case concerned the domestic authorities' decision to order the applicant, a journalist, to pay damages for having published five blog posts criticising L.B., another journalist who was the editor-in chief of a newspaper in the Desteptarea media group and producer for a local television channel belonging to the same group. The Court found, in particular, that the domestic courts had failed to give relevant and sufficient reasons to justify the interference with the applicant's right to freedom of expression. The standards applied by the domestic courts had not been compatible with the principles embodied in Article 10 of the Convention, including, in particular, contribution to a public-interest debate, whether the person concerned was well-known and his or her prior conduct, the content, form and consequences of the publication, and the severity of the sanction imposed. Nor had they based their decisions on an acceptable assessment of the relevant facts. It followed that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society" and that there had been a violation of Article 10 of the Convention.

* An order requiring the Mediapart site to remove transcripts and tapes of conversations that had been illegally recorded at Ms Bettencourt's home did not breach the Convention (14/01/2021)

In its Chamber judgment in the case of **Société Editrice de Mediapart and Others v. France** (*applications no. 281/15 and no. 34445/15*) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.
The two cases concerned an order issued against Mediapart, a news website, its publishing editor and a journalist to remove from the news company's website audio extracts and transcripts of illegal recordings made at the home of Ms Bettencourt, principal shareholder of the L'Oréal group. The Court reiterated that Article 10 of the Convention did not guarantee a wholly unrestricted freedom of expression, even with respect to media coverage of matters of serious public concern. Exercise of this freedom carried with it "duties and responsibilities", which also applied to the press. The applicants had been aware that disclosure of recordings made without Ms Bettencourt's knowledge was an offence, which ought to have led them to show prudence and precaution.
The Court reiterated the principle that journalists could not claim an exclusive immunity from criminal liability for the sole reason that, unlike other individuals exercising the right to freedom of expression, the offence in question had been committed during the performance of their journalistic functions. In certain circumstances, even where a person was known to the general public, he or she could rely on a "legitimate expectation" of protection of and respect for his or her private life. Thus, the fact that an individual belonged to the category of public figures could not, especially in the case of persons who, like Ms Bettencourt, did not exercise official functions, authorise the media to violate the professional and ethical principles which had to govern their actions, or legitimise intrusions into private life. The domestic courts had found against the applicants in order to end the disturbance caused to a woman who, albeit a public figure, had never consented to the disclosure of the recordings and transcripts in question, was vulnerable and had a legitimate expectation of having the illegal publications – which she had never been able to comment on, in contrast to the option available to her during the criminal trial – removed from the news site. The Court could see no strong reasons which required it to substitute its view for that of the domestic courts and to set aside the balancing exercise conducted by them. It was satisfied that the reasons relied upon were both relevant and sufficient to show that the interference complained of was "necessary in a democratic society" and that the order in question had not gone beyond what was necessary to protect Ms Bettencourt and P.D.M. from the interference with their right to respect for private life.

* The authorities' refusal to legally recognise a change of gender identity in the absence of surgery breached the Convention (19/01/2021)

In its Chamber judgment in the case of **X and Y v. Romania** (*applications nos. 2145/16 and 20607/16*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.
The case concerned the situation of two transgender persons whose requests for recognition of their gender identity and for the relevant administrative corrections to be made were refused on the grounds that persons making such requests had to furnish proof that they had undergone gender reassignment surgery. The Court observed that the national courts had presented the applicants, who did not wish to undergo gender reassignment surgery, with an impossible dilemma: either they had to undergo the surgery against their

better judgment – and forego full exercise of their right to respect for their physical integrity – or they had to forego recognition of their gender identity, which also came within the scope of respect for private life. In the Court's view, this upset the fair balance to be struck by the States Parties between the general interest and the individual interests of the persons concerned. The Court held that the domestic authorities' refusal to legally recognise the applicants' gender reassignment in the absence of surgery amounted to unjustified interference with their right to respect for their private life.

*** The penalty imposed on the applicant for begging in public breached the Convention (19/01/2021)**

In its Chamber judgment in the case of **Lăcătuş v. Switzerland** (*application no. 14065/15*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.
The case concerned an order for the applicant to pay a fine of 500 Swiss francs (CHF) (approximately 464 euros (EUR)) for begging in public in Geneva, and her detention in a remand prison for five days for failure to pay the fine. The Court observed that the applicant, who was illiterate and came from an extremely poor family, had no work and was not in receipt of social benefits. Begging constituted a means of survival for her. Being in a clearly vulnerable situation, the applicant had had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs by begging.
The Court considered that the penalty imposed on the applicant had not been proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers. The Court did not subscribe to the Federal Court's argument that less restrictive measures would not have achieved a comparable result. In the Court's view, the penalty imposed had infringed the applicant's human dignity and impaired the very essence of the rights protected by Article 8 of the Convention, and the State had thus overstepped its margin of appreciation in the present case.

*** Refusal to allow a prisoner to consult Internet sites on legal matters (such as that of the European Court) was unjustified (09/02/2021)**

In its Chamber judgment in the case of **Ramazan Demir v. Turkey** (*application no. 68550/17*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 10 (freedom of expression: freedom to receive information and ideas)** of the European Convention on Human Rights.
The case concerned the prison authorities' refusal to grant a request for access to certain Internet sites, lodged by Mr Demir in the course of his pre-trial detention in Silivri Prison in 2016.
Mr Demir, a lawyer, wished to access the Internet sites of the European Court of Human Rights, the Constitutional Court and the Official Gazette, with a view to preparing his own defence and following his clients' cases. The Court considered that since prisoners' access to certain sites containing legal information had already been granted under Turkish law for the purposes of training and rehabilitation, the restriction of Mr Demir's access to the above-mentioned sites, which contained only legal information that could be relevant to the applicant's development and rehabilitation in the context of his profession and interests, had constituted an interference with his right to receive information. It noted in this connection that the domestic courts had not provided sufficient explanations as to why Mr Demir's access to the Internet sites of the Court, the Constitutional Court or the Official Gazette could not be considered as pertaining to the applicant's training and rehabilitation, for which prisoners' access to the Internet was authorised by the national legislation, nor on whether and why Mr Demir ought to be considered as a prisoner posing a certain danger or belonging to an illegal organisation, in respect of whom Internet access could be restricted.
Furthermore, neither the authorities nor the Government had explained why the contested measure had been necessary in the present case, having regard to the legitimate aims of maintaining order and safety in the prison and preventing crime. It followed that the interference in question had not been necessary in a democratic society.

*** Vetting proceedings leading to dismissal of Constitutional Court judge were fair and dismissal proportionate (09/02/2021)**

In its Chamber judgment in the case of **Xhoxhaj v. Albania** (*application no. 15227/19*) the European Court of Human Rights held that there had been: **by a majority of 6 to 1, no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights as regards the alleged lack of independence and impartiality of the vetting bodies, **by a majority of 5 to 2, no violation of Article 6 § 1** as regards the alleged unfairness of the proceedings, **by a majority of 5 to 2, no violation of Article 6 § 1** as regards the alleged lack of a public hearing before the Appeal Chamber, **by a majority of 5 to 2, no violation of Article 6 § 1** as regards the alleged breach of the principle of legal certainty, and **by a majority of 5 to 2 no violation of Article 8 (right to respect for private and family life)**.
The case concerned a Constitutional Court judge who had been dismissed from office following the outcome of proceedings commenced in relation to her, as part of an exceptional process for the reevaluation of suitability for office of all judges and prosecutors in the country, otherwise known as the vetting process.

The applicant's case was examined by the vetting bodies and her dismissal was confirmed in private by the Appeal Chamber.
The Court found in particular that there had been no violation of Article 6 § 1 as the vetting bodies had been independent and impartial, the proceedings had been fair, holding a public hearing before the Appeal Chamber had not been strictly required, and the principle of legal certainty had not been breached. The Court furthermore considered that the dismissal from office had been proportionate and that the statutory lifetime ban imposed on the applicant on rejoining the justice system on the grounds of serious ethical violations had been consistent with ensuring the integrity of judicial office and public trust in the justice system, and thus had not breached her rights under Article 8.

* The Court clarifies the conditions for application of the presumption of equivalent protection in disputes concerning execution of a European arrest warrant (25/03/2021)

In its Chamber judgment in the case of **Bivolaru and Moldovan v. France** (*applications nos. 40324/16 and 12623/17*) the European Court of Human Rights held, unanimously, that there had been: a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights **in application no. 12623/17, lodged by Mr Moldovan**, and **no violation of Article 3 in application no. 40324/16, lodged by Mr Bivolaru**.
The case concerned the applicants' surrender by France to the Romanian authorities under European arrest warrants (EAWs) for the purpose of execution of their prison sentences. The case prompted the Court to clarify the conditions for application of the presumption of equivalent protection in such circumstances. The Court held that the presumption of equivalent protection applied in Mr Moldovan's case in so far as the two conditions for its application, namely the absence of any margin of manoeuvre on the part of the national authorities and the deployment of the full potential of the supervisory mechanism provided for by European Union (EU) law, were met. The Court therefore confined itself to ascertaining whether or not the protection of the rights guaranteed by the Convention had been manifestly deficient in the present case, such that this presumption was rebutted. To that end it sought to determine whether there had been a sufficiently solid factual basis requiring the executing judicial authority to find that execution of the EAW would entail a real and individual risk to the applicant of being subjected to treatment contrary to Article 3 on account of his conditions of detention in Romania. The Court noted that Mr Moldovan had provided evidence of the alleged risk that was sufficiently substantiated to require the executing judicial authority to request additional information and assurances from the issuing State regarding his future conditions of detention in Romania. The Court found a violation of Article 3 in so far as it appeared that the executing judicial authorities, in exercising their powers of discretion, had not drawn the proper inferences from the information obtained, although that information had provided a sufficiently solid factual basis for refusing execution of the EAW in question.
In Mr Bivolaru's case the Court considered that, owing to its decision not to request a preliminary ruling from the Court of Justice of the European Union (CJEU) on the implications for the execution of an EAW of the granting of refugee status by a member State to a national of a third country which subsequently also became a member State, the Court of Cassation had ruled without the full potential of the relevant international machinery for supervising fundamental rights having been deployed. The presumption of equivalent protection was therefore not applicable. There were two aspects to Mr Bivolaru's complaint: the first concerning the implications of his refugee status, and the second concerning conditions of detention in Romania. There was nothing in the file before the executing judicial authority or the evidence adduced by the applicant before the Court to suggest that he would still face a risk of persecution on religious grounds in Romania in the event of his surrender.
The Court considered that the executing judicial authority, following a full and in-depth examination of the applicant's individual situation which demonstrated that it had taken account of his refugee status, had not had a sufficiently solid factual basis to establish the existence of a real risk of a breach of Article 3 of the Convention and to refuse execution of the EAW on that ground. The Court also considered that the description of conditions of detention in Romanian prisons provided by the applicant to the executing judicial authority in support of his request not to execute the EAW had not been sufficiently detailed or substantiated to constitute prima facie evidence of a real risk of treatment contrary to Article 3 in the event of his surrender to the Romanian authorities. In the Court's view, the executing judicial authority had not been obliged to request additional information from the Romanian authorities. Accordingly, it held that there had not been a solid factual basis for the executing judicial authority to establish the existence of a real risk of a breach of Article 3 of the Convention and to refuse execution of the EAW on those grounds.

* Ban on disseminating information on an inquiry into allegations of corruption: Violation of a journalist's freedom of expression (04/05/2021)

In its Chamber judgment in the case of **Akdeniz and Others v. Turkey** (*applications nos. 41139/15 and 41146/15*) concerned an interim injunction ordered by the domestic courts banning the dissemination and publication (on any medium) of information on a parliamentary inquiry into allegations of corruption

against four former ministers, which had been instigated following an operation conducted by the Istanbul police and prosecutor's office on 17 and 25 December 2013.
The applicants, Banu Güven (a well-known journalist), as well as Yaman Akdeniz and Kerem Altıparmak (two academics who are popular users of the social media platforms) requested the lifting of the ban in question, relying on their right to freedom to impart information and ideas, as well as their right to receive information. The Constitutional Court dismissed their request on the grounds of their lack of victim status, since they were not directly or personally affected by the injunction. The Court pointed out that in itself, a measure consisting in prohibiting the possible publication and dissemination of information by any medium raised a freedom of information issue. It unanimously declared Banu Güven's application admissible as regards the complaint under Article 10 (freedom of expression). It accepted that Ms Güven, a journalist, political commentator and TV news presenter at the material time, could legitimately claim that the impugned prohibition had infringed her right to freedom of expression. She could therefore claim victim status. In that connection, the Court said that it should not be overlooked that the gathering of information, which was inherent in the freedom of the press, was also considered as a vital precondition for operating as a journalist; and that, in the context of the debate on a matter of public interest, that measure was liable to deter journalists from contributing to public discussions of issues important to community life. The Court went on to unanimously hold that there had been **a violation of Article 10 (freedom of expression)** of the Convention in respect of Banu Güven.
Indeed, the impugned injunction, which had amounted to a preventive measure aimed at prohibiting any future dissemination or publication of information, had had major repercussions on the applicant's exercise of her right to freedom of expression on a topical issue. Such interference had lacked a "legal basis" for the purposes of Article 10, and had therefore prevented Ms Güven from enjoying a sufficient level of protection as required by the rule of law in a democratic society. Finally, the Court held that Mr Akdeniz and Mr Altıparmak had not demonstrated how the impugned prohibition had affected them directly. They therefore lacked victim status in the instant case. The Court therefore declared their application inadmissible by a majority.

* Applicant's inability to obtain a review of a prohibition on leaving the country until a debt had been fully paid off was in breach of the Convention (11/05/2021)

In its Chamber judgment in the case of Stetsov **v. Ukraine** (*application no. 5170/15*) the European Court of Human Rights held, unanimously, that there had been: a violation of Article 2 of Protocol No. 4 (freedom of movement) to the European Convention on Human Rights. The case concerned a ban on leaving the country imposed on Mr Stetsov on account of a failure to reimburse a debt established by a judgment. According to domestic law at the material time, that prohibition could not be lifted until the full amount of the debt had been reimbursed. The ban had thus lasted for at least four years. As regards the restrictions imposed on the grounds of unpaid debts, the Court emphasised that such measures could only be justified if they pursued the aim of guaranteeing the recovery of the debts in question. Accordingly, the authorities could not extend the restrictions for long amounts of time without a periodical review of their justification. In the present case, the Court considered that Mr Stetsov had been subjected to measures which had been insufficiently justified and could not have been re-examined or reviewed until the strict deadline constituted by the date of full reimbursement. The Ukrainian authorities had therefore failed to honour the obligation to ensure that any interference with a person's right to leave his country was justified and proportionate vis-à-vis the circumstances, right from the outset and for the duration of the interference. Nevertheless, the Court took note of the 2017 and 2018 reform of civil procedure, which allowed debtors to bring proceedings to lift travel restrictions. That reform had, however, come into effect after the events which had given rise to Mr Stetsov's application.

* The lockdown ordered by the authorities to tackle the COVID-19 pandemic not to be equated with house arrest (20/05/2021)

In its decision in the case of **Terheş v. Romania** (*application no. 49933/20*) the European Court of Human Rights unanimously declared the application inadmissible. The case concerned the lockdown which was ordered by the Romanian government from 24 March to 14 May 2020 to tackle the COVID-19 pandemic and which entailed restrictions on leaving one's home. The Court held that the measure complained of could not be equated with house arrest. The level of restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty. In the Court's view, the applicant could not therefore be said to have been deprived of his liberty within the meaning of Article 5 § 1 of the Convention.

* Dismissal of a public-sector employee for having "Liked" Facebook posts: violation of her right to freedom of expression (15/06/2021)

In its Chamber judgment in the case of **Melike v. Turkey** (*application no. 35786/19*) the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 10 (freedom of expression)** of the European Convention on Human Rights. The case concerned the dismissal of Ms Melike, a contractual employee at the Ministry of

National Education, for having clicked "Like" on various Facebook articles (posted on the social networking site by a third party). The authorities considered that the posts in question were likely to disturb the peace and tranquillity of the workplace, on the grounds that they alleged that teachers had committed rapes, contained accusations against political leaders and related to political parties.
The Court noted that the content in question consisted of virulent political criticism of allegedly repressive practices by the authorities, calls and encouragement to demonstrate in protest against those practices, expressions of indignation about the murder of the president of a bar association, denunciations of the alleged abuse of pupils in establishments controlled by the authorities and a sharp reaction to a statement, perceived as sexist, made by a well-known religious figure. The Court held that these were essentially and indisputably matters of general interest. It reiterated that there was little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two areas: political speech and matters of public interest. It also noted that the disciplinary committee and the national courts had not taken account of all the relevant facts and factors in reaching their conclusion that the applicant's actions were such as to disturb the peace and tranquillity of her workplace.
In particular, the national authorities had not sought to assess the potential of the relevant "Likes" to cause an adverse reaction in Ms Melike's workplace, having regard to the content of the material to which they related, the professional and social context in which they were made and their potential scope and impact. Accordingly, the reasons given in the present case to justify the applicant's dismissal could not be regarded as relevant and sufficient. The Court also held that the penalty imposed on Ms Melike (immediate termination of her employment contract without entitlement to compensation) had been extremely severe, particularly in view of the applicant's seniority in her post and her age. Lastly, it concluded that, given their failure to provide relevant and sufficient reasons to justify the impugned measure, the national courts had not applied standards which were in conformity with the principles enshrined in Article 10 of the Convention. In any event, there had been no reasonable relationship of proportionality between the interference with Ms Melike's right to freedom of expression and the legitimate aim pursued by the national authorities.

*** Removal from office of a Member of Parliament and disqualification from standing as an electoral candidate on account of a criminal conviction: application inadmissible (17/06/2021)**

In its decision in the case of **Galan v. Italy** (*application no. 63772/16*) the European Court of Human Rights has unanimously declared the application inadmissible.
The case concerned the applicant's forfeiture of his electoral seat as a member of parliament on account of a finding by Parliament that there was a ground of ineligibility following a conviction for corruption. The Court attached weight to the approach taken by the Italian Constitutional Court, which had established in its case-law that disqualification from standing for election or removal from office were neither penalties nor effects of the criminal conviction.
Elected representatives who were removed from their office were excluded from the elected body to which they belonged because they had lost their moral capacity, an essential condition in order to continue to represent electors. The Court considered that the contested disqualification from standing as a candidate in elections and removal from office could not be regarded as the equivalent of a criminal punishment within the meaning of Article 7 of the Convention. This complaint was incompatible with the provisions of the Convention and had therefore to be rejected. The Court considered that the immediate application of the disqualification from standing as an electoral candidate had been consistent with the legislature's stated aim, namely to exclude persons convicted of serious offences from Parliament and thus to protect the integrity of the democratic process. This disqualification from standing as a candidate in elections could not be regarded as arbitrary or disproportionate. Lastly, having regard to the guarantees laid down through the "triple validation" parliamentary procedure – the Standing Committee on incompatibilities, disqualifications and removals, the Elections Board and the Chamber of Deputies –, the Court considered that the Convention did not require judicial review of a decision adopted by Parliament in the context of constitutionally reserved powers.

(*For more information please visit the website of the European Court of Human Rights: www.echr.coe.int*)

INFORMATION ON THE COURT

The building of the Constitutional Court:

The Constitutional Court of the Republic of Kosovo, since it became functional in 2009, has been located in the building of the former Kosovo Protection Corps - KPC, located in the center of Prishtina, in the area of Pejton. The position of the Court in the center of the capital city, symbolizes an equal access to all citizens and other authorized parties to the Constitutional Justice. Over the years this building has been adapted according to the needs and nature of work of the Constitutional Court. This has been carried out with the support of our donors, as in the case of construction of the Courtroom of the Court which has been funded by the Constitutional Court of the Republic of Turkey in 2010, the establishment of the Library of the Court which was entirely supported by the GIZ Legal Reform Project and the donation of additional office space/containers by the Constitutional Court of the Republic of Turkey in 2011.
The building of the Court has a usable office space of 784 m² and is used by 65 employees.

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